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UNION OF INDIA AND ORS

v.

SH. RAJIV YADAV, IAS AND ORS.

JULY 21, 1994

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[KULDIP SINGH, M.M. PUNCHHI AND K. RAMASWAMY, JJ.]

Service Law :

Indian Administrative Service (Cadre Rules), 1954.

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Rules 3 and 5—Cadre allocation—Home states—Reservation for scheduled castes/tribes—Valid—No obligation on Government to notify the principles of Cadre allocation.

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The respondent, an IAS Officer of the 1989 batch, was allocated to the Manipur and Tripura cadre. He challenged this order before the Central Administrative Tribunal on the ground that the reservation for scheduled castes/tribes candidates while allocating them to their home states was violative of Articles 16(4) of the Constitution of India. The tribunal allowed the application of the respondent. Aggrieved by the judgment of the Tribunal, the appellants preferred the present appeal.

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On behalf of the appellants it was contended that there was no obligation to notify the principles of cadre allocation.

Allowing the appeal, this court,

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HELD : 1. 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. Rule 5 of the Indian Administrative Service (cadre rules) 1954 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 notify "the principles of cadre allocation".

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[36-H, 37-A]

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2. 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. The principles of allocation 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. 22.5% reserved candidates are recruited to the IAS. Having done so both the categories are to be justly distributed amongst the States. The principles of cadre allocation, thus, ensure equitable distribution of reserved candidates amongst all the cadres. [37-F to H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3542 of 1992 etc. etc.

From the Judgment and Order dated 19.12.91 of the Central Administrative Tribunal, New Delhi in O.A. No. 2557 of 1990.

V.R. Reddy, Additional Solicitor General, Yogeshwar Prasad, N.N. Goswamy, Dr. A.M. Singhvi, Harish N. Salve, K. Madhava Reddy, H.S. Nigam, Kamleshwar Sahai, Ms. Rachna Gupta, C.V.S. Rao, T.C. Sharma, Hemant Sharma, G.N. Reddy, Ms. Indu Malhotra, Ms. Shirin Jain, A.K. Behara, D. Prakash Reddy, Vimal Dave, Ejaj Maqbool and S.M. Garg, for the appearing parties.

The Judgment/Orders of the Court was delivered by

KULDIP SINGH, J. The Central Government is the authority under the Indian Administrative Service (Cadre Rules), 1954 [the Cadre Rules] to allocate the members of the Indian Administrative Service (IAS) - directly recruited - to various State cadres/Joint cadres under the said Rules. The Central Government has laid down the broad principles of allocation called "the Roster System". The said system was earlier operating from 1966 to 1977. Thereafter till 1984 the allocations were done in accordance with the procedure called "The Limited Zonal Preferences System". Since 1985 - batch onwards the Central Government has reverted back to the "Roster System" with some modifications. Reservation to the extent of 15% and 7½% for the scheduled castes and scheduled tribes respectively has been provided in direct recruitment to the IAS. The "Roster System" provides that while allocating the scheduled castes/scheduled tribes candidates to their home States (insiders) vacancies shall be reserved for them in various cadres to the extent Reservation-Percentage has been provided in direct recruitment to the IAS. This reservation in the process of allocation was challenged by Rajiv Yadav, respondent

A in the appeal herein, before the Central Administrative Tribunal, New Delhi (the tribunal). A Full Bench of the tribunal allowed the application of Rajiv Yadav and held that no reservation can be provided for the scheduled castes/scheduled tribes while allocating the members of IAS to various cadres. This appeal, by the Union of India is against the judgment of the tribunal.

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Rajiv Yadav appeared in the civil services examination held in 1988. He belongs to the Union Territory of Delhi, and had opted for the "Union Territories" cadre. He was selected for appointment to the IAS and in the order of merit he was placed at serial number 16. By the order dated September 28, 1989 he was allocated to the Manipur and Tripura cadre. His representation for change of cadre from Manipur-Tripura to "Union Territories" having been rejected by the Central Government, he challenged the order allocating him to the Manipur-Tripura cadre before the tribunal.

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Rules 3 & 5 of the Cadre Rules, which are relevant, are as under :-

"3. Constitution of Cadres-3(1). There shall be constituted for each State or group of States an Indian Administrative Service Cadre.

