

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 13.9.2013

+ **WP(C) NO.3189 OF 2012**

SANJEEV KUMAR JHA Petitioner
Through: Mr. Aditya Ranjan, Advocate.

versus

DEPARTMENT OF PERSONNEL & TRAINING & ORS.
..... Respondents
Through: Mr. R.V.Sinha and Mr.R.N.Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE S.RAVINDRA BHAT (Open Court)**

1. The present petition has been filed by the petitioner challenging an order of the Central Administrative Tribunal dated 10th May, 2012.
2. The brief facts of the case are that the petitioner was successful in the Civil Service Examination (CSE) in the year 2010 conducted by the Union Public Service Commission (UPSC), securing 915th rank. He was selected to the Indian Administrative Service (IAS). He approached the Tribunal contending that even though he indicated the relevant place while filling the form as Jharkhand (his home State), he was mistakenly allotted the Chattisgarh State Cadre.

Accordingly, a violation of paragraph 7 (a) and 8 (ii) of the Cadre Allocation Policy, 2008 is alleged.

3. In support of his contention, it was argued by the learned counsel that the petitioner being in unreserved category candidate was entitled to be re-considered in respect of two converted Scheduled Caste (Insider) vacancies in accordance with paragraph 7(a). The method of allocation in respect of insider/vacancies was indicated in paragraph 8.

4. The Tribunal took note of the facts presented before it as well as the decisions on behalf of the parties. The petitioner has relied upon the decision in *C.M. Thri Vikrama Varma v. Aninash Mohanty & Ors*, (2007) 7 SCC 385 and submitted that even though a public servant has no right to be allocated to a certain cadre, yet the Government or the Executive Court has to treat him in a fair, equitable manner and apply the guidelines in question or in a non-discriminatory manner.

5. The Central Government had relied upon paragraph 5 of the CAP, 2008 which was applicable at the relevant time. Its contention was that the petitioner was deemed not to have indicated his Cadre

since the choice of preference of Jharkhand was not number one but number seven. In addition, it was argued that on an overall consideration of the materials on record and taking into account the petitioner's ranking, Chattisgarh Cadre was appropriate one to be allocated to him. The Tribunal held as follows:

“24. At this stage, even if there is some repetition, we intend to recapitulate some of the facts. The applicant having been selected for appointment to IAS in CSE-2010, it is noted that he declared in Column-19 in his application form that Jharkhand is his home state but in Column-20 which mandates the applicant to furnish his order of preference for various state cadres for which he would like to be considered and to start with the first preference to the last preference. The Jharkhand as his Home State he gave his preference as Number 7. Once the Insider UR vacancy for UR was consumed by Sh. Sinha with 60th rank, in UR category the applicant was treated as Outsider. The respondents, therefore, did not consider him with 915th rank for the Insider vacancies as the only Insider (UR category) was allocated to Shri Sinha who had 60th rank. It is noted that he gave his 1st preference as UP, 2nd preference as MP, 3rd Bihar, 4th Rajasthan, 5th Haryana, 6th as Punjab, 7th as Jharkhand and so on. He was allocated Chattisgarh Cadre i.e. his 13th preference against the Outsider vacancy on the basis of his rank in the merit list, available Outsider UR vacancies and preference of cadre indicated in the application forum, the respondents allocated him in the UR Outsider Category to Chattisgarh Cadre.

25. We note that the 1st respondent maintained several rosters as envisaged in Para 2 and 4 of the CAP 2008. As point running vacancy based roster showing SC, ST, OBC and UR points which are maintained for each cadre properly and use

the same for determining the vacancies of such categories in each cadre. The respondents take into account the actual filling up the roster points for each of the cadres. However, the same is adjusted as per the availability of candidates right from the CSE-1994. The next roster relates to the Outsider and Insider roster. Para 4 of the said CAP-2008 guides the respondents to main Insider (I), Outsider (O) roster points as O-I-O-O-I-O and so on and so forth, which facilitates the overall maintenance of the ratio of 1:2 between the Insiders and the Outsiders. The respondents have to take steps for maintaining the said rosters for each cadre, first for determining the total Insiders and Outsiders vacancies in the cadre, second for determining the OBC Insider/Outsider vacancies and the SC/ST Insiders vacancies and third for determining SC Insider Outsider vacancies. In the first step, the total Insider/Outsider vacancies in a cadre are determined on the basis of the first roster for the cadre. In the second step, the OBC Insider/Outsider vacancies and the SC/ST Insider and Outsider vacancies (as one block) is determined on the basis of the second roster for the cadre and in the final step the SC Insider/Outsider vacancies is determined on the basis of the third roster of the cadre. The UR Insider/Outsider vacancies for the cadre is determined by subtracting the total reserved Insider and the total reserved Outsider vacancies from the total Insider vacancies and the total Outsider vacancies respectively. It is noted that the accounting in these rosters for total vacancies as well as category wise vacancies is undertaken on the basis of actual filling up of such vacancies in each of the categories.

