

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00556/2015

Thursday, this the 21st day of June, 2018

C O R A M :

**HON'BLE Mr. U. SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

Vikas V (IFS)),
Now on training at Indira Gandhi National Forest Academy,
Ministry of Environment & Forests,
New Forest P.O., Dehradun – 248 006.
Resident of Vikas Bhavan, Kadavoor,
Perinad P.O., Kollam – 691 601.Applicant

(By Advocate – Mr.Sunil Jacob Jose)

V e r s u s

1. The Secretary,
Ministry of Environment & Forest and Climate Change,
Indira Paryavaran Bhavan, Aliganj, Jor Bagh Road,
New Delhi – 110 003.
2. The Secretary,
Department of Personnel & Training,
Ministry of Personnel Public Grievances & Pension,
North Block, New Delhi – 110 011.
3. State of Kerala represented by its Chief Secretary,
Government Secretariat,
Thiruvananthapuram – 695 001.Respondents

**(By Advocates – Mr.N.Anilkumar,Sr.PCGC [R] [R1-2]
& Mr.M.Rajeev,GP [R3])**

This Original Application having been heard on 12th June 2018, the Tribunal on 21st June 2018 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A.No.180/556/2015 is filed by Vikas V, an IFS selectee of 2013 batch against the failure on the part of Respondent No.1 to consider him for allotment to his home State, Kerala as an 'Insider' candidate. It is maintained that due to incorrect cadre allocation, the applicant has been allotted to West Bengal cadre instead. The reliefs sought in the O.A are as follows :

1. Call for the records leading to Annexure A-4.
2. Set aside Annexure A-2 as far as it relates to the wrong allocation of the applicant to West Bengal cadre.
3. Declare the applicant eligible for allocation to Kerala cadre in the Insider category.
4. Direct the 1st respondent to consider and pass a speaking order on Annexure A-4, within a time limit to be stipulated by this Hon'ble Tribunal.
5. Any further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
6. Award the cost of this proceeding.

2. The applicant is a native of Kerala. He qualified in the Indian Forest Service Examination conducted by the Union Public Service Commission (UPSC for short) during 2012 and was selected for the 2013 batch of IFS. He belongs to Other Backward Category (OBC) and was also the only candidate from that category from Kerala in that year. He had indicated Kerala as his first preferred State, Tamilnadu being his 2nd choice,

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Karnataka being his 3rd choice and Andhra Pradesh being his 4th choice (Annexure A-1). The 1st respondent issued Notification (Annexure A-2) F.No.17015/01/2013-IFS-II dated 2.5.2014 allotting him to the West Bengal cadre which was only his 16th preference.

3. The total number of vacancies allotted for Kerala cadre for the 2013 IFS batch were two and both these seats were reported as 'Outside' category. As per Roster Guidelines followed in cadre allocation the applicant was expecting at least one of the vacancies to be kept as 'Insider' vacancy which would have gone to the applicant. Aggrieved by the allotment, the applicant filed a RTI request online before the Respondent No.1 on 4.11.2014 and as no reply was received an appeal was filed on 19.2.2015 again before the Respondent No.1. He did not get any reply to his entreaties.

4. It is known that the Cadre Allocation Policy for All India Service Officers of the Respondent No.2 is governed by O.M.No.13011/22/2005-AIS(I) dated 10.4.2008 (Section 4 of which stipulates that "*the Insider (I) and Outsider (O) vacancies in a cadre shall be determined on the basis of the Insider-Outsider Roster with points as O-I-O-O-I-O and so on*". This principle had not been followed in the allotment for 2009 batch of the Kerala Cadre where all the 3 seats were allotted to Outsiders instead of allotting one to 'Insider' and two to 'Outsider'. Further at the time of 2013

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allotment two vacancies were confirmed but both were allotted to 'Outsider' disregarding the roster principle referred to. It is admitted that during 2010, 2011 and 2012 IFS selection 1:2 ratio was strictly maintained and 3 seats allotted for the Kerala cadre were balanced as per Outsider, Insider, Outsider ratio. It is stated that the departure from this principle adopted for the 2013 batch has robbed the applicant of allotment to his preferred State.

