IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13667 of 2019(O&M)
DATE OF DECISION:28.05.2019

Union of India through the Secretary

...Petitioner

Vs.

Central Administrative Tribunal, Chandigarh Bench, Chandigarh & another

...Respondents

CORAM:- HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE LALIT BATRA

Present: Mr. Arvind Moudgil, Advocate
for petitioner.

Mr. D. S. Patwalia, Senior Advocate with
Mr. A.S. Chadha, Advocate
for respondent No.2-caveator.

LALIT BATRA, J.

This writ petition has been filed by petitioner-Union of India impugning the legality of order dated 19.03.2019 rendered by Central Administrative Tribunal, Chandigarh Branch, in OA No.060/01509/2018 titled "Agam Singh Bedi Vs. Union of India", in terms of which, above said OA moved by applicant-Agam Singh Bedi (respondent No.2 herein) has been allowed and resultantly, respondent (petitioner herein)-Union of India has been directed to allocate applicant (Agam Singh Bedi) from IRS (C&CE) to IRS (IT) in view of availability of indicated vacancies, as per his merit and preference made.

2. Applicant's (respondent No.2 herein) case in brief is that he appeared in Civil Services Examination (hereinafter to be referred to as “CSE”), 2017, and at the time of filling up of application form, applicant gave option, in order of preference, for Indian Administrative Services, Indian Police Services, Indian Foreign Services, IRS (IT) and IRS (C&CE) respectively. The result of CSE, 2017, was declared on 27.04.2018 (Annexure A-4), wherein 990 candidates were recommended for appointment to All India Services. Applicant was placed at Serial No.332 of the select list. In the next step, Service Allocation List (hereinafter to be referred to as “SAL”) of selected candidates of CSE, 2017 (Annexure A-5), was issued on 31.07.2018, wherein name of applicant was mentioned at Serial No.311 with merit No.332. Thereafter, respondent-Union of India issued a letter dated 03.08.2018 (Annexure A-8) to all the recommended candidates of CSE, 2017, nominating them for 93rd Foundation Course, which was to commence from 27.08.2018 to 07.12.2018, which course is an integral and important part of the probation of the candidates recommended for appointment to All India Services. However, one could seek exemption from attending the above said course in three specific situations namely (i) that candidate had appeared in the subsequent CSE and cleared the same (ii) that candidate was suffering from some medical condition and (iii) that candidate had successfully completed the Foundation Course in a previous selection. Since applicant had already applied for CSE, 2018, and cleared it on 14.07.2018 and as such he sought exemption from 93rd Foundation Course, vide letter (Annexure A-9). In accordance with merit, applicant was allocated IRS (C&CE). Against the name of applicant in the SAL, an asterisk (*) has been marked indicating that service

allocation qua him is provisional and there is chance for up-gradation of the same. Second SAL was issued by the respondent on 14.08.2018, wherein again there was an asterisk (*) indicating that applicant's allocation was still provisional and he could be up-graded. Another SAL containing the name of applicant was issued on 24.08.2018 (Group “A”), wherein asterisk (*) mark was missing. Applicant was informed vide letter dated 24.08.2018 (Annexure A-7) that on the basis of his rank in the merit list, eligibility and preference, he has been allocated to the Indian Customs and Central Excise Service, Group “A” and he was required to undergo the Foundation Course before appointment, which is important component of probationary training. Respondent had uploaded list (Annexure A-10), which mentions the names and ranks of persons who had opted to undergo 93rd Foundation Course and further uploaded list of exemptees (Annexure A-11), candidates who had sought exemption and name of applicant finds mention therein as one of the exemptees. It is pleaded that even after commencement of Foundation Course, SAL was changed twice, firstly on 25.09.2018 and then on 20.11.2018 (Annexure A-12) indicating that it was final as no asterisk (*) mark was mentioned against names of candidates. Applicant was issued appointment letter on 27.11.2018 (Annexure A-13). It is pleaded that it has come to the notice of applicant that candidates namely Mr. Tuhin Sinha, Rank No.281 and Mr. Albert John, Rank No.327, who had secured higher ranks in merit and they were allocated IRS (IT) in General Category, they had also cleared CSE, 2016, they were allocated IPS and both of them had joined that service. Extract of Notification dated 21.12.2017 in this regard is Annexure A-14. Above said Mr. Tuhin Sinha and Mr. Albert John had never joined 93rd Foundation Course nor they sought any exemption from attending the said course and having joined IPS, two vacancies had arisen in IRS (IT). Above said fact is quite apparent in terms of letter dated 08.12.2018 (Annexure A-15). It is pleaded that in view of above said two vacancies, applicant as well as Mr. Ankush Kumar at Serial No.331 are next in merit and they are eligible for up-gradation/change from their current service to IRS (IT). Though applicant made representation before respondent to upgrade him to IRS (IT) but to no avail, which led to the filing of OA No.060/01509/2018, as detailed above, at the instance of applicant.

