

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 11480-81 OF 2018

Union of India and Anr.

.....APPELLANT(S)

VERSUS

Ms. A. Shainamol, IAS and Anr.

.....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

1. The present appeals, at the instance of Union of India¹, are directed against an order passed by the High Court of Kerala at Ernakulam on 28.02.2017 whereby the appellant was directed to allocate the respondent² herein to the Kerala cadre of the All-India Service.
2. The applicant is a candidate seeking appointment to the All-India Services in pursuance of the Civil Services Examination-2006³. The applicant was successful as she found her name at Serial No. 20 of

1 For short, the 'Union'

2 For short, the 'Applicant'

3 For short, the 'CSE-2006'

the candidates selected by the Union Public Service Commission⁴. She belongs to Muslim community and also to the Other Backward Class⁵. She was allotted Himachal Pradesh cadre after the Union sought the consent of Himachal Pradesh government on 13.11.2007, which was duly received on 17.12.2007.

3. It is thereafter that the applicant filed an Original Application under Section 19 of the Administrative Tribunals Act, 1985 before the Ernakulam Bench of the Central Administrative Tribunal⁶. The Tribunal directed the Union to allot and accommodate the applicant against the outsider OBC vacancy in the Maharashtra cadre by virtue of her merit over the candidate already identified and allotted the Maharashtra cadre. The Union and the applicant aggrieved against the said order filed writ petitions before the High Court of Kerala at Ernakulam. The writ petition of the Union challenging the direction of the Tribunal to accommodate the applicant in the Maharashtra cadre was allowed. Also, even the original application filed by the applicant for declaring and directing that the applicant is eligible to be allotted the Kerala cadre was allowed.
4. The facts are not in dispute. The applicant, though an OBC candidate, came on general merit without resorting to the relaxed

4 For short, the 'Commission'

5 For short, the 'OBC'

6 For short, the 'Tribunal'

standard for the candidates belonging to OBC. The applicant was one of the candidates belonging to Kerala and that the four other general category candidates were higher in merit than her. The placement of the applicant is as under:

Sl No.	Rank	Name of the Candidate	Category	Home State	Cadre Allotted	Allotted as
1	4	PRASANTH N	General	Kerala	Kerala	Insider
2	6	VYASAN R	General	Kerala	Nagaland	Outsider
3	13	NILA MOHANAN	General	Kerala	Assam Meghalaya	Outsider
4	17	REMYA MOHAN MOOTHADATH	General	Kerala	Gujarat	Outsider
5	20	SHAINAMOL A	OBC.	Kerala	Himachal Pradesh	Outsider

5. In the year in question, as per the policy, there was one post meant for Insider Unreserved candidate against which Prasanth N (Merit No. 4) from Kerala was allocated Kerala cadre. The second vacancy for OBC Outsider was allotted to Patil Ajit Bhagwatrao (Merit No. 131). The grievance of the applicant was that she had a better merit than Shri Sachindra Pratap Singh (Merit No. 26) who was allocated the Maharashtra cadre as an OBC candidate. The argument of the applicant was that she was higher in merit as an OBC candidate, therefore, she should have been allocated the Maharashtra cadre. Such argument was accepted by the Tribunal.
6. The High Court, in the writ petitions against the order of the Tribunal, inter alia held that the Kerala government had submitted

requisition for a minimum of 7 candidates. Even as per the Union, the cadre was of 124 direct recruits and the available officers were 119, therefore, there was a cadre deficiency of 5 officers. It was held that 5 admitted deficit vacancies were required to be filled up by following the outsider-insider ratio in the given cycle of 30-point roster, then there would be an insider vacancy, to be given either to the Scheduled Castes or Scheduled Tribes⁷ or the OBC. Since there was no SC/ST candidate, it had to be filled up by insider OBC, i.e., the applicant. It was also found that Rule 5(1) of the Indian Administrative Service (Cadre) Rules, 1954⁸ contemplates consultation with the State Government in respect of matter of allocation of cadre. Since there was no consultation with the government of Kerala, the Union is in breach of the mandate of Rule 5(1).

7. We find that the High Court has completely misread the statutory rules and the policy of allocation of cadre which would be discussed hereinafter.

8. The relevant rules, regulations and the policy instructions are required to be extracted before we proceed to discuss the respective contentions of the parties.

⁷For short, the 'SC/ST'

⁸ For short, the 'Cadre Rules'

“The Indian Administrative Service (Cadre) Rules, 1954

In exercise of the powers conferred by sub-section 1 of Section 3 of the All India Services Act, 1951 (LXI of 1951), the Central Government, after consultation with the Governments of the States concerned, hereby makes the following rules namely:

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2. Definitions: In these rules, unless the context otherwise requires-

(a) ‘Cadre officer’ means a member of the Indian Administrative Service;

(b) ‘Cadre post’ means any of the post specified under item 1 of each cadre in schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955.

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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.”

