

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 93 of 2002
Original Application No. 246 of 2002
Original Application No. 532 of 2002

Indore, this the 26th day of April, 2005

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

1. Original Application No. 93 of 2002 :

R.P. Jain & Ors. Applicants

(By Advocate – None)

V e r s u s

Union of India & Ors. Respondents

(By Advocate – Shri S.A. Dharmadhikari for respondent No. 1 and none
for others)

2. Original Application No. 246 of 2002 :

U.R. Netam Applicant

(By Advocate – Shri Ranbir Singh Marhar)

V e r s u s

Union of India & Ors. Respondents

(By Advocate – Shri S.A. Dharmadhikari for respondent No. 1 and none
for others)

3. Original Application No. 532 of 2002 :

Mahendra Singh Tomar Applicant

(By Advocate – Shri Rajendra Tiwari, Sr. Adv.)

V e r s u s

Union of India & Ors. Respondents

(By Advocate – Shri S.A. Dharmadhikari for respondent No. 1 and none for others)

O R D E R (Common)

By Madan Mohan, Judicial Member –

As the issue involved in all the aforementioned cases is common and the facts and grounds raised are identical, for the sake of convenience these Original Applications are being disposed of by this Common order.

2. By filing these Original Applications the applicants have claimed the following main reliefs :

OA No. 93/2002 :

“(i) to quash the impugned notification dated 31.10.2000 (Annexure A-1) as void arbitrary and illegal,

(ii) to direct the respondents to allocate State of Madhya Pradesh cadre to the applicants in terms of the options exercised by them.”

OA No. 246/2002 :

“(i) to direct the respondents to allocate Chhattisgarh Cadre to the applicant as per his option form dated 19.9.2000 (Annex. A/6),

(ii) to direct the respondents to include the name of the applicant in the Notification>List dated 31.10.2000 (Annex. A/9) for allocation to the cadre of Chhattisgarh State.”

OA No. 532/2002 :

(i) to issue a writ in the nature of Certiorari canceling the original list of allocation dated 31.10.2000 (Annexure A-1) so far as it relates to the applicant,

(ii) to issue a writ in the nature of Mandamus commanding the respondents to accept the representation for mutual transfer submitted by the applicant and Shri M.S Kanwar (Annexure A-12) and thereby further direct that the applicant be brought back to the IPS cadre of M.P. State forthwith or the exchange be allowed with any willing officer,



(iii) by issuance of a writ in the nature of Mandamus, to quash the benefit of willingness given to 24 officers or give the benefit of willingness to the applicant in the same way, permitting to be retained in M.P. Cadre as per his option."

3. The brief facts of the case in OA No. 532 of 2002 are that the applicant is a member of the IPS having been promoted from the State Police Service. He joined the State Police Service in the year 1983 as DSP and was appointed by promotion to IPS cadre and allotted 1993 as the year of allotment. The new State of Chhattisgarh has been created under the Act of Parliament called as M.P. Re-organization Act, 2000 (hereinafter to be referred as the Act of 2000). The Central Government has made IPS (Cadre) Rules, 1954 under the provisions of All India Services Act, 1951. A bare perusal of Section 67 makes it clear that the entire exercise pertaining to bifurcating of the cadre/cadres has to be effectively taken before the appointed day. So also Section 71 of the Act of 2000 provides for constitution of advisory committee for the purpose of ensuring fair and equitable treatment to all concerned. Everything transpired due to unprecedented haste because separate IPS cadres for the two states were required to come into existence before 1.11.2000 under Section 67 of the Act of 2000. The provisions of Section 67 in particular have not been followed in there proper perspective according to the norms fixed by the advisory committee, appointed by the Central Govt. under Section 71 of the Act of 2000. Accordingly, Annexure A-1 seeks to allocate the services of as many as 59 IPS officers from the erstwhile State of MP to the newly created State of Chhattisgarh in contravention of Rules & Regulations. For the State of Chhattisgarh cadre strength of 59 IPS officers was notified which was to comprise of 41 RRs and 18 SPS officers. The allocation of IPS personnels, as a consequence of bifurcating of the existing cadre of IPS of the erstwhile State of MP was to be made before 1.11.2000. The applicant was fully hopeful of just and equitable treatment in this exercise of cadre-bifurcation and allocation of posts and personnel between the two states. However the provisions of

