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**RESERVED**

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.522 OF 2006  
ALLAHABAD THIS THE 15<sup>th</sup> DAY OF *September* 2008

**HON'BLE MR. N. D. DAYAL MEMBER-A**  
**HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J**

1. Ms. Radhika Jha, IAS,  
District Planning Officer (West Sikkim),  
Sikkim Presently residing 238/172 Avenganj.  
Allahabd.
2. Nitesh Kumar Jha, IAS,  
District Development Officer (West Sikkim),  
Geyzing, Sikkim.

..... Applicants

By Advocate : Shri S. K. Om

Versus

1. Union of India through the Secretary Personnel,  
Department of Personnel & Training,  
Ministry of Personnel, Public Grievance &  
Pensions, North Block, New Delhi.
2. The Cabinet Secretary, Cabinet Secretariat,  
Government of India, Rashtrapati Bhawan,  
New Delhi.

..... Respondents

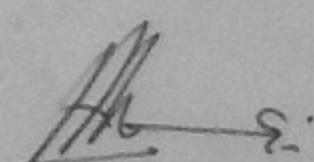
By Advocate : Shri Saumitra Singh

**ORDER**

**HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J**

The applicant has sought for the following  
reliefs:-

- "(i) to issue a writ, order or direction in the nature of certiorari quashing and setting aside the order No.13017/14/2003-AIS(1) dated 20<sup>th</sup> April, 2005 transferring applicant No.2 to the Sikkim cadre as also Order No.13017/14/2003-AIS(1) dated 19<sup>th</sup> July, 2005 and Order No.22012/55/2005-AIS(1)-Part-I dated 14.12.2005 rejecting their representations against the transfer and direct that both the applicants will be posted to a third cadre which is willing to accept them both.
- (ii) To issue a writ, order or direction in the nature of mandamus commanding the respondents to decide the applicants' representation dated 20.09.2005 by a speaking and reasoned order.
- (iii) To issue a further writ, order or direction in the nature of mandamus commanding the respondents to grant inter-cadre transfer of the applicant



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and consider their transfer to the State of Uttranchal.

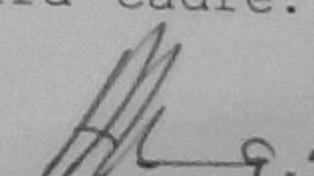
(iv) To issue any other writ, order or direction which this Tribunal may deem fit and proper in the facts and circumstances of the case."

2. The brief facts of the case are that both the petitioners qualified Civil Services Examination for the year 2001 with ranks of fifteen and ten respectively. Petitioner No.1 was allotted Sikkim Cadre whereas Petitioner no.2 was allotted Manipur-Tripura joint cadre.

After their marriage on 11.12.2002, in terms of the policy then in force the petitioners applied for a cadre transfer to one single cadre in March 2003. On the basis of the application made by them the respondents called for comments from their parent cadres. The petitioners have learnt that the Government of Sikkim refused to accommodate petitioner no.2 in Sikkim for the reason that being a small cadre it would be difficult for them to accommodate two officers from the same batch. However, the State Government expressed its no objection to the petitioner no.1 being transferred to a third cadre Annexure 7/P 39.

The State Governments of Manipur and Tripura also expressed their inability to accommodate petitioner no.1 but had no objection if petitioner no.2 was shifted out of their cadre. Copies of the communications sent by the state Governments are enclosed as Annexure 8/P 40 and Annexure 9/P 41.

Thereafter as per the then existing guidelines the petitioner applied for transfer to a third cadre.

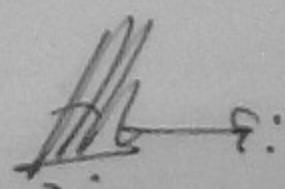


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In August 2003 they opted for Gujarat, Chattisgarh or Uttarakhand in that states because all the states had large deficits in their cadres. As per the policy then in force the Government of India wrote to the Governments of Gujarat, Chattisgarh and Uttarakhand for their consent vide letter dated 13<sup>th</sup> October 2003 stating that the proposed cadre transfer is covered under the policy. (Annexure 11/P 45) and incidentally all the three Governments agreed to accept the petitioners in October/November 2003 itself.

Thereafter the file for cadre transfer of the petitioners to Gujarat was moved and after clearance from the Ministry of Personnel it was forwarded to the Cabinet Secretariat for approval of the appointments committee of the cabinet (ACC). While the petitioner's case was not being processed, in another case where the spouses Sh. K M M Prasanna and Ms. Vijay Laxmi Bidari who were originally from Manipur-Tripura and Assam-Meghalaya and who had applied for the transfer of cadre in January 2003 on the same ground of marriage was considered and necessary orders were passed in December 2003 transferring the couple to Maharashtra cadre with the approval of the ACC. Copy of the order dated 31.12.2003 issued by the respondents in this regard is enclosed as Annexure 13 P/47.

