CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/020/01037/2019

HYDERABAD, this the 26th day of April, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

Manish Kumar Sinha, IPS,
S/o Sri Umesh Chandra Sinha,
Aged : about 43 years,
Inspector General of Police,
O/o Director General of Police,
Mangalagiri, Andhra Pradesh. ...Applicant

(By Advocate :Mr. K. Raghavacharyulu)

Vs.

1.Union of India Rep by its Secretary,
Department of Personnel and Training (DoPT),
New Delhi.

2.The Union of India, Rep by its Secretary,
Ministry of Home Affairs, New Delhi.

3.The State of Andhra Pradesh,
Rep. by its Chief Secretary,
General Administration Department,
Secretariat, Andhra Pradesh.

4.The State of Telangana,
Rep. by its Chief Secretary,
General Administration Department,
Secretariat, Hyderabad.

5.The Chairman, Advisory Committee,
(Pratyush Sinha Committee), DoPT,
Union of India, New Delhi. ....Respondents

(By Advocate : Mrs.K.Rajitha, Sr. CGSC,
Mr. V. Vinod Kumar, Sr. CGSC,
Mr.M.Bal Raj Goud, GP for State of AP&
Mr. P. Raveender Reddy, SC for State of Telangana)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed in regard to the cadre allocation of the applicant to the State of the Telangana in Indian Police service.

3. Applicant, hailing from the State of Jharkhand belongs to the 2000 batch of the Indian Police Service (IPS) and was allotted to the combined State of A.P under the Outsider quota (UR) as per IPS Rules, 1954. The applicant went on Central Deputation from 2013 to 2019. While on deputation, the State of A.P was bifurcated on 2.6.2014 as per the A.P Reorganization Act, 2014. (for short ñ***Act 2014"***) and this called for distribution of All India Service Officers among the State of Telangana and the Residuary State of A.P (for short ***"RSAP"***) as per the various provisions of the said Act. The applicant was allotted to RSAP though he opted for the State of Telangana and hence the OA.

4. The contentions of the applicant are that the provisions of the AIS (All India Services Act) 1951 (for short ñ***AIS Act 1951"***) and that of the Act 2014 were violated in distributing AIS officers among the two States. The first tentative list was released on 22.8.2014, the second one on 10.10.2014 with slight modifications giving no reasons followed by Provisional list on 26.12.2014 and the final list on 5.3.2015 with the applicant tentatively/ provisionally/ finally allotted to ***RSAP***. Swapping of officers was done arbitrarily and did not follow the procedure followed by U.C Agarwal Committee when certain northern States were bifurcated. Swapping rules framed were different for DR (Direct Recruits)

Insiders/Promotees and DR Outsiders and thereby, Article 14 of the Constitution was violated. Many AIS officers approached the Tribunal raising similar contentions and got relief, as for instance OA 1241 of 2014. The Tribunal in the cited OA has held that the distribution process was vitiated and hence the allocation of the applicant to RSAP is invalid. The constitutional and statutory rights conferred under the AIS Act 1951 to the applicant, cannot be taken away by an executive order under the Act 2014. The allocation of the applicant to RSAP was discriminatory, biased, irrational, arbitrary and illegal. Applicant cited the judgment of the Hon'ble Apex Court in State of ***A.P.v Nalla Raja Reddy [1967 SCR(3) 28]*** in support of his contentions.

5. Respondents 1& 2 state in their reply statement that the distribution of the AIS officers was necessitated due to the bifurcation of the composite State of A.P and it was done as per Sections 76 & 80 of the Act 2014. The allocation of officers was done by the Central Govt., as per the guidelines framed by an Advisory Committee Chaired by Sri Pratyush Sinha, IAS (Retd.) formed under Section 80 of the Act 2014, to ensure objectivity and fairness. Out of 62 IPS Unreserved (UR) outsider officers available, 27 officers had to be allotted to Telangana State. Hence, 27 Roster blocks were formed with the applicant, who was at Sl. 44 in a block of two officers and since both of them have opted for Telangana there was no scope for swapping resulting in the applicant's allotment to RSAP as per guidelines. Only 8 IPS unreserved officers had opted for RSAP. Further, while releasing the provisional list of allocation on 26.12.2014 the competent authority permitted swapping of officers in the same category with the same

grade pay as on 1.6.2014 and on grounds of marriage. The U.C Agarwal Committee and Pratyush Sinha Committee are two separate Committees and hence, their recommendations need not be similar. IPS officers belonging to the SC/ST/OBC are few in numbers and therefore, their swapping was based on roster block covering a few batches to enhance the scope of swapping, as provided for in the guidelines. The distribution of AIS officers is mandated by the Act 2014 and that no service conditions or recruitment rules of AIS Act of 1951 have been overruled. Applicant failed to point outas to which guideline has been violated in his case. Respondents relied on the Judgment of the Hon'ble Supreme Court in U.O.I. v Rajiv Yadav-1994 (6) SCC 38 to further their contentions.

The 3rd respondent has filed the reply statement affirming that the State Government has no role in the distribution of officers among the newly formed states and that it is the Central Govt. which is the competent authority to decide. The applicant was allotted to RSAP finally on 5.3.2015.

Ld. Counsel for the 4th respondent has submitted that they would go along with the reply statement filed on behalf of R-1 & R-2.

Applicant filed an additional affidavit claiming that his Junior Sri Akun Sabbarwal of 2001 batch, at Sl. 45 who was placed in the same roster block along with the applicant, was allotted Telangana ignoring the claim of Applicant though senior and placed as at Sl. 44. Further, when there were 3 officers who gave equal preference for both the States and one officer giving no response (NR), the respondents could have allotted these 4 officers along with the 8 officers who opted for RSAP, making the total number of officers as 12, since there was a severe dearth of officers opting

for RSAP. Instead, Sri Vishnu S. Warrier of 2013 batch who gave equal preference was allotted to Telangana. The size of the roster block depends on the total number of officers and the options given by them. If 12 officers were allotted to RSAP the number of the roster blocks would reduce to 23 increasing the number of officers in a roster block and also change the point of allocation. The beginning of the roster point originally envisaged was Telangana as per the lottery system adopted but later it was changed to RSAP to favour of the kith and kin of those in power/ committee. Swapping should have been allowed after the allocation was over and not at the preliminary stage. Rule 5 of the IPS (Cadre) Rules 1954 provides for allocation of cadres to officers whereas there is no equivalent provision about the modus of distribution of AIS officers under the Act 2014.

Applicant filed a rejoinder opposing the contentions of the respondents and in specific he claims that many others along with him were not let known the procedure about the distribution of AIS officers. U.C Agarwal Committee recommendations which were approved by DOPT were not followed in order to accommodate the near and dear of those in power. When a set of guidelines were available to deal with the bifurcation of the State there was no necessity to introduce another set of guidelines. The distribution of officers was forced on the applicant. There was no consistency in the procedure adopted and it was molded to suit the convenience of those who matter. In order to help the reserved community officers the applicant cannot be discriminated in regard to the choice of the cadre. The ground taken that there was discrimination between IPS officers from the promotee quota/ DR Insider and DR Outsider was not refuted in

the reply statement and hence, stands admitted. Respondents admitted that when both the officers in the roster block in which the applicant was placed, opted for Telangana swapping was not possible meaning thereby that guidelines of swapping were departed as per the choice of the executive in respect of some others. The applicant is not claiming allotment to his own State of Jharkhand but is exercising his legal right to continue in Telangana which was the original allocation granted as per Rule 5 of AIS Act 1951. Respondents are confused about the distribution and allocation, the later is provided for in the AIS Act 1951 and former arose because of Act 2014. Applicant has cited the judgments of the Hon'ble Apex Court to support his contention that the courts should protect constitutional rights. The right accrued to the applicant under the AIS Act 1951 cannot be disturbed. Further, the question of limitation would not arise if the circumstances shock the conscience of the Court as held by the Hon'ble Apex Court in Vidya Devi v State of H.P in (2020) 2 SCC 569. The applicant is not indulging in any adversarial litigation.

Respondents have filed an additional reply affirming that Sri Akun Sabarwal, though junior to the applicant and Sri Vishnu S. Warrier, who has given equal preference, were given Telangana cadre as per the modalities worked out in arriving at the point of allocation. In regard to the size of the roster block to be 62:27 respondents state that they have followed para 8 of the guidelines in working out the roster. The draw of lots was for drawing of roster and not for commencing the allocation. The outsider officers have mostly opted for the State of Telangana with only 8 choosing RSAP and hence, the option available for swapping amongst DR

Outsiders was limited. A different method of swapping was adopted for SC/ST/OBC community IPS officers so that each stake holder would get a fair opportunity to swap. The information in regard to the allocation was given to the members of the service at every stage, even with examples. The concept of AIS is dealt under Article 312 of the Constitution and an AIS officer is liable to serve with the Union/ states once he is allocated as per the DOPT rules on the subject. The distribution was fair, transparent and objective and not discriminatory or arbitrary as claimed.

Both the parties have also filed the written submissions, which we have gone through in detail.

6. Heard the counsel and perused the pleadings on record. The case came up for hearing on several occasions and it was heard at length. Both parties were given ample opportunities to support their respective contentions by documents which they felt necessary to be submitted to further their cause.

7. I. The dispute is about not allotting the Telangana State Cadre to the applicant who belongs to the 2000 batch of the Indian Police Service, subsequent to the bifurcation of the composite State of A.P into RSAP and Telangana State under the Act - 2014. The applicant was allotted to RSAP which he claims is arbitrary, irrational and discriminative. In sharp contrast, the respondents state that the distribution of the officer was as per guidelines laid down for the purpose under the Act 2014 without offending any provision of the AIS Act 1951. The All India Service (AIS) encompasses 3 services namely, Indian Administrative Service (IAS), Indian Police Service (IPS) and Indian Forest Service (IFoS). Applicant

belongs to the Indian Police service of the AIS and hence is governed by the provisions of AIS Act as well the IPS Cadre Rules etc. The interplay between the various provisions of the AIS Act/ IPS Cadre Rules, etc and the Act -2014 *perse* are the elements of the dispute on hand.

