

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

Judgment Reserved on August 12, 2013

Judgment Delivered on October 07, 2013

+ **W.P.(C) 2544/2012**

SHANKAR LAL KUMAWAT Petitioner

Represented by: Ms.Aishwarya Bhati, Advocate

versus

UNION OF INDIA Respondents

Represented by: Mr.Sachin Datta, Advocate with
Ms.Ritika Jhurani, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition is to the order dated March 07, 2012 passed by the Central Administrative Tribunal in Original Application No.2579/2011, whereby the claim of the petitioner inter-alia for a direction to allocate him his home cadre of Rajasthan instead of Tamil Nadu was rejected.

Facts

2. The petitioner was a successful candidate of Civil Services Examination (hereinafter referred to as CSE), 2009 and was allotted Indian Administrative Service (IAS).

3. The respondent notified the CSE Rules, 2009 vide Gazette Notification dated December 06, 2008. Rule 2 stipulated that a candidate was supposed to indicate his/her preferences for various services/post for which he/she would like to be considered for appointment. The said Rule also stipulated that a candidate shall be required to indicate in his/her

application form for main examination his/her preference for various State Cadres.

4. Further Rule 19(ii) of CSE Rules, 2009 stipulated that the cadre allotment to candidates' appointment to IAS/IPS will be governed by the policy of cadre allotment in force at the time of allotment of cadre. Due consideration will be given at the time of making allocation on the results of the examination to the preferences expressed by a candidate for various cadres at the time of his application.

5. Some of the preferences which the petitioner gave for various State Cadres in case of his appointment to IAS/IPS in his main examination form are as follows:

State/Cadre	Preference
XXXX	XXXX
(viii) Himachal Pradesh	03
XXXX	
(xviii) Punjab	02
(xix) Rajasthan	01
XXXX	
(xxi) Tamil Nadu	13

6. The result of CSE, 2009 was declared on May 06, 2010 and the petitioner obtained rank 168 and was allocated the Indian Administrative Service (IAS).

7. In the Rajasthan Cadre there were four vacancies in IAS. The same is given in the tabular form:

<u>Category</u>	<u>General</u>	<u>OBC</u>	<u>SC/ST</u>
Insider	01	01	Nil
Outsider	Nil	02	Nil

8. The four vacancies were filled in the following manner:

Sl. No.	Rank	Name of the Candidate	Category	Home State	Cadre Allotted	Allotted as
1	2	PRAKASH RAJPUROHIT	General	Rajasthan	Rajasthan	Insider
2	29	JITENDRA KUMAR SONI	O.B.C	Rajasthan	Rajasthan	Insider
3	77	NEHA GIRI	O.B.C	Uttar Pradesh	Rajasthan	Outsider
4	111	R VENKATESH KUMAR	O.B.C	Tamil Nadu	Rajasthan	Outsider

9. The successful candidates reported to LBS National Academy of Administration, Mussorie for their Foundation Course on August 30, 2010. The respondent issued Cadre allocation policy in terms of O.M dated April 10, 2008.

10. The Foundation Course which started from August 30, 2010 at LBSNAA, Mussoorie was over on December 12, 2010 and thereafter, the next phase of training at LBSNAA, Mussoorie had started from February 20, 2011. However, even at that point of time no cadre allocation of IAS-2010 was done by the respondent.

11. The Respondent issued an O.M. dated April 21, 2011 vide which para 9 of the existing O.M. dated April 10, 2008 was amended. The said amendment was brought into force with effect from CSE, 2009

12. Pursuant to the publication of O.M. dated April 21, 2011, the respondent published the complete cadre allocation of CSE, 2009 on May 12, 2011. The petitioner was allocated Tamil Nadu Cadre.

13. The petitioner thereafter submitted his representation dated May

19, 2011 to the respondent, wherein he requested for his allocation to his home cadre Rajasthan instead of Tamil Nadu, however, no response was made thereto.

14. The petitioner thereafter sent reminders dated May 28, 2011 and June 07, 2011, however, there was no response from the respondents.