When the case of the petitioners was submitted to the ACC for transferring the petitioners to Gujarat, the petitioners came to know that the file was kept pending for more than six months and eventually was



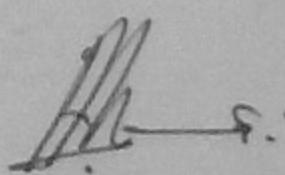
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returned for the proposal to be approved by the new Government which assumed office in the meanwhile.

However, again the whole process was initiated from the level of Desk officer in Department of Personnel and Training, Government of India (DOPT) up to appointments committee of Cabinet (ACC) but again it was returned on the ground that new policy is being framed. Here it is again pointed out that since petitioners' was old case new policy has nothing to do with that and the same was to be governed by the existing/old guidelines in as much as new policy should be merely prospective and no retrospective but without any valid justification there case was rejected on arbitrary grounds.

Yet another case pertaining to Sh. Kirlosh Kumar and Ms. Pooja Kulkarni who had also applied for cadre transfer on the same grounds of marriage and who were originally allotted the Manipur-Tripura and Karnataka cadres respectively were eventually transferred by the respondents to the Tamil Nadu cadre as per their order in February 2005. Copy of the order issued in this regard is Annexure 14 P/49.

The case was thereafter processed for their posting to Chattisgarh as the respondents felt that there was acute shortage of officers in the cadre. The case was accordingly put up to the ACC in August 2004 but was returned with a query as to the reasons for refusal of Manipur-Tripura and Sikkim which were not resorted to in other cases.

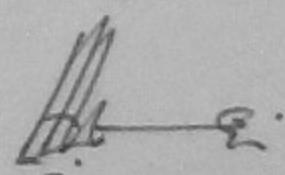


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Respondents on the basis of their wrong belief that there were only 22 officers in position against the total strength of 35 and that there were number of vacancies in the Sikkim cadre thereafter wrote to the Government of Sikkim urging them to accept petitioner no.2 on the ground that there was no reason for their refusal. In fact in Sikkim there were already 32 officers against 35 at the given point in time. Copy of a chart setting out the strength of the various is Annexure P/11.

The Government of Sikkim in its reply stated that they were not in a position to accept both the applicants because of it being a small cadre and due to cadre management problems that would arise in case two officers of the same batch were transferred to the cadre. However, in view of the insistence by the respondent they would accept petitioner no.2 only on condition that no officer is allotted in the year 2005. Copy of the letter dated 5.2.2005 is Annexure 17 P/57.

In view of the conditional acceptance by Sikkim which did not fulfill the requirement of "concurrence" as mentioned in IAS Cadre Rules 1954 Section 5(2), the DOPT re-submitted the proposal for transfer of the applicants to Chattisgarh where there was (and still is) an acute shortage of officers for ACC approval in February 2005. However, it is learnt that the ACC instead of approving the proposal as submitted changed it in an arbitrary manner and granted approval for transfer of petitioner no.2 to Sikkim despite the

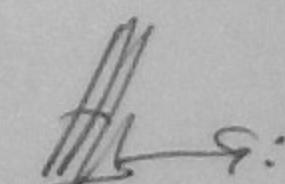


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refusal of the State Government to accept both the officers. Copy of the said order dated 20.04.2005 is one of the impugned orders. Thus the petitioners have been singled out for adverse action and foisted on a State Government which was reluctant to accept them in the first place while other officer couples similarly situated have been given transfer to a third cadre of their choice.

Here it is important to mention that on the insistence made by the respondents Government of Sikkim vide its letter dated 5.2.2005 gave conditional acceptance to the effect that in the year 2005 no direct recruit officer shall be posted in Sikkim for which respondents initially agreed and transferred Petitioner no.2 to Sikkim cadre against which petitioners protested and made representations to the respondents but without any relief. However, in the year 2005 respondents breached the condition put forward by the Government of Sikkim and allocated one officer namely Sh. A K. Singh against which Government of Sikkim protested vide letter dated 10.01.2006 page 72.

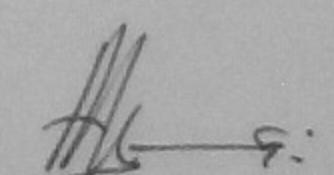
The representations made by the petitioners have been rejected by the respondents by non-speaking orders without assigning any reason. It is pointed out that later on Hon'ble Principal Bench has also directed the respondents to provide the speaking order (Annexure 21/P67) but inspite of that no reasons at all have been assigned, hence prayed for the reliefs.





