

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application No. 209 of 2009  
with  
Original Application No. 537 of 2010

Friday, this the 25<sup>th</sup>, day of November, 2011

**CORAM:**

**Hon'ble Mr. Justice P.R. Raman, Judicial Member  
Hon'ble Mr. K. George Joseph, Administrative Member**

**1. Original Application No. 209 of 2009 -**

S. Syamsunder, S/o. Sunderarajan S.,  
aged 30, Assistant Superintendent of Police,  
Chinthapalli, Vishakhapattanam District,  
Andhra Pradesh, residing at Vasanthi Mandiram,  
Vadakkevila PO, Kollam 691010.

..... **Applicant**

**(By Advocates – Mr. M.R. Rajendran Nair, Sr.  
Mr. M.R. Hariraj)**

**V e r s u s**

1. Union of India, represented by the Secretary to Government, Ministry of Home Affairs, North Block, New Delhi.
2. State of Kerala, represented by the Chief Secretary to Government of Kerala, Secretariat, Trivandrum.
3. State of Andhra Pradesh, represented by the Chief Secretary to Government of Andhra Pradesh, Secretariat, Hyderabad.
4. A. Akbar, Superintendent of Police (Rural), Office of the Supdt. of Police (Rural), Thiruvananthapuram.

..... **Respondents**

**[By Advocates – Mr. Sunil Jacob Jose, SCGSC (R1),  
Mr. P.K. Abdul Rahiman, GP (R2),  
Mr. O.V. Radhakrishnan, Sr.  
Mr. Dinesh P.T. (R4)]**

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2. **Original Application No. 537 of 2010 -**

Deepan Bhadran, IPS, S/o. Shri M. Krishna Bhadran,  
Assistant Superintendent of Police, Anjar Sub Division,  
Kutch District, Gandhi Nagar Gujarat State,  
Residing at Geethanjali, NTV Nagar 108,  
Prathibha Junction, Kadappakkada, Kollam. ....

**Applicant**

**(By Advocate – Mr. P.V. Mohanan)**

**V e r s u s**

1. The Union of India, represented by its Secretary,  
Ministry of Home Affairs, North Block, New Delhi.
2. The State of Kerala, represented by Chief Secretary,  
Government of Kerala, Thiruvananthapuram.
3. The State of Gujarat, represented by Chief Secretary  
State of Gujarat, Gandhi Nagar, Ahemedabad, Gujarat.
4. Shri A. Akbar, Superintendent of Police,  
Allapuzha.
5. Shri J. Jayanath,  
Assistant Superintended of Police,  
Aluva. ....

**Respondents**

**[By Advocates – Mr. A.D. Raveendra Prasad, ACGSC (R1),  
Mr. P.K. Abdul Rahiman, GP (R2),  
Mr. O.V. Radhakrishnan, Sr.  
Mr. Dinesh P.T. (R4)]**

These applications having been heard on 15.11.2011, the Tribunal on

25-11-11 delivered the following:

**ORDER**

**By Hon'ble Mr. K. George Joseph, Administrative Member -**

Having common issues, these O.As heard together and are disposed of  
by this common order. The applicants in these O.As are aggrieved that they  
are not allotted to the Kerala cadre of Indian Police Service (IPS).




O.A. 209/2009 :

2. The applicant being successful in the Civil Services Examination (CSE), 2004, was appointed to the IPS and was allotted to the Andra Pradesh cadre in the 'outsider' general quota. He had secured 41<sup>st</sup> rank and was the highest rank holder to be inducted into the IPS in that year. He had shown his willingness to be allocated to his home State, Kerala. He belongs to general category.

O.A. 537/2010 :

3. The applicant had secured 93<sup>rd</sup> rank in general quota in the CSE, 2006. Although he had opted for allocation to the Kerala cadre of the IPS, he was allocated to Gujarat cadre as an 'outsider' general candidate. He belongs to the OBC category.

4. In terms of letter D.O. No. 13013/5/84-AIS(I) dated 30/31.05.1985, 30 point vacancy roster and 30 point reservation roster for all the cadres of IPS are to be maintained. Distribution of vacancies in a cadre between 'outsider' and 'insider' is to be done over a period of time in the ratio of 2:1 following a cycle '**outsider-insider-outsider**'. As for reservation, SC/ST grouped together is 22 ½ % and OBC is 27%. From the year 1994 onwards, reservation for OBC was introduced in CSE in the light of the judgement of the Apex Court in Indira Sawhney's case, (1992) 3 SCC 217.



5. The applicant in O.A. No. 537/2010 contended that in the light of the law declared by the Constitution bench of the Apex Court in *Union of India vs. Ramesh Ram and Others*, 2010 (7) SCC 234, , he is entitled to get allotment in the State of Kerala as 'insider' OBC in view of the fact that he belongs to reserved category though he was selected against general/unreserved vacancy. Both the applicants contended that the allocation of 'insider' OBC exceeded the quota reserved for it and that the vacancies in the general quota should be given to them for the years 2004 and 2006 considering them as in the 'insider' general category. The applicant in O.A. No. 209/2009 contended that there was a shortfall of 'insider' general candidate when allocation from the candidates successful in the CSE, 2004 was made.

