CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/021/0174/2020

HYDERABAD, this the 26th day of April, 2021

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

V.G. Satish Pasumarthi,
S/o. Sri P.R.K. Prasad,
Aged about 31 years,
Occ: IPS Officer, Sikkim,
R/o. Sikkim. ...Applicant

(By Advocate : Mr. P. Shravan Kumar)

Vs.

1. Union of India Rep by the Secretary to Government,
Ministry of Home Affairs,
Room No. 220, North Block,
Central Secretariat, New Delhi – 110 001.

2. The Union of India, Rep by the Secretary to Government,
Ministry of Personnel and Training,
Department of Personnel and Training (DoPT),
North Block, Central Secretariat, New Delhi – 110 001.

3. The State of Sikkim, by the Chief Secretary,
New Secretariat, Gangtok – 737101.

4. The State of Telangana,
By the Chief Secretary,
Block C, 3rd Floor, Telangana Secretariat,
Khairatabad, Hyderabad.

5. Mr. Mohit Handa, IPS,
Deputy Commissioner of Police,
Panchkula, Haryana.

6. Ms. Aparna Gupta, IPS,
Additional SP (South),
Kanpur Nagar, Uttar Pradesh.

7. Mr. Kantesh Kumar Mishra, IPS
Superintendent of Police (Rural),
Patna, Bihar.

8. Mr. Mani Lal Patidar, IPS
Superintendent of Police,
Mahoba, Uttar Pradesh.

....Respondents

(By Advocate : Mrs. K.Rajitha, Sr. CGSC,
Mr. V. Vinod Kumar, Sr. CGSC,
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 challenging the allocation of Sikkim Cadre to the applicant in the Indian Police Service as well as the speaking order issued by the respondents on 24.8.2019. The applicant seeks allotment to Telangana cadre.

3. Brief facts of the case are that the applicant, hailing from A.P and belonging to the UR category, was selected for the Indian Police Service (for short ñ***IPS"***) on passing the Civil Service Exam of 2015 (for short ñ**CSE -2015**ò), with Sikkim Cadre allotted to him while undergoing training vide respondents notification dated 28.12.2016. A representation was submitted in regard to the cadre allotment on 29.1.2017 which was rejected on 3.3.2017. Aggrieved, applicant approached the Tribunal in OA 753/2017 wherein it was directed to dispose of the representation by a speaking order and pending disposal applicant be continued at Delhi where he was undergoing the District Practical Training. Without complying with the Tribunal order, the Director, National Police Academy, Hyderabad has directed the applicant to report to the Director General of Police, Sikkim and questioning the same OA 773 of 2019 was filed. Thereupon, along with the reply statement for the cited OA, the speaking order negating his request was served on the applicant while being at Hyderabad. Aggrieved over the rejection for not being considered for Telangana cadre, the OA is filed.

4. The contentions of the applicant are that there was no application of mind in passing the speaking order rebuffing the request made in respect of cadre allocation. In contrast those who were not even members of the service were allotted cadres. Rosters were not maintained for the States of A.P and Telangana as per prevailing policy. There was no effective consultation with the States while allotting Members of the Service. The increased cadre strength of Telangana was not taken into consideration while determining the vacancies against CSE 2015. Applicant cited judgments of superior judicial fora in support of his contentions.

Applicant filed MA 334/2020 and MA 335/2020 to amend the petition/ direct the respondents to file the reply statement and file additional material respectively, which were allowed on 12.10.2020.

5. Respondents in the reply statement confirm the selection of the applicant to IPS against CSE-2015 as an UR candidate and that his allocation to Sikkim was against UR vacancy based on preference and merit. IPS belongs to the AIS (All India Service) which has been referred to in the Constitution under Article 312, wherein it is detailed that AIS officers are liable to serve the Union of India or any of the States. Hence, a Member of the AIS should not have a grievance in regard to the place of posting. Cadre allocation was done in an objective, transparent, fair, equitable, non-discriminative manner to all the candidates, as per well laid down policy/ law in Public interest. Applicant was accordingly allocated to Sikkim, which is his 15th preference. Rosters, which are essential for cadre allocation, are maintained State wise. The ratio to be maintained between the Insider and Outsider is 1:2 in accordance with the direction of the

Hon'ble Apex Court in U.O.I v Mhathung Kithan & ors (CA No. 12310 of 1996) implying that at least 66.2/3% of the DR (Direct Recruit) allocated to a State should be from outside the State. Thus, as per the cited judgment, non allocation of Home Cadre to any candidate is not incongruent to any law. The cadre allocation was based on the cadre allocation policy issued on 10.4.2008 (for short ***CAP -2008***) wherein it was stated that the cadre would be allocated immediately after the appointments have been made and nowhere it was mentioned that it would be after the candidate joins the service. The clauses of CAP -2008 applicable to the applicant are clauses 7 (a) to (d). No candidate has a right to seek a particular cadre unless he is able to prove that the allocation is arbitrary, discriminative and is injurious to Articles 14 & 16 of the Constitution. As per Indian Police Service (Recruitment) Rules 1954, a Member of IPS is one who has been appointed to the service and continues after the commencement of the Rules. Also as per Rule 2 (2a) of the IPS (Cadre) Rules, a cadre officer is one who is a Member of the service. The Ministry of Home Affairs has followed the DOPT OM dated 1.4.2014 clarifying that as per CAP 2008 there is no bar to determine the cadre before the candidate joins the service, thereby making a distinction between 'determination' & 'allocation'. The difficulty of allocating candidates to least preferred cadres of N.E, West Bengal, Sikkim was addressed consequent to the issue of the letter dated 1.4.2014 without affecting the sanctity of the AIS. The vacancies in the Sikkim & Telangana Cadres to which the applicant has opted are 1 UR Outsider vacancy in Sikkim and 1 OBC Insider plus 1 SC Outsider vacancy in Telangana. The UR vacancy of Telangana was brought from Manipur invoking Rule 7 (d) of CAP -2008 applicable to CSE 2015. A new Roster

was initiated for the State of Telangana following the methodology used while distribution of AIS officers when the States of Bihar, MP & UP were bifurcated. Importantly, the AIS officers who were in position as on 2.6.2014 were distributed between the States of Telangana and the residual State of A.P as per A.P Re-Organization Act- 2014. The Judgment in M. Thri Vikram Varma v Avinash Mohanty & Ors ï 2011 (7) SCC 385, relied upon by the applicant is about a claim for a cadre of choice and in respect of the applicant it is an incidence of service, as observed in Rajiv Yadav case [1994 (6) SCC 38]. The guidelines in the Thri Vikram Verma case pertain to memo dated 30/31. 5.1985, wherein SC/ST candidates of AIS cadre were allotted as per the prescribed percentage and in the instant case it is based on DOPT memo dated 2.7.1997 issued in pursuance of R.K. Sabarwal v. State of Punjab [AIR 1995 SC 1371] and J.C. Mallick v. Ministry of Railway [1978 (1) SLR) Judgments. Transfer of Officers to Telangana would not affect the Rosters. In regard to assessment of vacancies in the States of A.P and Telangana, it has to be done vide DOPT OM dated 20.5.2016, based on the deficit weight in DR quota as on 1st January of the year subsequent to the CSE year. Accordingly, cadre strength of Telangana as on 1.1.2016 was taken into consideration for CSE 2015. Allocation of one UR vacancy to Sikkim is to maintain continuity of service.State Governments are consulted in regard to the vacancies in different categories while allocating officers and that the policy of not considering officers who were already selected to IPS for fresh allocation in the later selections came into vogue from CSE 2018.Respondents cited the judgments of the Hon'ble Apex Court in support of their contentions

Applicant filed a rejoinder wherein he claims that the 1st respondent can only implement rules laid down by 2nd respondent and interpreting them in a manner not intended is unlawful. DOPT memo dated 20.5.2016 has indicated that no cadre should get more vacancies than its demand and the Sikkim Government in its letter dated 2.3.2020 while responding to an RTI query has confirmed that the State Government has not requested for any allotment of IPS officer against CSE 2015. CAP-2008 does not envisage maintaining continuity of service as one of the factors of allocation. Respondents have not explained as to why only 2 officers were allotted to Telangana against 16 vacancies and in particular, when 10 more additional vacancies were sought by the State by declaring it as a deficit cadre whereas in respect of Sikkim one officer was allotted against one vacancy without any demand from the said State. The judgment in Union of India v. Rahul Rasgotra, 1994 (2) SCC 600 relied upon by the respondents does not apply to the applicant and on the contrary, the verdict in Rajesh Kumar v Union of India of the Hon'ble Principal Bench (OA No. 102/2007) and counter filed by the 2nd respondent in WP (C) No. 2544 of 2012 and CWP No. 7757 of 2012 before the Hon'ble High Court of Delhi vindicate the stand of the applicant in regard to the member of the service. The allocation of cadres to the 4 officers referred to in the OA who did not accept the offer of appointment and not allotting the Telangana cadre to the applicant as per rules/policy is against Articles 14 & 16 of the Constitution. The applicant has contended that OM dated 1.4.2014 relied upon by the respondents being an executive instruction cannot over rule statutory rules and further the object and purpose of the cited OM was never made public. Even the determination process spoken of in the memo was not completed

before the training commenced. The stand of the respondents that least preferred cadres need to be taken care has not been agreed to by the Hon'ble High Court of Delhi in Himanshu Kumar Verma and anr v U.O.I. in WP (C) No.109 of 2019. Regarding rosters respondents cannot ignore the law laid down by the Hon'ble Supreme Court. Lack of effective consultation with the States is evident from the fact that the respondents have allotted the applicant to Sikkim though there was no requisition. The reply statement is silent in respect of cadre review. Due to delay in conducting cadre review the correct number of vacancies could not be assessed and for the mistake of the respondents, applicant should not suffer. The decision of this Tribunal in Somesh Kumar v U.O.I dated 29.3.2016 in OA 1241 of 2014 has a cascading effect on the vacancy distribution and rosters of IPS posts between the 2 States consequent to the bifurcation of the composite State of A.P.

In the written submissions submitted by the respondents, it was reiterated that the applicant was correctly allotted to Sikkim in accordance with CAP 2008 as there was a vacancy. The OM dated 1.4.2014 does not defile the sanctity of AIS and on the contrary, the least preferred States got relief. The contention of the applicant that respondents should not allot cadre to those who did not join the service is technically incorrect. Allocation of vacancies to Telangana State was done as per weight deficit and demand. As the State of Sikkim has not furnished the demand, it was decided to allot one vacancy. Other submissions made were more or less the same as were made in the reply statement.

Applicant in his written submissions has contended that the respondents have come with the new argument that the Govt. of Sikkim has not responded to MHA letter dated 25.5.2016, in regard to demand for vacancies and therefore, one vacancy was allotted which was not submitted in the reply statement nor during oral submissions. Rosters have to be maintained as per DOPT memo dated 2.7.1997 and the 1st respondent cannot discount the same. Considering the vacancy assessment as on 1.1.2015 the percentage deficit in respect of Sikkim was 4.5% and in contrast it was 20.5% for Telangana which later sharply rose to 30.5% as on 1.1.2016. This important factor was not recognized by the respondents. The letter written by the Chief Secretary, Telangana seeking 10 additional posts was overlooked by the respondents. Other contentions are repetitive and require no mention.

