

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

ORIGINAL APPLICATION NO. 060/00480/2014

Chandigarh, this the 20th day of February, 2017

...

**CORAM: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MR. UDAY KUMAR VARMA, MEMBER(A).**

...

Amanat Mann D/o Sh. Mohinder Singh Mann, R/o House No. 598, Sector 6, Panchkula, Haryana.

....APPLICANT

(Argued by: Mr. M.S. Sindhu, Advocate with Mr. M.S. Mann, Advocate)

VERSUS

1. Union of India, Ministry of Home Affairs through the Secretary, North Block, Central Secretariat, New Delhi-110001.
2. Principal Secretary, Ministry of Personnel, Public Grievances and Pension, Deptt. of Personnel and Training (ASI-I Section), North Block, New Delhi.
3. Sardar Vallabhbhai Patel National Police Academy, Sivarampalli, Hyderabad, Andhra Pradesh-500052 through its Director

(Argued by: Mr. Sanjay Goyal, Advocate)

4. Union Public Service Commission, Man Singh Road Area, New Delhi, DL 110069 through its Secretary

(Argued by : None)

5. Charanjit Singh R/o H.No. 197, Sector 10, Dr. Kalra Street, Kharar, Mohali, Punjab, India.
6. Ms. Kanwardeep Kaur, HM-276, Phase-IX, Mohali, Punjab, India.

(Both Ex-parte vide order dated 9.7.2015).

.... RESPONDENTS

ORDER (oral)
JUSTICE M.S. SULLAR, MEMBER (J)

The challenge in the instant Original Application (OA), preferred by applicant, Amanat Mann, IPS, Daughter of Sh. Mohinder Singh Mann, is to the impugned order / Notification dated 7.5.2014 (Annexure A-14), whereby, she was allotted Uttar Pradesh cadre.

2. The matrix of the facts, culminating in the commencement, relevant for disposal of the present OA and exposed from the record, is that the Union Public Service Commission invited applications for filling up posts in Indian Civil Services, for the year 2012, by way of an advertisement dated 11.02.2012 (Annexure A-7). In pursuance thereof, the applicant, applied for recruitment to All India Services, vide application dated Nil (Annexure A-8). She opted Punjab as her 1st preference, State of Haryana as 2nd preference and Union Territories as 3rd preference.

3. Having successfully completed the recruitment process, although she secured merit/rank position No.194, in All India Merit, but she was ranked at 1st, as far as, Indian Police Service (for short "IPS") candidates were concerned, in her home State of Punjab. No other candidate, was stated to have secured, more marks belonging to any category, than that of the applicant, in the pointed selection.

4. As a consequences of the merit, the applicant was issued appointment letter dated 14.8.2013 (Annexure A-10) to the IPS and was sent for training vide letter dated



20.11.2013 (Annexure A-11). Consequently, she joined for training in Police Academy at Hyderabad.

5. The case set up by the applicant, in brief, in so far as relevant, is that, the vacancies in cadre to be filled by way of each competitive examination, have to be crystallized by the Central Government, in consultation with the State Governments. The Central Government wrote a letter dated 22nd May, 2013 (Annexure A-12) to all the States, intimating its proposal for distribution of the vacancies in the cadre of IPS, which were to be filled by way of Civil Services Examination, 2012 (for brevity "CSE 2012"). In this manner, the Central Government had recommended for grant of 5 vacancies, to the State of Punjab. In pursuance thereof, the Central Government, framed Roster dated Nil (Annexures A-13) for determination of categorization of vacancies to be filled up, in the IPS cadre through CSE, 2012.

6. According to the applicant, as per the roster, the category for which the post has to be earmarked, was based upon the rank secured by a candidate, and the roster was to operate in such a way, that no two consecutive posts were being filled up from amongst the Other Backward Classes (OBC) reserve candidates, and the roster was to operate in such a manner, where due representation was given to all the categories i.e. un-reserved as well as reserved categories. Though both the Insider vacancies were allotted to the candidates belonging to OBC, but since only one OBC

candidate was available, resultant 2nd Insider vacancy was wrongly given to Scheduled Caste (SC) candidate.