II. The contention of the applicant is that his allotment to RSAP based on the executive order issued under the Act -2014 is an infringement of the right which has originally accrued to him when he was allotted to the composite State of A.P under AIS Act 1951 when he was selected for IPS in 2000. At that juncture of time Telangana was a part of the erstwhile composite State of A.P and that he did not seek redistribution of the cadre but was forced on him. The Act -2014 was passed by the Parliament and it has provisions for distribution of the AIS cadre and the respondents claim that they have strictly followed the provisions of the Act 2014. As per respondentsô version, a harmonious interpretation of the two Acts would indicate that the Recruitment Rules of the IPS Cadre have not been changed with the advent of the Act -2014 which only provided for distribution of officers among the newly formed 2 States due to a historical necessity. We are of the view that Historical developments are a necessaryaccompaniment of the evolution of the human civilization in different dimensions of culture, administration, geography, politics etc. Individuals form a part of the process of change and it is the onerous duty of those who matter to facilitate the change in a justifiable manner with application of mind. Respondents are not new to the exercise of distribution of officers, since in the past when the States of Bihar, M.P &U.P were bifurcated, the AIS officers were distributed as per the recommendations of the U.C.Agarwal

Committee. With the bifurcation of the composite State of A.P, Pratyush Sinha Committee (for short ñ***P.S committee"***) was constituted to frame the guidelines for distribution of the AIS officers among the 2 new States. In other words, the respondents had an exposure to the U.C. Agarwal guidelines, which enabled them to effect the distribution of AIS officers among the 3 Northern States referred to. The applicant has claimed, time and again, in his different pleadings that when the U.C. Agarwal Committee recommendations were approved by DOPT where was the necessity to go in for fresh guidelines by forming the P.S.Committee. Respondents contested the same by averring that they were endowed with the responsibility of setting up an advisory committee under Act -2014 which they cannot dither to discharge. Learned counsel for the respondents submitted that the bifurcation of the composite State of A.P took place in 2014 in an all together different plane with too many contentious issues to be resolved. A mammoth exercise of redistribution of AIS officers will necessarily have to be looked into by taking into consideration contemporary factors was his forthright assertion. Therefore, the formation of the Pratyush Sinha Committee was situational and was the need of the hour, which is not liable to be questioned. However, we are of the opinion that since U.C. Agarwal Committee and P.S. Committee dealt with the homogeneous group of AIS officers, it would be a legitimate expectation that the norms laid down in P. S. Committee, would be largely synchronous in matters of relevance pertaining to distribution of AIS officers. Further, it is not for the Tribunal to question the decision of the respondents to form the P.S Committee under the Act -2014 but what would be in the domain of the Tribunal is the decision making process in constituting the P.S.

Committee and whether guidelines framed and approved by the competent authority were fair, transparent, objective and do not violate any constitutional provisions/ Act -2014. It is this aspect which we would like to examine in the ensuring part of the judicial scrutiny in the context of the claim of the applicant for allotment of the IPS cadre of Telangana State.

III. We note that consequent to the bifurcation of the composite State of A.P into RSAP and State of Telangana, the distribution of the AIS officers was dealt under various Sections of the Act 2014 and those relevant to the dispute are Sections 76 & 80 of the Act 2014, extracted hereunder, which provide for determining the strength, composition and allocation of AIS officers among the States keeping in view the AIS act of 1951 along with the guidelines to do so.

> ***76. Provisions relating to All-India Services***.—
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> *(1) In this section, the expression ―State cadre‖—*
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> *(a) in relation to the Indian Administrative Service, has the meaning assigned to it in the IndianAdministrative Service (Cadre) Rules, 1954;*
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> *(b) in relation to the Indian Police Service, has the meaning assigned to it in the Indian PoliceService (Cadre) Rules, 1954; and*
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> *(c) in relation to the Indian Forest Service, has the meaning assigned to it in the Indian ForestService (Cadre) Rules, 1966.*
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> *(2) In place of the cadres of the Indian Administrative Service, Indian Police Service and IndianForest Service for the existing State of Andhra Pradesh, there shall, on and from the appointed day, betwo separate cadres, one for the State of Andhra Pradesh and the other for the State of Telangana inrespect of each of these services.*
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> *(3) The provisional strength, composition and allocation of officers to the State cadres referred to insub-section (2) shall be such as the Central Government may, by order, determine on or after theappointed day.*
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> *(4) The members of each of the said services borne on the Andhra Pradesh cadre immediately beforethe appointed day shall be allocated to the successor State cadres of the same service constituted undersub-section (2) in such manner and with effect from such date or dates as the Central Government may,by order, specify.*
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> *(5) Nothing in this section shall be deemed to affect the operation, on or after the appointed day, ofthe All-India Services Act, 1951 (61 of 1951), or the rules made thereunder.*

Section 80 – Advisory Committees.

(1) The Central Government may, by order, establish one or more Advisory Committees, within a period of thirty days from the date of enactment of the Andhra Pradesh Reorganization Act, 2014, for the purpose of assisting it in regard to—

(a) the discharge of any of its functions under this Part; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this Part and the proper consideration of any representations made by such persons.

(2) The allocation guidelines shall be issued by the Central Government on or after the date of enactment of the Andhra Pradesh Reorganization Act, 2014 and the actual allocation of individual employees shall be made by the Central Government on the recommendations of the Advisory Committee:

Provided that in case of disagreement or conflict of opinion, the decision of the Central Government shall be final:

Provided further that necessary guidelines as and when required shall be framed by the Central Government or as the case may be, by the State Advisory Committee which shall be approved by the Central Government before such guidelines are issued."

Thus, as per Section 80 of the Act- 2014, an Advisory Committee Chaired by Sri Pratyush Sinha, with the Chief Secretaries of the newly formed States and the Cadre controlling authorities of the AIS as members, was formed on 28.3.2014 under the Act 2014 to lay down the guidelines for distribution of AIS officers in order to achieve objectivity and ward off allegations about any wrong doing, as asserted by the respondents. The terms of reference to the Committee are as under:

"2. The terms of reference for the Committee would be as follows:-

(i) To make suitable recommendations regarding determination of the cadre strength of the three All India Service (AIS), namely, IAS, IPS & IFOS of the two successor States namely Andhra Pradesh and Telangana on the basis of objective and transparent principles to be evolved by the Committee within one week from the date of this notification.

(ii) To consider and take a view on any representation(s)/comment(s) made by the stakeholder (s) with reference to such determination of cadre strength and principles, after the same is placed on the respective website of the three AIS for a period of one week and thereafter make suitable recommendations regarding the issues that may be raised through these representations, within a period of one week.

(iii) To recommend objective and transparent criteria for the allocation/distribution of personnel belonging to the three All India Services, i.e.

IAS, IPS & IFoS & borne on the existing cadre of Andhra Pradesh between the two successor States namely Andhra Pradesh and Telangana within three weeks from the date of this notification.

(iv) To further subdivide the total authorized strength of the three All India Services as approved by the Competent Authority after final recommendation of the Committee as mentioned at Para (ii) above, into Direct Recruitment Quota and Promotion Quota wise; Unreserved, OBC, SC and ST wise and Insider and Outsider wise for the two successor States namely Andhra Pradesh and Telangana arising out of the existing State of Andhra Pradesh immediately after approval of the determination of cadre strength, as mentioned at Point No. (ii) above or approval of the criterion for allocation/distribution by the Competent Authority, as mentioned at Point No.(iii) above, whichever is later.

(v) To recommend specific individual allocation/distribution of AIS officers in accordance with the allocation guidelines as approved by the competent authority, within one week after completion of the further sub-division of authorized cadre strength, as mentioned at Point No. (iv) above.

(vi) To consider any representation(s) made by an All India Service Officer (s) who is/are affected by such recommendations regarding individual allocation/distribution, as mentioned at point No.(v) above after the same is placed in the websites of the respective Cadre Controlling Authority of AIS, for one week, inviting representations, in order to ensure a fair and equitable treatment to all and make appropriate recommendations, if any, within one week from the closure of accepting representations from stakeholders."

The committee as per clause (ii) above, was expected to consider and take a view on any representation received from the stake holders with reference to the cadre strength and principles after the guidelines were placed on the website for a period of one week and thereafter make suitable recommendations in a weekôs time. Without doing so the Committee went ahead and published the guidelines on 22.8.2014 and also the first tentative list of distribution of AIS officers was released on the same day. The respondents have not explained in any of their pleadings as to why the list was released without taking any feedback on the purported guidelines and thereby acted against the terms of reference in such haste. The respondents having induced a legitimate expectation among the AIS officers including the applicant that any representation made in regard to the Principles of distribution proposed by the Advisory Committee would be gone into and

thereafter, the guidelines would be freezed for implementation. Taking a decision contrary to the said expectation is unfair.

IV. In this regard, we intend to observe that in all State actions, the State has to conform to Article 14 of the Constitution of which non-arbitrariness is a vital factor. A public authority can use powers for public good which casts a duty on the said authority to act fairly and to adopt a procedure which is 'fairplay in action', as was made evident by Section 80 (1) (b) of the Act - 2014. Due observance of this obligation raises a legitimate expectation in every AIS officer of being treated fairly in regard to the decision making process in distribution of the officers amongst the 2 States. To satisfy this requirement of non-arbitrariness in State action, it is necessary to give due weight to the legitimate expectation of theAIS officers likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse of power, affecting the very bona fides of the decision. In the given case, the respondents were to circulate the guidelines and seek views from the stake holders and thereafter commence the process of allocation. The legitimate expectation of the AIS officers and that of the applicant of at least their views would be solicited has been belied. Therefore, the decision to release the guidelines and the tentative allocation on 22.8.2014 is exposed to challenge on the ground of arbitrariness. Although the word tentative in releasing the first allocation was used but the mind of the respondents has been revealed about the respect they have to their own commandment. While stating what we did, we clarify that the rule of law does not eliminate discretion in the exercise of power, but provides for control of its exercise by judicial

review. Though the legitimate expectation of an AIS officer to be part of the guideline framing process as per the terms of reference, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary. This is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. An administrative decision of the public authority satisfying the requirement of non-arbitrariness would only withstand judicial scrutiny.

The object of inviting suggestions from the stake holders as per the terms of reference to the P.S. committee was to ensure a fair, objective and transparent allocation of cadres to the AIS officers and in the instant case IPS officers among the newly formed States. Involving the stake holders in the process of formulating the guidelines is in Public Interest, since the AIS officers are involved in the affairs of the State by holding key positions dictating the destiny of the State in matters of security. Retaining or modifying the recommendations of the P.S. committee after consulting the stake holders would have been a fair proposition to all concerned but not by not involving them, albeit envisaged in the terms of reference. We find that the respondents have failed to uphold the principle of legitimate expectation by releasing the guidelines and the allocation list on 22.8.2014 against the terms of reference. Though the applicantôs name did not figure in the first list, the respondents cannot disown the responsibility that they have to go by the terms of reference. Thus we find the decision making process was flawed in the very embryonic stage of the distribution of AIS officers by completely disregarding the legitimate expectation of the applicant to be a

part of the guideline framing process, as per the explicit terms of reference to the P.S. Committee. We take support of the Hon'ble Supreme Court in ***Food Corporation of India vs M/s. Kamdhenu Cattle Feed***, on 3 November, 1992 :: AIR 1993 SC 1601, JT 1992 (6) SC 259, 1992 (3) SCALE 85, (1993) 1 SCC 71, 1992 Supp 2 SCR 322, as under, in declaring the above.

> *7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law : A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.*
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> *8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.*
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> *9. In Council of Civil Service Unions and Ors. v. Minister for the Civil Service, 1985 A.C. 374 (H.L.) the House of Lords indicated the extent to which the legitimate expectation interfaces with exercise of discretionary power. The impugned action was upheld as reasonable, made on due consideration of all relevant factors including the legitimate expectation of the applicant, wherein the considerations of national security were found to outweigh that which otherwise would have been the reasonable expectation of the applicant. Lord Scarman pointed out that 'the controlling factor in determining whether the exercise of prerogative power is subject to judicial*

review is not its source but its subject-matter'. Again in In re Preston, 1985 A.C. 835 (H.L.) it was stated by Lord Scarman that 'the principle of fairness has an important place in the law of judicial review' and 'unfairness in the purported exercise of a power can be such that it is an abuse of excess of power'. These decisions of the House of Lords give a similar indication of the significance of the doctrine of legitimate expectation. Shri A.K. Sen referred to Shanti Vijay & Co. etc. v. Princess Fatima Fouzia and Ors. etc. [1980] 1 S.C.R. 459, which holds that court should interfere where discretionary power is not exercised reasonably and in good faith.