6. Heard both the counsel and perused the pleadings on record. The case came up for hearing on several occasions and since the issue concerns the premier service of the country, ample opportunities were given to both the parties in the form of filing additional material, rejoinder, written submissions, etc so that they could come clear from their view point in regard to the issue disputed.

7. I. The Ld. Counsel for the respondents had raised an objection that the Tribunal has no jurisdiction to hear the dispute because the applicant is working in Sikkim as on the date of instituting the OA. From the facts of the case, the dispute has traversed several rounds of litigations. Initially, the applicant has filed OA 753 of 2017 seeking his allotment to the State of Telangana/ Karnataka of the Indian Police Service. This

Tribunal on 19.7.2019 remanded the matter back to the respondents to consider the requestas per rules/law and issue a reasoned order. Without complying with the said order of the Tribunal in OA 753/2017 of issue of a speaking order, when the Director of the Sardar Vallabhbhai Patel National Police Academy, Hyderabad directed the applicant to report to DG of Police, Sikkim the OA 773 of 2019 was filed. Thereupon, the speaking order dated 24.8.2019 denying the request made was served on the applicant while he was at Hyderabad and therefore, a part of the cause of action arose at Hyderabad. The Tribunal gave permission to the applicant to withdraw the OA 773/2019 on 19.2.2021 and accordingly it was closed as withdrawn and by then the present OA was already filed and admitted. The speaking order referred to, is under challenge in the instant OA.

In addition, as per Rule 6 of CAT (Procedure) Rules, application can be filed when part of the cause of action occurs under the jurisdiction of the Tribunal. Rule is reproduced hereunder for reference.

> *an application shall ordinarily be filed by an applicant with the Register of Bench within whose jurisdiction*
>
> *(i) the applicant is posted for the time being, or*
> *(ii) the cause of action, wholly or in part, has arisen.*

Thus the above rule permits filing an application when a part of the cause of the action occurs under the jurisdiction of this Tribunal which is the case of the applicant and hence needs to be adjudicated in the interest of justice. The impugned speaking order and the decisions based on which the order was issued are under challenge. It is also observed that when the instant OA was admitted on 25.2.2020, there was no objection raised by the Ld. Respondents Counsel or the respondents. Hence, after the OA was admitted

raising an objection during the final hearing after more than a year has lapsed lacks legal logic. Objection raised for the sake of objection cannot be taken seriously, as observed by the Hon'ble Apex Court in ***Kanta Goel v. B.P. Pathak,*** (1977) 2 SCC 814, at page 815, as under:

> *6) "An objection for the sake of an objection which has no realistic foundation cannot be entertained seriously for the sake of processual punctiliousness."*

Further, the infraction of the claim of the applicant of his right to be allocated to the State of Telangana, which is the basis for the cause of action, has originated at Hyderabad and therefore, it is for this Tribunal to hear the applicant to prove with facts as to how his avowed right of allocation of Telangana cadre has been infringed. The occasion for the reaction of the applicant is the speaking order of the respondents delivered at Hyderabad. The view point expressed is supported by the Hon'ble Apex Court observations in ***Om Prakash Srivastava v. Union of India*** - (2006) 6 SCC 207, as under:

> *"12. The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense 'cause of action' means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in 'cause of action'. (See Rajasthan High Court Advocates' Assn. v. Union of India (2001) 2 SCC 294.)"*

Therefore, for aforesaid reasons the objection raised by the Ld. Respondents Counsel stands overruled.

II. Having addressed the preliminary objection, we now focus our attention to the core dispute in regard to allocating the applicant to the IPS cadre of the State of Sikkim instead of Telangana State. The facts of the case are that the applicant on passing and securing the rank of 191 in CSE - 2015, was allocated IPS which is one among the three AIS (All Indian Services), the other two being Indian Administrative Service and Indian Forest Service. After the service is decided, the cadre allocation to different States is a gargantuan exercise taken up in accordance with CAP/ IPS cadre allocation rules involving germane factors of rosters, merit, choice of the candidate and availability of vacancies etc. The choices of the applicant are reproduced here under:

Name	V G Satish Pasumarthi	
Rank	191	
Category, Home State	GENERAL	Andhra Pradesh
Cadre	Outsider Allocation	Preference of Applicant
A	B	C
AP	2 (174, 180)	1
TG	1 (158)	2
KTK	2 (169, 172)	3
TN	1 (179)	4
MH	4 (138, 143, 156, 164)	5
AGMU	1 (155)	6
MP	6 (125, 127, 133, 151, 159, 163)	7
PB	0	8
HR	1 (120)	9
GJ	1 (170)	10
UK	1 (168)	11
HP	2 (171, 173)	12
OD	1 (183)	13
RJ	3 (112, 134, 153)	14
SK	1 (191)	15
JH	3 (123, 148, 162)	16
WB	5 (186, 190, 204, 207, 210)	17
CHG	0	18
AM	2 (184, 208)	19

BH	3 (114, 122, 154)	20
MA	3 (212, 221, 222)	21
NL	3 (223, 224, 225)	22
TR	2 (214, 219)	23
KL	1 (196)	24
UP	5 (99, 177, 187, 195, 197)	25
J & K	2 (211, 213)	26

The first choice of the applicant was A.P his Home State and the second one was for the State of Telangana. The applicant claims that CAP 2008 & IPS Cadre Allocation Rules were violated in allotting him to Sikkim whereas respondents profess that they have scrupulously followed the said rules in deciding the allocation by adopting a fair, equitable, objective, non-discriminative and transparent methodology in allotting the applicant to the UR vacancy available for Sikkim State in the context of the availability of the vacancies in the State of Sikkim and Telangana as under:

No	Cadre	Insider Vacancies					Outsider Vacancies					Total
		UR	OBC	SC	ST	Total	UR	OBC	SC	ST	Total	
1	Sikkim	0	0	0	0	0	1	0	0	0	1	1
2	Telangana	0	1	0	0	1	0	0	1	0	1	2

III. Our endeavor, given the submissions made by the contending parties, would be to gauge as to which side the scales of justice will tilt and to make a beginning in this direction, we extract Rule 5 (1) of the IPS Cadre Rules, 1954, as under:

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

The crucial aspect of the rule is óconsultation with the State Governmentô. In the instant case, the respondents have admitted that since the Government of Sikkim has not responded to the letter of the 1st respondent written on 25.5.2016 in regard to demand for the IPS vacancies, it was decided to allot one vacancy to Sikkim and against the said vacancy the applicant was allotted. The moot point is as to whether this could be termed as consultation. The action or process of formally consulting or discussing is understood as consultation. It requires 2 parties for effective consultation to occur and definitely there can be no consultation only when one party is in the picture. One active and the other dormant, as seen in the instant case, would not complete the consultation circuit. Hence, the admission of the respondents that since the Govt. of Sikkim has not responded to their missive dated 25.5.2016 and therefore, they have allotted one vacancy to Sikkim is as good as no consultation since the intrinsic requirement of another party to complete the consultation is absent. It was a one way process, which is representative of a direction and not consultation, which indeed is a two way process involving a dialogue. It is not explained as to why the respondents did not await a response from Sikkim Government on a serious issue of the nature in question by at least issuing a reminder or the reason for taking a decision in such great haste without following up with the Govt. of Sikkim to induce an urgent response using modern technology tools available.

We also need to add at this juncture that the explanation of the respondents in the written submission that since the Sikkim Govt. did not respond to the letter referred to and therefore, the vacancy was allotted does

not find a place in the reply statement. The letter referred to does not state that if there is no response a vacancy will be allotted. Improving on the intent of the letter dated 25.5.2016 when it is not manifested in the letter perse by ushering in new material in the written submission, without also not doing so in the reply statement, is not permitted under law, as observed by the Hon'ble Apex Court in ***United Air Travel Services vs Union Of India, Ministry of External Affairs***, on 7 May, 2018, Writ Petition (Civil) No.631 of 2016:

> *11. Learned counsel for the petitioner has, thus, rightly drawn our attention to the Constitution Bench judgment of this Court in Mohinder Singh Gill v. Anr. v. The Chief Election Commissioner, New Delhi & Ors.4 to submit that such a plea cannot be accepted. We may note that this is a well settled legal position in many judicial pronouncements of this Court, but it is not necessary to revert to the same. In para 8 of the aforesaid judgment, V.R. Krishna Iyer, J, in his inimitable style states as under:*
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> > *"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:*
> >
> > > *"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older."*

Moreover, when the inclusion of the phrase 'consultation with the State Government' in the rule, has a definitive purpose in a federal form of Govt. and especially when it forms a part of a statutory rule framed under Article 309 of the Constitution, the respondents overruling the same by an executive order would not be in order. The letter of the 1st respondent

25.05.2016 only sought demand of the Sikkim state for IPS vacancies to be filled in through CSE-2015 and it did not specify that if there is no response, then a vacancy will be allotted. Hence, when the letter did not state so, the respondents are trying to develop the intent of the letter through the written submissions, which is contrary to the observations of the Hon'ble Supreme Court supra. Further, the justification given by the respondents that to 'maintain continuity', they have allotted the vacancy to Sikkim does not appeal to us since it would be inappropriate of a model employer of the likes of the respondents, to infringe their own rule. The State as a model employer should act in a fair manner giving due regard to the rules framed by it and definitely not atrophy them as observed by the Hon'ble Apex Court in ***Bhupendra Nath Hazarika & Anr vs State of Assam & Ors*** on 30 November, 2012 in CA Nos. 8514-8515 of 2012, as under:

> *48. Before parting with the case, we are compelled to reiterate the oft-stated principle that the State is a model employer and it is required to act fairly giving due regard and respect to the rules framed by it. But in the present case, the State has atrophied the rules. Hence, the need for hammering the concept.*

By not consulting the State Government in allocation of the vacancy, respondents have not followed the legal axiom laid down by the Hon'ble Apex Court stated supra. An action in defiance of the law of land is not maintainable.

To be plain, the proviso discussed imposes the statutory duty on the Central Government to make the order of allocation only after consultation with the State Government and it is lucid that consultation precedes allocation. Just

as placing the cart before the horse is not a pragmatic proposition, so too allocation without consultation is non-pragmatic. *Albeit*, consultation does not require concurrence of the State Government which would mean consent, but yet conferring with the State Government is a necessary requirement of consultation. Indeed, the usage of the phrase referred to in the rule cited is a predominant condition to be abided by and surely, the framing of the rule has not provided for any open ended option to do away with the said requirement by the respondents. Thus, we find the rule has been defied to the extent as expounded above. While making the above remarks, we rely on the judgment of the Hon'ble High Court of Kerala in ***U.O.I v Jyothilal K.R &ors*** in O.P. No. 6541 of 2003, as under:

> *"37. In view of the above, it is held that:-*
>
> *(i) Rule 5 of the IAS (Cadre) Rules, 1954 does not give a member of the service any right to claim allocation to any State. However, the provision imposes a statutory duty on the Central Government to make the order of allocation in consultation with the State Government. The consultation must precede the actual order of allotment.*
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> *(ii) The provision for consultation does not require the concurrence of the State Government. In law, there is a clear distinction between 'consultation' and 'concurrence. The former requires 'conferring' while the latter postulates 'consent'. However, consultation in the present context is not an option to do or not to do something. It is a condition precedent for passing the order of allocation. It must be observed. xxxx*
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> *(iii) The Central Government had also failed to follow the roster system inasmuch as the ratio 2:1 was not observed. The cyclic order was also violated. Thus, even the mandate of the two letters, which are supplemental to the Rule was disobeyed."*

Hence, by not consulting the Government of Sikkim and allotting one vacancy is not in rhythm with the legal principle propounded by the Hon'ble High Court as at above and therefore, lacks legal legitimacy.

