

(2003) 06 KL CK 0056
In the High Court Of Kerala
Case No : O.P. No. 6541 of 2003

Union of India (UOI)

APPELLANT

Vs

Jyothilal and Others

RESPONDENT

Date of Decision : 16-06-2003

Acts Referred:

Administrative Service (Cadre) Rules, 1954 — Rule 3, 5
Administrative Service (Recruitment) Rules, 1954 — Rule 4, 7
Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226

Citation : (2003) 06 KL CK 0056

Hon'ble Judges : Jawahar Lal Gupta, C.J.; A.K. Basheer, J

Bench : Division Bench

Advocate : V.T. Gopalan, Addl. Solicitor General, for the Appellant; Dushyant Dave and O.V. Radhakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, C.J.—Did the Central Government err in allocating the 1st Respondent to the I.A.S. Cadre for the State of Orissa? The Central Administrative Tribunal has answered this question in the affirmative. It has held that the allocation was made "irrespective of the fact that there was a short fall of insider quota in the Kerala Cadre of the I.A.S.; the State of Kerala had requested for more insiders; and that the allocation was made without effective consultation with the concerned State Governments". Aggrieved by the order dated 5th November 2002, a copy of which is at Ext.P-1, the Union of India has filed this petition under Article 226 of the Constitution. The relevant facts may be briefly noticed.

2. The first Respondent had appeared in the Civil Services Examination held in the year 1992. He was successful and was placed at No. 18 in the order of merit. While he was undergoing training at the Lal Bahadur Shastri Academy, he was informed vide notification, dated 17th December 1993 that he had been allocated to the State of Orissa. A copy of this notification has been produced on record as

Annexure A-1. Thereafter, on 8th February 1994, the Central Government sent a proposal to the State of Orissa indicating that the first Respondent was one of the officers who were being allocated to that State. A similar proposal was forwarded to the State of Kerala in respect of another set of officers vide letter, dated 9th February 1994. These two communications are on record as Exts.P-4 and P-6. The State of Orissa had communicated its acceptance vide letter, dated March 8, 1994. This communication has been placed on record as Ext. P-5. A similar communication was also sent by the State of Kerala vide its letter, dated March 21, 1994 (Ext. P-7).

3. The first Respondent requested the Central Government to allocate him to the State of Kerala. The matter was considered. Vide letter, dated May 5, 1995 (a copy at Annexure A-4), the request was declined. On May 25, 1995, the Government issued a notification placing the Respondent along-with the various other officers on probation with effect from September 5, 1993. On successful completion of the period of probation, the Respondent was posted as Sub Collector-cum-Sub Divisional Magistrate at Bhavanipatna.

4. Aggrieved by the action of the Central Government in allocating him to the State of Orissa and rejecting his request for allocation to the State of Kerala, the Respondent filed a petition u/s 19 of the Administrative Tribunals Act, 1985. The petition was initially presented to the Bench at Cuttak. On August 9, 1996, the Tribunal noticed that no counter-affidavit had been filed despite opportunity. It considered the prayer for interim relief and gave an interim direction for the Respondent's allocation to the State of Kerala. The Union of India filed a Review Petition. It was dismissed vide order dated July 1, 1998. The Petitioner did not challenge the order.

5. The petition filed by the Respondent at Cuttak was transferred by the Tribunal to the Principal Bench at Delhi. However, it appears that at a subsequent stage, it was transferred to the Bench at Ernakulam. Finally, vide order dated November 5, 2002, a copy of which has been produced as Ext. P-1, the Tribunal accepted the claim of the Respondent. Aggrieved by this order, the Union of India has filed the present petition.

