
(2015) 05 DEL CK 0276

In the Delhi High Court

Case No : Writ Petition (C) No. 2571 of 2001

UOI and Others

APPELLANT

Vs

S. Sengathir and Others

RESPONDENT

Date of Decision : 12-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309, 312

Citation : (2016) 226 DLT 215

Hon'ble Judges : Kailash Gambhir, J; I.S. Mehta, J

Bench : Division Bench

Advocate : Amit Mahajan, CGSC, for the Appellant; Shanker Raju and Aditya Dhar, Advocates for the Respondent

Final Decision : Allowed

Judgement

I.S. Mehta, J.—The petitioners under Article 226 of the Constitution of India has preferred the present writ-petition for setting aside the impugned order passed by the Central Administrative Tribunal, Principal Bench dated 24.11.2000, in O.A. No. 781/98 and O.A. No. 782/98 wherein the claim of the respondent No. 1 for cadre allocation of home state i.e. Tamil Nadu was allowed.

2. The brief facts as set out by the respondent No. 1 in the O.A. 781/1998 are that he, i.e. S. Sengathir, belongs to the OBC Category from the State of Tamil Nadu, appeared in the Civil Services Examination - 1996 (CSE-1996) and secured the rank of 330 in the said examination and another candidate namely R. Rajasekaran, who too filed O.A. No. 782/1998, also secured rank of 338 in the said examination.

3. The respondent No. 1 was allocated to the Indian Police Service on the basis of he being an OBC category candidate of Tamil Nadu State and thereafter, petitioner No. 1, asked the respondent No. 1 to join the foundation course at Lal Bahadur Shastri National Academy of Administration, Mussoorie vide letter dated 09.08.1997. After completion of his foundation course, he was allocated the

Rajasthan Cadre instead of State of Tamil Nadu despite his preference given in the application form. The only higher ranker for the State of Tamil Nadu in the OBC category, was Shri K.S. Palanisamy, who secured the rank of 244 in the said examination i.e. CSE-1996, but later, he did not join the foundation course. Consequently, the respondent, S. Sengathir, came to the first position amongst the OBC candidates from the State of Tamil Nadu.

4. There were six vacancies for the State of Tamil Nadu, and the respondent-applicant, despite holding the first position, was not allocated the Tamil Nadu cadre which is violative of Articles 14 and 16 of the Constitution of India. It was contended that the respondent be given the preference to the Home State after following the roster system in view of the judgment Union of India (UOI) and Others Vs. Rajiv Yadav, IAS and Others, (1994) 5 JT 54 : (1994) 3 SCALE 617 : (1994) 6 SCC 38 : (1994) 2 SCR 30 Supp : (1995) 1 SLJ 13 : (1994) 2 UJ 558 and the order No. 11011/32/97-Trg-IPS (P) 50 dated 17.03.1998 and further impugned order No. MHA (S) OM NO. I- 12015/F/195-IPS IV dated 06.03.1998 be set aside.

5. The petitioner, Union of India, admitted in their written statement that the respondent No. 1 i.e. S. Sengathir, qualified the CSE-1996 with rank 330 and allocated to the IPS cadre. It was stated that there were six vacancies of the IPS in the State of Tamil Nadu. Out of these six vacancies, three were for general category, one was reserved for OBC candidate and two were reserved for SC/ST candidate. The aforesaid allocation of cadre was done after following the Principles of Cadre Allocation of All India Services Officers under the Roster System. The aforesaid six vacancies were distributed amongst two insiders (one for general and one for SC/ST) and four outsiders (two for general and one each for OBC and SC/ST). Hence, there was no insider vacancy for OBC category in the IPS cadre of the Tamil Nadu to be filled up on the basis of CSE-1996. The respondent No. 1 is claiming the right over the drop-out vacancy and the same cannot be claimed as a matter of Right. There was only one exchanged insider OBC vacancy, which was filled up by Shri K.S. Palanisamy, who had higher rank than the respondent No. 1. Since no other insider OBC vacancy was available, the respondent No. 1 could not be allocated to his home state i.e. Tamil Nadu.

