

**SUPREME COURT OF INDIA**

G.Srinivas Rao

Vs.

Union of India & Ors.

C.A.No.1911 of 2006

(R.V.Raveendran and A.K.Patnaik,JJ.,)

19.07.2011

**JUDGMENT**

**A.K.Patnaik,J.,**

1. This is an appeal by special leave under Article 136 of the Constitution against the order dated 03.02.2005 of the Division Bench of the Andhra Pradesh High Court dismissing Writ Petition No.8072 of 2004 filed by the appellant.

2. The facts very briefly are that the appellant, a general candidate not belonging to any reserved category, took the Civil Services Examination, 1998 conducted by the Union Public Service Commission and he secured 95th rank and was appointed to the IPS and was allocated to the Manipur- Tripura Joint Cadre on 27.10.1999. Respondent No.4, who as an OBC candidate, also took the Civil Services Examination, 1998 and secured 133rd rank and was appointed to the IPS and was allocated to the Andhra Pradesh Cadre on 27.07.1999. The appellant filed O.A. No.155 of 2001 before the Central Administrative Tribunal, Hyderabad Bench, contending that instead of respondent no.4 he should have been allocated to the Andhra Pradesh Cadre and that the allocation of respondent no.4 to the Andhra Pradesh Cadre was bad in law, unjust and unsustainable. The appellant prayed for a direction from the Tribunal to the respondent no.1 to allocate him to the Andhra Pradesh Cadre. The Tribunal, however, did not find any irregularity in the roster system followed by the respondent no.1 in making the allocations and by order dated 25.07.2001 dismissed the O.A. The appellant challenged the order dated 25.07.2001 of the Tribunal before the High Court under Article 226 of the Constitution in Writ Petition No.17902 of 2002 and contended that though there was in the year 1999 a vacancy for a general candidate in the Andhra Pradesh Cadre to which the appellant could be allocated, this was converted to a vacancy for OBC candidate and the respondent no.4 was allocated to this vacancy in the Andhra Pradesh Cadre. The appellant also contended before the High Court that this vacancy for a general candidate was converted to a vacancy for OBC candidate on the ground that relevant data for five years in respect of OBC was not available though actually such data was available. Since this aspect of the matter had not been considered by the Tribunal, the High Court allowed the

Writ Petition, set aside the order of the Tribunal and remanded the case to the Tribunal for fresh consideration.

3. After the case was remanded to the Tribunal, the respondent no.1 filed a petition before the Tribunal seeking leave to file an additional affidavit and pursuant to leave granted by the Tribunal, the respondent no.1 filed an additional affidavit. In this additional affidavit, the respondent no.1 stated that a total number of 36 vacancies in the IPS were to be filled up on the basis of the Civil Services Examination, 1998 and out of total number of 36 vacancies, 21 vacancies were to be filled up by general candidates, 10 vacancies were to be filled up by OBC candidates and 5 vacancies were to be filled up by SC/ST candidates in accordance with the reservation provisions and the roster points and in May 1999, the vacancies were distributed category-wise in the following manner:-

S.L	Cadre	Total	27% OBC	22.5 % SC/ST	Genera
vacan	rounded off	rounded off	l -cies		
1.	Andhra Pradesh	1	.27	0	.225 0 1
2.	Assam	1	.27	0	.225 0 1
	Meghalaya				
3.	Bihar	1	.27	0	.225 0 1
4.	Gujarat	3	.81	1	.675 1 1
5.	Haryana	1	.27	0	.225 0 1
6.	Himachal Pradesh	1	.27	0	.225 0 1
7.	J & K	3	.81	1	.675 1 1
8.	Karnataka	3	.81	1	.675 1 1
9.	Kerala	2	.54	1	.450 0 1
10.	Madhya Pradesh	1	.27	0	.225 0 1
11.	Maharashtra	1	.27	0	.225 0 1
12.	Manipur Tripura	4	1.08	1	.900 1 2