6. The Petitioner alleges that the allocation has to be made by the Central Government under Rule 5 of the Indian Administrative Service (Cadre) Rules, 1954. The officer has no choice in the matter. The allocation is made on the basis of a thirty-point roster as envisaged under the orders of the Government. The conditions have been laid down in letters dated July 30, 1984 and May 31, 1985. These two communications are on record as Exts.P-3 and P-2 respectively. Secondly, it is alleged that the State of Orissa having accepted the proposal, the requirement of consultation with the State Government had been duly complied with. The allocation was in conformity with the provisions of Rule 5. Lastly, it is maintained that a Member of the Service has no right to claim that he be allocated to his home State. In the interest of impartiality and national integration, he can be allocated to any State. On these broad premises, the

Petitioner maintains that the order passed by the Tribunal is untenable.

7. The claim as made by the Petitioner has been controverted by the first Respondent by filing a counter-affidavit. He maintains that the order does not conform to the requirements of Rule 5. The roster prepared by the Central Government suffers from an error. There were four vacancies available for the 1993 batch. The first of these had to be given to an "insider". The next two could have gone to the "outsiders". Resultantly, he should have been allocated against the 4th vacancy as an "insider". The particulars of the persons appointed with effect from the year 1984 have been given to show that if the roster was followed, the claim as made by him would have been sustained. Even the other averments as made in the writ petition have been controverted. The Respondent maintains that the order passed by the Tribunal is in conformity with the rules and the law. Thus, he prays that the writ petition may be dismissed.

8. The Petitioner has filed an additional affidavit. It has been averred that the present roster system of cadre allocation had come into being from the Civil Services Examination, 1984. Thus, the officers belonging to the 1985 batch would be the first set of officers to be placed in the roster. The principles followed in the matter of cadre allocation have been reiterated, Relying upon the decision of Their Lordships of the Supreme Court in Union of India (UOI) Vs. Mhathung Kithan and Others, , it is maintained that the principle of carry forward is not applicable. Reliance has also been placed on the decision in Union of India (UOI) and Others Vs. Rajiv Yadav, IAS and Others, .

9. Learned Counsel for the parties have been heard. Mr. V.T. Gopalan, Additional Solicitor General appearing for the Petitioner, has contended that a member of an All India Service cannot claim allocation to his home State. The roster system as laid down vide letters dated July 30, 1984 and May 31, 1985 has been correctly followed. For the 1993 batch, the first two vacancies were given to the "outsiders". The third vacancy fell to the share of an "insider". Against this vacancy, Ms. Usha Titus, who was an "insider", was allocated. The 4th vacancy was again allotted to an "outsider". He has further submitted that the circular issued by the Government indicates that "at least 66 2/3 per cent" of the vacancies have to be given to the "outsiders". The "insiders" do not have an indefeasible right to claim 33 1/3 percent of the posts. That is the maximum that can be given to them. Resultantly, even if there is a shortfall in any particular year, they can make no complaint.

10. On the other hand, Mr. Dushyant Dave appearing for the first Respondent, has contended that the Central Government has to maintain the roster. This roster has to be continuous. Allocations have to be made in a cyclic order. If the allocations are made in strict conformity with the provisions of Rule 5 and the two letters, the roster as produced by the Petitioner with the additional affidavit as Annexure A-1, cannot be sustained. He further submits that there was no valid consultation with the States. As a result, the order of allocation does not conform to the requirements of Rule 5. Lastly, it has been submitted by the

counsel that the first Respondent has been working in the State of Kerala since September 2, 1996. He has spent more than six years in the State. In the process, he has even forgotten Oriya, which he had picked up during the short stay in Orissa. If he is now sent back to the State of Orissa, no public interest shall be promoted. In fact, the officer shall face avoidable difficulty. In this context, it has also been pointed that the State Government had not only made a request to the Central Government initially, but even reiterated it vide letter dated December 24, 2001. Copy of this letter has been produced as Ext. R-1(e) with the counter-affidavit.

11. In view of the contentions as raised by the learned Counsel, the two questions that arise for consideration are:

1. Does the order of allocation as passed by the Central Government conform to the provisions of Rule 5 of the Indian Administrative Service (Cadre) Rules, 1954?
2. Does the action conform to the requirements of the letters dated July 30, 1984 and May 31, 1985?