6. The learned counsel appearing on behalf of the petitioner, Union of India, has drawn our attention towards the fact that allocation of cadre was done on the basis of the government policy based on "Principles of Cadre Allocation of All India Services Officers under the Roster System" and the respondent No. 1 i.e. S. Sengathir, being a member of All India Service should not have any grievance merely because the cadre to which he had been allocated does not suit him and does not violate the Articles 14 and 16 of the Constitution of India.

On the contrary, the learned counsel for the respondent No. 1 has pointed out that the petitioners, while not allocating the home cadre to the respondent No. 1 despite, he making it to the first position amongst the OBC candidates belonging to the State of Tamil Nadu, after non-reporting of K.S. Palanisamy to the

foundation course as an insider OBC candidate, violated Article 14 and 16 of the Constitution of India. Consequently, on preferring the O.A. 781/98, the learned Tribunal has correctly passed the necessary orders in favour of the respondent i.e. S. Sengathir. Therefore, the present writ petition be dismissed with costs.

7. Excessive desire or possessiveness of allocation of home cadre is the main cause of filing O.A. No. 781/98 ignoring the fact that IPS is an elite service entrusted with important functions of national interest, internal security, public safety and maintenance of law and order of the Union of India.

The Indian Police Service which is called in short-form as the IPS is not just the law enforcing agency in its own right rather it also ought to perform its duty under Article 312 of the Constitution of India.

8. The respondent No. 1 i.e. S. Sengathir after his selection as an IPS officer came out with a plea that he be allocated his home-state i.e. Tamil Nadu rather than the State of Rajasthan. The question arises whether such plea or the claim of the respondent should be entertained. The answer is NO.

The All India Services, comprising of the Indian Administrative Service, Indian Forest Service, and the Indian Police Service, have been created under Article 312 of the Constitution of India in the national interest and form the backbone of the Indian administrative system. The members of these services, which are common to the Union and the States, are recruited by the Centre but their services are placed under various States, and they have the liability to serve both under the States and under the Centre. The Indian Police Service more popularly known as the IPS is entrusted with functions of public safety, internal security, and maintenance of law and order by the government under Article 312(2) of the Constitution of India. The present Indian Police Service came into existence in the year 1948 after replacing the imperial police.

9. Our attention is drawn towards the fact, that, appointment and allocation of cadre are two different things. Indisputably, in the instant case, S. Sengathir, was appointed as an IPS Officer, who was instructed to undergo the foundation course at Lal Bahadur Shastri National Academy of Administration, Mussoorie.

10. The allocation of cadre has taken place subsequently after following the due procedure i.e. under the Roster System. The respondent i.e. S. Sengathir is claiming cadre of Home State i.e. State of Tamil Nadu after placing reliance on thirty point roster system. The relevant extract of the letter dated 30/31.05.1985 and its detailed procedure is reproduced hereinunder:

GOVERNMENT OF INDIA MINISTRY OF PERSONNEL and TRAINING
ADMINISTRATIVE REFORMS AND PUBLIC GRIEVANCES AND PENSIONS

SECRETARY D.O. NO. 13012/5/84-AIS(I) DATED:30/31May, 1985

Dear Shri Seshan,

As you are aware, the allocation of the direct recruits to the All India Services,

including the Indian Forest Service is being made in accordance with the Limited Zonal Preferences System" from 1978 examinations and onwards. In this system all the cadres/joint cadres were divided into zones and the candidates were given the opportunity to indicate their preferences zone-wise and also for two cadres in each zone. The allocation was being made keeping in view the rank and preferences of the candidates subject to allocation of vacancies in each cadre between "insiders" and "outsiders"

Our experience has shown that the limited zonal preferences system of allocation suffers from a number of deficiencies. Under this system there is only a very limited movement of candidates from one part of the country to another across several States and even this limited inter-regional movement of candidates takes place only in respect of a few low ranking candidates. Another draw back of the system is that "outsiders" getting allocated to a State are mostly from a neighboring State.

