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the applicant to the Indian Administrative Service cadre of Himachal Pradesh etc.

2. The applicant belongs to a scheduled <sup>tribe</sup> ~~caste~~ community and she belongs to the State of Himachal Pradesh. She appeared in the Civil Service Examination 1989 and on the basis of the result declared, she has been allocated to I.A.S. The main contention of the applicant is that the allocation of State cadre to the IAS probationer is required to be done in accordance with the policy formulated by Respondent No. 1 which was brought into force with effect from Civil Service Examination 1984. According to the said policy, the principles of allocation of the present system are as follows. The zonal system of allocation, which was introduced in 1979, has been replaced by roster system of allocation from Indian Civil Service Examination 1984. The broad principle of allocation of the present roster system are as follows :-

- (i) Allocation of 'insiders', both men and women, is strictly according to their ranks, subject to their willingness to be allocated to their home States.

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- (ii) Allocation of 'outsiders' whether they are general candidates or reserved candidates, whether they are men or women, is according to the roster system after placing 'insiders' at their proper places on the chart as explained below.
- (iii) All the States Cadres/Joint Cadres are arranged in alphabetical order and divided into four groups each of which, on the basis of the average over a period of time, is taking roughly equal number of candidates.
- (iv) Since the number of cadres/Joint Cadres is 21, the cycles are 1 - 21, 22 - 42, 43 - 63 and so on.
- (v) The 'insider' quota candidates are then 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 'insider' candidates from the same cycle, they should be treated as going to the States in two successive cycles and so on.
- (vi) In the first cycle, State Cadre/Joint Cadres which have not received 'insider' candidates are given one candidate each in order of merit of 'outsider' candidates.

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The process is repeated in successive group of States e.g. the second cycle begins from Group II State, 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/she may get allocated to his/her own home State, when that happens, the candidate next below him/her is exchange with him/her.

(vii) For the succeeding year, the State Cadre are arranged again in alphabetical order but with Group I of the previous year at the bottom. i.e. Group III will come on top and so on.

(viii) In the case of candidates belonging to the reserved category such of these 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, are treated on par with general candidates for purpose of allotment though they are counted against reserved vacancies. In respect of other candidates belonging to the reserved category, a procedure similar to the one adopted for general candidates is adopted. In other words, a separate chart is prepared with similar grouping of States and similar operational details are followed.

3. Till 1982 Examination, the 'Outsider' ratio of 1:1 was being followed while allocating directly recruited candidates of the All India Services to various State/ Joint Cadres. This principle of 'outsider' 'insider' ratio of 1 : 1 for direct recruits for State Civil Service officers was 25% and direct recruitment quota was 75%. In 1977, however, the promotion quota was raised from 25% to 33-1/3% with consequential reduction in the direct recruitment quota to 66-2/3%. As a result, the 'outsider' element, which figured only in the direct recruitment quota went down. Keeping this in view, a proposal for revising the 'outsider/'insider' ratio from 1 : 1 to 2 : 1 was examined by the Government . This proposal, which meant that the 'outsider' element in the reduced direct recruitment quota may be raised to 66-2/3% was discussed in the Chief Ministers' Conference held in April, 1983. The Estimates Committee (1983-84) of the 7th Lok Sabha also considered the matter and in the 77th report, presented to the Lok Sabha on 17th April, 1984, recommended as follows:-

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"The committee see merit in a gradual increase in the percentage of outsiders in the State Cadres. This would enable the cadre officers serving within the States to be largely above local pressures. Moreover, this would also lead to national integration, which is the need of the hour."

" After careful consideration of the matter and the commendation of the Estimates Committee, it has been decided that in order to ensure better efficiency administration and to promote national integration, 'outsider'/insider' ratio in the allocation of direct recruits to the All India Services to different State Cadres should be raised from 1 : 1 to 2 : 1 so that overall ratio of 'outsider' and 'insider' in every cadre including promoted officers is nearly 1 : 1. The above decisions has been given effect to in the allocation I.A. S. probationers allotted to the various State/Joint Cadres on the results of Civil Services(Main) Examination from 1983.

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Hence, the policy of the Respondents is to maintain a 'insider'/outsider' ratio of 1:2 in each State cadre to ensure better efficiency in administration.