Regarding 1:

12. The Parliament enacted the All India Services Act, 1951. Section 3 of the Act empowers the Central Government to frame rules for recruitment etc. to the All India Services. In exercise of the power under the Act, the Central Government has framed the Indian Administrative Service (Recruitment) Rules, 1954. Rule 4 provides for the "method of recruitment" to the service. Broadly, the rule provides for recruitment by competitive examination; by promotion of substantive member of a State Civil Service and by selection, in special cases from amongst persons who hold gazetted posts in a substantive capacity in connection with the affairs of a State and who are not members of the State Civil Service. Rule 7, inter alia, provides for recruitment by competitive examination. In Clause (2), it has been provided that the examination shall be conducted by the Commission in accordance with such Regulations as the Central Government may from time to time make in consultation with the Commission and the State Governments. In pursuance of this provision the Government has framed the I.A.S. (Appointment by Competitive Examination) Regulations, 1955. Regulation 3 provides for the holding of examination. Regulation 4 relates to conditions of eligibility. Various other provisions regarding disqualification etc. have also been made. Under Regulation 8, the candidates have to be "considered for appointment 10 the available vacancies in the order in which their names appear in the list" prepared by the Public Service Commission as a result of the examination.

13. It is in pursuance to the provision of Regulation 8 that the first Respondent was appointed to the Indian Administrative Service.

14. In the very nature of things, the Central Government has to allocate the selected candidates to different States in the country. The cadre strength for

each State or group of States and Union Territories has to be separately fixed. The seniority of the officers has also to be determined. Separate Rules and Regulations exist for these matters. Immediately after selection, the selected persons have to be allocated to different States. The provisions for this purpose are contained in the I.A.S. (Cadre) Rules, 1954. Under Rule 3, the cadre for each State or group of States has to be fixed. The strength of the cadre constituted under Rule 3 has to be determined under the Regulations, which may be framed by the Central Government. Rule 5 makes provision for allotment. It reads as under:

5. Allocation of members to various cadres. -- (1) The allocation of cadre officers to the various cadres shall be made by Central Government in consultation with the State Government or the State Governments concerned.

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

A perusal of the above provision shows that the allocation of the cadre officers has to be made by the Central Government in "consultation" with the concerned State Government. In the case of a transfer from one cadre to another, the provision requires "concurrence" of the State Governments. On a consideration of the rule, it is clear that for the purpose of allocation, the Central Government has to merely "consult" the State. It does not need its concurrence. It is also true that there is an essential difference between "consultation" and "concurrence". While "consultation" implies conferring, "concurrence" would require consent. The use of two different words in the same rule is also indicative of the intent of the rule making authority.

15. On a perusal of Rule 5 as quoted above, it is undoubtedly clear that the candidate has not been given any right to choose the State for allocation. The competent authority is not required to ask for any option. The Central Government has been given the power to make allocation in consultation with the State Government. The issue is -- Has this provision been complied with?

16. The rule requires consultation with the State Government. Not merely, the furnishing of information to it. In the very nature of things the process of consultation must precede the act of allocation. The decision regarding allocation must be taken only after the State Government has been consulted. What is the position in the present case?

17. The Central Government had admittedly issued the notification dated December 17, 1993 regarding allocation. It was communicated to the 1st Respondent while he was undergoing training at the Lal Bahadur Shastri Academy. He was informed that he had been allocated to the State of Orissa. A copy of this notification has been produced by him on record as Annexure A-1. It is also not disputed that the Central Government had addressed the first communication regarding allocation of the officers to the State Governments on February 8, 1994. This was no consultation with the State Government. The

Central Government was virtually giving information. And that too without disclosing the fact that it had already issued the notification on December 17, 1993.

18. It is true, as pointed out by Mr. Gopalan that the State Governments had raised no objection. But the crucial fact is that they were never informed about the factum of the decision having preceded the initiation of the process of consultation. Still more, a fact, which deserves mention is that the state of Orissa, had recommended the 1st Respondent's transfer to Kerala vide letter dated May 12, 1995. The State of Kerala had asked for the allocation of the 1st Respondent even by transfer vide letters dated July 20, 1996 and December 24, 2001.

