

**\* THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN  
AND  
THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

**+ W.P.No.4938 OF 2017**

% Date: 10-01-2023

# Union of India, through the Secretary, Department of Personnel &  
Training

... Petitioner

**v.**

\$ Somesh Kumar

... Respondent

! Counsel for the Petitioner : Sri T.Suryakaran Reddy, learned Senior  
Counsel for Sri B.Narasimha Sarma

^ Counsel for respondent No.1 : Sri D.V.Sitharam Murthy, learned Senior  
Counsel for Sri N.Ashwani Kumar

Counsel for respondent No.2 : Sri B.S.Prasad, learned Advocate General

Counsel for respondent No.3 : Sri P.Govind Reddy, learned counsel  
appearing for services (AP)

< GIST:

➤ HEAD NOTE:

? CASES REFERRED:

1. (1994) 6 SCC 38
2. (1996) 10 SCC 562
3. (2011) 8 SCC 123
4. (2001) 2 SCC 118
5. (2007) 7 SCC 250

**THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**  
**AND**  
**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

**WRIT PETITION No.4938 of 2017**

**ORDER:** *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Sri T.Suryakaran Reddy, learned Senior Counsel and the then Additional Solicitor General of India representing Sri B.Narasimha Sarma, learned counsel for the petitioner; Sri D.V.Sitharam Murthy, learned Senior Counsel representing Sri N.Ashwani Kumar, learned counsel for respondent No.1; Sri B.S.Prasad, learned Advocate General for the State of Telangana for respondent No.2; and Sri P.Govind Reddy, learned counsel appearing for services (AP) representing respondent No.3.

2. This petition has been filed by Union of India through the Secretary to the Ministry of Personnel, Public Grievances and Pension in the Department of Personnel and Training under Article 226 of the Constitution of India assailing the legality and validity of the judgment and order dated 29.03.2016 passed by the Central

Administrative Tribunal, Hyderabad Bench at Hyderabad (briefly, 'CAT' hereinafter) in O.A.No.1241 of 2014.

**Facts and Pleadings:**

3. First respondent is an All India Service officer allocated to the Indian Administrative Service (IAS) on the basis of the civil services examination of 1988 under unreserved category. He is an IAS officer of the 1989 batch.

4. Since 1989 first respondent served in the composite State of Andhra Pradesh under unreserved category in different capacities. At the relevant point of time, he was serving as Commissioner of Greater Hyderabad Municipal Corporation (GHMC).

5. The composite State of Andhra Pradesh was bifurcated into the successor States of Telangana and Andhra Pradesh in terms of the Andhra Pradesh Reorganisation Act, 2014 (briefly, 'the Reorganization Act' hereinafter). The notified date being 02.06.2014, the two states came into being with effect from 02.06.2014. The

Reorganisation Act necessitates division and re-allocation of personnel serving in the erstwhile composite State of Andhra Pradesh including those belonging to the All India Services to the two successor States of Telangana and Andhra Pradesh. Section 76 of the Reorganisation Act provided for modalities for allocation of All India Service officers between the two States.

5.1. Section 80(1) of the Reorganisation Act provided that the Central Government may, by an order, establish one or more advisory committees within a period of thirty days from the date of enactment of the Reorganisation Act for the purpose of, amongst others, to ensure fair and equitable treatment to all officers affected by Part VIII of the Reorganisation Act, which comprises Section 80, and for proper consideration of any representation made by such person(s). As per sub-section (2), the allocation guidelines were to be issued by the Central Government on or after the date of enactment of the Reorganisation Act and the actual allocation of individual officers shall be

done by the Central Government on the recommendations of the advisory committee.

6. In exercise of powers conferred by Section 80 of the Reorganisation Act, Central Government vide notification dated 28.03.2014 constituted the advisory committee under the Chairmanship of Dr. S.Pratyush Sinha, IAS (Retd), for the following purposes:

(a) (i) to recommend the initial strength and composition of the categories of the Indian Administrative Service (IAS);

(ii) Indian Police Service (IPS); and

(iii) Indian Forest Service (IFS)

for the States of Telangana and Andhra Pradesh in terms of Section 76(3) of the Reorganization Act.

(b) to recommend as to which of the members of (i) IAS, (ii) IPS and (iii) IFS borne on the cadre of the undivided State of Andhra Pradesh should be allocated to the cadres in the successor States of Telangana and Andhra Pradesh of the same service.

7. Advisory committee (also referred to as the Dr. Pratyush Sinha committee) recommended norms and principles to be adopted for allocation of All India Service officers borne on the cadre of undivided Andhra Pradesh to the States of Telangana and Andhra Pradesh. On the basis of such recommendations, Central Government issued guidelines dated 30.05.2014 for allocation of All India Service officers borne on the undivided cadre of Andhra Pradesh between the successor States of Telangana and Andhra Pradesh. Simultaneously provisional list dated 30.05.2014 was prepared making allocation of the All India Service officers borne on the cadre of the undivided State of Andhra Pradesh to the successor States of Telangana and Andhra Pradesh. First respondent was allotted to Andhra Pradesh though he had opted for Telangana.