9. The relevant Indian Administrative Service (Recruitment) Rules, 1954⁹ and The Indian Administration Service (Appointment by Competitive Examination) Regulations, 1955¹⁰ read as under:

“The Indian Administrative Service (Recruitment) Rules, 1954.

In exercise of the powers conferred by sub-section (1) of section 3 of the All-India Services Act, 1951 (LXI of 1951), the Central Government after consultation with the

⁹For short, the ‘Recruitment Rules’

¹⁰For short, the ‘Competitive Examination Regulations’

Government of the States concerned, hereby makes the following rules, namely:-

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7. Recruitment by competitive examination.

7(1) A competitive examination for recruitment to the Service shall be held at such intervals as the Central Government may, in consultation with the Commission, from time to time, determine.

7(2) 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 State Government.

7(3) Appointment to the Service shall be subject to orders regarding special representation in the Service for Scheduled Castes Scheduled Tribes [and Other Backward Castes] issued by the Central Government from time to time in consultation with the State Governments.

Provided that the candidates belonging to the Scheduled Castes or Scheduled Tribes [or the other Backward Classes] and declared by the Commission to be suitable for appointment to the Service shall be appointed against unreserved vacancies in case they qualify for appointment to the Service based on their merit without recourse to the benefit of reservation. (Emphasis Supplied)

7(4) Candidates belonging to the Scheduled Castes or the Scheduled Tribes or Other Backward Classes declared by the Commission to be suitable for appointment to the Service with due regard to the maintenance of efficiency of administration may be appointed to the vacancies reserved for the candidates of the Scheduled Castes or the Scheduled Tribes or Other Backward Classes, as the case may be, under sub-rule (3).

Explanatory Note:- The Provisions for reservation in respect of the Other Backward Classes for recruitment to the Service was commenced from the year 1994 onwards and hence it is proposed to give retrospective effect to the provisions of sub-rule (3) of Rule 7 from the 1st day of

January 1994. It is certified that by giving retrospective effect to the provisions of the sub-rule (3) of Rule 7, nobody is being adversely effected.”

“The Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955

In pursuance of Rule 7 of the Indian Administrative Service (Recruitment) Rules, 1954, the Central Government, in consultation with the State Governments and the Union Public Service Commission, hereby makes the following regulations, namely:-

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7. List of successful candidates:

- (1) Subject to the provision of sub-regulation (2) the commission shall forward to the Central Government a list arranged in order of merit of the candidates who have qualified by such standards as the Commission may determine.
- (2) The candidates, belonging to any of the Scheduled Castes or the Scheduled Tribes may, to the extent of the number of vacancies reserved for the Scheduled Castes and the Scheduled Tribes, be recommended by the Commission by a relaxed standard, subject to the fitness of these candidates for selection to the Service.

Provided that the candidates, belonging to the Scheduled Castes and the Scheduled Tribes, who have been recommended by the Commission without resorting to the relaxed standard referred to in this sub-regulation, shall not be adjusted against the vacancies reserved for the Scheduled Castes and the Scheduled Tribes.”

10. The notification for conducting CSE-2006 was published in the Government of India Gazette on 03.12.2005. The relevant clauses

pertaining to allocation of cadre as provided by the notification read thus:

“NOTIFICATON
New Delhi, the 3rd December, 2005
RULES

No. 13018/6/2005-AIS(I).- The rules for a competitive examination-Civil Services Examination to be held by the Union Public Service Cofmmission in 2006 for the purpose of filling vacancies in the following services/posts are, with the concurrence of the Ministries concerned and the Comptroller and Auditor General of India in respect of the Indian Audit and Accounts Service, published for general information.”

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16 (1) After interview, the candidates will be arranged by the Commission in the order of merit as disclosed by the aggregate marks finally awarded to each candidate in the Main Examination. Thereafter, the Commission shall, for the purpose of recommending candidates against unreserved vacancies, fix a qualifying mark (hereinafter referred to as general qualifying standard) with reference to the number of unreserved vacancies to be filled up on the basis of the Main Examination. For the purpose of recommending reserved category candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes against reserved vacancies, the Commission may relax the general qualifying standard with reference to number of reserved vacancies to be filled up in each of these categories on the basis of the Main Examination:

Provided that the candidates belonging to the Scheduled Castes, Scheduled Tribes and the Other Backward Classes who have not availed themselves of any of the concessions or relaxations in the eligibility or the selection criteria, at any stage of the examination and who after taking into account the general qualifying standards are found fit for recommendation by the Commission shall not be recommended against the vacancies reserved for Scheduled Castes, Scheduled Tribes and the Other

Backward Classes. (Emphasis Supplied)

(2) While making service allocation, the candidates belonging to the Scheduled Castes, the Scheduled Tribes or Other Backward Classes recommended against unreserved vacancies may be adjusted against reserved vacancies by the Govt. *If by this process they get a service of higher choice in the order of their preference. (Emphasis Supplied)*

(3) The Commission may further lower the qualifying standards to take care of any shortfall of candidates for appointment against unreserved vacancies and any surplus of candidates against reserved vacancies arising out of the provisions of this rule, the Commission may make the recommendations in the manner prescribed in sub-rules (4) and (5).