3. On notice the respondents have appeared and filed the counter affidavit, the sum and substance of the respondents statement in the counter affidavit is that the applicant no.2 Shri Nitesh Kumar Jha had willingly applied for inter-cadre transfer to Sikkim Cadre on the basis of his marriage with Smt. Radhika Kha and applicant no.1. He had also requested for district training in state of Sikkim. It is respectfully submitted that applicant no.2 was permitted to do his district training in the state of Sikkim. After the receipt of consent from Government of Sikkim, the inter-cadre transfer of applicant no.2 was ordered as per policy. In view of this, the applicants are not entitled for any relief. It may be submitted that the purpose of policy of cadre transfer on the basis of marriage is that the husband and wife are brought on one cadre. The married couple cannot misuse this policy for getting a desirable cadre. Thus, the present original application of the applicants before the Tribunal is misuse of the policy of change in cadre based on the marriage.

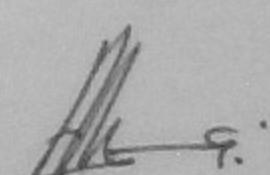
It is submitted that the applicants have wrongly filed the present original application before this Tribunal. The impugned orders have been passed by respondent no.1 as such this Tribunal has no jurisdiction over the case, as such the present original application is liable to be dismissed on the ground jurisdiction alone. It is further submitted that as the applicants are posted at Sikkim and the orders have been passed by respondent no.1, as the



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proper jurisdiction of the case lies with Tribunal situated at Sikkim or Manipur or Tripura or New Delhi.

That in reply to the contents of paragraph no.4(5) of the original application, it is submitted that the applicant no.2 had applied for inter-cadre transfer to Sikkim on the basis of marriage to Smt. Rashika Jha i.e. applicant no.1 borne on Sikkim cadre. In fact he had also requested for district training in the State of Sikkim. Later, applicant no.1 had also applied for inter-cadre transfer to Manipur & Tripura Cadre. The Government of Sikkim initially expressed reservations about accommodating applicant no.2. However, when matter was pursued with Government of Sikkim requesting it to explain the reasons for not accepting applicant no.2 on inter-cadre transfer from Manipur & Tripura to Sikkim on the ground of marriage, even though there was deficit of IAS officers in the State, the Government of Sikkim explained that it did not give consent earlier because more than one officer of the same seniority in a small cadre create problem for cadre management but added that it reconsidered the matter and agreed to accept applicant no.2 to Sikkim cadre on the condition that Government of India would not allocate a direct recruit in 2005. The Government of India accordingly issued the orders for inter-cadre transfer of applicant no.2 based on the consent of the Government of Sikkim. As regards the condition of not allocating one IAS Officer in 2005, Government of India in fact did allocate one officer to State of Sikkim in the year 2005 and Sikkim



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Government was also informed that it should accept at least one officer every year. Sikkim Government has accepted the officer so allocated. As per existing policy of Government of India, Sikkim is a deficit state and it cadre gap had to be filled by 2009-2010.

That in reply to the contents of paragraph No.4(6) of the original application, it is submitted that the Government of India pursued the matter with Government of Sikkim which accepted the applicant no.2 and accordingly inter-cadre transfer was allowed. It is submitted that existing guidelines for inter-state deputation cannot be allowed to be misused for getting a "desired" cadre. Therefore, it was/is not proper on the part of the applicants to insist on allotment of third cadre given the fact that the applicant no.2 had himself agreed for transfer to Sikkim cadre. Further, the Government of India was not, as a matter of Policy, inclined to permit a situation wherein the officers engineer rejection from their respective "undesirable" cadres to as to get a "desired" cadre.

That in reply to the contents of paragraph no.4(7) of the original application, it is submitted that on the subject of inter-cadre deputation, appointment committee of Cabinet (hereinafter referred to as ACC) is the final authority and only after the approval of ACC, the order for inter-cadre transfer are issued. Unless ACC approved the proposal of inter-cadre deputation, it had no legal validity. Further, Government of India has overriding powers to decide the matter under the residuary rules.



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That in reply to the contents of paragraph No.4(8) of the original application, it is submitted that inter cadre deputation is decided at the level of ACC in the Central Government. Any step taking prior to that can at best be considered as processing of the case and cannot be treated as decision of the Government. It is admitted that Government was in the process of formulating a policy wherein the Central Government would itself decide the "third cadre" so as to avoid misuse of the policy by married couples for getting a "desired" cadre.

That in reply to the contents of paragraph no.4(9) of the original application, it is submitted that the case of the applicants was kept pending with a decision that it is to be decided as per new policy. In fact at the time of approving the case of Mr. KMM Prasana and Mrs. Vijay Laxmi Bidari itself, it was decided to examine whether in cases of change of cadre on the grounds of marriage of two All India Service Officer, the question of choice of third cadre could be left to be decided by the Government based on functional consideration instead of leaving it to the officers' choice in which even an element of manipulation to secure refusal by the cadre of allocation of both spouses cannot be ruled out.