Section 67 were not followed in the letter and spirit. The respondent No. 1 allocated 59 officers of IPS of MP cadre to the newly constituted State of Chhattisgarh by notification dated 31.10.2000 (Annexure A-1). An Original Application was filed by the MP unit of the All India Services Officers' Association before this Tribunal challenging the recommendations of the UC Agarwal Committee in preparing the list of AIS officers to be transferred to the newly created State of Chhattisgarh on the ground that it smacked discrimination and favoritism. The Tribunal directed the respondents' Central Government to disclose the formula adopted for cadre division to Chhattisgarh and MP. It was also directed to supply to the Members of the Association a copy of guidelines and norms which were followed by the advisory committee. However, the guidelines as formulated by UC Agarwal's committee informally came to the knowledge of the applicant. The applicant submitted representation dated 20.11.2000 (Annexure A-9). The Committee constituted to consider the cases of genuine hardship, has given relief to some officers namely Shri D.S. Sengar and Dr. S.W. Naqui on the basis of their hardships. However, the case of the applicant has not been given due consideration. If the provisions of Insider and outsider as suggested by the original recommendations of the UC Agarwal Committee were followed, there would be no occasion of any heart-burning in the bifurcation of IPS (SPS) officers as there were 14 IPS (SPS) willing to go to Chhattisgarh. If the roster were run on remaining 61 IPS (SPS) officers for 2, 4 or 6 IPS (SPS) to be allocated to Chhattisgarh in case of proposed SPS strength of 16, 18 or 20, the applicant would not have been allocated to Chhattisgarh. Even in the matter of considering the willing officers, a pick and choose method has been followed. There are 4-5 other officers who have been deprived off this opportunity. Due to inequitable distribution, instead of 16 IPS (SPS) officers, four excess have been posted to Chhattisgarh thereby sealing the fate of a number of State Police Officers in Chhattisgarh in the matter of their promotional prospects vis-à-vis their counter parts in the State of MP. In the notification dated 21.10.2000 while computing the

number of duty posts in the IPS cadre, 41 posts were worked out as direct recruitment and 18 posts as SPS officers for the State of Chhattisgarh. While allocating the officers of IPS cadre of State of Chhattisgarh, 20 officers of promotion quota were allocated though no vacancy was given and all the nine vacancies remained in the State of MP for promotion quota, which is arbitrary, illegal and not only against the spirit of Section 67 and 71 of the Act of 2000 but also against the notification dated 21.10.2000. An excess of 2 promotee officers (20 against the stipulated 18) allocated to Chhattisgarh has created serious unjust situation. As on the relevant date i.e. on 31.10.2000, sanctioned cadre strength of erstwhile State of MP in respect of direct recruits was 194 as against which 203 direct recruits were working. On the contrary, sanctioned cadre strength of promotee IPS officers was 84 out of which only 75 were actually present. Thus, in the case of direct recruits, there was surplus of 9 while in the case of promotees, there was deficit of 9. Applying the norms/guidelines, the deficits and surplus had also to be proportionately distributed amongst the two succeeding states in which only 16 promotee IPS officers could have been validly allocated to the State of Chhattisgarh and 43 direct recruit IPS officers ought to have been allocated. While in fact, in gross contravention, 20 promotee IPS officers and 39 direct recruit IPS officers were allocated. The Committee which was constituted alongwith UC Agarwal contained the name of Shri K.S. Sharma the then Chief Secretary. His son Manish Sharma was one of the officers of the MP cadre and was likely to be shifted to Chhattisgarh alongwith direct recruits. In order to save him, all such exercises were done so that he was retained in MP by sending less number of direct recruits to the State of Chhattisgarh and compensating the balance by the promotee officers. In fact glaring instance of pick and choose and favoritism is evident from the fact that such blue-eyed boys who could not be protected or favoured even with various manipulations and subjective tinkering in allocation, have not been relieved despite their clear cut allocation orders. Shri UR Netam who has been allocated to MP cadre has not been relieved till date from