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3(2). The cadre so constituted for a State or a group of State is hereinafter referred to as a 'State Cadre' or, as the case may a, 'Joint Cadre'.

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5. Allocation of members to various cadres-5(1) The allocation of cadre officers to the various cadres shall be made by the Central Government in consultation with the State Government or the State Governments concerned.

5(2) The Central Government may, with the concurrence of the State Governments concerned transfer a cadre officer from one cadre to another cadre."

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There is no material on the record to show that the principles of allocation as provided in the "Roster System" have ever been notified by the Central Government. A demi-official letter dated May 31, 1985 from Secretary Government of India, Ministry of Personnel and addressed to Secretary, Department of Forest & Wild Life has, however, been placed on the record

H which is in the following terms :-

"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 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 neighbouring 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 every 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

A 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.

B (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.

C (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 :

D (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.

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

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

F Group IV : Tamil Nadu, Union Territories 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.

G (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 'insiders' candidates from the same cycle, they should be treated as going to the State in two successive cycles and so on.

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

(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 II 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. B C

(vi) For the succeeding year, the State cadres should be arranged again in alphabetical order but with Group I 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. D

(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. E F G

Since the Prince Minister has already approved the roster system of allocation as indicated above, I would request you to ensure that this system of allocation is followed while allocating the candidates appointed to the Indian Forest Service on the result of the Indian Forest Service Examination, 1984 and onwards." H

A The reasons for not notifying the principles of cadre allocation, as given by the Union of India in the special leave petition are as under :-

"In this connection, it is submitted that the provision made for SC and ST in cadre allocation in clause (2) of D.O. letter dated 31.5.1985 (Annexure P.I) was not something new introduced in 1985. The principles of cadre allocation in force prior to 1985 did contain special provision applicable to SC and ST candidates. Prior to 1985, no communication was issued laying down the principles of cadre allocation because the cadre allocation of all the three All India Services namely, IAS, IPS and IFS used to be made by the petitioner No. 1 Ministry of Personnel, Public Grievances and Pensions. Since work relating to the Indian Forest Service including cadre allocation was transferred to the department of forests and wildlife, it was necessary to communicate to that Department the modification made in 1985 in the principles of cadre allocation."

D The Tribunal came to the conclusion that the letter dated May 31, 1985 (quoted above) was only an inter-departmental communication and there being no other notification/order/circular issued by the Central Government notifying the principles of allocation as a policy -decision, the said letter could not be taken to be an executive order of the Government laying down the so-called "Roster System" providing for the principles of allocation. It was, therefore, held by the tribunal that the contents of the letter dated May 31, 1985 did not have any legal sanction to be considered as "established policy guidelines in the matter". It was held that Clause (2) of the said letter gave an benefit to the IAS probationers belonging to scheduled castes and scheduled tribes which was not permissible under Article 16(4) of the Constitution of India.

G We have given our thoughtful consideration to the reasoning and the conclusions 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 of-

ficer 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 otherwise notify "the principles of allocation" adopted by the Government as a policy. The letter dated May 31, 1985 shows that the Central Government has always been having guide-lines 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 test of time. It was operative during the years 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.

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 Service bears liability to serve in any part of India. The principles of allocation as contained in Clause 2 of the letter dated May 31, 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 22½% 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 castes/scheduled tribes candidates to be allocated to their home States. The principles of cadre allocation, thus, ensure equitable distribution of reserved candidates amongst all the cadres.

We, therefore, allow the appeal, set aside the judgment of the tribunal and dismiss the application filed by Rajiv Yadav before the tribunal.

- A Rajiv Yadav is IAS officer of 1989 batch. Although he was allocated to the Manipur-Tripura cadre, as a result of the orders of this Court, he is serving in the Union Territory cadre. He has also undergone district training in the Union Territory cadre in 'Hindi' language. In view of these facts, despite our reversing the Tribunal's judgment, we direct that Rajiv Yadav shall be treated to be allocated to the Union Territories cadre. This will, however, not debar the Central Government from transferring Rajiv Yadav from one cadre to another in terms of Rule 5(2) of the Cadre Rules on the justifiable ground arising after this judgment.