3. Respondent-Union of India filed reply to the OA while controverting the stand of applicant and categorically contended that service allocation of the candidates, recommended by UPSC is completed in various iterations of service allocation and it so happens on account of several parameters like temporary unfitness on medical grounds, UPSC provisional status remains unsolved for substantial period (maximum six months). However, as and when the status of a candidate is cleared, his service allocation is to be finalized and the candidate is required to join the service as per concerned Cadre Controlling Authority's (hereinafter to be referred to as "CCA") directions/notices in this regard. The nominated candidates for Foundation Course are directed to join it compulsorily. Further, it is contended that if any candidate resigns or does not join the service, the vacancy is carried forward to the next recruitment year by the concerned CCAs because if it is utilized by upgrading service of down below candidates, it would upset the whole chain of service allocation and it will be an unending process. As per DOPT Office Memorandum dated 07.02.1986 (Annexure R-1), unfilled direct recruitment quota vacancies are

to be carried forward to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to usual practice. The selection in question is a time bound process and is to be completed in an annual cycle. Respondent cannot engage itself in collecting and recollecting the information from various CCAs regarding the posts that remain unfilled because of non-joining of certain candidates. The service allocation is dependent on rank in the merit list, preferences for various services, medical status, availability of vacancies in the category of the candidate at his turn. Further it is contended that change in one service allocation leads to change in allocation of service of other candidates. The movement takes place in many services. In case claim raised by petitioner is accepted, it would open a pandora's box and may result in multiple litigation in different foras leading to administrative inconvenience. In this manner, respondent-Union of India has prayed for dismissal of claim of applicant (respondent No.2 herein).

4. We have heard learned counsel for the parties and have carefully gone through the record of the case.

5. Learned counsel for petitioner-Union of India while reiterating the cause of petitioner (respondent) has vehemently argued that in the selection process of All India Services, principle of attaining finality to the things has to be maintained and as such selection process cannot be kept an ongoing process as candidates keep on seeking exemption from Foundation Course and or even resigning from allocated cadres. He further urged that since impugned order dated 19.03.2019 passed by Central Administrative Tribunal is not in consonance with Office Memorandum dated 07.02.1986,

instant writ petition is entitled to succeed and impugned order is liable to be set aside.

6. On the other hand, learned counsel for respondent (applicant) has argued that allocation of cadre to respondent (applicant) had not attained finality and in fact during process two vacancies of IRS (IT) had arisen. He further urged that as respondent (applicant) has a right of consideration for up-gradation to IRS (IT) in view of preference given by him and especially in view of the fact that above said right of up-gradation was envisaged in the rules by indicating asterisk (*) against his name. He further urged that once two slots of IRS (IT) were never consumed by appointment of any one as allottees, Central Administrative Tribunal vide its order dated 19.03.2019 has rightly given direction to allocate one slot of IRS (IT) to respondent (applicant) and as such instant writ petition is liable to be dismissed.

7. While having due regard to the contentions of learned counsel for the respective parties and further a bare perusal of pleadings on the record, it is observed that as a matter of fact respondent (applicant) had qualified CSE, 2017, and in order of preference, he had given choices No.1 to 5 i.e. IAS, IPS, IFS, IRS (IT) and IRS (C&CE) respectively. Name of respondent (applicant) occurred in the SAL at Serial No.311 with merit rank No.332. It is pertinent to mention here that in the SAL issued on 31.07.2018 (Annexure A-5) against the name of applicant asterisk (*) was marked which shows that his allocation was provisional and he was having a chance of up-gradation consequent upon indeterminate medical status etc. of some of the candidates, who were higher in rank than such candidates. However, the asterisk (*) mark was removed in the SAL dated 24.08.2018 (Annexure