Chhattisgarh. He has also filed an Original Application before this Tribunal for his allocation to the State of Chhattisgarh. There are as many as 19 willing officers who want to be allocated to Chhattisgarh. The names of these officers have been mentioned in Annexure A-19. Apart from this 19 officers, one more officer Shri M.S. Kanwar is also willing for Chhattisgarh after his induction in IPS. Thus, if the Government wants to allocate 20 persons, it can very well do so by allocating 19 willing officers plus one Shri M.S. Kanwar which will make it 20 thereby sparing the unwilling officers who are willing to work in MP on grounds of genuine hardships and who are domicile of MP like the applicant. The applicant and Shri M.S. Kanwar who was inducted in IPS on a later date in January 2001 had given their willingness for mutual exchange of cadre. A bare perusal of Annexure A-17 roster of IPS (SPS) officers for allocation to State of Chhattisgarh will show that out of 16 officers to Chhattisgarh, 8 officers have been given the benefit of mutual exchange of cadre on the basis of their willingness. Thereafter four more officers were allocated to Chhattisgarh on the basis of their willingness. It is clear that 20 SPS officers and 4 RRs have been given the benefit of their willingness and allocated cadre of their choice, against the declaration of the Central Government. The action of the respondents is arbitrary, unjust and malafide. Hence, this Original Application is filed.

4. In OA No. 246 of 2002 the applicant is a Member of Indian Police Service of 1987 batch born on the cadre of Madhya Pradesh. The applicant has held various offices in the entire State of Madhya Pradesh. All other facts are similar to the facts as mentioned above in OA No. 532 of 2002.

5. In OA No. 93 of 2002 the applicants three in number are members of the Indian Administrative Service having been inducted in the said service by notification dated 20.12.1995, 14.3.2000 and 17.6.1993 respectively, as of 1.11.2000 their years of allotment are 1990, 1994 and

1988 respectively. They started their service career in the State of Madhya Pradesh and appointed as Members of IAS. In this case also all other facts are similar to the facts as mentioned above in OA No. 532 of 2002.

6. Heard the learned counsel for the parties and carefully perused the pleadings and records.

7. The learned counsel for the applicant in OA No. 532 of 2002 has drawn our attention towards the guidelines Annexure A/9-a and also drawn our attention towards Annexure A-13 which is a letter dated 20.2.2001 written by the Deputy Secretary to the Director Police, Government of India, Ministry of Home Affairs, New Delhi, in which he has forwarded with the recommendations for consideration of mutual cases between the applicant M.S. Tomar and one M.S. Kanwar and has also drawn our attention towards the letters dated 28.2.2001 (Annexure A-14) and 27.8.2001 (Annexure A-15). He has also drawn our attention towards page No. 132 of the OA where the names of the officers along with the statement of grievances of these officers allotted to Chhattisgarh, are given. The respondents have not considered the case of allocation of cadre to the states in true spirit. Mr. U.R. Netam has filed OA No. 246 of 2002 for his allocation to the State of Chhattisgarh. He has also argued that if the provisions of insider and outsider as suggested by the original recommendations of UC Agarwal Committee are followed there would be no occasion of any hardship in bifurcation of IPS (SPS) officers as there were 14 IPS (SPS) officers willing to go to Chhattisgarh. Even in the matter of considering the willing officers a pick and choose method has been followed. He further argued that there are 4-5 other officers who have been deprived of this opportunity, such as Shri J.D. Uikey, Shri U.R. Netam, Shri R.P. Singh, Shri N.L. Dongre, Shri I.S. Margekar and Shri M.S. Kanwar. He also argued that in order to save Mr. Manish Sharma who is likely to be shifted to Chhattisgarh, son of the then Chief Secretary Shri K.S. Sharma, all exercise was done to retain him in MP state by

sending less number of direct recruits to the State of Chhattisgarh. He further argued that there are as many as 19 willing officers who want to be allocated to Chhattisgarh. The names of these officers are mentioned in Annexure A-10. Apart from this the 19 officers one more officer Mr. M.S. Kanwar is also willing to go to Chhattisgarh after his induction in IPS. He further argued that the case is squarely covered by the judgment passed in OA No. 60/2002 by this Bench of the Tribunal vide order dated 30th July, 2004. He also argued that the applicant may be considered for a long term deputation.

7.2 It is further argued on behalf of the applicant that 59 IPS officers were allocated to the new State of Chhattisgarh constituting a separate and distinct cadre for that State. Among these 59 officers, the name of the applicant is also included at S.No.49 of the list. Out of these 59 officers, 20 officers are promotee IPS officers having been promoted from the cadre of State Police Service and 39 officers are from amongst the Regular Recruits. According to the amendment made in the IPS (Fixation of Cadre Strength) Regulations, 1955, there should be 41 IPS officers from amongst regular recruits and 18 IPS officers from amongst SPS promotees. The amendments have come into force on 1.11.2000. This means that total 59 posts of IPS officers were allocated to the new State of Chhattisgarh with a clear direction that 41 direct recruits and 18 IPS officers should constitute the new cadre of the State of Chhattisgarh. The provisions of Section 67 do not give any power to any of the respondents to commit breach of the provisions of Regulations of 1955.

