

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Applications. Nos. 525 and 526 of 2005

JABALPUR, THIS THE 16th DAY OF SEPTEMBER, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

(1) Original Application. No. 525 of 2005

D.C. Sagar, IPS, Aged about 39
Years S/o Shri A.C. Sagar
Superintendent of Police
Khandwa (M.P.)


Applicant

(By Advocate – Shri Rajendra Tiwari Sr. Adv. along with
Shri M.K. Verma)

VERSUS

1. Union of India, through
Secretary, DOPT,
Department of Personnel and Training
New Delhi.
 2. The Secretary, Ministry of
Home Affairs, North Block,
New Delhi.
 3. State of Madhya Pradesh,
Through Principal Secretary
Department of Home,
Mantralaya, Vallabh Bhawan
Bhopal (M.P.)
 4. State of Chhattisgarh, Through
Principal Secretary Department
Of Home, Mantralaya, DKS
Bhawan, Raipur (CG)
- Respondents

(By Advocate – Shri A.P. Khare for respondents No. 1 & 2
Shri Ajay Ojha for respondent No. 4
None for respondent No. 4)



(2) Original Application. No. 526 of 2005

1. Shri Vijay Kumar Singh, IPS
Aged about 44 years S/o Shri
S.L. Singh I.G. Jabalpur (M.P.)
2. Rajendra Kumar, IPS,
Aged about 45 years S/o Shri
Shri S.S.L. Shrivastava,
I.G. Sagar, M.P.
3. Shailendra K. Shrivastava, IPS,
Aged about 45 years S/o Shri
Late Shri V.B. Shrivastava,
IG. Railway, R/o
DN 1/10, Char Imli, Bhopal (M.P.)
4. Sanjeev Singh, IPS,
Aged about 45 years S/o Shri
G.P. Singh,
Dy Transport Commissioner
Of MP, R/o D-26 Upant
Colony, Bhopal (M.P.)
5. Mr. Anuradha Shankar, IPS,
Aged about 41 year S/o Shri
Ram Chandra Khan, DIG
Bhopal, R/o D 8/11, Char
Imli, Bhopal (M.P.)

Applicants

(By Advocate - Shri Rajendra Tiwari Sr. Adv. alongwith
Shri M.K. Verma)

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Through Principal Secretary
Department of Home,
Mantralaya, Valiabh Bhawan
Bhopal (M.P.)



4. State of Chhattisgarh, Through
Principal Secretary Department
Of Home, Mantralaya, DKS
Bhawan, Raipur (CG) Respondents
- (By Advocate – Shri M.Chourasia for respondents No.1&2
Shri Ajay Ojha for respondent No.4
None for respondent No.4)

ORDER

By M.P. Singh, Vice Chairman –

As the issue involved in both the aforementioned Original Applications is common, and the facts involved and grounds raised are identical, for the sake of convenience both the Original Applications are being decided by this common order.

2. MA No.498/2005, filed by the applicants in OA 526/2005 to permit them to prefer joint OA, is considered and allowed.
3. By filing OA No.525/05, the applicant has sought the following main reliefs :-

“8.2. to quash the order dated 30.5.2005 in the interest of justice, the de-novo exercise of drawing up list of 30 IPS officers for inter state transfer being beyond the mandate of M.P. Reorganization Act 2000.

8.3 to hold that the calculation of 43 DRs vacancies done by the Committee (Constituted vide order dated 5.12.2003) is violative to Regulations of 2000, and may further be pleased to quash the miscalculation of vacancies in the interest of justice.

8.4. to direct the respondents to prepare separate list for SC & ST category, in the interest of justice.

8.5. to direct the respondents to prepare the roster on the basis of 41 DR posts for the State of CG, in the interest of justice.

8.6. to hold that the act of respondents in creating class within the class by using anomalous terminology of outsiders and insiders, is violative to Article 14 & 16 of the Constitution of India.



8.7. to hold that the committee constituted vide order dated 5.12.2003 was not having powers, jurisdiction competence and authority to alter, change, reconsider or modify the Statutory Regulation i.e. Indian Police Service (Fixation of Cadre Strength) Fifth Amendment Regulations, 2000."

3.1 By filing OA No.526/05, the applicants, five in number, have sought the following main reliefs :-

"8.2. to quash the order dated 30.5.2005 in the interest of justice, the de-novo exercise of drawing up list of 30 IPS officers for inter state transfer being beyond the mandate of M.P. Reorganization Act 2000.