7. The case of the applicant, further proceeds, that she was at rank/position no.1, in her Home State cadre, in general category, in IPS cadre. Since there were 5 seats allocated to the cadre of Punjab, she has the preferential claim in her Home State. However, she was shocked to see the impugned notification dated 7.5.2014 (Annexure A-14) wherein, she was illegally allocated the cadre of Uttar Pradesh, instead of her Home State of Punjab. She was further shocked to see that, in so far as State of Punjab was concerned, all the 4 seats had been filled up from amongst reserved candidates, and both Insider vacancies were filled up by reserved category i.e. Respondents No.5 and 6, which amounts to 100% reservation, which is not legally permissible.

8. Aggrieved thereby, the applicant has instituted the instant OA, challenging the impugned notification, Annexure A-14, relating to her allotment of U.P. Cadre, on the following grounds :-

(i) That the impugned notification is liable to be set aside to the limited extent, as prayed for by the applicant, on the short ground that by way of the said Notification, the respondents have reserved 100% of the posts i.e. 4 in number for the reserved categories of OBC/SC/ST. This hundred percent reservation of posts in a cadre, is clearly impermissible and contrary to the well settled principle of law, as laid down by the Hon'ble Supreme Court of India in a plethora of judgments as far back as in the case of Indra Sawhney Versus Union of India, 1992 Supp (3) SCC 217. Hon'ble Supreme Court has held that, though the reservation is permissible so as to advance the cause of reserved / backward classes, but under no circumstances, could reservation exceed 50% of the total number of seats. However, by way of the impugned Notification, the

respondents have reserved 100% of seats in the cadre i.e. State of Punjab for the reserved categories. This action is, therefore, liable to be set aside on this short ground alone.

- (ii) That still further, it is submitted that the action of the respondents is also liable to be set aside on this short ground that the same is in derogation to the Rule 9 of the Indian Police Service (Appointment by Competitive Examination) Regulations, 1955. As per the mandate of the aforesaid Rule, under no circumstances, could reservation exceed beyond 22-1/2% i.e. 15% for Scheduled Castes and 7-1/2% Scheduled Tribes, respectively. In the impugned selection, 2 out of 4 posts have been given to the category of Scheduled Castes / Scheduled Tribes thereby making the reservation to 50% for the aforesaid categories. Not only this, even the reservation for the OBC which in no circumstances could have been beyond the prescribed quota of 27% has been breached, in as much as, 2 out of 4 seats have been given to the said category thereby amounting to 50% for this category as well. Therefore, the impugned notification is also liable to be set aside on this ground as well.
- (iii) That still further, it is submitted that even if an argument was to be raised by the State so as to support the Notification to the extent that the said reservation of seats was done keeping in view the backlog of the reserved vacancies, even under those circumstances, the said argument cannot be sustained in the wake of Sub Rule 3 of Rule 9 of the aforesaid Rules. As per the said sub rule, in case there is a backlog of vacancies for the reserved categories, then the said backlog was to be filled up in a subsequent examination but by treating the same as a separate and distinct group separate from the vacancies, which were being filled up under the Sub Regulation aforesaid. In the Advertisement, there is not even a whisper that any of the seats so filled up belong to the backlog of vacancies for the reserved categories. Therefore, on this short ground also, the impugned Notification is liable to be quashed.
- (iv) That still further, it is submitted that though the intent of providing for reservation for the reserved categories was for their advancement in social / public life, the same could not be extended to such a possibility where it encroaches upon the right of those candidates in the General category to compete for the said posts. Therefore, the Hon'ble Supreme Court of India, has time and again, emphasized that the quota for reservation should be applied to each year and each selection irrespective of the number of vacancies and / or number of vacancies for the reserved categories. In fact while dealing with similar provision, the Hon'ble Supreme Court in the case of **M. Nagaraj and Others Vs. Union of India etc.** (2007 AIR SC 71) has clearly held that the bench mark for every selection, has to be the posts advertised in such selection and, therefore, the reservation, as permissible, has to be calculated on the basis of that selection alone. That would be the only possible way in which Article 16 (4) and 16(1) could be harmoniously construed. The respondents in the instant case, however, have completely ignored this well settled proposition of law and have allocated 100% of posts in the cadre of the applicant to the reserved categories, thereby amounting to 100% reservation. The impugned Notification is liable to be quashed even on this ground also.