4. The learned counsel for the applicant has filed the rejoinder affidavit.

It may further be stated that in pursuance to the options invited by the respondents, petitioners gave

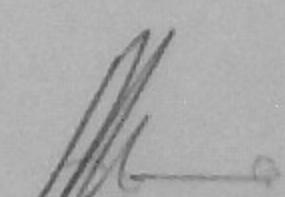


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their options for third cadre namely Uttranchal, Chattisgarh and Gujarat, as all these States were having deficit cadres and are in need of IAS Officers and for that purpose, these Governments had even requested the Government of India to give them more officers. However, pursuant to options invited by respondents and requests made by petitioners, all the three States accepted to accommodate the petitioners in October 2003 itself but even then the requests made by petitioners for their adjustment in common cadre has been arbitrarily rejected without assigning any reason. It is important to mention here that even Government of India acknowledged at that point of time that the said cadre transfer was covered in the policy in its communication to these state governments.

Here, it may also be mentioned that in exactly similar circumstances, several other couples made their requests for their transfer to the common cadre. The details of which has already been disclosed in the OA but for convenient perusal of this Hon'ble Court, the details of some of couples are as follows:-

1. Ms. Vijay Laxmi Bidari, IAS (Assam-Meghalaya) and K.M. Prasanna, IPS (Manipur-Tripura) to Maharashtra.
2. Ms. Sowjanya, IAS (Sikkim) and Dilip Javedkar, IAS (Manipur-Tripura) to uttranchal-(They are from the AS 2003 batch and the case is exactly similar to those of the applicants).
3. Ms. Shruti Singh, IAS (Sikkim) and Mr. ASHISH Chaudhary, IPS (Jammu & Kashmir) to Punjab-(They are from the 2004 batch).
4. Deepika Suri, IPS (Bihar) and Nikunj Srivstava, IAS (J&K) to Madhya Pradesh.

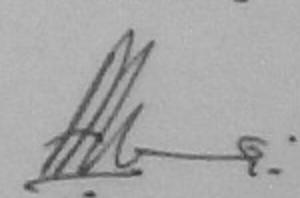




5. Priyanka Verghese, IFS (Nagaland) and Saifullah, IFS (Jammu & Kashmir) to Andhra Pradesh. (They are from the 2003 batch).
6. Pooja Kukarni, IAS (Maharashtra) and Kirlosh Kumar IAS (Manipur-Tripura) to Tamil Nadu. (This case was cleared at the same point of time).
7. Lots of IAS couples have recently been transferred to third cadres and innumerable couples were transferred in the past to third cadres of their choice.

It is specifically stated that according to petitioner's information, apart from aforementioned officers, there are large number of other officers, who have been transferred to third common cadre by relaxing the Rules but the details thereof is not available and as such, deponent is handicapped in this regard. It is, however, stated that a perusal of list of officers mentioned in paragraph under reply as well as already stated in original application would show that large number of officers have been transferred to common cadre before and after the request made by petitioners but only the petitioners have been singled out.

The malafide intentions of the respondents are clearly shown in the fact that the GOI pressurized the Govt. of Sikkim to accept petitioner no.2 stating false facts that Sikkim is a hugely deficit cadre as it had only 22 officers in position against a cadre strength of 35. This was absolutely incorrect as there were 32 officers in position at that point of time and not 22 as stated by DOPT. Govt. of Sikkim had already stated their inability

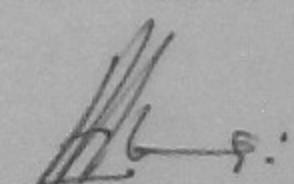


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to accept petitioner No.2 earlier. It is further incorrect to allege that Sikkim is a hugely deficit State (against a strength of 35 it had 32 officers in place) as there are a lot of states which are hugely deficit and it is also important to mention that Govt. of Sikkim has never asked Govt. of India for more officers as is the case with Governments of Chattisgarh and Uttranchal. It is also a point for consideration by the Court that what was the special reason about the parallel case of Ms. Vijai Laxmi Bidari and K.M. Prasanna (being processed at the same time) and many other cases, that the respondents did not pressurize the deficit cadres of Manipur-Tripura and Assam Meghalaya to accept the officers as was done in the case of applicants.

Other grounds are similar to the grounds taken in the OA. The learned counsel for the respondents has filed the supplementary affidavit on 11.07.2008 reiterating the same contentions taken in the counter affidavit, the learned counsel for the applicant has also filed supplementary rejoinder reply for the same on the same day and the matter was heard finally and the arguments are concluded by both the sides.