8. In reply, the learned counsel for the respondents argued that the Central Government constituted an advisory committee under the Madhya Pradesh Reorganization Act, 2000 vide its order dated 29th August, 2000, under the Chairmanship of Shri U.C. Agarwal, IAS (retd.) and 4 other members. The advisory committee submitted its recommendations in regard to the initial strength and composition of the cadres of All India Services for

the States of M.P. and Chhattisgarh in terms of Sections 67(2) & (3) of the Reorganization Act vide its Interim Report submitted on 9th October, 2000. Allotment of cadre is an incidence of service. A member of an All India Service bears liability to serve in any part of India. Pursuant to the above recommendations and methodology, 59 IPS officers have been transferred from the erstwhile IPS cadre of Madhya Pradesh to the newly created IPS cadre of Chhattisgarh by the Central Government vide its notification dated 31.10.2000 (Annexure R1). The approved methodology of allocation of All India Service officers provided for proportionate distribution of any surplus or deficit between the two States arising out of it. Therefore, against authorized promotion quota of 18, only 16 promotee IPS officers were to be allocated to IPS cadre of Chhattisgarh. Similarly, against authorized direct recruitment quota of 41 for cadre of Chhattisgarh, it was to be provided 43 directly recruited IPS officers. The learned counsel further argued that in respect of promotee IPS officers, there is no concept of insider or outsider.

¶ The concept of insider or outsider is applicable in the case of direct recruitment made to IPS through Civil Service Examination. 4 willing promotee IPS officers have been allocated to IPS cadre of Chhattisgarh to fill up the gap remained in IPS cadre of Chhattisgarh in the authorized cadre strength and the proposed allocation due to non availability of directly recruited insider IPS officers belonging to Chhattisgarh. Total number of 14 insider directly recruited IPS officers belonging to Chhattisgarh were to be allocated to IPS cadre of Chhattisgarh. However, there were only 9 directly recruited insider IPS officers belonging to Chhattisgarh were available. As many as many 5 vacancies remained unfilled in IPS cadre of Chhattisgarh due to non-availability of directly recruited insider officers. It is clear from Annexure R3 that S/Shri J.D.Ukey, U.R.Netram, R.P.Singh, N.L.Dongre and I.S.Margekar did not opt for allocation to IPS cadre of Chhattisgarh initially to Madhya Pradesh. Shri M.S.Kanwar became member of the Indian Police Service only in January 2001 (Annexure R4) and as such he was not available for consideration for allocation to IPS cadre of Chhattisgarh on 31.10.2000 when the impugned notification dated 31.10.2000 allocating 59 IPS officers from erstwhile IPS cadre of MP to newly created IPS cadre of

Chhattisgarh was issued. The respondents have considered the representations made by the officers for mutual transfers to both these States. After considering their contentions and individual problems, these representations were decided on merit. The learned counsel for the respondents also argued that they have not violated any guidelines of the Government of India and no favoritism or any undue act have been done by them. The reasonable and genuine hardships of the deserving officers were duly considered. Thus, the action of the respondents is perfectly legal and justified and they have not committed any irregularity or illegality.

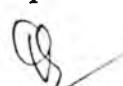
9. After hearing the learned counsel for the parties and carefully perusing the records, we find that this Tribunal has decided one OA No.60/02 vide order dated 30th July 2004 in A.K.Shrivastava, IPS and others Vs. Union of India and others. The facts, the rule position and the guidelines issued by the Central Government are almost same in the present OA. Para 6 of the order in OA 60/02 is reproduced below:

“We find some substance in the contention of the learned counsel for the applicants that as per the final report of the Advisory Committee constituted under the Madhya Pradesh Reorganization Act, 2000 under the Chairmanship of Shri U.C.Agarwal, there has been inequitable distribution of the promotee IPS officers to the State of Chhattisgarh in as much as instead of 16 promotees IPS officers, four excess have been posted to the State of Chhattisgarh thereby adversely affecting the career of a number of State Police Service officers in Chhattisgarh in the matter of their promotional prospects vis-à-vis their counter parts in the State of M.P. This excess allocation which delays the prospects of future inductees into IPS through promotion, is one of the causes of grievance in the instant application, in as much as if all the willing officers were accommodated, there would have been no encroachment on promotion prospects of IPS officers and 2/4 vacancies would have remained available for future inductees as initially thought of and decided.”