8. Being aggrieved, first respondent made two representations to the advisory committee on 26.08.2014 and 28.08.2014 requesting change of allocation from Andhra Pradesh cadre to Telangana cadre. In the second

representation, he also proposed that he could be swapped with another officer i.e., Sri Rajat Bhargava who had been allocated to the State of Telangana and who would prefer going to Andhra Pradesh. However, there was no response. Instead list dated 10.10.2014 was published. Insofar first respondent was concerned, the position was maintained.

9. At that stage, first respondent, as the original applicant, filed O.A.No.1241 of 2014 under Section 19 of the Administrative Tribunals Act, 1985 before the CAT. Prayer made in the said original application was to declare the guidelines dated 30.05.2014 and the subsequent process of allocation of officers of All India Service borne on the cadre of the erstwhile composite State of Andhra Pradesh to the successor States of Telangana and Andhra Pradesh including the allotment of first respondent to the State of Andhra Pradesh as illegal and arbitrary; further prayer made was for a direction to the Central Government to allot first respondent to the State of Telangana in terms of his option.

10. It appears that after filing of the original application, revised allocation order dated 05.03.2015 retaining the first respondent in the State of Andhra Pradesh was issued by the Central Government which also came to be challenged in the original application.

10.1. First respondent had challenged the guidelines before the CAT on various grounds. The guidelines were assailed on the ground that allocation of officers, more particularly the serving 191 direct recruit officers of the erstwhile composite State of Andhra Pradesh, to the successor States of Telangana and Andhra Pradesh in the ratio of 83:108 was done without reference to batch seniority which was contrary to the statutory rules i.e., Indian Administrative Service (Cadre) Rules, 1954. It was also contended that the impugned guidelines were prepared by the advisory committee headed by Sri Pratyush Sinha, IAS (Retd). In the advisory committee, the Chief Secretary of the erstwhile composite State of Andhra Pradesh and later on the Chief Secretary of the States of



Andhra Pradesh and Telangana were made members but they themselves were affected parties. Dr. P.K.Mohanty, who was the Chief Secretary of the composite State of Andhra Pradesh, was a member of the advisory committee. But his daughter Mrs. Swetha Mohanty, IAS of 2011 batch (unreserved outsider S.No.73) and son-in-law Sri Rajat Kumar Saini, IAS of 2007 batch (OBC outsider S.No.15) were direct recruit officers of the erstwhile composite State of Andhra Pradesh awaiting allocation to the two successor States on the basis of the impugned guidelines, and had opted for the State of Telangana. Therefore, nomination and participation of Dr. P.K.Mohanty in the proceedings of the advisory committee had vitiated the same.

10.2. Though Government of India constituted the advisory committee headed by Sri Pratyush Sinha, IAS (Retd) with detailed terms of reference, Central Government had acted arbitrarily by notifying the guidelines and individual allocation together without

giving any opportunity to the stakeholders to make any representation on the guidelines.

10.3. Though first respondent had made two representations to the advisory committee on 26.08.2014 and 28.08.2014 requesting change of allocation from Andhra Pradesh cadre to Telangana cadre, first respondent was not informed by the Central Government as to the decision taken on such representations. Without considering such representations, first respondent continued to remain allotted to Andhra Pradesh cadre as per list dated 10.10.2014.

10.4. Another contention advanced was that the impugned guidelines proposed division of serving officers amongst direct recruits into two groups i.e., direct recruit insiders and direct recruit outsiders. This classification of serving All India Service officers into direct recruit insiders and direct recruit outsiders had no nexus to the object sought to be achieved i.e., re-allocation of officers between the two States having regard to fair and equitable treatment. No

such classification was carried out in respect of promotee officers. Therefore, the guidelines were assailed as being discriminatory and thus violative of Article 14 of the Constitution of India.

10.5. The impugned guidelines also provided for an option to the officers for swapping but for direct recruits it was confined to officers of the same batch only though in case of reserved category officers swapping was permissible between officers of more than one batch. This was also contended to be discriminatory.

10.6. Another contention raised was non-inclusion of Dr. P.K.Mohanty, IAS of 1979 batch in the list of officers for allocation between the two States, though he was in service on 01.06.2014. As per the guidelines, officers to be considered for allocation should be borne on the cadre of the composite State of Andhra Pradesh and should be serving on the day immediately before the appointed day. Appointed day being 02.06.2014, the officers should be in service on 01.06.2014. Dr. P.K.Mohanty was in service as

on 01.06.2014. Therefore, he ought to have been included in the pool of officers in which event he would have been allotted to one of the successor States. If that would have been done, first respondent would have secured allotment in accordance with his option.

10.7. First respondent also contended that the advisory committee did not follow the guidelines of the U.C.Agarwal committee which was constituted to oversee allocation of All India Service officers at the time of division of the State of Uttar Pradesh.

