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Court : Central Administrative Tribunal CAT Jodhpur

Decided On : Apr-25-2000

Judge : B Raikote, S A Gopal

Appellant : Niranjan Kumar Vasu

Respondent : Union of India (Uoi) and ors.

Judgement :

1. Applicant, Niranjan Kumar Vasu, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for as under:-- (i) the impugned letter dated 24.7.1991 (Annexure A/1) may be quashed and set aside and the respondents Nos. 1 to 4 be allocated Rajasthan cadre to the applicant right from inspection of this appointment and he may be given all consequential benefits and if need be, the notification dated 15-4.1987 qua the applicant may be set aside; (ii) that if for granting above relief cadre allocation made in favour of respondent No. 5 is required to be set aside, the same may be set aside; (iii) the letter dated 31.5.1985 (Annexure A/2A) may be declared as un-constitutional and ultra vires to Articles 14 and 16 of the Constitution of India and consequently, the respondents may be directed to consider the cadre allocation of applicant bereft of letter dated 31.5.1985 and allocate him Rajasthan State." 2. Applicant's case is that he was selected to the Indian Forest Service by the Union Public Service Commission through the examination conducted in the year 1984 and he was allocated to Assam-Meghalaya joint cadre vide Ministry of Environment and Forest, Department of Environment, Forests and Wild Life's notification dated 15.4.1987.

As per the allocation, only one vacancy was available in the Rajasthan cadre for the insider against which a reserved category candidate was appointed. It is the contention of the applicant that he was placed higher in merit than the reserved category candidate and, therefore, should have been allocated to Rajasthan cadre as a insider candidate.

It has also been contended by the applicant that an application of "Roster System" in the matters of allocation is against Article 16(4) of the Constitution of India.

3. Notices were issued to the respondents and they have filed the reply. The official respondents have contended that the application is liable to be dismissed on the ground of limitation and it is further contended by the respondents that the applicant could not have been allocated to Rajasthan cadre in terms of the policy adopted by the Government of India in this regard.

4. We have heard the learned Counsel for the parties and perused the records of the case carefully.

5. We would first like to deal with the objection raised by the respondents in regard to limitation. The applicant was allocated Assam-Meghalaya joint cadre in the year 1987. However, he has approached this Tribunal in the year 1992, and for the delay it has been submitted by the applicant that at the time of allocation of cadres to the 1985 Batch of IFS officers, he was not aware of the Government policy in regard to allocation to various cadres as the cadre allocation was never published. The applicants further asserts that he came to know about the same for the first time after the order dated 10.8.1990 in OA No. 42/89 by the Chandigarh Bench of the Central Administrative Tribunal was passed and immediately thereafter, he had filed this application. It is pointed out here that the "Roster System" policy in matters of allocation of various cadres was made effective with effect from 1985 Batch, and the argument that the applicant was not aware of the said policy at the time of allocation of his cadre and that on coming to know of it only in the year 1990, He came to know of it cannot be said to be a satisfactory reason for delay in filing of the application, Thus, the application can be dismissed on this ground alone.

6. In this application, the applicant has questioned the validity of the guidelines issued by the Government of India dated 30.5.1985/31.5.1985 (Annexure A/2A) vide D.O. No. 13013/584-AIS(I). The learned Counsel appearing for the applicant contended that the same was violative of Articles 14 and 16 of the Constitution of India.

7. This controversy had come up earlier before Hon'ble the Supreme Court in Union of India v. Rajiv Yadav, IAS and Ors., 1995(1) SLJ 13 (SC), wherein it has been held as under: "We have given our thoughtful consideration to the reasoning and the conclusion reached by the Tribunal. We are not inclined to agree with the same. Rule 5 of the Cadre Rules provides that the allocation of the members of the IAS to various cadres shall be made by the Central Government in consultation with the State Government or the State Governments concerned. Sub-rule (2) of Rule 5 further provides that a cadre officer can be transferred from one cadre to another. When a person is appointed to an All-India Service, having various State cadres, he has no right to claim allocation to a State of his choice or to his home State. The Central Government is under no legal obligation to have options or even preferences from the officer concerned. Rule 5 of the Cadre Rules makes the Central Government the sole authority to allocate the members of the service to various cadres. It is not obligatory for the Central Government to frame rules/regulations or other- wise notify "the principles of allocation adopted by the Government as a policy. The letter dated 31.5.1985 shows that the Central Government has always been having guidelines either in the shape of "limited zonal preferences system" or "Roster System" for the exercise of its discretion under Rule 5 of the Cadre Rules. Simply because the principles of allocation called "Roster System" were not notified, it is no ground to hold that the same are non est and the Central Government cannot follow the same. In any case, the "Roster System" has stood the least of time. It was operative during the year 1966 to 1977 and again it is being followed from 1985 batch onwards. The fact that the "Roster System" is being followed in practice by the Central Government for all these years, is in itself a sufficient publication of its principles.