(4) While recommending the candidates, the Commission shall, in the first instance, take into account the total number of vacancies in all categories. This total number of recommended candidates shall be reduced by the number of candidates belonging to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes who acquire the merit at or above the fixed general qualifying standard without availing themselves of any concession or relaxation in the eligibility or selection criteria in terms of the proviso to sub-rule (1). Along with this list of recommended candidates, the Commission shall also declare a consolidated reserve list of candidates which will include candidates from general and reserved categories ranking in order of merit below the last recommended candidate under each category. The number of candidates in each of these categories will be equal to the number of reserved category candidates who were included in the first list without availing of any relaxation or concession in eligibility or selection criteria as per proviso to sub-rule (1). Amongst the reserved categories, the number of candidates from each of the Scheduled Caste, the Scheduled Tribe and Other Backward Class categories in the reserve list will be equal to the respective number of vacancies reduced initially in each category.

(5) The candidates recommended in terms of the provisions of sub-rule (4), shall be allocated by the

Government to the Services and where certain vacancies still remain to be filled up, the Government may forward a requisition to the Commission requiring it to recommend, in order of merit, from the reserve list, the same number of candidates as requisitioned for the purpose of filling up the unfilled vacancies in each category.”

11. The Union had prescribed a procedure to be followed in the allotment of cadre to the officers of All India Services on 30.07.1984. All the cadres/joint cadres were divided into four groups and the 24 States were arranged in alphabetical order. Later, another procedure was circulated on 30/31.05.1985¹¹. It is the said allocation circular which was in force at the time of cadre allocation for the year 2007. Maharashtra, Manipur-Tripura, Nagaland, Orissa, Punjab, Rajasthan and Sikkim fell in Group III whereas Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala and Madhya Pradesh fell in Group II. The principles of allocation on the basis of roster system were as follows:

“Government of India
Ministry of Personnel & Training
Administrative Reforms and Public Grievances and Pensions

Secretary

D.O. No. 13012/5/84-AIS(I)

Dated 30/31 May 1985

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(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

11 For short, the ‘allocation circular’

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:

Group I : Andhra Pradesh, Assam, Meghalaya, Bihar and Gujarat.

Group II : Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala and Madhya Pradesh.

Group III : Maharashtra, Manipur-Tripura, Nagaland, Orissa, Punjab, Rajasthan and Sikkim.

Group IV : Tamil Nadu, Union Territory, Uttar Pradesh

and West Bengal.

- (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 III 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."

12. It has also come on record that as per a meeting held on 04.07.2002, the number of vacancies to be filled for IAS every year from 2002 up to 2007 worked out to be 85. Such decision was in terms of Rule 4 of the Cadre Rules. The review was contemplated to be after five years as against three years prevalent prior to notification dated 10.03.1995. It is not the case of any party that the States had not participated in the meeting held on 04.07.2002. It was also found that by the time this decision was taken, the process of Civil Services Examination-2002¹² was already initiated. Therefore, the Commission expressed its inability to recruit 85

¹²For short, the 'CSE-2002'

officers in the CSE-2002. Hence, it was decided to recruit 70 officers in CSE-2002 and distribute the remaining 15 vacancies over the next four years. Therefore, the actual requirement of vacancies for CSE-2006 became 89 (85+4).

13. There was requisition for 108 posts by the States as against the 89 posts available for allotment. Kerala had sought 7 to 14 officers as against 2 officers allocated to it. In the brief notes circulated on behalf of the Union before this Court on 24.09.2018, it was mentioned that there were total 595 districts in the country whereas Kerala had 14 districts at the time of distribution of vacancies for CSE-2006. Therefore, the vacancies in Kerala were determined as $14/595 \times 89 = 2.09$ (rounded off to 2). In the additional affidavit filed by the Union on 31.10.2018, it was also pointed out that strength of 89 was divided between the cadres on the ratio of number of districts in each State. The 2 vacancies in the State of Kerala were decided to be filled up in the following manner:

Total Vacancies			Category-wise Vacancies								
			UR			OBC			SC/ST		
T	I	O	T	I	O	T	I	O	T	I	O
2	1	1	1	1	0	1	0	1	0	0	0

T- Total, I-Insider Vacancies, O-Outsider Vacancies

14. In respect of the applicant, foot note was given that she is a General Merit Candidate. She had not availed any concessions/relaxations admissible to an OBC candidate.