8.3 to hold that the calculation of 43 DRs vacancies done by the Committee (Constituted vide order dated 5.12.2003) is violative to Regulations of 2000, and may further be pleased to quash the miscalculation of vacancies and may further be pleased to quash the recommendations of Committee constituted vide order dated 5.12.2003 in the interest of justice.

8.4 to direct the respondents to prepare the roster on the basis of 41 DR posts for the State of CG based on U.C. Agarwal report and notification dated 21.10.2000, in the interest of justice.

8.5. to hold that the committee constituted vide order dated 5.12.2003 was not having powers, jurisdiction competence and authority to alter, change, reconsider or modify the Statutory Regulation i.e. Indian Police Service (Fixation of Cadre Strength) Fifth Amendment Regulations, 2000."

4. For the sake of convenience, we have taken the facts from OA 525/2005, for deciding the aforesaid Original Applications. The applicant is a directly recruited Indian Police Service (for short 'IPS') Officer of 1992 batch. The State of Madhya Pradesh was bifurcated into two states - one - State of Madhya Pradesh and the other - State of Chhattisgarh w.e.f. 1.11.2000. For the purpose of distributing All India Services (for short 'AIS') Officers, the Government of India had formed a Committee named as U.C. Agarwal Committee. The said Committee was given following terms of reference -



(a) To recommend the initial strength and composition of the cadres of -

- i) The Indian Administrative Service
- ii) The Indian Police Service and
- iii) The Indian Forest Service.

for the states of Madhya Pradesh and Chhattisgarh in terms of the Section 67 (3) of the Madhya Pradesh Reorganisation Act, 2000 and

(b) To recommend as to which of the members of :-

- iv) The Indian Administrative Service
- v) The Indian Police Service and
- vi) The Indian Forest Service.

borne on the cadre of the existing State of Madhya Pradesh should be allocated to the cadre of Chhattisgarh of the same service."

The U.C. Agarwal Committee submitted its recommendations for the initial strength and composition of the cadre on 9.10.2000 (Annexure-A-1). Based on the recommendations of fixation of cadre strength dated 9.10.2000, the Central Government issued a Notification dated 21.10.2000, by which IPS (fixation of Cadre Strength) Fifth Amendment Regulations, 2000 was published. As per this notification, the total authorized strength of IPS Officers of the State of Chhattisgarh was determined as 59. Out of 59 posts, 41 posts were to be filled by direct recruitment and 18 by promotion. The U.C. Agarwal Committee also submitted its recommendation regarding which of the members of IAS, IPS and IFS borne on the cadre of the existing State of Madhya Pradesh, should be allocated to the cadre of Chhattisgarh of the same Service and has given a methodology to be adopted for allocation of officers to the State of Chhattisgarh on 23.10.2000 (Annexure-A-3). Following the recommendations of the U.C. Agarwal Committee, list of 59 officers was drawn and they were allocated to the State of Chhattisgarh. After issue of the notification, the allocation of the officers to the State of Chhattisgarh has practically attained

finality. However, a few of the officers had filed OAs Nos. 2421/2001 and 1660/2001 before the Principal Bench, New Delhi of this Tribunal with a specific dispute of "counting of two directly recruited OBC category IPS officers as general outsiders". The Principal Bench vide its order dated 5.2.2002 (Annexure-A-5) disposed of the aforesaid OA with the following direction :-

"The respondents to consider the cases of the applicants for re-allocation of IPS cadre in the light of what has been stated above and take an appropriate decision as early as possible and in any case within a period of three months from the date of receipt of a copy of this order, with intimation to the applicants".

Thereafter the Central Government issued show cause notice dated 2.4.2002 (Annexure-A-6) to 39 officers, who were short-listed by the Central Government in pursuance of the order of the Principal Bench of the Tribunal. The Central Government had constituted a Committee vide order dated 5.12.2003, (i) to consider replies received from the members of the Service to whom show cause notices dated 2.4.2002 were served by the Government of India and to make its recommendations to the Central Government thereon; and (ii) to make recommendations to the Central Government with regard to the IPS officers, whose cadre have to be changed from Madhya Pradesh to Chhattisgarh, and vice versa for rectification of inadvertent administrative error. The Committee instead of going into the terms of the reference has exceeded its jurisdiction and has altered the IPS (Fixation of Cadre Strength) Fifth Amendment Regulations, 2000 by which there was specific allocation of 59 posts to the State of Chhattisgarh, wherein 41 posts were allocated for direct recruitment. The Committee which was constituted to rectify the inadvertent administrative error failed to see apparent error of not making separate lists for SC and ST category, instead the Committee exceeded its jurisdiction and has gone beyond the notification dated 21.10.2000 which had statutory force. According to the applicant, the IJC Agarwal Committee has