(v) That it is further stated that Cadre Allocation Policy for the All India Civil Services, as notified on 10.04.2008, clearly states that a candidate, who is selected on general standards, shall be eligible for allocation against the insider unreserved vacancy, as per his merit and preference. The relevant rule of the policy is reproduced herein below for the kind perusal of the Tribunal.

“6. A candidate shall be allotted to his Home Cadre or any other cadre, as the case may be, on the basis of his merit, preference and vacancy available at his turn in his category”.

A careful perusal of the above rule indicates that a candidate, who is higher in merit, shall have a preference for the allocation of his cadre, and in the instant case, the applicant securing merit position No.1, in the State of Punjab, and as per the preference given by her while filling up her application form for the allocation of the State of Punjab as her Home Cadre, was entitled to allotment of Home State. It is pertinent to mention here that the applicant is holding Rank No. 1 in the merit position in the State of Punjab was not allocated the cadre, as per her choice, and rather candidates lower in rank position than that of the applicant have been allocated the home cadre. On this ground also, the present application deserves to be allowed.

(vi) That further, it is submitted that a careful perusal of the 200 point roster to the IPS depicts that No. 2 consecutive posts can be allocated to the OBC, since the whole purpose to maintain the roster by the system for allocation of vacancy is defeated if consecutive posts are being given to the same category. Hence, on this ground also the present application deserves to succeed.

(vii) That further, it is also stated that from a careful perusal of the allocation of cadres for the State of Punjab, it is learnt by the applicant, that both the insider vacancies were allocated to candidates belonging to the OBC. It was in the case that since both vacancies were allotted and there was only one candidate of the OBC, the second vacancy as per rules / policy was then given to the candidate belonging to SC. It is asserted at this stage that both these candidates are much below in the merit position and rank than that of the applicant and even the applicant, who is at merit position No.1 in the State of Punjab, has not been given preference as opted by her and rather candidates below in rank have given insider cadre of the State of Punjab. Hence, on this ground also, the present application is liable to succeed.

(viii) That further, it is stated that as per the letter dated 31.05.1985, and also from a constructive reading of the judgment and the law laid down in C.M. Thri Vikrama Varma v. Avinash Mohanty reported as (2011) 7 SCC 385, the Hon'ble Supreme Court again held that the allocation of insiders has to be taken in consideration with Para 3 (3) of the letter dated 31.5.1985 which states that preference should be given in allocation of the insider strictly according to their ranks, subject to their willingness to be allocated to their home States. The Hon'ble Apex Court also held that deviation from the 6% permissible quota of the 27% for OBC candidates is violative of the principles laid down in Article

14, 15 and 16 of the Constitution of India. The Apex Court also held that any reservation beyond the sanctioned strength and as per the law laid down, are violative and should be quashed. In the present case, all the vacancies arising for the year 2012, have been filled by reserved candidates, which amounts to 100% reservation. Thus, on this ground also, this Original Application deserves to succeed.

9. Levelling a variety of allegations, and narrating the sequence of events in detail in all, applicant claims that being at position of Merit at No.1, in IPS, and her first preference in the application was Punjab, she was entitled to be allocated her Home State of Punjab, in view of Indian Police Service (Cadre) Rules, 1954, Indian Police Service (Appointment by Competitive Examination) Regulations, 1955 and the Memorandum / Instructions dated 30/31st May, 1985 and 10.4.2008, as amended from time to time. On the strength of the aforesaid grounds, the applicant seeks to challenge the impugned notification (Annexure A-14), in the manner, indicated hereinabove.