5. A photocopy of the Cadre Allocation of IAS Officers of 2005 to 2013 batches is presented as Annexure A-3 to show that the allocation had been strictly in accordance with the principles enshrined in the O.M dated 10.4.2008 for the IAS. Concerned about the disparity and illegality evident in the action of Respondent No.1 a detailed representation dated 28.4.2015 was filed by the applicant, a copy of which is available at Annexure A-4. Unfortunately the respondents chose not to consider the same and under the circumstances the applicant was left with no alternative but to approach this Tribunal.

6. As grounds, the applicant contends that the allocation of IFS Officers in respect of Kerala State for 2013 batch is in violation of the IFS Cadre Rules, 1966 and the DoPT O.M of 10.4.2008. The Apex Court in **C.M.Thri Vikrama Varma v. Avinash Mohanty & Ors. 2011 (7) SCC 385** had laid down that even though a candidate has no right to be allotted to a particular

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State cadre or a joint cadre, he has a right to a fair and equitable treatment in the matter of allocation under Article 14 and 16 (1) of the Constitution of India. The principles set out in the O.M dated 10.4.2008 mandates under Section 7 that in the absence of a SC/ST candidate, the said seat ought to be given to the next candidate belonging to the OBC category. The applicant maintains that he was the only OBC candidate and there was no SC/ST candidate from Kerala State in the relevant batch. The acts of omission and commission on the part of Respondent No.1 has adversely affected the fortunes of the applicant in terms of his desire to be posted in his home State to which he is eligible and he seeks a reasonable consideration of the grievances projected in the representation at Annexure A-4.

7. The respondents have filed a reply statement. The Respondent No.3 – State of Kerala, represented by its Chief Secretary – has filed a reply statement briefly submitting that the Ministry of Environment, Forests & Climate Change, Government of India is the Appointing Authority under whose mandate the cadre allocation of IFS Officers comes. It is maintained that the State Government has no role whatsoever in the same.

8. A reply statement has been filed on behalf of Respondent Nos.1 & 2 also wherein the averments and contentions raised in the O.A are denied. It is maintained that the applicant is appointed to the IFS on the basis of 2012

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examination conducted by the UPSC and was allotted to the West Bengal cadre as per Notification dated 2.5.2014 (Annexure R-1). Aggrieved by this the applicant has filed O.A seeking a declaration that he is eligible for allocation to Kerala cadre in the Insider category and seeks issue of an order to the Respondent No.1 to consider and pass a speaking order on Annexure A-4 representation dated 28.4.2015.

9. In so far as the merits of the contentions raised by the applicant in the O.A are concerned, the sole reply on behalf of Respondent Nos.1-2 is that the cadre allocation has been made in line with Cadre Allocation Policy dated 10.4.2008 issued by the DoP&T (Annexure R-2). The distribution of officers from the list of successful candidates who appear in the 2012 examination for IFS (2013 batch) was finalized "using DOPT's software". The two vacancies earmarked for Kerala were 'Outsider' vacancies, one 'SC' Outsider and other 'ST' Outsider. There was no 'OBC' Insider vacancy to which the applicant could lay claim. It is also submitted that there were three candidates from Kerala who were successful and according to the merit list two candidates from Kerala were at Rank No.33 and Rank No.40 whereas the applicant in the O.A was placed at Rank No.63. The first two candidates were unreserved quota candidates while the applicant is an OBC Insider and all the three candidates had given first preference for their home State, Kerala. The respondents also fall back on **Union of India & Ors. v.**

Rajiv Yadav (1994) 6 SCC 38 wherein the Hon'ble Supreme Court has held that “*...a selected candidate has a right to be considered for appointment to All India Services but he has no such right to be allocated to a cadre of his choice or to his home cadre*”.

10. Shri.Sunil Jacob Jose, learned counsel appeared for the applicant, Shri.N.Anilkumar, Sr.PCGC (R) appeared for Respondent Nos.1-2 and Shri.M.Rajeev, GP appeared for Respondent No.3. Initially this O.A was heard along with O.A.Nos.180/409/2014 and 180/375/2015. O.A.No.180/409/2014 related to IPS Officers and O.A.No.180/375/2015 related to IAS Officers. Both belonged to 2013 batch and had also claimed the eligibility for being allotted to Kerala cadre as 'Insider'. In these two O.As the candidates were both belonging to SC category and were pressing their right to be considered under 'Insider' SC category. As the O.A in question (O.A.No.556/2015) related more to the issue of 'Insider' being deprived and the 'Insider', 'Outsider' ratio being violated, this Tribunal decided to consider O.A.No.556/2015 as distinct from the other two.