11. Union of India, petitioner herein, which was arrayed as respondent No.1 in O.A.No.1241 of 2014, had filed objection. It was contended that All India Service is created under Article 312 of the Constitution of India and are common to both the Union and the States. Insofar IAS is concerned, there are two quotas – (i) direct recruitment quota and (ii) promotion quota. While the direct recruitment quota is filled up through a civil services examination conducted annually by the Union Public

Service Commission (UPSC), the promotion quota is filled up through appointment by promotion from amongst the state civil services as per the provisions of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955.

11.1. After formation of the two new States of Telangana and Andhra Pradesh out of the erstwhile composite State of Andhra Pradesh, following the Reorganisation Act, personnel employed in the undivided State of Andhra Pradesh including those belonging to All India Services were required to be divided and allocated. This aspect is addressed in Section 76 of the Reorganisation Act.

11.2. In exercise of powers conferred by Section 80 of the Reorganisation Act, Central Government constituted an advisory committee under the chairmanship of Dr. Pratyush Sinha, IAS (Retd) to *inter alia* recommend the initial strength and composition of cadres of IAS, IPS and IFS for the State of Telangana and for the residual State of Andhra Pradesh in terms of Section 76(3) of the

Reorganisation Act. Advisory committee was also under a mandate to recommend as to which of the members of IAS, IPS and IFS borne on the cadre of the undivided State of Andhra Pradesh should be allocated to the cadres of Telangana and Andhra Pradesh of the same service.

11.3. After due consideration and consultation, the advisory committee recommended the norms and principles to be adopted for allocation of Telangana cadre and Andhra cadre to All India Service officers borne on the cadre of undivided Andhra Pradesh. Following the same, Central Government framed the guidelines. Thereafter, the main features of the guidelines were adverted to.

11.4. The concerned officers were allowed to offer their preferences to be taken into account at the time of final allocation. On that basis and applying the guidelines, a draft list of officers to be re-allocated was circulated against which some of the affected officers submitted representations. After considering the representations, advisory committee submitted final report to the

competent authority. Whereafter orders dated 05.03.2015 were issued allocating All India Service officers to the newly created cadres of Telangana State and Andhra Pradesh State after approval of the competent authority. First respondent had to be allocated Andhra cadre though he had opted for Telangana. Allegations raised by the first respondent were denied.

12. State of Telangana also filed an affidavit taking the stand that affidavit filed by Union of India may be considered. It was contended that Government of India in the Department of Personnel and Training in exercise of powers conferred by sub-section (3) of Section 76 read with Sections 79 and 81 of the Reorganisation Act read with Rule 5 of the Indian Administrative Service (Cadre) Rules, 1954 had made provisional allocation of IAS officers to the State of Telangana vide the notification dated 30.05.2014. Earlier Government of India in the Department of Personnel and Training had issued a notification constituting the advisory committee for recommending to the Union of India guidelines for

allocation of officers belonging to the All India Services borne on the cadre of the erstwhile composite State of Andhra Pradesh to the two successor States. Pursuant thereto, advisory committee made recommendations and based on the recommendations, guidelines were issued and placed on the website of the Central Government, which was impugned in the original application.

12.1. Contending that allocation of All India Service officers between the States of Telangana and Andhra Pradesh was under the domain of Government of India, State of Telangana prayed for dismissal of the original application.

13. First respondent i.e., the original applicant had filed rejoinder affidavits denying the contentions of the Central Government as well as the State of Telangana.

14. After hearing the matter, CAT vide the judgment and order dated 29.03.2016 held that guidelines notified by the Central Government on 30.05.2014 and the subsequent process of allocation of officers of the All India



Services borne on the cadre of the erstwhile composite State of Andhra Pradesh to the successor States of Telangana and Andhra Pradesh vide the revised allocation order dated 05.03.2015 were liable to be quashed being in violation of Article 14 of the Constitution of India as well as Section 80 of the Reorganisation Act. However, CAT refrained from doing so on the ground of administrative exigency and not to unsettle the settled things. But the order dated 05.03.2015 insofar first respondent was concerned was set aside and quashed directing the respondents (including the petitioner herein) to treat him as an All India Service officer of the State of Telangana with all consequential benefits.

15. Assailing the aforesaid judgment and order dated 29.03.2016 of CAT, Union of India has filed the present writ petition.

16. Counter affidavit has been filed by respondent No.1. Interestingly, instead of himself swearing the affidavit, one Sri Vikas Raj serving as Principal Secretary to the

Government of Telangana, General Administration Department has sworn the affidavit. The affidavit, however, does not disclose that he was authorised by respondent No.1 to swear the affidavit for and on his behalf. We fail to understand as to why first respondent himself could not swear his own affidavit.

