

30/10/00
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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E.P/M.A No. 124/03

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SECTION OFFICER (Judl.)

FORM NO. 4
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH.
GUWAHATI.

ORDER SHEET

Orginal No. 91/202
Misc.Petition No. /
Contempt Petition No. /
Review Application No. /

Applicant(s) J. Shamala Rao

Respondent(s) H.O.F. Team

Advocate for Applicant(s) B.K. Sharma, P.K. Tiwari
H.K. Goswami

Advocate for Respondent(s) Case

Notes of the Registry	Date	ORDER OF THE TRIBUNAL
76547859 13.3.2002 Th. 13/3/02 P.D. for Ken. ator 8 steps with X	19.3.02	Heard Mr. B.K.Sharma, learned Sr. counsel for the applicant. The application is admitted. Call for the records. List on 23.4.2002 for order.
Notice prepared and sent to Despatch Section for being filed by respondent No. 1 by Regd A.D. 29/3/02 D 1048	23.4.2002	Prayer has been made by Mr.A.Deb Roy, learned Sr.C.G.S.C. on behalf of the respondents for permitting some more time to file written statement. Prayer accepted. List the case on 21.5.2002 for order.
1048 4/4/02	bb	Vice-Chairman

21 0A. 9/2002

21.5.02 List on 18.6.2002 to enable the Respondents to file written statement.

No written statement has been filed.

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20.5.02

I.C.Ushan
Member

Vice-Chairman

mb

18.6.02 List on 18.7.02 to enable the respondents to file written statement.

I.C.Ushan
Member

Vice-Chairman

lm

18.7.2002 List the case on 20.8.2002 to enable the respondents to file written statement.

No written statement has been filed.

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19.8.02

I.C.Ushan
Member

Vice-Chairman

20.8.02

No written statement so far filed. List again on 17.9.2002 for orders so that the Respondents may file written statement within the time prescribed.

I.C.Ushan
Member

Vice-Chairman

mb

17.9.02 The respondents are yet to file written statement. Mr. B.C. Pathak, learned Addl. C.G.S.C. appearing on behalf of Mr. A. Deb Roy, learned Ar. C.G.S.C. for the respondents sought for time for filing written statement.

List the matter on 5.11.2002 for orders.

mb

Vice-Chairman

5.11.02

The Respondents are yet to file

written statement. List on 3.12.02 to enable the respondents to file written statement. No further time shall be granted. Mr. A. Deb Roy, Sr.C.G.S.C. has stated that the respondents has engaged some other counsel. That cannot be ground for the respondents to procrastinate the matter. List on 3.12.92 for filing of written statement, if any.

No written statement has been filed.

2.12.02

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vice-Chairman

3.12.2002

Neither any written statement filed nor any one represented the respondents. Mr.A.Deb Roy, learned Sr.C.G.S.C. stated that the authority has entrusted the matter to a different counsel and he referred to the communication received by him from the Ministry of personnel, public Grievances & Pension.

No. Written statement
has been filed

6.1.03.

McCosh
Member


Vice-Chairman

bb

7.1.2003

Present: Hon'ble Mr Justice V.S. Aggarwal,
Chairman

Hon'ble Mr. K.K. Sharma,
Administrative Member

This Tribunal on 3.12.2002, keeping in view that written statement was not being filed, listed the matter for hearing.

After hearing Mr S. Sarma, learned counsel for the applicant, there is some ambiguity in regard to allotment of the cadres. It is directed that the respondents shall send an authorised person, not below the rank of a Deputy

7.1.2003

Secretary, Government of India, with the relevant record by virtue of which the cadres had been allotted to different persons.

Registry is directed to communicate his order to the respondents immediately.

List the matter for hearing on 18.2.2003.

Order dtd 7/1/03
communicated to the
Respondent on 30/1/03
D/N 179
dtd. 30/1/03 30/1/03.

nkm

K L Shar

Member

Chairman


21.1.03

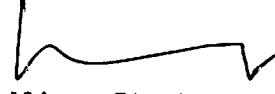
18.2.2003. Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman
The Hon'ble Mr. S. Biswas, Administrative Member.

W/S Submitted
by the Respondent.



S. Biswas

Member


Vice-Chairman

mb

26.3.2003 In view of the order passed in O.P. 30/2003, list the matter for hearing on 29.4.2003.

Slips taken. Notice
prepared and sent to the
Respondent
No. 268, 10th Regd AD.

31/3/03

D/N 620 to 624 dtd 31/3/03

mb

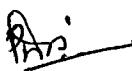
Member

Vice-Chairman

29.4.2003

Await service report and put up again on 1.5.2003 for hearing.

Respondent intimated
by the applicant.



bb


Vice-Chairman

1.5.2003 Heard Mr. U.K. Nair, learned counsel for the applicant.

Since the notices were issued by the registered post on 31.3.2003, the service is accepted and the service is now be treated as complete. Put up the matter for hearing on 8.5.2003.

Wts and rejoinder
have been filed.

3/5
7.5.03


Vice-Chairman

mb

8.5.03 Heard Mr S.Sarma, learned counsel for the applicant and Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents.

Let the matter be placed tomorrow in presence of Mr R.Sharma, learned Addl.C.G.S.C.

Member

Vice-Chairman

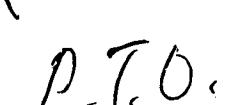
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9.5.03

Hearing Concluded.
Judgement reserved.

By order,

20.6.03


P.T.O.

100.

20.6.2003

Judgment delivered in open Court, kept in separate sheets. The application is allowed in terms of the order. No order as to costs.

For Respondent11.7.2003

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Copy of the Judgment
has been sent to the
Opp. for issuing the
same to the applicant
by Post.

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Vice-Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
O.A. NO. 91 OF 2002

Present : Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman
Hon'ble Mr. S. Biswas, Member (A)

J. Shyamala Rao, IAS, Staff Officer
to the Chief Secretary & Deputy
Secretary (Home & Political),
Assam Secretariat (Civil), Dispur,
Guwahati-6

VS

1. Union of India through the Secretary,
Dept. of Personnel & Training,
M/o Personnel, Public Grievances &
Pension, North Block, New Delhi
2. The Chief Secretary, Govt. of Assam,
Dispur, Guwahati-6
3. The Chief Secretary,
Govt. of Andhra Pradesh,
Hyderabad
4. Sri N. Sridhar, IAS, Project Officer,
Integrated Tribal Development Agency,
Utmoor, Adilabad Anheri,
Andhra Pradesh.
5. Sri Sailya Ramaieyer, IAS,
Project Director, Drought Prone Area,
Programme, C/o Collector, Shaty Bhawan
Lakaria Pool Range Reddy Dist.
Andhra Pradesh
6. Ahmed Nadeem, Project Director,
C/o Collectorate, Dist. Rural
Development Agency, Machili Pattanam,
Krishna District. Andhra Pradesh.

For the applicant : Mr. B.K. Sharma, Counsel
Mr. P.K. Tiwari, Counsel
Mr. S. Sarma, Counsel

For the Govt. respondents: Mr. A. Deb Roy, Sr. CGSC
Mr. R. Sharma, Addl. CGSC

Date of order : 20.6.03

ORDER

S. Biswas, A.M.:

This is the second time, the applicant, who is an IAS Officer of Assam-Meghalaya cadre, and currently working as Dy. Secretary under the Govt. of Assam, has approached this Tribunal challenging the speaking order dt. 10.9.01 passed by the respondent No. 1 in

S. Biswas

compliance with the direction of this Tribunal dt. 29.3.01 in an earlier OA being OA No. 1 of 1999 filed by the same applicant. By this speaking order, the representation of the applicant for allotment to his Home State cadre i.e. Andhra Pradesh cadre on his selection to IAS on the basis of Civil Service Examination, 1996 has been reconsidered and turned down for the reasons mentioned therein.

2. In order to understand the grievance of the applicant, it will be useful to state very briefly the facts at the outset.

2.1 The applicant hails from the State of Andhra Pradesh and belongs to OBC category. He appeared in the Civil Service Examination (CSE) 1996 for selection to IAS as direct recruit. During the relevant year, there were in all five vacancies in the State of Andhra Pradesh for intake of direct recruits on the basis of CSE, 1996. Incidentally, seven candidates hailing from Andhra Pradesh qualified in the 1996 Examination. Their names, status and rank are given below in order to understand the incidence of the grievance :-

	<u>Name</u>	<u>Status</u>	<u>Rank</u>
1.	Pamu Sampath Kumar	SC	5
2.	N. Sridhar (Res. 4)	OBC	29
3.	Shailaja Ramaiyer (Res. 5)	UR	31
4.	Jamjam Syamala Rao (Applicant)	OBC	34
5.	Shyam Jagannathan	SC	63
6.	Shasidhar Srinivas K	SC	267
7.	P. Krishnamurth	SC	336

2.2 Out of the aforesaid seven selected candidates, Sl. No. 1, whose rank was at Sl. No. 5 of the select list, did not opt for his Home State and the rest opted for their posting in their Home State.

2.3 Under Rule 5 of the IAS (Cadre) Rules, 1954, the allocation of selected candidates to the various State cadres is to be made by the Central Govt. in consultation with the State Govt. concerned. For this purpose, Govt. of India issued a policy guidelines dated 30-31 May, 1985 elaborating the mode of allocation of the direct recruits to the All India Services including IAS. According to this policy guideline, a roster system is followed for allocation in different zones comprising various states keeping in view the rank and

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preference of the candidates depending on the availability of vacancies in the cadre between "insiders" and "outsiders". Those who claim and are allocated to the Home State are called "insiders" whereas those who are allocated to a different State other than Home State are called "outsiders".

2.4 While the applicant and other selected candidates to IAS were under pre-appointment training, Govt. of India issued a statement indicating distribution of "Insiders and Outsiders" vacancies for various States in IAS cadre on the basis of CSE 1996 on 2.7.97 (vide annexure-A2). According to this, State of Andhra Pradesh was allotted the following "insider" and "outsider" quota against reserved and unreserved candidates.

Total Vacancies =5 (SC =1, OBC =1 and UR =3)
 Insiders = 2 (OBC =1 & UR =1)
 Outsiders= 3 (SC =1 & UR =2)

2.5 Against the aforesaid vacancy position, the following persons were allocated to the Andhra Pradesh cadre :-

	Name	Status	Rank	Remarks
1.	Peeyush Kumar	U.R.	9	Outsider
2.	N.Sridhar	U.R.*	29	Insider
3.	Shailaja Ramaiyer	U.R.	31	Insider
4.	Ahamad Nadeem	OBC	47	Outsider
5.	Bhupinder Kaur Aulkah	SC	107	Outsider

3. The grievance of the applicant precisely is that Shri N.Sridhar though an OBC candidate was recommended as an UR candidate in view of his higher rank. Accordingly, he was to be allocated to his Home State as an "insider" against UR vacancy. As a result, the "insider" vacancy earmarked for OBC ought to have been given to the applicant as he was next in rank as an "OBC" candidate. But the respondent authorities allocated the next candidate to Shri N.Sridhar i.e. Shri Shailaja Ramaiyer (above the applicant) against "insider" vacancy earmarked for UR candidate while treating Sri N.Sridhar, though recommended against UR vacancy, as an OBC "insider" candidate

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thereby depriving the applicant of his legitimate right to be appointed against earmarked "insider" vacancy for OBC. Instead, he was allocatated to Assam-Meghalaya cadre as an "outsider", where there was no "Outsider" OBC vacancy in 1996-97 bloc year.

4. The prayer of the applicant is for a direction to the respondents to allot him to his home State cadre i.e. Andhra Pradesh cadre and to quash the speaking order dt. 10.9.01 (annexure-A7).

5. The official respondents have contested the application by filing a written statement supporting the action taken by them in treating Sri N.Sridhar as an "insider" OBC candidate and allocating the next candidate i.e. Shailaja Ramaiyer the only 'insider' UR vacancy. It is contended that the applicant being next in rank could not be accommodated in the Home State as OBC candidate as there was no other "insider" vacancy available and hence he was offered Assam-Meghalaya cadre which he accepted without any protest. Hence, he is now estopped from raising any objection for his non-allotment to Home State cadre as OBC canidate.

6. We have heard the ld. counsel for the applicant and also for the official respondents. None has appeared for the private respondents nor any written reply has been filed on their behalf.

7. The only issue before us is whether the applicant was entitled to be allotted to his Home State cadre as an "insider" OBC candidate according to his rank, preference and available OBC vacancy.

8. It is not in dispute that Shri N. Sridhar was an OBC candidate and he ranked at Sl. No. 29. It is also undisputed that the next successful OBC candidate was the applicant whose rank was 34. In between, an UR candidate i.e. Shailaja Ramaiyer at rank 31 appears.

9. The official respondents have not denied the fact that Shri N.Sridhar was recommended for appointment as an UR candidate by virtue of his rank even though he belongs to OBC category. However, while allocating the cadre, they made a volta face by treating Shri N.Sridhar as an OBC candidate and allotted him the "insider" slot. As

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a result, the "insider" UR slot was given to the next candidate i.e. Shailaja Ramaiyer. Consequently, the applicant was denied allotment in Home State cadre as OBC candidate for want of any further "insider" vacancy as there were only two "insider" vacancies during the relevant recruitment year viz. one for UR and one for OBC and hence the applicant was allotted to Assam-Meghalaya cadre.

10. Both parties have relied on the decision of the Hon'ble Supreme Court in the case of UOI & Ors -vs- Rajiv Yadav & Ors reported in (1994) 6 SCC 38 wherein the policy decision issued by the Govt. of India dated 30/31 May, 1985 regarding allocation of cadre to All India Services and also the "roster system" for "insider" and "outsider" slots for both reserved and unreserved categories of candidates has been upheld.

11. In support of the action of the official respondents in treating Shri N.Sridhar as an OBC "insider" candidate though recommended for appointment as UR candidate by dint of his merit and rank, they have placed reliance on the principle allegedly being followed since 1994 which is incorporated in paras 10 & 11 of the impugned speaking order. It will be useful to quote the full text of the same as under :-

"10. Whereas it may so happen that in the home State of an OBC candidate recommended against unreserved vacancy, both insider unreserved as well as insider reserved vacancies are available, at his turn. In that case, his allocation will be made against unreserved or reserved vacancies depending on the category of the next below candidate hailing from the same State. If the next below candidate from the same State is from unreserved category, then the first candidate will be allocated against reserved vacancy. If the next below candidate from the State is from reserved category, then the first candidate would be allocated against unreserved vacancy.

11. And Whereas, this policy has been followed since Civil Services Examination 1994 without any deviation or exceptioin. This policy is followed so that a higher ranking candidate is not denied his home State who has a preferential claim over lower ranking candidate."

12. It will also be relevant to quota in full para 13 of the speaking order as under :-

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"13. And Whereas on the basis of Civil Services Examination, 1996, there were two insider vacancies - one for unreserved candidate and one for OBC candidate in IAS cadre of Andhra Pradesh. The first candidate hailing from Andhra Pradesh was Shri N.Sridhar (Rank-29). He belongs to OBC category but was recommended against unreserved vacancy. The next two candidates hailing from Andhra Pradesh were Shri Shailaja Ramaiyer (Rank-31 -unreserved category) and Shri J.Shyamala Rao (Rank-34-OBC). As the next candidate to Shri N.Sridhar (Rank 29), namely Shri Shailaja Ramaiyer (Rank-31) belongs to unreserved category, Shri N.Sridhar was allocated to his home State i.e. Andhra Pradesh against reserved vacancy and Shri Shailaja Ramaiyer against unreserved category."

13. In this context, it will also be pertinent to quote sub-para (vii) of para 4 of the policy decision of Govt. of India dated 30-31 May, 1985 (annexure-R2) as upheld by the Hon'ble Apex Court in Rajiv Yadav's case (supra) decided on 21.7.1994. It runs like this :-

"(vii) In the case of candidates belonging to the reserved category, such of those candidates, whose position in the merit list is such that they could have been appointed to the service even in the absence of any reservation, will be treated on par with general candidates for purposes of allotment though they will be counted against reserved vacancies....."

14. From a perusal of the two policy decisions i.e. one of May 1985 as upheld by the Hon'ble Apex Court in Rajib Yadav's case and the other allegedly being followed from 1994 onwards as mentioned in paras 10 and 11 of the impugned speaking order seem to be at variance and contradictory. The policy decision of 1994 has not been produced before us. According to the 1985 policy decision, a reserved category candidate, whose merit position is such that he could be appointed to the service even on merit alone treating as if there was no reservation, in that event, in the matter of allotment, he should be treated as a general candidate. Based on this principle which is upheld by the Hon'ble Apex Court, Shri N.Sridhar, who was at the top of the merit list amongst the candidates hailing from Andhra Pradesh and opted for Home State cadre, ought to have been appointed as a general category or UR candidate even though he belongs to OBC category. In fact, this was also the recommendation of the UPSC as

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admitted by the official respondents. In that event, the next person i.e. Shri Shailaja Ramaiyer (rank-31) who belongs to UR category, could not have been allotted to home State as there was only one slot for "insider" UR candidate at the relevant recruitment year. In that case, the applicant, who was the next person and belongs to OBC category, should have been allotted his home State as "insider" in the earmarked slot. But admittedly this was not done on the basis of undisclosed policy decision allegedly being followed from 1994 onwards. According to this policy decision, as explained in para 10 of the impugned speaking order, allocation of reserved or unreserved vacancy is dependent on the category of next below candidate hailing from the same State. In our opinion, this policy decision has its inherent defect because it is against the earlier policy enumerated above nor it is a written policy. In support of this policy decision of 1994, it is contended in para 11 of the speaking order that this policy is followed so that a higher ranking candidate is not denied his home State who has a preferential claim over lower ranking candidate. But at the same time, it is stated in para 21 of the speaking order by quoting from the observation of the Hon'ble Apex Court in Rajib Yadav's case as under : -

" And Whereas, it is well settled law that 'a selected candidate has a right to be considered for appointment to 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'. Therefore allotment to home cadre cannot be claimed as a matter of right."