15. The petitioner approached the Tribunal by filing Original Application No.2579/2011, wherein he had sought the following reliefs:

(a) Quash O.M dated 21/04/2011 of the Respondent to the extent of retrospectivity attached to it, and

(b) Consequently direct the Respondent to dispose of the representation dated 19/05/2011 of the Applicant and allocate him his home cadre Rajasthan instead of Tamilnadu cadre allocated to him, and/or

(c) Pass such other or further order/orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

16. The case of the petitioner before the Tribunal was essentially on four grounds. Firstly, reliance was placed on Rule 19(ii) of Civil Services Examination Rules, 2009 which provides that the cadre allocation to candidate appointed to IAS and IPS will be governed by the policy of cadre allocation in force at the time of allocation of cadre. The result of the Civil Services Examination were declared on May 06, 2010 and the Foundation Course commenced on August 30, 2010 and thus for the purpose of allocation of his cadre his case should have been considered in accordance with the policy in force at the time of allocation i.e. April 10, 2008 and not Cadre Allocation Policy dated April 21, 2011. Secondly, it was the case of the petitioner that in the light of the settled principle of law retrospective effect cannot be given to

an Executive order unless the statutory provisions permits the authorities to give such retrospective effect. It was also the stand that in the light of Doctrine of Promissory Estoppel the respondents are bound to allocate him in accordance with the Cadre Policy dated April 10, 2008.

17. Thirdly, it was the case of the petitioner that even though Section 3 of the All India Service Act, 1951 confers the power on the respondents to give retrospective effect to the rules framed by it for the purpose of regulation of recruitment and the conditions of service of persons appointed through All India Service but such retrospective effect cannot be given effect to the extent that any person to whom such rule is applicable is prejudicially effected.

18. Finally the petitioner stand was that according to paragraph 10 of the Cadre Allocation Policy the exercise of allocation of cadre must be done as early as possible and before the commencement of the Foundation Course at Lal Bahadur Shastri National Academy of Administration. According to him since the results have been declared on May 06, 2010 and Foundation Course commenced on August 30, 2010 the respondents should have published the complete cadre allocation before August 30, 2010 but instead the respondents published the same at a much belated stage only on May 12, 2011 and therefore the cadre allocation is bad.

19. The respondent has taken the following stand in its reply before the Tribunal:

7. That when a person is appointed to 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. Rule 5 of the relevant Cadre Rules makes the Central Government, the sole authority to allocate the members of service to various cadres. It is not obligatory for the

Central Government to frame rules/regulations or otherwise notify the principles of cadre allocation.

8. That the Hon'ble Supreme Court of India in the matter of "Union of India Vs. Rajiv Yadav", reported in 1994(6) SCC 38 has held that a selected candidate at best has a right to be considered for appointed to the IAS, but he has no such right to be allocated to a cadre of his choice or to his home state. Allotment of cadre is an incidence of service and a member of an All India Service bears liability to serve in any part of the country.

9. That All India Service is created under Article 312 of the Constitution in national interest and is common to both the Union and the States. A member of an All India Service, therefore, bears liability to serve either the Union or the State to which he is allocated.

9.1 That so long as he is allocated to a state in accordance with the principles of cadre allocation framed by the respondent in larger public interest and upheld by the Hon'ble Supreme Court, the applicant cannot have any grievance merely because the cadre to which he is allocated does not suit him and is not preferred by him.

10. That direct recruitment to the Indian Administrative Service is made on the basis of annual Civil Services Examination conducted by the Union Public Service Commission. As all the IAS officers are born on State/Joint Cadres, the candidates recruited to the IAS through this examination are required to be allocated to various cadres. This is done by following set principles. In the first stage, the total number of vacancies to be filled on the basis of particular examination is determined. The vacancies so determined are intimated to the UPSC and are notified. The UPSC in turn, recommends candidates belonging to each category equal to the number as worked out on the basis of the 200-point roster as notified to the UPSC.

10.1 That in the second stage the total number of

vacancies so determined, are distributed among various cadres. In the third stage, the vacancies earmarked for each cadre are divided among General, OBC, and SC/ST categories. The distribution of vacancies equals to the total number of vacancies as reported to the commission and it never altered.

11. That after distribution of vacancies among various cadres the next stage is the distribution of vacancies earmarked for each category into two categories, namely, those to be filled up by insider i.e., candidates hailing from the respective states and the vacancies to be filled up by outsiders i.e., candidates hailing from outside the state and opted to be allocated home State. The distribution of vacancies between insider and outsiders is done.