10. From the above, it is clear that even though the highest tenderer can claim no right to have his tender accepted, there being a power while inviting tenders to reject all the tenders, yet the power to reject all the tenders cannot be exercised arbitrarily and must depend for its validity on the existence of cogent reasons for such action. The object of inviting tenders for disposal of a commodity is to procure the highest price while giving equal opportunity to all the intending bidders to compete. Procuring the highest price for the commodity is undoubtedly in public interest since the amount so collected goes to the public fund. Accordingly, inadequacy of the price offered in the highest tender would be a cogent ground for negotiating with the tenderers giving them equal opportunity to revise their bids with a view to obtain the highest available price. The inadequacy may be for several reasons known in the commercial field. Inadequacy of the prince quoted in the highest tender would be a question of fact in each case. Retaining the option to accept the highest tender, in case the negotiations do not yield a significantly higher offer would be fair to the tenderers besides protecting the public interest. A procedure wherein resort is had to negotiations with the tenderers for obtaining a significantly higher bid during the period when the offers in the tenders remain open for acceptance and rejection of the tenders only in the event of a significant higher bid being obtained during negotiations would ordinarily satisfy this requirement. This procedure involves giving due weight to the legitimate expectation of the highest bidder to have his tender accepted unless outbid by a higher offer, in which case acceptance of the highest offer within the time the offers remain open would be a reasonable exercise of power for public good.

Indeed, the formation of the advisory committee was to ensure fair and transparent distribution giving scope to the stake holders to air their views in regard to the principles of distribution and thereafter crystalize the guidelines taking into account genuine grievances, so that the feeling of fair treatment to the AIS officers could emerge. It was not to be. Hence we find clear violation of Section 80 (1) (b) of the Act 2014 cited supra and the principle of legitimate expectation laid down by the Hon'ble Apex Court cited supra. When there was no participation of the stake holders in framing the principles of allocation as envisaged in the terms of reference and as

intended under the provisions of the Act-2014, we find it difficult to declare that the distribution was fair and equitable, as claimed by the respondents.

V. Further, when a certain authority is given the power to exercise it in a certain manner, the said authority should either exercise the power vested in that manner or not at all and not in any other manner, as observed by the Hon'ble Supreme Court in ***Anuradha Bhasinv.Union of India and ors in W.P (Civil) No. 1031 of 2019 and Ghulam Nabi Azad v Union of India and Anr*** in W.P (Civil) No. 1164 of 2019 on 10.1.2020 as under:

> *In this context, this Court in the Hukam Chand Shyam Lal case (supra), [Hukam Chand Shyam Lal v.Union of India, (1976) 2 SCC 128], observed as follows:*
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> > *"18. It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other amodes (sic) of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature..."*

The Committee was empowered to consider and take a view on any representation by the stake holders with reference to the determination of cadre strength and principles, after placing the same in the relevant web sites and thereafter make the suitable recommendations. Instead, we found that the guidelines and allocation were circulated on the same date, thereby not exercising the power vested in the P.S. Committee/Competent Authority in the manner it should have and therefore, a violation of the legal principle laid down by the Hon'ble Apex Court, cited supra.

Once a rule/guideline is framed, the transgression of the same has to be curbed and snubbed. We find it to be apparent in the instant case as scripted in the preceding paras and such rule violations are impermissible as per the Hon'ble Supreme Court verdicts in a catena of judgments, as under:

*The Hon'ble Supreme Court in **T.Kannan and orsvs S.K. Nayyar** (1991) 1 SCC 544 held that "Action in respect of matters covered by rules should be regulated by rules". Again in **Seighal's case** (1992) (1) supp 1 SCC 304 the Hon'ble Supreme Court has stated that "Wanton or deliberate deviation in implementation of rules should be curbed and snubbed." In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held " the court cannot de hors rules*

The transgression of the terms of reference discussed supra has been flagrantly violated by the respondents and hence the decision of the respondents to indulge in such transgression, is not in congruence with the Hon'ble Apex Court Judgments cited supra. In cases where rules/ guidelines were violated the courts have not hesitated to impose damages on the decision makers. In stating what we did, we rely on the observations of the Hon'ble Apex Court in ***B. Amrutha Lakshmi v State of A.P and ors*** in CA No.9193 of 2013 with ***Irrinki Srinagesh v. State of A.P. & Ors*** in CA No. 9194 of 2013, dated 18.10.2013, as under:

18. We have got to accept that, if the rules for selection contain a requirement, the same has to be applied uniformly and strictly, and none from the eligible group can be eliminated from being considered on any criteria, other than those which are provided in the rules. If there is a criteria laid down for selection, the Administration has to confine to the same, and it cannot impose an additional criterion over and above whatever has been laid down. If that is done, it will no longer remain an exercise of discretion, but will result into discrimination. It will mean treating similarly situated employees dissimilarly, and denying equal opportunity to some of them in the matter of public employment on the basis of a criterion which is not laid down, resulting into violation of Articles 14 and Article 16(1) of the Constitution of India. If the rules were to provide that in the event of large number of persons coming into the zone of consideration, the names of the senior most alone will be

forwarded, then it would have been a different situation. In the absence any such restrictive rule, as in the present case, the decision of the respondents cannot be justified.

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21. We cannot, however, ignore that the appellant had to resort to this litigation for no fault of hers. The non consideration of her claim was totally unjust. Hence, even though for the reasons that we have stated earlier, the appellant cannot get the relief in the nature of a direction to consider her for the selection which she had sought, she must get the damages for non-consideration on unjust grounds. This is because, the Commissioner for Commercial Tax had acted to reduce the zone of consideration, contrary to the rules, and in spite of a letter dated 1.7.2010 from the Principal Secretary Revenue (CT-I) Department, which had clarified that the Commissioner may send the proposals of the eligible candidates of the cadre of Assistant Commissioners and above, who were of outstanding merit. The award of damages is necessary also because, a message must go down that those who are responsible for administration of the State cannot trample upon the rights of others on the grounds which are unsustainable in law. We, therefore, direct the State of Andhra Pradesh to pay the damages of rupees fifty thousand to the appellant. This will be over and above the litigation cost of rupees twenty five thousand, which we hereby award.

VI. The respondents further claim that the details of the allocation process were intimated to the members of the AIS, which the applicant flatly denies and claims that only in regard to allocation, option was called from him. In respect of the other developments, he was kept in the dark. The respondents have not rebutted the same by submitting relevant documentary evidence. Therefore, the respondents it appears have made themselves susceptible to the accusation that the list and the guidelines

were framed without taking the stake holders into confidence. The applicant alleges that it was done secretively to favour some members of the AIS.

If we look broadly at the entire gamut of the dispute, the applicant on being selected is given an offer of appointment and only when he accepts the terms and conditions stated therein, he becomes the member of the service as admitted by the nodal Department namely, DOPT while filing reply affidavits before the Hon'ble High Court of Delhi in WP(C) No.2544/2012 & CWP No.7757/2012. In other words, a contract between the respondents and the applicant has come into play. Therefore it is undeniably true that the origin of government service is contractual, since there is an offer and acceptance in every case. In a contract, the parties to the contract have certain duties and responsibilities to be discharged to make the contract binding. One of the important facets of a contract is the legal communication. When a proposal or change in the terms of contract are envisioned by one party, it is necessary that the other party is at least informed so that it enables a reverse communication accepting the same or seeking a change for consideration. In the instant case, the applicant is aggrieved that the respondents have not kept him informed of any of the developments in regard to the distribution of the AIS officers except to seek his option for any one of the newly formed State. Such non communication would go against the contract of appointment and initial allocation to the composite State of A.P. The respondents have changed the allocation of the applicant to RSAP and before effecting the change in cadre the minimum requirement under law of contract was to inform the applicant the basis for the change. The respondents have not submitted any documents to

substantiate the fact that they had kept the applicant informed, more so when he was away from his cadre on central deputation. It is necessary that the communication of a proposal is made in a way that it comes to the knowledge of the other party, to complete the process of the proposal. A proposal which does not come to the knowledge of the person to whom it is made is no proposal. In every agreement, there should be communication of the proposal to the other party and that proposal should come to the knowledge of that party, and being in the knowledge, that proposal should be accepted by other party for formation of a valid agreement. Here, even if the person fulfills the terms of the proposal, and the proposal is communicated in such a way that it was not in the knowledge of the other party, it will not create a valid agreement, as held in the case of ***Lalman Shukla v. Gauri Dutt, 1913 40 ALJ 489.*** In this case, a general proposal was given by a person with certain award if anyone finds his lost nephew, a person without the knowledge of this offer, found the nephew and later claimed the award. The court held that since the person was not having the knowledge of the offer was not entitled for the award. In a similar case ***Fitch v Snedkar, (1868) 38 NY 248*** where Snedkar offered reward to anyone who found the lost dog, Fitch found the dog and returned it before being aware of the offer given by Snedkar. In this case too, it was held that *albiet* Fitch fulfilled the terms of the offer, but the offer communicated was not in his knowledge, he is not entitled to get the reward.

Therefore, from the above cases it can be said that the communication of any offer or proposal plays an important role in creating a valid agreement. If the communication of a proposal is not in knowledge

of other person then no one is bound by the promise. Applying the above principle to the case of the applicant in the light of his submission that the different elements of the process of allocation were not communicated to him, which was not rebutted by the respondents by any documentary evidence, the guidelines formulated would not be binding on the applicant.

We are conscious of the contra argument that once appointed to a post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed by the Government. In other words, the legal position of a government servant is one of status than of contract. However, the hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and public law is wedded to public interest. The public interest involved in the instant case is to allow the AIS officers to be allotted to the cadres of their choice in a fair and equitable manner as envisioned in section 80 of the Act-2014. Public interest lies in acting as per rules and acts, so that the rule of law will prevail. Public interest is a constitutional requirement in every action of the State, as held by the Hon'ble Supreme Court in ***Nidhi Kaim&Anr. vs State of Madhya Pradesh &Ors, Etc*** in Civil Appeal No. 1727 of 2016, as under:

> *No doubt, that the overarching requirement of Constitution is that every action of the State must be informed with reason and must be in public interest.*

The fairness and equitableness required to be a part of the decision making process, is missing in dealing with the relief sought by the applicant, as was brought out in the preceding para and neither are justifiable reasons forthcoming from the respondents. The overarching requirement of not

following the dictate of section 80 of the Act ï 2014 in public interest, is one another ground which deflates the defense of the respondents, in the light of the above observation of the Hon'ble Apex Court. Therefore viewed from any angle of either treating the offer of appointment to the applicant as contract or under public law coupled with public interest, the respondents failed to live up to the relevant provisions discussed supra in processing the request of the applicant in allotting the State cadre sought for by him.

In addition, we are tempted to add that democracy entails free flow of information. It is not only a normative expectation under the Constitution, but also a requirement under natural law, that no law should be passed in a clandestine manner. As Lon L. Fuller suggests in his celebrated article ñ*there can be no greater legal monstrosity than a secret statute*ò. In this regard, Jeremy Bentham spoke about open justice as the ñ*keenest spur to exertion*ò. In the same context, James Madison stated ñ*a popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or perhaps both. Knowledge will forever govern the ignorance and a people who mean to be their own Governors must arm themselves with the power which knowledge gives*ò.

The addition was only to allow the respondents to ponder as to how critical it is to let know those affected by their decisions to be kept informed in ways which could be documentarily evidenced.