19. Mr. Gopalan referred to the decision of Hon"ble the Supreme Court in Union of India (UOI) and Others Vs. Rajiv Yadav, IAS and Others, .

20. In this case, the issue related to the validity of the "roster system" for allocation. In that context it was observed that "Rule 5 of the Cadre Rules makes the Central Government the sole authority to allocate the members of the service to various cadres. It is not obligatory for the Central Government to frame rules/regulations or otherwise notify "the principles of allocation" adopted by the Government as a policy". There is no quarrel with this proposition. However, the Judgment does not say that the State Government need not be consulted before an order of allocation is passed and communicated to the persons concerned. Still further, the question was being considered by Their Lordships in the context of the right of a member of the Scheduled Castes/Tribes to be allocated to the home State. Such is not the position in the present case. Thus, the Counsel can derive no advantage from the decision.

21. The facts as noticed above clearly show that the provision of Rule 5 had not been followed. The Central Government was bound by it. Thus, the Tribunal has rightly taken the view that there was no "effective consultation". It committed no error. The first question is, accordingly, answered against the Petitioner.

Regarding 2:

22. Mr. Gopalan submitted that the Tribunal had erred in taking the view that the 1st Respondent was entitled to be allocated to the State of Kerala as there was a shortfall in the number of "insiders". Is it so?

23. The Cadre Rules do not lay down any specific criterion for allocation. Thus, there was a gap in the rules. Thus, the Government sought to fill it by the issue of administrative/policy decisions. Various orders were issued from time to time. In the present case, copies of two orders issued by the Central Government are on record. The first of these was issued on July 30, 1984. It has been placed on the record of the writ petition as Ext. P-3. It was issued by the Ministry of Personnel to the Chief Secretaries of all the State Governments. It was noticed that the States Reorganisation Commission had recommended that for securing

greater interstate co-ordination and efficient implementation of All India Policy about 50 per cent of the new entrants should be from outside the State concerned. Thus, a principle of "outsider" and "insider" was evolved. Keeping in view the fact that a quota of 75 per cent had been fixed for direct recruitment and 25 per cent had to be filled up by promotion, it had been decided that there may be a ratio of 1:1 for "outsider" and "insider" at the time of allocation of the direct recruits. In the year 1977, the promotion quota was raised from 25 per cent to 33 1/3 per cent. Resultantly, the direct recruitment quota was reduced to 66.2/3 per cent. In order to ensure a proper representation of "outsiders" it was decided that "at least 66 2/3 per cent of the officers are from outside the State concerned".

24. On May 31, 1985, the Ministry of Personnel issued another letter. A copy of the letter, which had been sent to the Secretary, Department of Forests and Wildlife, has been produced as Ext. P-2. In this letter it was inter alia observed that "the limited zonal preferences system of allocation suffers from a number of deficiencies". Thus, it was decided "with the approval of the Prime Minister that from 1985 batch onwards (1984 Examination candidates) we should revert back to the roster system ... with certain modifications". The broad principles of allocation on the basis of roster system were laid down. It was inter alia provided as under:

1. The vacancies in every cadre will be earmarked for "outsiders" and "insiders" in the ratio of 2:1. In order to avoid problems relating to fractions and to ensure that this ratio is maintained, over a period of time, if not during allocation, the break-up of vacancies in a cadre between "outsiders" and "insiders" will be calculated following the cycle of "outsider", "insider", "outsider".

25. Thus, it is clear that the candidates who had qualified in the year 1984 and these selected thereafter had to be allocated to different States in the cyclic order of "outsider", "insider", "outsider" and soon. The words-avoid "fractions" and "to ensure that the ratio is maintained" clearly indicate that the cycle had to be continuous.