Keeping in view the deficiency that is noticed in the working of the limited zonal preferences system it has been decided with the approval of the Prime Minister that from 1985 batch onwards (1984 examination candidates) we should revert back to the roster system, which was the system of allocation from 1966 to 1977 examination with certain modifications. The broad principles of allocation on the basis of roster system would be as follows:-

(1) The vacancies in every cadre will be earmarked for "outsiders" and "insiders" in the ratio of 2:1. In order to avoid problems relating to fractions and to ensure that this ratio is maintained, over a period of time, if not during allocation, the break-up of vacancies in a cadre between "outsiders" and "insiders" will be calculated following the cycle of "outsider", "insider", "outsider".

(2) The vacancies for Scheduled Castes and Scheduled Tribes will be reserved in the various cadres according to the prescribed percentage. For purpose of this reservation, Scheduled Castes and Scheduled Tribes will be grouped together and the percentages will be added. Distribution of reserved vacancies in each cadre between "outsiders" and "insiders" will be done in the ratio of 2:1. This ratio will be operationalised by following a cycle "outsider", "insider", "outsider" as is done in the case of general candidates.

(3) Allocation of "insiders", both men and women, will be strictly according to their ranks, subject to their willingness to be allocated to their home States.

(4) Allocation of "outsiders", whether they are general candidates or reserved candidates, whether they are men or women, will be according to the roster system after placing "insiders" at their proper places on the chart as explained below:-

(i) All the State cadres/Joint Cadres should be arranged in alphabetical order and divided into four groups which, on the basis of the average over a period of time, are taking roughly equal number of candidates each. On the basis of average

intake during the last 4 years, the groups could be as follows:

Group I: Andhra Pradesh, Assam, Meghalaya, Bihar and Gujarat.

Group II: Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala and Madhya Pradesh.

Group III: Maharashtra, Manipur-Tripura, Nagaland, Orissa, Punjab, Rajasthan and Sikkim.

Group IV: Tamil Nadu, Union Territory, Uttar Pradesh and West Bengal.

(ii) Since the number of cadres/Joint Cadres is 21, the cycles will be 1-21, 22-42, 43-63 and so on.

(iii) The "insider" quota should then be distributed among the States and assigned to different cycles of allotment. For example, if a State gets 4 "insider" candidates, they should go to the share of the State in their respective cycles and if there are 2, "insider" candidates from the same cycle, they should be treated as going to the State in two successive cycles and so on.

(iv) The "outsider" candidates should be arranged in order of merit and allotted to the State cadres in cycles as described in (v) below.

(v) In the first cycle, State cadre/Joint Cadres which have not received "insider" candidates should be given one candidate each in order of merit of "outsider" candidates. The process should be repeated in successive cycles, each successive cycle beginning with the next successive group of States, e.g., the second cycle should begin from Group III States, the third cycle with Group III States and the fourth cycle with Group IV States and the fifth cycle again with Group I States. Occasionally it may happen that a candidate's turn may come in such a way that he may get allocated to his own home State. When that happens, the candidate next below him should be exchanged with him.

(vi) For the succeeding year, the State cadres should be arranged again in alphabetical order but with Group 1 of the previous year at the bottom, i.e., the arrangement will begin with Group II on top. In the third year, Group III will come on top and so on.

(vii) In the case of candidates belonging to the reserved category, such of those candidates, whose position in the merit list is such that they could have been appointed to the service even in the absence of any reservation, will be treated on par with general candidates for purposes of allotment though they will be counted against reserved vacancies. In respect of other candidates belonging to the reserved category a procedure similar to the one adopted for general candidates would be adopted. In other words, a separate chart should be prepared with similar grouping of States and similar operational details should be followed. If there is a shortfall in general "insiders" quota it could, however, be made up by "insider" reserved candidates....."