VII. Another interesting aspect of the dispute is as to from which State the allocation of cadre should begin. Applicant alleges that as per the

draw of lots it was supposed to commence with the State of Telangana. Respondents reject the contention by explaining that the draw of lots was for drawing of roster and not for initiation of the allocation. When the respondents adopted the draw of lots in respect of roster, it is not understood as to why they could not use the same method in respect of allocation of cadre. The relevant consideration, whatever it may be in the matrix of decision making by the respondents, in resorting to drawal of lots for roster equally applies for the allocation process. The decision making process to arrive at the said decision by passing the relevant consideration of going for drawal of lots for allocation of the cadre, is a sure shot case of arbitrariness. We expected the respondents to come forward with proper reasoning in the different pleadings they put forward before the Tribunal on different occasions for not choosing the drawal of allots for allocation/distribution among the 2 States. Alas it was not to be. Any decision which is not backed by required reasoning is again an invincible case of arbitrariness. Service law expects rationality, reasonableness, objectivity, application of mind, transparency and fairness as some of the prerequisites of proper decision making. These elements are woefully missing in the decision to skip the proven method of drawal of lots for allocation. It is well known that the standard of fairness can be measured by the scope to reasonably anticipate the decision of the State in a given situation. The guidelines so drawn by the P.S. Committee should have been such that the AIS officers could have easily anticipated the State cadre they would be allotted to. Instead, respondents by adopting different stands for drawal of lots in respect of allocation and rosters, diverse swapping rules to reserved and unreserved community, have made the anticipation of the

allotment of the State cadre a different ball game altogether. Guidelines or no guidelines the ultimate decision to allot a cadre has to be transparent and fair, requiring that all those concerned were dealt in a manner which is rational and justifiable. If rules provide for discretion to the authorities even in such cases the discretion exercised should not be arbitrary. As for example, when swapping for the reserved community officers was permitted across batches the same could have been extended to the unreserved officers too. After all, by swapping, the interests of the State are not adversely affected. The State would be mighty pleased to have men in position and not as to who it should be. We have no hesitation to state that the drawal of lots would have undoubtedly placed the respondents in the respectable arena of fair play. Instead, they commenced allocation with the State of RSAP with no rhyme and reason as to why they did so.We found no rebuttal of this assertion of the applicant by the respondents in the plethora of documents submitted by them. The beginning point of the distribution makes an ocean of a difference in the allocation of the cadres to the AIS officers. The respondents could have adopted the same method of drawal of lots even for allocation and be done with it. Instead, again we find that a decision was taken disregarding the universally accepted norm of drawal of lots which allays allegations of bias. Therefore, the decision to commence the allocation with RSAP is mired with avoidable controversy, to say the least. Consequently, respondentsô decision to commence the process of allocation with RSAP fringes on arbitrariness and arbitrariness in decision making is impermissible under law. While making the above remarks, we have banked on the observations made by the Hon'ble

Supreme Court in ***Asha Sharma v. Chandigarh Admn.***, (2011) 10 SCC 86: (2012) 1 SCC (L&S) 354 at page 95, as under:

> *12. Arbitrariness in State action can be demonstrated by existence of different circumstances. Whenever both the decision-making process and the decision taken are based on irrelevant facts, while ignoring relevant considerations, such an action can normally be termed as "arbitrary". Where the process of decision making is followed but proper reasoning is not recorded for arriving at a conclusion, the action may still fall in the category of arbitrariness. Of course, sufficiency or otherwise of the reasoning may not be a valid ground for consideration within the scope of judicial review. Rationality, reasonableness, objectivity and application of mind are some of the prerequisites of proper decision making. The concept of transparency in the decision-making process of the State has also become an essential part of our administrative law.*
>
> *xxx*
>
> *14. Action by the State, whether administrative or executive, has to be fair and in consonance with the statutory provisions and rules. Even if no rules are in force to govern executive action still such action, especially if it could potentially affect the rights of the parties, should be just, fair and transparent. Arbitrariness in State action, even where the rules vest discretion in an authority, has to be impermissible. The exercise of discretion, in line with principles of fairness and good governance, is an implied obligation upon the authorities, when vested with the powers to pass orders of determinative nature. The standard of fairness is also dependent upon certainty in State action, that is, the class of persons, subject to regulation by the Allotment Rules, must be able to reasonably anticipate the order for the action that the State is likely to take in a given situation. Arbitrariness and discrimination have inbuilt elements of uncertainty as the decisions of the State would then differ from person to person and from situation to situation, even if the determinative factors of the situations in question were identical. This uncertainty must be avoided.*

VIII. Delving a little deeper into the issue, we find that the number of DR outsiders from the UR cadre to be distributed is 62 IPS officers. The number required to be allotted to the State of Telangana is 27 and 35 to RSAP. Whereas, when options were called, only 8 officers opted for RSAP and therefore, there was excess preference to Telangana State over and the above the authorized limit. Hence, to attend to this issue of excess demand to the State of Telangana, the system of roster blocks was brought into vogue. Thus, 27 roster blocks were formed, as per para 8 of the approved the guidelines, of which 19 blocks were of 2 points and 8 blocks of 3 points covering all the 62 officers. The modalities to arrive at the point of

allocation with reference to the size of the roster being even/ odd, as per the guidelines is presented here under:

> *"Where the size of the roster block so prepared is an even number, the point next below to the number arrived at by dividing the roster block by two will be the point for allocation; and where the size of the roster block is an odd number, the mid-point will be the point of allocation."*

Respondents admitted that there were 8 officers who opted for RSAP. The applicant has given the names of the 3 officers namely Sri V.S.K. Kaumudi, Sri Ray Vinay Ranjan & Sri Vishnu S. Warrier, who gave equal preference for both the States. One more officer by name Sri Abhilasha Bisht has not given any option and therefore, was categorized in the NR (Non-Responsive) category. The respondents admitted that there was heavy deficit in respect of options for RSAP and that only 8 officers opted for the said State. Now looking at the mathematics of the issue there were 62 outsider DR unreserved officers who are to be distributed among the 2 states and it requires no profound administrative rational, in the face of acute shortage of IPS officers in RSAP, to allot those who gave equal preference and the NR category officer to RSAP along with the 8 who have opted for RSAP. Thereby the strength of RSAP would have increased to 12 without giving any room for grievances to emerge from the officers named. Instead, the respondents adopted the point of allocation to explain the allotment which, in the given circumstances, was an uncalled for exercise, since the theory of roster blocks was postulated when there was competition amongst officers for Telangana. A classic case of an irrational decision, since when there were 3 officers who gave equal preference to both the States and one officer who gave no response, it was not required to

invoke the roster block concept to decide their distribution, instead, they could have been allotted to RSAP straightaway, which would have been fair, with no questions raised from any quarter and that too, in tune with the provisions of Section 80 of the Act-2014. A simple decision was made complex by the respondents doing what not to be done and not doing what is to be done. By doing what ought not to be done, is a clear mistake on part of the respondents and the said mistake should not recoil on to the applicant as observed by the Hon'ble Apex Court in a cornucopia of judgments as under:

> *The Apex Court in a case decided on 14.12.2007 (**Union of India vs. Sadhana Khanna**, C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees. In yet another case of **M.V. Thimmaiah vs. UPSC,** C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer. (iii) It has been held in the case of **Nirmal Chandra Bhattacharjee v. Union of India**, 1991 Supp (2) SCC 363 wherein the Apex Court has held "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."*

IX. The mistake has further impacted the size and number of the roster blocks since the number of roster blocks would reduce to (27-4) = 23. With the number of roster blocks reduced to 23 the size of the roster would be 62 : 23. The variance thus makes a marked difference to the distribution process and obviously to the claim of the applicant. Respondents have only stated that they have followed the guidelines but did not explain as to why they had to resort to an unwarranted remedy when there was a simple universally acceptable option of allotting the equal preference officers and NR officer to RSAP was available.

Out of the 62 officers to be distributed, the number of officers to be allotted to RSAP is 35 and to Telangana it is 27. As per the P.S. Committee

guideline at clause 8.1, the size of the roster would be largely dependent on the ratio of 27 out of 62 or 35 out of 62 depending on from which State the allocation begins. The roster would be 27 out of 62 if it is Telangana and 35 out of 62 if it is RSAP and the one chosen invariably decides the size of the roster. It was stated in the said guideline that the commencement would be by drawal of lots. The relevant guideline is extracted hereunder:

ñDIRECT RECRUIT ï OUTSIDES.

8. xxx

8.1 Like in the first example, it would be easier to understand the process through an example. Let us assume that there are 80 DR Outsiders in the undivided State of Andhra Pradesh who are to be allocated between residual Andhra Pradesh and Telangana. As per the ratio, 45 of them would have to be allocated to the residual Andhra Pradesh and 35 to the State of Telangana. There could be two ways in which the size of the roster block could be determined. If we initiate the exercise with the intention to allocate 45 officers to residual Andhra Pradesh, the size of the roster block would be dependent on the ratio of 45 out of 80 whereas if the exercise is done with the intention to allocate 35 of the 80 officers to Telangana, the size of the roster block would be 35 out of 80. In the previous instances of allocation of officers from the undivided States of UP, Bihar and MP to the successor States, the size of the roster block had been determined with reference to the small successor state in each case. Going by those precedents, the size of the roster block should be determined by the figure of 35 out of 80. However, in view of the suggestion of the Government of Andhra Pradesh, the question whether the process would be initiated with reference to the residual Andhra Pradesh i.e. to adopt the roster of 45 out of 80 or Telangana i.e. the roster out of 35 out of 80, would be determined by a drawing up of lots."

The guideline once again drives home the point that the size of the roster decides the allocation process. Therefore, the respondents not acting in allotting the officers who gave equal preference to both the States and the NR category officer to RSAP, which in turn changes the roster size, is a clear case of lack of application of mind in decision making. It is well settled that decisions taken without application of mind stand invalid.Further deploying different methods to work out the roster blocks for promotes and direct recruits as adduced at paras 7 & 8 of the advisory

committee guidelines, gives an unmistakable impression of the raw deal meted out to the DR outsiders by an unreasonable classification of a homogeneous group of IPS officers. We would deal with the unreasonable classification in the succeeding paragraphs.

X. Being on the subject of roster size, if the size of the roster were to be 62 : 23, by assuming the allotment of the 3 officers with equal preference and the one of the NR category were allotted to RSAP, the probability of the applicant figuring in a roster block of 3 or 4 cannot be ruled out. As for eg. the probability of the applicant with Sl. 44 being in a roster of size 3 along with serials of 43 and 45 would have facilitated the applicant to be allotted to the State of the Telangana taking the criteria of point of allocation as the mid-point in a roster with its size as an odd number viz 3. Similar prospect cannot be denied if the roster size were to be an even number of higher size.The scope to undertake such an exercise was scuttled by not allotting the 4 officers to RSAP by the respondents. It would suffice to state that the respondents mistake did make a difference to the allocation process. Discretion when not used with proper application of mind, then it would be termed as discrimination would loom large on the decision makers, as we have seen in the instant case where the applicant has been repeatedly claiming discrimination by improper application of guidelines. Denial of a fair opportunity to the applicant to be allotted to the State of Telangana, by not applying the prescribed norm as laid down in Section 80 of the Act-2014, would be violative of Articles 14 and 16 of the Constitution. True to speak, respondents lack the right to trample over the right of the applicant to be considered for the State of Telangana by not

exploring a universally acceptable possibility of allotting the equal preference officers and the NR officer to RSAP.