In our view, this rule does apply in the present context inasmuch as the higher ranking candidate is an U/R insider, and the available vacancy belongs to OBC insider slot. The comparison is grossly improper.

15. In our opinion, the above observation of the Hon'ble Supreme Court does not permit the respondent authorities to flout their self-professed rules, or legalise an illegal act of deviation. In the present context, the high ranking candidate is an U/R candidate but



high rank has been vaunted in the context of allocation of an OBC insider quota post which should go to an insider OBC candidate by their own policy pronouncement. Higher rank held by an UR candidate is not a good ground, therefore, to deprive the insider OBC quota to an available insider OBC candidate. The Hon'ble Supreme Court did not in the above observation give any such indulgence to the respondents to flout their own policy to accommodate a higher ranking U/R against an OBC insider quota post. The comparison is, devious and improper.

15.1 Further, in our opinion, this observation equally holds good in the case of Shri Shailaja Ramaiyer. She cannot also claim allocation in Home State cadre merely because she, an UR, is two positions higher to the OBC applicant. The official respondents cannot on this ground make allocation overlooking insider quota and its category. If a post is earmarked for OBC insider, it ought to go to an eligible OBC insider. His position may be lower to an U/R but the rules does not permit any one to side-track this. That is in the very core of quota rule professed by the respondents. In a situation where there is no "insider" slot in a particular year for a particular category of candidate, he/she cannot be retained in the home State even though his/her rank is much higher than those category of candidates for whom "insider" slots may be available. Thus, ranking is not the sole criteria for allocation in the home State, but the earmarked 'insider' slots which are based on the 1985 policy decision as upheld by the Apex Court. The roster, if applied as per rule, could not have offered an OBC insider post to an U/R candidate.

16. Moreover, the policy decision of 1985 and also the undisclosed and unpublished policy decision of 1994 as well as the decision of the Apex Court in Rajib Yadav's case were all pre- 1995 i.e. before the decision of the Constitution Bench in R.K.Shabarwal's case, AIR 1995 SC 1371. It has been held therein and in subsequent decisions also that reserved category candidates can compete against unreserved vacancy on merit and on their selection on merit they should not be treated as reserved category candidate. This is also precisely the

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policy of the Govt. of India incorporated in 1985 policy circular as quoted above.

16. Thus, it appears that during the relevant year, the respondent authorities allotted in fact two UR candidates viz. S/Sri N. Sridhar and Sailaja Ramaiyer as "insider" candidate though there was only one slot reserved for UR candidate. Amongst them Shri N. Sridhar was higher in rank and he was admittedly recommended for UR vacancy. Due to the alleged 1994 policy decision, the respondents allotted the higher ranking candidate "OBC" slot thereby showing favour to the next below U/R person to keep him in the home State ignoring their own sermon that no selected candidate has a right to be allocated to a cadre of his choice or to his home State.

17. There is another aspect of the matter. Admittedly, the applicant was allotted the Assam-Meghalaya cadre in 1997. But from the cadre allocation of IAS candidates of 1997 batch (copy produced before us), it appears that there was no "outsider" slot for OBC for Assam-Meghalaya cadre, yet the applicant, who belongs to OBC category and does not hail from the State of Assam, was allocated in that cadre. This is another infirmity in the action of the respondent authorities.

18. We found multiple deviations from the stated rules and procedure of cadre allocation in the chart of Cadre Allocation of I.A.S. Candidates of 1997, in respect of Andhra Pradesh which was produced before us during hearing of the case by the respondent's counsel.

18.1 In all 5 IAS Officers were to be allocated for A.P. in 1997 slot with the following category-wise break-up :-

U.R.	- 3
OBC	- 1
SC/ST	- 1
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Total	= 5

18.2 These posts were ordained to be filled in the said chart in order of the following Insider and Outsider quota allotted to respective UR, OBC and SC/ST Groups of IAS :-

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	<u>U.R.</u>	<u>OBC</u>	<u>SC/ST</u>	<u>TOTAL</u>	<u>REMARKS</u>
Insider Quota	1	1	-	2	
Filled	2	-	-	2	One UR Extra One OBC less
	+ 1	-1			
Outsider Quota	2	-	1	3	
Filled	1	1	1	3	One UR Outsider less
	-1	+1			One OBC Outsider extra

18.3 In all three noteable deviations in filling the insider and outsider quota have taken place in their own showing in the Cadre Allocation Chart in respect of A.P. Cadre IAS, which can be enumerated as below :

18.4 Though all the five posts have been somehow filled with 3 U/R, 1 OBC AND 1 SC, but a good deal of grooving was done - which is not according to the professed rule or procedure. The insider and outsider quota had been palpably violated in their own showing by the respondent in A.P.

	<u>U.R.</u>	<u>OBC</u>	<u>SC</u>
Sl. No. in IAS	7, 27 & 287	41	51
Rank in CSE, 1996	9, 29, & 31	47	107
	(Peeyush Kumar, N. Sreedhar & Shailaja Ramaiyer)	Ahmad Nadeem	Bhupinder Kaur Aulakh

18.5 It is clearly seen from the above, that i) as against 2 outsiders U/R to be filled for A.P. only one U/R was taken from outside. The deficiency was made good by favouring Shailaja Ramaiyer (S.No. and Rank 27, 29 respectively) who is an insider candidate below N. Sridhar OBC converted to U/R by merit as discussed (ibid). (ii) As against one allotted insider OBC, no insider OBC was taken - as we have reason to believe that N. Sridhar a high ranking OBC forfeited his OBC appointment by merit and was categorised and treated

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as U/R by the respondent in their own showing in the Cadre Allocation Chart cited above. He was actually granted an U/R slot in the chart to fill up 3 U/R posts for A.P. That is to say, the respondents, for all practical purposes, accepted him as an UR candidate. In the net result the OBC Insider quota post which went by default to be filled from the next Insider available candidate i.e. the applicant, was surprisingly, without any rule, precedence or authority, made good by a much low ranking outsider OBC Ahmad Nadeem. The obvious choice for the next below insider OBC to the applicant was blandly evaded for reasons not clarified. The ones stated are not legal as by their own showing N. Sridhar (Res.4) has been allotted an insider U/R quota post.

18.6 It may *prima facie* appear that the applicant had accepted the allotment but what of that, when palpable irregularity was committed in the allotment itself. He has challenged what is *prima facie* illegal and unauthorised compounding his quota of sufferance. What we could unmistakably notice is that there were two outsider U/R quota posts to be filled but only one outsider was allowed to join, not two. If that was done, as it is legally the provision then there could be no question of the outsider U/R quota post being given to an insider candidate (Res.5). This *ultra vires* have seemingly been covered up by quoting the applicant as a lower ranked OBC than Shailaja Ramaiyer, who is an U/R Insider in any case. Therefore, in our considered view, the comparison is both illegal and unsavoury. There is no rule written or otherwise which permits such comparison for justifying this unusual consideration in favour of Res.5. The respondents have actually given the allocation to N. Sridhar under U/R category in the Cadre Allocation Chart and has actually shown the intake of 3 U/R including N. Sridhar (R-4). Thereafter such an argument of the respondent in para 18 of the impugned letter dated 10-9-03 could only be rated as unfortunate excuse even in any common parlance. The legal point missed in the impugned order is that had there been no OBC insider quota to talk about, Res.4 whose categorisation as U/R on

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merit being irreversible incidence of service, would have got the single insider quota, not Res.5. The Rule or its exception both should be legally interpreted and applied which we find is missing. We have already discussed that the categorisation of an OBC as U/R on merit consideration is irrevocable - meaning thereby that the Res.4 is liable to enjoy and suffer both the advantages and disadvantages of an U/R candidate. But the respondents have interpreted it as a two way traffic. We are not able to agree with this as no rule permits the OBC to enjoy the facility of both worlds.

18.7 Thus, it is quite clear that against two UR vacancies earmarked for "outsider" only one was allotted i.e. Sl. No. 1 (Shri Peeyush Kumar). There was no quota for OBC for 'outsider', yet Shri Ahmad Nadeem (Sl.No. 4), an OBC "outsider" candidate was appointed. Obviously, there was a shoftfall of UR "outsider" quota and in its place an OBC "outsider" candidate has been appointed.

18.8 From the foregoing array of facts it is clear that the UR vacancy for "insider" quota, which ought to have gone to Shri N. Sreedhar was actuallly given to him in the chart because of his higher rank. Thereafter, no insider U/R post was available to accommodate Shri Shailaja Ramaiyer as an UR-Insider. Shri N.Sreedhar could not have been treated again by any double standard as an "insider" OBC candidate. The OBC post could not be given to an OBC "outsider" candidate as it has been done - all in furious disregard of their own rules and procedure. In the process, the applicant was also deprived of getting accommodation in home State cadre against a clear "OBC" insider quota, to which he was otherwise eligible. In our considered opinion, internal adjustment of quota for "outsider" and "insider" for reserved and unreserved candidates against declared vacancies to accommodate a favoured candidate cannot be done which will furstrate the very purpose of fixation of quota system iteself as per the policy decision of the Govt. of India, on which the respondents themselves place reliance.

19. For the reasons stated above, we are of the opinion that



non-allotment of the applicant to his Home State Cadre against the slot reserved for "insider" OBC candidate is not according to the policy guidelines enunciated by the respondents themselves. However, after all these years, it is also not possible to revise the allotment order made long ago, especially when neither Shri N.Sridhar nor Shri Shailaja Ramaiyer (respondents 4 and 5) were responsible for such allotment which was done by the respondent No. 1.

20. Keeping in view the peculiar facts and circumstances of the case, we are of the considered opinion that ends of justice will be met if we direct the respondent authorities, especially respondents 1 to 3 to allot the applicant his home State cadre i.e. Andhra Pradesh cadre against any available vacancy or against the first available future vacancy. Consequently, the speaking order dt. 10.9.01 (annexure-A7) is liable to be quashed.

21. We order accordingly and allow the application without any order as to costs.

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(S.BISWAS)

MEMBER(J)

CHOWDHURY. J. (V.C.)

I have had the advantage of reading the draft judgment rendered by the esteemed Member. By agreeing with the conclusion at which he has reached, I gratefully adopt his detailed account of the circumstances giving rise to the present O.A. I hereinbelow add my observations thereanent -

The Indian Administrative Service (Cadre) Rules, 1954 regulates the allocation of cadre officers to various cadres. Rule 5 of the Rules provides that the allocation of the members of IAS to various cadres shall be made by the Central Government in consultation with the State Government or the State Governments concerned. The Central Government is authorised to transfer a cadre officer from one cadre to another cadre with concurrence of the State Government in aid of Sub-rule (2). Referring to the rules, Mr R. Sharma, learned counsel for the respondents, contended that when a person is appointed to the Service (IAS) having various State Cadres, he does not have any further right to claim allocation to a State of his choice or to a home State. The sole discretion to allocate the members of the Service to various cadres is entrusted to the Central Government by a statute. Mr R. Sharma contended that in light of the professed policy adopted by the Government of India in the matter of cadre allocation of IAS officers, stipulates that preference in the matter of cadre allocation was given to the candidate having merit higher than the other candidates. Shailaja Ramaiyer who was higher in rank to the applicant was allocated to the sole insider vacancy earmarked for unreserved category of candidates.

2. Admittedly, the policy of allocation on the basis of the roster system was indicated in the D.O. letter dated 30/31.5.1985. On the basis of the roster system, sub-para 2 of para 3 of the aforementioned communication provides for distribution of reserved vacancies in each cadre between 'outsiders' and 'insiders' in the ratio of 2 : 1. As per clause (vii) of para 4, "in the case of candidates belonging to the reserved category, such of those candidates, whose position in the merit list is such that they could have been appointed to the service even in the absence of any reservation, will be treated on par with general candidates for purposes of allotment though they will be counted against reserved vacancies....."

3. On the own showing of the respondents, the position of respondent No.4, N. Sridhar, in the merit list was such that he could have been appointed to the Service in the absence of any reservation and as a matter of fact he was treated as a general candidate. His appointment was made as unreserved category by virtue of his merit position. For purpose of allotment also he was to be treated as a general candidate and not otherwise.

4. Discretion conferred is not unfettered, nor the same is arbitrary. The purported reasons assigned by the authority in refusing to allocate the applicant, the 'insider' reserved vacancy is obviously ultra vires for taking into account factors which were legally irrelevant. The methodology adopted for treating N. Sridhar, the respondent No.4, against the 'insider' reserved vacancy runs counter to the professed policy.

Rules.....

Rules bind, professed policy guides in the exercise of discretion. The roster system itself is introduced to provide equitable treatment to both the general candidates and the reserved candidates. The professed policy referred to by Mr R. Sharma, learned counsel for the respondents, envisages the roster system. It was introduced also to ensure equitable distribution of reserved candidates. As was aptly described in the following passage of the Supreme Court in *Union of India and others Vs. Rajiv Yadav, IAS and others*, reported in (1994) 6 SCC 38:

"We may examine the question from another angle. 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. The principles of allocation as contained in clause (2) of the letter dated 31.5.1985, wherein preference is given to a Scheduled Caste/Scheduled Tribe candidate for allocation to his home State, do not provide for reservation of appointments or posts and as such the question of testing the said principles on the anvil of Article 16(4) of the Constitution of India does not arise. It is common knowledge that the Scheduled Caste/Scheduled Tribe candidates are normally much below in the merit list and as such are not in a position to compete with the general category candidates. The "Roster System" ensures equitable treatment to both the general candidates and the reserved categories. In compliance with the statutory requirement and in terms of Article 16(4) of the Constitution of India 22½% reserved category candidates are recruited to the IAS. Having done so both the categories are to be justly distributed amongst the States. But for the "Roster System" it would be difficult rather impossible for the Scheduled Caste/Scheduled Tribe candidates to be allocated to their home States. The principles of cadre allocation, thus, ensure equitable distribution of reserved candidates amongst all the cadres."

5. On the own showing of the Respondents the professed policy was adopted for cadre allocation. Legal policy enjoins upon the authority to meticulously and punctiliously adhere to the norms it proclaims. In this context it would be apt to rehearse the following observation of the Supreme Court in R.D. Shetty Vs. International Airport Authority, reported in (1979) 3 SCC 489.

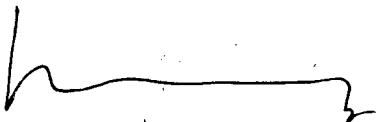
"It is well settled rule of administrative law that the executive must be rigorously held to the standards by which it professes its action to be judged and it must scrupulously observed those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr Justice Frankfurter in Viteralli Vs. Saton where the learned Judge said:

An executive agency must be rigorously held to the standards by which it professes its action to be judged Accordingly, if dismissal from employment is based on a defined procedure, even though genorous beyond the requirements 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."

6. On the own showing, the respondent No.4, N. Sridhar, was appointed to the Service and treated on par with the General candidates. This aspect of the matter was conclusively dealt by this Bench in O.A.No.1 of 1999 between the same parties. The findings to that extent is final and binding.

7. The consideratins those operated in the mind of the authority in excluding the applicant the 'insider' OBC vacancy and preferring the respondent No.5 against the said vacancy was guided by extraneous and irrelevant consideration, which amounted to denial of equality and thus isolation of Articles 14 and 16 of the

Constitution. Needless to recount that Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. An underlying basis of the professed policy of Cadre allocation is to render justice and to avoid injustice. The basic aim of the Indian Constitutionality is that the law should afford equal treatment for all. It is aimed at, to borrow the expression of Professor N. Dworkin, 'Equal Concern and Respect' - (Taking Rights Seriously - by R. Dworkin).


(D. N. CHOWDHURY)
VICE-CHAIRMAN

O R D E R

For all the reasons stated above, we set aside the impugned order No.22012/15/99-AIS(1) dated 10.9.2001. The application is allowed. The respondents are directed to revise the allotment order to the OBC 'insider' vacancy for 1996-97 in respect of Andhra Pradesh Cadre and to consider the case of the applicant for allotment in his home State as a OBC quota holder in the light of the observations made above within three months from the date of receipt of the order.

No order as to costs.


✓ (S. BISWAS)
ADMINISTRATIVE MEMBER


(D. N. CHOWDHURY)
VICE-CHAIRMAN

26

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH

OA NO. 91/02

J.S. Rao, IAS

..... Applicant

-VS-

Union of India

..... Respondent

STATEMENT OF THE CASE

1. The applicant belongs to 1997 batch of IAS.
2. The home State of the applicant is A.P.
3. Vide order dated 6.9.97 the applicant was appointed to IAS, after clearing the Civil Service Examination of 1996. (Annexure-1.)
4. The applicant underwent training after the selection and appointment at the Lal Bahadur Shastri National Academy.
5. In A.P. there were 5 vacancies to be filled up by the officers of 1996 Examination batch.
6. Out of 5 vacancies, 2 for insiders, (1 General + 1 OBC) and 3 for outsiders (2 General + 1 SC/ST), in terms of circular dated 15.9.97. (Annexure-2.)
7. The respondents vide notification dated 6.9.97 (Annexure-3.) allocated the A.P cadre in the following manner;

Name	Rank	Category	Insider/Outsider
1. P.Kumar	89	Gen.	Outsider.
2. N.Sridhar	29	Gen	Insider.
3. S.Ramaiyan	31	Gen.	Insider.
4. A.Nadeem	47	OBC	Outsider
5. B.K.Aulakh	197	SC	Outsider.