15. In light of this factual background, the argument of the Union was that in terms of Rule 7(3) of the Recruitment Rules, candidates belonging to SC/ST or OBC shall be appointed against unreserved vacancies in case they qualify for appointment to the service based on their merit without recourse to the benefit of reservation. However, Rule 7(4) contemplates that the candidates belonging to SC/ST or OBC may be appointed to the vacancies reserved for the candidates of the SC/ST or OBC, as the case may be, under sub-rule (3) with due regard to the maintenance of efficiency of administration. It was thus contended that in terms of Rule 7(3), if a SC/ST or OBC candidate is appointed without recourse to the benefit of relaxed standard, they shall be appointed against unreserved vacancies. However, Rule 7(4) is an enabling provision, as an exception to Rule 7(3), that a SC/ST or OBC candidate may be appointed to the vacancies reserved for SC/ST or OBC candidates with due regard to maintenance of efficiency of administration. Therefore, in terms of the Recruitment Rules, the applicant was assigned Himachal Pradesh cadre as a general category candidate and in terms of sub-clause (v) and (vi) of Clause 4 of the allocation circular. The applicant had not availed

any concessions/relaxations as admissible to OBC candidates. Therefore, she was a general merit candidate. Sachindra Pratap Singh who was an OBC candidate had ranked 26 in the merit list. He had availed concessions and relaxations available to such OBC candidates unlike the applicant. Therefore, as an OBC candidate, the first vacancy of OBC was allocated to Maharashtra cadre as it was the first State in the grouping of cadres to be followed for cadre allocation. The scheme of grouping of cadres was that all 24 States were put in the four groups on the basis of the average over a period of time, by taking roughly equal number of candidates for each State on the basis of average of the last four years. The State cadres were then arranged again in alphabetical order but Group I of the previous year was placed at the bottom, i.e., the arrangement of the previous year at the bottom. Thus, the next year arrangement will begin with Group II on top. In the third year, Group III would come on top and so on. Thus the cadre allocation of the candidates selected on the basis of CSE 2006 were in the following manner:-

Changed Order of Grouping of Cadres to be followed for Cadre Allocation of IAS Candidates of CSE-2006			
Group I	Group II	Group III	Group IV
1. Maharashtra 2. Manipur Tripura 3. Nagaland 4. Orissa 5. Punjab 6. Rajasthan 7. Sikkim	1. Tamil Nadu 2. A G M U T 3. Uttarakhand 4. Uttar Pradesh 5. West Bengal	1. Andhra Pradesh 2. Assam Meghalaya 3. Bihar 4. Chhattisgarh 5. Gujarat	1. Haryana 2. Himachal Pradesh 3. Jammu & Kashmir 4. Jharkhand 5. Karnataka 6. Kerala 7. Madhya Pradesh

16. It was also argued that consultation contemplated under Rule 5(1) of the Cadre Rules was held with the State of Himachal Pradesh where the applicant was allocated. The offer of allocation of the applicant was accepted by the State of Himachal Pradesh. Therefore, the required consultation process was complete in respect of allocation of the applicant to the State of Himachal Pradesh. The High Court had thus completely erred in law in holding that the consultation was required to be done with the State of Kerala for the reason the applicant belongs to Kerala and wanted to be allocated to Kerala. No such consultation was warranted in respect of the applicant with Kerala Government as she was 5th in the merit list of the candidates from Kerala. The first vacancy meant for insider from a Kerala candidate was filled up by Prasanna N. The other vacancy was meant for outsider OBC which was filled in by a person at Serial No. 131 as Kerala was the second-last State in Group IV for that particular year.
17. It was also argued that decision to fill up 89 vacancies was an administrative decision keeping in view multiple factors including the availability of infrastructure for training of the candidates at Lal Bahadur Shastri National Academy of Administration, Mussoorie. It was contended that mere vacancy in the cadre or in a particular State does not confer any legal right for the State to demand

additional officers as such administrative decision is not confined to one State alone but to the entire country. Therefore, the officers could not be allocated to the State of Kerala in contravention to the policy decision of filling up 89 vacancies in the CSE-2006. Reliance was placed upon judgment of this Court reported as ***The State of Haryana v. Subhash Chander Marwaha and Ors.***¹³ and ***Shankarsan Dash v. Union of India***¹⁴.

18. The appellant also referred to a three Judge Bench judgment of this Court reported as ***Union of India and Ors. v. Rajiv Yadav, IAS and Ors.***¹⁵ wherein considering the allocation circular, it was held that a selected candidate had a right to consider the appointment of the IAS but he had no such right to be allocated to cadre of his choice or to his home state. Allocation of cadre was an incidence of service. The Court held as under:

“6. We may examine the question from another angle. 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. A member of an all-India Service bears liability to serve in any part of India. The principles of allocation as contained in clause (2) of the letter dated 31-5-1985, wherein preference is given to a Scheduled Caste/Scheduled Tribe candidate for allocation to his home State, do not provide for reservation of appointments or posts and as such the question of testing the said principles on the anvil of Article 16(4) of the Constitution of India does not arise. But for the

13 (1974) 3 SCC 220

14 (1991) 3 SCC 47

15 (1994) 6 SCC 38

“Roster System” it would be difficult rather impossible for the Scheduled Caste/Scheduled Tribe candidates to be allocated to their home States. The principles of cadre allocation, thus, ensure equitable distribution of reserved candidates amongst all the cadres.”