11. Contending counsel were heard. Shri.Sunil Jacob Jose argued that the system followed in the three previous years ie. 2010, 2011 and 2012 was violated in the matter of the 2013 batch and it could clearly be seen that allotting the only two vacancies demarcated for 2013 to 'Outsider' would be

contrary to the ratio set out in the O.M of DoPT at Annexure R-2. All efforts made by the applicant to get further information as to how his claim came to be denied were stonewalled. His representation remains unanswered as also his efforts under the RTI Act. The defence put up by Respondent No.1 and 2 that they have depended on the 'software' prepared by DoPT is not an adequate explanation to the question which the applicant has raised. Shri.N.Anilkumar, Senior PCGC, on the other hand, maintained that the cadre allotment is on the basis of a foolproof methodology and there can be no room for any complaint about the manner in which it is being done. Both the vacancies for the relevant year were demarcated as 'Outsider' vacancies, one for SC 'Outsider' and other for ST 'Outsider'. In any case there was no OBC 'Insider' vacancy to oblige the applicant in the relevant year.

12. We have considered the contentions of the respective sides. At the core of the issue remains, the O.M laying down the Cadre Allocation Policy for All India Services at Annexure R-2. It is necessary to quote the said Policy in some detail :

1. The State Governments shall indicate the total number of vacancies to be filled through a particular Civil Services Examination (CSE)/Indian Forest Service Examination by 31st December of the year prior to the year of the Examination. In respect of the services under them, the respective Cadre Controlling Authorities, namely, the Department of Personnel and Training (DOPT)/Ministry of Home Affairs (MHA)/Ministry of Environment and Forests (MoEF) shall determine the vacancies including the break-up into Unreserved (UR)/Scheduled Caste

(SC)/Scheduled Tribe (ST)/Other Backward Class (OBC)/Insider/Outsider vacancies for each of the cadres as per established procedure, keeping in mind the number of **the districts in the state, the cadre gap in the cadre, the requisition received from the State Governments and the position of the rosters in the cadre.** The vacancies so determined would be communicated to the State Governments and published on the respective Ministry's website, both the actions to be completed before the commencement of the Civil Services Examination/Indian Forest Service Examination on the basis of which the recruitment is to be made. Since this would be a time bound exercise, the requisition received from the State Governments after the abovementioned deadline would not be considered while determining the vacancies.

2. A 200-point running vacancy based roster showing SC/ST/OBC/UR points shall be maintained for each cadre properly and would be used for determining the vacancies of various categories (SC/ST/OBC/UR) in each cadre. The accounting in this roster shall be done on the basis of actual filling of the roster point. This roster for each of the cadres may be initialized by adjusting the recruitments done since the CSE-1994.

3. 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 a 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.

4. The insider and outsider vacancies in a cadre shall be determined on the basis of the insider-outsider roster with points as follows : O-I-O-O-I-O and so on, so as to facilitate the maintenance of the ratio of 1:2 between the insiders and the outsiders. It is, however, clarified that 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 shall be 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 shall be 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 shall be determined on the basis of the third roster for the cadre. The UR insider/outsider vacancies for the cadre shall be 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) shall be on the basis of actual filling.

(emphasis supplied)

13. Going on to explain the formula for filling up the insider vacancies belonging to a particular category following is stated :

a. When no candidate is available against an insider SC vacancy in a Cadre, the same shall be filled up by bringing in the senior most insider officer available in the merit list of ST candidates (failing which in the merit list of OBC candidates and in the merit list of the Unreserved candidates in that order) and shifting the SC vacancy of the Cadre to the cadre to which the incoming officer would have normally been allotted against the available outsider vacancy in his category (failing which to the next cadre in alphabetical order in which the outsider vacancy is available).

b. When no candidate is available against an Insider ST vacancy in a Cadre, the same shall be filled up by bringing in the senior most insider officer available in the merit list of SC candidates (failing which in the merit list OBC list and in the merit list of the Unreserved candidates in that order) and shifting the ST vacancy of the Cadre, to the cadre to which the incoming officer would have normally been allotted against the available outsider vacancy in his category (failing which to the next cadre in alphabetical order in which the outsider vacancy is available).

c. When no candidate is available against an Insider OBC vacancy in a Cadre, the same shall be filled up by bringing in the senior most insider officer available in the merit list of ST candidates (failing which in the merit list SC candidates and in the merit list of the Unreserved candidates in that order) and shifting the OBC vacancy of the Cadre, to

the cadre to which the incoming officer would have normally been allotted against the available outsider vacancy in his category (failing which to the next cadre in alphabetical order in which the outsider vacancy is available).