Filed by
Abdolkarim Jami
Advocate
01/5/03

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8. In terms of 2.9.94 (para (v)) - the reserved candidate higher position in merit, may be treated at par with general category candidate for the purpose of allotment. (Ref- para 4.7 of the O.A.)

9. The candidate who opted for home cadre (A.P) are as follows.

1. N.Sridhar -- 29 -- Gen. (not availed OBC).
2. S.Ramaiyer - 31 -- Gen.
3. J.S.Rao -- 34 -- OBC.

10. The OBC insider vacancy was allotted to N.Sridhar although he was treated at par with General category candidate.

11. The applicant submitted a representation dated 17.3.98. (Annexure-4).

12. The respondents vide letter dated 22.9.98 rejected the claim of the applicant.

13. The said order dated 22.9.98 was the subject matter of the O.A No 1/99.

14. On 29.3.01, the O.A No 1/99 was allowed setting aside the order dated 22.9.98. (Annexure-6)

15. The respondents reiterating their stand once again rejected the case of the applicant vide order dated 10.9.2001. (Annexure-7).

G R O U N D S.

1. The respondents while allotting the cadre have failed to take into consideration the roster system and thereby deprived the benefit to a reserved category candidate.

2. The respondents utilised the insider OBC vacancy by a general candidate, without following the roster as well as the

guidelines holding the field. The aforesaid action has violated the settled proposition of law laid down by the Hon'ble Apex Court.

3. Even though there was no vacancy for outsider OBC, the respondents of their own has created the same and allotted to Mr A.Nadeem (OBC-Outsider).

4. The respondents should have adopted similar manner and method in respect of cadre allocation by the State of Tamilnadu.

5. The case is covered by various judgments passed by Hon'ble Apex Court, Hon'ble High Court and the Hon'ble Central Administrative Tribunal.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

14 MARCH 2002

Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH

(An application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the Case : O.A. No. 91 of 2002

S. Syamala Rao ... Applicant

- Versus -

Union of India ... Respondent

I N D E X

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For use in Tribunal's Office :

Date of filing :

Registration No.

REGISTRAR

Filed by :
The Applicant
through
Nijal Kr. Senapati
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

O.A. No. 91 of 2002

BETWEEN

J. Syamala Rao, I.A.S., Staff Officer to
the Chief Secretary & Deputy Secretary
(Home & Political), Assam Secretariat
(Civil), Dispur, Guwahati-6.

... Applicant

AND

2. The Chief Secretary
Govt. of Assam.
Dispur, Ghy-6.

Union of India, through the Secretary
to the Government of India, Department
of Personnel & Training, Ministry of
Personnel, Public Grievances & Pension,
North Block, New Delhi.

3. The Chief Secretary
Govt. of Andhra Pradesh
Hyderabad.

2. ~~The name of the Respondent No. 2 is
indicated as Respondent's ride order dtd
26/3/03 issued in MP 30/03.~~ ... Respondent

4. Sri N. Sreedhar IAS
Project Officer,
Integrated Tribal
Development Agency,
Utnoor, Achilaband District,
Andhra Pradesh.

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE
APPLICATION IS MADE :

5. Sri Saitya Ramnager IAS
Project Director
District Phone Area
Programme,
C/o Collectorate,
Shaly Bhaawan,
Dakshin, Puri
Range Reddy District,
Andhra Pradesh.
The application is directed against the order No.
22012/15/99-AIS(I) dated 10th September 2001 passed by
the Respondent rejecting the representation dated
17.3.98 of the Applicant for allotment of home cadre
i.e. Andhra Pradesh, after reconsidering it in pursuant
to the order dated 29.03.2001 of the Hon'ble CAT,

6. Ahmed Nadeem IAS
Project Director,
C/o. Collectorate,
Dist- Rural Development Agency,
Machili Pethamuru,
Kreishna District,
Andhra Pradesh.

2. JURISDICTION OF THE TRIBUNAL :
The applicant declares that the subject matter of
the instant application for which he wants redressal is
well within the jurisdiction of the Hon'ble Tribunal.



3. LIMITATION :

The applicant further declares that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the Applicant is a citizen of India. He belongs to OBC category and is an IAS officer belonging to 1997 batch. The Home State of the Applicant is the State of Andhra Pradesh. On being successful in the Civil Services Examination, the Applicant was appointed to the IAS vide letter No. 13013/3/97-AIS(I) dated 6.9.97 issued by the Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training. Pursuant to the letter dated 6.9.97, the Applicant was allotted the Assam Meghalaya Joint Cadre.

Copy of the letter dated 6.9.97 is annexed as
ANNEXURE-A/1.

4.2 That pursuant to his selection and appointment to IAS, the Applicant underwent training at the Lal Bahadur Shastri National Academy of Administration, Mussoorie and Dibrugarh District of Assam. Presently he is working as Deputy Secretary (Home & Political) in the Assam Civil Secretariat, Dispur.

4.3 That in so far as the home State of the Applicant, Andhra Pradesh is concerned, it is stated that in the aforesaid State, there were in all 5 (five)



vacancies to be filled up by the officers of the 1996 Examination Batch. Of these 5 (five) vacancies, three were required to be filled by candidates belonging to the general category, while one was reserved for SC/ST and one for OBC.

4.4 That vide circular No. 8/2/ASP/97 dated 15.9.97, a copy of the statement indicating distribution of "insider and outsider" vacancies for various categories in IAS on the basis of CSE, 1996 received vide the Department of Personnel and Training's D.O. No. 13011/30/96-AIS(I) dated 2.6.97, was circulated amongst all IAS officer trainees of 1997 batch. As per the aforesaid statement, in the roster system in existence in the General category out of the total three vacancies, one is for Insider and two are for Outsiders. The lone SC/ST vacancy is meant for Outsider. The lone OBC vacancy is meant for Insider. This is shown in a tabular form below for the sake of convenience :

	General	SC/ST	OBC	Total
Insider	1	-	1	2
Outsider	2	1	-	3
Total	3	1	1	5

Copy of the circular dated 15.9.97 enclosing the statement indicating the distribution of insider and outsider vacancies for various categories in IAS on the basis of CSE-96 is annexed as ANNEXURE-A/2.



4.5 That the Central Government in exercise of power conferred by sub-rule (1) of Rule 5 of IAS (Cadre) Rules, 1954, allocated five officers to the State Cadre of Andhra Pradesh vide notification dated 6.9.97. The names of these five officers who were allocated Andhra Pradesh Cadre and the rank obtained by each of them is shown above in the form of chart for the sake of convenience.

Sl.No.	Name	Rank
1.	Peeyush Kumar	9
2.	N.Sridhar	29
3.	Shailaja Ramaiyer	31
4.	Ahamad Nadeem	47
5.	Bhupinder Kaur Aulakh	107

Copy of the notification dated 6.9.97 is annexed as ANNEXURE-A/3.

4.6 That the question of reservation in favour of SC/ST and OBC for purpose of recruitment to IAS is governed by regulations prescribing quota for reserved for SC candidates, 7 1/2% for ST candidates and 27% for OBC candidates. For filling the vacancies reserved for SC/ST and OBC candidates, such candidates are to be considered for appointment in the order in which their names appear in the list of successful candidates i.e. strictly in terms of their merit positions. The category against which the above mentioned candidates were appointed to IAS is given below :



Sl.No.	Name	Rank	Category against which appointment was given.
1.	Peeyush Kumar	9	General
2.	N.Sridhar	29	General
3.	Shailaja Ramaiyer	31	General
4.	Ahamad Nadeem	47	OBC
5.	Bhupinder Kaur Aulakh	107	SC

4.7 That as per Rule 5 of the Cadre Rule, Central Government is the authority to allocate the members of IAS to various cadres/joint cadres. However, there is no such statutory rule regulating the principles of allocation. The roster system is, however, operative for exercise of discretion under Rule 5 of the Cadre Rules. The principles of cadre allocation on the basis of roster system (as contained in the circular No. 3/5/ASF/94 dated 2nd September 1994 of Lal Bahadur Shastri National Academy of Administration, Mussorie) are reproduced below :

- "(i) Allocation of "insiders" both man and woman is strictly in accordance to their rank, subject to their willingness to be allocated in their home State.
- (ii) Allocation of "outsiders" whether they are general candidates or reserved candidates and whether they are men or women is in accordance to the roster system after placing "insiders" at the proper places.

(iii) The vacancies in every cadre are to earmarked for "outsiders" and "insiders" in the ratio of 2 : 1 and the cycle would be outsider : insider : outsider.

(iv) Distribution of reserved vacancies in each cadre between "outsiders" and "insiders" will be done in the ratio of 2 : 1. this would again be operated by following a cycle outsider : insider : outsider as is done in the case of a general candidate.

(v) In the case of candidates belonging to the reserved category, such of those candidates whose position in the merit list is such that they could have been appointed to the service on the basis of their own merit, they shall be treated at par with general candidates for the purpose of allotment."

4.8 That the candidates allotted to Andhra Pradesh along with the category against which they have been appointed to IAS and also the Insider/Outsider category is indicated below for convenience in the form of a table.

Sl.No.	Name	Rank	Category against which appointment was given.	Insider/Outsider
1.	Peeyush Kumar	9	General	Outsider
2.	N.Sridhar	29	General	Insider
3.	Shailaja Ramaiyer	31	General	Insider
4.	Ahamad Nadeem	47	OBC	Outsider
5.	Bhupinder Kaur Aulakh	107	SC	Outsider

4.9 That in the Civil Services Examination, 1996, the candidates who were appointed to IAS and who opted for Andhra Pradesh as their home cadre are listed below in the order of merit :

Sl.No.	Name	Rank	Category against which appointment was given for IAS.
1.	N. Sridhar	29	General
2.	Shailaja Ramaiyer	31	General
3.	J. Syamala Rao	34	OBC

4.10 That against the two insider vacancies for Andhra Pradesh, one which was reserved for OBC has been allotted to Mr. N. Sridhar, the one which was reserved for General was allotted to Shailaja Ramaiyer.

4.11 That it is pertinent to mention that the Applicant opted for Andhra Pradesh as his home cadre. Moreover, the Applicant also belongs to OBC and he has been appointed against this vacancy. However, Sri N. Sridhar who obtained 29th rank belongs to OBC category and did not utilize his OBC status for his selection to the IAS, unlike the Applicant. It is due to this reason that Shri N. Sridhar was treated as a general category candidate and adjusted against a general vacancy for appointment. Out of the two vacancies for insiders in Andhra Pradesh, the one which was meant to be occupied by an OBC candidate was given to Shri N. Sridhar - a candidate, who, as already stated above, though belonging to OBC category did not utilize his status as such and was thus liable to be

treated as a general category candidate for the purpose of allocation to the Andhra Pradesh cadre when there is a clear general vacancy available and was therefore not liable to be treated as OBC for the purpose of reservation of vacancy for OBC. Hence the contention of the Applicant in the present case is that he was entitled to be adjusted against an insider vacancy meant for OBC. The other general vacancy was given to Ms. Shailaja Ramaiyer, which in fact should have given to Mr. N. Sridhar. The basic thrust of the Applicant's argument is that when an OBC candidate does not use the benefit of OBC status for the purpose of being selected to IAS, then for the purpose of allocation of cadre, he cannot be treated to be an OBC candidate especially when there is a clear general vacancy available. In such a situation, the OBC candidate has to be treated as a general candidate and he has to be adjusted in a general vacancy for the purpose of allocation of cadre.

4.12 That this being the case the Applicant submitted a representation dated 17.3.98 to the Respondent authority through the Director, Lal Bahadur Shastri National Academy of Administration, Missouri requesting for allotment of his home cadre of Andhra Pradesh. In this representation, the Applicant elaborately explained the reasons and circumstances under which he was seeking change of cadre i.e. his home cadre.

Copy of the representation dated 17.3.98 is annexed as ANNEXURE-A/4.



4.13 That the Respondent vide letter dated 22.9.98 intimated the Applicant that his grievance in the matter of cadre allocation cannot be considered and thus rejected the representation of the Applicant for change of cadre dated 17.3.98.

Copy of the letter dated 22.9.98 issued by the Respondent is annexed as ANNEXURE-A/5.

4.14 That being thus aggrieved by the impugned letter dated 22.9.98, the Applicant filed an application before the Hon'ble Tribunal being O.A. No.1 of 1999. In the aforesaid O.A., Respondent filed the written statement and the Applicant in response of the same, also filed his rejoinder.

4.15 That the Hon'ble Tribunal, Guwahati on consideration of all the materials and after hearing the counsel of both the sides disposed of the Original Application vide order dated 29.3.2001. The significant features of the order of the Hon'ble Tribunal are illustrated hereinbelow for the sake of convenience :

- (i) Against the general insider vacancy Miss Ramaiyer and N. Sridhar were adjusted and no one was available against OBC insider vacancy.
- (ii) The roster system is made to evenly and justly for distributing the posts including the post in a home cadre for the reserved candidate. In view of the roster system, it may be possible for the reserved candidate for being allocated in the home State.

a
b

(iii) In Union of India -Vs- Rajiv Yadav reported in (1994) VI SCC 38 which was referred to by both the counsel, the Supreme Court considering the roster system observed that the roster system ensures equitable treatment to the general candidate and reserved category. In the above case, the Supreme Court took judicial notice that the Scheduled Caste/Scheduled Tribe candidates were normally much below in the merit list and as such are not in a position to compete with the general category. But for the roster system, it would be difficult rather impossible to the Scheduled Castes/Scheduled Tribe candidates to be allocated to their home State.

(iv) Allocation of cadre is no doubt an incidence of service but when the respondent authority in discharging the constitutional proclamation as well as statutory obligation formulated a policy, such policy decision are to be adhered to.

(v) Departure from its professed norm is not permissible without any valid reason.

(vi) On the own showing of the respondents Mr. N. Sridhar though a reserved category candidate was allocated to IAS without any edge. He was in view of the merit position was to be treated at par with general candidate for the purpose of allotment of cadre.

(vii) There could not have been standards under criteria for appointment and allocation.

(viii) The roster does not contemplate sidelining the reservation policy.

(ix) The roster system is in operation in the matter of cadre allocation and in such case, the policy of reservation cannot be totally ignored.

(x) The communication dated 22.9.98 cannot be sustained and accordingly is set aside.

(xi) The respondents are directed to reconsider the matter in accordance with law and in the light of the observations made in the order.

Copy of the order of the Hon'ble Tribunal dated 29.3.2001 is annexed as ANNEXURE-A/6.

4.16 That the Respondent as per the direction of the Hon'ble Tribunal reconsidered the matter and passed an order dated 10th September 2001 rejecting the claim of the Applicant that he should be allocated to the Andhra Pradesh cadre.

The copy of the impugned order dated 10.9.2001 is annexed as ANNEXURE-A/7.

4.17 That the Applicant states that the impugned order dated 10th September 2001 is not in conformity with the direction and observations of the Hon'ble Tribunal made in its order dated 29.3.2001 passed in O.A. No. 1/99. The Respondent did not follow the roster system and gave precedence to the merit criteria which resulted in an anomalous situation. The anomalous situation created by the action of the Respondent can be shown in a



tabular form for the sake of convenience. As per the roster system, the vacancy position for the Andhra Pradesh was -

	Insiders	Outsiders	Total
General	1	2	3
OBC	1	Nil	1
SC/ST	Nil	1	1
Total	2	3	5

However, the Respondent followed the merit criteria giving it precedence over the roster system. This resulted in an anomalous situation as can be seen in the following table :

	Insiders	Outsiders	Total
General	2 (Mr. N. Sridhar Ms. Sailaja Ramaiyer)	1 (Mr. Peeyush Kumar)	3
OBC	Nil	1 (Mr. Ahmad Nadeem)	1
SC/ST	Nil	1 (Ms. Bhupinder Kaur Aulakh)	1
Total	2	3	5

The table above shows the anomalous situation created by the impugned action of the Respondent. For example, the OBC vacancy should be for insider as per roster. However, it was allocated to outsider Ahmad Nadeem in violation of the roster. It was in view of the above fact that the Hon'ble Tribunal had observed in its order passed in O.A. No. 1/99 that against the available general vacancy, Ms. Shailaja Ramaiyer and

Mr. N. Sridhar were adjusted and none was available against the OBC insider vacancy. Hence the OBC insider vacancy ought to have been allotted to the Applicant as he is the first person to get appointment against OBC vacancy from Andhra Pradesh.

4.18 That like the present case, similar situation arose in the State of Tamil Nadu for the examination year 1996 (same as that of Applicant). There were two vacancies, one for general and one for OBC (similar to that of Andhra Pradesh) in the State of Tamil Nadu in the insider slots, for the examination 1996. The insider candidates from Tamil Nadu in the order of merit were -

- (i) Ms. Swarna Srinivasan : Rank 12 (general category)
- (ii) Ms. Beela Venkateswar : Rank 39 (general category)
- (iii) Mr. D. Karthikeyan : Rank 42 (OBC)

The insider general vacancy was allotted to Ms. Swarna Srinivasan and OBC vacancy was rightly allotted to Mr. D. Karthikeyan denying it to Ms. Beela Venkateswar, a general category candidate higher in merit than Mr. D. Karthikeyan. Apparently what was done in the State of Tamil Nadu in the matter pertaining to cadre allocation is contrary to what the Respondents have claimed in para 11 and para 18 of the impugned order dated 10.9.2001. The manner in which the cadre allocation was carried out in the State of Tamil Nadu for the examination year 1996 had the same methodology been adopted in the State of Andhra Pradesh, the Applicant would have certainly got his home cadre.