16.1. Be that as it may, it is submitted that like first respondent, there are many officers working in different capacities in the State of Telangana. They were also allotted to the State of Andhra Pradesh following bifurcation. Assailing such allocation, they had filed original applications like the first respondent. Taking note of the fact that the officers were working in the State of Telangana in different capacities, CAT refrained from setting aside the revised allocation only on the ground that it did not want to unsettle things. It is stated that in terms of the judgment and order of CAT, the officers allotted to the Telangana cadre are functioning in highly responsible positions. They are ably assisting the state administration machinery in a very efficient manner on

account of their domain expertise and experience. First respondent is working as Chief Secretary to the Government of Telangana. Any interference with the order of CAT would lead to dislocation in the administration besides jeopardising seniority position of the officers.

16.2. It is contended that CAT had examined the record and after thorough consideration of all relevant aspects had passed a reasoned order. No case for interference is made out. Therefore, the writ petition should be dismissed.

**Submissions:**

17. Sri T.Suryakaran Reddy, learned Senior Counsel and the then Additional Solicitor General has elaborately referred to the impugned judgment and order of CAT. He has also referred to the relevant provisions of the Reorganisation Act. In the course of his submissions, learned Senior Counsel has laid great emphasis on Rule 5(1) of the Indian Administrative Service (Cadre) Rules, 1954 as well as Rule 16 of the All India Services (Death-

cum-Retirement Benefits) Rules, 1958. He submits that CAT had erred on facts as well as on law in setting aside the allocation of first respondent to the State of Andhra Pradesh. Compounding the untenability of the aforesaid order, CAT had issued directions to treat the first respondent as an All India Service officer of the State of Telangana with all consequential benefits. Such a direction is completely untenable, he submits. According to him, there could not have been and there is no good reason to declare the guidelines framed by the Central Government on the basis of recommendations of the advisory committee for allocation of officers borne on the cadre of undivided Andhra Pradesh to the two successor States of Telangana and Andhra Pradesh as illegal and arbitrary. Though CAT had declared the said guidelines to be contrary to the All India Services Act, 1951, there is no discussion or any analysis as to how there was any such violation. Reliance placed by CAT on the guidelines framed by the Central Government on the basis of the Agarwal committee recommendations to find fault with the

guidelines framed by the Central Government on the basis of recommendations of the advisory committee was not at all justified. Guidelines framed by the Central Government on the basis of Agarwal committee recommendations were in relation to division of the State of Uttar Pradesh following the Uttar Pradesh Reorganisation Act, 2000. On the other hand, guidelines framed by the Central Government on the basis of the recommendations of the advisory committee were relating to bifurcation of the composite State of Andhra Pradesh on the basis of the Reorganisation Act. The two cannot be equated factually and contextually. Merely because certain recommendations made by the Agarwal committee does not find place in the impugned guidelines based on the recommendations of the advisory committee would not render the latter illegal and arbitrary.

17.1. Insofar swapping of the first respondent with another officer by the name of Sri Rajat Bhargava is concerned, the same was not permissible because Sri Rajat Bhargava belonged to a different batch; swapping in

respect of unreserved category was confined to officers of the same batch only. However, in case of officers belonging to the reserved categories, the guidelines provided for swapping amongst officers spanning over more than one batch. This has been explained in paragraph 8.5 of the guidelines. It is stated that since there may be very few SC, ST and OBC officers in a batch, in order to facilitate greater choice to them swapping was not confined only to one batch. This is a reasonable explanation. Therefore, CAT was not justified in taking the view that denial of such an opportunity to officers of unreserved category like the first respondent was discriminatory.

17.2. His further contention is that Dr. P.K.Mohanty was included in the advisory committee by virtue of his office. At the time when the advisory committee was constituted, he was the Chief Secretary of the undivided State. Mandate of the advisory committee was to give certain recommendations to the Central Government for framing guidelines for the purpose of allocation of All India Service officers of the combined State of Andhra Pradesh to the

two successor States. At the time of actual allocation, he was not there as he had already superannuated. Therefore, there was no question of him influencing proceedings of the advisory committee to favour or give undue benefit to his daughter and son-in-law.

17.3. He also submits that Dr. P.K.Mohanty had actually retired from service on 28.02.2014 whereafter he was on extended service till 30.06.2014. His offer of voluntary retirement by waiving off the notice period was accepted by the State Government whereafter he was allowed to go on voluntary retirement on 01.06.2014. In terms of Note-2 below Explanation to sub-rule (3) of Rule 16 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 that such a date of retirement shall be treated as a non-working day. Therefore, Dr. P.K.Mohanty could not have been included in the list of All India Service officers borne on the cadre of undivided State of Andhra Pradesh for the purpose of allocation to the two successor States of Telangana and Andhra Pradesh.

17.4. He finally submits that an All India Service officer is bound to serve in any part of India. He cannot claim as a matter of right that he will serve in any particular state. This is not permissible. He has no vested right to service in a particular State. Judgment and order of CAT being wholly untenable, the same is liable to be set aside and quashed.

18. Sri D.V.Sitharam Murthy, learned Senior Counsel representing the first respondent elaborately referred to the discussions and findings rendered by CAT on the four issues framed by it for consideration. Each of the findings returned by CAT on the four issues is correct and legally sound, he submits. Impugned judgment and order of CAT is a well reasoned one and requires no interference.