XI. Besides, respondents state that the junior to the applicant Sri A. Sabharwal appearing at Sl.45 and the applicant figuring at Sl.44 were placed in the same roster block, of size of 2 officers with both seeking Telangana. As the size of the roster block is 2 which is an even number, applying the formula as at para VIII above, the point of allocation would work out as 2/2+ 1 = 2 and therefore Sri A. Sabharwal though junior to the applicant, was allotted to Telangana. Generally in service matters, as per service law, it is the seniors who are given preference and not the juniors in matters of extending service benefits. Allocation of cadre and its continuance is an issue related to service conditions. Seniority though is not a fundamental right yet it is a civil right and any infringement of the said right would be permitted only if there exists any rules validly framed under a statute. The respondents have not cited any statute governing the service conditions of the applicant to overlook his seniority in distribution of the cadre. Strictly speaking it was not allocation of cadre but it was distribution of the AIS officers between Telangana and RSAP under Act - 2014 which makes all the difference. Allocation is well governed by Cadre Allocation Rules.When it is a case of distribution, seniority should have been given due credence. The guideline of point of allocation based on roster block coupled with seniority would have made Act 2014 harmonious with the provisions of Act 1951. There was no strict construction in the P.S. Committee guidelines as to why seniority has to be overlooked while applying the roster theory. Our above views are based on the observations

of the Hon'ble Supreme Court, as under, in ***State of U.P. and Anr vs Dinkar Sinha*** on 9 May, 2007 in Appeal (Civil) No.1262 of 2004:

> *17. Seniority may not be a fundamental right, but is a civil right. [See Indu Shekhar Singh and Ors. v. State of U.P. and Ors., [2006] 8 SCC 129, Bimlesh Tanwar v. State of Haryana and Ors., [2003] 5 SCC 604 and Prafulla Kumar Das v. State of Orissa, [2003] 11 SCC 614 Infringement of the said right would be permissible only if there exists any rules validly framed under a statute and/ or the proviso appended to Article 309 of the Constitution of India. It cannot act in a vacuum. Any rule taking away such rights would deserve strict construction.*

Thus, we are of the view that the guideline of ignoring the seniority and relying only on the point of allocation for distribution of the AIS officers and in particular the applicant, is not convincing. The consequential result following a flawed approach was that the junior to the applicant Sri A. Sabarwal was given Telangana though the applicant has also sought the same State. In fact, Act -2014 has a specific clause under section 76 (5) stating that the provisions in the said Act should be deemed to be not contrary to the provisions of the AIS act 1951. In other words, the aspect of seniority as envisaged in the AIS Act and the relevant Rules under the Act cannot be glossed over. Above all, the legal principle laid by the Hon'ble Apex Court as at above has not been adhered to.

The importance of seniority was emphasized by the Hon'ble Apex court in respect of confirmation and promotion in ***Bal Kishan v. Delhi Admn. & Anr., 1989 Supp (2) SCC 351***, as extracted hereunder. We are of the view that cadre allocation/distribution is as important as confirmation or promotion. Once an AIS officer is allotted to a particular State, then his entire career would be spent in that State and indeed, his youthful years and years close to the grave, in the allotted State. Such being the significance of

distribution of AIS officers, we are surprised that the P.S Committee could ignore the seniority principle which is the foundation for building a service career. In fact in the cited judgment of the Hon'ble Apex Court it was held that deviation from the seniority principle would be demoralizing.

> *9. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution.*

XII. In sharp contrast, we do observe that when it came to swapping of officers in the allocation process, the principle of seniority has been recognized and swapping was resorted to based on seniority along with allied conditions. We are surprised as to what prevented the respondents to induct and leverage the principle of seniority in the roster block based allocation, when there are 2 similarly placed officers seeking the State of Telangana in the same roster block. Interestingly respondents invoked the Principle of seniority when it came to swapping of officers, which is discussed in the later part of the judgment. Same rule applied differently to a common issue would not withstand the rigors of legal scrutiny since it smacks of arbitrariness. Therefore, there is no consistency in the decision making process involving the movement of officers involving roster block and the swapping methodology. Administrative decisions have to be consistent when the issue to be dealt is common. Infact, consistency is a virtue as held by the Hon'ble Apex Court in ***State of Karnataka vs K. Umadevi***, (2006) 4 SCC 1 at para 20).

> *"Consistency is a virtue"*

Such virtue was not exhibited by the respondents while laying down and applying down the guidelines.

XIII. Assuming for a moment, that it was an error in not considering seniority in the distribution of cadre as per the roster blocks, the legal recourse available to the respondents was to at least ensure consistency in the assumed error even in swapping as held by the Hon'ble Apex Court in ***State of Mysore v. R.V. Bidap***, (1974) 3 SCC 337, as under:

> *It is apt to remember the words of Rich, J.:*
>
> *"One of the tasks of this Court is to preserve uniformity of determination. It may be that in performing the task the Court does not achieve the uniformity that was desirable and what uniformity is achieved may be uniformity of error. However in that event it is at least uniformity".*

Consistency in judgments is not only for Courts but the administrative authorities in decision making since their action has to be necessarily in Public interest. Being inconsistent would mean that the decision making process has been vitiated by arbitrariness.

The approach of the respondents in regard to issues relating to rosters is riddled with too many inconsistencies and thereby is not in harmony with the above verdicts. Thus, we declare that the respondents did not show any consistency in decision making while framing or applying the guidelines which is not in consonance with the above observation of the Hon'ble Apex Court.

XIV. In respect of Sri Vishnu S. Warrier placed at Sl.61, he falls in the roster block of size 3 which is an odd number, with 2 other officers Sri A. Nayeem Asmi at Sl.60 and Sri Aishwarya Rastogi at Sl.62. When the roster block size is odd, the point of allocation would be the middle point as

per the formula cited supra and therefore, since Sri Warrier being at Sl.60 the middle point, he was given Telangana. Formula-wise it is perfect but decision wise, it is difficult to appreciate that when Sri Vishnu S. Warrier has given equal preference for both the States, where was the necessity to adopt the roster formula when he could have been allotted to RSAP on grounds of administrative exigency, as there was heavy deficit for this State. Respondents have not explained in any of the pleadings as to how the other two officers who gave equal preference namely Sri V.S.K. Kaumudi and Sri Ray Vinay Ranjan were allotted to Telangana despite ample opportunities were available to them when the case was heard on innumerous occasions. We are of the firm view that guidelines framed to distribute AIS officers should not be so framed so as to create hardships as held by the Hon'ble Supreme Court in ***Nirmala Chandra Bhattacharjee and ors in U.O.I and ors*** in JT 1991 (5) SC 35 delivered on 19.9.1999, as under:

> . *No rule or order which is meant to benefit employees should normally be construed in such a manner as to work hardship and injustice specially when its operation is automatic and if any injustice arises then the primary duty of the courts is to resolve it in such a manner that it may avoid any loss to one without giving undue advantage to other.*

Our endeavor is thus to undo the injustice done to the applicant, caused by decisions of the respondents which are neither consistent nor in resonance with the legal principles discussed supra, in tune with the letter and spirit of the verdict of the Hon'ble Apex Court cited above.

XV. Respondents introduced the concept of swapping to enable officers to swap their allocations under certain conditions. The conditions are as follows:

(i) After publishing the list distributing AIR officers between the two successor States a fresh window may be opened to all officers to opt for swapping with another within the same category and in the same grade pay as on 01.06.2014.

(ii) Officers with two years or less service left as on 02.06.2014 whether working or retired after that date may be considered for change of cadre, if they are already not allocated to the cadre of their preference provisionally and if they so represent.

(iii) The following modalities have also been approved by the Competent Authority for giving effect to (a) swapping within the category and in the same grade pay and (b) cadre shift on grounds of marriage:

(a) After publishing the list distributing AIS officers between the two successor States the fresh window may be opened for 15 days for officers to indicate whether they would like to shift to the successor State. While giving such option, the officer concerned would also be asked to indicate whether he/she is seeking the change on the basis of marriage grounds or for any other reason. If the officer is opting on the marriage ground, he/she would be asked to indicate the name of the spouse and the cadre to which he or she has been allotted to.

(b) Such officers who represent for the shift would be arranged in the order of seniority in the respective successor States in terms of category in the respective Grade pay.

(c) Swapping of officers would be done seniority wise from the respective lists of officers of the two successor States who have opted for a change, category-wise in the same Grade Pay.

(d) Those couples who have been allotted to the same cadre would not be allowed the option of swapping based on the ground of marriage. It is made clear at the outset, that if one of the spouse of such couples opts for a change, regardless of the fact that his/ her spouse is in the same cadre, the other spouse would not have the choice to represent later for a shift on marriage grounds.

(e) After the swapping exercise is complete, in accordance with the above, if some of the marriage couples belonging to AIS still remain unadjusted in the same cadre, as per the provisions of the cadre transfer guidelines of the Government of India, the couples would be adjusted in the cadre of their choice."

As is seen from the swapping rules seniority has been correctly recognized as an intrinsic aspect in dealing with the distribution among the 2 States as adduced at clause (c) supra. The contention of the applicant is that swapping in respect of SC/ST/OBC was within roster and whereas for U.R outsiders belonging to the DR category it has been confined to the batch. The respondents have explained that in case of OBC outsider category IPS officers, there were only 12 of them from 9 different batches, i.r.o SC

outsider category the number was 11 from 10 different batches and coming to ST outsider category it was 7 from 6 different batches. Therefore, given the lesser number of reserved community officers, swapping across batches to the reserved community officerswas allowed, to enhance the swapping probability. When the respondents could think of the concerns of the officers referred to, we fail to understand as to why the same concern was not shown in respect of UR outsider officers in applying the seniority clause to usher in fairness as was envisioned in section 80 (1) (b) of the Act 2014. Espousing the cause of one group and paying no attention to the cause of others symbolizes unfairness. Generally it is expected of the respondents to be neutral in furthering the cause of the different groups of employees as held by the Hon'ble Apex Court in ***S.I. Rooplal &Anr. vs Lt. Governor Through Chief Secretary, Delhi***on 14 December, 1999 in Appeal (Civil) 5363-64 of 1997, as under:

> *Before concluding, we are constrained to observe that the role played by the respondents in this litigation is far from satisfactory. In our opinion, after laying down appropriate rules governing the service conditions of its employees, a State should only play the role of an impartial employer in the inter-se dispute between its employees. If any such dispute arises, the State should apply the rules laid down by it fairly. Still if the matter is dragged to a judicial forum, the State should confine its role to that of an amicus curiae by assisting the judicial forum to a correct decision. Once a decision is rendered by a judicial forum, thereafter the State should not further involve itself in litigation. The matter thereafter should be left to the parties concerned to agitate further, if they so desire. When a State, after the judicial forum delivers a judgment, files review petition, appeal etc. it gives an impression that it is espousing the cause of a particular group of employees against another group of its own employees, unless of course there are compelling reasons to resort to such further proceedings. In the instant case, we feel the respondent has taken more than necessary interest which is uncalled for. This act of the State has only resulted in waste of time and money of all concerned.*

While one may tend to appreciate the initiative taken by the respondents to address the likely difficulty that would be faced by the reserved community officers in the swapping process, but that has to be permitted under the Act-2014 and not in contravention of the above judgments of the Hon'ble Supreme Court of being concerned with the difficulty of one group and turning a blind eye to the legitimate difficulties of the others. It can be seen that the guidelines permitted swapping for one group of officials and denied to another group by an irrational classification. To reiterate, an officer belonging to Unreserved category DR quota can swap with an officer belonging to the unreserved category of the same batch, whereas those belonging to the Reserved categories can swap with another officer belonging to his or her category/ community within the roster block which enwebs more than one batch. The guidelines, therefore, do not conform to the norm stated under Section 80(1)(b) of the Act since the guidelines failed to provide fair and equitable treatment to AIS officers to be allotted to two States and that the classification brought out under the guidelines is arbitrary and the classification is not established on the intelligible differentia, which distinguish the offices into two groups and the said differentia does not have any rational relation to the object sought to be achieved and there is no nexus between the basis of classification and the object sought to be achieved. It was equally important for the respondents to allow the swapping across batches for the UR Direct Recruit officers as was followed by U.C. Agarwal Committee to similarly situated AIS officers. Restricting the swapping as was done by the respondents to the DR-UR officers to the batch to which they belong, is discriminatory and arbitrary as well as overwhelmingly injurious to Articles 14 and 16 of

Constitution. The decision of the respondents in discriminating the DR-UR officers as explicated in regard to swapping, would thus be difficult for us to uphold and further, would not go well with the decision of the Hon'ble Supreme Court cited supra.