4.19 That in a few cases of similar nature, the direction in the nature of Mandamus were given by the Central Administrative Tribunal to correct irregularities in cadre allocation. One such case is O.A. No. 781/98 and O.A. No. 782/98 wherein irregularities in cadre allocation in the Civil Service Examination, 1996 in Indian Police Service were sought to be corrected. In the aforesaid case, the Principal Seat of this Hon'ble Tribunal in its common order dated 24.11.2000 directed the Respondents to allocate home cadre to the Applicant in O.A. No. 781/98.

Applicant craves leave of this Hon'ble Court to produce copy of the common order dated 24.11.2000 passed by the Principal Seat of the Hon'ble Tribunal in O.A. NO. 781/98 and O.A. No. 782/98.

4.20 That being thus aggrieved by the impugned order dated 10th September 2001, the Applicant has come before this Hon'ble Tribunal for the ends of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS :

5.1 Because the impugned order dated 10.9.2001 is contrary to the observations made by the Hon'ble Tribunal in its order dated 29.3.2001 and the directions contained therein.

5.2 Because from reading of the impugned order, it is inferred that the Respondent applied the merit criteria only to OBC candidates and not to the SC and ST candidates. The action of the Respondent is, therefore,



discriminatory and as such illegal. It is submitted that application of merit criteria whether in regard to OBC candidate or to an SC/ST is per se illegal and there is no legally tenable ground for applying the merit criteria.

5.3 Because the Hon'ble Tribunal in its order dated 29.3.2001 opined that there could not have been standard under criteria for appointment and allocation. It was further observed by the Hon'ble Tribunal that on the own showing of the Respondent, Mr. N. Sridhar though a reserved category candidate was allocated to IAS without any edge. He was in view of his merit position was to be treated at par with the general category candidate for the purpose of allotment of cadre. Hence, Mr. N. Sridhar ought to have been treated as a general candidate for cadre allocation. However, the Respondent Inspite of the observation of the Hon'ble Tribunal again considered Mr. N. Sridhar as an OBC and allocated the general vacancy to Ms. Shailaja Ramaiyer. The impugned action of the Respondent is, therefore, contrary to the observation of the Hon'ble Tribunal.

5.4 Because the Respondent ignored the fact that the Hon'ble Tribunal while passing the order considered the merit argument of the Respondent and rejected it. However, the Respondent yet again used the same argument for rejecting the representation of the Applicant. The Hon'ble Tribunal observed that the roster system which was upheld by the Hon'ble Supreme Court does not contemplate sidelining the reservation



policy. The Hon'ble Tribunal also reiterated the observations of the Supreme Court to the effect that the roster system ensures equitable treatment to the general and reserved candidates. It was also emphasised that without roster system, it would be difficult, rather impossible for the reserved candidate to be allocated to their home State. The Hon'ble Supreme Court in Rajiv Yadav case took a judicial notice of the fact that reserved candidates are normally much below in the merit list and as such, are not in a position to compete with the general category. However, relevant observation of the Hon'ble Tribunal which were made in light of the observations of the Hon'ble Supreme Court in Rajiv Yadav case were ignored by the Respondent while passing the impugned order dated 10.9.2001.

5.5 Because the merit criteria followed by the Respondent is against the observation of the Hon'ble Tribunal and the same is also contrary to the observations of the Hon'ble Supreme Court in Rajiv Yadav case. It is submitted that the roster system was upheld by the Hon'ble Supreme Court, because without such a system, it would have been impossible for the reserved candidates to get allocated to their home cadres inasmuch as they are much below in merit compared to the general candidates. Hence, the Hon'ble Supreme Court accepted the principles that a reserved candidate may get allocated to his home State denying it to an open category candidate higher in merit to him. Hence the criteria of merit followed by the Respondent in its impugned order is against the letter



and spirit of the judgment of the Hon'ble Supreme Court in Rajiv Yadav case. Even the Hon'ble Tribunal in its order opined that the roster system upheld by the Hon'ble Supreme Court does not contemplate sidelining the reservation policy.

5.6 Because the Respondent in its impugned order stated that "a higher ranking candidate is not denied his home State who has a preferential claim over lower ranking candidate". The aforesaid observation may be valid for candidates belonging to same category. However, when the candidates belong to different categories like in the present case, such comparison is unjustified because the candidates are bound to be adjusted against the different categories of vacancies because of the roster system. The comparison made by the Respondent is against the basic principle of reservation itself.

5.7 Because the reservation system should not be used against the interest of the reserved candidate. It can be used only to benefit reserved candidate. The reservation of one vacancy of OBC in the insider slot for Andhra Pradesh was meant to benefit an OBC candidate. However, the impugned action of the Respondent neither benefited N. Sridhar as he was getting the home cadre on his own merit nor it benefited the Applicant. Hence the impugned action of the Respondent did not benefit any OBC candidate. The beneficiary of OBC reservation i.e. the OBC vacancy in Andhra Pradesh is Ms. Shailaja Ramaiyer who happens to

be a general candidate. Ms. Shaillaja Ramaiyer would not have got her home cadre if there was no OBC vacancy. This is because of the merit criteria which is clearly violative of the basic principle of reservation policy. Hence the impugned action of the Respondent is contrary to the order of the Hon'ble Tribunal wherein it was held that the policy of reservation cannot be ignored when roster system is in operation.

5.8 Because the Respondent in para 12 of its impugned order dated 10.9.2001 has spoken about the past instances when the similar practice was followed in the matter of allocation of cadre. However, it is submitted that the mistakes made in the past cannot be the justification for perpetuation of such irregularities.

5.9 Because the argument advanced by the Respondent that a selected candidate has a right to be considered for appointment to IAS, but he has no such right to be allocated to a cadre of his choice or to his home State and that allotment of cadre is an incidence of service and member of All India Service bears liability to serve in any part of India, cannot be disputed. However, cadre cannot be allotted whimsically or capriciously and the discretion vested in the Respondent has to be reasonably exercised in conformity with the guidelines and the law laid down by the Court. It is submitted that though allocation of cadre is an incidence of service, but when the Respondent in order to discharge its obligation formulated a policy, then such a policy is to be adhered to. Departure from its

professed norms is not permissible without any valid reason. In the present case, the Respondent deviated from its norm and acted arbitrarily while allocating cadre and as such, the impugned order is liable to be set aside and quashed.

5.10 Because the impugned order dated 10.9.2001 is contrary to the law laid down by the Hon'ble Supreme Court in Rajiv Yadav case and the same is also contrary to the observations made by the Hon'ble Tribunal in its order dated 29.3.2001.

5.11 Because there is no basis for the Respondents to apply the merit criteria. There is no material available on record to suggest that such a criteria exists. It is submitted that the merit criteria in the present case has been applied arbitrarily and the same was introduced by the Respondents without any legal basis.

6. DETAILS OF REMEDIES EXHAUSTED :

That the Applicant states that he has no other alternative efficacious remedy except by way of approaching this Hon'ble Tribunal.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

The Applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of

the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

8.1 Quash and set aside the order No. 22012/15/99-AIS(I) dated 10.9.2001 (Annexure-A/7) ;

8.2 Direct the Respondent to allot to the Applicant his home cadre i.e. Andhra Pradesh cadre.

8.3 Pass such other order/orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

8.4 Cost of the application.

9. INTERIM ORDER PRAYED FOR :

In the facts and circumstances of the present case, the Applicant does not pray for any interim relief.

10.

The Application is filed through Advocate

11. PARTICULARS OF THE I.P.O. :

(i) I.P.O. No. : 76 547859

(ii) Date : 13/3/02

(iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

VERIFICATION

I, J. Syamala Rao, son of Late J. Satyanarayana Murty, aged about 33 years, presently working as Staff Officer to the Chief Secretary & Deputy Secretary (Home & Political), Assam Secretariat (Civil), Dispur, Guwahati-6, do hereby solemnly affirms and verify that the statements made in the accompanying application in paragraphs 4.2, 4.3, 4.8 to 4.12, 4.14, 4.17, 4.19 and 4.20 are true to my knowledge ; those made in paragraphs 4.1, 4.4 to 4.7, 4.13, 4.15 to 4.18 being matters of records are true to my information derived therefrom and the rest are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this the 12th day of ^{March} February 2002 at Guwahati.

Jyamala Rao

No. 13013/3/97-AIS(I)

Government of India

Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

To

New Delhi, dated the 6 SEP 1997

34 OBC IAS M
JAMJAM SYAMALA RAO
47/2RT, 1ST FLOOR,
VIJAYA NAGAR COLONY,
HYDERABAD-500057

Subject: Appointment to the Indian Administrative Service
on the results of the Civil Services Examination, 1996-

Madam/Sir,

The Government of India is pleased to appoint you to the Indian Administrative Service in the scale of pay of Rs.2200-75-2800-EB-100-4000 on the basis of the results of the Civil Services Examination conducted by the Union Public Service Commission in 1996 and allocate you to Assam-Meghalaya Cadre/Joint Cadre.

2. The terms and conditions of service in the Indian Administrative Service are laid down in the Rules framed under the All India Services Act, 1951, and you will be governed by these rules. You are advised to study the Rules and Regulations carefully in your own interest.

3(i) AGREEMENT :

Please execute an agreement in the attached form, binding yourself and one surety jointly and severally to refund, in the event of your failing to complete probation to the satisfaction of the Central Government, any money paid to you consequent on your appointment as a probationer. Please execute the agreement and deliver the same duly executed to the Director of the Academy for onward transmission to this Department.

*Atteeted
Ukijam
Advocate*

- 2 -

3(ii) DECLARATION ABOUT MARRIAGE:

Under Rule 5 of the Indian Administrative Service (Recruitment) Rules, 1954, a person having more than one spouse living is not eligible for appointment to the Service. The Central Government may, however, if satisfied that such marriage is permissible under the personal law applicable to him/her or the other party to the marriage and there are other grounds for so doing, exempt any person from the operation of this provision. This appointment is, therefore, conditional on your declaration in the form enclosed and submitting it to the Director of the Academy. In case you have more than one spouse living and you wish to be exempted from the operation of the said provision, you may furnish the full facts of your case to this Department immediately to enable the Government of India to take a decision in the matter.

3(iii) DECLARATION ABOUT CLOSE RELATIONS:

You shall furnish information within thirty days in respect of your close relations in the attached form (in duplicate) and deliver the same to the Director of the Academy.

3(iv) DECLARATION ABOUT MOVABLE, IMMOVABLE AND VALUABLE PROPERTY.

You shall also furnish information within thirty days in respect of movable, immovable and valuable property in accordance with the provisions of Rule 16(1) of All India Services (Conduct) Rules, 1968 (in duplicate) and deliver the same to the Director of the Academy.

4. Please convey to this Department your acceptance of the appointment to the Service and Cadre allocation within thirty days. If you do not communicate the same within the said period, the appointment shall be rescinded without any further notice to you.

Yours faithfully,

N. Sivasailam

(N. SIVASAILAM)
DEPUTY SECRETARY TO THE GOVT. OF INDIA.

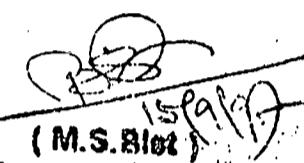
Annexure - A/2

- 24 -

No. 8/2/ASP/97
Lal Bahadur Shastri
National Academy of Administration,
MUSSOORIE

Dated: 16/9/97

Copy of statement indicating distribution of "Insider" and "Outsider" vacancies for various categories in IAS on the basis of CSE 1996 received vide Department of Personnel and Training's D.O. No. 13011/30/96-AIS(I) dated 2/6/97 is forwarded to all IAS Officer Trainees of 1997 Batch for their information


(M.S. Bhat)
Superintendent

All IAS Officer Trainees of 1997 Batch
(through 10/4/97)

Attested
M.S.
Advocate

Statement indicating the Distribution of 'Insiders' and 'Outsiders'
vacancies for various categories in LAS on the basis of CSE-96.

No.	Name of Cadre/ Joint Cadre	Total			Insiders			Outsiders		
		T	O	S	T	O	S	T	O	S
1.	Andhra Pradesh	5	1	1	2	1	-	3	-	1
2.	Assam Meghalaya	3	1	1	1	1	-	2	-	1
3.	Bihar	7	2	2	2	1	-	5	1	2
4.	Gujarat	4	1	1	1	-	-	3	1	1
5.	Haryana	1	-	-	-	-	-	1	-	-
6.	Himachal Pradesh	2	-	-	1	-	-	1	-	-
7.	Jammu & Kashmir	1	-	-	-	-	-	1	-	-
8.	Karnataka	4	1	1	2	1	1	3	-	-
9.	Kerala	3	1	1	1	-	-	2	1	1
10.	Madhya Pradesh	6	2	1	2	1	1	4	1	-
11.	Maharashtra	4	1	1	2	-	-	3	1	1
12.	Manipur- Tripura	4	1	1	1	1	-	3	-	1
13.	Nagaland	1	-	-	1	-	-	-	-	-
14.	Orissa	3	1	1	1	-	-	2	1	1
15.	Punjab	3	1	1	1	-	-	2	1	1
16.	Rajasthan	4	1	1	1	-	1	3	1	-
17.	Sikkim	1	-	-	1	-	-	-	-	-
18.	Tamil Nadu	6	2	1	2	1	-	4	1	1
19.	AGMUT	3	1	1	1	1	-	2	-	1
20.	Uttar Pradesh	7	2	2	3	1	-	4	1	2
21.	West Bengal	4	1	1	1	-	-	3	1	1
	Total	76	20	18	27	9	3	49	11	15

Note: "T" indicates Total ; "O" indicates OBC ; "S" indicates SC/ST

No. 13013/3/97-AIS(I);
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, dated the 6th September 1997

To

The Director,
LBS National Academy of Administration,
Mussoorie (UP)

Subject:- Civil Services Examination, 1996 -

Appointment to IAS and allocation of Cadre reg. -

Sir,

I am directed to forward herewith the offer of appointment pertaining to 72 candidates (As per list attached) who have been allocated to Indian Administrative Service on the basis of Civil Services Examination, 1996 and directed to report for F.C. Training at LBSNAA, Mussoorie. The Cadre allocation in respect of these candidates have also been finalised and the same is indicated in their respective offer of appointment. It is requested that the offer of appointment in respect of these candidates may please be handed over to them under acknowledgement.

2. The offer of appointment in respect of two candidates, namely, Ms. Beela Venkatesan (Rank-39) and Ms. M. Geeta (Rank-43) who have also been directed to report for FC Trg. at LBSNAA, Mussoorie will be issued shortly.

3. Further, Shri P. Sampath Kumar (Rank-5) vide his letter dated 29.8.97 had represented to change in respect of option/preferences for allocation to 'Home State' in his Application Form of CSE-96. However, the same has been rejected. A copy of the reply sent to him by this Deptt. in the matter is enclosed alongwith his Offer of Appointment.

4. Kindly acknowledge receipt of this letter alongwith the enclosures and after service of the appointment letters please ensure submission of return.

Yours faithfully,

(N. SIVASAILAM)

DEPUTY SECRETARY TO THE GOVT. OF INDIA.