12. That the distribution of vacancies as 'outsider' and 'insider' in each cadre is made through application of two 30-points rosters – one for the distribution of total vacancies and the other for distribution of reserved vacancies. The rosters follow the points Outsider – Insider – Outsider; Outsider – Insider – Outsider and so on till all the points in the rosters are exhausted. The application of the above rosters ensures distribution of vacancies as 'outsider' and 'insider' in the prescribed ratio of 2:1 over a period of time, if not in a particular year. Since the vacancies in various cadres are often not 3 or in multiple of 3, any attempt to distribute the vacancies for a particular year taken as a single unit would result in fractions, thereby creating impediment in working out 'insiders' and 'outsiders' consequently stalling the process of cadre allocation.

12.1 That above all, the roster system of allocation followed for allotment of IAS has stood the test of judicial scrutiny of the Hon'ble Apex Court in Rajiv Yadav's (supra) and "Union of India vs. Mhathung Kithan & Ors." reported in 1996(10) SCC 562.

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16. That it is submitted that the revised Cadre Allocation Policy issued vide OM dated 10.4.2008 was implemented with effect from CSE 2008 (IAS 2009 batch) for three All India Services viz. IAS, IPS and IFoS. After completion of the Cadre allocation, it was observed by MHA in respect of an IPS candidate that the certain candidates belonging to reserved category but qualified on general merit could not be allocated cadre of their higher preference for want of vacancy in UR category at their turn. Whereas, there was vacancy in their own category in the cadre for which they had expressed the higher preference but against that the candidates of his category who had qualified on relaxed standards and was lower in a merit vis-a-vis the particular reserved category (GM) candidate was allocated that cadre. This resulted in anomalous situation where a candidate fell in disadvantageous position because of his merit whereas the candidate of his own category who had qualified on relaxed standards and was in lower in merit was allocated cadre of his higher preference.

17. That it is further submitted that while considering the cadre allocation for CSE 2009 (IAS 2010 batch) also it was observed that some reserved category candidates who qualified on general standards were not getting cadre of their higher preference, though there was vacancy in their own category which was getting allocated to less meritorious candidates qualified on relaxed standards. In order to remove this anomaly and to give just and proper treatment to reserved category GM candidates it was decided to amend para-9 of the said policy suitably.

18. That in view of the above, para-9 of the policy was amended on 21.4.2011 and was applied for the CSE 2009 (IAS 2010 batch) for which cadre allocation was still not done. Therefore, it is incorrect to say that the amendment notified in para-9 of the policy issued on 21.4.2011 was to CSE 2009, made applicable retrospectively. It is further submitted that Policy has corrected anomalous situation where in higher ranked reserved category candidates were put to disadvantageous position vis-a-vis lower ranked

candidates of the same category. The applicant cannot be allowed to claimed better preference of choice of cadre vis-a-vis higher candidate of his own category.

20. The Tribunal dismissed the Original Application by holding that the Cadre Allocation Policy issued on April 21, 2011 does not suffer from any illegality or arbitrariness by giving effect for the selected candidates of the Civil Services Examination, 2009.

21. We have heard the learned counsel for the parties.

22. Ms.Aishwarya Bhati, learned counsel appearing for the petitioner would reiterate the submissions made on behalf of the petitioner before the Tribunal. She has taken us to the Civil Services Examination Rules, 2009, more specifically Rule 19(i) and 19(ii) and contended that in terms of Rule 19(ii) the cadre allotment to candidates appointed to IAS/IPS will be governed by the policy of cadre allotment in force at the time of allotment of cadre. According to her in terms of Rule 19(i) the appointment to various services will be governed by the rules and regulations in force as applicable to the respective services at the time of appointment.