XVI. Once the IPS officers are selected, they form a homogeneous group and when the concern of one section of the group is being addressed the same concern need to have been shown to others by applying the well-established principles of seniority ordained in service law. In ***Indra Sawhney v. Union of India, 1992 Supp (3)*** SCC 217, at page 490, the Hon'ble Apex Court has held that a backward class entrant cannot be given less privileges because he has entered through easier ladder and similarly a general class candidate cannot claim better rights because he has come through a tougher ladder. After entering the service through their respective sources they are placed on equal footing and thereafter there cannot be any discrimination in the matter of promotion. Both must be treated equally in the matters of employment after they have been recruited to the service. Any further reservation for the backward class candidate in the process of promotion is not protected by Article 16(4) and would be violative. The relevant para of the judgment is extracted hereunder:

> *379. Constitution of India aims at equality of status and opportunity for all citizens including those who are socially,economically and educationally backward. If members of backward classes can maintain minimum necessary requirement of administrative efficiency not only representation but also preference in the shape of reservation may be given to them to achieve the goal of equality enshrined under the Constitution. Article 16(4) is a special provision for reservation of appointments and posts for them in government services to secure their adequate representation. The entry of backward class candidates to the State services through an easier ladder is, therefore, within the concept of equality. When two persons one belonging to the backward class and another to the general category enter*

> *the same service through their respective channels then they are brought at par in the cadre of the service. A backward class entrant cannot be given less privileges because he has entered through easier ladder and similarly a general class candidate cannot claim better rights because he has come through a tougher ladder. After entering the service through their respective sources they are placed on equal footing and thereafter there cannot be any discrimination in the matter of promotion. Both must be treated equally in the matters of employment after they have been recruited to the service. Any further reservation for the backward class candidate in the process of promotion is not protected by Article 16(4) and would be violative.*

Though the issue in the above verdict was in relation to promotion, the legal principle that has been laid down is that there cannot be any distinction/ discrimination in allowing the benefits to the officers of a homogeneous group. Therefore, the respondentsô approach in regard to permitting swapping across batches in regard to reserved community officers, but not to unreserved officers, is not in tandem with the above judgment of the Hon'ble Apex Court.

XVII. Respondents not showing similar concern in respect of the UR officers, is the root cause of the dispute in the instant case. Applying arguably favorable standards to a part of a homogeneous group and not to others is impermissible under law as they offend Articles 14 & 16 of the Constitution. The distinction in regard to the insider/outsider/ promotee/ DR/reserved community melts once the officers are selected to the IPS and allotted a given cadre. They form a homogenous group and their future career prospects are accordingly regulated. The guidelines issued based on U.C. Agarwal Committee recommendations to distribute AIS officers of Bihar, M.P and U.P and those pursuant to Prathyush Sinha Committee for distribution of AIS officers of the composite State of A.P. under relevant acts, were approved by a common authority namely DOPT. The

commonality was dealing with the service conditions of the homogeneous group of AIS officers and without a legal basis a classification was made by laying down different guidelines. At least in core areas which have a legal implication, there has to be uniformity like in respect of Principle of Seniority, swapping etc. Disregarding the uniformity and creating a classification as explained, would not be constitutional since it infringes Articles 14 and 16 of the Constitution of India. Albeit, the policy of reservation is constitutionally recognized and upheld by the Hon'ble Apex Court, the said policy applies to appointments, promotion and not for distribution of the officers' consequent to bifurcation of States. Reclassifying a homogeneous group of AIS officers belonging to different States and among those belonging to the same State, like in the instant case, as reserved and unreserved in extending certain benefits, while distributing AIS officers among the 2 states with no rationally discernable principle goes against the legal principle laid down in ***D.S. Nakara & Others vs Union Of India*** on 17 December, 1982 - 1983 AIR 130, 1983 SCR (2) 165, by the Hon'ble Supreme Court as under:

> *With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria: 'being in service and retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of being in service on the specified date and retiring subsequent to that date' in impugned memoranda, Exhibits P-I and P-2, violates Art. 14 and is unconstitutional and is struck down.*

The artificial classification of a homogeneous group was struck down by the Hon'ble Apex Court which has an indisputable implication to the dispute under adjudication. Respondents reclassifying the homogeneous group based on the recommendations of the P.S. Committee, reserved v unreserved, DR outsider v DR insider/promotee, for the purpose of distribution of the AIS officers, as discussed in paras supra, is thus not in accordance with law. More so, when the AIS officers are governed by the AIS Act 1951, they form a homogeneous group though they may be serving different State Governments or within the same State. The U.C. Agarwal Committee dealt with a similar issue of distribution of cadre of the AIS officers under the same AIS Act and the relevant bifurcation Act of 2000. The U.C. Agarwal committee recommendations largely apply to the homogeneous group of AIS officers whether they belong to the States of UP, MP & Bihar or A.P and therefore, it is difficult to appreciate the reasons for not adopting the core principles pertaining to roster block, seniority etc which were given due credence by Agarwal Committee. It is not out of place to observe that the same respondents in a similar issue concerning IPS cadre allocation have filed a reply statement in OA 174/2020 in November 2020 to acclaim that they have followed the process adopted in maintaining rosters for allocation of cadres as was adopted during the bifurcation of the States referred to. Therefore, the very same respondents, in particular, R-1 and R-2 taking a contrary stand in the instant OA, is a self-defeating proposition. Similarly placed persons are to be treated identically as has been observed in 5th CPC report as at para 126.5

> *Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases*

> *without forcing other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee."*

The decisions taken in U.C. Agarwal Committee to permit swapping across batches for UR officers who are similarly placed like the applicant could have been normally extended without forcing the later to approach the Tribunal. The contentious issues flagged by the applicant are common issues applicable to the DR outsiders and therefore the respondents should have reviewed the guidelines to the extent required to remove angularities and make them fall in line with the legal principles discussed so far in the above paras. The P.S Committee recommendations need necessarily have to be within the purview of law and not beyond.

Further, the Hon'ble Apex Court has explained the significance of equality guaranteed by Articles 14 and 16 of the Constitution by laying down tests for determining the constitutional validity of a classification, which is of utmost relevance to the case on hand, in a catena of judgments wherein it was held that Article 14 prohibits class legislation and not reasonable classification. The Hon'ble Supreme Court in respect of classification held that when two employees are a part of the same cadre/ rank, they cannot be treated differently for the purpose of pay and allowances or other conditions of service in ***Union of India and others vs. Atul Shukla and others*** in (2014) 10 SCC 432.

A classification passes the test of Article 14 only if:

(a) there is an intelligible differentia between those grouped together and others who are kept out of the group; and

(b) there exists a nexus between the differential and the object of the legislation.

The classification done by the respondents in the instant case does not pass both the tests and hence the synthetic classification attempted by the respondents is illegal. We take support of the observations of the Hon'ble Apex Court in regard to tests of classification and associated issues in State of ***W.B. v. Anwar Ali Sarkar [AIR 1952 SC 75], Ram Krishna Dalma v. S.R. Tandolkar (AIR 1958 SC 538), Lachhman Das v. State of Punjab [AIR 1963 SC 222], E.P. Royappa v. State of T.N. (1974)4 SCC 3, Maneka Gandhi v. Union of India [(1978) 1 SCC 248], Subramanian Swamy v. CBI (2014) 8 SCC 682,*** to substantiate the view, we held as at above.

To be precise furthermore, the underlying principle is that, so long as the officers are a part of the cadre, their entry, based on how they joined the AIS cadre, is immaterial in distributing the officers on bifurcation. They must be treated as equals in all respects once they join the cadre. It cannot be gainsaid that equals shall be treated as equals in service matters after joining the AIS. It requires no reiteration that once several persons have become members of AIS they essentially become equals as per the provisions of constitution. Preferential treatment in the distribution of a group of AIS officers on bifurcation of States tantamount to treating equals as unequals. The Hon'ble Apex Court judgment in State of ***A.P v Nalla Raja Reddy (1967) 3 SCR 28*** cited by the applicant, lays down the above

principle succinctly by holding that equals have to be treated equally and even treating unequals as equals is discrimination. The said judgment aptly applies to the case of the applicant, since various members of a group after recruitment and joining the service as AIS offiers integrate into one common group for the purpose of distribution and are equals. Treating the unequals namely the senior (Applicant) and the Junior (A. Sabarwal) as equals in allotment by applying the roster theory, in service matters, as was done in the instant case by the respondents, is not in line with the above judgment.

Besides, the doctrine of classification is a subsidiary rule evolved by the superior Judicial fora to give a practical content to the said doctrine. An unrelenting attempt to discover some basis for classification, where not called for, may deprive Article 14 of its magnificent content. The respondents have done an unjust classification in the instant case which is against the observation of the Hon'ble Apex Court in Lachhman Das supra. A pragmatic approach has to be adopted to harmonize the requirements of public services, as emphasized by the respondents in regard to AIS officers serving the Union and in any of the States, with the Legitimate expectations of AIS officers. Evolving a theory of classification to subvert the precious guarantee of equality, by heterogenization of a homogenous group, without any legal backing smacks of unlawfulness. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment as is required under section 80 of the Act 2014. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality, pervades Article 14 like a brooding

omnipresence. Fairness and equality were expressively derided by ushering in an arbitrary classification among the AIS officers by the respondentôs, and therefore, Article 14 & 16 require, comprehensively striking down such a decision.