4. The Respondents, in their reply, submitted that all the IAS Officers are borne on <sup>the</sup> State cadres. The candidates recruited through the examination will have to be allotted to various cadres and after arriving at the number of vacancies to be filled up by direct recruits in a year, the number out of them to be filled up by reserved candidates is determined on the basis of a running 40 point roster maintained for the purpose. Direct recruits are allotted to various States/Joint Cadres according to the said principles. The vacancies filled up in States are divided into two categories viz., those to be filled up by 'insider' i.e. candidates hailing from those States and the vacancies to be filled by 'outsider' i.e. candidates hailing from outside the State. The principle of cadre allocation has been explained in details in D.O. letter dated 31.5.1985. There were two vacancies for direct recruitment in IAS cadre in Himachal Pradesh to be filled up on the result of the Civil Service Examination 1989. Both

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the vacancies were for general candidates. According to the 30 point roster, both the vacancies were required to be filled up by 'outsiders'. Since there was no 'insider' vacancy, the applicant was treated as an 'outsider' and allotted to the Bihar cadre under the roster system. Further, they contended that important consideration in setting up All India Services is that the All India composition of such services with personnel drawn from different States with some 'outsiders' at higher administrative levels in each State would emphasise the unity of India<sup>and</sup> provide some uniform standard of administration above national parochial consideration and help national integration. Therefore, when a person is interested to join such a service, he must be prepared to serve any of the cadres to which he/she is allocated. The All India Services bears the liability to serve in any part of India. The allotment of a candidate to a cadre is purely an administrative exercise completely within the sole jurisdiction of the Govt.

5. It is further denied that the applicant is entitled to be allocated to Himachal Pradesh, her home State. It was further submitted, that the allocation

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of candidates to various States is an administrative matter in which interference of the Tribunal is not in the interest of the Nation. The applicant was allotted to a cadre strictly in accordance with the principle of cadre allocation which was uniformly applied to all candidates.

6. We have heard the rival contentions of the parties and perused the records carefully. The applicant, when she filed the O.A., had applied for an interim order and the Tribunal, after considering the case of the applicant, granted interim order vide dated 17.7.1991 directing the Respondents to provisionally allow the applicant to take her district's training in the State of Himachal Pradesh with the clear stipulation that this will be done at her own risk and responsibilities, however, subject to the out-come of the present application. In spite of the 'dasti' service, the Respondents did not file any application for vacating the interim order and they had filed their counter reply only on 3.3.1992.

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7. After hearing the arguments of both the counsel and careful consideration of the facts and circumstances of the case, we are of the view, that the contention of the Respondents that the candidates of Indian Administrative Service are expected to serve in any State of India and no one has legal right, does not appear to be valid.

8. The facts of the present case briefly stated are that the applicant was selected for the Indian Administrative Service as a result of the Civil Services Examination held in 1989. She was appointed to the service in 1990. The dispute in the present case relates to the allocation of the cadre. While she claims allocation to the Himachal Pradesh cadre, the respondents allocated her to the Bihar cadre. She has challenged the allocation on the grounds that it is violative of the policy laid down by the Central Government. It is admitted by both the parties that she was the only candidate belonging to Himachal Pradesh, who was declared successful at the 1989 examination and there were two vacancies in the Himachal Pradesh cadre. She claims allocation to the said cadre from the 'insiders' quota. On the other hand, the Respondent claims that they maintain a

roster in accordance with the policy and the allocation of both the 1990 posts to 'outsiders' is on the basis of the roster. The learned senior counsel, Shri P.H. Ramchandani, on behalf of the Respondents claim that the roster has been in force for the past few years and no objection has been raised against the same. He has drawn our attention to the letter dated 31.5.1985 in support of their contention. The documents referred to by the claimants are (i) Annual Report of the department for the year 1986-87 and the policy decision of the Government of India vide letter dated 30th July, 1984 respectively; whereas the Respondents on the other hand relied on the D.C. letter dated 31.5.1985. They have also, as directed during the course of hearing, placed on record a copy of the roster which they have followed in respect of the Himachal Pradesh cadre, which we have perused. In the roster furnished by the Respondents vide dated 15.9.1990, serial number 26 of the roster indicates 'insider' whereas roster referred to at Annexure R-I indicates 'outsider', for the year 1990, both the post have

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have been filled by the 'outsiders'.