23. She has drawn our attention to the Cadre Allocation Policy issued vide O.M dated April 10, 2008 and relied upon clause 9 and 10 of the said O.M. According to her it is this policy which would determine the allocation of the cadre in the case of the petitioner inasmuch as in terms of clause 10 of the policy cadre allocation exercise shall be done before the commencement of the Foundation Course in the Lal Bahadur Shastri National Academy of Administration. In this case the results having been declared on May 06, 2010, and the petitioner joined the Foundation Course on August 30, 2010 the allocation should have been made before August 30, 2010 when the policy dated April 10, 2008 was

in vogue. She has also drawn our attention to the office memorandum dated April 21, 2011 to contend that the amendment would have a prospective effect and not at least to the candidates governed by the Civil Services Examination Rules, 2009. She has referred to the procedure laid down in the memorandum dated June 15, 2011, wherein the Department of Personnel and Training had laid down the procedure for implementing the para No.9 of the Cadre Allocation Policy dated April 21, 2011. According to her great prejudice has been caused to the petitioner inasmuch as the petitioner was sure that as per his rank he would get his home State of Rajasthan. He went to the Foundation Course with that belief. Unfortunately, after coming from the Foundation Course he was informed that he has been allotted Tamil Nadu Cadre.

24. She would further submit that pursuant to the allocation he had only 15 days time to acquaint himself with the language of Tamil and join the said cadre.

25 She relied upon the judgment of the Supreme Court reported as (2011) 7 SCC 385 C.M.Thri Vikrama Varma vs. Avinash Mohanti and Ors.

26. Mr.Sachin Datta, learned counsel for the respondent would justify the allocation of Tamil Nadu cadre to the petitioner. He has taken us to the paragraph 16 of the counter-affidavit filed before the Tribunal to justify the reasons for amending para 9 on April 21, 2011. He states that certain reserved category candidates who qualified on general standards were not getting cadre of their higher preference though there was vacancy in their own category which was getting allocated to less meritorious candidate qualified on relaxed standards. In order to remove this anomaly and to give just and proper benefit to the category of

reserved category candidates who qualified on general standards it was decided to amend the para 9 of the policy. By that date of April 21, 2011 the cadre allocation was still not done. According to him the policy has created anomalous situation where higher ranked reserved category candidates were put to disadvantageous position vis-a-vis lower ranked candidates of the same category. The petitioner cannot be allowed to claim better preference of choice of cadre vis-a-vis higher ranked candidate of his own category.

27. Before we deal with the rival submissions of the counsel for the parties, we would like to note the Rule position.

Rules Position

All India Services Act, 1951

1. Regulation of recruitment and conditions of service: (1)
The Central Government may, after consultation with the Governments of the States concerned including the State of Jammu and Kashmir, and by notification in the official Gazette make rules for the regulation of recruitment, and the conditions of service of persons appointed, to an AI India Service.

(1-A) The power to make rules conferred by this section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the rules or any of them but no retrospective effect shall be given to any rules so as to prejudicially affect the interest of any person to whom such rule may be applicable.

IAS (Recruitment) Rules, 1954

7(3) Appointment to the service shall be subject to orders regarding special representation in the service of the Scheduled Castes or the Scheduled Tribes or other Backward Classes issued by the Central Government from

time to time in consultation with the State Governments.

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 Scheduled Castes or the Scheduled Tribes, as the case may be under sub Rule (3).

Provided that candidates belonging to the Scheduled Castes or Scheduled Tribes or 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 benefit of reservation.

IAS (Cadre) Rules, 1954

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

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

Office Memorandums

The respondent introduced a new system of cadre allocation as per O.M. No.13011/22/2005-AIS (I) dated 10/04/2008. This O.M. was issued in supersession of the existing cadre allocation policy and came into effect with the Civil Services Examination, 2008/Indian Forest Service Examination, 2008. For the purpose of the instant petition para 9 and 10 of the O.M. dated 10/04/2008 is being quoted below:

(9) A reserved category candidate selected on general standards shall be eligible for allocation against the available insider unreserved vacancy as per his merit and preference. But if he cannot be allocated against such vacancy, for he is lower in rank as compared with other general category candidates, he shall be considered for allocation as per his merit and preference against the available insider vacancy of his category and, in case found eligible, adjusted by exchanging insider vacancy in his category into insider UR vacancy and outsider UR vacancy into outsider reserved vacancy of his category. This is to ensure that such candidate is not placed at disadvantageous position vis-a-vis other candidates of his category in the merit list below him.