Provided that in every such case listed in clause (a), (b) and (c) above, if insider-physically-disabled-candidate(s) of the relevant community is/are available, such physically disabled candidate (senior most in the merit list) shall be so adjusted. In other words, a physically disabled candidate would have a higher claim for being adjusted as compared with non-physically disabled candidates of his community.

d. When no insider unreserved candidate is available against an Insider Unreserved vacancy available in a Cadre but insider SC/ST/OBC candidate(s) is/are available, such senior most ST candidate (failing which such senior most SC candidate and such senior most OBC candidate in that order) shall be adjusted by shifting out the Unreserved insider vacancy to the next cadre in alphabetical order having outsider vacancy in that category and bringing in an Outsider vacancy of that category from that cadre.

14. As is explained in the document, the Policy has been the outcome of a detailed analysis of number of districts in the State, cadre gap in the cadre, the present situation of the roster in the particular cadre etc. 'District weightage' and 'deficit weightage' are other factors which have gone into development of the system. Based on these principles the DoPT is reported to have developed a software which is being utilised by DoPT in the allocation of IAS Officers, Ministry of Home Affairs in the case of IPS Officers and Ministry of Environment and Forests in the case of IFS Officers. It would be difficult for this Tribunal without adequate data to either certify the inviability of the system or declare it as faulty. It is also pertinent to note that Respondent Nos.1 and 2 have merely taken shelter under a declaration that the software used has taken all factors into consideration. Yet the applicant feels deprived on seeing both

the annual vacancies going to 'Outsider'. He did file a representation which has been met with a deafening silence from the side of the respondents.

15. We have to state that no system which cannot be justified to the stakeholders is a good system. It is also pertinent to note that the reply statement of Respondent Nos.1 and 2 is brief to the point of being cursory and does not attempt to spell out how both the vacancies allotted to Kerala ended up as 'Outsider'. It is necessary to examine whether in line with the Cadre Allocation Policy in the absence of ST/SC/OBC Outsiders whether the said vacancy would have devolved to the OBC Insider category. We have only the stony silence of the respondents as reply. While the software referred to may indeed be beyond reproach, it cannot remain, to borrow a Churchillian phrase 'an enigma, wrapped in a riddle, inside a mystery'.

16. A software developed for a purpose, such as the one in question here, is based on an algorithm, that takes into account weightage for each category and sub-category. The applicant's contention, strongly raised by his learned counsel, is that as an OBC Insider, the second vacancy ought to have gone to him based on a consideration of the previous three years allotment between various categories. The respondents have not been able to convince the Tribunal that the contention is without basis. Based on the

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facts before us, we are of the categoric view that the points raised in the O.A and contained in the representation addressed to Respondent No.1, need to be considered seriously and dealt with through a speaking order. The O.A succeeds in part. We direct the Respondent No.1 to duly consider the representation made by the applicant, a copy of which is available at Annexure A-4 and dispose of the same through a speaking order under intimation to the applicant. This process shall be completed as expeditiously as possible and in any case, within 60 days of receipt of a copy of this order. No costs.

(Dated this the 21st day of June 2018)

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

**(U.SARATHCHANDRAN)
JUDICIAL MEMBER**

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List of Annexures in O.A.No.180/00556/2015

1. **Annexure A-1** – A true copy of the relevant portion of IFS Examination 2012 candidates preference sheet.
2. **Annexure A-2** – A true copy of the notification F.No.17015/01/2013- IFS-II dated 2.5.2014.
3. **Annexure A-3** – A true copy of the Cadre Allocation of IAS Officers of 2005 batch to 2013 batch.
4. **Annexure A-4** – A true copy of the representation dated 28.4.2015 submitted by the applicant along with forwarding letter dated 14.5.2015.
5. **Annexure A-5** – A true copy of the Chart to illustrate cadre allocation in IAS Tamil Nadu Cadre from the year 2008 to 2014.
6. **Annexure A-6** – A true copy of the Chart prepared on the information proved in DOPT's website.
7. **Annexure R-1** – A true copy of the Notification dated 2.5.2014.
8. **Annexure R-2** – A true copy of the O.M dated 10.4.2008.