9. The contention of the learned senior counsel for the applicant, Shri M. Chandrasekharan, is that the policy laid down by the Government is reflected in the Annual Report furnished to Parliament and which clearly indicate that the number of 'outsiders' appointed in any cadre should be such that a ratio of 2:1 is maintained as between 'outsiders' and 'insiders'. As per the additional affidavit filed by the Respondents as far as the Himachal Pradesh is concerned, there have been 23 appointments between 1984 to 1989. Out of this, 17 are 'outsiders' and 6 are 'insiders'. According to the applicant, the ratio of 2:1 has been suppressed and the ratio would go beyond 3:1 in the event of the two posts of 1990 being also allotted to 'outsiders'. This, according to the applicant, is contrary to the policy laid down as stated above. It is the contention of the applicant that ratio is not to be applied only to 'outsiders' alone but has to be applied to 'insiders' also. In other words, just as at least two 'outsiders' should be in the cadre for every 'insider', there should be

one 'insider' for every 2 'outsiders' which is a natural corollary, according to the applicant. It is not a one way ratio. Even if the appointment is considered on a year to year basis still it is contended that 'outsiders' are to get 2 posts out of 3. In 1990, it is said that there are 2 posts.  $\frac{2}{3}$  of 2 would be  $1\frac{1}{3}$ . The Respondents in their additional affidavit have stated ratio below half will not be considered. It would mean that there could be only one 'outsider'. It is, therefore, urged by the learned senior counsel for the applicant that whether the computation of the 2:1 ratio is on the basis of the entire cadre or on the basis of one particular year, in both the case there being 2 posts, one of them should go to an 'insider'..

10. According to the Respondents, the policy is being implemented by the maintenance of a roster. The appointments are made on the basis of the roster. The roster goes on the basis 'outsider.', 'insider.', 'outsider.', so as to ensure a 2:1 ratio. This remaining continuing roster decides the filling up of vacancies. It is their case that the 2 posts of 1990 fall under

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2 posts in the roster both of which are earmarked for 'outsiders'. The roster has been worked upon since 1984 onwards and it is their case that it should not be disturbed now, particularly because there has been no complaints in the past.

11. The main issue for consideration is relating to the relative significant of the policy as stated above which prescribes 2 : 1 ratio for 'outsiders' and insiders' and the maintenance of the roster prepared by the Respondents which has been in force for the past since 1984. It is not correct to say that since the roster has been in vogue for the past few years, there have been no complaints and, therefore, the petitioner has no case. We are not impressed by this contention. A candidate, who is affected, who suffers deprivation cannot be deprived of the right of challenging the same in the event of his/her being effected thereby. The arguments that no legal right is vested in the candidate appears to us to be incorrect. The Supreme Court in Ramana D. Shetty Vs. International Airport /A. 1979 SC 1628 / held as under:-

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" It is well settled rule of administrative law that an Executive Authority must rigorously hold to the standards by which it professes its action to be judged and it must scrupulously observe those standards on point of invalidation of an act in violation of them."

12. The Supreme Court adopted this rule from what Mr. Justice Frankfurter in Vitarelli v. Seaton (1959) which was a case where a dismissal from employment was involved. This principle enunciated in Ramana's case (Supra) has found acceptance in relating to service jurisprudence particularly inasmuch as <sup>any</sup> deviation therefrom would amount of an abridgement of the fundamental rights under Article 14 of the Constitution. Thus, for example, in B.S. Minhas v. Indian Statistical Institute [1983 (4) SCC 582], the Supreme Court held, to similar effect citing with approval the earlier decision in Amarjit Singh Ahluwalia v. State of Punjab [1975(3)SCC 503] and Sukhdev Singh v. Bhaqat Ram [1975(1)SCC 421]. We are not, therefore, inclined to <sup>agree</sup> with the submission of the Respondents that there is no legal right to the applicant who has been effected in the present case. What has to be decided is whether in denying allocation to the Himachal Pradesh cadre of the applicant, who is an 'insider', the Government has followed the policy laid down for the purpose or not. If it has not been followed, it would amount to arbitrariness which would be violative Article 14 of the Constitution, In that event, it could — legitimately — be

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challenged before us by the person affected.