26. We note that these roster wise vacancies are determined prior to the holding of CSE and the interested candidates, if desired, can know the same from the website of the official respondents. Further, the official respondents are mandated to maintain for the country as a whole (a) 2:1 Outsider –Insider ratio and (b) the prescribed percentage of reservation for the SC, ST and OBC. In order to maintain these two mandatory position, they have to balance and adjust the available selected

candidate's for filling up the state wise vacancies in those respective categories. Respondents have, in our considered opinion, adopted the reservation policy, Insider-Outsider rotation as per the CAP-2008.

27. Cadre Allocation is done based on the position available at that time of cadre allocation. Any development occurring after cadre allocation cannot be allowed to disturb the cadre allocation already done as otherwise cadre allotment would become a never ending process and would disturb the cadre allocation of other candidates also. The cascading effect across the states would arise if one of the cases is ordered to be changed. Such change and direction can be issued if there is violation of CAP 2008. In Arti Lal's case (supra), this Tribunal did not find any violation of the CAP 2008 and observed that the applicant therein had no justification and locus standi to assail cadre allocation made to her. Moreover, as per the principles of cadre allocation, the candidates who could not get their home state are treated as 'Outsider' and are allotted cadre by rank, and preference against outsider vacancies. In the said case, the applicant was allotted cadre in her category as an outsider SC candidate. Cadre allocation process is chain reaction in nature, if vacancy is consumed; the same is not available for the next candidate and so on. In case of UP, there was only one SC Insider vacancy. The 2nd respondent having given the UP as home state and 1st preference and no o the SC candidate higher to him in the rank given UP as the 1st preference, he was legally entitled to get UP cadre. The 1st respondent exactly did that.

28. The responsibility of the Government is to undertake a proper balancing exercise between the equity on one side and the reservation meant for the SC, ST and OBC on the other side while carrying out cadre allocation to various successful candidates. The applicant having secured very low position in the merit list at 915th rank and belonging to UR category has claimed equity of conversation of the Insider SC vacancy to that of Insider UR vacancy. He has taken into account only one

aspect i.e. 'equity' aspect and cited paragraph 7(1) in support of his claim to convert Insider SC vacancy to Insider UR vacancy, but the respondents have to undertake the mandatory constitutional reservation policy for SC, ST and OBC. Therefore, they have converted the Insider SC vacancy to that of Outsider SC vacancy. It must be noted that one the Insider vacancy has been filled up with Sh. Sinha (belonging to Insider UR category securing very high rank i.e. 60th rank), the Insider UR vacancy was consumed by him. Therefore, the applicant became outsider as per the Policy. His choice for Jharkhand State being 7th and not the 1st, the applicant's Home State Allocation under the UR would not have been considered as held by this Tribunal in **Arti Lal's case (supra)**. The Home State indicated in column 19 of the application form needs to be supported by indicating first choice in Column 20 of the said forum. Applicant has not given Jharkhand State as his 1st choice and on the other hand he has assigned 7th choice for the same. We, therefore, feel that the priority given in column no.20 of the application form needs to be recognized while allocating cadre to the successful candidates. Had only the column 19 been sufficient, what was the need for indicating preferences amongst the States including the Home State? Therefore, the collective reading of columns 19 and 20 of the application form signifies that the concerned applicants once indicate their choice of Home State, they must give the first preference for that State and if they give contrary, it would mean that their preference is not the 1st preference for that State. The applicant has committed the mistake on his own which cannot be cured by judicial intervention. We may refer to the list of successful candidates who have been allotted Jharkhand Cadre for the 2011 batch of IAS.

Sl.No.	Rank	Name of Candidate	Category	Home State	Cadre Allotted	Allotted as
55	60	Rahul Kumar Sinha	General	Jharkhand	Jharkhand	Insider
56	74	Astik Kumar	General	Uttar	Jharkhand	Outsider

		<i>Pandey</i>		<i>Pradesh</i>		
57	77	<i>Rai Mahimapat Ray</i>	<i>General</i>	<i>Uttar Pradesh</i>	<i>Jharkhand</i>	<i>Outsider</i>
58	125	<i>Chhaviranjan</i>	<i>OBC</i>	<i>Bihar</i>	<i>Jharkhand</i>	<i>Outsider</i>
59	278	<i>Anjaneyulu</i>	<i>SC</i>	<i>Andhra Pradesh</i>	<i>Jharkhand</i>	<i>Outsider</i>
60	298	<i>Manjunath</i>	<i>SC</i>	<i>Karnataka</i>	<i>Jharkhand</i>	<i>Outsider</i>
61	334	<i>Rajeshwari B</i>	<i>SC</i>	<i>Karnataka</i>	<i>Jharkhand</i>	<i>Outsider</i>
62	390	<i>Waghmare Prasad Krishna</i>	<i>SC</i>	<i>Maharashtra</i>	<i>Jharkhand</i>	<i>Outsider</i>

The above table indicates that all those candidates are higher than the applicant in the merit list and the allocation has been done as per the vacancies in different categories notified for the cadre. We do not find any deviation and the decision of the 1st respondent cannot be faulted.”