specifically stated in its recommendations dated 23.10.2000 that "the number of insiders amongst DRs for the new State i.e. Chhattisgarh be determined on the normative basis of 33 1/3% of the DRs to be allocated to that State. Actual allocation of DR insiders will, however, depend on their availability in the existing Cadre of Madhya Pradesh", (Para ii of Annexure-I of recommendations dated 23.10.2000) subject to ceiling of 33.3% of direct recruits. In fact, there was no direction by the Principal Bench of the Tribunal to violate the IPS (Fixation of Cadre Strength) Regulations, 1955 or to reconsider the notification dated 21.10.2000 by which the fixation of cadre strength was done in accordance with IPS (Fixation of Cadre Strength) Regulations, 1955 which had acquired statutory force from the date of issuance. The UC Agarwal Committee in its recommendations had specifically stated that there should be separate list for each and every category, but the Central Government has not prepared separate lists for SC & ST categories. The Committee exceeding its jurisdiction has calculated 43 posts of Direct recruits instead of 41 posts as provided in the IPS (Fixation of Cadre Strength) (Fifth Amendment) Regulations, 2000. Because of two extra posts of Direct Recruits given to the cadre of Chhattisgarh, the entire formation of roster has got altered which has given rise to the grievance of the applicant.

4.1 It is also stated by the applicant that one of the affected officers, from the list drawn by the Ministry of Home Affairs as per the directions dated 5.2.2002 of Principal Bench of the Tribunal, went to the Hon'ble Delhi High Court against the show cause notice dated 2.4.2002 issued to him. The Ministry of Home Affairs had submitted their reply to the said Writ Petition No.3581/2002 (Brij Bhushan Sharma Vs. Central Administrative Tribunal & Others) in Delhi High Court, stating that the methodology adopted by the Government was correct, therefore, instead of taking a final decision on this list of 2.4.2002 and

issuing a final notification of cadre transfer, the Ministry of Home Affairs changed the methodology of calculation and issued fresh notices dated 4.2.2005 to a new set of 30 officers for the inter-State transfer.

4.2 The applicant has further stated that it is wrongly mentioned in the show cause notice dated 4.2.2005 that recommendations of the Advisory Committee constituted under the Madhya Pradesh Reorganization Act, 2000 have been considered and norms suggested by them for cadre allocation of AIS personnel have been accepted by the Government, subject to the following modifications :-

- "1. As against the normative basis of the allocation for 'insiders' recommended by the Advisory Committee it was decided that the proportion of 'insiders' amongst direct recruits be fixed at the level obtaining in the undivided cadre or the 1/3 of the total number of the direct recruits, whichever is higher.
2. In case of any gap between the number of officers proposed to be allocated to the newly constituted state after proportionately distributing any surpluses or deficits in the undivided cadre and the number of officers actually allocated, the same be filled in from amongst such officers who have given their willingness to serve in the new State (whether 'Insiders' 'Outsiders' or 'promotees'), but could not get allocated earlier in case the number of such officers is more than the gap to be filled in that case the required number may be taken through roster".

4.3 The applicant has further submitted that if the calculation of posts is done in accordance with notification dated 21.10.2000, the following will be the break up of posts to be allocated to the State of Chhattisgarh:-

"1. Authorized strength of Existing IPS : 278 (DR:194,
cadre of Madhya Pradesh promotees : 84)

2. IPS officers in position as on dates : 279 (DR:203,
promotees : 76)

3. IPS officers due for superannuation by 31.10.2000 : 1(Promotee)
4. IPS officers available for division between reorganized IPS cadre of MP & newly created IPS cadre of CH : 278
(279-1 = 278)
5. Number of DR insider and outsider IPS officers in existing IPS cadre of M.P. : 203(Insider: 49, Outsider : 154)
6. Total number of DRs to be given to Chhattisgarh. : 41"

4.4 The applicant has further stated that the roster had to be prepared on the basis of the notified number of 41 DRs and any excess of DRs could easily have been settled by taking into account the willingness option. Shri R.L. Amravanshi of SC category – an insider of MP is already in Chhattisgarh on this principle, and Shri Himanshu Gupta is in Chhattisgarh on account of being spouse of another AIS officer. This settles the problem of 'excess' DRs and there is no need for changing the entire roster for resolving this issue. Moreover, DRs were never recruited in excess, they appeared so because of a court judgment raising the quota of promotee officers from 72 to 84, and because of some spouses coming to MP, and this does not warrant a change of basis for making the roster. Since no affirmative steps were taken by the Central Government for recalling the show cause notices, the applicant had preferred an OA No.308/2005 (D.C. Sagar Vs. Union of India & Others). The said OA was disposed of by this Tribunal vide order dated 23.3.2005 with certain directions. The applicant has contended that the respondents have not paid attention to the order passed by the Tribunal, and have passed the order dated 30.5.2005 by which they have asked concurrence of the State Governments of Madhya Pradesh and Chhattisgarh. Hence this OA.