10. Sequelly, the contesting respondent No. 1 has refuted the claim of the applicant and filed a written statement, wherein it was admitted that the applicant qualified the CSE, 2012 and secured 194th rank in unreserved category, 1st rank in IPS cadre, and her first preference was State of Punjab. However, it was pleaded that the total intake from the CSE, 2012 was 150, out of which 75 were for un-reserved, 41 for OBC, 23 for SC and 11 for ST and, it was divided amongst IPS cadres, by using an objective formula for the purpose of proportionate distribution of the candidates, amongst the cadres. All the cadres are given

equal considerations. Vacancies are further divided between various categories and between insiders and outsiders, on the basis of the 200 point vacancy roster, maintained at the level of each cadre, and the 30 point Insider – Outsider Roster, 30 Point Reserved Roster and 30 Point SC, ST Rosters.

11. However, it was acknowledged by the contesting respondent that total 5 vacancies, 1 un-reserved, 3 OBC and 1 ST were ear-marked for State of Punjab. But, un-reserved vacancy from Punjab cadre, was reduced and was added to OBC category. It was admitted that Regulation 9 provides that if sufficient number of candidates, who are members of the SC/ST, are not available for filling up all the vacancies so reserved, the vacancies not so filled, shall be treated as backlog vacancies.

12. Likewise, the contesting respondent no.1 has tried to further explain that the reserved seats were allocated to the State of Punjab, to ensure equitable representation to the various categories, and not to exactly implement the policy of reservation per-se at the level of cadre. In a particular examination, the vacancies for a particular cadre may not exactly correspond to the reservation criteria, as the post based vacancy rosters are maintained, on the basis of actual filling up of slots. In all, according to the respondents, the distribution of the posts to the State of Punjab, was carried out to ensure equitable representation to various categories. It will not be out of place to mention here that, virtually acknowledging the factual matrix and reiterating the validity

of the impugned notification, the contesting respondent has stoutly denied all other allegations and grounds, contained in the OA and prayed for its dismissal. It will not be out of place to mention here that, as nobody appeared on behalf of private respondents No.5 & 6 to contest the cause of applicant, despite service, so ex-parte proceedings were ordered against them on 9.7.2015, by this Tribunal.

13. Controverting the pleadings of the reply filed by the respondents and reiterating the grounds contained in the OA, the applicant has filed the rejoinder. It was explained by the applicant in the rejoinder that the 2nd insider vacancy of OBC, could not be filled by insider OBC candidate, due to non availability of OBC insider candidate. However, two SC candidates, with Rank No. 682 and 724, were available, the senior most SC candidate with Rank No. 682 was allotted to Punjab against un-filled OBC insider vacancy. Thus, un-reserved insider vacancy, which fell in the Punjab Cadre of year 2012, was converted into OBC insider category. Since there was no OBC insider category candidate available, same was, thereafter, given to SC insider category candidate i.e. respondent no.6. According to the applicant, there was an excess of more than 15% in the SC category. Affidavits dated 22.7.2015 and 7.10.2015 filed by the respondent clearly proves the fact that, as far as allocation to Punjab Cadre is concerned, that slot No. 53 was available for un-reserved category for insider quota. In this manner, the applicant was entitled to be allotted Punjab Cadre. Thus, she prayed the

acceptance of the OA. That is how, we are seized of the matter.

14. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance, and after bestowal of thoughts over the entire matter, we are of the firm view that the instant OA deserves to be accepted, for the reasons, and in the manner, mentioned herein below.

15. What cannot possibly be disputed here is that, after successfully completing the recruitment process, the applicant secured merit / rank position No. 194, in All India Merit, and she was ranked at 1st position, as far as IPS candidates are concerned, in her home State of Punjab. No other candidate was stated to have secured more marks, belonging to any category, than that of the applicant in the CSE, 2012. As a consequence thereof, she was issued appointment order dated 14.8.2013 (Annexure A-10), was sent for IPS training vide letter dated 20.11.2013 (Annexure A-11) and she joined for Training in Police Academy at Hyderabad.

