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UNION OF INDIA  
v.  
MHATHUNG KITHAN AND ORS.

SEPTEMBER 18, 1996

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[A.M. AHMADI, CJ. AND SUJATA V. MANOHAR, J.]

*Service Law :*

*Indian Administrative Service (Cadre) Rules—Rule 5.*

C

*Cadre allocation—Insider vacancy—Non-availability of Insider—Carry-forward—Permissibility of—Policy dated 30.7.1984 required at least 66.2/3% of directly recruited Officers from outside State concerned—Held : did not impose ceiling of 66.2/3%—Hence, in absence of any rule, filling up of insider vacancy by outside due to non-availability of insider not a ground to accom-*

D

*modate insider in outsider vacancy in subsequent year.*

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**Respondent No. 1 was appointed to the Indian Administrative Service and was allocated to a state different from his home State. There were two seats which were available for the home State of respondent No. 1. However, both these seats were earmarked for outsiders as per the 30 point roster under a policy dated 30.7.1984 of the appellant-Union in which the "outsider" element in the direct recruitment quota was raised to 66.2/3%. Respondent No. 1 challenged his allocation before the Central Administrative Tribunal which directed the appellant to consider transfer of respondent No. 1 from his present State to his home State. Being aggrieved the appellant-Union preferred the present appeal.**

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**On behalf of respondent No. 1 it was contended that in the previous batch when the vacancy was for an insider since no insider was available, the vacancy was occupied by an outsider; and that respondent No. 1 should be considered for one of the roster points available for his batch in the subsequent year.**

**Allowing the appeal, this Court**

H

**HELD : 1.1. In the light of the Policy dated 30.7.1984 a continuous 30 point roster was provided. The roster follows the cycle, "outsider, insider, outsider, outsider, insider, outsider .....". In any given year the**

roster starts with the point where the roster ended in the previous year. In the case of the State cadre for the home State of respondent No. 1 there were two vacancies for allocation to his batch. As per the 30 point roster, both these vacancies were for outsiders. Hence the first respondent, being an "insider", was not eligible for either of the two vacancies. He was, therefore, allotted to a different State. [489-B-D] A

1.2. There is no rule which provides for a carry-over of "insider" vacancies if they are not filled due to non-availability of insider candidates. In the absence of any such rule for carry-forward of insider vacancies, is not possible to accommodate respondent No. 1 in the vacancies which are earmarked for outsiders as the relevant roster points. [489-E-F] B

*Union of India & Ors. v. Rajiv Yadav, IAS & Ors.*, [1994] 6 SCC 38, relied on. C

2. The roster is framed bearing in mind the requirement of increasing outsiders in the quota of Direct Recruits. The policy requires that at least 66.2/3% of the officers who are directly recruited are from outside the State concerned. It does not impose a ceiling of 66.2/3%. [489-H, 490-A] D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12310 of 1996 Etc. E

From the Judgment and Order dated 23.12.94 of the Central Administrative Tribunal, Chandigarh in O.A. No. 1064-CH of 1992.

V.R. Reddy, Additional Solicitor General, K.N. Shukla, (Ms. Shashi Kiran) for Ms. Anil Katiyar and C.V.S. Rao for the Appellant. F

Pankaj Kalra and B.K. Sharma for the Respondent in C.A. No. 12310/96.

Rajeev K. Singh for the Respondent in C.A. No. 12325/96. G

The Judgment of the Court was delivered by

**MRS. SUJATA V. MANOHAR, J.** Leave granted in both the special leave petitions. H

*Civil Appeal No 12310/96 (@ SLP(C) No. 13705/95.*

- A Respondent No. 1 appeared in the Civil Service Examination conducted by the Union Public Service Commission in the year 1985. He was selected for appointment to the Indian Administrative Service in the 1986 batch. The home State of respondent No. 1 is Nagaland and he gave his preference for allocation to his home State cadre. There were two seats which were available for allocation to Nagaland. Both these seats were
- B earmarked for outsiders as per the 30 point roster. Hence the first respondent was allocated to the State of Haryana. He challenge this allocation by filing an application before the Chandigarh Bench of the Central Administrative Tribunal. The Tribunal has allowed the application and directed the appellant-Union of India to consider the transfer of respondent
- C No. 1 from the Haryana cadre to the Nagaland cadre in the manner set out in the order. The present appeal is from the order of the Tribunal.