5. We have heard the learned counsel for the parties and perused the pleadings and the materials on record. The respondents have taken up the contention with regard to the jurisdiction of this Tribunal stating that this OA was filed by the applicants wrongly and as such it is to be dismissed. The applicants have



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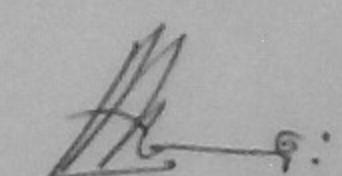
stated in the rejoinder that the applicant no.1 is a permanent resident of Allahabad and the cause of action accrued in the State of Uttranchal, and further the applicants have produced the copy of the letter dated 01.11.2003, in which Government of Uttranchal has agreed to accept the applicants to the proposed inter cadre transfer to Uttranchal of the applicants, in view of this it is stated the cause of action arose within the jurisdiction of this Tribunal and the OA is maintainable. To decide this issue the proposition of law laid down by the Hon'ble Supreme Court with regard to the cause of action in the case of Navinchandra N. Majithia Versus State of Maharashtra and Others reported in (2000) 7 SCC 640 is as follows:-

18. In legal parlance the expression "cause of action" is generally understood to mean a situation or state of facts that entitled a party to maintain an action in a court or a Tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person. (Black's Law Dictionary)

19. In Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment.

20. In "Words and Phrases" (4<sup>th</sup> Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts which give a party a right to judicial interference on his behalf".

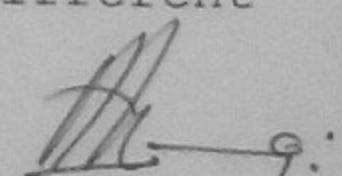
In view of the above and the relief claimed by the applicants has direct nexus with their posting to Uttranchal state which has agreed to accept the applicants and express its no objection to the proposed inter cadre transfer of the applicants which



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is evident from Annexure 24 dated 01.11.2003 and as such in view of Rule 6 of CAT (Procedure) Rules 1987 this Tribunal has jurisdiction over Uttranchal state, and having regard to the facts and circumstances of the case we reject the contention of the respondents with regard to jurisdiction and maintainability of this OA and the OA will be considered on its merits treating this Tribunal has jurisdiction to decide the same. To appreciate the rival contentions of the parties on merits, it is relevant to keep in mind the proposition of law laid down by the Hon'ble Supreme Court with regard to equality before law, arbitrariness, unfairness and unreasonableness, in the case of Amita Versus Union of India and Others reported in (2005) 13 SCC 721. Relevant paragraph reads: -

"11. ....Article 14 of the Constitution guarantees to every citizen of India the right of equality before the law or the equal protection of law. The first expression "equality before the law" which is taken from the English Common Law, is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. It also means that amongst the equals the law should be equal and should be equally administered and that likes should be treated alike. Thus, what it forbids is discrimination between persons who are substantially in similar circumstances or conditions. It does not forbid different

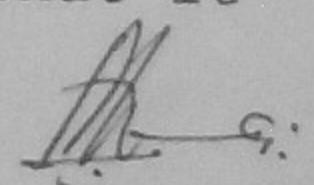


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treatment of unequals. Article 14 of the Constitution is both a negative and positive right. Negative in the sense that no one can be discriminated against : any body and everyone should be treated equals. The latter is the core and essence of the right to equality and the State has the obligation to take necessary steps so that every individual is given equal respect and concern which he is entitled to as a human being. Therefore, Article 14 contemplates reasonableness in State action, the absence of which would entail the violation of Article 14 of the Constitution.”.

**AIR 1991 Supreme Court 536 (Vencil Pushraj Vs. State of Rajasthan) :**

“21. The preamble of the Constitution of India resolves to ensure to all its citizens justice, social, economic and political; and Equality of status and opportunity. Every State action must be aimed at achieving this goal. Part IV of the Constitution contains 'Directive Principles of State Policy' , which are fundamental in the governance of the country and are aimed at securing social and economic freedoms by appropriate State action which is complementary to individual fundamental rights guaranteed in Part III for protection against excesses of State action, to realize the vision in the Preamble. This being the philosophy of the Constitution, can it be said that it



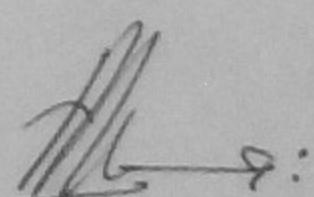
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contemplates exclusion of Art. 14- non-arbitrariness which is basic to rule of law- from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the Constitutional Scheme to accept the argument of exclusion of Art. 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief , which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but stand and form contracts between unequal.”.