6. It is argued by learned counsel for the petitioner, Mr. Ranjan, that paragraph 5, which the Tribunal has relied upon, does not come in the way of the petitioner’s claim for cadre allocation in Jharkhand State. It was submitted that the relevant columns i.e. 19 and 20 in the present case did in fact indicate that the petitioner wished to be allocated to the Jharkhand State cadre.

7. Learned counsel stressed upon the fact that the subsequent guidelines were changed to specifically stipulate that where home State was indicated, it had to be given preference in order of priority. In the absence of such stipulation, as indeed CAP 2008 reflected, it could not be said that the indication of Jharkhand as the home State ought to have been ignored in the circumstances of this case. The

learned counsel further submitted that a reading of paragraphs 7(a) and 8(ii) leads to only one conclusion – that the petitioner being an insider of Jharkhand was entitled to be accommodated in the default vacancies as no SC/ST or OBC insider candidates for Jharkhand were available, and his name had to be therefore, shifted from Chhattisgarh and allocated against one of the SC vacancies. It was submitted that the Tribunal wrongly understood the purport of the decisions rendered by the Supreme Court and that the events which occurred after the initial cadre allocation ought to have been considered to accommodate the Petitioner in Jharkhand.

8. This Court has extracted the basic reasoning of the Tribunal in the impugned order. It is apparent that the Petitioner, an unreserved category candidate showed Jharkhand as his seventh preference for cadre allocation. Therefore, when the Cadre allocation authority had to analyse the options given by various candidates, it had to take into account the several permutations and combinations. Shri Sinha, on the basis of the preference indicated by him, was allocated Jharkhand as his cadre; his ranking was high; it was 60. The Petitioner, on the other hand, was much lower in ranking; he was 915. Shri Sinha's

preference for Jharkhand was, like the petitioner's, at Serial No. 7. Being higher in rank, he was allocated the insider vacancy for that State. The other UR (unreserved candidate) slots were filled by those who had again ranked higher than the petitioner; likewise, even the reserved insider vacancy and outsider vacancies were filled by those possessing much higher ranking.

9. The Supreme Court, in its various judgments (*Rajesh Yadav v. Union of India* 1994 (6) SCC 38; *Union of India v. Mhathung Kitan & Ors.*, 1996 (10) SCC 562) has ruled that cadre allocation has to address various issues, such as compliance with the mandatory requirement of ensuring a 2/3-1/3 ratio between outsiders and insiders in cadres for each state; respecting the reservation policies of the Union; and also taking into account the preference of the candidates. As would be apparent the cadre allocation exercise is a complex one. It cannot, and does not base itself on one or two considerations, but on a balance of all the relevant factors. Whilst the expectation and aspiration of a candidate to be allocated the cadre of his choice, it may even be his home state, is one relevant factor, that cannot trump or prevail over the other constitutionally and legally binding

considerations of ensuring that reservation policies and the mandate of the rules are respected. This is also the effect of later decisions such as *G. Srinivasa Rao v. Union of India* (2011 (8) SCC 123).

10. The Court cannot be oblivious of the fact that the petitioner's argument also encompasses a claim that the subsequent change of situation in the Jharkhand cadre has afforded scope to the decision makers to allocate one vacancy, which he claims he can be adjusted to. The Court cannot take these later developments into account, because it can result in a fresh chain of events, the possibilities of which cannot be visualized. The Court's scope of interference, in cadre allocation exercises, is to ensure that the decision maker does not stray beyond the bounds of the rules of the constitutionally mandated reservation policies and binding guidelines. The inherent dynamism which is implicit in a cadre allocation exercise where the allocation of each candidate itself constitutes a consideration to be taken for the subsequent step, and the balancing act to be performed by the decision maker, cautions against an interventionist judicial review approach.

11. In view of the above reasons, this court is of opinion that no

infirmity can be found with the approach or conclusions of the Tribunal in the impugned order. The writ petition has to fail and is consequently dismissed without any order as to costs.

**S. RAVINDRA BHAT, J
(JUDGE)**

**NAJMI WAZIRI, J
(JUDGE)**

**SEPTEMBER 13, 2013
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