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

% *Date of decision: 14.02.2022*

+ **W.P.(C) 18/2021 & CM Nos. 57/2021 & 15539/2021**

UNION OF INDIA & ORS.

.....Petitioner

Through: Mr Asheesh Jain, CGSC with Mr
Adarsh Kumar Gupta and Mr Keshav
Mann, Advocates.

versus

RAMA SHANKAR PRASAD & ANR.

.....Respondents

Through: Mr Ankur Khandelwal and Mr
Himanshu Handa, Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Court hearing convened via video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J. (ORAL):-

1. This writ petition is directed against the order dated 07.08.2019, passed by the Central Administrative Tribunal [in short the "Tribunal"] in O.A. No.1802/2019.
2. At the heart of the matter, is the cadre allocated to the respondents, who were the original applicants before the Tribunal.
- 2.1. The Tribunal has disposed of the O.A. [i.e., O.A. No.1802/2019], without examining the rights and contentions of the parties, by relying upon the judgment of the co-ordinate bench of this Court dated 03.05.2019, passed in a bunch of matters including W.P.(C) No.109/2019, titled *Himanshu Kumar Verma & Anr. v. Union of India & Ors.* This is evident upon a perusal of paragraph 6 of the impugned order. In the said paragraph, the Tribunal has extracted paragraph 88 of the said decision rendered by this



Court.

2.2. Based on the direction issued by the co-ordinate bench in the above-mentioned writ petition, the Tribunal has directed the petitioners to carry out fresh cadre allocation *vis-a-vis* the respondents, who belong to the Indian Forest Service (IFoS).

2.3. The Tribunal had, in effect, applied the same yardstick that the co-ordinate bench of this Court stipulated in the aforementioned judgment. The petitioners were, thus, directed to make cadre allocation according to the merit of the candidates, by taking into consideration the preference given by the candidates irrespective of whether they had filled numerical “99” in any of the zones or cadres, and if a candidate was not able to get any of the preferred cadres as per his/her rank, cadre allocation qua such a candidate could be made in the manner set out in later part of paragraph 4 of the Office Memorandum (OM) dated 05.09.2017. The operative direction issued, in this behalf, is contained in paragraph 8 of the impugned order:

“..8. In view of these developments, we allow the O.A. in terms of the judgment dated 03.05.2019 in W.P. (C) No.109/2019 & batch, and direct the respondents to undertake fresh cadre allocation of the successful candidates allocated to the IFoS, according to their merit and by taking into consideration the preferences given by the candidates irrespective of whether they have filled "99" in any of the zones or cadres. If a candidate is not able to get any of the preferred cadres according to his rank, cadre allocation in respect of such a candidate may be resorted to in the manner set out in later part of paragraph 4 of the O.M. dated 05.09.2017, i.e. he may "be allotted along with other such candidates in the order of rank to any of the remaining cadres, 5 arranged in alphabetical order, in which there are vacancies in his category if allocation of all the candidates who could be allotted to cadres in accordance with their



preference"....”

2.4. We may note that, while passing the impugned order, the Tribunal was aware of the fact that the aforesaid judgment of the co-ordinate bench dated 03.05.2019, was carried in appeal to the Supreme Court *via* a Special Leave Petition i.e., SLP (C) Nos.12430-12431/2019, titled ***Ministry of Home Affairs v. Himanshu Kumar Verma & Ors.*** The Tribunal also took notice of the fact that the Supreme Court, via an order dated 17.05.2019 passed in the said SLP and other connected matters, had clearly held that the relief granted, would be confined to those candidates who approached the Court/Tribunal in time. This aspect is noticed in paragraph 7 of the impugned order.