18.1. Insofar the provision of swapping of officers is concerned, he submits that there is no basis to exclude direct recruit unreserved outsiders like the first respondent. He submits that underlying principle governing allocation of officers is traceable to Section



80(1)(b) of the Reorganisation Act; there must be fair and equitable treatment to all officers affected by the division of the composite State and consequential allocation to the successor States. First respondent was denied such a fair and equitable treatment. His representations were also not properly considered.

18.2. Sri Sitharam Murthy, learned Senior Counsel after referring to various documents on record submits that Dr. P.K.Mohanty was working as on 01.06.2014. Therefore, by virtue of paragraph 3 of the guidelines, his name should have been included in the list of officers for allocation. This has been rightly pointed out by CAT. Had his name been included, the same would have materially altered the position of the first respondent and his option for the State of Telangana would have been accepted in the ordinary course. He, therefore, submits that the judgment and order of CAT is legally sound. Besides CAT has taken a very pragmatic approach as well. Question of interference with the judgment and order of CAT at this belated stage would not arise.

19. Sri B.S.Prasad, learned Advocate General representing the State of Telangana submits that the judgment and order of CAT is just and proper and should not be interfered with. Respondent No.2 has filed written submissions. It is submitted that State of Telangana had filed a formal counter affidavit before CAT wherein stand taken was that exercise of allocation of officers was within the purview of the Central Government. However, after the allocation exercise was over and following the judgment and order of CAT, first respondent who was directed to be treated as an officer of Telangana, is now serving the State of Telangana as Chief Secretary. He has worked in the State of Telangana for a considerable period contributing to the various developmental activities undertaken by the State. Interfering with the judgment and order of CAT at this stage may unsettle the settled position. State of Andhra Pradesh has expressed no grievance to the allocation of first respondent to the State of Telangana. That being the position, question raised in the writ petition is academic. Therefore, the judgment and order of

CAT which is a cogent and a well reasoned one should not be disturbed.

20. In his reply submissions, Sri T.Suryakaran Reddy, learned Senior Counsel submits that it is indeed surprising that State of Telangana has adopted a completely different and opposite stand in the writ proceedings as against its stated position before CAT. State of Telangana cannot blow hot and cold at the same time. Before CAT, it sought for dismissal of the original application filed by the first respondent. Now in the writ proceedings instituted at the instance of the Central Government, it is supporting the case of the first respondent. Such contrary stand cannot be accepted.

21. Submissions made by learned counsel for the parties have received the due consideration of the Court.

22. At the outset, it would be apposite to deal with the judgment and order passed by CAT.

**Order of CAT dated 29.03.2016:**

23. After considering the rival pleadings and submissions as well as considering the materials on record, CAT framed four issues for consideration. The four issues are as under:

(i) Whether the guidelines framed by respondent No.1 on the basis of the Pratyush Sinha Committee are illegal, arbitrary and in violation of All India Services Act, 1971 (sic) and statutory guidelines and rules made thereunder?

(ii) Whether inclusion of Dr. P.K.Mohanty, IAS (1979) in the advisory committee as a member of the committee vitiated its deliberations because two of the officers viz., Smt Swetha Mohanty IAS (2011) (Unreserved Outsider S.No.73) and Sri Rajpat K Saini, IAS (2007) (OBC Outsider S.No.15) are his daughter and son-in-law respectively?

(iii) Whether the list prepared comprising of officers borne on the cadre of undivided State of Andhra Pradesh as on 01.06.2014 slated for distribution to the successor states is illegal and arbitrary on account of non-inclusion of the name of Dr P.K.Mohanty (who retired on 01.06.2014 i.e., one day prior to the appointed day)? and

(iv) Whether the effective date of retirement of Dr. P.K.Mohanty viz., 01.06.2014 amounts to a non-working day as contended by the respondents?

23.1. Insofar the first issue is concerned, the same related to challenge to the guidelines framed by the Central Government on the basis of the recommendations made by the Dr. Pratyush Sinha committee. It was the contention of the first respondent that the guidelines framed were contrary to the statute governing the service conditions of All India Service officers and *ultra vires* the constitutional provisions. Alternative submission was that even assuming that the guidelines were valid, the consequential allocation of officers and the procedure followed were contrary to the guidelines. Resultantly, first respondent was allotted to the State of Andhra Pradesh despite option given for the State of Telangana. CAT noted that guidelines dated 30.05.2014 allowed the option for *inter se* swapping. But while an officer belonging to the unreserved category in direct recruit or promotee quota could exercise the option of swapping with an officer belonging to the unreserved category of the same batch only, officers belonging to the reserved categories were given the option of swapping with another officer