5. The applicants in OA 526/2005 have raised somewhat same facts and grounds in their OA as stated by the applicant in OA 525/2005

6. The respondent No.2 in their separate replies in the aforesaid OAs, have stated that the communication dated 30.5.2005 is not an order but only a communication from the Central Government to the State Government seeking their concurrence to the inter cadre transfer of IPS officers of erstwhile IPS cadre of Madhya Pradesh who have been erroneously allocated to the Madhya Pradesh/Chhattisgarh cadres. Since no orders have yet been issued transferring the applicants from Madhya Pradesh to Chhattisgarh, no cause of grievance has occurred to them in the matter filed herewith. The respondent No.2 has further stated that this Tribunal in the earlier order dated 23.3.2005 passed in OAs Nos. 307 & 308/2005 had inter-alia directed the Union of India to consider the representations of the applicants, give them personal hearing, and consult the State Governments. The Central Government is exactly doing the same. The applicants were given personal hearing by the Joint Secretary (Police) on 6.5.2005. Now, the Central Government is consulting the State Governments. However, no final orders have been issued so far. The respondent No.2 has further submitted that the Hon'ble High Court of Chhattisgarh at Bilaspur had directed the Union of India vide its order passed in Writ Petitions Nos. 2805/05 and 3176/2004 to take decision in the matter latest by 30.6.2005, otherwise the Court will be constrained to take serious view of the matter.

6.1 The respondent No.2 has also moved M.As. Nos.722 & 723/2005 on 22.8.2005, in which it has been mentioned that in the meanwhile the Government of Madhya Pradesh vide their letter No.F 20/2002/B-2/Two dated 14.6.2005 has not concurred to the proposal of the Central Government for inter cadre transfer of IPS officers from Madhya Pradesh to Chhattisgarh and vice versa



including the applicants in the above said OAs. In view of this submission, the present OAs have become infructuous and are liable to be dismissed.

7. Heard the learned counsel for the parties and carefully perused the pleadings available on record.


8. During the course of arguments, the learned counsel for the respondents has submitted that since the Government of Madhya Pradesh has not given the concurrence and the State of Chhattisgarh has given conditional concurrence, it has been decided by the Government of India to drop the exercise of rectification of administrative errors. Moreover, no order for transferring 15 officers from the State of Madhya Pradesh to State of Chhattisgarh and vice versa has yet been issued and, therefore, no cause of action accrues to the applicants. Only show-cause notices were issued to the officers who were likely to be transferred from the State of Madhya Pradesh to the State of Chhattisgarh and vice versa. In view of these submissions the learned counsel has submitted that the present Original Applications have become infructuous and be dismissed as infructuous.

9. On the other hand, the learned Senior Advocate Shri Rajendra Tiwari has submitted that in response to the letter dated 30.5.2005 issued by the Ministry of Home Affairs seeking concurrence from the State Government of Madhya Pradesh, the Government of Madhya Pradesh have not sent their concurrence for the transfer of 15 officers from the State of M.P. to State of Chhattisgarh in terms of Rule 5(2) of IPS (Cadre) Rules, 1954. The learned counsel for the applicants has produced a copy of the order dated 27.6.2005 issued by the Government of India, Ministry of Home Affairs, whereby the Ministry of Home Affairs have rejected the representation of the 10 officers of State of Chhattisgarh for their transfer to State of Madhya Pradesh, on the