CIVIL APPEAL No. 2184 OF 1993.

- C We have today pronounced judgment in *Union of India & Ors. v. Rajiv Yadav, IAS & Ors.* Civil Appeal No. 3542/92. The appeal has been allowed, the impugned judgment of the Central Administrative Tribunal has been set aside and the principles of "cadre allocation" for reserved candidates have been upheld.

- D In view of our judgment in *Rajiv Yadav's* case this appeal by the Union of India has to be allowed. For the reasons given and the conclusions reached by us in *Rajiv Yadav's* case, we allow this appeal, set aside the impugned judgment of the tribunal dated October 1, 1992 and dismiss the application filed by Anil Kumar before the tribunal.

- E Anil Kumar is an IPS officer of 1989 batch. Although he was allocated to Assam-Meghalaya cadre, but as a result of the interim orders of the Central Administrative Tribunal he is serving in the Uttar Pradesh cadre. He has also undergone district training in Uttar Pradesh in Hindi language. In the facts and circumstances of this case, despite our reversing the tribunal's judgment, we direct that Anil Kumar shall continue to be allocated to the Uttar Pradesh Cadre. This will, however, not debar the Central Government from transferring Anil Kumar from one cadre to another in terms of Rule 5(2) of the Cadre Rules on any justifiable grounds arising after this judgment. The appeal is allowed in the above terms. No costs.

- G *CIVIL APPEAL No. 3870 OF 1993.*

- H We have today pronounced judgment in *Union of India & Ors. v. Rajiv Yadav, IAS & Ors.*, Civil Appeal No. 3542/92. The appeal has been allowed, the impugned judgment of the Central Administrative Tribunal has been set aside and the principles of "cadre allocation" for reserved candidates have been upheld.

In view of our judgment in *Rajiv Yadav's* case this appeal by the Union of India has to be allowed. For the reasons given and the conclusions reached by us in *Rajiv Yadav's* case, we allow this appeal, set aside the impugned judgment of the tribunal dated November 27, 1992 and dismiss the application filed by Vinay Kumar before the tribunal. No costs.

CIVIL APPEAL No. 5017 OF 1994.

Special leave granted.

We have today pronounced judgment in *Union of India & Ors. v. Rajiv Yadav, LAS & Ors.*, Civil Appeal No. 3542/92. The appeal has been allowed, the impugned judgment of the Central Administrative Tribunal has been set aside and the principles of "cadre allocation" for reserved candidates have been upheld.

In view of our judgment in *Rajiv Yadav's* case this appeal by the Union of India has to be allowed. For the reasons given and the conclusions reached by us in *Rajiv Yadav's* case, we allow this appeal, set aside the order of the Tribunal dated February 23, 1993 and dismiss the application filed by Sanjay Kumar before the Tribunal. No costs.

CIVIL APPEAL No. 5014 OF 1994.

Special leave granted.

We have today pronounced judgment in *Union of India & Ors. v. Rajiv Yadav, LAS & Ors.*, Civil Appeal No. 3542/92. The appeal has been allowed, the impugned judgment of the Central Administrative Tribunal has been set aside and the principles of "cadre allocation" for reserved candidates have been upheld.

In view of our judgment in *Rajiv Yadav's* case this appeal by the Union of India has to be allowed. For the reasons given and the conclusions reached by us in *Rajiv Yadav's* case, we allow this appeal, set aside the impugned judgment of the tribunal dated December 11, 1992 and dismiss the application filed by Savita Vikas Handa before the tribunal. No costs.

CIVIL APPEAL No. 5015 OF 1994.

Special leave granted.

We have today pronounced judgment in *Union of India & Ors. v.*

A *Rajiv Yadav, LAS & Ors.*, Civil Appeal No. 3542/92. The appeal has been allowed, the impugned judgment of the Central Administrative Tribunal has been set aside and the principles of "cadre allocation" for reserved candidates have been upheld.

B In view of our judgment in *Rajiv Yadav's* case this appeal by the Union of India has to be allowed. For the reasons given and the conclusions reached by us in *Rajiv Yadav's* case, we allow this appeal, set aside the impugned judgment of the tribunal dated December 10, 1992 and dismiss the application filed by Shankar Jiwal before the tribunal. No. costs.