13.	Nagaland	2	.54	1	.450	0	1
14.	Orissa	2	.54	1	.450	0	1
15.	Punjab	1	.27	0	.225	0	1
16.	Rajasthan	4	1.08	1	.900	1	2
17.	Sikkim	1	.27	0	.225	0	1
18.	Tamil Nadu	1	.27	0	.225	0	1
19.	AGMU	1	.27	0	.225	0	1
20.	Uttar Pradesh	1	.27	0	.225	0	1
21.	West Bengal	1	.27	0	.225	0	1
	Total	36		8	5	23	

Respondent no.1 further stated in the additional affidavit that since as per the distribution made in the aforesaid table, the total number of vacancies for general candidates worked out to be 23 instead of 21 and total number of vacancies for OBC candidates worked out to be 8 instead of 10, 2 vacancies for general candidates had to be converted to 2 vacancies for OBC candidates. The respondent no.1 has also stated in the additional affidavit that as the relevant data for the last five years in respect of OBC candidates was not available with the respondent on 28.05.1999 when the entire exercise of allocation was completed and approved by the competent authority and the data for four years, i.e. from the Civil Services Examinations, 1994 to Civil Services Examinations, 1995, was available, the earlier advice of the Department of Personnel and Training in Annexure R-1 to the additional affidavit of the respondent no.1 was followed and two general vacancies from the first two States in the alphabetical order, one from the Andhra Pradesh Cadre and one from the Assam-Meghalaya Joint Cadre, were converted to OBC vacancies and the result was that respondent no.4 was allocated to the OBC vacancy of Andhra Pradesh Cadre. The Tribunal in its order dated 09.01.2004 accepted this explanation of the respondent no.1 and rejected the argument of the appellant that the respondent no.1 had arbitrarily taken a lower ranking candidate in preference to high ranking general candidate while making the allocation to the Andhra Pradesh Cadre. Aggrieved, the appellant filed Writ Petition No.8072 of 2004 before the Andhra Pradesh High Court and contended that despite availability of data pertaining to OBC candidates for five years, the respondent no.1 did not consider the same while making the allocation. In the impugned order, however, the High Court held that this apprehension of the appellant was factually without any basis and did not find any fault with the order of the Tribunal. In the impugned order, the High Court also took the view that the appellant was required to implead all the candidates of his batch of IPS, as respondents in the O.A. as well as in the Writ Petition but had not done so and thus relief could not be granted to the

appellant. The High Court further held in the impugned order that the allocation of the appellant to the Manipur-Tripura Joint Cadre was intimated to him by a letter dated 21.10.1999, but he filed the O.A. in 2001 and by the time the impugned order was passed, the officers would have undergone attachment training and a wholesale or extensive review of the cadre allocation at a belated stage would not be conducive to public interest.

4. Mr. Ranjit Kumar, learned counsel for the appellant, submitted that this Court has held in *R. K. Sabharwal and Others v. State of Punjab and Others*<sup>1</sup> that the prescribed percentage of reservation of posts for backward classes cannot be varied or changed. He submitted that in *M. Nagaraj v. Union of India*<sup>2</sup> a Constitution Bench of this Court has further observed that the reservation provision should not lead to excessiveness so as to breach the ceiling limit of the reserved quota. He submitted that the Secretary, Government of India, Ministry of Personnel & Training Administrative Reforms and Public Grievances, has in his letter dated 31.05.1985 (hereinafter referred to as 'the letter dated 31.05.1985') laid down the broad principles of allocation on the basis of roster system which are to be followed while making allocation of officers appointed to All India Services and a reading of these principles of allocation would show that the vacancies are to be reserved in various cadres according to prescribed percentage and, therefore, the prescribed percentage of reservation including that of OBC cannot be exceeded. He submitted that in *Union of India v. Rajiv Yadav, IAS and Others*<sup>3</sup> this Court, after examining the principles of cadre allocation in the letter dated 31.05.1985, held that the "Roster System" ensures equitable treatment to both the general candidates and the reserved categories. He referred to the Chart annexed as Annexure P/19 to show that the percentage of OBC candidates allocated to the Andhra Pradesh Cadre from Civil Services Examination 1994 to 1998 was as high as 33% which was far in excess of the 27% reservation in favour of OBC. He vehemently argued that the Chart in Annexure P/19 further shows that in various other State cadres the total percentage of OBC candidates allocated from the Civil Services Examinations of 1994 to 1998 was less than 27% and, therefore, the respondent no.1 should not have converted the vacancy for general candidate in Andhra Pradesh Cadre to a vacancy for OBC candidate. According to Mr. Ranjit Kumar, since there is breach of the principles of allocation and the roster system as laid down in the letter dated 31.05.1985 and the allocation of respondent no.4 to the Andhra Pradesh Cadre was in excess of the 27% quota for OBC, this is a fit case in which this Court should quash the allocation of the respondent no.4 and instead direct respondent no.1 to allocate the appellant to the Andhra Pradesh Cadre.