19. It was contended that a judgment of this Court reported as ***Union of India and Anr. v. Satya Prakash and Ors.***¹⁶ arises out of the fact where OBC candidates selected on merit were taken into consideration to determine the quota of OBC candidates. Therefore, the said judgment would not be applicable to the facts of the present case as it is not the case of any other parties that OBC candidates appointed on merit have been taken into consideration for determining the quota of OBC candidates for filling up of the post in terms of CSE-2006 notification.
20. On the other hand, learned counsel for the applicant argued that on the basis of the affidavit filed by the State of Kerala, there was no consultation with it in respect of allocation of the applicant to the State of Kerala. The reliance is based upon a Division Bench judgment of Kerala High Court reported as ***Union of India v. Jyothilal and Ors.***¹⁷ wherein for lack of consultation with the State, the Division Bench held as under:

16 (2006) 4 SCC 550

17 (2003) 3 ILR (Kerala) 516

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

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(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.”

21. It has been pointed out that Civil Appeal No. 47/2004 against the said judgment was decided on 03.05.2006 wherein it was held by this Court as under:

“Although a number of legal issues of seminal importance were sought to be raised and urged before us, it appears to us that there no final relief that can be granted to the Union of India in this Appeal. The first respondent has been working as an officer of the State of Kerala cadre for almost ten years. Therefore, it would be unjust and inequitable to direct his reallocation to the State of Orissa cadre, both from his point of view and from the point of view of the efficiency of the administration. We are, therefore, not inclined to make any such order with regard to the reallocation of the first respondent to the State of Orissa cadre.

In the result, we think that a just solution would be to dismissed this Appeal filed by the Union of India, keeping open all the issues of law raised in this Appeal to be urged and decided in a more appropriate case.”

22. It is argued that the applicant is an OBC candidate, therefore, she is in need of availing OBC status only at the time of cadre allocation, whereas the Union had overlooked this fact. The candidate at serial no. 26 had been allocated Maharashtra Cadre as an outsider, whereas, the applicant is also an outsider candidate so far as Maharashtra is concerned, therefore, she is entitled to be allocated to Maharashtra cadre.
23. The first question required to be examined is whether consultation in respect of allocation of cadre is required to be done with the State from which the candidate belongs or with the State to which the candidate is being allocated. The entire basis of claim of the applicant is that there was no consultation with the State of Kerala. The said argument is however untenable. The applicant was allocated to the State of Himachal Pradesh and there was a consent duly given by the State of Himachal Pradesh for her allocation to that State. In fact, no consultation was required to be carried out in respect of the applicant with Kerala State. Therefore, mandate of Rule 5(1) of the Cadre Rules is satisfied when consultation was made with the State to which allocation was made.
24. The State of Kerala has not disputed the decision arrived at in the meeting held on 04.07.2002, whereby the allocation of 89 vacancies to be filled up to the year 2007 was arrived at. Out of 89

vacancies, two vacancies were allocated to the State of Kerala, one to be filled up by an insider and other by an outsider OBC. The fact that the Kerala Cadre is deficient in respect of number of officers cannot be disputed by a successful candidate as such candidate had no right to claim additional vacancies so that the applicant can be assigned home state. The argument to claim that the entire deficient cadre should be made by allocation to one State in preference to other 23 States in the country is preposterous. The balancing of claims of all the States is to be carried by the Union and not by one State or by the Courts.

25. The allocation order was approved by this Court in **Rajiv Yadav**. The number of vacancies allocated to each State was again based on logical mechanism as the number of districts in the entire country i.e., 595 divided by the number of districts in the State. Thus, in this manner, the vacancies available for allocation to the various States were arrived at. Accordingly, the two vacancies were allocated to the State of Kerala and the allocation in other States was in respect of number of districts available in each State.
26. The applicant claimed allocation to the State of Kerala, i.e., her home cadre. There were 4 senior candidates in the general category. She was on merit as a general category candidate, having not availed any of the relaxed standards meant for a

candidate of OBC category. In terms of proviso to Rule 7(3) of the Recruitment Rules and the proviso to clause 16(1) in the notification inviting applications for CSE-2006, the candidates including the applicant were put to notice, that SC/ST or OBC candidates will be treated as General Category Candidates who have not availed any concession or relaxation. The applicant was thus rightly treated as General Category candidate. In terms of Clause 16(2) of the CSE-2006 notification, the candidates belonging to the SC/ST or OBC recommended against unreserved vacancies may be adjusted against reserved vacancies by the Government, if by this process they get a service of higher choice in the order of their preference. The applicant was already allocated IAS as there was no question of change of service.