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ground that there is a difference of opinion between the State Government of Madhya Pradesh and that of Chhattisgarh with regard to inter cadre transfer of IPS officers from one cadre to another and vice versa as rectification of administrative errors and the State Governments have not given their unambiguous concurrence. The learned counsel has also submitted that the respondent No.2 have filed MA Nos.722 & 723/2005 on 22.8.2005 stating that in view of the fact that the Government of M.P. has not concurred to the proposal of the Central Government for inter-cadre transfer of IPS officers from Madhya Pradesh to Chhattisgarh and vice versa, the present OAs be dismissed as infructuous. He has further drawn our attention to the letter dated 28.6.2005 (enclosed with the aforesaid MAs) issued by the Govt. of India, Ministry of Home affairs, addressed to their standing counsel, in which it has been mentioned that 'in view of the above development, Government of India is not in a position to take further necessary action under Rule 5(2) of IPS (Cadre) Rules, 1954 and has decided to drop the exercise of rectification of administrative errors. The learned Sr. Advocate has argued that though the matter for inter-state transfer of IPS officers has been dropped for the present, on technical grounds, but the same could still be pursued further if the concurrence of the State Governments of Madhya Pradesh and Chhattisgarh in terms of Rule 5(2) of the IPS (Cadre) Rules, 1954 becomes available in near future. He has, therefore, submitted that instead of disposing of these Original Applications as infructuous, the same be decided on merits.

9.1 The learned Senior Advocate Shri Rajendra Tiwari has also argued that the UC Agarwal Committee submitted its recommendations on 9.10.2000 for the initial strength and composition of the cadre. Based on these recommendations, the Central Government had issued a notification dated 21.10.2000 by which IPS (Fixation of Cadre Strength) Fifth Amendment Regulations, 2000 was published. As per this notification dated



21.10.2000 the cadre strength of direct recruit IPS officers of Chhattisgarh was fixed at 41 and promotee officers as 18. However, some of the affected officers had filed an Original Application before the Principal Bench, New Delhi of this Tribunal with a specific dispute of 'counting of two directly recruited OBC category IPS officers as general outsiders'. The Principal Bench has disposed of the said OA directing the respondents to consider the case of the applicants for reallocation of the IPS cadre in the light of what has been stated in the said order and take an appropriate decision as early as possible and in any case within a period of three months. The respondents have issued the show cause notices to 39 officers, who were likely to be affected. The learned counsel has submitted that as per the notification dated 21.10.2000 the State of Chhattisgarh was to be given 41 posts against Direct Recruitment quota and 18 posts against promotion quota. However, as per the show cause notice dated 4.2.2005 the proposed strength of DR is increased from 41 to 43. According to him, there were 9 direct recruit IPS officers who were in excess of the authorized strength of direct recruit as on 31.10.2000 and they were to be distributed proportionately between the two States. Thus, only 2 officers out of 9 were to be allocated to the State of Chhattisgarh by way of taking their willingness. This has been done by allocating two officers one Shri R.L. Amravanshi as a willing officer, and another Shri Himanshu Gupta as a spouse case, to the State of Chhattisgarh. However, as per the order dated 4.2.2005, the respondents have made wrong calculation on the basis of 43 Direct Recruits to be allocated to the State of Chhattisgarh, whereas as per the recommendations of the UC Agarwal Committee, only 41 direct recruits were to be allocated.

9.2 According to the learned Sr. Advocate for the applicants, the transfer of 15 officers at this stage under Rule 5(2) of the IPS (Cadre) Rules, 1954 is not justified on the following grounds :-



- “(i) a long time of five years has elapsed since the cadre division was affected;
- (ii) number of irreversible changes have taken place in both these cadres in last five years. Large number of officers have since retired in both the States and are drawing post retirement benefits from the respective State Governments. Many officers have been promoted to various ranks. Any large scale transfer would, besides adversely affecting such officers, be also detrimental to the policing administration of the two States;
- (iii) there have already been cadre review and new recruitments in both the States and now the existing cadres in both the places are very different from what they were at the time of cadre division on 31.10.2000;
- (iv) the Hon'ble Supreme Court in the case of Rajeev Yadav (1994)28 ATC 228 has observed that cadre allotment being incidental, AIS officers are liable to serve anywhere in the country;
- (v) after five years time an administrative finality has already set in both the cadres; and
- (vi) finally, there is no provision in the State Reorganization Act, 2000 about any changes being made in the respective cadres after the appointed day i.e.1.11.2000”.

