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* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No.2211/2011

BISHNU CHARAN MALLICK Petitioner
 Through: Mr. T.V. George & Mr. Maurya Sarkar,
 Advs.

Versus

SECRETARY, DEPARTMENT OF ADMINISTRATIVE
 REFORMS & PUBLIC GRIEVANCE & ORS. Respondents
 Through: Mr. R.V. Sinha & Mr. R.N. Singh, Advs.
 for R-1&2.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
08.11.2011

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1. The petition impugns the order dated 20.01.2011 of the Principal Bench of the Central Administrative Tribunal (CAT) dismissing O.A.No.2698/2009 preferred by the petitioner under Section 19 of the Administrative Tribunal Act, 1985 and thereby negating the claim of the petitioner, who cleared the Civil Services Examination, 2006, to the Cadre of his Home State, Orissa.

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 file and no page is missing.

2. The Tribunal has given three reasons for declining the relief to the petitioner. Firstly, that a selected candidate though has a right to be considered for appointment to the IAS but has no right to be allocated a Cadre of his choice or to his Home State and that allotment of Cadre is an incidence of service. Reliance in this regard was placed on *Union of India Vs. Rajiv Yadav* 1994 (6) SCC 38; Secondly, it was held that no error was found in the allocation of Cadres; Lastly, it was held that the petitioner had not impleaded the persons who would necessarily have to be moved out of the Orissa Cadre if the claim of the petitioner was to be accepted and in the absence of which persons, no relief could be granted to the petitioner.

3. The counsel for the respondent appearing on advance notice has also contended that the challenge was made by the petitioner belatedly i.e. after two years.

4. The counsel for the petitioner before us has taken great pains to urge that the Policy for allotment of a cadre had been violated in depriving the petitioner of his Home Cadre. The petitioner belongs to the Scheduled Caste category and had obtained 11th position in the merit list in the Civil Services Examination, 2006. It is not in dispute, that in the relevant year 2007, of the four vacancies in Orissa Cadre only one was Insider earmarked

for General Category and the other three were Outsider, one each for General, SC/ST & OBC; that the said Insider vacancy was allocated to Sh. Arvind Aggarwal from General Category having 8th i.e. better rank than the petitioner and also belonging to Orissa State. The crux of the argument of the petitioner is that the lone Insider vacancy though in the relevant year belonging to General Category, ought to have been treated as belonging to reserved category owing to the Policy reserving 22.5% of total number of Insider vacancies for reserved category but the overall reserved category insider officers in the State being less than 22.5%, being only 10.52%. The petitioner thus contends that all insider vacancies, even if in subsequent years belonging to general category, ought to be allocated to reserved category till the prescribed ratio is achieved. Reliance is placed on principles laid down in *R.K. Sabharwal Vs. State of Punjab* (1995) 2 SCC 745.

5. The Tribunal in the impugned order has also dealt in detail with the said contention of the petitioner. The Tribunal has held that the ratio of the Insider Quota of the SC/ST Category has to be maintained in the overall recruitment to the Civil Services in each year and the unfilled / Insider vacancies in the reserved category of a particular year are not carried

forward to the next year.

6. We have perused the Policy. We are unable to decipher therefrom any requirement to so carry forward the reserved Insider vacancies to the subsequent year or to maintain overall reservation to the extent of 22.5% in the Insider quota. The working of the Policy for allocation of Cadre is dependent on the total number of vacancies to be filled up on the basis of a particular examination and which are distributed from amongst the general, SC/ST, OBC categories and thereafter among various Cadres. The distribution of Insider and Outsider vacancies in each Cadre itself is on a rolling basis between different States and unfilled reserved Insider vacancies devolve each year to General Category candidates. On perusal of Policy, we do not find any scope therein for carry forward of reserved insider vacancies and if the same were to be introduced, it would make the entire Policy as exists, unworkable.

7. There is another aspect of the matter. Allocation of insider vacancies within a category is strictly on the basis of ranks. If it were to be held that the reserved category vacancies are to be so carried forward, a situation may well arise where notwithstanding category vacancy, the candidate with highest rank may be deprived of his Home State. Such a situation will

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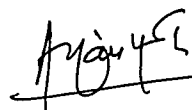
amount to making candidates taking examination in a particular year competing not only amongst themselves but also with those who had taken the exam in previous year. The same will be contrary to competition and cannot be permitted. Moreover, when the Scheme itself provides for yearly distribution / allocation, the concept of carry forward cannot be introduced, specially when, as held by the Apex Court, there is no right to a particular Cadres.

8. Merit is also found in the contention that the petition preferred by the petitioner was bad for non joinder of necessary parties. The petitioner could not have been given the relief without displacing Sh. Arvind Aggarwal aforesaid from Orissa Cadre in as much as appointments beyond vacancies could not have been made. The Tribunal correctly distinguished the judgments cited by petitioner in this regard by observing that the present was not a case of challenge to any Rules for it to be said that affected parties were not required to be impleaded; the present was a case of interpretation of or challenge to executive instructions.

9. We may also notice that the Policy / Scheme aforesaid though labelled as "Roster System" ought not to be confused with the term as used in service jurisprudence and is merely a method of allocation of Cadre.

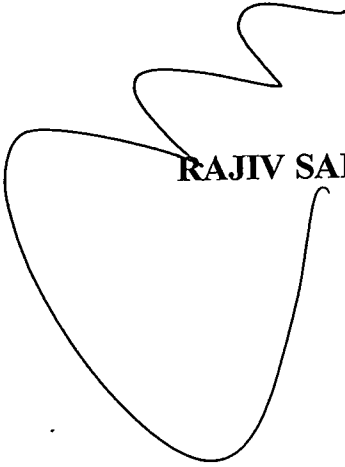
R.K. Sabharwal would have no application.

10. No case requiring judicial review of the well reasoned order of the Tribunal is made out. There is no merit in the petition. Dismissed. No order as to costs.



ACTING CHIEF JUSTICE

NOVEMBER 08, 2011
'gsr'



RAJIV SAHAI ENDLAW, J