5. Mr. Mohan Parasaran, learned Additional Solicitor General, on the other hand, submitted that the impugned order of the Tribunal should not be disturbed as it contains good reasons for not interfering in the allocation of the officers of the 1999 batch of IPS. He submitted that while distributing the vacancies in an All India Service, the Central Government has to consider plurality of choices and allocating two OBC vacancies to the cadres of States which were first two in the alphabetical order is one of the choices open to the Central Government when relevant data for the last five years in respect of the OBC candidates was not available when the exercise of allocation was completed and approved by the competent authority. He submitted that the decision of this Court in *R. K. Sabharwal and Others v. State of Punjab and Others* (supra), cited by Mr. Ranjit Kumar, relates to maintenance of roster for the

purpose of reservation of posts and may have relevance for the appointment to the IPS but has no relevance to allocation of members of the All India Service to different cadres after their appointment.

6. Mr. Neeraj Kumar Jain, learned counsel appearing for respondent no.4, contended that the equitable distribution of vacancies for general candidates and reserved candidates is required to be ensured by the letter dated 31.05.1985 over a period of time and not every time the allocation is made to a cadre and thus the contention of the appellant that the allocation of the respondent no.4 to the Andhra Pradesh Cadre has not ensured such equitable distribution is not correct. He further submitted that in any case the allocations of respondent no.4 to the Andhra Pradesh Cadre and the appellant to the Manipur-Tripura Cadre were made as far back as in the year 1999 and the appellant filed the O.A. after two years in 2001 and that too after he accepted the allocation and the High Court rightly held that the allocation made in the year 1999 could not be disturbed by a challenge to the allocations in 2001. He finally submitted that respondent no.4 has been working in the Andhra Pradesh Cadre since 1999 and should not be disturbed at this stage by this Court.

7. We have considered the submissions of the learned counsel for the parties and we find that Rule 3 of the IPS (Cadre) Rules, 1954 provides that each State and a group of States will have a State cadre or Joint Cadre respectively of the IPS and Rule 5 of the Cadre Rules provides that the Central Government in consultation with the State Government or State Governments concerned has the power to make allocation of IPS officers to various cadres. We further find that in Para 3 of the letter dated 31.05.1985 the broad principles which are to be followed for allocation on the basis of roster system have been indicated by the Central Government. Clause (2) of Para 3, on which Mr. Ranjit Kumar placed reliance, is extracted hereinbelow:-

"(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 percentage will be added. Distribution of reserved vacancies in each cadre between 'outsiders' and 'insiders' will be done in the ratio 2:1. This ratio will be operationalised by following a cycle 'outsider, 'insider', 'outsider' as is done in the case of general candidates."

It will be clear from Clause (2) of Para 3 of the letter dated 31.05.1985 that the vacancies for Scheduled Castes and Scheduled Tribes are to be reserved in the various cadres according to the prescribed percentage and distribution of reserved vacancies in each cadre between outsiders and insiders are to be done in the ratio of 2:1 and this ratio is to be operationalised by following a cycle outsider, insider, outsider as is done in the cases of general candidates. What is, therefore, contemplated by Clause (2) of Para 3 of the letter dated 31.05.1985 is that a roster for each cadre, with vacancies earmarked for outsider and insider and for general candidates and reserved candidates is maintained and allocations of outsider, insider, general and reserved candidates are made to these earmarked vacancies. It will be further clear from

Clause (2) of Para 3 that the vacancies for the reserved categories are not to exceed the prescribed percentage for the reserved category 'in the various cadres'.