XVIII. The respondents line of defense was to rely on the judgment of the Honôble Supreme Court in ***Union of India and Others v. Rajiv Yadav,*** IAS and Others, (1994) 6 SCC 38, wherein it was held as under:

> *6. ... ... 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.*‖

In ***C.M. Thri Vikrama Varma v. Avinash Mohanty and Others***, (2011) 7 SCC 385, the Honôble Supreme Court was dealing with a dispute relating to cadre allocation on the basis of a declared policy contained in the letter dated 31.05.1985. The Honôble Supreme Court held that a member appointed to an All India Service has no right to any particular State cadre, or a joint cadre. He has a right to fair and equitable treatment in the matter of allocation under Articles 14 & 16 of the Constitution. The Honôble Supreme Court agreed with the finding of the Honôble High Court that allocation made in violation of the guidelines contained in the declared policy vide letter dated 31.05.1985 was arbitrary, and not equitable. The Honôble Supreme Court also rejected the defense of the Government that the complexity of the decision making process, i.e. allocation of cadres, cannot be a defense when a grievance is made before a Court by a citizen that his fundamental right to equality has been violated. Therefore, it is the

desecration of Section 80 of the Act - 2014 by the respondents vis-à-vis the applicant, wherein fair and equitable treatment in allocation of the cadre was postulated, which calls for the intervention of the Tribunal to undo the wrong done to the applicant. Thus, in view of its own later judgment of the Hon'ble Apex court in C.M. Thri Vikram Verma as at above, the judgment in Rajiv Yadav relied upon by the respondent may not be of much assistance to the respondents.

XIX. In addition, we must add that the constitution of a committee is important from the perspective of conflict of interest. One of the members of the P.S. Committee was Sri P.K. Mohanty whose daughter and son-in-law were members of the AIS and were in the run for the cadre allocation on the bifurcation of the composite State of A.P. Sri P.K. Mohanty may or may not have influenced the allocation is a different matter on which we would like to comment, but law does not permit individuals to deal with issues wherein they have conflict of interest, since judicial propriety requires that an individual cannot be a judge in issues related to him. In ***ManikLal Vs. Dr. Prem Chand Singhvi,*** AIR 1957 SC 425, the Apex Court while accepting the validity of the said principle, held that the principle applied not only to judges but to all Tribunals and Bodies and also pointed out that ñ the test was not whether in fact a ñbiasò has affected the judgment, but the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunalò. Justice is not the function of the courts alone, it is the duty of all those who are to decide a dispute fairly between competing parties. Wherever there

has to be an independent application of mind, the rule applies. Therefore, the rule is applicable, not only in the case of courts of justice but in respect of authorities, who have to act as judges in regard to the rights of others. The Hon'ble Supreme Court has held that the proof of prejudice was not necessary. Although Sri P.K. Mohanty was inducted in the capacity of the Chief Secretary but yet the best course open was to decline the nomination for the reason stated, as emotive issues will unconsciously work on a human mind whoever it may be and in whatever capacity he is working. Respondents too have faltered in inducting a member who had conflict of interests.

The admitted fact that the daughter and son-in-law of Dr. P.K. Mohanty were in the list of officers borne on the cadre as on 01.06.2014 for allocation to successor States would bring in the element of bias. Human mind being what it is, the element of bias cannot be ruled out while dealing with the issues of the heart. The inevitable conclusion we arrive at is that the presence of Dr. P.K. Mohanty as a Member of the Committee to consider cases of allotment of his dear ones certainly gave room for a covert bias to exercise in their favour. Personal bias arises from personal/ family relationship or personal hostility with a party. In the instant case it is the family relationships of Sri P.C Mohanty, which ushers in the element of bias. We take support of the Hon'ble Supreme Court observations in regard to bias in ***Ashok Kumar Yadav and Ors. vs. State of Haryana and Ors.***reportedin MANU/ SC/0026/1985: (1985) 4 SCC 417, as under, to substantiate what we have said.

> *This Court emphasised that it was not necessary to establish as but it was sufficient to invalidate the selection process if it could be shown that there was*

reasonable likelihood of bias. The likelihood of bias may arise on account of proprietary interest or on account of personal reasons, such as, hostility to one party or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection."

In one another judgment as under, Hon'ble Apex Court in Writ Petition Nos. 173 to 175 of 1967, decided on 29.04.1969, in ***A.K. Kraipak and Ors. vs. Union of India and Ors. [AIR 1970 SC 150],*** held that the inclusion of a member who has conflicting interests is not justifiable.

"15. It is unfortunate that Naquishbund was appointed as one of the members of the selection board. It is true that ordinarily the Chief Conservator of Forests in a State should be considered as the most appropriate person to be in the selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All India Service is entitled to great weight. But then under the circumstances it was improper to have included Naquishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of this participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney-General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. It was in the interest of Naquishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates.

16. The members of the selection board other than Naquishbund, each one of them separately, have filed affidavits in this Court swearing that Naquishbund in no manner influenced their decision in making the selections. In a group deliberation each member of the group is bound to influence the others, more so, if the member concerned is a person with special knowledge. His bias is likely to operate in a subtle manner. It is no wonder that the other members of the selection board are unaware of the extent to which his opinion influenced their conclusions. We are unable to accept the contention that in adjudging the suitability of the candidates the members of the board did not have any mutual discussion. It is not as if the records spoke of themselves. We are unable to believe that the members of selection board functioned like computers. At this

> *stage it may also be noted that at the time the selections were made, the members of the selection board other than Nquishbund were not likely to have known that Basu had appealed against his supersession and that his appeal was pending before the State Government. Therefore there was no occasion for them to distrust the opinion expressed by Naquishbund. Hence the board in making the selections must necessarily have given weight to the opinion expressed by Naquishbund.*

Therefore, there can be no other conclusion than to conclude that the proceedings of the P. S. Committee have been vitiated altogether. However, the time machine has clocked many years since 2014 and therefore, setting aside the P.S. Committee proceedings at this juncture of time on this count, would become the harbinger of dealing with another round of complex administrative issues. Hence, we desist to do so. Nevertheless, reverting to the case of the applicant, as the very foundation of the P.S.Committee recommendations being untenable, the outcome of such un-tenability would be untenable. In the words of his Lordship Justice Sri Krishna Iyer in ***Maneka Gandhi, [*1978 AIR 597]**

> *"Lawful illegality could become the rule, if lawless legislation be not removed"*

Therefore, the Tribunal need to step in to right the wrong done to the applicant in cadre distribution. More importantly, in the background of the legal axiom that Administrative power is subject to fairness, reasonableness and justness, as held by the Hon'ble Supreme Court of India in ***Anoop Kumar vs State of Haryana*** on 15 January, 2020 in Civil Appeal No.315 of 2020 (Arising out of SLP(C) No.18321 of 2011), as under:

> *It cannot be disputed that the administrative power exercised by the DGP is subject to the requirement of fairness, reasonableness and justness.*

In not allotting the cadre sought by the applicant, we find the decision making process of the respondents suffered from the inadequacy of fairness, reasonableness and justness in ample measure as expounded in the preceding paras. Thus, a conclusion of clear breach of the legal principle referred to above. Besides, a question if posed as to whether the applicant was responsible for the improper laying of guidelines or the constitution of the committee, the answer would be a truthful no. Then the succeeding question that would emerge is as to whether the applicant can be castigated for no fault of his in regard to the relief sought. The legal dictum is that he cannot be, as pointed out by the Hon'ble Apex Court in ***Mohd. Ghazi vs State of M.P. 2000(4) SCC 342***.

> *It is settled law that no one should be penalized for no fault of his.*

In the context of the above observation of the Hon'ble Supreme Court, conceding to the relief sought by the applicant would be fair and appropriate.

XX. A similar issue fell for consideration in regard to the AIS officer belonging to the IAS cadre in OA 1241/2014 dated 29.03.2016. The challenge was to the constitution of the Advisory Committee, the swap principles, not adopting the lottery system in regard to allocation of officers and allotting them against the terms of reference. Considering the challenge mounted, the Tribunal framed certain issues and among them those relevant to the present dispute are extracted hereunder:

> *(i) Whether the guidelines framed by the respondent No. 1 on the basis of Pratyush Sinha Committee are illegal, arbitrary and in violation of All India Services Act, 1971 and statutory guidelines and Rules made thereunder?*

(ii) Whether inclusion of Dr. P.K. Mohanty, IAS (1979) in the Advisory Committee as a Member of the Committee vitiated its deliberations because two of the offices viz., Smt. Swetha Mohaty, IAS (2011) (Unreserved Outsider S. No. 73) and Sri Rajat K Saini, IAS (2007) (OBC Outsider S. No. 15) are his daughter and son-in-law respectively?

*"**41. Issue No.(i):***

In the instant application, two fold reliefs are claimed by the applicant. Firstly, that the guidelines framed for allocation of officers borne on the cadre of united Andhra Pradesh State to that of the successors States are illegal and arbitrary and contrary to the statute and the rules governing the service conditions of the All India Service officers and ultra-vires the constitutional provisions; Secondly, assuming that the guidelines are valid, the entire allocation of the officers and the procedure followed is contrary to the guidelines and resultantly, the applicant was allotted to State of Andhra Pradesh and had the illegalities not been committed in the allotment, the applicant would have been allotted to the State of Telangana.

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45. Keeping in view all the grounds taken by the applicant and after perusal of the material on record and the dictum laid down by the Hon'ble Supreme Court in the above referred cases, we hold that the guidelines framed by the 1st respondent on the basis of the recommendations of Pratush Sinha Committee are illegal, arbitrary and in violation of All India Services Act, 1971. Issue No.I is answered accordingly.

46. Issue No.(ii):

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The respondents and Mr.Mohanty did commit indiscretion and were circumvent in view of the fact that the terms of reference of the Committee of which Mr.Mohanty by virtue of his position i.e. the Chief Secretary of undivided A.P. was a member was to formulate guidelines for allocation of cadres to the members of the undivided A.P. who were in the gradation list of the IAS as on 01.06.2014 and Mr.Mohanty's daughter and son-in-law were in the list. Accordingly, the respondents ought not to have nominated Mr.Mohanty as the guidelines to be formulated would have been naturally applicable to his daughter and son-in-law. At the same time, Mr.Mohanty should have suo moto declined to become a member of the committee saying that he was not interested to be a party in view of the fact that his daughter and son-in-law belong to the undivided IAS cadre of A.P. and further that there would have been a conflict of interest as he would be a judge in his own cause. There are catena of judicial pronouncements upholding the time tested principles that one cannot be a judge in one's own cause and that like Caesar's wife a public servant should be beyond reproach and the justice should not only be done, but should also "appear to have been done". The person concerned has nothing to do with the proceedings in which he will be willynilly involved in a conflict of interest. On the basis of the above, although there is nothing to prove that Mr.Mohanty's daughter and son-in-law got benefited from the guidelines which were manipulated in order to ensure that his daughter and son-in-law got what they wanted i.e. Telangana cadre, yet the unsavory fact cannot be wished away that as Mr.Mohanty was an interested party and there was a conflict of interest involved in his becoming a member of the committee and therefore the delicacy of the situation ought to have prompted Mr.Mohanty to have refrained from becoming a member of the committee. To this extent we can say that why Mr.Mohanty being a member a shadow was cast on his neutrality in the matter and adversely effected.

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In view of the above position, we hold that the inclusion of Dr. P.K. Mohanty, IAS (1979) in the Advisory Committee as a member vitiate its deliberations. The issue is answered accordingly. "

The Tribunal in the above judgment has dealt elaboratelywith the issue of provisions relating to swapping of Direct Recruit outsiders and the reserved community officers, wherein reserved community officers were allowed to swap across different batches whereas Direct recruit outsiders were allowed to swap within the same batch, and held them as discriminatory, arbitrary and illegal. Similarly the inclusion of Sri P.K. Mohanty as a member of the P.S Committee has vitiated the very deliberations of the P.S Committee. In sum and substance, the guidelines approved by the competent authority on the basis of the P.S Committee were held to be illegal, arbitrary and in violation of the AIS Act 1951. The decision of the Tribunal has not been stayed till date by the superior judicial fora and hence holds the fort in respect of the dispute on hand.