16. The All India Services are governed by All India Services Act, 1961 (hereinafter referred to as "Act"). Section 3 of the Act empowers the Central Government to frame rules for the regulation of recruitment and conditions of service of persons. In exercise of powers, the Central Government, in consultation with the Government of States, framed Indian Police Service (Recruitment) Rules, 1954 (For brevity

“Recruitment Rules”). Rule 7 of the Recruitment Rules provides for recruitment, by way of appointment / competitive examination. Rule 9 postulates the reservation of vacancies for Scheduled Castes and Scheduled Tribes candidates. According to this rule, 15% and 7-1/2% of the available vacancies shall be reserved for candidates who are Members of the Scheduled Caste / Scheduled Tribe. They are to be considered for appointment in the order in which their names appear in the list. Rule 9 (3) further posits that, if sufficient number of candidates, who are members of the Scheduled Caste / Scheduled Tribes, are not available for filling of the vacancies so reserved, vacancies not so filled, shall be treated as backlog vacancies and carried forward to the subsequent examination, until they are filled. It has been specifically provided therein that the backlog vacancy shall be treated as ***distinct group***, separate from the current vacancies, reserved under the said Regulation. That means, for the members of the Scheduled Caste / Scheduled Tribe, the reservation, under any circumstances, could not exceed 22-1/2% and if there was backlog of vacancy, the same was to be treated as separate block and not filled from the current vacancy, that were advertised.

17. Not only that, the Central Government, after consultation with the States, also framed Indian Police Service (Cadre) Rules, 1954 (for short “Cadre Rules”) (Annexure A-2). The Cadre Rules defined ‘Cadre Officer’ as a member of the IPS, and ‘cadre post’ means, any of the posts,

specified under item 1 of each cadre, in schedule to the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955. Rule 4 of the Regulations provides strength of cadre and according to rule 4 (2), the Central Government shall, at the interval of every five years, re-examine the strength and composition of each such cadre, in consultation with the State Government, or the State Governments concerned, and may make such alterations therein, as it deems fit. The allocation of cadre officers to the various cadres, shall be made by the Central Government, in consultation with the State Government or State Governments concerned, as per rule 5 of the Cadre Rules. In order to supplement the rule and to clarify the vacancy position to be filled up from each category, the Central Government issued instructions dated 30/31.5.1985 (Annexure A-3). The position of cadre allocation was further clarified vide Memos dated 10.4.2008 (Annexure A-4), dated 21.4.2011 (Annexure A-5) and dated 15.6.2011 (Annexure A-6).

18. It is not a matter of dispute that the Central Government had recommended for grant of 5 vacancies to the State of Punjab, as per letter dated 22.5.2013 (Annexure A-12). According to the applicant, as per the impugned Notification dated 7.5.2014 (Annexure A-14), only 4 vacancies were allotted to the State of Punjab. It will not be out of place to mention here that in fact 5 vacancies were filled, in Punjab quota, 4 by way of Notification dated 7.5.2014 (Annexure A-14) but one vacancy was notified vide

separate Notification No.I-12015/1/2012-IPS.IV dated 9th May, 2014, where by Ms. D. Sudarvizhi, with Rank No. 343, was allotted Punjab Cadre, in OBC reserved quota.

19. As is evident from the record, that in pursuance of the Recruitment Rules and Cadre Rules, the Central Government has framed Model 200 point roster of Reservation, determination of categorization of vacancies, to be filled up in the IPS, through CSE 2012 (Annexure A-13). Admittedly, the Central Government has exhausted the reserved quota upto the Sr. No. 52 of the Model Point Roster (Annexure A-13) and next post, i.e. at Sr. No. 53, falls to the share of the un-reserved category of CSE, 2012. It is a matter of record that the applicant secured 1st position in IPS cadre and her first choice of State is home State of Punjab. In that eventuality, the respondents were duty bound to allot Slot No. 53, to the applicant, out of insider quota of State of Punjab. No explanation, much less cogent, is forthcoming on record on behalf of the respondents, for conversion of insider quota of Un-reserved to the reserved category.

