
(2013) 10 DEL CK 0423
In the Delhi High Court
Case No : Writ Petition (C) 7290 of 2008

UOI and Others

APPELLANT

Vs

Abhishekh Dixit

RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Citation : (2013) 10 DEL CK 0423

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Rakesh Tiku, Mr. Prakash Gautam and Mr. Vivek Ojha, for the Appellant; M. Shoeb Alam, Advocate for R-1, Mr. Arjun Pant, Advocate for R-4., Mr. Anil Mittal and Mr. Anuj Kumar Ranjan, Advocates for R-5, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The above captioned writ petition challenges the order dated January 03, 2008 passed by the Central Administrative Tribunal allowing OA No. 1920/2007 by quashing the order dated June 04, 2007 issued by the Director, SVP, National Police Academy to the extent it concerned the respondent and directed the Ministry of Home Affairs (MHA) to consider the allocation of cadre to the respondent in accordance with the principles laid down in the letter dated May 31, 1985 and to pass a detailed speaking order regarding the same. Before delving into the factual matrix, we note the policy pertaining to allocation of state cadres to the candidates who successfully clear the Civil Services Examination (CSE). We highlight that we would be concerned with the situation existing prior to April 10, 2008 for the reason on April 10, 2008 a new Cadre Allocation Policy has come into force and in the writ petition we are concerned with the cadre allocation pertaining to CSE-2005.

2. From the year 1966 till the year 1977, a roster system was used to allocate State cadre to those who cleared Civil Services Examination and were allocated a Group-A or a Group-B service. The same was changed in the year 1978 with the introduction of the Limited Zonal Preferences system. Since certain deficiencies

were noted in the working of the Limited Zonal Preferences system, in the year 1985 the previous roster system was re-adopted with certain modifications. In said regard, on May 31, 1985, a letter was sent by Sh. K. Ramanujam, Secretary, Ministry of Personnel and Training to Sh. T.N. Seshan, Secretary, Department of Forest and Wildlife detailing the new procedure adopted. It is the common case of the parties that the principles of cadre allocation stand enunciated in the said letter dated May 31, 1985 and thus we note the same. The same reads as under:-

Government of India Ministry of Personnel & Training administrative Reforms and Public Grievances and Pensions.

Secretary

D.O. No. 13013/5/84-AIS(I) Dated 30/31 May, 1985

Dear Shri Seshan,

As you are aware, the allocation of the direct recruits to the All India Services including the Indian Forest Service is being made in accordance with the "Limited Zonal Preferences System" from 1978 examination and onwards. In this system all the cadres/joint cadres were divided into zones and the candidates were given the opportunity to indicate their preferences one-wise and also for two cadres in each zone. The allocation was being made keeping in view the rank and preferences of the candidates subject to allocation of vacancies in each cadre between "insiders" and "outsiders".

2. Our experience has shown that the limited zonal preferences system of allocation suffers from a number of deficiencies. Under this system there is only very limited movement of candidates from one part of the country to another across several States and even this limited interregional movement of candidates takes place only in respect of a few low ranking candidates. Another drawback of the system is that "outsiders" getting allocated to a State are mostly from a neighbouring State.

3. Keeping in view the deficiency that is noticed in the working of the limited zonal preferences system it has been decided with the approval of the Prime Minister that from 1985 batch onwards (1984 examination candidates) we should revert back to the roster system which was the system of allocation from 1966 to 1977 examination with certain modifications. The broad principles of allocation on the basis of roster system would be as follows:-

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".

2. The vacancies for Scheduled Castes and Scheduled Tribes will be reserved in

the various cadres according to the prescribed percentage. For purpose of this reservation, scheduled castes and scheduled tribes will be grouped together and the percentages will be added. Distribution of reserved vacancies in each cadre between "outsiders" and "insiders" will be done in the ratio of 2:1. This ratio will be operationalised by following a cycle "outsider", "insider", "outsider" as is done in the case of general candidates.

3. Allocation of "insiders", both men and women, will be strictly according to their ranks, subject to their willingness to be allocated to their home States.