C *CIVIL APPEAL No. 5016 OF 1994.*

Special leave granted.

D We have today pronounced judgment in *Union of India & Ors. v. Rajiv Yadav, LAS & Ors.*, Civil Appeal No. 3542/92. The appeal has been allowed, the impugned judgment of the Central Administrative Tribunal has been set aside and the principles of "cadre allocation" for reserved candidates have been upheld.

E In view of our judgment in *Rajiv Yadav's* case this appeal by the Union of India has to be allowed. For the reasons given and the conclusions reached by us in *Rajiv Yadav's* case, we allow this appeal, set aside the impugned judgment of the tribunal dated November 13, 1992 and dismiss the application filed by T. Vanudhar Reddy before the tribunal. No costs.

CIVIL APPEAL No. 3543 OF 1992.

F We have today pronounced judgment in *Union of India & Ors. v. Rajiv Yadav, LAS & Ors.*, Civil Appeal No. 3542/92. The appeal has been allowed, the impugned judgment of the Central Administrative Tribunal has been set aside and the principles of "cadre allocation" for reserved candidates have been upheld.

G In view of our judgment in *Rajiv Yadav's* case this appeal by the Union of India has to be allowed. For the reasons given and the conclusions reached by us in *Rajiv Yadav's* case, we allow this appeal, set aside the impugned judgment of the tribunal dated April 28, 1992 and dismiss the application filed by Ms. Anju Gupta before the tribunal.

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Anju Gupta is an IPS officer of 1990 batch. Although she was allocated to Himachal Pradesh cadre, as a result of the interim orders of the Central Administrative Tribunal she is serving in the Uttar Pradesh cadre. She has also undergone training in Uttar Pradesh in the Hindi language. In the facts and circumstances of this case, despite our reversing the tribunal's judgment, we direct that Anju Gupta shall continue to be allocated to the Uttar Pradesh Cadre. This will, however, not debar the Central Government from transferring Anju Gupta from one cadre to another in terms of Rule 5(2) of the Cadre Rules on any justifiable ground arising after this judgment. The appeal is allowed in the above terms. No costs.

WRIT PETITION (C) No. 398/1992.

We have today pronounced judgment in *Union of India & Ors. v. Rajiv Yadav, LAS & Ors.*, Civil Appeal No. 3542/92. The appeal has been allowed, the impugned judgment of the Central Administrative Tribunal has been set aside and the principles of "cadre allocation" for reserved candidates have been upheld.

This writ petition has been filed by Supriya Sahu who is a scheduled caste candidate. In the counter affidavit filed on behalf of Union of India by Mr. V.K. Cherian, Under Secretary, Department of Personnel and Training, it has been stated as under :-

"However, in this Writ Petition Kumari Supriya Sahu has claimed allotment to U.P. Cadre, her home State. Even if the provision made in the principles of cadre allocation for reserved candidates is upheld by the Supreme Court that will not automatically entitle Kumari Supriya Sahu for allotment to U.P. cadre. This is because there is already a candidate belonging to reserved candidate above her in the merit list hailing from U.P., whose appointment is pending."

In view of the stand taken by the Union of India no relief can be given to the petitioner by this Court. We, however, direct the Union of India to consider the case of the petitioner in accordance with the principles of cadre allocation for reserved candidates as upheld by this Court in *Rajiv Yadav's* case. The writ petition is disposed of. No costs.

A *CIVIL APPEAL No. 5018 OF 1994.*

Special leave granted.

B We have today pronounced judgment in *Union of India & Ors. v. Rajiv Yadav, IAS & Ors.*, Civil Appeal No. 3542/92. The appeal has been allowed, the impugned judgment of the Central Administrative Tribunal has been set aside and the principles of "cadre allocation" for reserved candidates have been upheld.

C In view of our judgment in *Rajiv Yadav's* case this appeal by the Union of India has to be allowed. For the reasons given and the conclusions reached by us in *Rajiv Yadav's* case, we allow this appeal, set aside the impugned judgment of the Tribunal dated January 8, 1993 and dismiss the application filed by Alka Bhargava before the Tribunal. No costs.

V.S.S.

Appeal allowed.