6. We may examine the question from another angle. 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. A member of an All-India Services bears liability to serve any part of India. The principles of allocation as contained in Clause (2) of the letter dated 31.5.1985, wherein preference is given to a Scheduled Caste/Scheduled Tribe candidate for allocation to his home State, do not provide for reservation of appointments or posts and as such the question of testing the said principles on the anvil of Article 16(4) of the Constitution of India does not arise. It is common knowledge that the Scheduled Caste/ Scheduled Tribe candidates are normally much below in the merit list and as such are not in a position to compete with the general category candidates.

The "Roster System" ensures equitable treatment to both the general candidates and the reserved categories. In compliance with the statutory requirement and in terms of Article 16(4) of the Constitution of India 221/2% reserved category candidates are recruited to the IAS. Having done so both the categories are to be justly distributed amongst the States. But for the "Roster System" it would be difficult rather impossible for the Scheduled Caste/ Scheduled Tribe candidates to be allocated to their home States. The principles of cadre allocation thus, ensure equitable distribution of reserved candidates amongst all the cadres".

8. From the above judgment of Hon'ble the Supreme Court, it is clear that the guidelines for allotment of the cadres to different States circulated vide letter dated 31.5.81 have been upheld. In these circumstances, learned Counsel for the applicant fairly submitted that he does not want to press the point regarding validity of the circular.

However, the learned Counsel for the applicant contended that allocating respondent No. 5 to Rajasthan State and not allocating the applicant to Rajasthan State, since both were hailing from Rajasthan is illegal. He elaborated the contentions stating that in the selection list, the applicant was at Sl. No. 9 and the respondent No. 5 was at serial No. 152 vide Annexure A/3, therefore, the applicant could have been allotted to Rajasthan State as against the respondent No. 5. He stated that both the applicant and the respondent No. 5 are the insiders, i.e., from Rajasthan, he being at higher rank was entitled to be considered for Rajasthan

State as an insider as against the respondent No. 5. Therefore, the allotment of respondent No. 5 to the Rajasthan State was illegal. He further contended that so far as the Rajasthan State is concerned, there was only one post of IPS to be allotted and for such a single post, roster system could not be applied. He further submitted that at any rate the respondent No. 5 could not get allotment to Rajasthan State as per the roster. He elaborated his contentions stating that as per the roster, for Scheduled Castes and Scheduled Tribes, reservation of 15% and 71/2% respectively is provided and that is only applied to the selection and the same cannot be applied for allotment of the States to the candidates. He states that the allotment of the States to the candidates should be based on running account of the posts available and not to find out whether the particular post go to insider or outsider and that has not been done, while allotting respondent No. 5 to the Rajasthan State. Therefore, he made representation to the Government of India and the same has been rejected vide endorsement dated 24.7.91 (Annexure A/1). He stated that no reasons are indicated for rejecting the representation, therefore, the same is a non-speaking order and liable to be quashed. Alternatively, he submitted that no doubt, reservations are provided to the SC/ST candidates in terms of Article 16(4) of the Constitution of India, but at the same time Article 335 be kept in view for ensuring the efficiency of the administration, but that has not been done by the department. The applicant was higher in rank in the selection and, therefore, he is entitled to get allotment to Rajasthan State in order to maintain the efficiency of the department. Therefore, the impugned action of the respondents is also contrary to the Article 335 of the Constitution of India. In support of his arguments he cited judgments of Hon'ble the Supreme Court, *Post Graduate Institute of Medical Education and Research, Chandigarh v. Faculty Association and Ors.*, AIR 1998 SC 1767 and *Bhide Girls Education Society v. Education Officer, Zila Parishad, Nagpur and Ors.* 1994 SCC (L&S) 78.