20. There is yet another aspect of the matter, which can be viewed entirely from a different angle. As indicated hereinabove, the Central Government, has actually allotted five vacancies to the State of Punjab, as per notification, Annexure A-14 and 5th slot was allotted to Ms. D. Sudarvizhi, with Rank No. 343, in OBC reserved quota, vide Notification No.I-12015/1/2012-IPS.IV dated 9th May, 2014. All these posts were filled up as under :-

S N	Cate-gory	Candidate's name & Rank	Home State	Cadre Allotted
1.	OBC	D Sudarvizhi (343)	Tamil Nadu	Punjab-6
2	OBC	Surendra Lamba (381)	Rajasthan	Punjab-4
3	OBC	Sharanjit Singh (402)	Punjab	Punjab-1
4	SC	Knwardeep Kaur (682)	Punjab	Punjab-1
5	ST	Bhagirath Singh Meena (724)	Rajasthan	Punjab-5

Meaning thereby, all the 5 allotted vacancies to Punjab State were filled from the reserved categories of OBC/SC/ST, which amounts to 100% reservation, which is not legally permissible.

21. The learned counsel for the respondents has not disputed that all the 5 seats have been filled up from the reserved candidates and both the insider vacancies were also filled by reserved category i.e. respondents No.5 and 6. In this manner, the respondents have filled the reserved vacancies in excess of their fixed quota, as contemplated under Rule 9 of the Recruitment Rules, which provides that in pursuance of the rule 7 of the Recruitment Rules, 15% and 7-1/2% of the available vacancies, shall be reserved for candidates, who are members of the Scheduled Castes and Scheduled Tribes, respectively.

22. Likewise, the feeble explanation, put forth by the respondents, is that all the vacancies were filled up from reserved category, to ensure equitable representation to the various categories, is speculative and cannot legally be sustained. Learned counsel for the respondents has miserably failed to indicate, how and in what manner, the respondents applied so called objective formula, for purpose

of proportionate distribution of the candidates amongst the cadres. Moreover, it remains unfolded mystery that, what prompted the respondents to convert un-reserved slot No. 53 to the reserved category, and then fill in all the posts from reserved category candidates against the Roster, that too, in excess of their quota, amounting to 100% reservation, which is not legally permissible in view of the law laid down by the Hon'ble Apex Court in the case of **Indira Sawhney Versus Union of India**, 1992 Supp (3)SCC 217, even if there was back log of reserved category candidates.

23. Assuming for the sake of argument, if sufficient number of candidates of reserved category are not available, then such vacancies have to be treated as back log, and carried forward to the subsequent examination, unless they are filled. It has been specifically provided in Regulation 9(3) that even the back log vacancy shall be treated as distinct group, separate from the current vacancy, reserved under Regulation 9(1).

24. This is not the end of the matter. Admittedly, one unreserved vacancy along with 3 OBC vacancies and 1 ST vacancy was identified for Punjab cadre at the time of Civil Services examination, 2012. It was only much later in the month of April 2014 that the MHA resorted to tinkering with it with a legitimate objective of creating in the state cadres as close a balance as was envisaged at national level. The respondents have tried to explain the same as follows:-

6. All the officers appointed to the Indian Police Service under DR quota are allocated to a distinct cadre by Ministry of Home Affairs in the Government of India as per the provisions of Recruitment Rules framed by Department of Personnel & Training.

7. That a 200-point running vacancy-based-roster showing SC/ST/OBC/UR points is maintained for each cadre properly and used for determining the vacancies of various categories (SC/ST/OBC/UR) in each cadre. The accounting in this roster is done on the basis of actual filling up of the roster point.