8. The case of the respondent no.1 in the additional affidavit filed before the Tribunal was that in accordance with the reservation provisions and the roster points as explained by this Court in *R. K. Sabharwal and Others v. State of Punjab and Others* (supra), 36 candidates were selected to the IPS, out of whom 21 were general candidates, 10 were OBC candidates and 5 were SC/ST candidates. These 36 candidates were to be allocated to the different State and Joint Cadres and were initially proposed to be distributed in May, 1999 in the manner given in the Chart in Para 3 of this judgment, but the authorities found that by distribution of vacancies, only 8 out of 10 selected OBC candidates could be accommodated in the different cadres and 23 instead of 21 selected general candidates would get accommodated in the different cadres. It was, therefore, necessary for the competent authority to increase 2 vacancies to adjust 2 more OBC candidates and reduce 2 vacancies proposed for general candidates so that ultimately the 10 OBC candidates could be allocated to 10 vacancies in different cadres and 21 general candidates could be allocated to 21 vacancies in different cadres. The competent authority accordingly diverted two vacancies for general candidates, one from the Andhra Pradesh Cadre and one from the Assam- Meghalaya Joint Cadre, to vacancies for accommodating two more OBC candidates selected for appointment. The reason for choosing the Andhra Pradesh Cadre and the Assam-Meghalaya Joint Cadre for converting two vacancies for general candidates to vacancies for OBC candidates is that when the allocation was finalized by the competent authority on 28.05.1999, relevant data in respect of OBC candidates was available only for four years, i.e. from Civil Services Examination, 1994 to Civil Services Examination, 1997, but was not available for the fifth year because allocation for the fifth year on the basis of Civil Services Examination, 1998 was yet to be notified and ultimately got notified in October, 1999. Respondent No.1 has further explained in his additional affidavit filed before the Tribunal that the Andhra Pradesh Cadre and the Assam-Meghalaya Joint Cadre were chosen for diversion of the two vacancies for accommodating two OBC candidates in accordance with an earlier advice of the Department of Personnel and Training annexed to the affidavit is Annexure R-1 to follow the alphabetical order while choosing the States for decrease or increase in OBC vacancies in the absence of data for 5 years in relation to OBC allocation.

9. We fail to appreciate how data for 5 years in respect of allocation of OBC candidates was relevant for making the allocation when Clause (2) of Para 3 of the letter dated 31.05.1985 required that a roster in each cadre with vacancies for insider, outsider, general and reserved candidates not exceeding prescribed percentage was required to be maintained and allocations of candidates selected in the All India Services were to be made in these vacancies earmarked for insider, outsider, general candidates or reserved candidates. As has been held by this Court in *Union of India v. Rajiv Yadav, IAS and Others* (supra), the roster system ensures equitable treatment to both the general candidates and reserved candidates and hence the roster system cannot be by-passed on some ground or the other which may result in unfair treatment to either general candidates or reserved candidates in violation of their right to equality under Articles 14 and 16(1) of the Constitution.

10. Nonetheless, we find that the appellant was allocated to the Manipur-Tripura Cadre on 27.07.1999 and was intimated about such allocation by letter dated 02.10.1999. Instead of challenging the allocations made in 1999 at the earliest, the appellant filed the O.A. before the Tribunal only in 2001 by which time the 36 candidates including the respondent no.4, who had been selected and appointed to the IPS on the basis of Civil Services Examination, 1998 and had been allocated to different cadres, had already joined their respective cadres and undertaken training in their respective States. The High Court thus held in the impugned order that the wholesale or extensive review of the cadre allocation at a belated stage was not conducive to public interest. For granting relief to the appellant, the Tribunal or the Court will have to direct the respondent No.1 to undertake afresh the exercise of allocation in accordance with the roster system as provided in the letter dated 31.05.1985 and allocate the 36 officers of the IPS appointed on the basis of the Civil Services Examinations, 1998 and such an exercise will disturb the allocation of several members of the IPS.

11. In our considered opinion, therefore, the High Court was right in taking a view that no relief can be granted to the appellant on the ground of delay on the part of the appellant in moving the Tribunal. The appeal is therefore dismissed. No order as to costs.

<sup>1</sup>(1995) 2 SCC 0745

<sup>2</sup>(2006) 8 SCC 0212

<sup>3</sup>(1994) 6 SCC 0038