(10) The Cadre allocation exercise for the IAS shall be done as early as possible and before the commencement of the Foundation Course in the LBSNAA. The Cadre allocation exercise for the IPS/IFoS shall also be done immediately after the appointments have been made.

O.M dated April 21, 2011 is issued by the respondent amending para No.9 of the O.M dated April 10, 2008.

Legal Position

28. The Supreme Court in its opinion reported as (1994) 6 SCC 38 Union of India vs. Rajiv Yadav has held as under:

“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 guide-lines 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."

29. The aforesaid position in Rajiv Yadav's case (supra) was reiterated by the Supreme Court in its opinion reported as (1996) 10 SCC 562 Union of India vs. Mhathung Kithan. The same is reproduced as under:

"Rule 5 was construed by this Court in the case of Union of India v. Rajiv Yadav, IAS. It has held that a selected candidate has a right to be considered for appointment to the IAS but he has no such right to be allocated to a cadre of his choice or to his home Stats. Allotment of cadre is an incidence of service; and a member of an All India Service bears liability to serve in any part of India. Respondent No.1, therefore, had no right to be allocated to a cadre of his choice."

30. We may note here in para No.19 of the judgment of the Thri Vikrama Varma's case (supra) the Supreme Court has held as under:

"This position of law was reiterated in Mhathung Kithan and Others (supra). The Court, however, has not held in

Rajiv Yadav or in Mhathung Kithan that such authority of the Central Government can be exercised arbitrarily or in a manner which is not equitable to the general or reserved category candidates selected for appointment to an All-India Service. On the contrary, the Court has held in Rajiv Yadav that the roster system as contained in the letter dated 31-05-1985 ensures equitable treatment to both the general candidates and the reserved candidates.”

31. The question which falls for our consideration is whether the application of the policy dated April 21, 2011 in the case of the Civil Services Examination, 2009 and allocating Tamil Nadu cadre to the petitioner is arbitrary.

32. It is an admitted position that the results for the Civil Services Examination were declared on May 06, 2010. The Foundation Course commenced on August 30, 2010. Till August 30, 2010 when the petitioner went for Foundation Course no allocation of cadre took place. He did not make any issue with regard to the delay in allocating the cadre. The para No.9 of the Cadre Allocation Policy dated April 10, 2008 was amended on April 21, 2011. The allocation was actually effected on May 12, 2011. The first representation was made by the petitioner only on May 19, 2011 when he found that he was allotted Tamil Nadu cadre.

33. If the petitioner had any grievance because of non allocation of cadre before he went to the Foundation Course, he should have made grievance of the same. He did not make any grievance. For certain good reasons the respondents had amended the para No.9 of the Policy dated April 10, 2008, on April 21, 2011. We wish to bring out the amendment as brought about by Policy dated April 21, 2011.

Para 9 of Cadre Allocation Policy dated April 10,2008	Amended Para 9 of Cadre Allocation Policy dated April 21, 2011
A reserved category candidate selected on general standards shall be eligible for allocation against the available insider unreserved vacancy as per his merit and preference. But if he cannot be allocated against such vacancy, for he is lower in rank as compared with other general category candidates, he shall be considered for allocation as per his merit and preference against the available insider vacancy of his category and in case found eligible adjusted by exchanging insider vacancy in his category into insider UR vacancy and outsider UR vacancy into outsider reserved vacancy of his category. This is to ensure that such candidates is not placed at disadvantageous position vis-a-vis other candidates of his category in the merit list below him.	Notwithstanding what has been said above a reserved category candidate selected on general standards shall be eligible for allocation against the available unreserved vacancy as per his merit and preference. But if he cannot be allocated against such vacancy, for he is lower in rank compared with other general category candidates, he shall be considered for allocation as per his merit and preference against the available vacancy of his category.

34. The reasons for such an amendment being what has been spelt out by the respondents before the Tribunal and this Court, we do not see any infirmity in that regard. The reasons are not arbitrary. Rather it has been done to remove a very anomalous situation whereby person belonging to the OBC category even though high in merit was denied the cadre of his preference which was being allotted to reserved candidate lower in the merit. On facts it is seen that there is one insider vacancy reserved in OBC category in the cadre of Rajasthan against which Mr.Jitender

Kumar Soni rank No.29 has been allocated. If the para No.9 as stood before April 21, 2011 i.e. in terms of April 10, 2008 was to be followed for cadre allocation then Mr.Jitender Kumar Soni would not have got the home State of Rajasthan. It would mean that Mr.Soni despite being rank no.29 was being denied the home cadre, which would have gone to the petitioner. That can't be the intent of any rule to deny a benefit to a person who is more meritorious. It is in order to obviate such a situation that para No.9 has been amended.