6. The respondents in their reply statement submitted that as a matter of policy, at least  $66\frac{2}{3}\%$  direct recruits in a State cadre in All India Services must be from outside the State cadre. This limit is a minimum requirement for outsiders. It does not impose a ceiling of  $66\frac{2}{3}\%$ . While determining the vacancies, the Government of Kerala was duly consulted by the Central Government. It is not mandatory that the ratio of 2:1 is to be maintained in allocation of cadres from every CS Examination. As number of vacancies to be distributed in a cadre is small and counting of vacancies in different categories involves rounding off to the nearest whole number, there may be a marginal excess/shortfall in the percentage of reservation in various categories in a cadre in the short term. The excess/shortfall of particular category in a

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particular cadre is taken care of by making adjustment every year at the time of determining vacancies by taking average of shortfall/excess during the previous 5 years. As no SC/ST candidates are qualified in the CSE, 2004 from the State of Kerala, the 'insider' SC/ST vacancy of the State was exchanged with OBC 'outsider' vacancy and was filled up by allocation of 'insider' OBC category candidate as per paragraph 9 of the procedure at Annexure R-VII in OA 537/10 for cadre allocation. There was no 'insider' general vacancy in the 30 point vacancy of roster for Kerala in 2004 to accommodate the applicant in OA 209/2009. As the applicant in O.A. No. 537/2010 had qualified in the CSE, 2006 as a general category candidate and there was no 'insider' general category vacancy in the IPS cadre of Kerala State in the year 2006, he was not eligible for allocation to his home State. He was allocated to the IPS cadre of Gujarat against the 'outsider' vacancy of the State strictly in accordance with the principles of cadre allocation. In the year 2006 the lone 'insider' vacancy was for the OBC category and of the 2 'outsider' vacancies, one was for general category and another for SC/ST category. Had there been a 'insider' general vacancy in IPS cadre of Kerala on the basis of the CSE, 2006, the same would have been filled up by allocating Shri Seju P. Kuruvilla who was higher in rank (Rank No. 93) to Kerala and not the applicant. The contention of the applicant that the OBC is over-subscribed in the IPS cadre of Kerala is based on misinterpretation of rules on the subject. The applicants do not have any legal right to be considered for allocation to a cadre of his choice, i.e. Kerala cadre, as an 'insider' candidate. The applicants were allotted to IPS cadre of Andhra



Pradesh and Gujarat strictly in accordance with the relevant rules, policy, guidelines and instructions relating to cadre allocation. As held by Hon'ble Supreme Court in *Union of India and Others vs. Rajiv Yadav*, 1994 (6) SCC 38, an AIS officer has no right to claim allocation of his home State or a cadre of his choice and is liable to serve anywhere in India.

7. The 4<sup>th</sup> respondent in O.A. No. 537/2010 submitted that he appeared in the CSE, 2006. He belongs to OBC category. He was allocated to Kerala cadre by the Ministry of Home Affairs after consultation with the Kerala State in accordance with cadre allocation policy and Rule 5 of the IPS (Cadre) Rules, 1954. No relief is sought against him by the applicant. Impleading him in this O.A was thus unnecessary and the interest of justice demands deletion of his name from the array of the parties. Redrawing the cadre allocation as sought by the applicant would create injustice and difficulties to the IPS officers serving in the State of Kerala and who were allotted in the previous years as OBC candidates. It will unsettle the entire allotment of IPS cadre made in the State of Kerala. The applicants have not made other IPS officers as parties who were allotted to the Kerala cadre in the OBC category. Marginal deviations are not fatal either to the integrity of the AIS recruitment policy nor does it subvert any of the statutory rules.

8. We have heard Mr. Rajendran Nair (Sr.) with Mr. M.R. Hariraj, learned counsel for the applicant in O.A No. 209/09, Mr. P.V. Mohanan, learned

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counsel for the applicant in O.A. No. 537/10, Mr. Sunil Jacob Jose, learned SCGSC for respondent No. 1 in O.A. No. 209/09, Mr. P.K. Abdul Rahman, learned GP for respondent No. 2 and Mr. O.V. Radhakrishnan (Sr.) with Mr. Dinesh P.T., learned counsel for respondent No. 4 in both the O.As and perused the records.

9. The short question to be adjudicated in these O.As is whether the applicants are entitled to be allocated to the cadre of IPS in the State of Kerala in the roster of 'insider general'.

10. First, we consider the issue whether the applicant in O.A. No. 537/2010 is entitled to the benefit of reservation for the OBC category. In column 6(b) of the application form for the CSE, 2006, he had indicated that he belongs to the OBC creamy layer. In column No. 6(a), he had indicated his community as "General Category (Others), Code No.4" As per note 2 to column 6 (a), no change in the community status indicated by a candidate in his/her application form for the Civil Services (Pre.) Examination will ordinarily be allowed by the Commission. As per the stated facts, the applicant in O.A. No. 537/10 belongs to OBC creamy layer. There is nothing on record to show that he has changed his community status. As he belongs to OBC creamy layer, he is not entitled to the benefit of reservation for OBC. The law declared by the Apex Court in *Union of India vs. Ramesh Ram and Others* (supra) is that "(iv) The reserved category candidates "belonging to OBC, SC/ST categories" who are selected

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on merit and placed in the list of general/unreserved category candidates can choose to migrate to the respective reserved category at the time of allocation of services. Such migration as envisaged by Rule 16(2) is not inconsistent with Rule 16(1) or Articles 14, 16(4) and 335 of the Constitution". As the applicant is not a reserved category candidate as per his application, the law declared by the Apex Court is not applicable to him.