IV. Continuing our examination of the issue of allocation of the applicant to Sikkim, it would be pertinent to evaluate the allocation against the CAP- 2008, on which the respondents have banked to justify their decision. The CAP-2008 circulated vide DOPT letter dated 10.4.2008 and enclosed as annexure -I to the reply statement, at para -1 reads as under.

> *"1.The State Governments shall indicate the total number of vacancies to be filled through a particular Civil Services Examination (CSE)/ Indian Forest Service Examination by 31st December of the year prior to the year of the Examination. In respect of the services under them, the respective Cadre Controlling Authorities, namely, the Department of Personnel and Training (DOPT)/ Ministry of Home Affairs (MHA)/ Ministry of Environment and Estates (MOEF) shall determine the vacancies including the break-up into Unreserved (UR)/ Scheduled Caste (SC)/ Scheduled Tribe (ST)/ Other Backward Class (OBC)/ Insider/ Outsider vacancies for each of the cadres as per established procedure, keeping in mind the number of the districts in the state, the cadre gap in the cadre, the requisitions received from the State Governments and the position of the rosters in the cadre. The vacancies so determined would be communicated to the State Governments and published on the respective Ministry's website, both the actions to be completed before the commencement of the Civil Services Examination/ Indian Forest Service Examination on the basis of which the requirement is to be made. Since this would be a time bound exercise, the requisition received from the State Governments after the abovementioned deadline would not be considered while determining the vacancies."*

The stand of the respondents is that though there was no demand from the Sikkim State they have allocated one vacancy in order to ómaintain continuity of serviceô. We note that against this vacancy, the applicant was posted to Sikkim. As is seen from the policy for cadre allocation, the factors which require to be followed are the number of districts in the State, cadre gap, the requisitions received from the State Government and the position of the rosters in the cadre. We tried to discover in the CAP- 2008 as to whether there was any clause to allot a vacancy for ómaintaining continuity of serviceô and despite our best efforts we could not, *albeit* we read the policy closely and carefully. Hence when there is no provision in the

policy, a decision to allot a vacancy for Sikkim by the respondents is a flagrant transgression of their own policy. If the respondents do not follow their policy, then who will! In fact, respondents have relied on the judgment of the Hon'ble Supreme Court in Mallikarjuna Rao v State of A.P to assert that the courts should not interfere in policy matters as under:

> *While exercising powerof judicial review of administrative action, the court is not an appellate authority. The constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the constitution lies within the sphere of legislature or executive."*
>
> *The Special Rules have been framed under Article 309 of the Constitution of India. The power under Article 309 of the Constitution of India to frame rules is the legislative power. This power under the constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. The Courts cannot usurp the functions assigned to the executive under the constitution and cannot even indirectly require the executive to exercise its rule making power in any manner.*

Respondents also cited the verdict of the Hon'ble Supreme Court in ***Tata Cellular V U.O.I (JT) 1994 (4) SC 532***, to drive home the same point of non- intervention of Courts in policy matters.

In the instant case, we are not finding fault with the policy but are bringing out the fault lines in implementing the policy by the respondents. Judicial review is about the decision making process and the implementation of the decision and not about the decision. We are not questioning the policy, but when the policy does not provide for a clause to allot a vacancy for continuity of service, invoking such a clause is a gross infringement of the policy.True to speak it is a colourable exercise of power. Indeed, in the very same judgment it was held by the Hon'ble Apex Court, as under:

This Court relying on Narender Chand Hem Raj & Ors. v. Lt. Governor, Union Territory, Himachal Pradesh & Ors., [1972] 1 SCR 940 and State of Himachal Pradesh v. A parent of a student of medical college, Simla and Ors., [1985] 3 SCC 169 held in Asif Hameed & Ors. v. State of Jammu & Kashmir & Ors., [1989] Supp. 2 SCC 364, as under:

> *"When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike-down the action.*

The State action has to be in accordance with the powers and functions assigned to it as per law referred to above. Respondents have not acted within the powers and functions assigned to them by invoking a non-existent clause in the policy. Breach of the policy referred to is violation of law and is unconstitutional and hence, the Tribunal has to step in to strike down the action.

V. It is not uncommon, that for every executive action, there are certain time lines to be adhered to, and in as important an exercise as determining the vacancies in IPS, which has a bearing in regard to the internal security of the Nation, the time lines are to be followed rigorously. The CAP- 2008 as extracted above has stipulated that the determination of vacancies to undertake recruitment has to be completed before the commencement of the Civil Services Examination/ Indian Forest Service Examination and that any requisition received for allotment of the vacancy after the deadline set would not be entertained. The date of the preliminary exam was 23.8.2015 and the letter written to the Government of Sikkim by the 1st respondent to ascertain the demand for the vacancies, was on 23.5.2016, again in violation of the CAP -2008. The policy was abundantly clear that any requisition received after the due date would not be

entertained. We are surprised as to how the respondents could violate the policy with such impudence. Therefore, when the initial step of not ascertaining the demand for vacancy before the preliminary exam was not undertaken by the respondents then it would not be appropriate to shoot of a letter after the cutoff date since any reply even if received from the Sikkim Government placing their demand for vacancies and action thereof, after the preliminary exam was conducted, would go against the provision of CAP -2008, thereby making the action taken legally invalid. Rules are framed to be followed in order to usher in uniformity and fairness. Not following the rules would make the process arbitrary. In the instant case, the Government of Sikkim has not responded to the communiqué of the 1st respondent dated 23.5.2016 and all the more it was not called upon the respondents to allocate the vacancy to Sikkim. The respondents action of scripting a letter, after the preliminary exam was over and allotting a vacancy with no intent expressed by the Sikkim Government, appears to be a foregone conclusion since it apparently reveals the mind of the respondents to allot the vacancy whether a reply was to be received or not. Such actions of the respondents fringe on arbitrariness more so when they are not in step with the guidelines. The meek defense of the respondents that the Sikkim Government has not responded to the signorma cited and therefore, the decision is difficult to be upheld since if many State Governments were not to respond, can the respondents take such a stance. They cannot, since the rule of law has to be upheld, as was correctly proclaimed by the respondents in the reply statement. Alas in the aspect described supra respondents have failed to follow the rule of law by not adhering to the CAP- 2008 in regard to the time lines to be followed while

determining the vacancies. Any directive issued in offense of the policy will not be enforceable in the eyes of law.

VI. In addition, we do observe that the DOPT in its letter dated 20.5.2016 which was enclosed by the respondents as annexure-III makes it explicit that the allotment of cadre has to be restricted to the demand from the States. The relevant para of the OM is reproduced hereunder:

> *"Sub: Distribution of vacancies to be filled in IAS on the basis of CSE-2015-reg.*
>
> *The undersigned is directed to refer to the subject cited above and to say that Competent Authority has approved cadre wise distribution of vacancies to be filled in IAS on the basis of Civil Service Examination (CSE)-2015. While approving the vacancies, it has also been approved that only deficit weight in Direct Recruitment Quota as on 01st January of next year to the CSE year may be considered for the purpose of distribution of vacancies among various cadres/ joint Cadres of IAS, but no cadre should get more vacancies than its demand i.e. allotment to the cadres would be restricted to their demand.*
>
> *2. This is for information and further necessary action for Ministry of Home affairs and Ministry of Environment & Forests."*

In the instant case the RTI reply furnished by the State Government of Sikkim on 2.3.2020, annexed at page 38 of the MA 335/2020, states as under:

Sl. No.	Information sought	Information furnished
1.	Kindly inform the number of IPS officers requested by Government of Sikkim from Union Ministry of Home Affairs to be allotted through Civil Services Exam, 2015	Reply: The State Government have not requested MHA for any IPS officer through Civil Services Exam, 2015
2.	Kindly inform the number of IPS officers actually allotted to Sikkim Cadre on the basis of Civil Services Exam, 2015	Reply: The MHA allotted one IPS officer, namely Shri V.G. Satish Pasumarthi on the basis of Civil Services Exam, 2015

The reply is candid by affirming that there was no requisition for any IPS vacancy and when there was no requisition, how could the 1st

respondent allot the vacancy to Sikkim against the orders of the nodal agency namely DOPT. By a Presidential order dated 14.1.1961 the óGovernment of India (Allocation of Business) Rulesô were framed in exercise of the powers conferred by clause (3) of Article 77 of the Constitution. The first schedule of the order indicates the Ministries/Departments which shall transact with the Business of Government of India and the second schedule specifies the subjects that would be dealt by the Ministries/ Departments and a perusal of the second schedule referred to will reveal that DOPT is the nodal Ministry to deal with the Service conditions as under:

> *IV. SERVICE CONDITIONS*
>
> *21. General questions (other than those which have a financial bearing including Conduct Rules relating to All India and Union Public Services except in regard to services under the control of the Department of Railways, the Department of Atomic Energy, the erstwhile Department of Electronics and the Department of Space).*
>
> *22. Conditions of service of Central Government employees (excluding those under the control of the Department of Railways, the Department of Atomic Energy, the erstwhile Department of Electronics, the Department of Space and the Scientific and Technical personnel under the Department of Defence Research and Development, other than those having a financial bearing and in so far as they raise points of general service interests).*
>
> *23.(a) The administration of all service rules including F.Rs. SRs. and C.S.Rs.(but excluding those relating to Pension and other retirement benefits)*

The Business Allocation Rules have thus a constitutional backing and any instruction from the nodal Ministry/ Dept. and in the instant case the DOPT on Service matters, would be binding on the other departments of the Government of India. Hence, the 1st respondent has thus gone beyond jurisdictional boundaries in allotting a vacancy to Sikkim without demand, against the instruction of the 2nd respondent (DOPT) contained in letter cited, which is not only incorrect but unconstitutional as the Business Allocation Rules have constitutional sanctity.

In fact, an administrative order confers no justiciable right, but there are some exceptions. The legal principle is that statutory rules cannot be overruled by administrative orders. However, if the rules framed under Article 309 of the Constitution are silent on any particular point, executive instructions which are not in variance with the rules/policy can be issued to fill up the gaps or supplement them. Therefore, arriving at the conclusion that no executive order would confer any right is sweeping. Administrative orders conferring rights and duties have ushered in the concept of Natural justice. We have stated what we did above, based on the observations of Hon'ble Supreme Court in ***Union of India vs K. P. Joseph*** And Ors on 27 October, 1972 - 1973 AIR 303, 1973 SCR (2) 752 as under:

> *Generally speaking, an administrative Order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. This Court has held in Sant Ram Sharma v. State of Rajasthan and Another(1) that although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Art. 309 of the Constitution are silent on any particular point, the Government can fill up gaps ;and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service.*
>
> > *In Union of India and Others v. M/s. Indo Afghan Agencies Ltd.(2), this Court, in considering the) nature of the Import Trade Policy said:*
> >
> > *"Granting that it is executive in character, this Court has held that Courts have the power in appropriate cases to compel performance of the obligations imposed by the Schemes upon the departmental authorities. "*
>
> *To say that an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and impose duties. It is because an administrative order can abridge or take away rights that we have imported the principle of natural justice of audi alteram partem into this area.*

The DOPT order dated 20.5.2016 mandating to tailor the allotment of vacancies to the demand from the States, echoes the CAP -2008 and is not contrary to any of the rules. Therefore, the 1st respondent to turn a blind eye

to the cited order which has a statutory flavour and allotting a vacancy to Sikkim does not go well with the legal principle laid down by the Hon'ble Apex Court cited supra.