4. Allocation of "outsiders", whether they are general candidates or reserved candidates, whether they are men or women, will be according to the roster system after placing "insiders" at their proper places on the chart as explained below:

(i) All the State cadres/joint Cadres should be arranged in alphabetical order and divided into four groups which, on the basis of the average over a period of time, are taking roughly equal number of candidates each. On the basis of average intake during the last 4 years, the groups could be as follows:

(ii) Since the number of cadres/Joint Cadres is 21, the cycles will be 1-21, 22-42, 43-63 and so on.

(iii) The "insider" quota should then be distributed among the States and assigned to different cycles of allotment. For example, if a State gets 4 "insider" candidates, they should go to the share of the State in their respective cycles and if there are 2, "insider" candidates from the same cycle, they should be treated as going to the State in two successive cycles and so on.

(iv) The "outsider" candidates should be arranged in order of merit and allotted to the State cadres in cycles as described in (v) below.

(v) In the first cycle, State cadre/joint cadres which have not received "insider" candidates should be given one candidate each in order of merit of "outsider" candidates. The process should be repeated in successive cycles, each successive cycle beginning with the next successive group of States, e.g. the second cycle should begin from Group II States, the third cycle with Group III states and the fourth cycle with Group IV states and the fifth cycle again with Group-I States. Occasionally it may happen that a candidate's turn may come in such a way that he may get allocated to his own home State. When that happens, the candidate next below him should be exchanged with him.

(vi) For the succeeding year, the State cadres should be arranged again in alphabetical order but with Group I of the previous year at the bottom, i.e., the arrangement will begin with Group II on top. In the third year, Group III will come on top and so on.

(vii) In the case of candidates belonging to the reserved category, such of those candidates, whose position in the merit list is such that they could have been

appointed to the service even in the absence of any reservation, will be treated on par with general candidates for purposes of allotment though they will be counted against reserved vacancies. In respect of other candidates belonging to the reserved category a procedure similar to the one adopted for general candidates would be adopted. In other words, a separate chart should be prepared with similar grouping of States and similar operational details should be followed. If there is a shortfall in general "insiders" quota it could, however, be made up by "insider" reserved candidates.

5. Since the Prime Minister has already approved the roster system of allocation as indicated above, I would request you to ensure that this system of allocation is followed while allocating the candidates appointed to the Indian Forest Service on the result of the Indian Forest Service Examination, 1984 and onwards.

With regards

Yours sincerely,

Sd/-

(K. RAMANUJAM)

Shri T.N. Seshan,

Secretary

Department of Forests & Wild Life,

New Delhi

3. The policy aforementioned contained in the letter dated May 31, 1985 was held capable of being applied for cadre allocation by the Supreme Court in the decision reported as (1994) 6 SCC 38 Union of India v. Rajiv Yadav IAS. The Supreme Court held:-

5. We have given our thoughtful consideration to the reasoning and the conclusions reached by the tribunal. We are not inclined to agree with the same. Rule 5 of the Cadre Rules provides that the allocation of the members of the IAS to various cadres shall be made by the Central Government in consultation with the State Government or the State Governments concerned. Sub-rule (2) of Rule 5 further provides that a cadre officer can be transferred from one cadre to another. When a person is appointed to an All India Service, having various State Cadres, he has no right to claim allocation to a State of his choice or to his home State. The Central Government is under no legal obligation to have options or even preferences from the officer concerned. 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. The letter dated May 31, 1985 shows that the Central Government has always been having guidelines either in the shape of "limited

zonal preferences system" or "Roster System" for the exercise of its discretion under Rule 5 of the Cadre Rules. Simply because the principles of allocation called "Roster System" were not notified, it is no ground to hold that the same are non-est and the Central Government cannot follow the same. In any case the "Roster System" has stood the test of time. It was operative during the years 1966 to 1977 and again it is being followed from 1985-batch onwards. The fact that the "Roster System" is being followed in practice by the Central Government for all these years, is in itself a sufficient publication of its principles.

(emphasis supplied)

4. Before noting in detail the respondent's challenge to his cadre allocation we briefly note the process of cadre allocation as in vogue.

5. The States and the Union Territories were divided into 21 cadres/joint cadres with each State constituting a separate cadre except for the three joint cadres; namely: Assam-Meghalaya, Manipur-Tripura and AGMUT (Arunachal Pradesh, Goa, Mizoram and Union Territories). We highlight that when the policy was applied in the year 2006 the cadres became 24.