9. As against this argument, the respondents contended that the respondent No. 5 has rightly been allotted to the State of Rajasthan.

They stated that the respondent No. 5, being a person belonging to Scheduled Caste category, he was entitled to be placed as Sl. No. 1 as against the applicant as per the roster. They further contended that even the Government guidelines

(Annexure A-2A) which has been upheld by Hon'ble the Supreme Court, also provides for reservation even in regard to allotment of cadres. They further submit that as per Annexure A2/A guidelines, out of 3 posts, 2 posts were meant for outsiders and one for insider and that the post meant for insider has been given to the respondent No. 5, according to the roster system as well as the guidelines issued by the Government of India vide Annexure A/2A. Therefore, there is neither any illegality nor any irregularity in allotting the respondent No. 5 to Rajasthan State. It is further contended that immediately after the allotment in the year 1987, the applicant has not raised any objection and he raised the objection only belatedly, and the Government of India had rightly rejected his representation vide Annexure A/1 as one filed after such a long spell of time with delay and laches. In fact, Hon'ble the Supreme Court observed that the guidelines Annexure A/2A were in force even prior to 1985 batch and it was within the knowledge of the applicant. If that is so, the application is liable to be rejected on the ground of delay and laches.

10. It is further clarified on behalf of the respondents that even in the State of Rajasthan a roster was maintained for 'insider' and 'outsider' by indicating 'i' and 'o' for the posts available. The post in question that was allotted to the respondent No. 5 was meant for insider on the basis of roster maintained and it was meant for Scheduled Caste according to the reservation roster. He also stated that the judgments cited by the learned Counsel for the applicant do not apply to the facts of the case and consequently sought rejection of the application.

11. The fact that the respondent No. 5 belongs to Scheduled Caste category is not in dispute and the applicant is at Sl. No. 9 and the respondent No. 5 is at Sl. No. 152 in the select list and both of them are insiders to Rajasthan State and both had opted for Rajasthan State.

But the case of the official respondents is that the respondent No. 5 was entitled to allotment to Rajasthan State as against the applicant, since he belong to Scheduled Caste category and the post in Rajasthan was allotted to respondent No. 5 according to the guidelines issued by the Government of India vide Annexure A/2A. They have also stated that a continuing roster was maintained

indicating 'O', 'I' and 'O' and on the basis of this roster and also on the basis of the roster principles applicable to Scheduled Caste category, respondent No. 5 has been allotted to Rajasthan State. In order to appreciate this contention of the respondents, we think it appropriate to extract the relevant paragraph of the reply filed by the Union of India as under : "2. The officers appointed to the IPS by direct recruitment are allocated to the State cadres according to certain principles, the details of which are given hereunder. The vacancies to be filled up in each State are divided into two categories viz. those to be filled by 'insiders', i.e. the candidates hailing from these States and the vacancies to be filled up by 'outsiders' viz. the candidate as hailing from outside the State. The vacancies filled up by insiders and outsiders are further sub-divided into those to be filled up by general candidates and those to be filled up by candidates belonging to the Scheduled Caste/Scheduled Tribe (hereinafter referred to as reserved candidates). Thus, for the purpose of cadre allocation of direct recruits : (i) the number of reserved candidates to be allocated to each State cadre is worked out on the basis of 22 1/2% (15% + 7 1/2%) of the vacancies to be filled up in that State cadre; (ii) the vacancies to be filled up in each State cadre are distributed between those to be filled by insiders and those to be filled up by outsiders in the proportion of 1:2 on the basis of a counting 3 point roster maintained for the purpose from 1983 examination when the insider/outsider ratio was revised to 1:2. The roster started with 'o' (outsider) for each State, each cycle being 'O', 'I' and 'O'.

(iii) Out of the vacancies meant for reserved candidates the vacancies that should be filled by insiders and outsiders are also separately determined on the basis of a continuing 30 point roster.