9.3 The learned Sr. Advocate has further argued that the roster driven calculations in the case of IPS officers had to be based on the authorized cadre strength of Chhattisgarh cadre as notified in the IPS (Fixation of Cadre Strength) (Fifth Amendment) Regulations, 2000, which were based on U.C. Agarwal Committee's recommendations, as accepted by the Government of India, i.e. 41 Direct Recruits and 18 officers of the promotee quota had to be the basis for calculating the names of the officers to be sent to Chhattisgarh. He has further submitted that on the basis of the methodology mentioned in the U.C. Agarwal Committee's recommendation dated 23 10 2000, the number of general category direct recruits would be calculated to as 20, that of SC and ST officers would be 6 and that of OBC officers would be 1, rest 14 would be filled by insider direct recruits. He has further submitted

with

that in case of insider officers or promotee quota officers not being available, then vacancies should have been carried over in accordance with the U.C. Agarwal Committee's recommendations. The direction given by the Principal Bench for rectification of one single inadvertent error of counting two OBC officers as General category officers has also not been implemented in right perspective. The Committee constituted by the Government of India for compliance of the order of Principal Bench of this Tribunal, has grossly exceeded its brief and has seriously erred in carrying out a de-novo exercise on basis of correction of two errors. In such a case where a number of calculations are subject to different interpretations, a number of so called error can be pointed out but no committee has any authority of making such interpretation in violation of the IPS (Fixation of Cadre Strength) Fifth Amendment Regulations, 2000 and State Reorganization Act, 2000. The learned counsel has also contended that the category-wise distribution of 41 Direct Recruit IPS officers as recommended by the U.C. Agarwal Committee should have been made as under:

1. Authorized strength of Existing IPS cadre of Madhya Pradesh	: 278 (DR:194, promotees : 84)
2. IPS officers in position as on dates	: 279 (DR:203, promotees : 76)
3. IPS officers due for superannuation by 31.10.2000	: 1 (Promotee)
4. IPS officers available for division between reorganized IPS cadre of MP & newly created IPS cadre of CH	: 278 (279-1 = 278)
5. Number of DR insider and outsider IPS officers in existing IPS cadre of M.P.	: 203 (Insider: 49, Outsider : 154)
6. Total number of DRs to be given to Chhattisgarh	: 41
7. Insider to be given (33.33% of 41)	: 14 (13.66)
8. Outsiders to be given (66.67% of 41)	: 27 (27.33)

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9.(a)Percentage of various cate- :Gen:44out of 49-89.79%
gories Insiders IPS officers in SC/ST: 4 out of 49-8.16%
the then existing IPS cadre OBC : 1 out of 49-2.04 %
of MP.

(b)Percentage of various :Gen : 113 out of 154 - 73.37%
categories outsider IPS SC/ST :35 out of 154 - 22.72%
officers in the existing OBC : 6 out of 154 - 3.83%
IPS cadre of MP

10.(a) Number of DR insiders to be : Gen : 12.57 - 13
provided to Chhatisgarh SC/ST : 1.14 - 1
categories in the %age of OBC : 0.28 - 0
given in Col.9 above.

(b) Number of DR outsiders to be : Gen : 20 (19.80)
provided to Chhatisgarh category- SC/ST : 6 (6.13)
wise in the %age given in Col.9 OBC : 1 (1.03)
above.

11. Number of insiders categorywise : Gen 9 (less 4)
belonging to Chhatisgarh available SC/ST:0(less 1)
OBC : 0

10. We have given careful consideration to the rival contentions and we find that the undisputed facts of the case are that the State of Madhya Pradesh was bifurcated into two States on 1.11.2000 i.e. State of Madhya Pradesh and State of Chhattisgarh. U.C. Agarwal Committee was appointed to recommend the initial strength and composition of the cadres of IAS, IPS & IFS for the States of MP and Chhattisgarh, and to recommend as to which of the members of the IAS, IPS and IFS borne on the existing cadre of Madhya Pradesh should be allocated to the cadres of Chhattisgarh of the same Service. The total cadre strength of IPS officers as on 31.10.2000 in the State of MP was 278 officers (194 direct recruits and 84 promotees). As per the recommendations of the UC Agarwal Committee, the cadre strength of IPS officers in the State of Chhattisgarh was fixed at 59 : 41 direct recruits and 18 as promotee officers. Some of the affected IPS officers have filed Original Applications before this Bench of the Tribunal and the Principal Bench of the Tribunal. In their OAs, the applicants have


inter alia stated that two outsider OBC category directly recruited IPS officers have been counted as general category officers for the purpose of allocation of cadres of outsider category directly recruited IPS officers of erstwhile IPS cadre of Madhya Pradesh. But for counting of the said two OBC category IPS officers as general, they would not have been allocated to IPS cadre of Chhattisgarh. The Principal Bench vide order dated 5.2.2002 disposed of OAs 1660/2001 and 2421/2001 by directing the respondents to dispose of the pending representation of the applicants within three months. Similar directions were given by Jabalpur Bench of the Tribunal in OA 789/01 and OA 400/01. In pursuance of the directions of the Tribunal, the Central Government conducted fresh exercise of allocation of cadres to the outsiders category directly recruited IPS officers of erstwhile IPS cadre of Madhya Pradesh after removing the name of the two outsider OBC category directly recruited IPS officers from the list of general category outsider IPS officers and issued show cause notice dated 2.4.2002 to 39 IPS officers belonging to IPS cadre of Madhya Pradesh and to IPS cadre of Chhattisgarh, who were likely to be transferred from one cadre to another.