"Details of procedure followed in the allotment of cadre to the officers of the All India Service"

"The States of the Union of India are divided into 24 cadres/Joint Cadres. Each State constitutes a cadre except the three Joint Cadres, namely, Assam-Meghalaya, Manipur-Tripura and AGMUT (Arunachal Pradesh, Goa, Mizoram and Union Territories) Cadre.

2. The first stage in cadre allocation is to divide the vacancies in each cadre among general, OBC and SC/ST on the basis of prescribed percentage for both the categories are added for the purpose of cadre allocation).

3. The next stage is to divide the vacancies for each category (i.e. general, OBC and SC/ST) between insiders and outsiders on the basis of 30-point roster. In the said roster, the first vacancy goes to outsider, the second vacancy goes to insider and the third vacancy goes to outsider. The cycle is repeated. This 30-point roster is continuous.

4. A list of candidates allotted to the service is prepared indicating their home states and their willingness to be allocated to their home states and each candidate is assigned a Sl. No. in the order of merit in the said list.

5. Allocation of "insiders" is done strictly according to their ranks, subject to their willingness to be allocated to their home-States. Allocation of "outsiders" is done according to the roster system after placing "insiders" at their proper places on the Allocation-chart as explained below.

6. All the cadres/joint cadres are arranged in alphabetical order and divided into four groups. These groups are devised on the basis of an average intake by each group, which over a period of time is roughly equal. The groups are as below:

Group I: Andhra Pradesh, Assam-Meghalaya, Bihar, Chhattisgarh and Gujarat;

Group II: Haryana, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Karnataka, Kerala and Madhya Pradesh;

Group III: Maharashtra, Manipur-Tripura, Nagaland, Orissa, Punjab, Rajasthan and Sikkim and

Group IV: Tamil Nadu, AGMUT (UT Cadre), Uttaranchal, Uttar Pradesh and West Bengal.

7. Since the number of cadre/joint cadres is 24, the cycles are 1-24, 25-48, 49-72 and so on. The candidates between Sl. No. 1 and 24 who can be allocated to their home states are slotted into the first cycle (1-24) and the candidates between Sl. No. 25 and 48 who can be allocated to their home states are slotted in the second cycle (25-48) and so on.

8. If there are two or more candidates who as per their Sl. No. have to occupy the same cycle, they will occupy the next cycle irrespective of their Sl. No. In other words, if there are three candidates to be allotted as insiders at Sl. Nos.

3,7,11, then the Sl. No. 3 will occupy the first cycle (1-24), Sl. No. 7 will occupy the second cycle (25-48) and Sl. No. 11 will occupy the third cycle (49-72).

9. If a general candidate is not available to fill general insider vacancy then it is filled by an insider SC/ST candidate provided there is an SC/ST outsider vacancy available in that cadre to facilitate exchange. If SC/ST insider candidate is not available or SC/ST outsider vacancy is not available in that cadre then the general vacancy is filled by insider OBC candidate with the same condition that there must be an outsider OBC vacancy to facilitate the exchange. Similarly, the insider OBC vacancy, if not filled due to non-availability of insider OBC candidate is first filled by an insider SC/ST candidate and then by insider general candidate with the same conditions. An unfilled insider SC/ST vacancy is first filled by insider OBC candidate and then by a general insider candidate with the same conditions.

10. Even after exchange, if an insider vacancy is not filled it goes to outsider and it is not carried forwarded.

11. The candidates who could not get their home states are arranged in the order of merit and allocated to the cadres against vacant slots available in various cadres, beginning from the first cadre of the order in which they are arranged for the year. After the first cycle is filled, the remaining outsiders will be allocated in the second cycle but the second cycle will start from the next group of the States and so on. For example, in a particular year, the 1st Group which starts from Andhra Pradesh is at the top. After allocating the outsiders against the available slots in the first cycle, the next available outsider candidate will be allotted to the first available state of 2nd Group and after allocating all the available outsider candidates who can be allocated in the second cycle, the next available outsider will be allocated in the first available state of 3rd Group and so on. This ensures equal distribution of merits.