Aftered
Wkly
forwrdt

CIVIL SERVICES EXAMINATION, 1996

ROLL NO.	NAME OF THE CANDIDATES	SERVICE ALLOTTED	CADRE ALLOTTED
18393	SUNIL KUMAR BARNWAL	IAS	BIHAR
10720	MANENDRA PRASAD AGRAWAL	IAS	UTTAR PRADESH
24460	RAHUL BHINDARI	IAS	PUNJAB
7293	RITA SINGH (KM.)	IAS	UTTAR PRADESH
1809	MANISH SINGH	IAS	MADHYA PRADESH
3646	PEETYUSH KUMAR	IAS	ANDHRA PRADESH
3774	SANJEEB KUMAR MISHRA	IAS	ORISSA
1486	RAGHUNENDRA KR. SINGH	IAS	MADHYA PRADESH
15620	SWARNA S. (KM.)	IAS	TAMIL NADU
36363	SHAHNEENA JHUSAIN (MS.)	IAS	GUGARAT
354352	RAKESH GUPTA	IAS	HARYANA
12666	SUBHASISH PANDA	IAS	HIMACHAL PRADESH
2570	MANOJ KUMAR DWIVEDI	IAS	JAMMU & KASHMIR
33517	HARSH GUPTA	IAS	KARNATAKA
112461	ASHEESH KUMAR	IAS	MAHARASHTRA
74499	SANGHAMITRA GHOSH (KM.)	IAS	WEST BENGAL
6093	NIHARIKA BARIK (MS.)	IAS	MANIPUR-TRIPURA
1037	MANISH BHARDWAJ	IAS	NAGALAND
3007	NAVEEN MAHAJAN	IAS	RAJASTHAN
45	SANOG KUMAR JHA	IAS	SIKKIM
5569	SANDEEP KUMAR	IAS	AGMUT
35146	R. NEESH	IAS	HIMACHAL PRADESH
864	RAXHEE GUPTA (KM.)	IAS	KARNATAKA

CIVIL SERVICES EXAMINATION, 1996

ROLL NO.	NAME OF THE CANDIDATES	SERVICE ALLOTTED	CADRE ALLOTTED
249	VISAY KUMAR	IAS	MAHARASHTRA
25201	TINKU BISWAL (MS.)	IAS	MANIPUR-TRIPURA
10152	SHAILAJA RAMAIYER	IAS	ANDHRA PRADESH
1724	HEMANT KR. GERA	IAS	RAJASTHAN
211663	ASHISH VACHANI	IAS	TAMIL NADU
68311	RAJESH KR. SINHA	IAS	WEST BENGAL
9702	SANTOSH KUMAR MALL	IAS	BIHAR
01189	K. SARMILA MARY JOSEPH (MS.)	IAS	KERALA
314	PANKAJ KR. BANSAL	IAS	TAMIL NADU

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CIVIL SERVICES EXAMINATION, 1996

ROLL NO. NAME OF THE CANDIDATES	SERVICE ALLOTTED	CADRE ALLOTTED
RY = OBC		
79770 N. SRIDHAR	IAS	ANDHRA PRADESH
122099 JAMJAM SYAHALA RAO	IAS	ASSAM-MEGHALAYA
225761 HARI OM	IAS	UTTAR PRADESH
11130 D. KARTHIKEYAN	IAS	TAMIL NADU
78916 AHMAD NADEEM	IAS	ANDHRA PRADESH
42168 PANKAJ KUMAR	IAS	BIHAR
26648 ASHWINI KUMAR	IAS	GUJARAT
1137 S. SELVAKUMAR	IAS	KARNATAKA
79063 RADHENDRA KR. AGARWAL	IAS	KERALA
10274 SUBODH KR. SINGH	IAS	MADHYA PRADESH
394 SRANTANU	IAS	MANIPUR-TRIPURA
43762 SANJAY KUMAR SINGH	IAS	ORISSA
54093 KRISHNA KUMAR	IAS	PUNJAB
243 RONIT KUMAR	IAS	RAJASTHAN
994 SUKH VEER SINGH	IAS	MADHYA PRADESH
35219 SURENDRA GUPTA	IAS	WEST BENGAL
19540 SHARMOGA SUNDARAM M.K.	IAS	UTTAR PRADESH
191532 SATYABRATA SAMBO	IAS	TAMIL NADU
11531 CANDANELOJ V.	IAS	AGARTALA
78618 SAFIULLA A.H. (M.S.)	IAS	BIHAR
213060 RAMESH KUMAR SUDHANSU	IAS	UTTAR PRADESH



ROLL NO.	NAME OF THE CANDIDATES	SERVICE ALLOTTED	CADRE ALLOCATED
SC 100000	SC 100000 PARSI GANPATI KUMAR	IAS	ASSAM-MECHALAYA
SC 100002	SC 100002 PARSI GANPATI KUMAR	IAS	ASSAM-MECHALAYA
SC 5021	SC 5021 SHIVAM JAGANNATHAN	IAS	RAJASTHAN
SC 43750	SC 43750 GAYATRI MECHHAL (MS.)	IAS	ANDHRA PRADESH
SC 140475	SC 140475 BAWIPINDER KAUR AULAKH (MS.)	IAS	BIHAR
SC 2122	SC 2122 CHHEDVIR KANS	IAS	KARNATAKA
SC 7543	SC 7543 AMLAN ADITYA BISWAS	IAS	KERALA
SC 149350	SC 149350 SHESHDAHAR SRINIVAS K.	IAS	MADHYA PRADESH
SC 53037	SC 53037 SULEMAN BANWAR	IAS	MANIPUR-TRIPURA
SC 3594	SC 3594 RAJEEV KUMAR	IAS	ORISSA
SC 10595	SC 10595 PREMOP KUMAR MISHRA	IAS	MAHARASHTRA
SC 109389	SC 109389 HARSHADDEEP SRIKAR KAMBLE	IAS	UTTAR PRADESH
SC 143029	SC 143029 KARANJEEB (MS.)	IAS	AGHUT
SC 68167	SC 68167 P. KRISHNAMURTHY	IAS	

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CIVIL SERVICES EXAMINATION, 1996

C/ ROLL NO.	THE CANDIDATES	SERVICE ALLOTTED	CADRE ALLOTTED
1	1091 ST 36440 RAJESH CHAND MEENA	IAS	GUJARAT
2	124701 VIKRIT DRA KUMAR MEENA	IAS	PUNJAB
3	216697 HAR SAWAY MEENA	IAC	TAMIL NADU
4	150620 ONKAR SINGH MEENA	IAS	WEST BENGAL
5	1414 LALKHANIANA PAXAI	IAS	UTTAR PRADESH
6	205520 ROBERT LAICHUNGNGA CHON	IAS	BIHAR

60
95 - V.K. Anil Kumar

Mussoorie,
Dated 17/03/98

To

The Secretary to the Government of India,
Department of Personnel and Training,
Ministry of Personnel, Public Grievances and Pensions,
New Delhi

Through:

The Director,
Lal Bahadur Shastri National Academy of Administration,
Mussoorie-248 179

Sir,

Sub: J.SYAMALA RAO, IAS Officer Trainee, 1997 Batch- Representation for
change of cadre - Regarding.

With reference to your letter no:13013/3/97/AIS(I), dated 6th September 1997 appointing me to the Indian Administrative Service and allotting me to Assam-Meghalaya cadre, I have the following few lines for your kind perusal and favourable action.

As per the statement indicating number of "insider" and "outsider" vacancies, categorywise, sent by Department of Personnel and Training (DOPT) to the Lal Bahadur Shastri National Academy of Administration, vide D.O No. 13011/30/96-AIS(I) dated 2/6/97, there were two insider vacancies in Andhra Pradesh, one belonging to the General and the another belonging to the OBC category.

1. Mr N.Sridhar, 29 th Rank and Ms Shailaja Ramaiyer 31st Rank were allotted insider vacancies of Andhra Pradesh in OBC and General respectively. But Mr N.Sridhar did not utilise his reservation facility for the purpose of appointment to IAS as he got it on his own merit. Clearly Mr N.Sridhar should have been given his Home Cadre i.e, Andhra Pradesh in General as there was one general insider vacancy available and the other insider vacancy left which is an OBC vacancy should have been allotted to me as I was the first OBC candidate available from Andhra Pradesh.

Even as per the letter containing "Principles of Cadre Allocation" which has been sent by DOPT to the Academy in the year 1994, Mr N.Sridhar should have been treated on par with general candidates for the purpose of cadre allocation. The relevant Principle is reproduced below.

Clause No. (vii) " In case of candidates belonging to the reserved category, such of those candidates, whose position in the merit list is such that they could have been appointed to the service even in the absence of any reservation, will be treated on par with

*Affected
Advocate*

general candidates for the purpose of allotment, though they will be counted against reserved vacancies...".

2. In respect of part of Clause (vii) which says that reserved candidates making in the general merit will be counted against reserved vacancy, the Department of Personnel and Training has considered such candidates (i.e. Candidates with reservation making in general merit) in the general list and not counted towards reserved vacancies, in view of the Judgement of the Honourable Supreme Court in Indra Sawhney vs Union of India. For example for the examination year 1996, the DOPT has given appointment in IAS to 19 candidates belonging to SC/ST category, even though there were only 18 vacancies, as Mr.P.Sampath Kumar,5 th Rank, got the service on his own merit. Similar is the case of OBCs. Also, only 35 people belonging to General category, who don't have any reservation, have been given appointment as three candidates namely Mr.P.Sampath Kumar 5th Rank (SC), Mr N.Sridhar 29 th Rank (OBC), and Mr Hari Om, 38th Rank(OBC) have been treated as General category candidates.

3. Mr P.Sampath Kumar, 5th Rank, belonging to SC category, who got the service on his own merit, has been treated as general candidate and allotted Assam-Meghalaya cadre as an outsider (Exchanged with Mr Peeyush Kumar, 7th Rank, General candidate, who originally got Assam-Meghalaya cadre, as per clause (v) of principles of cadre allocation).The SC vacancy in Assam-Meghalaya cadre has been given to Mr Shyam Jagannathan, 63rd Rank(SC) (Exchanged with Ms Bhupinder Kaur Aulakh, Rank 107(SC)). Whereas DOPT has done the exactly opposite thing in case of Mr.N.Sridhar.

4. Mr.Ahmad Nadeem, Rank 47, a candidate belonging to OBC, who utilised his reservation for the purpose of appointment to IAS, has been given Andhra Pradesh cadre in Outsider quota, even though there was no outsider OBC vacancy.(Reference :DOPTs letter dated 2/6/97, D.O.No 13011/30/96-AIS(I)). In effect the outsider General vacancy has been converted to OBC, even though there were number of General category candidates available in the list for filling that vacancy.

5. With reference to the statement indicating distribution of vacancies, conversion of reserved candidate qualifying in general merit list to reserved and vice versa, for cadre allocation would completely violate the apportionment of vacancies as indicated in the statement and it would be difficult to accommodate 22 OBCs and 19 SC/ST candidates as against 20 OBC and 18 SC/ST vacancies respectively indicated in the statement.

6. I also came to know that since 1984 number of insider vacancies in Andhra Pradesh could not be filled up because of non availability of insider candidates and since allocation is to be done by roster, such insider vacancies should have been kept vacant, to be filled by insiders as and when insiders would be available. Any outsiders allotted to the state due to non availability of insiders could be accommodated only against outsider points in the roster. Hence I am eligible to the backlog vacancies and be allotted to the Andhra Pradesh cadre.

In view of the above mentioned reasons I request you to consider my case sympathetically in a favourable light and allot me my Home Cadre i.e. Andhra Pradesh which is rightfully due to me.

Thanking you sir,

Yours faithfully,

(J.Syamala Rao)
IAS officer Trainee, 1997 Batch,
Phase-I Professional Course,
Lal Bahadur Shastri National Academy
of Administration, Mussoorie-248 179.

No. 13011/17/98-AIS(I)
GOVT. OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS
DEPARTMENT OF PERSONNEL & TRAINING

New Delhi, the 22 Sept., 1998

To

Sh. J. Syamala Rao, IAS(P)
Assistant Commissioner
Dibrugarh,
Assam.

Sub: Indian Administrative Service (cadre) Rules
1954 - representation received from Sh.
J Syamala Rao, IAS(RR:97) regarding.

Madam, Sir,

I am directed to refer to your letter dated 17.3.98 forwarded to this Deptt. vide Academy's letter No. 12/13/ASP/97 dated 24.3.98 on the subject mentioned above and to say that Cadre Allocation of candidates allocated to IAS is finalised by this Department strictly in accordance with the principles of cadre allocation of All India Services. Accordingly, you have been allocated to the IAS cadre of Assam-Meghalaya as an 'outsider' on the basis of CSE-1996. Further, you have, vide your letter dated 22-9-97, already conveyed your acceptance for appointment to the IAS alongwith your allocation to the joint cadre of Assam-Meghalaya. Thus, there is no question of any grievances in the matter of cadre allocation that can be considered at this stage.

Yours, faithfully,


BRARAT PRASAD 21/9/98
UNDER SECRETARY TO THE GOVT. OF INDIA

Asif Ali
With your
Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Annexure - A/6

Original Application No. 1 of 1999.

Date of decision : This the 29th day of March, 2001.

Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

Hon'ble Mr. K.K. Sharma, Member(A).

J. Syamala Rao, I.A.S.(P),
Assistant Commissioner,
Posted in the office of the
Deputy Commissioner,
Dibrugarh.

...Applicant

By Advocate Mr. B.K. Sharma.

-vs-

Union of India through the
Secretary to the Government of India,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances
& Pension, North Block,
New Delhi.

...Respondents

By Advocate Mr. A. Deb Roy, Sr. C.G.S.C.

ORDER

CHOWDHURY J. (V.C.).

The question requiring consideration for adjudication in this proceeding pertains to cadre allocation to a member of the Indian Administrative Service (hereinafter referred to as IAS) directly recruited in the following circumstances :

The applicant was appointed to All India Service as per his merit list in the Other Backward Class category. He was allotted in the IAS in 1977 batch on being successful in 1996 Civil Services Examination and allotted to the Assam-Meghlaya Joint Cadre. He declared Andhra Pradesh as his home state and expressed his willingness to be allocated to

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by
Advocate

his home state. As per category wise distribution of vacancies worked for Civil Services Examination, 1996, there were 5 vacancies to be filled in the State of Andhra Pradesh. Of these 5 vacancies 3 were earmarked for general candidates and 1 each for OBC and ST candidates. As per 30 point roster 2 vacancies were for insiders and 3 for outsiders. The Central Government in exercise of power conferred by Sub rule (1) of Rule 5 of the IAS (Cadre) Rule 1954, allocated 5 officers to the State Cadre of Andhra Pradesh by Notification dated 6.9.1997. The five officers those who were allocated to Andhra Pradesh with their respective ranks was indicated in the paragraph 4.4 of the application in the following way :

	<u>Name</u>	<u>Rank</u>
1.	Peyush Kumar	(9)
2.	N. Sridhar	(29)
3.	Shailaja Ramaiyer	(31)
4.	Ahmed Nadeem	(47)
5.	Bhupinder Kaur Aulakh	(107)

The applicant in this application claimed that as per the roster system he was to be accommodated against OBC vacancy meant for insiders. The applicant pleaded that as per the roster 3 posts were meant for outsiders and 2 for insiders in the State of Andhra Pradesh out of the 5 vacancies. Out of the 3 insiders 1 vacancy was to go to SC/ST and 2 to General candidates. So far as the 2 insiders are concerned one vacancy was to go to OBC and the other was to go to the general candidate. The applicant pleaded that besides him N. Sridhar who was ranked 29 and Shailaja Ramaiyer ranked 31 also opted for Andhra Pradesh as their home cadre. The applicant was ranked at serial number 34. Sridhar who obtained 29th rank also belonged to OBC

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did not utilise his OBC status for his selection to the IAS. N. Sridhar was treated as general category and adjusted against the general vacancy. The applicant stated and contended out of the two vacancies for insiders in Andhra Pradesh the one which was meant to be provided to OBC candidate was given N. Sridhar though for the purpose of allocation of cadre he was to be accommodated against the general vacancy alongwith Shailaja Ramaiyer and the vacancy of OBC was to be filled up through the applicant. The applicant accordingly submitted representation before the authority on 17.3.1998. By an order dated 22.9.1998 the respondents rejected the same and asserted that allocation to the IAS was made strictly in accordance with the principles of cadre allocation of All India Services. Hence this application assailing the legality of the aforementioned order.

2. The respondents submitted its written statement and disputed the claim of the applicant. The respondents in its written statement asserted that distribution of vacancies between insiders and outsiders was done on the basis of thirty point roster. There were two separate thirty point rosters, one for total number of vacancies and another for reserved vacancies. It was further stated that after introduction of reservation for OBC in recruitment through Civil Services Examination from the examination held in 1994, the thirty point roster for reserved category incorporated OBC slots in addition to the SC/ST slots. The distribution of vacancies between insiders and outsiders for the entire reserve category was done in the same roster. Earlier, there were two categories, namely Unreserved (General) and SC/ST, the unfilled insider SC/ST vacancy lots were filled by unreserved (General) candidates and vice-versa subject only to the condition that there must be

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an outsider vacaney to facilitate the exchange. Hence, with the introduction of third ctgory, namely OBC, it was decided with effect from Civil Services Examination, 1994 (1995 batch) that where an insider SC/ST-OBC candidate was not available for allocation against that insider slots, the insider slot for SC/ST-OBC candidates were allocation to outsider OBC-SC/ST candidate with the same condition that there must be an outsider candidate for that category in that cadre. It was further stated that if an insider OBC-SC/ST candidate was not available to facilitate the exchange, the said insider vacancy slot was allocated to an unreserved (General) candidate again subject to the condition there must be an unreserved (General) outsider candidate and if an insider slot still remains unfilled it was to be filled by an outsider and under the principles of the cadre allocation, the unfilled insider vacancies were not carried forward. The relevant part of the pleading pertaining to the issue are reproduced below :

"4. The applicant belongs to OBC category and secured 34th rank in the combined merit list of the Civil Services Examination, 1996. As per his merit position in the OBC Category he was allocated to the IAS. He declared Andhra Pradesh as his home state and expressed his willingness to be allocated to his home state. As per the category-wise distribution of vacancies worked out for the Civil Services Examination, 1996, there were 5 vacancies to be filled in the State of Andhra Pradesh. Of these, 3 vacancies were earmarked for General candidates and 1 each for OBC and SC/ST candidates. As per the 30 point roster, 2 vacancies were for insiders and 3 for outsiders. Out of 2 insider vacancies to be filled in the State cadre of Andhra Pradesh for the Civil Services Examination, 1996, one was for General candidate and another for OBC candidate. Against the available General insider vacancy, the first General candidate hailing from Andhra Pradesh with Rank 1, namely Shri Shailaja Ramaiyer was allocated. Against the OBC insider vacancy, the first OBC candidate hailing from Andhra Pradesh with Rank-29, namely N Sridhar was allocated. As no insider OBC vacancy for the State cadre of Andhra Pradesh was available at the turn of the applicant for the 1991 batch (CSE, 1996) he could not be allocated to his home State. However, the applicant was allocated to the joint



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cadre of Assam Mghalaya as an outsider strictly in accordance with the principles of cadre allocation.

5.