11. The Central Government vide its order dated 5.12.2003 constituted a Committee under Chairmanship of Secretary DOPT, with the following terms of reference -

- (i) To consider replies received from the members of the Service to whom show cause notices dated 2.4.2002 were served by the Govt. of India and to make its recommendations to the Central Govt. thereon.
- (ii) To make recommendation to the Central Govt. with regard to the IPS officers, whose cadres have to be changed from Madhya Pradesh to Chhattisgarh and vice versa for rectification of inadvertent administrative error.

The said Committee has sought certain clarifications and advice of the Ministry of Law with regard to the matter whether the transfer of the officers from one State to another State will be in terms of Rule 5(1) of the IPS (Cadre) Rules, 1954 or under Rule 5(2) of the

IPS (Cadre) Rules, 1954. The Ministry of Law advised that exercise of rectifying the administrative error be treated under Rule 5(2) of the IPS (Cadre) Rules, 1954, i.e. transfer from one State to another. The Ministry of law also advised that since the Administrative Ministry had issued notices to the affected officers earlier, non-issue of notices to the another set of officers would be discriminatory. Therefore, issuance of notices to the other set of affected officers is advisable. It is because of this reason, that the Central Government has issued notices to the applicants in the present OAs. As per the de novo exercise conducted by the Central Government, after correcting both the inadvertent administrative errors pointed out by the Committee constituted under the Chairmanship of Secretary, DOP&T, some IPS officers except Shri Ravi Sinha were required to be allocated to IPS cadre of Madhya Pradesh. A new set of IPS officers belonging to Madhya Pradesh cadre than the one who were earlier served show cause notice dated 2.4.2002, inter alia were to be transferred to IPS cadre of Chhattisgarh. They were served fresh notice dated 4.2.2005 to show cause as to why they may not be transferred to IPS cadre of Chhattisgarh on rectification of inadvertent administrative error. After considering the replies to the show cause notice dated 4.2.2005, the Central Government, vide letter dated 30.5.2005 sought the concurrence of the respective State Governments of Madhya Pradesh and Chhattisgarh to the inter cadre transfer of 30 IPS officers from Madhya Pradesh to Chhattisgarh and vice versa under Rule 5 (2) of IPS (Cadre) Rules, 1954. The Government of Madhya Pradesh vide their letter dated 14.6.2005 have stated that the Government of Madhya Pradesh do not concur to the proposal of inter cadre transfer of the officers as five years have elapsed since the bifurcation of erstwhile Madhya Pradesh and the officers allocated to Madhya Pradesh would be put to great hardship and inconvenience if they are shifted at this stage. Looking to the uncertainty and instability amongst IPS officers on this account,



the State Government have decided not to concur with the proposed inter cadre transfer. The Government of Chhattisgarh vide their letter dated 20.6.2005 have inter-alia stated that the State Government concur to the proposal of inter-cadre transfer of the said IPS officers subject to the condition that first the Government of Madhya Pradesh release the IPS officers from Madhya Pradesh, who have been allocated to IPS cadre of Chhattisgarh, keeping in view the shortage of IPS officers in Chhattisgarh. Since there is a difference of opinion between the State Government of Madhya Pradesh and that of Chhattisgarh with regard to inter cadre transfer of IPS officers from one cadre to another & vice versa as rectification of administrative errors and the State Governments have not given their unambiguous concurrence, it is not feasible for the Central Government to transfer any of the IPS officers from one cadre to another, including the following 10 officers from Chhattisgarh to Madhya Pradesh :-

- (1) D.M. Awasthi, IPS (CH: 86)
- (2) Ram Niwas, IPS (CH: 82)
- (3) Vivekanand, IPS (CH: 96)
- (4) M.W. Ansari, IPS (CH: 84)
- (5) G.P. Singh, IPS (CH: 94)
- (6) A.D. Gautam IPS (CH: 92)
- (7) Ashok Juneja, IPS (CH: 89)
- (8) Anil M. Navaney, IPS (CH: 78)
- (9) Rajesh Km. Mishra, IPS (CH: 90)
- (10) B.K. Singh, IPS (CH: 87)

The Central Government have rejected the representation of the aforesaid 10 officers and have also decided to drop the matter. In the letter dated 28.6.2005, it has been mentioned that the Government of India is not in a position to take further necessary action under Rule 5(2) of IPS (Cadre) Rules, 1954 and have decided to drop the exercise of rectification of administrative errors.