8. The purpose of maintaining the aforesaid roster at the level of the cadres is to ensure equitable representation to various categories and not to exactly implement the policy of reservation, per se, at the level of cadre, for it would not be possible to achieve simultaneously the prescribed percentage of reservation in the intake both at the level of country and at the level of cadre. Implementation of reservation policy on the total intake of service in a particular year would be a mandatory feature. Hence, while determining the category-wise vacancies (SC/ST/OBC/UR) in a cadre for a particular year, if the sum of the vacancies in category for all the cadres is greater than the total vacancies in that category determined by operating the roster on the total vacancies (intake) for the service in that year, the vacancies in the cadre(s) having the highest excess (on a percentage basis) in that category as per the roster for that cadre (s) would be reduced so as to match the sum of vacancies in that category for all the cadres to the total vacancies in the service for that category. Similarly, if the sum of vacancies in a category for all the cadres is less than the total vacancies in that category determined by operating the roster on the total vacancies (intake) for the service in that year, the vacancies in the cadre (s) having the highest shortfall (on a percentage basis) in that category as per the roster for that cadre(s) would be increased to match the sum of the total vacancies in the service for that category.

9. Thereafter, the insider and outsider vacancies in a cadre are determined on the basis of the insider-outsider roster with points as follows : 0-1-0-0-1-0 and so on, so as to facilitate the maintenance of the ratio of 1:2 between the insiders and the outsiders. Depending on the actual filling of the insider vacancies, the ratio between insiders and outsiders in a cadre at any point of time may, however, be less than 1:2. There would be the following insider-outsider rosters for each cadre: first, for determining the total insiders and outsiders vacancies in the cadre; second, for determining the OBC insider / outsider vacancies and the SC/ST insider / outsider vacancies; and third, for determining SC insider / outsider vacancies and ST insider / outsider vacancies. In the first step, the total insider / outsider vacancies in a cadre are determined on the basis of the first roster for the cadre. In the second step, the OBC insider / outsider vacancies and the SC/ST (as one block) insider / outsider vacancies are determined on the basis of the second roster for the cadre. And in the last step, the SC insider / outsider vacancies and the ST insider / outsider vacancies are determined on the basis of the third roster for the cadre. The UR insider /

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outsider vacancies for the cadre are determined by subtracting the total reserved insider and the total reserved outsider vacancies from the total insider vacancies and the total outsider vacancies respectively. The accounting in the rosters (for total vacancies as well as category-wise vacancies) is done on the basis of actual filling".

25. We may not perhaps have any quarrel with this objective and we are also inclined to appreciate the practical difficulties in ensuring the same. However, a plausible and legally sound explanation needs to be offered for each change that the MHA has made in the category wise identified vacancy in each cadre. Such an explanation is not forthcoming anywhere in the written statement except for the general assertion that an effort has been made to achieve the respective proportionate representation of various categories in each cadre. We do not find the explanation either detailed or adequate to justify such changes and also the legality of this exercise. In fact, the respondents are silent about the legal sustainability of making these changes and diversions from one category to another when the advertisement itself was based on cadre wise vacancy position collated by MHA, which is not legally admissible.

26. It is not a matter of dispute that there is not even whisper in the advertisement that any of the seats so filled up, belong to only reserved category candidates. It has been held by Hon'ble Supreme Court in the case of **M. Nagaraj and Others Vs. Union of India**, 2007 AIR SC 71, that the benchmark for every selection has to be the posts advertised in such selection and, therefore, the reservation as permissible

has to be calculated on the basis of that selection alone. That would be the only possible way in which Article 16 (1) and 16 (4) could harmoniously be construed. Hence, the contrary arguments of the learned counsel for the respondents deserve to be and are hereby repelled and ratio of law laid down by the Hon'ble Apex Court in the indicated cases, mutatis mutandis, is applicable to the present controversy, and is a complete answer to the problem in hand.