The remaining vacancies to be filled up by insiders and outsiders are earmarked for the general candidates.

(iv) The allocation of general candidate including the reserved candidates who qualify alongwith them, and the allocation of reserved candidates who qualify by securing ranks lower than the last general candidates are done in two separate charts. For the sake of convenience, the chart of allocation of general candidates, including the reserved candidates qualifying in the general merit list is being

referred to as Chart I and chart of allocation of reserved candidates is being referred to as Chart II.12. From the above paragraph of the counter, it is clear that the respondent-department clearly maintained the roster for each cycle. The present single post allotted to Rajasthan was meant for 'I' and the roster pertaining to Scheduled Caste category was also considered by maintaining 2 separate charts and accordingly, on the basis of the Charts, the post in question was allotted to respondent No. 5. In paragraph 5 of the counter, it is further contended by the respondents as under:-- "5. That in allocating officers appointed on the results of the IPS Examination, 1984, to the various participating cadres, the number of officers to be allocated to the Rajasthan cadre was 3, out of which one officer was to be from the Scheduled Caste/Scheduled Tribe category. In terms of three point roster employed for division of vacancies among 'insiders' and 'outsiders,' the unreserved vacancies were both to be filled up from amongst outsiders whereas the alone reserved vacancy was to be filled from amongst an insider candidate from Rajasthan. In undertaking allocation on the basis of above enunciated systems and procedure, there being no 'insider' vacancy to be filled from amongst general candidates, the applicant could not be allowed to his home State, Rajasthan (among the officers appointed to the service in the results of the IPS Examination, 1984, the applicant was the senior-most among the 'insiders' from Rajasthan). On the other hand, there being alone reserved vacancy and this vacancy being for officers belonging to Rajasthan, the respondent No. 5 who though had ranked 152 in the list of candidates recommended by the UPSC was the first among Scheduled Castes/Scheduled Tribes candidate belonging to Rajasthan and having opted for Rajasthan, was allotted to his home State.

13. From the above explanation, it is clear that out of three posts, 2 were meant for general category and one for reserved category and that one post falling for reserved category, was rightly allotted to respondent No, 5. If that is so, there is neither any illegality nor any irregularity in allotting respondent No. 5 to the State of Rajasthan. However, the learned Counsel for the applicant submits that the post in question is a single post, therefore, there cannot be any reservation either directly or by device of rotation of roster point as held in AIR 1998 SC 1767. But this argument overlooks the fact that there were 3 posts out of which 2 posts were to be filled in by general category and one from Scheduled Caste/ Scheduled Tribe

category according to roster Annexure A/A2. As explained by the respondent No.1, i.e. Union of India, one post meant for the 'insider' was to be given only to the reserved category as per two charts maintained for the reserved candidates and general candidates. We find that the guidelines issued by the Government of India vide Annexure A/2A also provide this method only. The relevant part of Annexure A/2A is extracted below : "(2) The vacancies for Scheduled Castes and Scheduled Tribes will be reserved in the various cadres according to the prescribed per centage. For purpose of this reservation, Scheduled Castes and Scheduled Tribes will be grouped together and the per centage 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.

(4) (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." It was running account as per the above guidelines. Therefore, the contention of the learned Counsel for the applicant in this regard is devoid of any merit and the rulings of Hon'ble the Supreme Court relied upon by the applicant's Counsel, AIR 1998 SC 1767, 1998(3) JT 223 and 1994 SCC (L&S) 78, do not apply to the facts of the case. The law declared by Hon'ble the Supreme Court in 1995(2) SCC 745 is also not being violated since the allotment of the IPS officers to the concerned States were made on the basis of the running account as laid down in the guidelines of the Government of India vide Annexure A/2A by maintaining two charts, one for reserved category and other for general category. Moreover, in similar circumstances, the Principal Bench of the Central Administrative Tribunal took the same view in O.A. No.2602/93 and the batch, decided on 15.7.99 Vivek Saxena v. Union of India and Ors., and accordingly

dismissed those applications.

14. For the above reasons, we do not find any merit in this application. Accordingly, we pass the order as under:--

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