11. As for the shortage of candidates in the IPS cadre of Kerala State, it can happen only if a minimum percentage is prescribed for 'insiders'. As per policy at least  $66\frac{2}{3}\%$  of direct recruits in a State cadre in All India Services must be from outside the State cadre. There is a minimum requirement of  $66\frac{2}{3}\%$  of outsiders in a State cadre, but it is not a ceiling as held by Hon'ble Supreme Court in the case of *Union of India vs. Mhathung Kithan and Others* and *Union of India vs. Kumar Bindhyeswari Negi & Others* (JT 1996 (8) SC 499). There is no such minimum requirement for 'insiders' although the ratio between 'outsider' and 'insider' is 2:1. This ratio is to be maintained over a period of time. As number of vacancies in a cadre is likely to be small and counting vacancies in various categories involves rounding off, it is possible, there can be a marginal excess/shortfall in the percentage of reservation of various categories in a cadre in a particular year. A marginal variation in the percentage of reservation cannot be treated as fatal to the allotment process as per rules. Moreover, the applicants being AIS officers, they are liable to serve anywhere in India. As held by Hon'ble Supreme Court in the case of *Union of*

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*India and Others vs. Rajiv Yadav*, 1994 (6) SCC 38, an AIS officer has no right to claim allocation of his home State or a cadre of his choice and is liable to serve all over India. The lone 'insider' vacancy of Kerala as per 30 point reserved roster in the year 2004 was meant for SC/ST category candidates. Again the lone 'insider' vacancy in the year 2006 was meant for the OBC category. There was no backlog of 'insider' general vacancy in the 30 point vacancy of roster for Kerala either in 2004 or 2006. Therefore, the contention that there was a shortage of insider general candidate is not substantiated.

12. It is seen that the reserved category has been allocated 15 vacancies as against 14 required from the Civil Services Examination, 1994 to 2003. This excess of one post has arisen from the fact that mathematical exactitude is not possible while rounding off the fractions. Any excess/shortfall due to rounding off in a particular cadre is taken care of when allocation is made every year by averaging the shortfall/excess of at least last 5 years CS Examinations. Therefore, we do not find any merit in the contention of the applicants that the OBC is over represented in the IPS cadre of Kerala either in the year 2004 or in the year 2006. In the year 2006, as per 30 point vacancy roster, out of 3 vacancies, one was for an 'insider' candidate against roster point No. 14 and two were for 'outsider' candidates against roster point Nos. 15 and 16. As per 30 point reservation roster, the 'insider' vacancy was for OBC candidate against roster point No. 29. Out of two 'outsider' vacancies, one was to be filled up by SC/ST category against roster point No. 28 and the other vacancy

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was earmarked for general category. As there was no 'insider' general category vacancy in the IPS cadre of Kerala for CSE, 2006, the applicant in O.A. No. 537/2010 cannot be allocated to Kerala cadre. In the year 2004, due to non-availability of SC/ST candidates the insider SC/ST vacancy was filled up by allocating insider OBC candidate as per rules. For the sake of convenience, the relevant part of the details of procedure followed in the allotment of cadre to the officers of the All India Service is reproduced as under:

“9. If a general candidate is not available to fill general insider vacancy then it is filled by an insider SC/ST candidate provided there is an SC/ST outsider vacancy available in that cadre to facilitate exchange. If SC/ST insider candidate is not available or SC/ST outsider vacancy is not available in that cadre then the general vacancy is filled by insider OBC candidate with the same condition that there must be an outsider OBC vacancy to facilitate the exchange. Similarly, the insider OBC vacancy, if not filled due to non-availability of insider OBC candidate is first filled by an insider SC/ST candidate and then by insider general candidate with the same conditions. An unfilled insider SC/ST vacancy is first filled by insider OBC candidate and then by a general insider candidate with the same conditions.”

13. We do not find any illegality or arbitrariness or discrimination in the operation of vacancy roster or reservation roster in the allocation of officers from CSE 2004 and CSE 2006. The applicants are not entitled to be allocated to the cadre of IPS in the State of Kerala in the roster of 'insider general'. The heart burning in not getting the home state is quite understandable. It is the lack of proper understanding of the principles followed in the allotment of cadre to the officers on the part of the applicants that has given rise to these OAs. In the result, these OAs are dismissed with no order as to costs.

  
(K. GEORGE JOSEPH)  
ADMINISTRATIVE MEMBER

CVR

  
(JUSTICE P.R. RAMAN)  
JUDICIAL MEMBER