6. The first stage in the cadre allocation is to divide the vacancies arising in each cadre amongst general category candidates and SC/ST candidates on the basis of the prescribed percentages for reservation. Thereafter to classify the candidates who had successfully cleared the Civil Services Examination into two groups/categories: (i) insider; and (ii) outsider. The insider being those candidates who opt for their home State to be allotted to them. Of logic would be that outsider would be those who could not be posted in their home State.

7. Thereafter the vacancies for each category i.e. General and SC/ST category are to be divided between the "insider" and "outsider", in the ratio of 2:1 and in order to ensure that this ratio is maintained, the first vacancy goes to an "outsider"; the second vacancy goes to an "insider" and the third once again goes to an "outsider". This cycle is repeated.

8. Thereafter a list of candidates allotted to the service is prepared in order of merit, indicating their home State and their willingness to be allotted their home State and each candidate is assigned a serial number in the order of merit in the said list.

9. The "insider" candidates are then allotted the cadre, followed by the "outsider" candidates.

10. This requires the first step to be taken. The same is to allocate the "insider" candidate(s) according to their rank and subject to they opting for being allotted their home State. The allocation of "insider" is done primarily in accordance with paragraphs 3(3), 3(4)(ii) and 3(4)(iii) of the letter dated May 31, 1985. If there are two or more candidates who as per their serial number have to occupy the same cycle, they should be treated as going to the particular state cadre in two successive cycles.

11. At the first stage the insider available vacancy, if at all is filled up by those who opt for their home State. This means that with reference to the merit position the process is repeated at the first cycle, the second cycle and so on. As such only one candidate is allotted per State cadre per cycle, meaning thereby that if one insider candidate has been allocated a State cadre at a cycle then even if an outsider vacancy exists in that State cadre no "outsider" candidate can be allotted to that cadre in the particular cycle and automatically the next available "outsider" vacancy in the succeeding cadre is allotted to the candidate against that serial number.

12. The next stage, after the allocation of all insider candidates is completed, is the allocation of the remaining candidates i.e. the "outsider" candidates. They are allocated to a State (not being their home state), in serial order in successive cycles.

13. But, it has to be kept in mind that when the policy was issued on May 31, 1985 there was no reservation for OBC Candidates, a special category entitled to the benefit of reservation which was recognized for the first time and implemented in the year 1993.

14. We note the facts.

15. The respondent appeared at the CSE-2005 and cleared the same obtaining rank No. 107 in the merit list which became rank No. 27 with reference to the respondent being allotted the Indian Police Service. He was a general category candidate and had opted for the home State insider vacancy for the State of Rajasthan. But, he was allotted the State cadre of Tamil Nadu.

16. The respondent filed a representation dated March 09, 2007 to the Director, SVP National Police Academy questioning the cadre allocation and prayed that the same was contrary to the principles enunciated in the letter dated May 31, 1985. It was his case that one Sh. Dhrubjyoti Dey and one Sh. Patil Sachin Ashok at serial No. 38 and 44 respectively who adopted for their home state cadre i.e. West Bengal and Maharashtra respectively ought to have been allotted their home cadre at the second cycle. He highlighted that for the year in question the first cycle of cadre allocation commenced from Group-II States and thus outsiders in the State of Maharashtra and West Bengal ought to have been allotted to outsider candidates in the first cycle itself i.e. from serial Nos. 1 to 24. The respondent highlighted that as per paragraph 4(5) of the letter dated May 31, 1985, at the first cycle, State cadres which have not been allotted insider candidates should be allotted one candidate each in the order of merit from amongst the outsider candidates and thus the State of Maharashtra and West Bengal ought to have been allotted an outsider candidate at the first cycle.

17. The said representation was rejected vide order dated June 04, 2007; operative part whereof reads as under:

Keeping in view the above position of the principles of Cadre Allocation, Sh.

Dhrubjyoti Dey, the only insider candidate who had qualified the Civil Services Examination 2005 from West Bengal was allocated to the IPS cadre of West Bengal as a general insider candidate in the first cycle. Likewise, Sh. Patil Sachin Ashok, the first available insider candidate who had qualified the Civil Services Examination 2005 from Maharashtra was allocated to the IPS cadre of Maharashtra as a general insider candidate in the first cycle.