AIR 1974 Supreme Court 555 (E.P. Royappa Vs. State of Tamil Nadu and another):

“86. It is also necessary to point out that the ambit and reach of Article 14 and 16 are not limited to cases where the public servant affected has a right to a post. Even if a public servant is in an officiating position. He can complain of



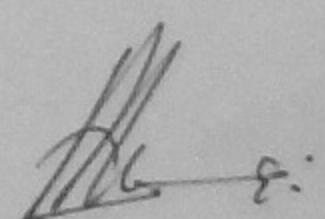
violation of Art. 14 and 16 if he has been arbitrarily or unfairly treated or subjected to malafide exercise of power by the State machine.. It is, therefore, no answer to the charge of infringement of Articles 14 and 16 to say that the petitioner had no right to the post of Chief Secretary but was merely officiating in that post. That might have some relevance to Act. 311 but not to Articles 14 and 16. We must, therefore, proceed to consider whether the transfer of the petitioner first to the post of Deputy Chairman and then to the post of Officer on Special Duty was arbitrary, hostile and in mala fide exercise of power. What was the operative reason for such transfer: was it the exigencies of public administration or extra administrative consideration having no relevance to the question of transfer? Was the transfer to the post Deputy Chairman or Officer on Special Duty so irritation or unjust that it could not have been made by any reasonable administration except for collateral reasons? These are the questions which call for our consideration.

87. Now, two important considerations must weigh with us in determining our approach to these questions. First, the post of Chief Secretary is highly sensitive post. It is a post of great confidence- a lynchpin in the administration- and smooth functioning of the administration requires that there should be complete rapport and



understanding between the Chief Secretary and the Chief Minister. The Chief Minister as the head of the Government is in ultimate charge of the administration and it is he who is politically answerable to the people for the achievements and failures of the Government. If, therefore, for any valid reason the Chief Secretary forfeits the confidence of the Chief Minister, the Chief Minister may legitimately, in the larger interests of administration, shift the Chief Secretary to another post provided of-course that does not involve violation of any his legal or constitutional rights. There can be no question in such a case as to who is right and who is wrong. The displacement of the Chief Secretary from his post in such a case would not be arbitrary and it would not attract the inhabitation of Article 14 and 16. It may, however, be pointed out that such an action would not, we think, ordinarily be taken except for the most compelling reasons, because if resorted to without proper justification, it would tend to affect the political neutrality of the public service and lead to demoralization and frustration amongst the public servants.”.

AIR 1984 Supreme Court 1361 (A.L. Kalra Vs. The Project and Equipment Corporation of India Ltd):



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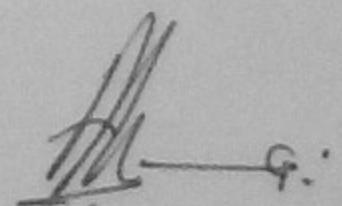
"17. Before we deal with the contentions raised on behalf of the appellant, it is necessary to dispose of a contention having a flavour of a preliminary objection raised by Mr. Lal Narain Sinha on behalf of the respondent-corporation. It was urged that in the absence of any specific pleading pointing out whether any one else was either similarly situated as the appellant or dissimilarly treated the charge of discrimination cannot be entertained and no relief can be claimed on the allegation of contravention of Art. 14 or Art. 16 of the constitution. It was submitted that the expression discrimination imports the concept of comparison between equals and if the resultant inequality is pointed out in the treatment so meted out the charge of discrimination can be entertained and one can say that equal protection of law has been denied. Expanding the submissions, it was urged that the use of the expression 'equality' in Art. 14 imports duality and comparison, which is predicated upon more than one person or situation and in the absence of available material for comparison, the plea of discrimination must fail. As a corollary, it was urged that in the absence of material for comparison evaluation not only the charge of discrimination cannot be sustained but the executive action cannot be struck down on the ground that the action is *per se* arbitrary. Proceeding along, it was urged that making law is



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a matter of legislative policy and the degree of reasonableness in every such law is equally a matter of policy and policy of the legislature is not judicially reviewable on the specious plea that it is either arbitrary or unreasonable.

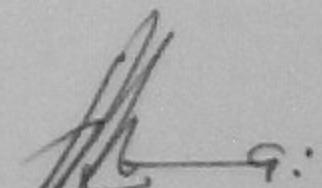
18. It is difficult to accept the submission that executive action which results in denial of equal protection of law or equality before law cannot be judicially reviewed nor can it be struck down on the ground of arbitrariness as being violative of Art. 14. Conceding for the present purpose that legislative action follows a legislative policy and the legislative policy is not judicially reviewable, but while giving concrete shape to the legislative policy in the form of a statute, if the law violates any of the fundamental rights including Art. 14, the same is void to the extent as provided in Art. 13. If the law is void being in violation of any of the fundamental rights set out in Part III of the Constitution, it cannot be shielded on the ground that it enacts a legislative policy. Wisdom of the legislative policy may not be open to judicial review but when the wisdom takes the concrete form of law, the same must stand the test of being in tune with the fundamental rights and if it trenches upon any of the fundamental rights, it is void as ordained by Art. 13.