belonging to the reserved category within the roster block which encompassed more than one batch. This was held to be not in conformity with Section 80(1)(b) of the Reorganisation Act. That apart, it was held that guidelines failed to provide equitable, just and fair treatment to all the officers and that the classification was arbitrary, not based on *intelligible differentia* having any rationale nexus to the object sought to be achieved. CAT was also of the opinion that recommendations of the U.C. Agarwal committee for undertaking allocation of officers borne on the cadre of the undivided State of Uttar Pradesh to the successor States under the Uttar Pradesh Reorganisation Act, 2000 which did not make any classification for exercising the option of swapping should have been followed in the present case. CAT further noted that the first respondent belonged to the 1989 batch and was classified under the direct recruit outsider unreserved category. He being the only officer under that category of that batch, he had no option to swap since no other officer of the same category and batch was available. Though an

option was given by the first respondent for swapping with another officer, namely, Sri Rajat Bhargava of the 1990 batch, the same was not considered being of a different batch. In the circumstances, CAT held that classification of the officers of the same batch into two groups i.e., unreserved and reserved categories for the purpose of exercising their option for mutual swapping and imposing unreasonable restriction on unreserved category by confining their option of mutual swapping to the same batch of officers only whereas in case of unreserved category of officers, it was made available to more than one batch was violative of Articles 14 and 16 of the Constitution of India, being illegal and arbitrary. Resultantly, it was held that guidelines framed by the Central Government on the basis of the recommendations of the Pratyush Sinha committee were illegal, arbitrary and violative of the All India Services Act, 1971 (sic).

23.2. The second issue framed was whether inclusion of Dr. P.K.Mohanty, IAS (1979) as a member of the advisory committee had vitiated its deliberations because two of the

officers who were seeking allocation were his daughter Smt. Swetha Mohanty, IAS (2011) (unreserved outsider S.No.73) and his son-in-law Sri Rajat K. Saini, IAS (2007) (OBC outsider S.No.15).

23.3. Dr. P.K.Mohanty was included as a member of the advisory committee to frame guidelines for allocation of All India Service officers borne on the cadre of the undivided State of Andhra Pradesh to the two successor States of Telangana and Andhra Pradesh in the capacity of being the Chief Secretary of the composite State of Andhra Pradesh. According to CAT, this ought not to have been done as the authorities were well aware of the fact that Dr. P.K.Mohanty's daughter and son-in-law were both IAS officers of the composite State of Andhra Pradesh and their names were included in the list of officers for allocation. As a matter of fact, it was observed that Dr. P.K.Mohanty himself ought to have declined to become a member of the advisory committee as there was every likelihood of conflict of interest. CAT held that although there was nothing to prove that Dr. P.K.Mohanty's



daughter and son-in-law benefited from the guidelines or got the guidelines manipulated to suit their claim of being allocated to the Telangana cadre but the fact that Dr. P.K.Mohanty was a member of the advisory committee cast a shadow on his neutrality as well as on the proceedings. Clarifying further, CAT held that though Dr. P.K.Mohanty who was a member of the advisory committee was not sitting on his own cause, but the nearness of his relationship with the two officers would give rise to a reasonable impression that Dr. P.K.Mohanty would espouse the cause of his daughter and son-in-law. Therefore, CAT held that inclusion of Dr. P.K.Mohanty, IAS (1979) in the advisory committee had vitiated its deliberations.

23.4. Insofar the third issue is concerned, the same pertain to preparation of the list of officers borne on the cadre of the undivided State of Andhra Pradesh as on 01.06.2014 and slated for allocation to the two successor States. The list so prepared was held to be illegal and arbitrary for non-inclusion of the name of

Dr. P.K.Mohanty who had retired on 01.06.2014 i.e., one day prior to the appointed day. It was the contention of the first respondent that had Dr. P.K.Mohanty, who was in service as on 01.06.2014, been included in the list of officers for allocation as per roster, first respondent would have been allotted to the State of Telangana as per his option. Though the date of retirement of Dr. P.K.Mohanty i.e., 01.06.2014 was a Sunday, the same ought to have been considered as a working day for him for the purpose of his allocation.

23.5. On a perusal of the documents and materials on record, CAT found that Dr. P.K.Mohanty was given extension of service from 28.02.2014 A.N., for four months i.e., upto 30.06.2014. Accordingly, he had attended office from 01.03.2014 onwards. Vide G.O.Rt.No.1999 dated 12.05.2014, the then Government of Andhra Pradesh permitted him to voluntarily retire from service on 01.06.2014 AN. He had attended office on 01.06.2014 and had issued a number of government orders. Thus, he was in service as on 01.06.2014. As per paragraph 3 of the

guidelines, his name ought to have been included in the list of officers slated for distribution between the two successor States, more so in terms of sub-section (4) of Section 76 of the Reorganisation Act. According to CAT, had his name been included in the list for allocation, first respondent could have been allotted to the state of his choice. Therefore, CAT held that list of officers borne on the cadre of the composite State of Andhra Pradesh as on 01.06.2014 for allocation to the successor States was illegal on account of non-inclusion of the name of Dr. P.K.Mohanty.