6. The applicant has challenged the allocation of Shri N. Sridhar (OBC, Rank-29) to Andhra Pradesh against the sole insider OBC vacancy earmarked for 1997 batch for the State cadre of Andhra Pradesh. Shri N. Sridhar has been given the benefit of his OBC status in matter of cadre allocation. Though, it is admitted that Shri N. Sridhar has been allocated to IAS without availing the benefit of his reserved status i.e. OBC category yet it is denied that Shri N. Sridhar cannot be given the benefit of his reserved status in determining his cadre allocation in accordance with the policy of cadre allocation in this regard. It is submitted that the cadre allocation is an incidence of service and the strict application of and adherence to the reservation criteria is made/done at the recruitment stage only. In the matter of cadre allocation, an insider vacancy cannot be given to a low ranking candidate which slot has been denied to a candidate of higher rank. Shri N. Sridhar (Rank -29) belongs to the OBC category and was recommended for appointment as General merit candidate. He declared Andhra Pradesh his home state. In Andhra Pradesh, there were 2 vacancies for insider (1 for general and the other for OBC). The first candidate hailing from Andhra Pradesh in order of merit is Shri N. Sridhar - an OBC candidate with rank No. 29. Shri N. Sridhar was recommended for appointment as General merit candidate. Since an insider vacancy was available both in the General and OBC category, N. Sridhar could be allocated either against the vacancy meant for General or OBC candidate on merit basis. The second candidate in the order of merit is Shri Shailaja Ramaiyer - a General candidate with rank NO. 31. The third candidate in the order of merit is the applicant namely, J. Shyamala, an OBC candidate with rank No. 34. As per the principles of cadre allocation Shri N. Sridhar has been allocated against the sole insider OBC vacancy and Shri Shailaja Ramaiyer has been allocated against the sole insider General vacancy. As regards the applicant's claim that Shri N. Sridhar ought to have been allocated against the sole insider General vacancy because he has been recommended for recruitment on general merit and a general insider vacancy is available in Andhra Pradesh cadre, and that the sole insider OBC should have gone to the applicant, it is submitted that as per the extant policy guidelines, preference for allocation in matter of cadre allocation is given to candidates higher in merit. If, as per the applicant's contention, Shri N. Sridhar (rank-29) is allocated against the general insider vacancy and the applicant (rank -34) against the OBC insider vacancy, then Shri Shailaja Ramaiyer

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(rank-31) would then not be able to be allocated to his home state though he is senior in rank to the applicant."

3. From the material facts alluded above it thus emerges that the applicant could not be accommodated in the insider slot meant for OBC candidate in the State of Andhra Pradesh. Against available general insider vacancy, Miss M. Ramaiyer was allocated against who ranked 31 and N. Sridhar who ranked 29 was adjusted and no one was available against OBC insider vacancy.

4. Mr. B.K.Sharma, learned Senior counsel appearing for the applicant submitted that the respondents instead of one general candidate for insider allotted two insider posts to two general insider candidates namely N. Sridhar and S. Ramaiyer, accordingly Ramaiyer and Sridhar were allocated to IAS on their own merit and not as reserved candidate. Since Sridhar was of higher merit than S. Ramaiyer, N. Sridhar was only to be allotted to the one insider general slot. S. Ramaiyer was adjusted against a non-existent vacancy. Mr. B.K.Sharma further submitted that instead of accommodating the applicant in the OBC vacancy which was meant for insider, the respondents arbitrarily provided the State vacancy to Ahmed Nadeem. Mr. A. Deb Roy, learned Sr. C.G.S.C. on the other hand countering the arguments of Mr. B.K.Sharma submitted that N. Sridhar was no doubt allocated to IAS without providing him the benefit of reserved status, but that would not disentitle the Central Government to confer the benefit of reserved status to N. Sridhar in the matter of cadre allocation. Mr. A. Deb Roy submitted that the cadre allocation is an incidence of service and not a condition of service. A selected candidate has a right to be considered for IAS but he has no such right to be allocated to the cadre of his choice or to his home state. A member of all India Services is to serve any

part of the country. Mr. A. Deb Roy further submitted that the applicant on accepting the appointment to service, and cadre allocation has now estopped from questioning the allocation of cadre. 10

5. As per Rule 5 of the Cadre Rule, Central Government who is the authority to allocate the members of IAS - direct recruits to various cadre/joint cadres under the Rule. There is no such statutory rule regulating the principles of allocation. The roster system is however operative for exercise of discretion under Rule 5 of the Cadre Rule. The principles for allocation on the basis of roster system are reproduced below :

i. Allocation of "insiders" both men and women is strictly in accordance to their rank, subject to their willingness to be allocated to their home state.

(ii) Allocation of "outsiders" whether they are general candidates or reserved candidates and whether they are men or women is in accordance to the roster system after placing "insiders" at the proper places.

iii. The vacancies in every cadre are to be earmarked for "outsiders" and "insiders" in the ration of 2 : 1 and the cycle would be outsider : insider : outsider.

Distributions of reserved vacancies in each cadre between 'outsiders' and 'insiders' will be done in the ration of 2 : 1. This would again be operated by following a cycle outsider : insider " outsider as is done in the case of general candidates.

v. In the case of candidates belonging to the reserved category, such of those candidates whose position in the merit list is such that they could have been appointed to the service on the basis of their own merit, they shall be treated at par with general candidates for the purpose of allotment."

6. The roster system is introduced to ensure equality of opportunity in the matter of employment and also equitable treatment to the general candidate as well as reserved category in conformity with the Constitutional

policy laid down in clause (iv) of Article 16. Provisions are made for reservation on appointment or post in favour of the backward classes thereby earmarking post for the reserved category of candidate recruiting to IAS. The roster system is made to evenly and justly for distributing the posts including the post in a home state for the reserved candidate. In view of the roster system it may possible for reserved candidate for being allocated in the home state. In Union of India Vs. Rajiv Yadav, IAS & Ors. reported in (1994) VI SCC 38 which was referred to both the counsel. The Supreme Court in that case considering the roster system observed that the roster system ensures equitable treatment to the general candidate and reserved category. In the above case the Supreme Court took judicial notice that the Scheduled Caste/Scheduled Tribe candidates were normally much below in the merit list as such not in a position to compete with the general category. But for the roster system it would be difficult rather impossible to the Scheduled Caste/Scheduled Tribe candidates to be allocated to their home state. Allocation of cadre no doubt is an incidence of service but when the respondent authority in discharging the constitutional proclamation as well as statutory obligation formulated a policy, such policy decisions are required to be adhered to. Departure from its professed norm is not impermissible, without any valid reason. On the own showing of the respondent N. Sridhar though a reserved candidate was allocated to the IAS without any edge. He was in view of his merit position was treated at par with general candidate for the purpose of allotment of cadre. There could not have been standards under criteria for appointment and allocation. The roster system is cited above also does not contemplate side lining the reservation policy. The roster system is operative in the matter of cadre allocation and

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in such cases the policy of reservation cannot be totally ignored.

7. For the foregoing reasons the impugned communication dated 22.9.1998 cannot be sustained and accordingly the name is not made. The respondents are directed to reconsider the matter in accordance with law and in the light of the observations made above.

8. The application is allowed to the extent indicated above. There shall, however, be no order as to amounts.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Add)

trd

Certified to be true Copy
স্বাক্ষর প্রতিলিপি

4/4/2001

Section Officer (U,

মানবিক সম্পদ বিভাগ
Central Administrative Tribunal

গুৱাহাটী প্রদৰ্শন অধিদপ্তর

Gauhati Bench, Guwahati
মানবিক সম্পদ, বিভাগ

4/4/2001

No. 22012/15/99-AIS(I)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

Dated the 10th September, 2001

ORDER

Subject: Reconsideration of the representation dated 17.03.1998 of Shri J. Shyamala Rao, IAS (RR:97) for his cadre allotment to his home State – Andhra Pradesh in pursuance of the order dated 29.03.2001 of the CAT Guwahati Bench in OA No. 1 of 1999

Whereas, Shri J. Shyamala Rao was allotted to the IAS Joint Cadre of Assam-Meghalaya on the basis of CSE 1996 in accordance with the principles of allocation and the policy on the subject. Formal letter of appointment was sent to him vide DOPT letter no. 13013/3/97-AIS(I) dated 6-9-1997. Shri J. Shyamala Rao conveyed his acceptance for his appointment to the IAS and his allocation to the joint cadre of Assam-Meghalaya vide his letter dated 22.9.1997.

2. And Whereas, Shri J. Shyamala Rao preferred representation dated 17.03.1998 requesting to allot him to his home cadre i.e. Andhra Pradesh for the reasons stated in the said representation.

3. And Whereas, the representation dated 17.03.1998 of Shri J. Shyamala Rao was considered and disposed of vide DOPT letter No. 13011/17/98-AIS(I) dated 22.09.1998 explaining that his allotment to the Joint Cadre of Assam-Meghalaya is strictly in accordance with the principles of cadre allocation and therefore no question of grievance arises inasmuch as his cadre allocation is concerned.

4. And Whereas, Shri J. Shyamala Rao filed an original application bearing no. 1 of 1999 before the Guwahati Bench of the Central Administrative Tribunal praying to quash and set aside the letter dated 22.9.1998 (supra) and to direct the respondents to allot him his home cadre i.e. Andhra Pradesh.

5. And Whereas, the Hon'ble Central Administrative Tribunal, Guwahati Bench was pleased to set aside the communication dated 22.9.1998 (supra) and direct the respondents to reconsider the matter in accordance with law and in the light of the observations made by them vide order dated 29.03.2001.

6. And Whereas, the Hon'ble CAT Guwahati Bench in its order dated 29.03.1998 observed that –

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“...Allocation of cadre no doubt is an incidence of service but when the respondent authority in discharging the constitutional proclamation as well as statutory obligation formulated a policy, such policy decisions are required to be adhered to. Departure from its professed norm is not permissible, without any valid reason. On the own showing of the respondents N. Sridhar though a reserved candidate was allocated to the IAS without any edge. He was in view of his merit position was treated at par with general candidate for the purpose of allotment of cadre. There could not have been standards under criterion for appointment and allocation. The roster system cited above also does not contemplate sidelining the reservation policy. The roster system is operative in the matter of cadre allocation and in such cases the policy of reservation cannot be totally ignored.”

7. And Whereas, the principles of cadre allocation have been modified after introduction of reservation for OBC candidates w.c.f. Civil Services Examination 1994.
8. And Whereas, some of the OBC candidates do not avail themselves of any of the concessions available to OBC category. Such candidates are recommended by UPSC for allocation against unreserved vacancies.
9. And Whereas, these candidates are allocated against unreserved vacancies only when such allocation does not place them in any disadvantageous position. Otherwise they are considered for allocation against reserved vacancies. Therefore, an OBC candidate recommended against unreserved vacancy is considered for allocation to his home State against insider unreserved vacancy, if available at his turn. If there is no unreserved vacancy available at his turn, then he is considered against insider OBC vacancy, if available at his turn.
10. ~~Whereas it may so happen that in the home State of an OBC candidate recommended against unreserved vacancy, both insider unreserved as well as insider reserved vacancies are available, at his turn. In that case his allocation will be made against unreserved or reserved vacancies depending on the category of the next below candidate hailing from the same State. If the next below candidate from the same State is from unreserved category, then the first candidate will be allocated against reserved vacancy. If the next below candidate from that State is from reserved category, then the first candidate would be allocated against unreserved vacancy.~~
11. And Whereas, this policy has been followed since Civil Services Examination 1994 without any deviation or exception. This policy is followed so that a higher ranking candidate is not denied his home State who has a preferential claim over lower ranking candidate.
12. And Whereas, on the basis of the Civil Services Examination 1994, there were two insider vacancies - one for unreserved candidate and one for OBC candidate in IAS Cadre of Bihar. The first candidate hailing from Bihar was Shri Ajoy Kumar Singh, Rank-7. He belongs to OBC category but was recommended against

unreserved vacancy. There were two more candidates hailing from Bihar, namely, Shri Arvind Chaudhary (Rank-16 - Unreserved category) and Shri Sushil Kumar (Rank-73 - OBC). As the next candidate to Shri Ajoy Kumar Singh (Rank-7) namely Shri Arvind Kr. Chaudhary (Rank-16) belongs to unreserved category, Shri Shri Ajoy Kumar Singh was allocated to his home State, i.e. Bihar against reserved vacancy and Shri Arvind Kr. Chaudhary was allocated against unreserved category so as to avoid a situation in which Rank-73 (low ranking) is getting his home State which has been denied to rank-16 (high ranking).

13. And Whereas, on the basis of Civil Services Examination, 1996, there were two insider vacancies - one for unreserved candidate and one for OBC candidate in IAS Cadre of Andhra Pradesh. The first candidate hailing from Andhra Pradesh was Shri N. Sridhar (Rank-29). He belongs to OBC category but was recommended against unreserved vacancy. The next two candidates hailing from Andhra Pradesh, were Shri Shailaja Ramaiyer (Rank-31 - unreserved category) and Shri J. Shyamala Rao (Rank-34 - OBC). As the next candidate to Shri N. Sridhar (Rank-29), namely Shri Shailaja Ramaiyer (Rank-31) belongs to unreserved category, Shri N. Sridhar was allocated to his home State i.e. Andhra Pradesh against reserved vacancy and Shri Shailaja Ramaiyer against unreserved category.

14. And Whereas, allocation of IAS officers to various cadres is made by the Central Govt. under Rule 5 of the IAS Cadre Rules 1954. The ambit of the power of the Central Govt. under Rule 5 of the Cadre Rules has been defined by the Apex Court in Union of India v. Rajiv Yadav & Ors. (1994) 6 SCC 38 wherein it was held that "Rule 5 of the Cadre rules makes the Central Government the sole authority to allocate the members of the service to various cadres. It is not obligatory for the Central Government to frame rules/regulations or otherwise notify the principles of cadre allocation."

15. And Whereas, the Central Govt. have framed certain principles to allot the members of the Service to various State / Joint Cadres. Broad principles of cadre allocation as contained in the demi official letter dated 30/31 May, 1985 have been upheld by the Hon'ble Supreme Court in Rajiv Yadav's case (supra).

16. And Whereas, it is a settled law that the principles of cadre allocation as contained in clause (2), wherein preference is given to a reserved candidate for allocation to his home State, do not provide for reservation of appointments or posts and as such the question of testing the said principles on the anvil of article 16(4) of the Constitution of India does not arise (1994 6 SCC 38).

17. And Whereas, Shri J. Shyamala Rao's request for allotment to his home cadre of Andhra Pradesh according to his representation dated 17.03.1998 is based on the following grounds -

- a. Mr. N Sridhar did not utilise his reservation facility for the purpose of appointment to IAS as he got it on his own merit. Clearly, Mr. N. Sridhar should have been given his home cadre i.e. Andhra Pradesh in General as

there was one general insider vacancy available and the other insider vacancy left which is an OBC vacancy should have been allotted to him as he was the first OBC candidate available from Andhra Pradesh.

b. Since 1994 number of insider vacancies in Andhra Pradesh could not be filled up because of non-availability of insider candidates and since allocation is to be done by roster, such insider vacancies should have been kept vacant, to be filled by insiders as and when insiders would be available. Any outsiders allotted to the state due to non-availability of insiders could be accommodated only against outsider points in the roster. Hence he is eligible to the backlog vacancies and be allotted to the Andhra Pradesh Cadre.

18. And Whereas, Shri N. Sridhar (Rank-29) belongs to the OBC category and was recommended for appointment as General merit candidate. Since an insider vacancy was available both in the General and OBC category, N. Sridhar could be considered either against the vacancy meant for General or OBC's. Shri Shailaja Ramaiyer belongs to General category and Shri J. Shyamala Rao belongs to OBC category. As a matter of practice Shri N. Sridhar has been allocated against the sole insider OBC vacancy and Shri Shailaja Ramaiyer against the sole insider General vacancy. Shri J. Shyamala Rao could not be allocated to his home Cadre for want of a second insider OBC vacancy. According to the policy decision of the Govt. of India in effect since CSE-1994, Shri N. Sridhar could not be given the insider general vacancy because in that case the other insider vacancy i.e. insider OBC vacancy would have gone to Shri J. Shyamala Rao resulting in deprivation of home Cadre to Shri Shailaja Ramaiyer though higher in merit.

19. And Whereas, the principles of cadre allocation does not provide for carry over of unfilled insider vacancies if not filled due to non-availability of insider candidates. This policy of the Govt. of India has stood the test of judicial scrutiny in Union of India v. Mhathung Kithan & Ors. and in Union of India v. Kumari Bindhyeswari Negi & Ors. JT 1996 (8) S.C. 499. In a common judgement delivered in the above cases, the Hon'ble Supreme Court held that –

"We have, however, not been shown any rule which provides for a carry-over of "insider" vacancies if they are not filled due to non-availability of insider candidates. In the absence of any such rule for carry-forward of insider vacancies, we do not see how the first respondent can be accommodated in the vacancies which are earmarked for outsiders as per the relevant roster points.

In this context it is difficult to accept the contention of the first respondent regarding carry-forward of "insider" vacancies. The roster is framed bearing in mind this requirement of increasing outsiders in this quota of Direct Recruits. The policy requires that at least 66 2/3 % of the officers who are directly recruited are from outside the State concerned. It does not impose a ceiling of 66 2/3 %. The Tribunal was, therefore, not right in disturbing the implementation of the policy as per the roster."

20. And Whereas, in terms of the ruling of the Apex Court in Mhathung Kithan's case, Shri J. Shyamala Rao is not entitled for allotment to home Cadre against 'backlog of insider vacancies' which has no concept in cadre allocation.

21. And Whereas, it is a well settled law that 'a selected candidate has a right to be considered for appointment to 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' (1994 6 SCC 38). Therefore allotment to home Cadre cannot be claimed as a matter of right.

22. And Whereas, pursuant to the order dated 29.03.2001 of the CAT Guwahati Bench in OA No. 1 of 1999, the matter of cadre allotment of Shri J. Shyamala Rao has been reconsidered in accordance with law and in the light of the observations made in the order of 29.03.2001.

23. And Whereas, in view of the ruling of the Apex Court in Rajiv Yadav's and Mhathung Kithan's cases and the practice and the policy which have been consistently followed, the inescapable conclusion is that Shri J Shyamala Rao is not entitled for allotment to his home Cadre i.e. Andhra Pradesh as an insider.