VII. A further analysis would disclose that the 2nd respondent is the competent authority to lay down the guidelines as to how the vacancies are to be allotted to different States as a nodal agency. It was for the 1st respondent to follow the guidelines of the 2nd respondent and not self-delegate to itself the authority which it is incompetent to exercise. It is a well settled principle of law that when a power has been entrusted in a person/ authority then it is only that person/ authority who can exercise the power unless person/authority has been authorized to delegate it to another person /authority. In the instant case the Business Allocation Rules under Article 77 of the Constitution have empowered the DOPT (R-2) to deal with service matters and in the instant case with respect to allocation of vacancies it has issued a directive to confine the vacancy allotment to the demand emerging from the States. The 2nd respondent has not delegated any authority to the 1st respondent to allocate a vacancy when there was no demand and yet we find the 1st respondent jumping the gun by doing the converse. Thus the cardinal principle that power has to be exercised by the authority upon whom it was conferred and not by others, was not abided by. Courts expect effective compliance of the said principle and would generally strike down anything contrary to the settled principle unless there are profound reasons backed by rules/ law. Thus the self-assumed sub delegation of power by the 1st respondent in allocation of vacancy to Sikkim in breach of the OM dated 20.5.2016 and the Business Allocation

Rules is unsustainable. We depend on the observation of the Hon'ble Supreme Court in ***Union Of India &Ors vs B.V. Gopinath*** on 5 September, 2013 in Civil Appeal No.7761 of 2013 (Arising out of SLP (C.) No. 6348 of 2011), as under, in asserting the above.

> *43. Accepting the submission of Ms. Indira Jaising would run counter to the well known maxim delegatus non protest delegare (or delegari). The principle is summed up in "Judicial Review of Administrative Action" De Smith, Woolf and Jowell (Fifth Edition) as follows:- "The rule against delegation A discretionary power must, in general, be exercised only by the authority to which it has been committed. It is a well-known principle of law that when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another." The same principle has been described in "Administrative Law" H.W.R. Wade & C.F. Forsyth (Ninth Edition), Chapter 10, as follows:-*
>
> *"Inalienable discretionary power An element which is essential to the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred, and by no one else. The principle is strictly applied, even where it causes administrative inconvenience, except in cases where it may reasonably be inferred that the power was intended to be delegable. Normally the courts are rigorous in requiring the power to be exercised by the precise person or body stated in the statute, and in condemning as ultra vires action taken by agents, sub-committees or delegates, however expressly authorized by the authority endowed with the power."*
>
> *44. This principle has been given recognition in Sahni Silk Mills (P) Ltd. (supra), wherein it was held as under:*
>
> > *"6. By now it is almost settled that the legislature can permit any statutory authority to delegate its power to any other authority, of course, after the policy has been indicated in the statute itself within the framework of which such delegatee (sic) is to exercise the power. The real problem or the controversy arises when there is a sub- delegation. It is said that when Parliament has specifically appointed authority to discharge a function, it cannot be readily presumed that it had intended that its delegate should be free to empower another person or body to act in its place."*

VIII. We also add that the power granted to an authority has to be exercised in the manner it has been permitted to and not otherwise. The 1st respondent was granted the power by the 2nd respondent to confine the vacancy allotment to the extent of demand from the States and not in any

other manner. The 1st respondent transgressed the authority assigned by allotting the vacancy to Sikkim without demand and the same goes against the observation of the Hon'ble Supreme Court in ***Anuradha Bhasin V 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:*
>
> > *"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..."*

Therefore, allocation of a vacancy to Sikkim goes against the grain of the approved norms of consultation,demand, time lines, self- delegation as set out the in the rules/ law. The said decision having contravened rules and law is untenable. Therefore, when the decision of allocation of a vacancy to Sikkim is bad in law the subsequent decision of allotting the applicant to Sikkim has necessarily to be legally bad, for the simple reason that but for a wrong decision/ own mistake of the respondents the applicant could not have been allotted to Sikkim. The respondents cannot take advantage of their own mistake to wrong the applicant by allotting him to Sikkim which he could not have been by following the rules/Law. As held by the Hon'ble Apex Court in ***Rekha Mukherjee v. Ashis Kumar Das,*** in (2005) 3 SCC 427, respondents cannot take advantage of their own mistake as under:

> *36. The respondents herein cannot take advantage of their own mistake.*

IX. The respondents have been affirming that they have allocated cadres to the candidates as per allocation policy/ rules and it was fair and not arbitrary. True, the effort of the respondents in this regard is genuine since the respondents Organizations arrayed as parties would be impersonal in implementing rules framed. Probably due to misconceived interpretations the mistakes flow in. Even if the mistakes are unintentional, yet when they take away the right of an individual, they need to be undone to uphold law. It is said that the proof of the pudding is in eating and therefore, respondents have to be adjudged as to how well they have implemented the policy/rules in allocation of cadres to the selected candidates. The applicant has contended that even those who were not the members of IPS were allotted cadres against rules/Policy by giving details of the candidates as under:

Candidate Name	Rank in CSE-2014	Rank in CSE-2015	Cadre in CSE-2014	Cadre in CSE-2015	Offer of Appointment	Training	Remarks
Aparna Gupta	108	125	Uttar Pradesh	Madhya Pradesh	Not accepted	Not reported	Already in home cadre
Kantesh Kumar Mishra	103	138	Bihar	Maharashtra	Not accepted	Not reported	Already in home cadre
Manilal Patidar	188 CSE-2013	171	Uttar Pradesh	Himachal Pradesh	Not accepted	Not reported	Already in higher preferred cadre
Mohit Handa	127	120	Haryana	Haryana	Not accepted	Not reported	Already in higher preferred cadre

The respondents interdict the contention of the applicant by averring that once a candidate is selected for IPS then he becomes a member of the service. To resolve the conflicting contentions, we fall back once again on

the IPS (Cadre) Rules, 1954 (*for short "**Cadre Rules 1954**"*) which are reproduced hereunder for reference:

> *1. Short title and commencement.-- These rules may be called the Indian PoliceService (Cadre) Rules, 1954.*
>
> *2. Definitions.-- In these rules unless the context otherwise requires, -*
>
> *2(a) 'Cadre officer' means a member of the Indian Police Service:*
>
> *2(b) 'Cadre post' means any of the posts specified under item 1 of each cadre inschedule to the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955.*
>
> *Xxx*
>
> *5. Allocation of members to various cadres.–*
>
> *5(1) The allocation of cadre officers to the various cadres shall be made by the Central Government in consultation with the State Government or State Governments concerned.*

A harmonious interpretation of the Rule 2 (a) along with Rule 5 as at above would eloquently make it clear that those who join the IPS are to be considered to be a cadre officer. In other words those who do not join the service would not be construed as the members of the Service. After being selected to the service, the question of allocation of cadre would then arise. It may thus sound illogical to allocate a cadre to a selected candidate though he/she has not expressed willingness to join the service and more so when he/she did not join. The Hon'ble Supreme Court of India in ***Dinesh Kumar Kashyap vs South East Central Railway*** on 27 November, 2018, Civil Appeal Nos.11360-11363 of 2018 (Arising out of SLP (Civil) Nos.29668¬29671/2017), while dealing with appointments has referred to its own judgment in Shankar Dash and observed as under:

> *13. In Shankarsan Dash v. Union of India, (1991) 3 SCC 47, a Constitution Bench of this Court held that the notification for an appointment merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection, they do not acquire any right to the post. It was held as under:*

> *"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies.*

The essence of the judgment of the Constitutional Bench is that even if a candidate is selected he would not acquire an indefeasible right to the post. Only when he accepts the terms and conditions of the offer of appointment and joins the service then he can be treated as a member of the service. Till then the candidate selected has no right over the post for which he is selected. When a candidate has no right over a post it can be safely concluded that he does not belong to the service to which the post belongs to. The cadre rules 1954 do not have any such provision too. Hence cadre allocation to those who are not members of IPS is defenseless and is not in line with the legal principle laid down by the Hon'ble Apex Court as at above. Further, Hon'ble Apex Court has held in ***Dinesh Chandra Sangma v. State of Assam, (1977) 4 SCC 441***, as under:

> *This Court observed in Roshan Lal Tandon v. Union of India (1968) 1 SCR 185as follows:*
>
> > *"It is true that the origin of government service is contractual. There is an offer and acceptance in every case.*

Unless there is acceptance of the offer of appointment the contract of appointment would not fructify at the originating stage of the Govt. service. The respondents have contended that once a candidate is allotted to IPS he is a member of the service which does not gel well with the observations of

the Hon'ble Apex Court cited supra to the extent that the origin of the service will commence with acceptance and has no right over the post selected for till he/she takes charge of the post. In addition, the Hon'ble Principal Bench of this Tribunal in OA 102/2007 in Rajesh Kumar v Union of India has held that without accepting the offer of appointment to IPS, a selected candidate would not be a member of the service as under:

> *"As far as the facts of this case are concerned, the issue is really very simple 'Offer of Appointment' to IPS was made to all candidates who were successful in CSE, 2004 and allocated to IPS cadre by DOP&T. The successful candidates were asked to accept the offer of appointment failing which the offer would be considered to have lapsed. Respondent - 4 was given two opportunities to respond to the offer of appointment, to both of which he did not react. Therefore, on 10.01.2006 it was not correct for MHA to have considered his name for allocation of cadre".*

(Emphasis supplied)

The Hon'ble Principal Bench continued to hold the same view in OAs 2236 of 2010 & 1340 of 2008 while adjudicating disputes between Rupesh Kumar Meena v U.O.I and Rakesh Bansal v U.O.I respectively. Interestingly DOPT, the nodal Ministry has filed a reply in WP (C) No. 2544 of 2012 in Sri Shankar Lal Kumavat before the Hon'ble High Court of Delhi, wherein it submitted as under:

> *"It is submitted that an officer can be called a member of service only after he physically joins that service. The same issue matter came up for adjudication before the Principal Bench of the Central Administrative Tribunal in OA No.102 of 2007 and was disposed off by the Hon'ble Tribunal by its order dated 2.2.2007."*
>
> *xxx*
>
> *"(d) That the Hon'ble Tribunal in the above mentioned case categorically held that the cadres can be allocated to only those officers who actually join All India Service. That a successful candidate for the Civil Services Examination becomes the member of service only after he physically joins the training meant for that service at the respective institute. Therefore, in respect of the IAS officers, in the first instance the said officers have to report to LBSNAA for the Foundation Course, which starts generally in the*

> *first week of September. In the context of the present case, it is submitted that Foundation Course for the IAS officers, recruited through CSE, 2009 started on 30.08.2010. Consequently, the candidates allocated to IAS from CSE, 2009 became the members of the service only on 30.8.2010."*