XXI. As held by the Hon'ble Supreme Court in ***S.I. Rooplal &Anr. vs. Lt. Governor Through Chief Secretary, Delhi***on 14 December, 1999, Appeal (Civil) 5363-64 of 1997, the judgment of a coordinate bench / superior judicial fora is binding.

At the outset, we must express our serious dissatisfaction in regard to the manner in which a coordinate Bench of the tribunal has overruled, in effect, an earlier judgment of another coordinate Bench of the same tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the tribunal was of the opinion that the earlier view taken by the coordinate Bench of the same tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law from the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bounded by

the enunciation of law made by the superior courts. A coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement.

We therefore, respectfully concur with the observations of the Coordinate Bench in the OA 1241 of 2014, following the legal principle laid down by the Hon'ble Apex Court cited supra.

XXII. The Tribunal in the cited OA has also justified the grounds on which the Tribunal can interfere in the distribution of officers by relying on the judgments of the superior judicial fora. The same being relevant, we have extracted the same as under:

> *51. During the course of arguments, learned Asst. Solicitor General contended that there is a roster system to be followed and the respondents did every act in a scientific manner. He also contended that if the contentions of the applicant are accepted, it will affect the distribution list finalized in respect of all the All India Services officers borne on the cadre of the undivided State of Andhra Pradesh and since the distribution has already been finalized in respect of so many officers, it cannot be disturbed at this stage. In support of his contentions, learned Addl. Solicitor General relied upon a decision of the Hon'ble Supreme Court in Union of India vs. Rajiv Yadav reported in 1994 (6) SCC 38, in which the Apex Court held that a candidate selected at best 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 and a Member of an All India Services bears liability to serve in any part of the country. However, in the present case, the contention of the applicant is that the principles of allocation do not ensure equitable treatment and therefore, challenged under Articles 14 and 16 of the Constitution of India and Section 80 of A.P. Reorganization Act, 2014 and hence, the said judgment relied upon by the 1st respondent is not applicable to the facts of the present case. Learned counsel for the 1st respondent apprehended that if the relief of the applicants is considered, it may lead to administrative chaos which would have the effect of unsettling the settled things. The Apex Court in the case of **S. Ramanathan v. Union of India reported in 2001 (2) SCC 118** held that "It would, therefore, be not appropriate for this Court to deny the relief to the appellants on the ground of apprehended administrative chaos, if the appellants are otherwise entitled to the same." The Hon'ble Supreme Court in para 5 of its judgment in the above referred case has observed as under:*
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> > *"Dr. Rajeev Dhawan, the learned senior counsel, appearing for the respondents-direct recruits, learned Additional Solicitor General Mr. Mukul Rohtagi, appearing for the Union of India and Mr. A.Mariarputham, Mrs. Aruna Mathur and Mr. Anurag Mathur, appearing for the State of Tamil Nadu, on the other hand contended that there has been no definite prayer before the Tribunal seeking a mandamus for having a triennial review in accordance with the relevant provisions of the Cadre Rules and that being the position, the appellants will not be permitted to raise the matter after so many years, which would have the effect of unsettling the settled questions. It was also contended that the*

appellants having failed in their attempt to get the select list altered, have now come forward through a subterfuge and the discretionary jurisdiction of the Court should not be invoked for that purpose. Mr. Rohtagi, the learned Additional Solicitor General, though candidly stated before us that the appropriate authority should have done the triennial review for fixation of the cadre strength within the time stipulated in the cadre rules, but vehemently objected for any such direction being issued for re-consideration of the case of the appellants, more so when the appellants have not approached the Tribunal diligently. According to the learned Additional Solicitor General the tribunal has rightly considered the question of prejudice and has denied the relief sought for. The learned Additional Solicitor General also urged that the situation which should have been made available in 1987 on the basis of the cadre strength, cannot be brought back by a direction for re-consideration and in that view of the matter, neither the equity demands such a direction nor it would be appropriate for this Court to unsettle the settled service position. But to our query, as to how the orders of different tribunals on identical situations could be carried out without any demur, the learned Additional Solicitor General was not in a position to give any reply. It also transpires from the available records that the Union of India, no-where has even indicated as to how it would be unworkable if a direction is issued by this Court for re-consideration of the case of promotion to the IPS Cadre on the basis of the additional vacancies which have been found to be available. It would, therefore be not appropriate for this Court to deny the relief to the appellants on the ground of apprehended administrative chaos, if the appellants are otherwise entitled to the same. It is no doubt true that while exercising the discretionary jurisdiction, Courts examine the question of administrative chaos or unsettling the settled position, but in the absence of any materials on record, the Court should not be justified in accepting the apprehension of any administrative chaos or unsettling the settled position, on the mere oral submission of the learned Additional Solicitor General, without any materials in support of the same. On examining the records of the case, we do not find an iota of material, indicating the so-called administrative chaos, likely to occur in the event any direction is issued for re- consideration of the case of promotion on the basis of the alteration of the cadre strength and, therefore, we have no hesitation in rejecting the said submission of the learned Additional Solicitor General."

52. We have also carefully considered the principle adopted in Prakash Chandra Sinha's case [(2003) 4 JCR 165] by the Hon'ble High Court of Jharkhand that the allocation should not be interfered with on individual grievances relating to non-acceptance of options exercised, unless clear illegality or unreasonableness is established and the said decision of the Hon'ble High Court of Jharkhand has also been confirmed by the Hon'ble Supreme Court in the matter of Indrage Paswan Vs. Union of India, reported in 2007 (7) SCC 250, which was relied upon by the counsel for the 1st respondent. However, the facts and circumstances in the above two decisions are entirely different from the facts and circumstances of the present case. In the above referred two decisions, the petitioners challenged on the ground that they worked most of their service in Jharkhand and hence, they sought for allocation in Jharkhand state. In the above decisions, the Hon'ble Court has not interfered with the allocation process since there is no illegality found in allocation. The Hon'ble Court further found that no case of mala fides or irrationality has been made out in the matter of allocation of the appellant to the re-organized State of Bihar. The said case is pitched only on the ground of non-acceptance of the option of the appellant and an attack on the grounds for its rejection. However, it is clear from the two judgments that when there is any illegality or unreasonableness or irrationality, the Court can interfere and if there is any discrimination in evolving the guidelines, the Court can interfere in such matters. The case of

the applicant herein is that the guidelines do not admit to a rationale principle of uniform application, and application of guidelines is rendered discriminatory on account of arbitrary classification of the officers which bears no nexus for the objective sought to be achieved for equitable allocation. Thus, the act of the respondents indicates sufficient discrimination. The guidelines are irrational to the point of being unreasonable in the Wednesbury sense and thereby, inviting interference by this Tribunal. Hence, in the peculiar facts and circumstances of the present case, the above two judgments are no way beneficial to the respondents.

53. The entire exercise of allotment of the officers to the successor States has been completed by now as admitted by the learned counsel for the 1st respondent and further this applicant and few other officers only approached this Tribunal and cases are pending all through. The only apprehension expressed by the learned Asst. Solicitor General that if the contentions of the applicant are accepted, it will effect distribution list finalized in respect of all the All India Services officers borne on the cadre of undivided Andhra Pradesh and since the distribution has already been finalized in respect of so many officers, it cannot be disturbed at this stage. "

We too understand the apprehensions of the respondents if the guidelines were set aside lock stock and barrel, for being inconsistent with law, as was prayed for in the above judgment. Further, as the allocation process has been completed and those who have been allocated to the respective States as per their choice are not before us to adjudicate and hence, any view to upset/ set aside the guidelines of the P.S. Committee and the consequences thereof, at this instant of time, may not be fair having regard to the above legal requirement.

XXIV. Other contentions submitted by both the sides were gone into in detail and found them to be not relevant enough to comment upon. However, before parting, we must observe that the respondents are to be rigorously held accountable for the standards they profess and on deviating from the said standards the Tribunal has to step in to decimate the deviation, to uphold the standards professed. In settling the dispute, we did exactly the same. To state what we did, we rely on the observation of the Hon'ble Apex Court in ***Ramana Dayaram Shetty v. International Airport Authority of India (1979 AIR 1628)*** as under :

It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those Standards on pain of invalidation of an act in violation of them.

This rule was enunciated by Mr Justice Frankfurter in Viteralli v. Seton(l) where the learned Judge said:

> *"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a define(l procedure, even though generous beyond the requirement that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.*

XXV. Moreover, after having dealt with dispute in all its dimensions, we observe that there was non-application of mind to relevant factors. When power is exercised by non-application of mind then such exercise of power will be regarded as manifestly erroneous and vitiated. The exercise of power by the respondents in the instant case by non-application of mind to multifarious issues like ignoring seniority, inconsistency in decision making, discrimination in swapping, etc. has led to manifestly erroneous decision in regard to allocation of cadre to the applicant. A decision which is patently erroneous stands vitiated. We draw support in making the above remarks, from the observation of the Hon'ble Supreme Court in ***Rajeev Suri V Delhi Development Authority & Ors*** in Transferred Case (Civil) No.229 of 2020 with Transferred Case (Civil) No. 230 of 2020 in Civil Appeal No.... of 2020 (Arising out of S.L.P. (Civil) Noé ../2020) (@ Diary No. 8430/2020) on 05.01.2021, as under, by referring to its own judgment in Reliance Airport Developers (P) Ltd. v. Airports Authority of India & Ors in (2006) 10 SCC (1):

The Court further added the grounds of non-application of mind to relevant factors and non-existence of facts and noted thus:

> *"57. ...If the power has been exercised on a non consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated ..."*

After analyzing the various decisions of the respondents in regard to the dispute as at above, coalescing to negate the relief sought by the applicant, we are constrained to observe that the rejection is illegal. Therefore it requires to be removed as observed in ***Maneka Gandhi*** cited supra.

XXVI. In view of the aforesaid circumstances, we are of the view that the law inclines towards the applicant and hence, the relief sought has to be favourably considered. Therefore, the impugned notification dated 5.3.2015 to the extent of allocating the applicant to RSAP is set aside. The applicants in OA Nos.1241/2014, 230/2020, OA 174/2020 were directed to be treated as AIS officers of the Cadre they claimed. Following the same analogy and to upkeep judicial discipline, as enunciated in ***S.I. Rooplal & Anr. vs Lt. Governor Through Chief Secretary, Delhi*** on 14 December, 1999 in Appeal (Civil) No.5363-64 of 1997 by the Hon'ble Supreme Court, we direct the respondents to treat the applicant in the instant case as an AIS officer of the State of Telangana with consequential benefits as are permissible under the relevant rules/law. The Ld. Counsel for the applicant has submitted that there are a number of vacancies available in the State of Telangana in the IPS cadre, which was not negated by the respondents.

Therefore, keeping in view the fact that the applicant is holding a responsible position under the aegis of the 3rd respondent, we direct R-3 to make necessary arrangements to relieve the applicant within a period of 12 weeks from the date of receipt of this order and the 4th respondent to issue appropriate posting orders, with both R-3 & R-4 marking copies of their orders to R-1 & R-2.

XXVII. With the above direction, the OA is disposed of, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVEMEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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