2.5. It would thus be relevant, at this juncture, to extract the order dated 17.05.2019 passed by the Supreme Court in the aforementioned SLP: -

“Heard learned counsel for the parties at length. Permission to file special leave petitions is granted. In exemplary fairness, learned Solicitor General suggests that the 18 writ petitioners who had approached the High Court (one of the writ petitioners being the respondent No.4 in S.L.P.(Civil) Nos.12420-12421 of 2019, having withdrawn) and two petitioners, who had approached the Central Administrative Tribunal shall be accommodated without considering “99” in their respective choices. This will be done by increasing one post in the respective State cadres this year, which will have to be adjusted in coming years. The suggestion is accepted by the respondents. The impugned judgment and order is, accordingly, modified by directing the petitioners to accommodate the twenty trainee officers in the manner suggested by the learned Advocate General. It is made clear that such accommodation is being made as an exceptional case and will not be treated as a precedent for other candidates of the same batch or in future as only these 20 persons approached the Court/Tribunal in time. The special



leave petitions are disposed of with the above directions/observations. It is made clear that all questions of law are kept open. Needless to mention that the original cadre allocation of the other candidates shall not be disturbed.”

2.6. A careful perusal of the aforementioned extract would show that the Supreme Court modified the judgment of the co-ordinate bench of this Court, and also went on to say that the accommodation made by the Supreme Court had been made as an exceptional case and would not be treated as a precedent for other candidates of the same batch or in future, given the fact that only 20 persons had approached the Court/Tribunal in time.

2.7. Furthermore, more importantly, the Supreme Court also observed that all questions of law are kept open, and that the original cadre allocation of other candidates shall not be disturbed.

3. Given this position, the Tribunal could not have simply taken recourse to the aforementioned judgment of the co-ordinate bench of this Court and disposed of O.A. No. 1802/2019 pending before it.

3.1. In our opinion, since the questions of law have been kept open by the Supreme Court, the Tribunal would have to decide the matter on merits, after hearing both parties. This is especially so, given the fact that it is not disputed that the Indian Administrative Service (IAS) and Indian Police Service (IPS) officers who were arrayed as parties before the Supreme Court belonged to the same batch i.e., 2018 batch.

3.2. We may add that even Mr Asheesh Jain, learned central government standing counsel, who appears for the petitioners, does not dispute that the order passed by the Supreme Court, extracted above, was restricted, if at all,



to the IAS and IPS officers who were represented before the Court. Therefore, the Tribunal, according to both Mr Jain and Mr Ankur Khandelwal, who appears for the respondents, would have to examine the matter, as indicated above, afresh *vis-a-vis* IFoS officers.

4. Therefore, given the foregoing circumstances, we are of the view that impugned order of the Tribunal is required to be set aside.

4.1. It is ordered accordingly.

4.2. The matter is remitted to the Tribunal for a fresh hearing. It will be open to the parties to advance their respective submissions before the Tribunal. To hasten the proceedings, parties and/or their respective counsel are directed to appear before the concerned bench of the Tribunal on 02.03.2022.

4.3. Furthermore, we would request the Tribunal to make an endeavour to dispose of the case at the earliest.

5. Before we conclude, it is required to be noticed that respondent no. 3 i.e., Rushal Garg was arrayed as party in the instant writ petition, even though he had succeeded in his case which was lodged before the Chandigarh Bench of the Tribunal. This aspect is recorded in the order dated 29.04.2021. It appears that Mr Khandelwal, on instructions of respondent no. 3 i.e., Mr Rushal Garg, got the said respondent not only arrayed as party but also have him subject himself to the interim order dated 19.01.2021 passed in the writ petition .

5.1. Therefore, at this stage, when the matter is being remanded to the Tribunal i.e., the Principal Bench, New Delhi, Mr Khandelwal seeks to delink respondent no. 3 from the matter. It is Mr Khandelwal's submission that respondent no. 3 should be allowed to file appropriate proceedings



before the Chandigarh Bench of the Tribunal.

5.2. While we would have no difficulty in de-linking respondent no. 3, however, given the stand that Mr Khandelwal took before the Court on 29.04.2021 [on instructions of the said respondent], respondent no.3 can only file an execution petition or a contempt petition after a decision is rendered in the O.A. from which the instant petition arises [i.e., O.A. No.1802/2019]. It is ordered accordingly.

5.3. Thus, respondent no.3 is deleted from the array of parties, subject to him abiding with the condition adverted to in paragraph 5.2 above.

6. The writ petition is disposed of in the aforesaid terms. Consequently, pending applications shall stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

FEBRUARY 14, 2022/mr

[Click here to check corrigendum, if any](#)