12. For the succeeding year, the Groups of States will rotate. The Group at top this year will come at the bottom in the next year. The second Group will come at the top and so on.

13. In the case of reserved categories, separate charts are prepared for OBC and SC/ST candidates with similar details and methods.

14. In the case of candidates belonging to reserved category such of those candidates who are recommended for appointment against unreserved vacancy and get allocated to the service against unreserved vacancy are given the benefit of reservation if they get their home state as reserved candidates."

11. The principle of equality under Article 14 of the Constitution of India is inherent in the Rule of Law. However, its effect would depend upon its enforcement and application. The rule of law is satisfied when the laws are applied bona-fide without bias and irrational distinction. However, the concept of equality allows the different treatment provided there is reasonable justification

to do so while enforcing the rule of law. Here, the plea taken by the respondent is that, amongst the OBC candidates, his position was 2nd and K.S. Palanisamy was holding the 1st position amongst the OBC candidates belonging to the State of Tamil Nadu and his position in merit was 244th. Since, K.S. Palanisamy who was holding the 244th position overall and first amongst the OBC candidates of Tamil Nadu, did not join the Tamil Nadu cadre, consequently, the respondent became entitled to the insider vacancy in the batch of 1997.

12. The non-joining of K.S. Palanisamy subsequent to the foundation course ipso-facto does not create any vacancy in favour of the respondent of his home state i.e. State of Tamil Nadu as he has already been allocated the cadre of Rajasthan when his senior in merit, Shri K.S. Palanisamy was allocated the Tamil Nadu cadre.

The plea of the respondent that, once K.S. Palanisamy did not join the foundation course and consequently, the right of allocation of his home-cadre accrued in his favour does not seem to be correct as there was no occasion for the allocation of such drop-out vacancy till the succeeding year and the respondent has already joined the Rajasthan cadre from where he is discharging his duties.

Moreover, a selected candidate has a right to be considered for appointment but does not have any right qua against the allotment of cadre which is an incidence of service. Reliance in this regard may be placed on Union of India (UOI) and Others Vs. Rajiv Yadav, IAS and Others, (1994) 5 JT 54 : (1994) 3 SCALE 617 : (1994) 6 SCC 38 : (1994) 2 SCR 30 Supp : (1995) 1 SLJ 13 : (1994) 2 UJ 558 wherein the Hon'ble Supreme Court made the following observations:

"A selected candidate has a right to be considered for appointment to the IAS but he has no such right to be allocated to a cadre of his choice or to his home-State. Allotment of cadre is an incidence of service."

The judgment - Jai Narain Ram Vs. State of U.P. and others, AIR 1996 SC 703 : AIR 1995 SC 703 : (1995) 9 JT 123 : (1996) LabIC 577 : (1995) 6 SCALE 671 : (1996) 1 SCC 332 : (1995) 5 SCR 444 Supp pertains to the applicants who were denied appointment by the State Public Service Commission whereas in the present case, the respondent No. 1 is already given appointment to an All India Service and allocated cadre of Rajasthan and respondent No. 1 is claiming as a matter of right, allocation of his Home state. Consequently, the aforementioned judgment does not help the respondent in the instant case.

So far as the case titled as J. Loganathan Vs. Union of India (UOI) rep. by its Secretary to Government, Department of Personnel and Training and Ors, dated 31.07.2009 W.P No. 43632/2006 is concerned, the same is not helpful as the facts of the instant case is different and the facts of the aforementioned is one related to erroneous acts and subsequent inaction on part of the government.