35. We also note that the relief as prayed for by the petitioner is to be granted in terms of para No.9 of the policy as it stood before April 21, 2011 then Mr.Jitender Soni would become a necessary party. He was not made a party despite respondents' taking an objection in that regard.

36. One of the contentions of Ms.Aishwarya Bhati was that the policy dated April 21, 2011 cannot be given a retrospective effect. We are not in agreement with such a plea. The cadre allocation for the Civil Services Examination, 2009 was done only May 12, 2011, when the policy dated April 21, 2011 was in vogue. On May 12, 2011 the said policy has been rightly implemented. Even assuming it is the case of the petitioner that the cadre allocation should have been done before April 30, 2011 before the Foundation Course had commenced as we have noted above the same having not been done, the petitioner should have approached the Court at that point of time. The time having elapsed and a new policy in place, no direction in that regard has been sought in the petition, no such relief in that regard can be granted.

37. In any case the only right the petitioner has for being considered for cadre allocation in accordance with the policy. He has no right to seek home cadre i.e. Rajasthan in the present case, as a matter of right.

38. As we have held above, there were certain justifiable and compelling reasons for the respondents to amend para No.9 of the policy dated April 10, 2008, we do not see any merit in the contention of the petitioner.

39. Ms.Bhati has referred to para Nos.18, 19, 20, 25 and 26 of the judgment in Thri Vikrama Varma's case (supra). In Thri Vikrama Varma's case (supra) the Supreme Court was concerned with the policy as was being followed in terms of letter dated May 31, 1985. The ratio of the judgment of the Supreme Court being that in the matter of cadre allocation even the candidate has no right to be allocated a particular State cadre or a joint cadre but he has right to a fair and equitable treatment in the matter of allocation under Article 14 and 16(1) of the Constitution and in this case the para No.9 was required to be amended to remove arbitrariness and anomalous situation, we find that the respondents were justified in bringing out the amendment in terms of policy dated April 21, 2011 and allocate the Tamil Nadu cadre to the petitioner.

40. We note for the benefit the relevant conclusion of the Tribunal in the impugned order. The same is reproduced as under:

“As stated earlier, the amendment of Para 9 of the CAP 2008 has been given effect to from CSE-2009. As has been discussed earlier, the CAP 2009, IAS Officers of 2010 batch have got the cadre allocations after the amendment to Para 9 has been issued. Therefore, the contention of the applicant about the retrospective effect of the amended Para 9 of the CAP 2008 does not arise. While issuing amendment dated 21.04.2011, it is noted that the respondents were well aware that the IAS officers selected out of the CSE-2009 are to be allocated their cadres only subsequent to the issue of amendment. Thus, the contention canvassed and the reliance of judgment of Hon'ble

Supreme Court placed by Shri Gupta does not convince us as in the present case the direct impact is only prospective. Therefore, this contention is rejected. Considering the above facts and circumstances of the case, we are also of the opinion that the judgment relied on by Shri Nidhesh Gupta, learned Senior Advocate in Yogendra Srivastava (supra), Jahan Singh (supra) and Govind Prasad (supra) are clearly distinguishable and would not be applicable in the facts and circumstances of the present case.

In the totality of facts and circumstances of the case, we are of the considered opinion that the amended Para 9 of the CAP 2008 issued on 21.04.2011 does not suffer from any illegality or arbitrariness by giving its effect for the selected candidates of CSE-2009. We also note that the applicant has not raised any other ground to canvass his case for allotment to the Rajasthan Cadre instead of Tamil Nadu cadre. Therefore, we find from the pleadings that his cadre allocation has been done as per the extant rules and as per the amended Para 9 of the CAP 2008. Thus, the action of the respondents does not attract any infirmity.”

41. We find no merit in the present writ petition. The same is accordingly dismissed.

42. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

OCTOBER 07, 2013
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