24. And Now Therefore, upon reconsideration of the matter of cadre allotment of Shri J. Shyamala Rao as requested in his representation dated 17.3.1998 pursuant to the order dated 29.03.2001 of the CAT Guwahati Bench, Shri J. Shyamala Rao's request for allotment to his home Cadre is not in consonance with the law settled by the Apex Court and the principles of allocation and the policy decision of the Govt. of India and therefore the same cannot be acceded to. Ordered accordingly.


(K.K. Sharma)
Desk Officer

To,

J. Shyamala Rao, IAS,
Jonai, Dhemaji District, Assam.

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

OA No. 91 of 2002

Syamala Rao

Applicant

Versus

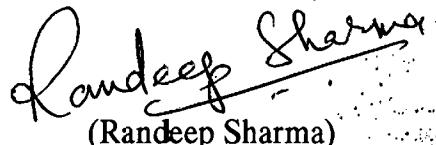
Union of India

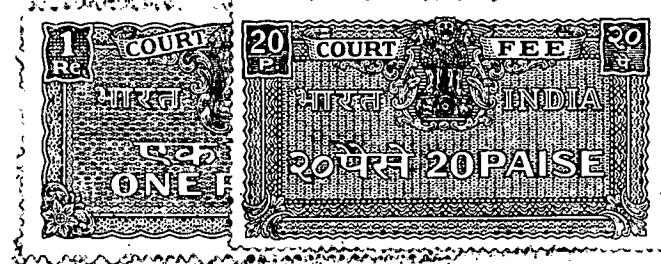
Respondent

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PLACE: Guwahati
DATE: November 2002


(Randeep Sharma)
Addl. Central Govt. Standing Counsel



BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

OA No. 91 of 2002

Syamala Rao

Applicant

Versus

Union of India

Respondent

Written Statement / Reply of the Respondent

The humble respondent named above

Most Respectfully showeth:

1. That the application is not maintainable in facts and law. The matter has been adjudicated and dealt with by this Hon'ble Tribunal as well as by the respondent.
2. That there is no cause of action for filing the present application. The allegations and the contentions of the applicant raised in the present case is same as the earlier one, i.e. in OA 1/99.
3. That the statements which are not specifically admitted herein, shall be deemed to have been denied by the respondent.
4. That the statements made in para 1 and 2 of the application are matters of record.
5. That the respondent strictly denies the statement made in para 3 of the application. The application is barred by limitation as prescribed in Section 21 of Administrative Tribunals Act and also under the provisions of limitation Act.

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6. That the statements made in paras 4.1 and 4.2 of the application are matters of record. From the averments made in the said paras, it is evident that the applicant has willfully and unconditionally accepted the offer of appointment dated 6.9.1997 to the I.A.S. wherein the applicant was allocated to the joint cadre of Assam-Meghalaya. After accepting the offer of appointment and allocation, the applicant is presently working in the Assam Civil Secretariat at Dispur.

A copy of the acceptance letter dated 22.9.1997 is enclosed herewith as Annexure – R-1.

7. That the statements made in paras 4.3, 4.4 and 4.5 of the application are matters of record.
8. That with regard to the statements made in para 4.6 of the application, the respondent states that according to the policy of cadre allocation of I.A.S. officers, an insider vacancy cannot be given to a low ranking candidate by denying a candidate with higher rank. In the case of Andhra Pradesh, there were 2 'insider' vacancies and 3 'outsider' vacancies. This ratio of insider and outsider vacancies is applicable through out India and the rationale behind the formulation of this ratio of cadre allocation has also been upheld by the Hon'ble Supreme Court. The principles of cadre allocation contained in Clause 2 of the letter dated 31.5.1985 (annexed herewith Annexure R-2), wherein preference is given to a scheduled caste/scheduled tribe candidate for allocation to his home state, do not provide for reservation of appointment or posts and as such, there is no question of testing the said principles of allocation on the anvil of Article 16(4) of the Constitution of India. In the present case, out of the 2 'insider' vacancies, one was for general candidates and the other for candidates belonging to other Backward Classes (in short OBC). The highest rank holder from Andhra Pradesh was N. Sridhar, with Rank No. 29 and

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belonging to OBC. The second candidate from Andhra Pradesh in terms of merit was Shailaja Ramaiyer with Rank No. 31 and who belonged to the general category. The applicant was in the third place in the order of merit holding Rank No. 34 and who belonged to OBC. As an insider vacancy in Andhra Pradesh was available for both general and OBC categories, the candidate with the highest rank i.e. N. Sridhar could be allocated either to the vacancy for General candidates or to the vacancy for OBC candidates strictly on merit basis. As the second highest candidate in order of merit belonged to the General category, the said candidate namely Shailaja Ramaiyer was allocated to the vacancy for General candidates and the vacancy for OBC candidates was allocated to the first candidate in order of merit namely, N. Sridhar. The respondent further states that the professed policy adopted by the Govt. of India in the matter of cadre allocation of IAS officers, stipulates that preference in the matter of cadre allocation is given to the candidates having merits higher than the other candidates.

Moreover, the applicant has not made N. Sridhar and Shailaja Ramaiyer as party respondents in this application.]

9. That the respondent does not admit the contentions and statements made in para 4.7 of the application. It is a fact that under Section 5 of the Cadre Rules, the Govt. of India is entitled to allocate cadres to the candidates appointed in the Indian Administrative Service. The respondent however denies existence for exercise of discretion under Rule 5 of the Cadre Rules. The All India Services have been created under Article 312 of the Constitution of India in the interest of the entire nation and the All India Services are common to both the Union of India as well as the States. A person belonging to the All India Services bears a liability/responsibility to serve either the Union of India or the State to which he has been allocated. According to the principles governing cadre allocation and which has been upheld by the Hon'ble Supreme Court, a candidate cannot have any grievance on

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the ground that the cadre which has been allocated to him does not suit him or that the candidate wanted allocation to his home state. A candidate selected for the IAS may have a right for appointment but does not have right to claim allocation to a cadre of his choice or to his home state and it is not obligatory on the Govt. of India to have any option or preference from the candidates. It is also not obligatory for the Govt. of India to frame rules or regulations or to notify the principles of cadre allocation. As regards the quotations cited by the applicant in the para, the respondent begs to add the other portion of the principles which have been deliberately left out by the applicant in this para. The addition to the principles left out by the applicant is contained in a letter dated 30/31.5.1985 wherein the entire principles of cadre allocation have been quoted in detail.

10. That while replying to the statements made in paras 4.8 and 4.9 of the application, the respondent states that N. Sridhar who belonged to OBC category was allocated to the insider vacancy reserved for OBC candidates in Andhra Pradesh although N Sridhar was eligible for both of the insider vacancies in Andhra Pradesh by virtue of being the highest candidate in order of merit. The respondent also states that without N. Sridhar and Shailaja Ramaiyer as parties in this case, the question of allocation of N. Sridhar and Shailaja Ramaiyer cannot be effectively adjudicated as it may prejudice Shailaja Ramaiyer and N. Sridhar.
11. That the statements made in para 4.10 of the applicant are factually correct and hence admitted.
12. That the statements made in para 4.11 of the application are stoutly denied by the respondent. The respondent respectfully states that in the matter of cadre allocation, an insider vacancy cannot be given to a low ranking candidate by denying the slot to a candidate with higher rank.

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As stated earlier, there were 2 'insider' vacancies in Andhra Pradesh. Out of these 2 'insider' vacancies, one was earmarked for candidates belonging to the unreserved category and the other was reserved for candidates belonging to OBC category. In the present case, the candidate with the higher rank in order of merit from Andhra Pradesh, i.e. N. Sridhar being an OBC candidate and ranked as 29 in the order of merit was eligible for both of the insider vacancies available in Andhra Pradesh. The next highest ranked candidate in order of merit from the same state was Shailaja Ramaiyer, a candidate belonging to the unreserved category and having Rank No. 31 in the order of merit. The third ranked candidate in order of merit from Andhra Pradesh was the applicant himself belonging to the OBC category with Rank No. 34. As per the principles of cadre allocation for 'insider' vacancies, the highest ranking insider candidate being eligible for allocation in the reserved vacancy for OBC was accordingly, allocated to the sole insider vacancy reserved for OBC candidates. The next highest ranking candidate Shailaja Ramaiyer belonging to the unreserved category was allocated to the sole insider vacancy earmarked for unreserved category candidates. Regarding the contention raised by the applicant, the respondent stoutly denies the same since it would tantamount to deviation from the professed policy adopted by the Union Government in the matter of cadre allocation. If the argument put forward by the applicant is considered, then it will mean that N. Sridhar with Rank 29 will be allocated to the unreserved insider vacancy and the applicant with Rank No. 34 will be allocated to sole insider vacancy for OBC candidates. In such a situation, Shailaja Ramaiyer who is higher in rank to the applicant i.e., with Rank 31 shall be left out and in spite of having merit and rank higher than the applicant, Shailaja Ramaiyer will be denied his rightful claim for allocation in the insider vacancies available in Andhra Pradesh. Therefore, the argument of the applicant that he ought to be allocated

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to the sole insider vacancy for OBC candidates is not tenable as it is violative of the principles and policy adopted by the Central Government in the matter of cadre allocation of IAS officers. As there was no more insider vacancy, as mentioned, the applicant could not be allocated to his home state of Andhra Pradesh and in strict accordance with the principles of cadre allocation, the applicant was allocated to the joint cadre of Assam-Meghalaya as an outsider candidate.

13. That the statements made by the applicant in paras 4.12, 4.13 and 4.14 are matters of record. As has been stated by the respondent in this written statement, as per the principles and rationale of cadre allocation the representation of the applicant dated 17.3.1998 was rightly rejected by the respondent authority in its letter dated 22.9.1998. The respondent also begs to state that in the letter dated 22.9.1998 (Annexure – A/5 of the application) of the respondent authority, it was clearly mentioned that the applicant by his letter dated 22.9.1997 had already conveyed his acceptance for appointment to the IAS and the allocation to the joint cadre of Assam-Meghalaya. The respondent authority accordingly intimated the applicant that his grievance against cadre allocation cannot be considered at this stage.
14. That the statements made in paras 4.15 and 4.16 of the application are matters of record. The respondent respectfully states that the 'significant features' of the order dated 29.3.2001 illustrated by the applicant in para 4.15 of his application as (iii), (iv), (v) etc clearly vindicates the contentions of the respondent in the matter of cadre allocation of IAS officers. Moreover, the respondent in compliance with the order dated 29.3.2001 of this Hon'ble Tribunal (Annexure A/6), duly considered the representation of the applicant dated 17.3.1998. After due consideration of the case put forward by the applicant and also by taking into account the legalities of the system of cadre allocation and observations of the Apex Court, the representation

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dated 17.3.1998 of the applicant was disposed of by the respondent authority by passing a reasoned and speaking order dated 10.9.2001 (Annexure A/7 of the application). In the said order dated 10.9.2001 passed by the respondent and impugned by the applicant in the present case, the respondent authority gave a vivid and detailed description about the system and principle observed by the respondent authority for the purpose of cadre allocation of I.A.S. officers. For the purpose of stressing the case of the respondent, the respondent begs to quote the following observations made in its order dated 10.9.2001.

“10. Whereas it may so happen that in the home State of an OBC candidate recommended against unreserved vacancy, both insider unreserved as well as insider reserved vacancies are available, at his turn. In that case his allocation will be made against unreserved or reserved vacancies depending on the category of the next below candidate hailing from the same State. If the next below candidate from the same State is from unreserved category, then the first candidate will be allocated against reserved vacancy. If the next below candidate from that State is from reserved category, then the first candidate would be allocated against unreserved vacancy.

11. And Whereas, this policy has been followed since Civil Services Examination 1994 without any deviation or exception. This policy is followed so that a higher ranking candidate is not denied his home State who has a preferential claim over lower ranking candidate.

12. And Whereas, on the basis of the Civil Services Examination 1994, there were two insider vacancies - one for unreserved candidate and one for OBC candidate in IAS Cadre of Bihar. The first candidate hailing from Bihar was Shri Ajoy Kumar Singh, Rank-7. He belongs to OBC category but was recommended against unreserved vacancy. There were two more candidates hailing from Bihar, namely, Shri Arvind Chaudhary (Rank-16 - Unreserved category) and Shri Sushil Kumar (Rank-73 - OBC). As the next candidate to Shri Ajoy Kumar Singh (Rank-7) namely Shri Arvind Kr. Chaudhary (Rank-16) belongs to unreserved category, Shri Ajoy Kumar Singh was allocated to his home State, i.e. Bihar against reserved vacancy and Shri Arvind Kr. Chaudhary was allocated against unreserved category so as to avoid a situation in which

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Rank-73 (low ranking) is getting his home State which has been denied to rank-16 (high ranking).

14. And Whereas, allocation of IAS officers to various cadres is made by the Central Govt. under Rule 5 of the IAS Cadre Rules 1954. The ambit of the power of the Central Govt. under Rule 5 of the Cadre Rules has been defined by the Apex Court in Union of India v. Rajiv Yadav & Ors. (1994) 6 SCC 38 wherein it was held that "Rule 5 of the Cadre rules makes the Central Government the sole authority to allocate the members of the service to various cadres. It is not obligatory for the Central Government to frame rules/regulations or otherwise notify the principles of cadre allocation."

18. And Whereas, Shri N. Sridhar (Rank-29) belongs to the OBC category and was recommended for appointment as General merit candidate. Since an insider vacancy was available both in the General and OBC category, N. Sridhar could be considered either against the vacancy meant for General or OBC's. Shri Shailaja Ramaiyer belongs to General category and Shri J Shyamala Rao belongs to OBC category. As a matter of practice Shri N. Sridhar has been allocated against the sole insider OBC vacancy and Shri Shailaja Ramaiyer against the sole insider General vacancy. Shri J. Shyamala Rao could not be allocated to his home Cadre for want of a second insider OBC vacancy. According to the policy decision of the Govt. of India in effect since CSE-1994, Shri N. Sridhar could not be given the insider general vacancy because in that case the other insider vacancy i.e. insider OBC vacancy would have gone to Shri J. Shyamala Rao resulting in deprivation of home Cadre to Shri Shailja Ramaiyer though higher in merit.

21. And Whereas, it is a well settled law that 'a selected candidate has a right to be considered for appointment to 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' (1994 6 SCC 38). Therefore allotment to home Cadre cannot be claimed as a matter of right.

22. And Whereas, pursuant to the order dated 29.03.2001 of the CAT Guwahati Bench in OA No. 1 of 1999, the matter of cadre allotment of Shri J. Shyamala Rao has been reconsidered in accordance with law and in the light of the observations made in the order of 29.03.2001.

23. And Whereas, in view of the ruling of the Apex Court in Rajiv Yadav's and Mhathung Kithan's cases and the practice and the policy which have been consistently followed, the inescapable conclusion is that Shri J Shyamala Rao is not entitled for allotment to his home Cadre i.e. Andhra Pradesh as an insider.

24. And Now Therefore, upon reconsideration of the matter of cadre allotment of Shri J. Shyamala Rao as requested in his representation dated 17.3.1998 pursuant to the order dated 29.03.2001 of the CAT Guwahati Bench, Shri J. Shyamala Rao's request for allotment to his home Cadre is not in consonance with the law settled by the Apex Court and the principles of allocation and the policy decision of the Govt. of India and therefore the same cannot be acceded to. Ordered accordingly."

From the observations and the reasons stated by the respondent authority in the order impugned in this application, it is evident that the order dated 29.3.2001 of this Hon'ble Tribunal was duly considered in accordance with law and in the light of the observations of the Apex Court. After considering and discussing all relevant aspects of the matter, the representation dated 17.3.1998 of the applicant could not be accepted since the same was not in consonance with the principles of cadre allocation and the relevant provisions of law.

15. That the respondent does not admit the averments of the applicant made in paras 4.17 and 4.18 of the application. As has been repeatedly stated in this written statement, N. Sridhar the highest ranking candidate from Andhra Pradesh being an OBC candidate was eligible for allocation to either of the reserved and unreserved insider vacancies. As the second highest ranking candidate belonged to unreserved category, the highest ranking candidate being an OBC candidate was allocated to the sole insider vacancy for OBC candidates and the second highest ranking candidate was allocated to the sole unreserved insider vacancy. As there was only 2 'insider' vacancies in Andhra Pradesh and only one was reserved for OBC candidates, the

applicant placed in the third position in order of rank and merit could not be allocated to his home state. It has already been made known to the applicant that allocation of cadre is made strictly in order of merit and in total consonance of the relevant policy of the Central Government and as such, the applicant is estopped from raising the same issue and allegations before this Hon'ble Tribunal. The applicant has failed to establish that the impugned order does not conform to the order dated 29.3.2001 of this Hon'ble Tribunal passed in O.A. 1/99. Furthermore, it shall be against the principles of Natural Justice if the matter of allocation of N. Sridhar and Shailaja Ramaiyer is disturbed without giving them any opportunity to place their case.

16. That the applicant has taken same grounds in para 5 of the application, which are not tenable in law. The contentions raised by the applicant in the grounds of this application have already been rebutted and replied by the respondent in the preceding paras of this written statement. However, the counsel for the respondent shall make the necessary submissions against the grounds at the time of hearing of the application.
17. That the respondent states that the statements in paras 6 of the application are matters of record. However, the declaration in para 7 of the application is not entirely correct since the applicant had earlier filed O.A. 1/99 before this Hon'ble Tribunal relating to the same subject matter.
18. That the respondent stoutly denies the reliefs sought for by the applicant in para 8 of his application. In view of the averments made in this written statement as well as in the impugned order, the case of the applicant merits no consideration and interference by this Hon'ble Tribunal, for which the same is liable to be dismissed with costs for

unnecessarily subjecting the respondent to litigation in respect of the same matter.