27. Likewise, the principal argument advanced by learned counsel for the respondent no. 1, Ministry of Home Affairs, in diverting the UR vacancy to OBC vacancy is to restore the imbalance within the cadre amongst UR, OBC, SC and ST. As a logical consequence of this exercise, the outcome should have reflected restored balance. But has the outcome served this objective? The answer as we find from the statistics on the percentage representation, is clearly a no. Admittedly by filling two OBC vacancies, the percentage representation of OBC has certainly improved but not liquidated. If the diversion of UR vacancy to OBC vacancy had resulted in this vacancy being filled by OBC candidate, the objective would have been well served. However, the fact remains and acknowledged by both the applicant and respondents is that no OBC was available to be adjusted against this diverted vacancy from UR to OBC. This fact was known to the respondents even before they took the decision to divert this UR vacancy to OBC vacancy and if not known could have been anticipated. And the process should have

stopped at that. The respondent's next step of filling this diverted vacancy with an SC candidate in the garb of the Cadre Allotment policy, 2008 that if an OBC is not available for the earmarked vacancy, an SC or ST should be given this slot, in our view is wrong and unjust and unacceptable, in the context of peculiar facts and circumstances of this case. It is clearly leading to a further increase in the representation of SC even when SC is overrepresented in the cadre. The applicant in her rejoinder dated 30.12.2015 to the written statement of the respondents has claimed that the excess representation of SC in the cadre, post 2012 allotment has gone up to nearly 17% (16.9591% to be precise) which was 15.38462% after allotments had taken place in 2011. These figures have not been contested or disputed by the respondents.

28. Moreover, the stipulation in CAP 2008 about filling the vacancy of OBC with SC when OBC candidate is not available cannot be used knowing full well that the same is going to increase the representation of SC in the cadre where SC is already significantly over represented. This provision of the further diversion of an OBC vacancy to SC has to be put in place only when it does not result in further skewed representation amongst the categories. The remedy cannot be worse than the malady which seems to be ~~in~~ the case presently. It can be construed only as a misapplication of a provision to favour a particular category. The diversion from UR to OBC is per se not wrong but further diverting the same

to SC category is clearly wrong and not sustainable. In a situation like this, the proper thing should have been to restore the original division of vacancies amongst UR, OBC, SC and ST, which we intend to do through this order.

29. Not only that, the respondents have also failed to establish that the process of restoration of the avowed balance in the representation of various categories in the cadre is a continuous and sustained process; and is not selective, sporadic and ad hoc. This restoration of balance exercise cannot be undertaken in particular years, in exclusion to other years. The response of the respondents does not shed any light on this restoration exercise in the past years and also does not establish that this exercise is not arbitrary or ad hoc. In absence of clear evidence that the respondents ought to have placed before us, their action in diverting this vacancy first from UR to OBC and then from OBC to SC lacks both credibility and objectivity.

30. As we delve deeper into this matter, it is becoming increasing clear to us that this double diversion strategy of the respondents- to first divert a UR vacancy to OBC vacancy and again diverting it to SC vacancy- in the garb of increasing the representation of OBC in the cadre has not only not served the stated objective of increasing the representation of OBC in the cadre but on the contrary has only resulted in favouring a particular candidate belonging to SC category belonging to Punjab in getting allotted Punjab cadre. It is an official sleight of hand through a non-objective and

questionable application of an administrative policy by misconstruing its provisions. There is no doubt that this is a colourable and arbitrary exercise of authority devoid of legal sustainability and deserves to be struck down.

31. Therefore, thus, seen from any angle, it is held that the applicant is entitled to be allotted Slot No. 53, depicted in 200 Point Roster, Annexure A-13, her first preference, State of Punjab cadre, in the obtaining circumstances of the case. Thus, the impugned notification dated 7.5.2014 (Annexure A-14), relatable to the allotment of UP cadre to the applicant, deserves to be set aside.

32. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

33. In the light of the aforesaid reasons, the impugned notification, Annexure A-14, relatable to the allotment of UP Cadre to the applicant is hereby set aside. At the same time, the respondents are directed to allot Punjab Cadre to the applicant, against Slot No. 53, depicted in 200 Point Roster, Annexure A-13, as her first preference, forthwith. However, the parties are left to bear their own costs.

Uday Kumar Varma
(UDAY KUMAR VARMA)
MEMBER (A)

Mehiwar Singh Sullar
(JUSTICE M.S. SULLAR)
MEMBER (J)
Dated: 20.02.2017

HC*