27. Therefore, as a general category candidate, there was no occasion for consultation with State of Kerala as the applicant was not even eligible to be considered for allocation to the said State in terms of the allocation order. The reasoning given by the High Court that there was cadre deficiency, therefore, the applicant was entitled to be allocated is strange and bereft of any merit.
28. The consistent view of this Court has been that even if the name of the candidate appears in the merit list, such candidate has no right to claim appointment. The Constitution Bench in a judgment

reported as ***Shankarsan Dash*** held as under:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165] , Neelima Shangla v. State of Haryana [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] , or Jatinder Kumar v. State of Punjab [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899].”

29. In ***Subhash Chander Marwaha***, this Court held that the existence of vacancies does not give any legal right to a candidate to be selected for appointment. It was held as under:

“10. One fails to see how the existence of vacancies give a legal right to a candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed. Indeed, if the State Government while making the selection for appointment had departed from the ranking given in the list, there would have been a legitimate

grievance on the ground that the State Government had departed from the rules in this respect. There is no constraint that the Government shall make an appointment of a Subordinate Judge either because there are vacancies or because a list of candidates has been prepared and is in existence. “

30. Therefore, the decision of the Union to fill only 89 vacancies in the cadre of IAS cannot be permitted to be disputed. The High Court had exceeded its jurisdiction to order allocation of Kerala Cadre to the applicant without examining the policy decision of the Union to fill up only 89 vacancies. The High Court again erred in law that an OBC candidate, who has not availed relaxation or concession, had to be treated as general category candidate.

31. Rule 7(3) of the Recruitment Rules contemplates that the candidate belonging to the SC/ST or OBC found suitable by the Commission for appointment to the service “*shall be appointed against unreserved vacancies*” in case they qualify for appointment to the service based on their merit without recourse to the benefit of reservation. Such provision in the rule is a consonance with the judgment of this Court in ***Indra Sawhney and Ors. v. Union of India and Ors.***¹⁸ which reads thus:

“811. In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own

18 (1992) Supp. 3 SCC 217

merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.”

32. Rule 7(4) is to be read as a proviso to Rule 7(3) of the Recruitment Rules which permits the appointment of candidates of SC/ST or OBC against the vacancies reserved for such candidates *“with due regard to the maintenance of efficiency of administration”*. Therefore, if a SC/ST or OBC candidate who has been found suitable for appointment against the unreserved vacancies can be appointed against the vacancy reserved for SC/ST or OBC, provided a conscious decision is taken with regard to the maintenance of efficiency of administration.
33. The applicant though belonging to OBC has not availed any relaxations or concessions admissible to OBC candidates. She was a general merit candidate, thus not entitled to OBC reserved seat in her State. She was allocated to Himachal Pradesh cadre as a general category candidate falling in Rule 7(3) in view of her merit position as a general category candidate.
34. Regulation 7 of the Competitive Examination Regulations framed under the Recruitment Rules does not make mention of OBC candidate in the list of successful candidates published under Rule 7 but such regulation has to be read in terms of Rule 7 of the Recruitment Rules as such regulations have been framed in

exercise of the powers conferred under Rule 7 of the Recruitment Rules. It may be a situation of *casus omissus* but since such regulation is not in tune with Rule 7 of the Recruitment Rules, it has to give way to the statutory rules framed. The regulations cannot be in conflict with the statutory rules. Therefore, the non-inclusion of OBC in Regulation 7 is inconsequential for the purposes of the present appeals as the case of the applicant falls within Rule 7 of the Recruitment Rules.

35. We find that Sachindra Pratap Singh was the first OBC candidate who had availed concessions or relaxations as OBC and was allocated to Maharashtra cadre, being the first State in Group I in the scheme of grouping of States or cadres. Therefore, the applicant had no claim appointment to the Maharashtra cadre. She had no right to the Kerala cadre as well as the second post in the vacancies in the State of Kerala was meant for an OBC outsider candidate. Since Kerala was second last State in Group IV, the OBC candidate at Serial No. 131 was allocated such cadre.
36. The appeal before this Court in **Satya Prakash** was against an order passed by the Delhi High Court reported as **Satya Prakash v. Union of India**¹⁹. In the aforesaid case, an OBC candidate was not appointed to any of the Central Services as the Union had taken the candidates appointed on general merit though belonging

19 Union of India, 2002 SCC On Line Del 1000 = (2002) 99 DLT 749 (DB)

to OBC to determine the percentage of appointed OBC candidates. The Delhi High Court was examining CSE-1996 which was a notification inviting applications for 28 different categories of services. In fact, rules mentioned in the said judgment are not the rules but clauses provided in the advertisement. The core question and the answer to the question posed are as under:

“12. The core question which arises for consideration in these writ petitions, is as to whether those OBC candidates were selected on merit and were placed in the list of open category candidate having regard to the decision of the Apex Court in *Ritesh R. Sah's case* (supra), could still for the purpose of placement be considered to be OBC candidate leading to deprivation of the other OBC category candidates from allocation of service whatsoever.