18. Aggrieved by the same, the respondent approached the Central Administrative Tribunal, filing OA No. 1920/2007, seeking a declaration that the cadre allocation of the IPS officers of the 2006 batch i.e. pertaining to CSE-2005 was illegal being contrary to the cadre allocation policy and prayed that the order dated June 04, 2007 rejecting his representation be quashed and that a direction be issued that cadre re-allocation be carried out as per the principles laid down in the letter dated May 31, 1985.

19. Before the Tribunal, the respondent urged the same grounds as he had urged in his representation; this time essaying in detail the alleged violation of the cadre allocation policy as stipulated in the letter dated May 31, 1985. The same reads as under:-

12. The first outsider candidate on the serial order list (Annexure A-6) is serial no. 1 Jatin Narwal, who belongs to Haryana State. Haryana has no insider vacancy, the next cadre in order is Himachal Pradesh, where likewise there is no outsider vacancy, as Kashmir cadre since the first outsider vacancy is available in that cadre. However he has been allocated to Jharkhand. This is the first anomaly in the allocation.

13. The next outsider candidate is serial no. 2 (Ms. Garima Malik) belonging to the state of Haryana. Haryana has no insider vacancies therefore she should be allocated to the next available outsider vacancy that falls vacant in the Jharkhand cadre. However the said candidate has been allocated to the Jammu & Kashmir cadre. This is the next anomaly in the allocation.

14. The next outsider candidate is at serial no. 4 (Shashank Anand) who belongs to Delhi and has been rightly allocated to Haryana which was the first outsider vacancy available in the first cycle.

15. The next outsider candidate is serial no. 7 (Abhshek Goyal) who belongs to Punjab and has been rightly allocated to Karnataka.

16. At serial no. 8 is the next outsider candidate, Akash Jindal, who belongs to Punjab and has been rightly allocated to Kerala.

17. Ms. Remya Roshni who is placed at serial no. 9 in the list (belongs to Kerala state) and has been allocated to the Manipur-Tripura Joint Cadre. This allocation is also erroneous as the next available outsider vacancy after Kerala cadre was available in the Maharashtra cadre. However the vacancy in the Maharashtra cadre has been wrongly filled by the respondents by allocating it with the insider candidate at serial no. 44 (Patil Sachin Ashok) who belongs to Maharashtra state.

17.1 The applicant submits that the error in allotting Patil Sachin Ashok in the first cycle despite having serial no. falling between 25-48 is the pivotal source of the anomalous allotments in the list. The said allotment is in violation of rule no. 7. It is humbly submitted that the said candidate could not have been allocated in the first cycle because the first cycle ends at serial no. 24. The relevant extract of Rule 7 is reproduced below:

7. The candidates between... SI. No. 25 and 48 who can be allocated to their home states are slotted in the second cycle (25-48) and so on.

18. The next outsider candidate is available at serial no. 11 (Ms. Roopa M. belonging to Karnataka state). Manipur-Tripura Joint Cadre has the next available outsider vacancy. However the said candidate has been allotted the Nagaland cadre because the outsider vacancy in Manipur-Tripura joint cadre in that cycle has wrongly been exhausted due to the incorrect allocation explained in paragraph 17 above. The next outsider candidate at serial no. 12 (Sriman Shukla who belongs to M.P.) should have been rightly allotted to Nagaland cadre but has wrongly been allocated to the Tamil Nadu cadre due to the incorrect allocation explained in para 17 above.

19. The allocation of candidates at serial no. 13 (Sweety Agarwal who belongs to Delhi state) and 14 (Ramesh Kumar who belongs to Haryana state) requires explanation on the basis of rule no. 4 (v) of the policy letter dated 31.05.1985 marked as Annexure A-1 above. The relevant portion of the said rule is reproduced below for ready reference.

4(v).... Occasionally it may happen that a candidate's turn may come in such a way that he may get allocated to his own home State. When that happens, the candidate next below him should be exchanged with him.

The above stated rule provides for the swapping/interchange of the cadre in a peculiar situation of an outsider candidate (being allocated to his/her home cadre) with the cadre of the candidate next below.

Sr. No. 13 was being allocated the AGMUT cadre (albeit incorrectly) and such her cadre would have been the same as her home state. Sr. No. 14 (Ramesh Kumar who belongs to Haryana) was being allocated Uttarakhand.