Again in C.W. No.7757 of 2012 in Shri Shiv Narayan v DOPT, GOI & Ors, DOPT has filed a reply statement, before the Hon'ble Delhi High Court, affirming as under:

> *"It may be seen that the rule specifically provides for allotment of Cadre to the cadre officers only. A candidate from a particular civil service examination can be called a cadre officer only after he is appointed to IAS. It is therefore incumbent on the part of this respondent to decide about 'the appointment to IAS' of the candidates from a particular civil service examination before the cadres in respect of such candidates are finalized."*

Thus, when the nodal Ministry has filed reply affidavits before the Hon'ble Delhi High court in the W.Ps cited that a selected candidate would become a member of the service only after he physically joins the service, the 1st respondent is precluded from taking a diagonally opposite stand and that too when R-1 is incompetent to do so as per the Business Allocation Rules. Above all, the respondents have admitted in the reply statement that as per Rule 2 (2a) of the IPS (Cadre) Rules, a cadre officer is one who is a member of the service. The 4 candidates who did not accept the appointment and the applicant who has accepted the appointment are dissimilar. Treating similar persons dissimilarly and dissimilar persons similarly is pure discrimination as held by the Hon'ble Supreme Court in ***State of A.P v Nalla Raja Reddy*** (1967) 3 SCR 28 as under:

> *A statute may expressly make a discrimination between persons or things or may confer power on an authority who would be in a position to do so. Official arbitrariness is more subversive of the doctrine of equality than statutory discrimination. In respect of a statutory discrimination one knows where he stands, but the wand of official arbitrariness can be waved in all directions indiscriminately. A statutory provision may offend Art. 14 of the Constitution both by finding differences where there are none and by making no difference where there is one.*

The applicant and the 4 candidates were on a different footing and yet the respondents treating them on a similar basis to allot cadres does not synchronize with the above judgment and hence the said decision is legally impermissible. The respondents have defended their stand, by citing the judgment of the Hon'ble Apex Court in ***Union of India v Rahul Rasgothra in 1994 (2) SCC 600***. However, the cited verdict, relates to an exempted probationer. The definition of ñProbationerò and ñexempted probationerò as per Rules of the respondents organization are as under:

Rule 2(e) of IPS (Probation) Rules, 1954 defines ó'Probationerò to mean a person appointed to the Service on probation and include an exempted probationer when he is appointed to the Service on probation.

Rule 2(ee) defines ó'exempted probationerô to mean a person, ówho, on being allocated to the Serviceô, óhas expressed his intention to appear at the next examination and has been permitted to abstain from probationary training in order to so appear.

Thus, an exempted probationer is one who on being allocated to the service, has expressed his intention to appear at the next exam and has been permitted to abstain from probationary training in order to so appear. Rahul Rasgotra was one such exempted probationer who has been allotted the service and on having taken exemption from the probationary training to

appear in the next CSE, preferred a claim that his cadre allocation was to be made along with the juniors with whom he had undergone training and not with the reference to his original batch. While rejecting the plea of Rahul Rasgotra, the Hon'ble Apex Court has observed that cadre allocation need not be delayed until exempted probationer actually joined the service. Thus in Rahul Rasgotra's case, there was allotment of service after he accepted the offer of appointment and in contrast the 4 candidates named in table supra have not accepted the offer of appointment and thus are not on par with Rahul Rasgotra. Therefore, the judgment cited by the respondents would not be of any assistance to them.

Another argument furthered by the respondents is that the DOPT circular dated 1.4.2014 has called for determination of the cadres before the allocation of the cadre. The relevant portion of the order is reproduced here under:

> *"The undersigned is directed to refer to the subject cited above and to say that while approving the cadres for the candidates appointed/ allocated to Indian Administrative Service on the basis of Civil Services Examination, 2012, the Prime Minister's Officer has, inter alia, observed that as per cadre allocation policy, 2008, determination (of) the cadres of candidates before they become members of service is not barred although allocation of the cadres to a candidate can only be made after he/she becomes a member of the service, thereby creating a clear distinction between "determination" and "allocation" of cadre as two separate processes."*

The Memo being an executive order would not prevail over the statutory cadre Rules 2 & 5 of IPS (Cadre) Rules discussed in paras supra, which state that a member of the IPS service is one who joined the service, doubly confirmed by the nodal Ministry in its reply affidavits in WPs cited supra before the Hon'ble Delhi High Court and the Hon'ble Principal Bench

finding to this effect as referred to in the preceding paragraph. Hon'ble Supreme Court in a catena of judgments has held that statutory rules prevail over executive instructions as under:

> *Executive instructions cannot override modify or amend the rules made under Article 309 of the Constitution MANU/SC/0500/1970 : (1970) II LLJ 284 SC.*
>
> *There can be no dispute with the proposition that a rule framed under the proviso to Article 309 of the Constitution cannot be modified by an executive order or instruction.* ***State of Maharashtra Vs. Chandra Kant*** *AIR 1981 SC 990. The Executive instruction cannot override the rules under the proviso to Article 309 of the Constitution as they are equated with the act of a legislature. Thus an administrative instruction under the proviso to Article 309 cannot supplement them.* ***Bhagat Singh Vs. Union of India*** *1981 Lab.I.C1309 : (1983) 1 SCR 686. If the statutory rules framed by the Governor or any law enacted by the State Legislature under Article 309, is silent on any particular point, the State Government can fill up that gap and supplement the rule by issuing administrative instructions nor inconsistent with the statutory provisions already framed or enacted.*
>
> *29. The executive instructions in order to be valid must run subservient to the statutory provisions.* ***District Registrar Vs. M.B. Koyakutty*** *MANU/SC/0043/1966 : (1967) I LLJ 698 SC ;* ***Bishun Deo Mahto Vs. State of Bihar*** *1982 Lab.I.C. 1446;* ***Sant Ram Vs. State of Rajasthan*** *MANU/SC/0330/1967 : (1968) II LLJ 830 SC ;* ***Union of India Vs. N.R.Sunderam*** *1982 Lab. I.C. 1185 and* ***Gurdial Singh Fiji Vs. State of Punjab*** *1979 SCC (L & S) 179.*

The statutory rules had no gap to be filled up as the construction was clear and forthright. Therefore, in view of the above observations of the Hon'ble Apex Court, the OM dated 1.4.2014 suffers from the pain of legal acceptance.

The onerous responsibility of the Tribunal is to give effect to the natural meaning of the words used in the rules. Construction comes into play if the words used in the statute are self-defeating, which is not the case in regard to the cadre rules- 1954 under reference. We echo the views of the Hon'ble Apex Court in ***R. S. Nayakvs A. R. Antulay*** on 16 February, 1984 in

Equivalent citations: 1984 AIR 684, 1984 SCR (2) 495, as under, in stating what we did above.

> *If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self-defeating*.

The memo dated 1.4.2014 can supplement the statutory rules if there were any gaps left and not supplant the rules. We found no gaps or ambiguity in the rules cited. Thus, the issuance of the memo dated 1.4.2014 lacks legal sanctity in the light of the judgments of the Apex Court referred to above.

X. We have meticulously gone through the memo dated 1.4.2014 and nowhere was the import of word determination was elaborated. An executive order usually has an object and a rational backing it and we find that both the elements missing in respect of the memo in question. Moreover, assuming it to be a policy though not admitted, it should have been circulated to those it was intended for. The respondents have not enclosed any documentary evidence about such communication to those it concerns including the applicant. Without communicating such an order along with its object and purpose it may be not be fair to operationalize the said memo.The observations of the Hon'ble Delhi High Court in Himanshu Kumar Verma and Anr.v Union of India and ors reported in WP (C) 109 of 2019, extracted here under, substantiates our view point.

> *"65. There can be no quarrel with the object & purpose with which the respondents may have framed the new cadre allocation policy contained in OM dated 05.09.2017. The said object is laudable and in our view, the government would be entitled to implement that objective/policy. The question, thus, arises, whether the said object & purpose, was clearly set out and communicated to the persons concerned, including the*

petitioners and other candidates, before they were called upon to give their preferences online? The office note which forms the basis of the new cadre allocation policy, remained in the confines of the files of the Government and thus, it would have to be examined whether the said stated purpose & object was sufficiently elaborated and communicated, when the new cadre allocation policy was formulated and circulated vide OM dated 05.09.2017.

Xxx

67. There can be no quarrel with the aforesaid proposition. However, if the Central Government has chosen to declare its policy in the matter of cadre allocation, and the central theme of that policy is to allocate cadres as per the preferences of the selected candidates on the basis of their merit, then the Government cannot be heard to say that it can disregard its declared and stated policy. Denial of preference made by a more meritorious candidate, and allocation of cadres in violation of the stated policy would clearly constitute breach of the fundamental rights of such candidates under Articles 14 & 16 of the Constitution of India."

XI. Even as per the memo 1.4.2014, the determination of the cadres ought to have been done before the commencement of the foundation course at Lal Bahudur Shastri National Academy of Administration. The foundation course commenced on 29.8.2016 and the impugned notification of allocation of cadres was issued on 28.12.2016. Thus the instruction contained in the cited memo issued by the 2nd respondent, the nodal agency, was not followed by the 1st respondent. Whereas in respect of those selected for IAS it was completed before the training as claimed by the applicant and not denied by the respondents. Once the candidates join the foundation course they become members of the IPS and the Cadre Rules will apply and not the memo referred to by the respondents. The dictate of the memo ends with the commencement of the foundation course and the IPS cadre rules take over. Thus, on multiple counts the memo cited has no application to the case of the applicant. The only line of defense taken by the respondents is that the memo will facilitate officers to the least preferred cadre. This may facilitate an

administrative cause but such cause has to be backed by a statutory norm. The Hon'ble High Court of Delhi in ***Himanshu Kumar Verma and anr v U.O.I*** and Anr in W.P (C) 109/2019 has held that when the object and the purpose of any order when not made known to those it should, then such an order is no order. The memo in question fails the above legal test and hence its validity remains to be a big question mark. The CAP- 2008 only speaks of allocation to cadre officers and not to those who are not. Respondents can operationalize the memo 1.4.2014 by amending the IPS Cadre Allocation Rules-1954 and not until then. As long as any executive order does not infringe the statutory rule it will rule the roost as was observed in regard to the DOPT memo dated 20.5.2016 in paras supra, wherein the instruction of restricting the allocation of vacancies to the demand was not defiling any rules or CAP. We are constrained to observe that we cannot hold a similar view in respect of the memo dated 1.4.2014 as it despoils the statutory norms on the subject/ policy. A rule is a statement that tells you what is or is not allowed in a particular environment, situation, etc. It is a statement that tells you what is allowed or what will happen within a particular system and true to speak, an advice about the best way to do something. The best way of doing something has a beneficial connotation. Therefore, looking from a positive perspective a rule will usher in benefits to all concerned and hence its framing should not invite hardships to anyone. In such situations work around could be contemplated wherein those who work in least preferred cadres for some length of time can go to the home cadre with certain conditions. Like for example Central Govt. employees when transferred and posted to the N.E, J&K, etc for a period of 2 years they are entitled for choice posting after

they complete the tenure. Those who are low on merit would then be willing to prefer least preferred cadres with the hope of getting cadre of choice on a later date. *Albeit*, we are aware that it would not be so simple for cadre allocation but surely a way can be worked out by applying a little more thought of having a committee to go into it and recommend. That be as it may, the short point we like to make that while making a rule it should not create benefits to one and hardships to the other. Law equally applies as much to the Citizen as much as to the State. Determination of cadres may be perhaps helpful before joining the training but the instruction to implement should not create hardships to the selected candidates more than the benefits it was intended for.In making the above observation we are backed by the Hon'ble Supreme Court observation in ***Nirmala Chandra Bhattacharjee and ors v 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.*

Among the 4 candidates under reference, who figure at sl. 11, 14, 22 & 39 in CSE 2015, 3 of them appear at Sl 4, 7 & 20 in CSE 2014 and the fourth one at Sl.41 of CSE 2013. All the 4 candidate have got better ranks than the applicant and allotted cadres against CSE ï 2015, though not to be allotted as per rules/ policy, thereby impairing the opportunity of allocation of the applicant to a cadre of higher preference.