Under Rule 5 of the Cadre Rules it is provided as follows :

- D "5. Allocation of members to various cadres 5(1). The allocation of cadre officers to the various cadres shall be made by the Central Government in consultation with the State Government or the State Government concerned.
- E 5(2) - The Central Government may, with the concurrence of the State Government concerned transfer a cadre officer from one cadre to another cadre".

- F Rule 5 was construed by this Court in the case of *Union of India and Ors. v. Rajiv Yadav, IAS and Ors.*, [1994] 6 SCC 38. It has held that a selected candidate has a right to be considered for appointment to the IAS but he has no such right to be allocated to a cadre of his choice or to his home State. Allotment of cadre is an incidence of service; and a member of an All-India service bears liability to serve in any part of India. Respondent No. 1, therefore, had no right to be allocated to a cadre of his choice.

- G Under a policy decision conveyed by the Govt. of India, Department of Personnel & Training to the Chief Secretaries of all States by a letter dated 30th July, 1984, it was decided that for various reasons set out therein, in order to have a proper balance in the State cadre, the "outsider" element in the direct recruitment quota was raised to 66.2/3% or in the ratio 2 : 1
- H as between outsiders and insiders in place of 1 : 1. The letter states :

"It is proposed to give effect to this decision by ensuring henceforth at the time of allocating candidates appointed to I.A.S. and I.P.S on the basis of Civil Service Examination, that *at least 66.2/3%* of the officers are from outside the State concerned."

(underlining ours)

In the light of this policy a continuous 30 point roster was provided starting from the examination held in 1983. The roster follows the cycle, "outsider, insider, outsider, outsider, insider, outsider .....". In any given year the roster starts with the point where the roster ended in the previous year. In the case of the State cadre for the State of Nagaland there were two vacancies for allocation to the batch which had passed the examination in the year 1985. As per the 30 point roster, both these vacancies were for outsiders. Hence the first respondent, who belonged to the State of Nagaland, being an "insider", was not eligible for either of the two vacancies. he was, therefore, allotted to the State of Haryana.

The first respondent has contended that in the batch passing the examination in 1984, when the vacancy was for an insider, no insider was available and the vacancy had been occupied by an outsider. Hence he should be considered for one of the roster points available for the batch of 1985. We have, however, not been shown any rule which provides for a carry-over of "insider" vacancies if they are not filled due to non-availability of insider candidates. In the absence of any such rule for carry-forward of insider vacancies, we do not see how the first respondent can be accommodated in the vacancies which are earmarked for outsiders as per the relevant roster points.

In the policy statement of 30th July, 1984, a reference was made to the fact that State service officers who get promoted to I.A.S./I.P.S. are in the age group of 40 to 50 and at that late stage, their transfer to another State cadre may give rise to personnel and administrative problems of adjustment. Therefore, in order to restore the outsider-insider balance in a State cadre, it was proposed that the outsider element in the direct recruitment quota required to be increased. In this context it is difficult to accept the contention of the first respondent regarding carry-forward of "insider" vacancies. The roster is framed bearing in mind this requirement of increasing outsiders in the quota of Direct Recruits. The policy requires that *at least 66.2/3% of the officer who are directly recruited are from outside*

A *the State concerned. It does not impose a ceiling of 66.2/3%. The Tribunal was, therefore, not right in disturbing the implementation of this policy as per the roster.*

The appeal is, therefore, allowed with costs. The order of the Tribunal is set aside and the application of the first respondent is dis-

B missed.

In view of the above decision, Civil Appeal No. 12325/96 (@ SLP(C) No. 21429/93) is also allowed with costs since the facts are similar to the facts in the above Civil Appeal.

C V.S.S.

Appeal allowed.