13. Further, the judgments - Union of India (UOI) and Another Vs. Rahul Rasgotra and Others, AIR 1995 SC 2237 : (1994) 68 FLR 711 : (1994) 1 JT 441 :

(1995) LabIC 1762 : (1994) 1 LLJ 913 : (1994) 1 SCALE 336 : (1994) 2 SCC 600 : (1994) 1 SCR 508 : (1995) 1 SLJ 82 : (1994) 2 UJ 80 , Shankarsan Dash Vs. Union of India, AIR 1991 SC 1612 : (1991) 62 FLR 981 : (1991) 2 JT 380 : (1991) LabIC 1460 : (1992) 2 LLJ 18 : (1991) 1 SCALE 848 : (1991) 3 SCC 47 : (1991) 2 SCR 567 : (1991) 2 UJ 212 and C.M. Thri Vikrama Varma Vs. Avinash Mohanty and Others, (2011) 130 FLR 795 : (2011) 8 JT 1(1) : (2011) 7 SCALE 542 : (2011) 7 SCC 385 : (2011) 2 SCC(L&S) 256 : (2011) AIRSCW 5829 : (2011) AIRSCW 4129 : (2012) AIRSCW 317 : (2011) 5 Supreme 548 are not helpful to the respondents as the claim in the instant case is arising out of incidence of service.

14. The Principles of Cadre Allocation of All India Services under the Roster System is a tool and technique to allocate the cadre to the qualified candidates of the All India Services, in a fair, equitable and non- discriminatory manner based on government policy. Consequently, the present policy i.e. Principles of cadre allocation under the Roster system formulated under Article 309 of the Constitution does not require test of judicial scrutiny, or any interference from the outside in absence of aforementioned rules being discriminatory, biased or unfair.

The material placed on record indicates that in the relevant year i.e. 1996, there were six vacancies for the State of Tamil Nadu, and out of the Six vacancies, one was for general, none for OBC and one for SC/ST candidate in the insider quota and in the outsider quota, there were two general, one OBC and one SC/ST. The present dispute is pertaining to the insider OBC vacancy where, initially, no vacancy was existing in the relevant year. However, prior to the allocation of cadres, as per the policy, i.e. the Principles of cadre allocation under the Roster system, the insider SC/ST vacancy was exchanged with the only available one OBC outsider vacancy and the said OBC vacancy was then filled up by one Shri K.S. Palanisamy, who was higher in merit than the respondent No. 1, S. Sengathir, and had secured the rank of 244 and was allotted the Tamil Nadu Cadre.

15. In the present case, the cadre allocation was done in accordance with the established rules i.e. the Roster System and therefore, was, not done in an arbitrary or unfair manner and does not warrant any interference. Reliance is placed on Mallikarjuna Rao and Others Vs. State of Andhra Pradesh and Others, AIR 1990 SC 1251 : (1990) 3 JT 34 : (1990) 2 SCC 707 : (1990) 2 SCR 418 .

The Rule of Law in the instant case is satisfied when the respondent i.e. S. Sengathir was given the post of IPS and consequently, he has undergone the foundation course and has become the member of the Indian Police Service. Reliance in this regard is placed on M. Nagaraj and Others Vs. Union of India (UOI) and Others, AIR 2007 SC 71 : (2006) 9 JT 191 : (2006) 10 SCALE 301 : (2006) 8 SCC 212 : (2007) 1 SCC(L&S) 1013 : (2006) 7 SCR 336 Supp .

The background of creating All India Services was to create a better and effective

mechanism to run the country efficiently in the national interest as India is a culturally rich and diverse country consisting of multiple religions and languages. While enforcing the Rule of Law, the executive created a mechanism of Roster System for fair and equitable allocation of cadres. Here is a case, when the post is being created and accepted by the respondent i.e. S. Sengathir as a member of Indian Police Service on merit and his claim of Home State is incidental to the post and does not give any independent right unless the respondent succeeds in establishing the arbitrariness or discriminatory qua against him to attract the provisions of Articles 14 and 16 of the Constitution of India.

16. Consequently, in light of the aforesaid discussion, we allow the present Writ Petition and set aside the impugned order/judgment dated 24.11.2000 passed by the learned Tribunal in O.A. 781/98. There shall be no order as to costs.