13.So far as the reserved category candidates are concerned, the recommendations of the Commission have to be considered having regard to the relaxed standard applied in their case, as is evident from Sub-rule (ii) of Rule 16 aforementioned. The proviso appended to Rule 16 in no uncertain terms states that such candidates belonging to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes, who had been recommended by the Commission without resorting to the relaxed standard, i.e., on merit, shall not be adjusted against the vacancies reserved for the respective reserved category candidates.

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15. The decision of the Apex Court in *Ritesh R. Sah's case* (supra), as also the proviso to Rule 16 clearly prohibit deprivation of the benefit of the reservation only because some reserved category candidates had also been selected on merit inasmuch as they were not to be treated as reserved category candidates except for a limited purpose, namely, for the purpose of allocation of service, but thereby OBC candidates cannot be deprived of their right to obtain allocation of any service.

.... It cannot be contended that both for the purpose of allocation of job as also for the purpose of computation as regards number of OBC category candidates those OBC candidates selected on merit although were to be treated as general category candidates but for all intent and purport they would still be considered to be the reserved category candidates.

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17.The Apex Court clearly held that if a candidate is entitled to be admitted on the basis of his own merit then such admission should not be counted as against the quota of the Scheduled Castes or Scheduled Tribes or any other reserved category since the same would be against the constitutional mandate of Article 16(4) of the Constitution of India.”

37. It is the appeal against the said judgment which was dismissed by this Court on 05.04.2006 in **Satya Prakash**. The clause in the advertisement published on 3.12.2005 is prior to the Judgement of this Court, therefore, certain clauses in the Rules and/ or advertisement may not be consistent with the law laid down by this Court in **Indra Sawhney**. But such question does not arise for consideration of this Court; therefore, it is not necessary to decide the legality and validity of the Rules.
38. The notification dated 3.12.2005 inviting applications for CSE-2006 was in terms of Rule 7 of the Recruitment Rules and also the allocation circular. The proviso to clause 16(1) of the notification contemplates that if an SC/ST or OBC candidate has not availed any concessions or relaxations in the eligibility or selection criteria

at any stage of the examination, and if after taking into account the general qualifying standards is found fit for recommendation by the Commission, they shall not be recommended against the vacancies reserved for SC/ST and OBC.

39. It is sub-clause (2) of Clause 16 of CSE-2006 which gives an option to SC/ST or OBC candidate recommended against unreserved vacancies to be adjusted against reserved vacancies, if by this process they get a service of higher choice in order of their preference. Thus, an SC/ST or OBC candidate selected against unreserved vacancy as a general merit candidate cannot make a grievance in respect of allocation of cadre but has a right to seek service as a reserved category candidate if that improves the selection of service. In fact, all the candidates including the applicant were put to notice as to how the cadre allocation would be made. But still, the applicant chose to claim home state though she was not eligible to be considered for such state. She had taken chance in appearing in the selection process but when she was unsuccessful in getting the home cadre, attempts were made to get into the home cadre on wholly untenable grounds.
40. In the light of **Rajiv Yadav**, the allocation of cadre is not a matter of right. It was 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. As stated above, allotment of cadre is an incidence of service. The applicant as a candidate for the All-India Service with eyes wide open has opted to serve anywhere in the country. Once an applicant gets selected to service, the scramble for the home cadre starts. The procedure for allocation of cadre is a mechanical process and admits no exception except in terms of Rule 7(4) which is to be read as proviso to Rule 7(3). The State has no discretion of allocation of a cadre at its whims and fancies. Therefore, the Tribunal or the High Court should have refrained from interfering with the allocation of cadre on the argument of alleged violation of the allocation circular.

41. We find the observation of the High Court that there was a lack of consultation with the State of Kerala is not acceptable. Such consultation was not required to be carried out as discussed above. The finding of the High Court that the determination of total vacancies to be 89 was affected without any regard to cadre gap and on the ground that the requisition by the State Government was ignored as the rules and regulations warranted a mandatory consultation with the State of Kerala. We find that such conclusions are not supported by the documents on record including the additional affidavit filed by the Union. The findings of the High Court that the action of the Union was arbitrary as the

allocation to certain States was more than the cadre gap is again not sustainable as the 89 vacancies were allocated to the States on the basis of the norms as disclosed in the brief notes submitted before this Court.

42. The judgment of the Kerala High Court in **Jyothilal** again proceeds on the assumption that consultation was required to be carried out with the State of Kerala though the candidate was allocated to the State of Orissa. The judgment proceeds on basic fallacy that consultation has to be with the State to whom the officer is to be allocated, not with the State with whom the officers claim allocation.
43. Before parting, we would like to observe that in terms of Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987, an application before the Central Administrative Tribunal is required to be filed where the applicant is posted for the time being or the cause of action wholly or in part has arisen. The applicant in her Original Application has not laid any foundation as to how the Ernakulam Bench of the Central Administrative Tribunal will have the jurisdiction to entertain an Original Application filed by her. It appears that the applicant had chosen the Ernakulam Bench for the reason that she was permanent resident of Kerala State. The applicant was not posted in the State of Kerala on the date of filing

of the application. The applicant has not explained how the cause of action either wholly or partly had arisen within the jurisdiction of the Tribunal at Kerala.

