

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
MHATHUNG KITHAN & ORS. ETC.

DATE OF JUDGMENT: 18/09/1996

BENCH:
MANOHAR SUJATA V. (J)
BENCH:
MANOHAR SUJATA V. (J)
AHMADI A.M. (CJ)

ACT:

HEADNOTE:

JUDGMENT:
Present;

Hon'ble the Chief Justice
Hon'ble M.S. Justice Sujata V. Manohar
V.R.Reddy, Additional Solicitor General, K.N.Shukla,
Sr. (Ms. Shashi Kiran) Adv, for Ms.Anil Katiyar, Adv.
C.V.S,Rao, Adv. with them for the Appellant
Pankaj Kalra and B.K.Sharma, Adv. for the Respondent
in C.A.No. 12310/96
Rajeev K.Singh, Adv. for the Respondent in
C.A.No.12325/96

J U D G M E N T

The following Judgment of the Court was delivered:
Mrs. Sujata V. Manohar, J.
Leave granted in both the special leave petitions.
Civil Appeal No. 12310/96 (@ SLP(C) No.13705/95)
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 earmarked for outsiders as
per the 30 point roster. Hence the first respondent was
allocated to the State of Haryana. He challenged 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 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:-

"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 Governments concerned.

5(2) - The Central Government may, with the concurrence of the State Governments concerned transfer a cadre officer from one cadre to another cadre".

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.

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% or in the ratio 2:1 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% of the officers who are directly recruited are from outside 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 dismissed.

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.