Having covered the pros and cons of the issue with respect to the allocation of cadres to the 4 selected candidates without joining the service, we have

no hesitation to observe that the allocation of cadres to them was against rules/ law The said allocations were neither fair nor objective, as claimed by the respondents and all the more marred the opportunity of the applicant to get a cadre of choice.

XII. In the allocation of cadres, maintenance of rosters does play a vital role and recognizing the same respondents have adopted a 200 point roster.Even while filing the reply in the earlier round of litigation the respondents in OA 753/2017 have emphasized in no uncertain terms that roster maintenance is the key to category wise break down of vacancies to allot cadres each year. The said submission of the respondentsô calls for a perusal of the relevant paragraph of CAP -2008 circulated vide letter dated 10.4.2008 in regard to the 200 points roster and hence is extracted hereunder for reference.

> *"2. A 200-point running vacancy-based-roster showing SC/ST/OBC/UR points shall be maintained for each cadre properly and would be used for determining the vacancies of various categories (SC/ST/OBC/UR) in each cadre. The accounting in this roster shall be done on the basis of actual filling of the roster point. This roster for each of the cadres may be initialized by adjusting the recruitments done since the CSE-1994."*

The Roster register has to be initialized by adjusting the recruitments done since CSE 1994.This is the well laid down policy of the respondents. The year 1994 was chosen in view of the introduction of reservation for the OBC from this year.Hence any non-maintenance of rosters as stipulated would have a telling effect on the allocation of the cadres. Both the parties referred to the judgments of the Honôble Apex Court in R.K Sabarwal and J.C. Mallick to bolster their point of view in regard tomaintenance of

rosters. The significance of rosters has been examined and the law laid by the Hon'ble Supreme Court in R.K. Sabarwal v State of Punjab in AIR 1995 (1) SLR, is scripted hereunder:

> *"The purpose of "running account" is to make sure that the Scheduled Castes/Scheduled Tribes and Backward Classes get their percentage of reserved posts. The concept of "running account" in the impugned instructions has to be so interpreted that it does not result in excessive reservation."*

Against the backdrop of the above factors it has to be examined as to whether the respondents have followed the rules/ law in maintaining rosters.

The applicant contends that non-maintenance of rosters has led to lesser number of vacancies to be filled under UR category of CSE -2015 for the State of Telangana. The respondents had nearly 2 years' time at their disposal to update the rosters as per CAP -2008 after bifurcation of the composite State of A.P in 2014 into 2 new States of Telangana and the residual State of A.P. Without countering the applicant's contention with facts and figures respondents have stated that they have followed the time tested principle of maintenance of roster registers as was adopted during the bifurcation of the States of Bihar, M.P & U.P. The respondents admitted that they maintained a new roster register for Telangana on its formation. However, the CAP- 2008 direction is to maintain from 1994 and therefore the violation of the policy in regard to the maintenance of rosters is palpable. Further, if they have maintained the new register as claimed it is not explained as to what prevented the respondents in notifying the same to usher in transparency as is required in such matters.

The respondents have no escape but are bound by CAP-2008 of maintaining the rosters from 1994 by adjusting the roster points and without giving tangible reasons for the deviation from the policy they cannot get away by making a general submission that they followed the pattern espoused during the bifurcation of the Northern States referred to above. We are surprised to note that though the applicant has sought information under RTI on 8 occasions in the year 2017, it was declined. In the present era of information revolution, decisions of the State are to be published *suo motto* either in the web sitesmaintained or by any other suitable means except in respect of certain matters concerning National security, foreign affairs etc as per the provisions of the RTI act. Respondents could have provided the information sought to affirm their assertion that the allocation was transparent. Having not done so, the likelihood of such action being perceived as an attempt to hide information from public scrutiny, cannot be ruled out. At the Tribunal too, respondents were given plenteous opportunities to defend themselves through oral submissions/documents and yet we observe that the respondents failed to rebut the claim of the applicant on the said count. Respondents in the reply statement have submitted in regard to the rosters in their own words as under:

> *"The category wise vacancy of a cadre is determined by operating 200-point running vacancy-based-roster which is maintained for each cadre, the 200 point roster contains SC/ST/OBC/UR points in a manner prescribed by the Department of Personnel & Training vide its OM dated 2.7.97 in pursuance of the law laid down by the Hon'ble Supreme Court in the matter of R.K. Sabharwal v. State of Punjab (AIR 1995 SC 1371) as well as J.C. Mallick v. Ministry of Railways (1978) (1) SLR)."*

A reading of para 5 of the OM dated 2.7.1997 of DOPT will disclose the following:

> *"5. At the stage of initial operation of a roster, it will be necessary to adjust the existing appointments in the roster. This will also help in identifying the excesses/ shortages, if any, in the respective categories in the cadre. This may be done starting from the earliest appointment and making an appropriate remark – "utilized by SC/ST/OBC/Gen," as the case may be, against each point, in the rosters as explained in the explanatory notes appended to the model rosters. In making these adjustments, appointments of candidates belonging SCs/STs/OBCs which were made on merit (and not due to reservation) are not to be counted towards reservation so far as direct recruitment is concerned. In other words, they are to be treated as general category appointments".*
>
> *(emphasis supplied)*

At the stage of initial operation of the rosters the existing appointments in the rosters are to be adjusted to assess any excess/shortage in the respective category with a clear remark that the reserved candidates selected on the basis of merit are not to be adjusted towards reserved vacancies. The respondents have stated that they are following the instructions of DOPT memo dated 2.7.1997 in maintaining the rosters and if so it is not explained as to why they have to follow the roster process prescribed at the time of the bifurcation of the Northern States cited. The impression we thus gain is that the respondents are self- contradicting themselves on the same issue. When an established process in maintaining rosters was available to respondents in the form of OM referred to by the respondents, their contention that nothing was available at the time of bifurcation of the composite State of A.P. in regard to rosters is incorrect altogether.

It is not out of place to affirm that the same respondents while filing a reply in OA 1037/2019 before this Tribunal have taken a stand that the recommendations of the U.C. Agarwal committee in regard to the distribution of AIS officers consequent to bifurcation of the States of Bihar, M.P & U.P, need not be followed when a separate committee chaired by Pratyush Sinha was formed to recommend guidelines in regard to bifurcation of the composite State of A.P. Having taken the said stand in the cited OA the respondents cannot take a contrary stand in the instant OA of claiming that they followed the procedure prescribed in regard to rosters consequent to bifurcation of the Northern States cited. Such inconsistency in their stand exposes the approach of the respondents to the issue as being arbitrary. In fact, 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 a virtue was not exhibited by the respondents in their approach to the maintenance of rosters as expounded above.Reiterating the aspect of consistency, Hon'ble Apex Court in the ***State of Mysore v. R.V. Bidap,*** (1974) 3 SCC 337, has re-emphasized the need for consistency in a profound manner 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 there 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. The rosters generally are not to be maintained with shortfalls/excesses and unreasonable variation was not approved by the Hon'ble Supreme Court in ***C.M. Thri Vikram Varma v Avinash Mohanty*** in (2011) 7 SCC 385, by upholding the judgment of the Hon'ble High Court of A.P in ***Avinash Mohanty v U.O.I*** in W.P No 458/2007, by observing as under:

> *11. xxx After considering this table, the High Court has held in the impugned judgment that even according to the Union of India, as against a total of 29 vacancies 9 OBC candidates (4 insiders + 5 outsiders) had been allocated to the Andhra Pradesh cadre from amongst the successful candidates of Civil Services Examinations from 1994-2003 and if Vikrama Varma, an insider OBC candidate, was to be allocated to the Andhra Pradesh cadre from the selected candidates of the Civil Services Examination, 2004, a total of 10 OBC candidates would be allocated to the Andhra Pradesh cadre in the 30 point roster, making the percentage of OBC candidates to 33 1/3, which was a variation of 6% in excess and by any standard was not a marginal variation.*
>
> *Xxx*
>
> *13. Admittedly, Avinash Mohanty had secured a higher rank than VikramaVarma in the Civil Services Examination, 2004 and both Avinash Mohanty and Vikrama Varma are insiders. Clause (3) of Para 3 of the letter dated 31.05.1985 states that allocation of insiders, both men and women, will be strictly according to their ranks, subject to their willingness to be allocated to their home States.*
>
> *Hence, Avinash Mohanty was required to be considered for allocation to the Andhra Pradesh cadre if he had given his willingness for being allocated to his home State, Andhra Pradesh, before Vikrama Varma could be considered for such allocation. If, however, the vacancy for which consideration was being made was a vacancy for an insider OBC candidate in the 30 point roster, Vikrama Varma would have preference over Avinash Mohanty. But*

> *the High Court has come to a finding that the number of vacancies in the 30 point roster filled up by OBC candidates from Civil Services Examinations 1999-2003 were 9 and had exceeded the 27% reservation for OBC candidates and hence there could not be an insider OBC vacancy in which Vikrama Varma could have been allocated. The High Court was, therefore, right in coming to the conclusion that allocation of Vikrama Varma to the Andhra Pradesh cadre was in violation of the guidelines contained in the letter dated 31.05.1985 and was clearly arbitrary and not equitable*.