44. This Court in a judgment reported as ***Oil and Natural Gas Commission v. Utpal Kumar Basu & Ors.***²⁰ was examining filing of a writ petition before the Calcutta High Court for the reason that the writ petitioner would suffer loss at its registered office which is situated within the jurisdiction of the Calcutta High Court. It may be stated that broadly language of Article 226 and Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987 is similar. This Court considering Article 226 (2) of the Constitution held as under:

“8. From the facts pleaded in the writ petition, it is clear that NICCO invoked the jurisdiction of the Calcutta High Court on the plea that a part of the cause of action had arisen within its territorial jurisdiction. According to NICCO, it became aware of the contract proposed to be given by ONGC on reading the advertisement which appeared in the *Times of India* at Calcutta. In response thereto, it submitted its bid or tender from its Calcutta office and revised the rates subsequently..... Therefore, broadly speaking, NICCO claims that a part of the cause of action arose within the jurisdiction of the Calcutta High Court because it became aware of the advertisement in Calcutta, it submitted its bid or tender from Calcutta and made representations demanding justice from Calcutta on learning about the rejection of its offer. The advertisement itself mentioned that the tenders should be submitted to EIL at New Delhi; that those would be scrutinised at New Delhi and that a final decision whether or not to award the

20 (1994) 4 SCC 711

contract to the tenderer would be taken at New Delhi. Of course, the execution of the contract work was to be carried out at Hazira in Gujarat. Therefore, merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action. Besides the fax message of 15-1-1993, cannot be construed as conveying rejection of the offer as that fact occurred on 27-1-1993. We are, therefore, of the opinion that even if the averments in the writ petition are taken as true, it cannot be said that a part of the cause of action arose within the jurisdiction of the Calcutta High Court.”

45. This Court in a Judgment reported as ***Alchemist Ltd. v. State Bank of Sikkim***²¹, reviewing the entire case law to determine as to when the cause of action wholly or in part arises held that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. This Court held as under:-

“**37.** From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a *material, essential, or integral* part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a “part of cause of action”, nothing less than that.”

21(2007) 11 SCC 335

46. The Full Bench of the Jurisdictional High Court in a judgment reported as ***Nakul Deo Singh v. Deputy Commandant***²² was considering an Original Petition filed before the Kerala High Court by a Head Constable working in the Central Industrial Security Force Unit at Bokkaro Steel Plant. In the said case, the disciplinary authority and the appellate authority were situated outside the territorial jurisdiction of the High Court. The applicant claimed that since the order of appellate authority was received within the jurisdiction of the Kerala High Court, therefore, it will have the jurisdiction to entertain the Original Petition. The Court held as under:

“29.It appears to us that the decisions in *Swaika* At best receipt of the order or communication only gives the party a right of action based on the cause of action arising out of the action complained of. When that action complained of takes place outside the territorial jurisdiction of the High Court and an appeal therefore is dismissed by an authority located outside the jurisdiction of the High Court cause of action wholly arises outside the jurisdiction of the High Court and Art. 226(2) of the Constitution cannot be invoked to sustain a Writ Petition in this High Court on the basis that a part of the cause of action has arisen within the jurisdiction of this court, merely because the appellate order communicated from the seat of the appellate authority was received while the petitioner was residing or working within the jurisdiction of this court Acceptance of the argument that the situs of the receipt of the order will determine the jurisdiction can lead to a position where a litigant would be in a position to choose his own court for the purpose of redressal of his grievance. All that he need do is to move over to a particular place for receiving the communication from the appellate authority and then approach the High Court of

22 1999 SCC OnLine Ker 366

that place with a plea that that court had jurisdiction because the order of the appellate authority was served on him while he was residing within the jurisdiction of that High Court No litigant can have a right to choose the court for seeking relief and the mere introduction of clause 2 of Art. 226 does not alter that position.”

47. It may be noticed that Union had not raised objection about the entertainment of an Original Application filed by the applicant before the Ernakulam Bench of the Central Administrative Tribunal. It appears that the applicant filed an application before the Ernakulam Bench for the reason that she was permanent resident in the State or may be for the reason, the order of allocation was received by her in the State of Kerala. Both of these reasons do not give rise to part of cause of action arising within the Jurisdiction of the Ernakulam Bench of Tribunal. At this stage, the applicant is not being non-suited on the ground that the Ernakulam Bench of the Tribunal had no jurisdiction.
48. In view of the above, the appeals are allowed and the orders passed by the High Court and the Tribunal are set aside and the original application filed by the applicant is accordingly dismissed.

.....J.
(HEMANT GUPTA)

.....J.
(V. RAMASUBRAMANIAN)

**NEW DELHI;
OCTOBER 22, 2021.**