However in the light of rule 4(v) mentioned above their cadres were swapped/interchanged and consequently sr. No. 13 was allocated Uttarakhand and Sr. No. 14 was allocated AGMUT Cadre. The rule 4(v) to the case of sr. Nos. 13 and 14 was that though serial no. 13 remained to have been wrongly allocated the Uttarakhand cadre, serial no. 14 (Ramesh Kumar) was allocated the correct cadre as per the de-jure accurate list.

20. The candidate at serial no. 18 (Rajendra Narain Dash who belongs to Orissa) is the next outsider candidate. He should have been allocated to the Uttarakhand cadre as per the rules, but he has wrongly been allocated to the Chhattisgarh Cadre due the anomaly explained in paragraph 17 above.

21. The case of Ms. Sonia Khokkar (who belongs to Delhi) at serial no. 20 is another anomalous case requiring explanation similar to that given in para 17 above. It is pertinent here to note that once again the respondents have ignored rule no. 7 as a result of which the said candidate who should have been allotted the West Bengal cadre (since the next available outsider vacancy after Uttarakhand would have been in West Bengal cadre) has been allocated to the Maharashtra cadre.

21.1 The said anomaly has arisen since the candidate at serial no. 38 (Dhrubjyoti De who belongs to West Bengal) was allocated the West Bengal cadre in the first cycle itself. As a result the first insider vacancy in the West Bengal cadre having been wrongly allocated in the first cycle by an insider candidate at sr. no. 38 (who ought to have been slotted as an insider candidate only in the second cycle) has resulted in exhausting the vacancy rightly due for allocation of an outsider candidate in the first cycle in that cadre.

20. Per contra, the petitioners contended that the allocation of cadres was the sole prerogative of the Central Government under Rule 5(1) of the Indian Police Service Cadre Rules, 1954. Petitioners further contended that as per the law laid down in the decision reported as Union of India (UOI) and Others Vs. Rajiv Yadav, IAS and Others, , a person being appointed to an All India Service could not claim allocation to a State of his choice and that the Central Government was not under any obligation to give an option to the concerned officer for allocation to a particular cadre.

21. The Tribunal noted the fact that no Rules in respect of cadre allocation had been notified by the Government of India but certain principles were followed and presently the principles laid down in the letter dated May 31, 1985 were in vogue.

22. Regarding the challenge raised by the respondent to the cadre allocation for those who were allotted Indian Police Service pursuant to CSE-2005, the Tribunal has held as under:-

The allocation between "insider" and "outsider" has to be made as per paragraph 4 of the letter. In 1985, there were 21 cadres/Joint cadres. After creation of three more states in 2001, the number of cadres/Joint cadres has become 24. Therefore, the cycles will be 1-24, 25-48, 49-72 and so on instead of 1-21, 22-42, 43-63 and so on mentioned in paragraph 4(ii). In the Instant case, paragraph 4(v) of the letter of 31.05.1985 is important. It is not disputed that both Dhrubjyoti De and Patil Sachin Ashok are below serial number 24 in the merit list. They should, therefore, have been considered in the second cycle. Had they been considered in the second cycle, one "outsider" candidate in order of the merit would be placed in that cadre and that would have altered the list of cadre allocation. The Respondents have made the following statement in paragraph 4 of the impugned order at Annex A-8, by which the Applicant's representation has been rejected:

Keeping in view the above position of the Principles of Cadre Allocation, Shri. Dhruvjyoti De, the only insider candidate who had qualified the civil services examinations 2005 from West Bengal was allocated to the IPS Cadre of West Bengal as a General insider candidate in the first cycle. Likewise Shri Patil Sachin Ashok, the first available insider candidate who had qualified the civil services examination 2005 from Maharashtra was allocated to the IPS cadre of Maharashtra as a general insider candidate in the first cycle.

This, in our view, is contrary to the procedure indicated in paragraph 4 of the letter.

23. As regards the law declared in the decision in Rajiv Yadav's case (supra), the Tribunal noted that it did not advance the cause of the petitioners, instead it favoured the respondent's contention that the principles enunciated in the letter dated May 31, 1985 had the force of Rules and had to be followed. The Tribunal also noted Rule 5 of the Indian Police Service Cadre Rules, 1954 which reads as under:

5. Allocation of members to various cadres.-

(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.