Respondents aver that the above judgment was in the context of allocation of cadre of choice. True, but the intrinsic judicial principle involved that ought to be drawn and applied, from the above judgment is that the percentage variation in allocation category wise should not be significant. We proceed to apply the said principle as under, to the case on hand. According to CAP-2008, the cutoff date for notifying the vacancies category wise is the date of conducting the preliminary examination which for the CSE -2015 was 23.8.2015. As on the said date the category wise position of officers in position was as under:

Total officers :45

General ï 21 (46.7%)

OBC ï 14 (31.1%)

SC ï 7 (15.5%)

ST -3 (6.7%)

The details have been furnished in the OA and not refuted by the respondents. MHA on 2.9.2016 (A-4) has allotted 2 vacancies to be filled up for the State of Telangana, of which one was for OBC and the other one for SC, thereby changing the category wise composition as presented below:

Total officers :47

General ï 21 (44.6%)

OBC ï 15 (32%)

SC ï 8 (17%)

ST -3 (6.4%)

The short fall in respect of UR is thus 5.4% (50 ï 44.6 = 5.4%) and in regard to the reserved category the excess allocation percentage allocation is 55.4% ie 5.4% more than the prescribed limit. Infact, from one another perspective reserved category allocation is 10.8 % over and above the allocation percentage of the UR category which apparently disqualifies to be termed as fairness. Nevertheless confining to the general limitation of a maximum of 50% reservation quota, the shortfall in respect of UR category being 5.4 % is significant and is thus an infringement of the legal principle laid down by the Hon'ble High Court of A.P and upheld by the Hon'ble Apex Court as at above. Excessive representation has been specifically directed to be guarded against in R.K. Sabharwal supra and respondents did exactly the opposite by making an excess percentage of allocation of vacancies to the reserved category by 5.4%, which is significant. Thus, legally the percentage allocation of vacancies to the reserved and unreserved category for CSE- 2015 to the State of Telangana is untenable. By maintaining the percentage as prescribed under law, some more posts under UR category could have been allotted to Telangana and which would have paved the way for the allotment of the applicant to the said cadre which is his 2nd preference. This Tribunal in OA 725 of 2013 in N.Swetha

v. Ministry of Home Affairs had no favorable remarks to be made about roster maintenance by the 1st respondent, as under:

> *"30. The averment in para 21 of the counter that the allotment of Shri Avinash Mohanty by creating supernumerary post was done to prevent the cascading effect which would have impacted the batch and resulted in unwarned litigation by adversely affected candidates cannot be appreciated in view of the observation of the Hon'ble High Court and Hon'ble Supreme Court as referred above.*
>
> *31. Thus, this is a case where under the garb of orders of the Hon'ble High Court and Supreme Court the respondents who are bent upon to favour a particular candidate misinterpreting the orders of the Hon'ble High Court and Supreme Court went to the extent of going on record in the reply stating that the judgment of the Hon'ble High Court and Hon'ble Supreme Court are not correct, instead of passing an order of allotment as per law as directed. Nowhere in any proceedings the respondents averred that Shri Thri Vikram Varma was entitled for AP Cadre and not Shri Avinash Mohanty as per law as directed by the court. They simply created a supernumerary post in the garb of implementing court order.*
>
> *32. Thus, the allotment of Shri Thri Vikram Varma as insider OBC which was incorrect was not rectified but was further complicated, that has caused injustice to the applicant as her right to be considered as insider general category candidate of AP is robbed off.*
>
> *33. In the circumstances, the OA is allowed and the impugned proceedings No. 1-2015/1/2011-IPS.IV and No. 1-14012/07/2013-IPS-IV dated 15.03.2013 and 17th May 2013 are quashed in so far as it allocates the applicant to the Karnataka cadre as an outsider and to the extent necessary to make appropriate consequential changes and fresh orders have to be passed with regard to the allocation of the applicant in the light of the observations in this OA and such orders have to be passed within a period of six weeks from the date of receipt of a copy of this order. We make it clear that we do not intend to give any direction to disturb the allotment Shri Tri Vikram Varma to AP cadre in 2004. It is for the concerned authority to take a decision with regard to the same."*

From the above, we gain an impression that the respondents have not set their house in order in dealing with the issue of proper maintenance of rosters as per rules/law.

XIII. Further the cadre Strength was increased from 78 to 97 for Telangana State vide notification dated 29.4.2016 of direct recruit IPS officers and the same was also published in the Gazette notification on 3.5.2016, while as the CSE results were published on 10.5.2016. Therefore the contention of the applicant is that the increased cadre strength has not been taken into consideration which marred his allotment to Telangana and that the letter of the Chief Secretary of Telangana addressing the 1st respondent on 16.6.2016 makes it obvious that the process of vacancy assessment began on 25.5.2016 ie after the cadre strength was increased. Respondents responded, averring that, as per DOPT letter dated 20.5.2016 the deficit weight has to be calculated as on 1.1.2016 which we find it to be correct. However, Rule 4 (2) of IPS (Cadre) Rules 1954 states as under:

> *The Central Government shall, at the interval of every five years, re-examine the strength and composition of each such cadre in consultation with the State Government or the State Governments concerned and may make such alterations therein as it deems fit:*

The respondents are to carryout cadre review every 5 years and with the last review being done as per the notification cited was on 16.6.2010, the relevant portion is extracted hereunder:

Authorized Cadre Strength of the Indian Police Service (as on 01.01.2014)

Sl. No.	***Cadre***	***Senior Duty Posts (SDP)***					***Total Sr. Duty Posts***	***Central Deputation Service***	***State Deputation Service***
		DG	***ADG***	***IG***	***DIG***	***SP***	***(SDP)***	***(CDR) (@ 40% of SDP)***	***(SDR) (@ 25% of SDP)***
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*10*
1.	*Andhra Pradesh*	*3*	*12*	*30*	*24*	*71*	*140*	*56*	*35*

Trainee Reserve	***Jr. Posts Reserve & Leave Reserve***	***Promotion Posts***	***Direct Recrt Posts***	***Total Authorised Strength***	***Cadre Schedule notified vide DOPT's Notification No. & Date***	***No. of Officers in position***		
(TR) (@ 3.5% of SDP	***(JRP & LR) (@16.5% of SDP)***	***(PQ) (33 1/3% of SDP+ CDR+ SDR+TR)***	***(DRQ)***	***(TAS) (PQ+DRQ)***		***Direct Recruit***	***Promotee***	***Total***
11	***12***	***13***	***14***	***15***	***16***	***17***	***18***	***19***
4	*23*	*78*	*180*	*258*	*No.11052/15/2010-AIS-II-A dt.**16.06.2010***	*138*	*69*	*207*

Hence the next review is due on 16.6.2015 and there are no details furnished in the reply as to why the cadre review was not done by the respondents by the said date. We presume that silence is acceptance since no contest would mean admission. The law in regard to cadre review has been laid by the Hon'ble Supreme Court in ***U.O.I v Hemraj Singh Chouhan*** in 2010 (4) SCC 290 as under:

> *"44. Concurring with the aforesaid interpretative exercise, we hold that the statutory duty which is cast on the State Government and the Central Government to undertake the cadre review exercise every five years is ordinarily mandatory subject to exceptions which may be justified in the facts of a given case. Surely, lethargy, in-action, an absence of a sense of responsibility cannot fall within category of just exceptions.*
>
> *45. In the facts of this case neither the appellants nor the State of UP has justified its action of not undertaking the exercise within the statutory time frame on any acceptable ground. Therefore, the delayed exercise cannot be justified within the meaning of 'ordinarily' in the facts of this case. In the facts of the case, therefore, the Courts hold that there was failure on the part of the authorities in carrying out the timely exercise of cadre review."*

The Hon'ble High Court of Bombay following the Hon'ble Apex Court judgment has held in WP no 2203 of 2013 as under :

> *"13. ..The Apex Court has clearly held that the statutory duty which is cast on the State Government and the Central Government to undertake the cadre review exercise every five years is ordinarily mandatory subject to exceptions which may be justified in the facts of a given case."*

Therefore, as per the legal principle laid down above, the cadre review had to be completed by 16.6.2015 but was procrastinated and the exercise was completed on 29.4.2016. The A.P State Re-organization Act 2014 has a clause under section 76 (5) of the act which reads as under:

> *(5) Nothing in this section shall be deemed to affect the operation, on or after the appointed day, of the All-India Services Act, 1951 (61 of 1951), or the rules made thereunder.*

Thus, the cadre review was to be done by June 2015 along with the distribution of the officers, under the A.P Re-organization Act, which was completed by March 2015 by the respondents. Although, there was no legal impediment for the respondents to conduct the cadre review, no reasons have been let known by the respondents for not conducting the cadre review on a belated date. Had the cadre review been done as per schedule the augmented vacancies would have facilitated the allotment of the Applicant to Telangana.

XIV. Besides, the respondents have admitted that the deficit weightage forms the basis for allotment of vacancies to the States. They do have a process to balance the excess/deficits which was explained in the reply statement and accordingly the weight deficit States are given priority

in allotment of the vacancies. In this context, it would be apt to observe that as on 1.1.2015 (A-4 of MA 528/2020) the State of Sikkim had a cadre strength of 22 and 21 officers were in position with a shortage of one officer, working out to a deficit of 4.5% in the cadre strength. Whereas in respect ofTelangana there were 62 officers working against 78 sanctioned strength with a deficit shortage of 16 officers and a deficit of 20.5%. The prudent decision would then have been to allocate the one vacancy to Telangana and not to Sikkim. In fact, the Chief Secretary of Telangana vide his letter dated 16.6.2016 to the 1st respondent has sought allocation of 10 addtional vacancies to Telangana State and to declare it as a deficit cadre, with a further request to allow willing officers on Inter State cadre deputation. Ironically on one hand the State of Sikkim did not ask for any vacancy and yet the respondents went ahead with the allocation of a vacancy and that to contravening CAP policy as well as the DOPT direction dated 20.5.2016. On the other hand, the State of Telangana was desperately asking for 10 additional vacancies before the cadre allocation was done on 28.12.2016 and yet they were not allotted. This reconfirms the fact that there was no effective consultation with the States and lack of policy adherence in the allotment of vacancies as required under CAP -2008. We are of the view that when the continuity of service was the basis to allocate a vacancy to Sikkim by the respondents, though not permitted under CAP -2008, what prevented the respondents to take a similar view in respect of the State of Telangana when there was frantic demand for allocation of vacancies and to even permit officers on inter cadre deputation. Different decisions on the same issue in contravention of rules is objectionable and not maintainable as per the rule of law.

The rule of law is innate in the constitutional principle of equality. Rule of law is satisfied when laws are applied equally without any unreasonable distinction. When the instructions and policy are vividly clear that when there is no demand no vacancy is to be allotted, allotting one to Sikkim where there was no demand and not allotting additional vacancies to Telangana by conducting cadre review in time and when there was acute demand, would tantamount to not applying law equally to the 2 States under reference and hence a gross infringement of the rule of law.This is further reinforced from the fact that by applying the formula of cadre allocation of multiplying the deficiency in a cadre by 150 and dividing by the sum of deficiency in all cadres, as explained at page 34 of the OA, we arrive at the number of officers to be allotted to a State. Applying the said formula the number of officers to allotted against CSE -2015, to Sikkim is 0.246 and to Telangana it is 3.94. By applying the rounding of principle the number of officers to be allotted would be nil for Sikkim and 4 for Telangana. Hence even as per the formula of the respondents there was scope for 4 vacancies to be allotted to Telangana. This was not countered effectively by the respondents with facts and figures except for making general submissions which lack gravity. Had the 4 vacancies were to be allotted to Telangana, the applicant would have had a bright opportunity to be allotted to Telangana. Therefore, it is explicit that an irrational distinction between the 2 States in vacancy allocation is seen in its full bloom. We draw support for making the above remarks from the observations of the Constitutional Bench of the Hon'ble Apex Court ***in M. Nagaraj vs. Union of India*** [(2006) 8 SCC 212] at 277 in Para 118, as under:

"The constitutional principle of equality is inherent in the rule of law. However, its reach is limited because its primary concern is not with the content of the law but with its enforcement and application. The rule of law is satisfied when laws are applied or enforced equally, that is, even-handedly, free of bias and without irrational distinction. The concept of equality allows differential treatment but it prevents distinctions that are not properly justified. Justification needs each case to be decided on case-to-case basis."