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19. The scope and ambit of Art. 14 have been the subject matter of catena of decisions. One facet of Art. 14 which has been noticed in E.P. Royappa Vs. State of Tamil Nadu (1974) 2 SCR 348: (AIR) 1974 SC 555, deserves special mention because that effectively answers the contention of Mr. Sinha. The Constitution Bench speaking through Bhagwati, J in a concurring judgment in Royappa's case observed as under (at p. 583 of AIR):

" The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now what is the content and reach of this great equalizing principle? It is a founding faith to use the words of pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude . Equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed, cabined and confined" within traditional and doctrinaire limits. From a positive point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political



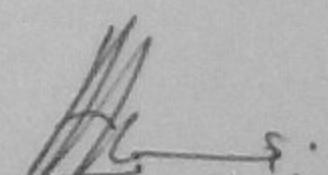
logic and constitutional law and is therefore, violative of Art. 14, and if it affects any matter relating to public employment , it is also violative of Art. 16. Article 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.”.

This view was approved by the Constitution bench in Ajay Hasia's case (AIR 1981 SC 487). It thus appears well settled that Article 14 strikes at arbitrariness in executive/administrative action because any action that is arbitrary must necessarily involve the negation of equality. One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An action per se arbitrary itself denies equality of protection by law. The Constitution Bench pertinently observed in Ajay Hasia's case and put the matter beyond controversy when it said 'wherever therefore, there is arbitrariness in State action whether it be of the legislature or of the executive or of an "authority" under Art. 12, Art. 14, immediately springs into action and strikes down such State action'. This view was further elaborated and affirmed in D.S. Nakara Vs. Union of India (1983) 1 SCC 305 : (AIR 1983 SC 130). In Maneka Gandhi Vs. Union of India (1978) 2 SCR 621: (AIR 1978 SC 597), it was observed that Art.



14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It is thus too late in the day to contend that an executive action shown to be arbitrary is not either judicially reviewable or within the reach of Article 14. The contention as formulated by Mr. Sinha must accordingly be negatived."

6. Now coming to the present case on hand, the case of the applicant is based on arbitrariness, discrimination, and equality before law and against unreasonable action of the respondents. It is an admitted case between the parties with regard to the facts of the case is concerned that the applicant Nos. 1 and 2 are belonging to I.A.S cadre and subsequently the marriage took place between the applicants on 11.12.2002 and thereafter they applied in the month of March 2003 for cadre transfer to one single cadre. The State, in which the applicant Nos. 1 and 2 working, not agreed but have no objection to change third cadre. Thereafter the applicants again opted for a change third cadre Gujrat, Chhatisgarh and Uttarakhand. In the meanwhile, the applicant No. 2 transferred to Sikkim. The State Government expressed its concurrence only on the condition that no officer is allotted in the year 2005, inspite of this, the case is approved for transfer of applicant No. 2 to Sikkim and it is stated that the respondents breached the condition put forward by the Government of Sikkim and allocated one officer namely Sri A.K. Singh and



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further stated by their communication dated 10.01.2006 produced as Annexure A- 23, it becomes very difficult to proper cadre management in the State. At annexure A- 15, which is Office Memorandum dated 08.11.2004, the relevant portion is as follows: -

" OFFICE MEMORANDUM

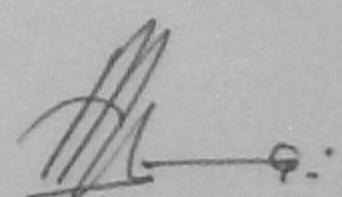
Subject: Change of Cadre of All India Service Officer- policy regarding

The undersigned is directed to say that the change of cadre of All India Service officers is governed by Rule 5(2) of the IAS (Cadre) Rules, 1954 and analogous Rules in the IPS (Cadre) Rules, 1954 and IFS (Cadre) Rules, 1966, which is as follows:

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

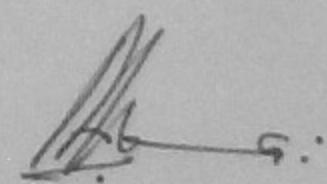
The reading of the above office memorandum makes clear that the respondents have not followed the guidelines and the case of the applicants was processed without there being clear concurrence of the State Government before passing the order of applicant No.