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

24. Observing that the Central Government cannot have an unfettered and arbitrary right to allot cadres to candidates clearing the CSE and had to follow the principles articulated in the letter dated May 31, 1985 while exercising discretion under Rule 5(1) the Original Application filed by the respondent was allowed issuing the direction that only with respect to the respondent cadre allocation be re-worked out as per the policy contained in the letter dated May 31, 1985 and as clarified by the Tribunal.

25. During arguments of the writ petition a very peculiar situation arose. Pertaining to allocation of State cadre to those who were allotted the Indian Administrative Service, DoPT, the cadre controlling department for IAS was interpreting the letter dated May 31, 1985 in a manner which was projected by the respondent and which manner was upheld by the Tribunal but the Ministry of Home Affairs, the cadre controlling authority for IPS was interpreting the same in a diametrically opposite direction.

26. It is apparent that taking a cue from paragraph 3(4)(ii) of the letter dated May 31, 1985 and the phrase/sentence: "Since the number of cadres/joint cadres is 21, the cycles will be 1-21, 22-42, 43-63 and so on", (cycles now to be 1-24, 25-48 and so on) and applying the same, the DoPT has been following the procedure which we may understand, and since during arguments learned counsel for the respondents had the cadre allocation for IAS at the CSE-2007,

with reference to the cadre allocation for IAS at said CSE-2007. 110 candidates had to be allotted the Indian Administrative Service. The chart of allocation is as under:-

27. The serial number in bold indicates the insider candidates and the remaining the outsider candidates.

28. To understand how the allocation is done, the reader of our opinion would look at the chart without seeing the numbers 1 to 110 i.e. as if the second part of the tabular chart was blank and only the name of the State, the insider and outsider vacancies with reference to the number of candidates to a State cadre existed in the chart. Thereafter the insider vacancies being plotted on the second part of the table under the caption "Unreserved" "OBC and "SC/ST. To help the reader of our opinion, the reader would at the first instance ignore to see the numbers in the normal print and we highlight at serial No. 8 i.e. State of Bihar. 5 candidates had to be allotted to said State out of which 1 was insider and unreserved. 2 were outsiders unreserved and 1 each outsider in the OBC and SC/ST category. The first unreserved candidate was at serial merit position No. 36 who had opted for the home State and he being the senior most in the merit position if a merit list was drawn up of candidates from State of Bihar, DoPT placed him as an insider candidate at the second cycle leaving one slot vacant in the adjoining cell of the first cycle. It may be seen that when outsider allocations were done the candidate at serial No. 7 was allotted said slot because at the first stage only candidates at serial No. 1 to 24 had to be taken into account because the cycle was of 24 cadres. In case MHA had done the allocation the candidate at serial No. 36 would have been placed in the first cycle because he was the first candidate in order of merit from the State of Bihar who had opted for the State cadre.

29. The Tribunal has subscribed to the interpretation adopted by the DoPT and proceeded to pass the order dated January 03, 2008 bearing the same in mind. When dealing with how the cadre allocation had to be carried out, the Tribunal, in paragraph 7, of the order observed as under:

7. The allocation between "insider" and "outsider; has to be made as per paragraph 4 of the letter. In 1985, there were 21 cadres/Joint cadres. After creating of 3 more States in 2001, the number of cadres/Joint cadres has become 24. Therefore, the cycles will be 1-24, 25-48, 49-72 and so on instead of 1-21, 22-42, 43-63 and so on mentioned in paragraph 4(ii). In the instant case, paragraph 4(v) of the letter of 31.05.1985 is important. It is not disputed that both Dhrubjyoti De and Patil Sachin Ashok are below serial number 24 in the merit list. They should, therefore, have been considered in the second cycle. Had they been considered in the second cycle one "outsider" candidate in order of merit would be placed in that cadre and that what would have altered the list of cadre allocation...This, in our view is contrary to the procedure indicated in paragraph 4 of the letter.

30. On the other hand, the Ministry of Home Affairs has relied on paragraph 3 of the letter which states that allocation of insiders, both men and women will be strictly according to their ranks, subject to their willingness to be allocated to their home State.