19. That apart from refuting the allegations leveled by the applicant in his application, the respondent begs to state that the All India Service, which is common to the Union and the States have been created under Article 312 of the Constitution of India by keeping in mind the interest of the nation as a whole. The Central Government is the sole authority for allocating members of the All India Services and the Central Government has accordingly, framed principles governing the allocation of cadres have been upheld by the Hon'ble Supreme Court. According to Rule 5 of the IAS Cadre Rules, a member of the Indian Administrative Service is bound to serve in any part of the country. However, an opportunity is also given to the selected candidates for opting for allocation in his home state but strictly on the basis of the rank secured by him in order of merit. It is also pertinent to mention here that any candidate who accepts the offer for appointment in IAS wherein his allocation to a particular cadre is also mentioned, cannot later on, nurture any grievance against the authorities concerned for not being allocated to a state or post as per his choice. It is also not obligatory on the part of the respondents to frame rules or regulations etc for the purpose of cadre allocation. The applicant cannot have the best of both worlds by accepting the order of his appointment in the IAS and at the same time nurture grievance in the matter of cadre allocation more so, when the order of appointment also includes the allocation of the candidate to a particular cadre. The applicant cannot shirk from his responsibilities and obligations as an IAS officer so long he continues to be a member of the Indian Administrative Service. In view of such a position, the applicant has no locus standi to prefer this

application and accordingly, the same is liable to be dismissed.

It is therefore most respectfully prayed that this Hon'ble Tribunal may be pleased to dismiss the application filed by the applicant with compensatory costs in the facts and circumstances of the case.

And for this, the respondent as in duty bound shall ever pray.



DEPONENT

(कौ. कौ. शर्मा)

(K. K. SHARMA)

देस्क अधिकारी

Desk Officer

कार्यक और प्रशिक्षण विभाग

Dept. of Personnel & Trg

भारत सरकार

Govt. of India

VERIFICATION

I, K. K. Sharma son of late C. L. Sharma, aged about 47 years, working as Desk Officer with the respondent, do hereby declare that I have been authorized to sign this verification on behalf of the respondent. The statements made in the written statement are true to my knowledge and I sing this verification today the day of November 2002.



DEPONENT

(कौ. कौ. शर्मा)

(K. K. SHARMA)

देस्क अधिकारी

Desk Officer

कार्यक और प्रशिक्षण विभाग

Dept. of Personnel & Trg

भारत सरकार

Govt. of India

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Date: 22.9.1997
A.P.S.S.C.

Deputy Secretary to the Govt. of India,
A.C.M. Divasikar (By name)
Ministry of Personnel, Public grievances and Pensions,
Department of Personnel & Training,

Respected sir,

Sub: Acceptance of appointment to service and cadre allocation

I, J.SYAMALA RAO, am in receipt of your letter No:13013/3/97-AIS(I) dated 6th September 1997 concerning my appointment to the Indian Administrative Service based on the results of the civil services examination 1996.

Sir, this is to convey acceptance of my appointment to the *Indian Administrative Service* and allocation to the Assam-Meghalaya joint cadre.

As requisite I have confirmed to the following necessities.

1) Executing an agreement binding myself and one sarely jointly and severally and submitting the same to the Director IBSNAA, Mussoorie.

2) Making a declaration regarding marriage as per Rule 5 of the Indian Administrative Service (Recruitment) Rules, 1951 and submitting the same to the Director IBSNAA, Mussoorie.

3) Also submitted as required to the Director IBSNAA, is information concerning ~~classifications of allocation~~ immovable, movable and valuable property.

If your office has any further advice/clarification regarding the above please do forward the same to me.

Thanking you.

Rank No. 34

SECRETARY

GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL & TRAINING
ADMINISTRATIVE REFORMS AND PUBLIC
GRIEVANCES AND PENSIONS

D.O. NO. 13013/5/84-AIS(I)

DATED 30/31 May, 1985

Dear Shri Seshan,

As you are aware, the allocation of the direct recruits to the All India Services, including the Indian Forest Service is being made in accordance with the Limited Zonal Preferences System from 1978 examinations and onwards. In this system all the cadres/joint cadres were divided into zones and the candidates were given the opportunity to indicate their preferences zone-wise and also for two cadres in each zone. The allocation was being made keeping in view the rank and preferences of the candidates subject to allocation of vacancies in each cadre between 'insiders' and 'outsiders'.

2. Our experience has shown that the limited zonal preferences system of allocation suffers from a number of deficiencies. Under this system there is only very limited movement of candidates from one part of the country to another across several States and even this limited inter-regional movement of candidates takes place only in respect of a few low ranking candidates. Another draw back of the system is that 'outsiders' getting allocated to a State are mostly from a neighbouring State.

3. Keeping in view the deficiency that is noticed in the working of the limited zonal preferences system it has been decided with the approval of the Prime Minister that from 1985 batch onwards (1984 examination candidates) we should revert back to the roster system which was the system of allocation from 1966 to 1977 examination with certain modifications. The broad principles of allocation on the basis of roster system would be as follows:-

1. The vacancies in every cadre will be earmarked for 'outsiders' and 'insiders' in the ratio of 2:1. In order to avoid problems relating to fractions and to ensure that this ratio is maintained, over a period of time, if not during allocation, the break-up of vacancies in a cadre between 'outsiders' and 'insiders' will be calculated following the cycle of 'outsider', 'insider', 'outsider'.
2. The vacancies for Scheduled Castes and Scheduled Tribes will be reserved in the various cadres according to the prescribed percentage. For purpose of this reservation, Scheduled Castes and Scheduled Tribes will be grouped together and the percentages will be added. Distribution of reserved vacancies in each cadre between 'outsiders' and 'insiders'

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will be done in the ratio of 2:1. This ratio will be operationalised by following a cycle 'outsider', 'insider', 'outsider' as is done in the case of general candidates.

3. 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.
4. Allocation of 'outsiders', whether they are general candidates or reserved candidates, whether they are men or women, will be according to the roster system after placing 'insiders' at their proper places on the chart as explained below:
 - (i) All the State cadres/Joint Cadres should be arranged in alphabetical order and divided into four groups which, on the basis of the average over a period of time, are taking roughly equal number of candidates each. On the basis of average intake during the last 4 years, the groups could be as follows:

Group I :	Andhra Pradesh, Assam, Meghalaya, Bihar and Gujarat.
Group II :	Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala and Madhya Pradesh.
Group III :	Maharashtra, Manipur-Tripura, Nagaland, Orissa, Punjab, Rajasthan and Sikkim.
Group IV :	Tamil Nadu, Union Territory, Uttar Pradesh and West Bengal.
 - (ii) Since the number of cadres/Joint Cadres is 21, the cycles will be 1-21, 22-42, 43-63 and so on.
 - (iii) The 'insider' quota should then be distributed among the States and assigned to different cycles of allotment. For example, if a State gets 4 'insider' candidates, they should go to the share of the State in their respective cycles and if their are 2, 'insider' candidates from the same cycle, they should be treated as going to the State in two successive cycles and so on.

(iv) The 'outsider' candidates should be arranged in order of merit and allotted to the State cadres in cycles as described in (v) below.

(v) In the first cycle, State cadre/Joint Cadres which have not received 'insider' candidates should be given one candidate each in order of merit of 'outsider' candidates. The process should be repeated in successive cycles, each successive cycle beginning with the next successive group of States, e.g., the second cycle should begin from Group III States, the third cycle with Group III States and the fourth cycle with Group IV States and the fifth cycle again with Group I States. Occasionally it may happen that a candidate's turn may come in such a way that he may get allocated to his own home State. When that happens, the candidate next below him should be exchanged with him.

(vi) For the succeeding year, the State cadres should be arranged again in alphabetical order but with Group I of the previous year at the bottom, i.e., the arrangement will begin with Group II on top. In the third year, Group III will come on top and so on.

(vii) In the case of candidates belonging to the reserved category, such of those candidates, whose position in the merit list is such that they could have been appointed to the service even in the absence of any reservation, will be treated on par with general candidates for purposes of allotment though they will be counted against reserved vacancies. In respect of other candidates belonging to the reserved category a procedure similar to the one adopted for general candidates would be adopted. In other words, a separate chart should be prepared with similar grouping of States and similar operational details, should be followed. If there is a shortfall in general 'insiders' quota it could, however, be made up by 'insider' reserved candidates.

5. Since the Prime Minister has already approved the roster system of allocation as indicated above, I would request you to ensure that this system of allocation

is followed while allocating the candidates appointed to the Indian Forest Service on the result of the Indian Forest Service Examination, 1984 and onwards.

With regards,

Yours sincerely,

Sd/-

(K. RAMANUJAM)

Shri TN. Seshan,
Secretary,
Department of Forests & Wild Life,
NEW DELHI.

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28th APR. 2001

DA NO. 91/02

Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

DA NO. 91/02

J.S. Rao, IAS

..... Applicant

-VS-

Union of India

..... Respondent

REJOINDER TO THE WRITTEN STATEMENT FILLED BY THE RESPONDENT NO.1.

1. That the applicant has received the copy of the written statement filed by the respondent No.1 and has gone through the same. Save and except the statement which are not specifically admitted hereinbelow, same may be treated as total denial. The statements which are not based on record are also denied and the respondent is put to the strictest proof thereof.

2. That with regard to the statement made in para 1 & 2 of the W.S. of the W.S. the applicant while denying the contentious made therein begs to state that in para 1 of the DA the particulars of the order against which the application is made has been made clear regarding the cause of action as well as the impugned order. After the pronouncement of the judgment dated 29.3.2001 in DA No. 1/99 the Hon'ble Tribunal with certain observations remanded the matter back to the respondents for passing necessary orders but the case of the applicant was once rejected on the same ground and the applicant has now challenged the said order dated 10.9.2001 and as such the question of maintainability does not arise.

Filed by
the applicant themselves
Alka Das
Advocate
28/4/03

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3. That with regard to the statement made in para 3 & 4 of the W.S. the applicant while denying the contentions made therein begs to rely and refer upon the statement made above as well as in the OA.

4. That with regard to the statement made in para 5 of the W.S. the applicant begs to state that in terms of Section 21 of the Administrative Tribunal Act, 1985 and taking into consideration the impugned order dated 10.9.2001, this OA has been filed well within the limitation period.

5. That with regard to the statement made in para 6 of the written statement the applicant while denying the contentions made therein begs to state that the contentions raised by the respondents regarding acceptance of offer of appointment is not correct. It is stated that mere acceptance of offer of appointment would not stand in the way in making a challenge to the arbitrary action of the respondent and under any circumstances the principle of estopped would act adversely against the applicant.

6. That with regard to the statement made in para 7 of the written statement the applicant does not admit anything contrary to the records.

7. That with regard to the statement made in para 8 and 9 of the written statement the applicant while denying the contentions made therein begs to state that the respondent intentionally suppressed the fact that the Hon'ble Apex Court upheld the ratio of insider and out-sider, it also upheld the ratio of reserved category candidates. Taking into consideration the letter dated 30-31/5/85, (para 3 clause 2) it is crystal clear that as per the

principle, for OBC as per the roster for 1996 examination should go to "insider". In fact there was no OBC outsider vacancy in terms of Annexure-2 of the OA, but in the instant case the OBC vacancy has been filled up by an outsider (Sri Ahmed Nadeem). And they have finally adjusted Mr. N. Sridhar against general vacancy. This anomalous situation has been explained in para 4.17 of the OA in details. The aforesaid violation is contrary to the judgment passed by Hon'ble Apex Court (Rajiv Yadav's Case). The entire anomaly has been created by the Merit criteria which has been proved to be contrary to the letter and spirit of Apex Court judgment. It is pertinent to mention here that the Hon'ble Tribunal in its earlier judgment in OA No 1/99 has already settled the Law and as such the impugned order dated 10.9.2001 is not at all sustainable and liable to be set aside and quashed. The respondents deliberately avoided the fact/explanation as to how Mr. Ahmed Nadeem has been allotted Andhra Pradesh Cadre against OBC vacancy as he is an OBC candidate falling under the category of outsider and as there was no outsider vacancy. It is further stated that the applicant for ~~abandon~~ caution has been made ^{abundant} ~~to~~ ^{the Chief Secretary, Assam} the Chief Secretary, Andhra Pradesh, Sri N. Sridhar, Smt. Sailaja Ramaiyer and Mr. Ahmad Nadeem as party respondents No. 2,3,4, 5 and 6 by filing MP No. 30/03 and the Hon'ble Tribunal was pleased to allow the said addition vide its order dated 26.3.2003.

8. That with regard to the statement made in para 10 of the written statement the applicant while denying the contentious made therein begs to state that in terms of the judgment passed in OA No.1/99 the process of cadre allocation was wrong and the present impugned order is not in conformity with the directions of the Hon'ble Tribunal and as such same is liable to be set

aside and quashed. It is further stated that the applicant has already made additional party respondents and the Hon'ble Tribunal has already granted the prayer and hence the question of maintainability of the OA does not arise.

9. That with regard to the statement made in para 11 of the written statement, the applicant offers no comment on it as same has already been admitted by the respondents.

10. That with regard to the statement made in para 12 of the written statement the applicant while reiterating and reaffirming the statements made above, as well as in the OA denies the correctness of the same and begs to state that the observations and directions contained in the judgment passed in OA No. 1/99, the Hon'ble Tribunal has laid down the Law in conformity with the law laid down by the Hon'ble Apex Court, and as such, the respondents under any circumstances cannot violate the same. However, the respondents have passed the impugned order dated 10.9.2001, rejecting the claim of the applicant, which is contrary to the judgment passed in OA No.1/99 and as such same is not sustainable and liable to be set aside and quashed.

11. That with regard to the statement made in para 13 of the written statement the applicant categorically denies the correctness of the same and begs to state that the statement made by the respondents regarding the order dated 22.9.98 (Annexure 5 to the OA) is contentious in nature. The said order dated 22.9.98 no longer in existence and hence the statement justifying its validity amounts to contempt of court's order and for which the Hon'ble Tribunal may be pleased to draw up appropriate contempt proceeding against the respondent No.1. The

said judgment and order dated 29.3.2001 (Annexure-6) has attained its finality and any attempt in rewriting the said judgment is contemptuous in nature. Apart from that the impugned order dated 10.9.2001 is only a reiteration of the same and as such same is also not sustainable in the eye of Law and liable to be set aside and quashed.

12. That with regard to the statement made in para 14 of the written statement the applicant while reiterating and reaffirming the contentions made above as well as in the OA begs to state that the respondents have failed to maintain the Roster and same is apparent from the impugned order dated 10.9.2001 and as such the impugned order is not sustainable and liable to be set aside and quashed.

13. That with regard to the statement made in para 15 of the written statement the applicant while reiterating and reaffirming the statement made above as well as in the O.A. begs to state that the core issue involved in the case is regarding granting of benefit to an OBC insider candidate in respect of cadre allocation. But in the instant case there is no beneficiary of OBC vacancy. The beneficiary can not be Mr N.Srichar, as he because of his merit got Andhra Pradesh cadre in general vacancy. On the other hand Mr. Ahmed Nadeem who has been allotted the OBC vacancy in any case an outsider candidate and has not given any preference to A.P. Cadre and hence he is also not a beneficiary. From the above analogy it is clear that the letter and spirit of the Principles of reservation has not been followed at all by the respondents in passing the impugned order and hence same is not sustainable and liable to be set aside and quashed.

14. That with regard to the statement made in para 16 of the

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written statement the applicant while denying the contentions made therein begs to state that there are sufficient grounds for granting the reliefs sought for by the applicant. It is further stated that there are also sufficient grounds for drawal of contempt proceeding against respondents No.1 for his willful and deliberate violation of the judgment and order passed in OA No.1/99.

15. That with regard to the statement made in para 17 & 18 of the written statement the applicant while denying the contentions made therein begs to state that under the facts and circumstances, as well as the averments made above and in the OA, the applicant is entitled to all the reliefs claimed in the OA with cost.

16. That with regard to the statement made in para 19 of the written statement the applicant while denying the contentions made therein begs to state that the issue regarding acceptance of Assam Meghalaya Joint Cadre was placed by the respondents in the earlier OA (OA No.1/99) and the issue now has attained its finality. Hence it is not open for the respondents to raise the issue once again. The impugned order dated 10.9.2001 is a repetition of earlier impugned order dated 22.9.1998 and as such same is not sustainable and liable to be set aside and quashed.

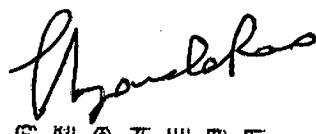
17. That the applicant under the aforesaid facts and circumstances prays that the impugned order dated 10.9.2001 be set aside with a further direction to allot Andhra Pradesh (Home cadre of the applicant) with immediate effect.

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VERIFICATION

I, J. Syamala Rao, son of Late J. Satyanarayan Murty, aged about 33 years, presently working as Staff Officer to the Chief Secretary & Deputy Secretary (Home & Political, Assam Secretariat (Civil), Dispur, Guwahati-6, do hereby solemnly affirm and affirm and verify that the statements made in the accompanying application in paragraph 1, 4, 5, 6, 9, 12, 15, 17, are true to my knowledge; those made in paragraphs 2, 3, 7, 8, 10, 11, 16 being matters of records are true to my information derived therefore and the rest are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this the 28th day of April, 2003.


S I G N A T U R E

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