2. The applicants have taken specific instance referring with details of other couples, who are similarly placed and the respondents considered their cases and passed the orders of transfer but the case of the applicant denied even though the case of the applicant was put up at the same point of time, keeping pending the case of the applicants for consideration and denying the request of the applicants later on another case of K.M.M Prasanna and Mrs. Vijay Laxmi Bidari for third cadre considered and transferred to Maharashtra, which was not deficit



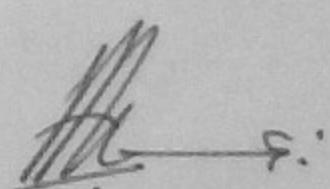
(43)

cadre and so also the applicants have furnished in the RA as many as seven cases of the couples similar to the applicants in which the request have made for change of cadre and transfer, the respondents have considered their cases and passed appropriate order. Inspite of the information furnished by the applicants in the RA with regard to the cases considered by the respondents based on the same terms and conditions of the service and guide lines and on the ground of marriage but the respondents have not given any specific reason to deny the same to the applicants' request. The learned counsel for the respondents was specifically ordered after the RA was filed by the applicants on 05.02.2008 and later on 12.05.2008 with detail order, inspite of that the respondents are unable to produce any material and also not stated the stand whether they will reconsider the case of the applicants as per the request for accommodation in third cadre even though the time is taken by the respondents and thereafter the matter was heard. Respondents have not filed any material information to the order passed. However, they have filed Supplementary Affidavit on 11.07.2008 reiterating the same contention taken in the CA and Supplementary Affidavit and not with reference to the orders passed. The explanation from the respondents has not come on record. This clearly goes to show that the case of the applicants was not considered by the respondents in just, proper and reasonable manner and further even though the material, which are on record, in which the

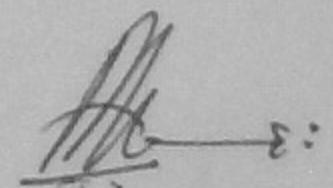


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cases of similarly placed persons belonging to the same cadre on the ground of marriage, was considered by the respondents and the necessary orders are passed. Therefore, it is clear from the action of the respondents that they are acted in arbitrary manner while considering the case of the applicants as the action of the respondents in rejecting the case of the applicants even though they are also belong to the same cadre on the guide lines applicable to the persons on the same cadre, in which the number of persons of the same cadre was considered on the same ground of marriage and the orders are passed. In the instant case, respondents while considering the cases of the applicants on the same guidelines, in which the other cases were considered, have failed to apply the same principle and guide lines. Even though considering the request of other persons, who are similarly placed denied the equal opportunity by the respondents, which is violative of principle of equality before law and also in discriminatory manner treating the same persons, who are equally placed and giving relief to one suited person and denied the same to other person is nothing but an arbitrary act of the respondents. Therefore, the action of the respondents is unsustainable in law and the same is arbitrary, unreasonable, and discriminatory as the respondents failed to furnish the particulars of others which are within the knowledge of the respondents.

A handwritten signature in black ink, appearing to be 'H. S.' followed by a stylized mark.

7. In view of the proposition of law laid down by the Hon'ble Supreme Court, which is extracted in the preceding paragraphs of this order based on the facts of this case, the said principle, which are stated above, are applicable to the present case of the applicants and, therefore, the contention of the respondents that change of cadre on the ground of marriage is unreasonable attitude to get suited for their desired cadre cannot be accepted. Having regard to the fact that the respondents have considered the request of other similarly placed persons, who are of the same cadre and details of which, the applicants have furnished. When the request was pending consideration before the authorities, they have failed to take decision on the request of the applicants. On the other hand they have taken decision with regard to other persons of similarly placed of the same cadre. In the absence of any cogent reason forthcoming why the applicants' request was not considered during that period, without there being no acceptable explanation in not considering the case of the applicants as the same was kept pending and subsequently coming with the reasons that as the applicants' request are considered and accepted, cannot be in consonance of the request made by the applicant and, therefore, the explanation given by the respondents cannot be accepted having regard to the fact that the respondents on the face of it have not acted in just and fair manner and in accordance with principles law laid down by the Hon'ble Supreme Court while considering the cases of



the persons, who are similarly placed in a similar cadre and the respondents have failed to follow the proper procedure and to consider the cases impartially which resulted in miscarriage of justice and against basic principle of rule of law of good governance. The identical placed persons while discharging their functions, and that to in the cadre of IAS officers, which is not acceptable. Therefore, the action of the respondents against the applicants is unsustainable and is liable to be set aside and the inaction of the respondents in not considering the case of the applicants in a just and proper manner as considered in the cases of other person, demands justice and the applicants should also be treated in the same manner. Therefore, the applicants have made out a case for grant of the relief.

8. In view of the foregoing reasons, the impugned orders dated 20.04.2005, 19.07.2005 and 14.12.2005 are quashed and the respondents are directed to consider the representation of the applicants for inter cadre transfer to the State of Uttranchal or other states which will accept them both, this exercise shall be done by the respondents within a period of three months from the date of receipt of a certified copy of this order. No Costs.

*The O.A. is allowed.*



Member-J



Member-A

/ns/