26. It is in the background of this position under the circulars that the present case has to be examined.

27. Mr. Gopalan contended that the allocation has to be made on the basis of the roster. If an "insider" is not available, the point can be allotted to an "outsider". There is no provision for carry forward. The roster system was duly followed. This stand of the Petitioner was controverted by Mr. Dave. In fact, there was even controversy and contest on the factual aspect. The hearing of the case was interrupted on 11th June 2003 so as to enable Mr. Gopalan to get full facts from the Central Government. Thereafter, he had produced before us two documents. The first of these depicts the position regarding the allocation of officers from the years 1983 to 1989. The second document relates to the candidates allocated as a result of the examinations held during the years 1990 to 1992. These two

documents are taken on record as Mark "X" (Pages 1 to 3) and Mark "Y" respectively. We have signed all the four pages. On a perusal of these documents, the following position emerges:

(i) The roster was started by the Central Government from the year 1983 and not for the examination, which had been held in the year 1984.

(ii) The year-wise position of "insiders" and "outsiders" allocated to the State of Kerala for the Indian Administrative Service Cadre in pursuance to the examinations held during the years 1983 to 1992 was as under:

Year of Exam.	Outsider	Insider
1983	4	2
1984	4	2
1985	5	2
1986	4	2
1987	3	2
1988	3	2
1989	3	1
1990	5	2
1991	3	1
1992	3	1

A perusal of the above shows that since the start of the roster from the year 1983, 37 "outsiders" and 17 "insiders" were allocated to the State of Kerala. Thus, there was a shortfall in the number of "insiders". The ratio was not maintained. Clearly, the factual position as noticed by the Tribunal was not wrong.

28. The position in respect of the years 1990, 1991 and 1992 may actually be reproduced from Mark "Y". It is as under:

Total Number of Outsider Vacancies in 1990=5 Total Number of Insider Vacancies in 1990=2 Year of Exam. 40. Outsider 1990 Saurabh Garg 41. Insider 1990 Raju Narayana Swamy 42. Outsider 1990 B. Srinivas 43. Outsider 1990 Km. Vandana Gurani 44. Insider 1990 A. Jayathilat 45. Outsider 1990 Shamrao A. Tagade (S.C.) 46. Outsider 1990 Km. Rachna Sharma Total Number of Outsider vacancies in 1991=2 Total Number of Insider vacancies in 1991=2 Year of Exam. 47. Insider 1991 Ramakrishnan, V. 48. Outsider 1991 Sanjeev Kaushik 49. Outsider 1991 Bishwa Nath Sinha 50. Insider 1991 Ellangovan, K. [Insider not available] Total Number of Outsider vacancies in 1992=3 Total Number of Insider vacancies in 1992=1 Year of Exam. 51. Outsider 1992 Puneet Kr. 52. Outsider 1992 Devender Kumar Dhodamat 53. Insider 1992 Km. Usha Titus 54. Outsider 1992 Khobragade Raja Namdeo Rao.

A perusal of the above shows that for the examination held in the year 1990 "outsiders" were given five posts and the "insiders" two. For the ensuing year the position indicated by the document is that two "insiders" and two "outsiders" were taken. However, it is the admitted position that Mr. Ellangovan, K. was an "outsider". On the roster he was shown to have consumed an insider's point. The fact that an "insider" was not available has been recorded in the document (Mark Y) against the name of the Officer. For the candidates who had appeared in the examination in the year 1992, the first two points had been given to two "outsiders", the third to the "insider" and then to an "outsider". In the background of this factual position, the short question is -- Did the Central Government follow the provision in the circular?

29. As already noticed, the two circulars clearly provide that the "roster system" shall be applied to the candidates who take the examination held in the year

1984. In fact, it was apparently started from the year 1983. Why? Mr. Gopalan submitted that even if the roster is commenced from the year 1984, there would be no change in the position. On the basis of the material on the record, we cannot record a firm finding that he is right. However, even if it is assumed to be so, it appears that the criterion laid down in the circulars was not followed. The reason? The decision of 1985 clearly provides that the vacancies will be earmarked in the ratio of 2:1. In order to avoid problems relating to fractions and to ensure that the ratio is maintained over a period of time", it was provided that the cycle viz. "outsider", "insider", "outsider" shall be followed. The intention was clear. The position had to be seen over a period of time. Not for a year only. The ratio had to be maintained. The 30 points roster had to be followed in a cyclic order. In the present case, the "roster" was commenced from the year 1983. Still more, the rule regarding the "cycle" was not followed.