A-6). Further vide letter dated 24.08.2018 (Annexure A-7), petitioner (respondent) had informed respondent (applicant) about his allocation of Indian Customs and Central Excise Service, Group “A” and for that Foundation Course was to be undergone by him. At this juncture, it is relevant to point out here that undergoing Foundation Course for joining allocated service is a mandatory feature. At the same time, in certain set of circumstances, a candidate may be granted exemption. In the instant case, respondent (applicant) having qualified subsequent CSE, 2018 (Preliminary), had sought exemption from Foundation Course and the said permission was granted to him. Further, it is quite evident on the record that two candidates namely Mr. Tuhin Sinha and Mr. Albert John, who were allocated IRS (IT), they never joined and as a matter of fact out of CSE, 2016, they (Mr. Tuhin Sinha and Mr. Albert John) were allocated IPS and they had joined that service and as such they had never shown their intention to join IRS (IT) out of CSE, 2017, resultantly two slots of IRS (IT) remained vacant, as is evident from Notification dated 08.12.2018 (Annexure A-15). It is also evident on the record that despite offering appointment to the selected candidates, above said Mr. Tuhin Sinha and Mr. Albert John did not opt to join allocated service i.e. IRS (IT) and in fact they opted for some other service out of different select list. It is nowhere the case of petitioner (respondent) that Mr. Tuhin Sinha and Mr. Albert John had requested to retain their lien against the slots of IRS (IT) against select list of CSE, 2017. In this view of the matter, once petitioner (respondent) has taken the stand that allocation of cadre of respondent (applicant) could undergo a change and that too upto five iterations, in this scenario, respondent (applicant) has a vested right of consideration for up-gradation of his choice as two slots of IRS (IT) were never consumed by appointment of anyone as allottees have neither undergone any Foundation Course nor joined the cadre and in fact they joined IPS and that too out of CSE, 2016.

8. Though, learned counsel for petitioner (respondent) has laid much emphasis on office memorandum dated 07.02.1986 (Annexure R-1) but a bare perusal of said document reveals that it provides for general principles for determining the seniority of various categories of persons employed in Central Services. Further above said office memorandum provides that unfilled direct recruitment quota vacancies be carried forward and added to the corresponding direct recruitment vacancies of the next year. There is no dispute with respect to above said instructions but in the instant case as per stand taken by petitioner (respondent) towards the respondent (applicant) that his preference can be up-graded and in view of above, general instructions dated 07.02.1986 (Annexure R-1) would not be applicable in the instant case as two candidates to whom slots of IRS (IT) were allocated, they never joined and in this scenario these slots were never consumed and further eligibility of respondent (applicant) for up-gradation of his choice was not even disputed by the petitioner (respondent).

9. Further, learned counsel for petitioner (respondent) has urged that in case claim raised by respondent (applicant) is accepted, it would result in chaos and administrative difficulties and further it would be an unending process. However, above said apprehension raised by petitioner (respondent) appears to be imaginary one as unless slots are consumed by appointment, the same are to be treated as vacant and the said slots are to be offered to candidates next in merit and once in the instant case respondent (applicant) comes next in the merit, in this scenario, respondent's (applicant)

right of consideration of up-gradation cannot be taken away by petitioner (respondent) as it would be against the principles of natural justice, equity and fair play. It is well settled law that when a statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of said procedure. When petitioner (respondent) has indicated that up-gradation of applicant can go a change, in this view of the matter, petitioner (respondent) cannot be permitted to back out and claim that it is not permissible. Mentioning of asterisk (*) against the name of respondent (applicant) that his preference could be up-graded, this aspect is clear indicative that there is indeed a provision for doing so and thus right of respondent (applicant) cannot be allowed to ruin at the instance of petitioner (respondent) and that too under the garb of administrative chaos.

10. In view of above, it can be safely concluded that respondent (applicant) did not undergo Foundation Course. Against his name, there was specific remark that his up-gradation can undergo a change due to reasons mentioned therein. Once above said circumstance had arisen due to non-joining of two candidates who were allocated IRS (IT), then indeed right of respondent (applicant) for consideration of above said up-gradation deserves to be allowed by petitioner (respondent) and the said right cannot be permitted to be defeated only on the apprehension of administrative inconvenience.

11. As a sequel to above said findings, it is held that Central Administrative Tribunal, vide its order dated 19.03.2019, has rightly allowed OA No.060/01509/2018 moved by respondent (applicant) and further rightly directed petitioner (respondent) to allocate respondent

(applicant) from IRS (C&CE) to IRS (IT) and as such said findings are sustained. In this view of the matter, instant writ petition moved by petitioner (respondent) being devoid of merits is dismissed.

(MAHESH GROVER)
JUDGE

(LALIT BATRA)
JUDGE

28.05.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No