Regarding the above paragraph, the number of allocation of post is only varying from the aforesaid judgment and from the present OA. We have also perused para 7 of the order in the aforesaid OA in which it is held that “the respondents are directed to examine this issue and consider the same in

terms of the observations contained in para 17 (a) of Chapter-VI of the Final report of the Advisory Committee constituted under the Chairmanship of Shri U.C.Agarwal, within a period of three months from the date of communication of this order and if the applicants are found to be eligible for allocation to the State of Madhya Pradesh, their cases may be considered accordingly." We also do so accordingly.

9.1 In para 8 of the order in the aforesaid OA, it is mentioned that the "applicants have also submitted that they are facing lot of hardship by allocation to State of Chhattisgarh as all of them belong to State of Madhya Pradesh. They have also stated that equal number of IPS officers serving in Madhya Pradesh are willing for allocation to State of Chhattisgarh, but their requests have not been accepted by the respondents. According to the learned counsel for the respondents, the allocation of promotees IPS officers of erstwhile State of M.P. to the newly created States of Madhya Pradesh and Chhattisgarh has been done strictly in accordance with the approved policy of the Central Government and no individual officer has locus standi to challenge the same. The learned counsel for the respondents has also submitted that the representations submitted by the applicants were duly considered by the Committee constituted by the Government of India to examine the cases of genuine hardship of the individual officers and other related issues arising out of allocation of all India Service officers to the bifurcated cadres of Chhattisgarh and Madhya Pradesh. The said committee has rejected the representations of the applicants". In the present case the officers have also submitted their representations and they are willing for allocation to the State of Chhattisgarh as is evident from the OANo.246/02 filed by U.R.Netram in which he has sought the relief to direct the respondents to allocate the Chhattisgarh cadre as per his own option dated 19th September, 2000 (Annexure A6). We have perused para 8.1 of the order in OA 60/02 in which it is mentioned that " we have also gone through the final report of the Advisory Committee constituted under the MP Reorganization Act, 2000 under the Chairmanship of Shri U.S.Agarwal,



very carefully and found that in para 7 of Chapter-I the committee has observed as under:

“7....If after all this there are other cases of 'hardships' or cases that do need compassionate treatment Government has the normal powers under the AIS Cadre Rules to allow short terms inter-State deputations or even long term inter-cadre transfers. These powers could be exercised on individual merits. If any representations are received from any aggrieved officer later.”

“We find that the committee constituted by the Government of India to examine the case of genuine hardship of the individual officers in its minutes dated 18.5.2001 has not considered the cases of the applicants in terms of the observations of the Advisory Committee in para 7 of Chapter-I quoted above. We also find that there appears to be genuine problems of the applicants. In this view of the matter, if the request of any of the applicants cannot be acceded to as per the directions given in para 7 of this order, they may submit their representations for short terms inter-State deputations or even long terms inter-cadre transfers. If such representations are submitted by the applicants, the respondents are directed to consider their case on humanitarian grounds and decide the same within a period of three months of the receipt of their representations. In the result, the OA is partly allowed with the directions contained in para 7 and 8.1 above.”

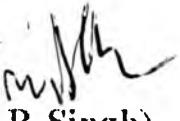
9.2 We also find that there appears to be genuine problems of the applicants in all the three OAs mentioned above. In this view of the matter, if the request of any of the applicants cannot be acceded to as per the directions given in para 7 of the order in OA 60/02, then the applicants may submit their representations for short terms inter-State deputations or even long terms inter-cadre transfers. If such representations are submitted by the applicants, the respondents are directed to consider their case on humanitarian grounds and decide the same within a period of three months of the receipt of their representations.

10. Considering all the facts and circumstances of the cases and also the order passed in OA 60/02 dated 30th July 2004, all the three OAs are partly allowed with the aforesaid directions. No costs.

QF

11. The Registry is directed that to issue the copy of memo of parties to the concerned parties while issuing the certified copies of this order


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

“SA”/aa.