30. Mr. Gopalan appearing for the Petitioner submitted that the circulars do not embody the principle of carry forward. The outsiders are entitled to at least $66 \frac{2}{3}$ per cent of the vacancies. Thus even if the outsiders get more than $66 \frac{2}{3}$ per cent there is no violation of the circular. He placed reliance on the decision of Hon"ble the Supreme Court in Union of India (UOI) Vs. Mhathung Kithan and Others, .

31. The Counsel is absolutely right in contending that the "outsiders" are entitled to at least $66 \frac{2}{3}$ per cent. He is also right in his submission that the circular does not provide for any carry forward of "insider" vacancies. However, a perusal of the decision of Their Lordships clearly shows that in paragraph 6 it has been observed that in the light of the policy "a continuous 30 point roster was provided". This roster "follows the cycle, outsider, insider, outsider, outsider, insider, etc....". It was further observed that "in any given year the roster starts with the point where the roster ended....". Thus, in a case where the roster for the previous year ends with an "insider" the next point will go to an "outsider". Still more, as mentioned above, the circular clearly postulates that the ratio of 2:1 has to be maintained. The clear implication is that even if in a particular year an insider's point has gone to an "outsider", the insider may not be able to claim an extra vacancy in the next year, but the next point during the ensuing year must be given to an "insider", if available. This is essential to maintain the ratio over a period of time. What is the position in the present case?

32. A perusal of the extract from Mark "Y" as reproduced above shows that point Nos. 48, 49 and 50 for the examination held in the year 1991 have been allotted to "outsiders". It is also the admitted position that point No. 50, though belonging to an "insider", was actually consumed by an "outsider". In the cyclic order point No. 51 should have gone to an "insider". If that had been done Smt. Usha Titus, who was at Sl. No. 9 in the merit list would have been allocated to State of Kerala against point No. 51. The two "outsiders" would have consumed point Nos. 52 and 53. The first Respondent would have been entitled to be adjusted against point No. 54.

33. Mr. Gopalan contended that Their Lordships of the Supreme Court have rejected the principle of carry forward. It is undoubtedly so. It is in view of this position that no "insider" from the State of Kerala is entitled to be adjusted against point No. 50 which was given to an "outsider". Since the roster provides for a continuing cycle and the last three points had gone to "outsiders", it is in conformity with the circular that 51st roster point goes to an "insider". The plain language of the circular cannot be read to mean that 5 continuous points have to be given to "outsiders". Such an interpretation would not be in conformity with the rule as laid down by Their Lordships in Kithan's case. After all, the fractions have to be avoided. The ratio has to be maintained over a period of time. Otherwise, the rule that "in any given year the roster starts with the point where the roster ended" would lose all meaning.

34. There is another aspect of the matter. It is the admitted position that the first Respondent was posted in the State of Orissa on 24th August 1995. Thereafter he had approached the Central Administrative Tribunal. By an interim order of August 9, 1996, he was granted an interim relief. According to Mr. Dave, he had joined in Kerala on September 2, 1996. Since then he has remained in the State of Kerala. Should he be sent back to the State of Orissa after a lapse of more than 6 years? Whatever little he might have learnt of Oriya, must have been forgotten by now. He may not be able to read the documents. He may not be able to know about the officers of his batch or those who were subsequently recruited during all these years. Still further, it appears that the State of Kerala has been continuously requesting the Central Government to reconsider its decision. Even a communication in this behalf was sent by the State Government vide letter, dated 24th December, 2001. A copy has been produced by the Respondent with his counter-affidavit to the present writ petition as Ext. R-1(c). In this letter it was pointed out that the first Respondent had been working in the State since September, 1996. It was requested that he be allowed to continue. Surely, the experience that the first Respondent has gained in the State of Kerala can be of better use to this State than it would to the State of Orissa.