31. Now, the problem is writ large. Whereas the Ministry of Home Affairs as also DoPT have interpreted the policy requiring candidates in order of merit to be seen in the cycle 1-24, 25-48, 49-72, 73-96, 97-120 and thus to said extent both are ad-idem, the point of diversion stems from the fact that the positioning of merit has determined the slotting in the applicable cycles when MHA has made the allocation vis-?-vis DoPT. To wit, since we have given the example with respect to State of Bihar, since the first candidate in order of merit in the unreserved category who had opted for State of Bihar was at serial No. 36, whereas as per MHA he would have been placed in the first cycle, DoPT has placed him the second cycle. Meaning thereby had MHA plotted the allocation the person at serial No. 36 would have been plotted against the first adjoining cell i.e. the place occupied by the candidate at serial No. 7.

32. The two interpretations stem from the malleability of the general principles of cadre allocation, which are enunciated in the letter dated May 31, 1985 and the further fact that a policy which did not envisage at the relevant time reservation for OBC has been applied. Applying the same as per DoPT a candidate first available as an insider for a particular cadre would be allotted the State cadre even if his merit position is not at merit serial No. 1 to 24 by requiring him to be placed at the first instance in the second cycle but MHA would place the candidate concerned notwithstanding he is not at merit serial No. 1 to 24 in the first cycle.

33. Notwithstanding that we have explained as above with reference to the example of the State of Bihar pertaining to IAS allocation for the CSE-2007 because during argument in Court said allocation chart was used as an exemplar, to illustrate theoretically the difference between the methodology adopted by the Department of Personnel and Training (DoPT) and Ministry of Home Affairs (MHA) while implementing the policy letter dated May 31, 1985 we take another example.

34. If there are 50 candidates to be allotted State cadres and the first insider candidate for a particular cadre is available at serial No. 47, as per merit position, the DoPT would place the concerned candidate in the second cycle of the Roster, since serial No. 47 falls within the cycle of 25 to 48, the cycle of the Roster being 1 to 24, 25 to 48 and so on. The reason being there are 24 cadres. On the other hand, the MHA would place the concerned candidate in the first cycle itself, since he is the first insider available candidate for that cadre.

35. We are faced with a peculiar problem. The malleability of the language used in the policy letter dated May 31, 1985 leaves ample scope for subjectivity and two views of the same policy emerge. Thus, it cannot be said that one view is

wrong. But, what about the argument that it would be a contradiction in terms to say that as per same policy it can be interpreted to mean that a same slot can be filled in the first cycle and also in the second cycle. The argument would be that whereas words and phrases are capable of having more than one meaning but the same have to be analogous and not in the opposite. We concede to the point that ordinarily it would seem irrational to accept a word or a phrase as having two meanings which are in the opposite. But what is seemingly ordinary may be missing a point. It is possible that the same word, phrase or a concept is capable of having two meanings in the opposite. A ready illustration would be the use of the word "crowd", with reference to a bus and a discotheque: "What would be an irritating crowd in a bus would be an atmosphere in a discotheque".

36. Humour apart, it is settled law that where a policy has been interpreted consistently for a long period of time and the interpretation does not violate any statute or the constitution, a Court would not upset an action taken pursuant to the policy if it is interpreted otherwise.

37. We highlight that the cadre allocation policy has since undergone a change in the year 2008 and the problem is not of a recurring kind. Strangely enough, till respondent raised the issue, nobody realized that DoPT and MHA, the two faces of the same kind were interpreting the policy in a different manner. Thus, respondent's case is the solitary instance with no precedentiary value and thus there is no need to direct that henceforth which out of the two interpretations should be followed. But we would be failing not to highlight that the interpretation by MHA appears to be the better interpretation for the reason we see logic in the fact that the cycles i.e. 1 to 24, 25 to 48 and so on have to be operated not as a mechanist but with logic. This means that the candidates have not be slotted as per their merit ranking in the cycles but the cycles have to be operated phase wise requiring the State at serial No. 1 to be looked at and identifying the first available candidate who had opted for the insider vacancy in the State and slotting the candidate in the first cycle against the insider vacancy. We highlight that it is the cycle which has to be operated and the list, as per merit, of the candidates is the reservoir from which the waters flow to operate the cycle. We allow the writ petition and quash the impugned order dated January 03, 2008. OA No. 1920/2007 filed by the respondent is dismissed but without any order as to costs.