23.6. Related to the third issue is the last issue framed by CAT, namely, whether the effective date of retirement of Dr. P.K.Mohanty i.e., 01.06.2014 amounted to a non-working day? CAT held that Dr. P.K.Mohanty had retired on 01.06.2014, on which date he had attended office and had issued a number of government orders. As Government of Andhra Pradesh had permitted his voluntary retirement on 01.06.2014 AN and accordingly he had retired, the date of his retirement i.e., 01.06.2014

could be treated as a working day. Since he was in service as on 01.06.2014, his name should have been included in the list of officers borne on the cadre of the composite State of Andhra Pradesh as on 01.06.2014 for allocation to the two successor States. This issue was answered accordingly.

23.7. Thereafter, CAT passed the following order:

55. For the foregoing reasons and discussions made above and in view of the facts and circumstances of the case and after applying the ratio of the judgments cited by the applicant, we are of the considered view that the impugned guidelines notified by the 1<sup>st</sup> respondent dated 30.05.2014 and the subsequent process of allocation of officers of All India Services borne on the cadre of the erstwhile State of Andhra Pradesh to the successor States of Andhra Pradesh and Telangana vide the impugned Revised Allocation Order dated 05.03.2015 are liable to be quashed and set aside on the ground of being arbitrary, illegal, offending Article 14 of the Constitution of India and also in violation of Section 80 of the Andhra Pradesh Reorganization Act, 2014. However, in the interest of administrative exigency and with a view not to unsettle the settled things, we refrain ourselves from doing so. The action on the part of the respondents in constituting the Advisory Committee by including Dr.P.K.Mohanty as a Member in the Committee and

issuing the Revised Allocation Order dated 05.03.2015 without including the name of Dr. P.K.Mohanty in the list of officers to be allocated though he was well in service as on 01.06.2014 is certainly contrary to the rules and law. Keeping in view the dictum laid down by the Apex Court in the case of **S.Ramanathan v. Union of India** ((2001) 2 SCC 118), we have no hesitation to quash and set aside the impugned order dated 05.03.2015 in so far as the applicant is concerned and accordingly, the same is quashed and set aside in so far as the applicant is concerned. We further direct the respondents to treat the applicant as an All India Service officer of the State of Telangana cadre with all consequential benefits. The interim order granted on 30.10.2014 is made absolute.

24. Before we dilate on the correctness or otherwise of the findings returned by CAT, it would be apposite to refer to the relevant legal provisions.

**Legal Framework:**

25. Part XIV of the Constitution of India deals with services under the Union and the States. Article 312 which is included in Part XIV deals with All India Services. As per clause (1), notwithstanding anything in Chapter VI of Part VI and Part XI, if the Council of States has declared

by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more All India Services including an All India Judicial Service common to the Union and the States and subject to the other provisions of the said Chapter dealing with services, regulate the recruitment and the conditions of service of persons appointed, to any such service. Clause (2) says that the services known at the commencement of the Constitution as the Indian Administrative Service (IAS) and the Indian Police Service (IPS) shall be deemed to be services created by Parliament under Article 312. Clauses (3) and (4) are not relevant for the present discourse in as much as those pertain to All India Judicial Service.

25.1. Thus, what Article 312 provides for is creation of one or more All India Services common to the Union and the States if it is considered necessary or expedient in the national interest.

26. Parliament has enacted the All India Services Act, 1951 to regulate the recruitment and conditions of service of persons appointed to the All India Services common to the Union and the States. The aforesaid Act provides for constitution of new All India Services other than the existing two All India Services, namely IAS and IPS. Section 2A provides for such constitution. One of the new All India Services is the Indian Forest Service (IFS). Section 3 deals with regulation of recruitment and conditions of service. As per sub-section (1), the Central Government may after consultation with the Governments of the States concerned and by notification in the official gazette make rules for the regulation of recruitment and the conditions of service of persons appointed to an All India Service. As per sub-section (2), every rule made by the Central Government under Section 3 and every regulation made under or in pursuance of such rule, shall be laid, as soon as may be after such rule or regulation is made, before each House of Parliament.

27. In exercise of the powers conferred by sub-section (1) of Section 3 of the All India Services Act, 1951, the Central Government after consultation with the Governments of the States made the Indian Administrative Service (Cadre) Rules, 1954. Rule 2(a) defines “cadre officer” to mean a member of the Indian Administrative Service. “Cadre post” has been defined in Rule 2(b) to mean any of the post specified under item (1) of each cadre in the schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955.

27.1. Rule 3 deals with constitution of cadres. Sub-rule (1) says that there shall be constituted for each State or group of States an Indian Administrative Service cadre. As per sub-rule (2), the cadre so constituted shall be referred to as the state cadre for a state and joint cadre for a group of states.

27.2. As per sub-rule (1) of Rule 4, the strength and composition of each of the cadres constituted under Rule 3 shall be determined by regulations made by the Central



Government in consultation with the State Governments. Sub-rule (2) empowers the Central Government to re-examine the strength and composition of each such cadre in consultation with the State Government ordinarily at the interval of every three years (after the amendment in 1995, five years) and make such alterations as it deems fit. But the proviso makes it very clear that such a provision would not affect the power of the Central Government to alter the strength and composition of any cadre at any other time.