12. During the course of arguments, the learned Sr. Advocate for the applicants has submitted that although the matter has been



dropped by the Central Government for the time being because of non-availability of the unambiguous concurrence from the State Governments of Madhya Pradesh and Chhattisgarh, but in near future if the concurrence of the State Government becomes available, the matter might again be pursued by the Central Government for transfer of the 15 officers from Madhya Pradesh to Chhattisgarh and vice versa. The sum and Substance of the argument of the learned Sr. Advocate for the applicants is that as per the recommendation of the U.C. Agarwal Committee, the cadre strength of IPS officers of the State of Chhattisgarh was fixed at 59 - 41 as direct recruits and 18 as promotee officers. The cadre strength of both the States have undergone change. Many officers have retired and some of them have been promoted in their respective States. Therefore, this exercise of transfer should not be done at this belated stage. The Committee, as constituted by the Central Government in pursuance of the directions of the Principal Bench, has exceeded its jurisdiction and instead of rectifying the administrative error of counting two OBC officers as general category outsiders have also made another recommendation to undertake the exercise of working out the number of posts for reserved categories separately for insiders and outsiders in each category. The Central Government has done this exercise on the basis of 43 directly recruited IPS officers instead of 41, which is wrong as the cadre strength of 41 direct recruits was based on the recommendations of the U.C. Agarwal Committee, as notified on 21.10.2000 and that has attained finality and no further change could be made by the subsequent notification. Since there were 9 direct recruit officers in excess of their authorized strength, at the time of cadre division on 31.10.2000, they were required to be distributed proportionately between the two States as per the U.C. Agarwal Committee's recommendations, which have been approved by the Government (DOP&T). Two such IPS officers have already been allocated to the State of Chhattisgarh – one Shri

Amravanshi by way of giving his willingness and another Shri Himanshu Gupta as a spouse case and, therefore, no further inter-State transfer of officers from the State of Madhya Pradesh to the State of Chhatisgarh and vice versa is required at this belated stage.

13. In view of the discussions made above, we find force in the contentions made by the learned Senior Advocate with regard to the authorized strength of 41 DR IPS officers of Chhatisgarh and their category-wise break up (as suggested in para 9 above) based on the strength of 41 only as notified by the Government of India on 21.10.2000, and that the committee has exceeded its jurisdiction by calculating 43 posts of DR instead of 41 posts as provided in the IPS (Fixation of Cadre Strength) Regulations, 2000. This contention has not been controverted by the respondents in their reply nor during the course of oral submissions made by the learned counsel for the respondents. Moreover, this Tribunal while passing the interim order in the present OAs on 17.6.2005 has clearly observed in para 8 of the order that the respondent no.2 "have not explained about the fact mentioned in para 2 of MA 520/2005 about increasing the number of Direct Recruit from 41 to 43".

14. While we find that the respondents are justified in their action to drop the matter because of non-availability of concurrence of the State Governments, we are of the considered opinion that in case the Central Government still considers the proposal for inter-State transfer of IPS officers from MP cadre to Chhattisgarh cadre, and vice versa, in terms of Rule 5(2) of the IPS (Cadre) Rules, 1954, they may do so on the basis of the cadre strength of 41 directly recruited IPS officers for Chhatisgarh, fixed by the aforesaid Notification dated 21.10.2000, which was issued by the Government on the recommendations of the U.C. Agarwal

Committee.



15. In the result, both the Original Applications are disposed of in the above terms. No costs

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

Rkv

पूतकन सं ओ/न्या.....जवलपुर, दि.....
प्रतिनिधि अन्ये दाल:-

- (1) सचिव, राज्य न्यायलय सार एग्जिक्यूशन, जवलपुर
- (2) अल्लेके काउंसल Sh. R. Tiwari, St. Adv.
- (3) कलके काउंसल Sh. M. K. Verma Adv.
- (4) कलके काउंसल Sh. M. Choudharia, Adv.
- (5) कलके काउंसल Sh. Rajay Ojha, Adv.
- (6) कलके काउंसल Sh. R. P. Khare, Adv.

सचिव एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

20/9/05