13. Regarding merits of the case, we find that except for a reference a post should be filled up on <sup>an</sup> 'outsider', 'insider' 'outsider' basis, there is no other reference in the policy placed before us to the maintenance of any roster and its efficacy. It is, no doubt, true that appointments in the Central Government are generally made on the basis of certain rosters, which are prescribed <sup>under</sup> relevant OMs issued by the Government. These rosters being prescribed under the OMs and their validity depend on the OMs. In the present case, the policy on the basis of which the appointment is done as evidenced by the documents produced by the parties clearly indicate the ratio of 2:1 being maintained, as regards 'outsiders' and 'insiders'. There is no roster prescribed under the policy to implement the said policy. Therefore, the issue to be considered would, therefore, be whether the roster being maintained by the Respondents is in accordance with the principle contained in the policy.

14. We ~~were~~ were not concerned with the implementation of the roster in the past; we are <sup>only</sup> concerned with the

implementation of the roster in the matter of making appointments in 1990. Apparently, two vacancies existed, in the Himachal Pradesh cadre. The only candidate, who was successful from Himachal Pradesh, is the applicant. It is her case that she should be allotted one of the two posts as an 'insider'. On a true consideration of the guidelines, what is important is the maintenance of 2:1 ratio between 'outsiders and 'insiders'. This is a rule which has been thought upon for purpose of bringing about, among other things, National integration. One cannot find fault with the principle which the Government has adopted as a matter of policy. We shall have to see whether the stand adopted by the Respondents in the present case does or does not amount to distortion of the principle which forms the basis of the policy. The intention of the Government is to ensure that there are atleast 2 'outsiders' for every single 'insider' in a cadre. This cannot mean that the number of 'outsiders' appointed in a cadre could be such as to go beyond the 2:1 ratio, even when insider fall within the ratio of 2:1 is available. The outsiders can admittedly go

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beyond the ratio of 2:1 when 'insiders' are not available. But that is not the case before us. In the year 1989, though two vacancies for 'insiders' exist according to their roster since 'insiders' are not available, they have inducted 2 'outsiders' to fill up said vacancies. As we see the guidelines, just as 2 'outsiders' are to be appointed against one 'insider', it is equally important to ensure that one 'insider' is appointed against 2 'outsiders' subject to availability. This seems to be the rationale behind the policy. If the roster in any particular year is worked in such a manner as would distort the above factual situation, the roster to that extent cannot be worked in that matter. The applicant has pointed out as to how her claim to appointment as an 'insider' would be justified, whether an overall picture of the entire cadre is taken or the appointment to the cadre in 1990 is taken. We see considerable force in the submissions of the learned senior counsel for the applicant. It is not legally permissible to deprive her of her allocation

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to the Himachal Pradesh cadre as an 'insider' in view of the factual situation as in the cadre 'outsiders' are far in excess of the 2:1 ratio in 1989. Her allotment to the Himachal Pradesh cadre is justified both if the roster is operated in a unit of three viz., 'outsider' insider' annually or on a running basis.

15. In the above view of the matter and more particularly in view of the factual position as admitted by the Respondents namely that there have been 23 appointments from 1984 to 1989 out of which 17 have been 'outsiders' and 6 have been 'insiders', we are not persuaded to accept the arguments put forth by the respondents. Hence, we are of the opinion, that it would not be in order to appoint 2 more 'outsiders' in 1990 at the expense of the applicant who is an 'insider' and thereby reach a ratio of more than 3: 1 between 'outsiders' and 'insiders' in the cadre. This is not in keeping with the policy which we find laid down in the documents referred to by the applicant and the Respondents.

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16. We are, therefore, of the view, that the application deserves to be allowed and we order accordingly. Out of the 2 posts to which appointments are made in 1990<sup>one</sup> shall be allocated to the applicant as per above direction. We are informed that pursuant to the interim order passed by this Tribunal earlier, the applicant is having a training in the State of Himachal Pradesh and has been continuing there. In view of this application being allowed she shall be regularised in Himachal Pradesh cadre without any dislocation either to the applicant or to the Respondents. The OA is disposed of as per directions' above. There will be no order as to costs.

*B.S. Hegde*  
(B.S. HEGDE)  
MEMBER(J)

*I.K. Rasgotra*  
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MEMBER(A)

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