35. It is undoubtedly true that the Writ Court is primarily concerned with the implementation of law and not the matters of administration. However, it is equally important that the court weighs the equities before taking a final decision. It is under a duty to reach injustice wherever it occurs. In any event, matters of public interest are not irrelevant while considering cases in the exercise of writ jurisdiction. Taking the totality of the circumstances into consideration, We find that there was violation of the circulars issued by the Petitioner itself. It had failed to follow the standard that it had itself laid down. Thus, even the second question is answered against the Petitioner.

36. No other point was raised.

37. In view of the above, it is held that:

(i) Rule 5 of the I.A.S. (Cadre) Rules, 1954 does not give a member of the

service any right to claim allocation to any State. However, the provision imposes a statutory duty on the Central Government to make the order of allocation in consultation with the State Government. The consultation must precede the actual order of allotment.

(ii) The provision for consultation does not require the concurrence of the State Government. In law, there is a clear distinction between "consultation" and "concurrence". The former requires "conferring" while the latter postulates "consent". However, consultation in the present context is not an option to do or not to do something. It is a condition precedent for passing the order of allocation. It must be observed.

(iii) The letters dated July, 30, 1984 and May 31, 1985 lay down the criteria for allocation. The prescribed criterion had to be followed from the 1985 batch onwards. In other words, it had to be applied to the candidates who had appeared in the Civil Services Examination conducted in the year 1984 or thereafter. This was not followed and the roster was started from the examination held in the year 1983.

(iv) The circular undoubtedly provides that "at least 66 2/3 per cent" of the posts shall be filled up by allocating the "outsiders". Thus, the "insiders" do not have any right to claim carry forward of the vacancies that are allotted to the "outsiders" on account of the non-availability of the "insiders". However, the letters specifically lay down that the "cycle of "outsider", "insider", "outsider" has to be followed. This cycle has to be continuous. If, in a particular year, a vacancy has gone to an outsider, the next must be filled up by following the cyclic order. The ratio has to be maintained over a period of time.

(v) In the present case, the provision of Rule 5 was not followed inasmuch as the order of allocation had been actually passed and communicated by the Central Government vide its letter dated, December 17, 1993. The letters for consultation with the State Government had been issued by the Central Government on February 8, 1994. The consultation had to precede the order and not follow it. It is settled that if anything is required to be done in a particular way, it must be done in that manner and no other. This rule was admittedly not followed. Thus, the action in the present case was not in conformity with the provision contained in Rule 5.

(vi) The Central Government had also failed to follow the roster system inasmuch as the ratio of 2:1 was not observed. The cyclic order was also violated. Thus, even the mandate of the two letters, which are supplemental to the rule was disobeyed.

(vii) The Central Government was bound to follow the standards that it had prescribed for itself. It has to set an example for others to emulate. It cannot be permitted to deviate from the path that it had prescribed for itself. In the present case, there was a clear deviation.

(viii) It is true that the High Court, in the exercise of its writ jurisdiction is primarily concerned with the observance of law. It cannot pass any order, which may be contrary to the Statutory provision. Yet, it is equally clear that the High Court has the jurisdiction to reach injustice wherever it occurs. It cannot be a silent spectator when an authority acts unfairly. It is under a duty to intervene whenever there is a violation of law or the instructions issued by the Government itself.

(ix) In the circumstances of the present case, it is clear that the findings recorded by the Tribunal are not wrong. Still further, the first Respondent has been working in the State of Kerala since the year 1996. The State Government has been repeatedly requesting the Central Government to agree to his allocation for transfer to this State. His transfer or allocation to the State of Orissa, at this stage, shall not promote any public interest. Thus, it would not be in the interest of justice for this Court to intervene and set aside the order of the Tribunal.

In view of the above, we find no merit in the writ petition. It is consequently, dismissed. However, in the circumstances of the case, the parties are left to bear their own costs.