XV. If the additional vacancies were allotted because of the apparent weight deficit of Telangana, the allotment of the applicant to Telangana would have improved remarkably with the change in roster points in favour of the applicant as was brought out at pages 35 to 36 of OA. In addition, the Telangana State has created a number of new districts which in turn call for more number of vacancies to be allotted and 1/3rd of the posts in the Superintendent of Police to which grade the applicant presently belongs to, are vacant as per the IPS civil list of 2021 which we have perused. Thus the weight deficit in the IPS cadre is on a steep rise for the State of Telangana which required appropriate appreciation by the competent authority but unfortunately it was not to be. The respondents only one line answer was that the vacancies on 1.1.2016 were taken as per DOPT were taken but they did not explain the deficiency in the decision making process as was brought out at length in the paras supra in conducting the cadre review in time as required under rules/law. However, in view of a slew of mistakes committed by the respondents as discussed supra, the applicant was wronged in the allotment of the Cadre of Telangana. It is well established in law that the mistake of the respondents should not recoil on the employee as observed by the Hon'ble Apex Court in a cornucopia of cases 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 recent 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."*

More or less, a similar view was held by the Hon'ble Apex Court in ***Kusheswar Prasad Singh v State of Bihar*** and ors in (2007) 11 SCC 447 relying on its own judgments in U.O.I & ors v Major General Madan Lal Yadav (Retd) in (1996) 4 SCC 127 and Mritunjoy Pani and Anr v Narmanda Bala Sasma & Anr in AIR 1961 SC 1353.

XVI. The main forte of defense of the respondents is reliance on the Hon'ble Supreme Court judgment 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.*‖

Hence the respondents assert that in accordance with the above judgment the applicant has no right to seek a cadre of his choice. However, in C.M. Thri Vikrama Varma v. Avinash Mohanty and Others, (2011) 7 SCC 385, the Hon'ble Supreme Court while dealing with a dispute relating to cadre allocation on the basis of a declared policy contained in the letter dated 31.05.1985, has 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 Hon'ble Supreme Court agreed with the finding of the Hon'ble 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 Hon'ble 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. From the judgment the legal principle that emerges is that the right to fair and equitable treatment in cadre allocation under Article 14 & 16 of the Constitution cannot be unheeded to by trespassing the rules and policy. Therefore, it is the desecration of CAP- 2008 and the IPS cadre rules vis-à-vis the applicant resulting in action violative of Articles 14 & 16 of the Constitution 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. The other judgment cited by the respondents is of the Hon'ble Apex Court in U.O.I v Mhathung Kithan & ors wherein it has been held that at least 66.2/3% of the DR (Direct Recruit) allocated to a State should be from outside the State. There is no dispute in this regard, but what is disputed is how well the respondents have followed the rules and policy guidelines in cadre allocation to a DR outsider candidate to the State of Telangana. Therefore, the cited judgment lacks relevance to the

dispute and would not be of much help to the respondents to further their case.

XVII. The IPS cadre allocation rules, CAP -2008 and the DOPT order dt. 20.5.2016 raise a legitimate expectation among the candidates that the respondents would follow the laid down norms and therefore they can legitimately expect that a certain cadre, would in all probability, will be allotted. Anticipating State action implies objectivity and transparency in decision making and this forms the basis of legitimate expectation. Based on a given input the output should be calculable like for instance in the instant case, when cadre allocation rules, CAP -2008 and DOPT letter dated 20.5.2016 are applied, the proximate cadre allocation should be facilitated to be anticipated. However, if the norms laid are not followed, subjectivity substitutes objectivity and in the process legitimate expectation would be belied, as in the instant case where we found that policy and rules have not been adhered the way they should, resulting in a grievance in regard to the allotment. Belying a legitimate expectation is not encouraged under law as observed by the Hon'ble Supreme court in ***Food Corporation Of India vs M/S. Kamdhenu Cattle Feed,*** on 3 November, 1992 in Equivalent citations: AIR 1993 SC 1601, JT 1992 (6) SC 259, 1992 (3) SCALE 85, (1993) 1 SCC 71, 1992 Supp 2 SCR 322, as under:

> *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.

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.

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.

XVIII. Respondents have taken a stand that the AIS has been referred to in Article 312 of the Constitution and that AIS officers are liable to serve under the union or any of the States. We agree with the same. However, while ordering AIS officers to serve the union or any of the States, their allocation has to be effected by following rules and policies framed for the purpose. On following the rules and allotting the AIS officers to the States, no questions would be asked. In the instant case the IPS Cadre Allocation Rules, 1954, CAP-2008, DOPT memo dated 20.5.2016 which are the torch bearers of allocation process, have been violated and therefore any action which is not in congruence with the rules will fail legal scrutiny. Hon'ble Supreme Court has held that action in respect of issues covered by rules should be invariably regulated by the rules and any deviation from the rules should be curbed and snubbed 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.*

Therefore, the allotment of Sikkim cadre to the applicant against rules being out of step with the above directions of the Hon'ble Apex Court, the order of allocation allocating the applicant to Sikkim will not hold good.

XIX. As was pointed out by us in the initial paras supra, cadre allocation is a gigantic exercise with inter play of many factors to arrive at the justifiable allocation. The application of rules and the relevant policy has to be proper so that the cadre allocation done is fair, equitable, objective, non-discriminative and transparent as was declared to be done by the respondents.After delving into the relevant details, we found that the decisions of the respondents to be mostly arbitrary, be it cadre allocation to non-members of IPS, maintenance of rosters, consultation with the States, allocation of vacancies, cadre review etc. We are forced to make this concrete observation, since we found that the respondents relied on irrelevant facts like clauses 7 (a) to (d) of CAP- 2008 which have no perceptible impact on the dispute while ignoring the relevant facts like roster maintenance, vacancy, demand, allocation norms, etc in allocating the cadre to the applicant. Decisions are to be properly reasoned, as for the example we find no rational in the respondents stating that to ómaintain continuityô a vacancy was allotted to Sikkim which is neither provided for in the rules or CAP -2008. Lack of transparency in the decision making process was evident as was demonstrated in not sharing the innocuous Roster details despite 8 attempts by the applicant through RTI. Transparency is an intrinsic part of Administrative law and any weakness in this regard calls for serious introspection. Executive action has to flow with the stream of rules and policy guidelines, whereas in the instant case, we

found that IPS cadre allocation rules, CAP- 2008 etc were flagrantly disregarded. Reasons given for deviating from the rules were not justifiable and in regard to some issues like cadre review, they were not forthcoming. Even if discretion is vested in an authority, such discretion should not be exercised in an arbitrary manner, as was seen in the instant case of the Director, National Police Academy directing the applicant to report at Sikkim in an arbitrary manner without serving the speaking order on the applicant in accordance with the order of the Tribunal and in violation of the observation of the Hon'ble Apex Court in Anoop Kumar vs State Of Haryana on 15 January, 2020 in Civil Appeal No.315 of 2020 wherein it was held that administrative power has to be exercised subject to fairness and reasonableness.While passing orders of determinative nature, good governance demands adherence to the principles of fairness. Fairness was absent in dealing with the desperate request of the Chief Secretary to allot additional vacancies though there was scope to do so as was seen from the transfer of a vacancy from Manipur by the respondents. On the other hand allotting a vacancy to Sikkim though not asked for is difficult to understand in the paradigm of fairness. Uncertainty in decision making which ought to have been avoided is seen in the instant case, wherein it is observed that the respondents have adopted different standards in different situations though they had scope to be consistent in their approach. The different stands of R-1 & R-2 in defining a member of the service, taking contradictory stands in different OAs before the Tribunal/ High court in similar issues are a few examples of the uncertainty in the approach of the respondents in dealing with cadre allocation. The approach of the respondents on different parameters of decision making discussed in this para would compel us to

the conclusion that the respondentsô decision in not acceding to the request of the applicant was a case of discrimination and arbitrariness. We are supported by the observations of the Honôble Supreme Court in ***Asha Sharma v. Chandigarh Admn., (2011) 10 SCC 86 : (2012) 1 SCC (L&S) 354***, as under, in lacing our conclusion with the above remarks.

> *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*
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> *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.*

XX. From the above it requires no reiteration that due to the improper approach of the respondents not backed by rules/law, the applicant was not allotted to the cadre he sought and that too for no fault on his behalf. By not being at fault the applicant should not be penalized as

observed by the Hon'ble Apex Court in ***Mohd. Ghazi vs State of M. P - 2000(4) SCC 342*** as under:

it is settled law that no one should be penalized for no fault of his

XXI. Hence a reconsideration of the request of the applicant to be allotted to the State of the Telangana is a fair proposition in the light of the above legal principle postulated by the Hon'ble Apex Court. 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 consultation with the State Governments, demand based vacancy assessment, adherence to rules/policies etc, has led to a manifestly erroneous decision in regard to the allocation of cadre to the applicant. A decision which is patently erroneous stands vitiated.The speaking order 24.8.2019 is silent in regard to the non-adherence of rules and in respect of the maintenance of rosters for the States of Telangana/ the residual State of A.P and its content was mostly drawn from the reply statement filed in OA 753/2017 without giving any independent reasoning by application of mind for rejection of the request made. Power has been exercised on the basis of inaccurate facts as detailed in the preceding paras. Our above remarks are supported by 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), as under:

> *The Court further added the grounds of non-application of mind to relevant factors and non-existence of facts and noted thus:*
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> > *"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 the words of his Lordship Justice Sri Krishna Iyer in Maneka Gandhi**, [1978 AIR 597]** as under:

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

XXII. To sum up, after the traversing the length and breadth of the dispute to its minutest detail as is required by the Tribunal and after weighing the contentions of both the parties with a sense of equanimity and responsibility, we need to hold that reasonableness and justness were missing on part of the respondents in declining the relief prayed for by the applicant. Rule violations were copious and distancing from the policy was extensive as illustrated in the paras supra. Reasonableness and justness are necessary embellishments in the exercise of administrative power as observed 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) no18321 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.*

The respondents have rightly pointed out in their reply statement that no candidate has a right to seek a particular cadre unless he is able to prove that the allocation is arbitrary, discriminative and is injurious to Articles 14 & 16 of the Constitution. The decisions of the respondents on multiple factors from consultation to cadre review, discussed at length in the foregoing paras, and requiring no reiteration, have been arbitrary, opaque and discriminative, thereby offending Articles 14 and 16 of the Constitution. A decision which offends Articles 14 & 16 of the Constitution is *void ab initio* and therefore, the allocation of the applicant to Sikkim too. Further, we also observe that the applicant has not indulged in an adversarial litigation inasmuch as his allocation to the cadre of Telangana would not effect other candidates.

XXIII. 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 our effort to settle 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:*
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> > *"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 defined 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.*

After prescribing the rules/ policy which is the sword used by the respondents to formulate and implement decisions, respondents taking decisions violating them would make such decisions liable to perish by the very same sword. The instant case is of such nature and therefore the cadre allocation to the applicant against the rules/policy has to perish.

XXIV. In view of the aforesaid circumstances, where we found that rules and law were not followed in deciding the cadre allocation of the applicant, the impugned order dated 24.8.2019 is set aside and also the notification dated 28.12.2016 to the extent of the applicantôs allocation to Sikkim as at Sl. 54 of the notification is set aside. We hold that since the law and rules are favorably inclined towards the applicant, the relief sought has to be considered. The applicants in OA Nos.1241/2014, 230/2020 & OA 1037/2019 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) 5363-64 of 1997 by the Honôble Supreme Court to abide by the observation of the

Coordinate Bench/ superior judicial fora, 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 contradicted 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.

XXV. 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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