27.3. Allocation of members to various cadres is dealt with in Rule 5. As per sub-rule (1), allocation of cadre officers to various cadres shall be made by the Central Government in consultation with the State Government or the State Government concerned. In terms of sub-rule (2), the Central Government may with the concurrence of the State Government concerned, transfer a cadre officer from one cadre to another cadre.

28. In pursuance of sub-rule (1) of Rule 4 of the Indian Administrative Service (Cadre) Rules, 1954, the Central Government in consultation with the Governments of the States concerned made the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955. Insofar the combined State of Andhra Pradesh was concerned, direct recruitment posts were 257 and promotion posts were 74.

29. Exercising power under sub-section (1) of Section 3 of the All India Services Act, 1951, the Central Government after consultation with the Governments of the States concerned has framed the All India Services (Death-cum-Retirement Benefits) Rules, 1958. Rule 16 deals with superannuation gratuity or pension. As per sub-rule (1), a member of the service shall retire from the service with effect from the afternoon of the last day of the month in which he attains the age of sixty years. As per the third proviso, a member of the service holding the post of Chief Secretary to a State Government may be given extension of service for a period not exceeding six months on the recommendations of the State Government with full

justification and in public interest with the prior approval of the Central Government.

29.1. Rule 16(2) says that a member of the service may, after giving at least three months previous notice in writing to the State Government concerned, retire from service on the date on which such member completes thirty years of qualifying service or attains fifty years of age or on any date thereafter as may be specified in the notice. However, as per the second proviso, the State Government concerned on a request made by the member of the service may, if satisfied and for reasons to be recorded in writing, relax the period of notice. Similarly, under Rule 16(3), the Central Government in consultation with the concerned State Government may require a member of the service to retire from service in public interest after giving three months previous notice in writing or three months pay and allowances in lieu of such notice. Note-2 below Explanation to Rule 16(3) mentions that in the case of a member of service who retires under

sub-rule (2) etc, the date of retirement shall be treated as a non-working day.

30. Likewise, the Central Government after consultation with the Governments of the States has framed the All India Services (Conditions of Service-Residuary Matters) Rules, 1960. As per Rule 3, if the Central Government is satisfied that the operation of any rules made or deemed to have been made under the All India Services Act, 1951 or any regulation made under any such rule regulating the conditions of service of persons appointed to the All India Services causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that rule or regulations, as the case may be, to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.

30.1. Similarly, Central Government has framed the Indian Administrative Service (Regulations of Seniority) Rules, 1987. Rule 6 deals with fixation of seniority of

officers transferred to another cadre. Sub-rule (1) says that if a direct recruit officer is transferred from one cadre to another in public interest, his year of allotment shall remain unchanged and his *inter se* position among the direct recruits having the same year of allotment in the cadre to which he is transferred shall remain the same as determined in accordance with Rule 10 of the Indian Administrative Service (Probation) Rules, 1954. Rule 10 of the aforesaid Rules deals with seniority of probationers. As per sub-rule (1), the Central Government shall prepare a list of all probationers who are recruited to the service under sub-rule (1) of Rule 3 and are assigned the same year of allotment. Such list shall be arranged in order of merit which shall be determined in accordance with the aggregate marks obtained by each probationer at the competitive examination etc.

31. The composite State of Andhra Pradesh was bifurcated into the successor States of Telangana and the residual State of Andhra Pradesh by the Andhra Pradesh Reorganisation Act, 2014 (already referred to as 'the

Reorganisation Act'). Section 2(a) defines "appointed day" to mean the day which the Central Government may by notification in the official gazette appoint.

31.1. It may be mentioned that Central Government by notification in the official gazette, had appointed 02.06.2014 as the appointed day.

31.2. Section 2(h) deals with "population ratio". It says that population ratio in relation to the States of Andhra Pradesh and Telangana would mean the ratio of 58.32 : 41.68 as per the 2011 census. Section 2(j) defines "successor State" to mean in relation to the existing State of Andhra Pradesh, the State of Andhra Pradesh or the State of Telangana, as the case may be.

31.3. Part VIII of the Reorganisation Act contains the provisions as to services. Section 76 deals with provisions relating to All India Services. Section 76(1)(a) defines, the expression "state cadre" in relation to IAS as having the same meaning assigned to it in the Indian Administrative Service (Cadre) Rules, 1954. Sub-section (2) of Section 76

says that in place of the cadres of IAS, IPS and IFS for the existing State of Andhra Pradesh, there shall, on and from the appointed day, be two separate cadres, one for the State of Andhra Pradesh and the other for the State of Telangana in respect of each of the said services. In terms of sub-section (3), the provisional strength, composition and allocation of officers to the state cadres referred to in sub-section (2) shall be such as the Central Government may by order determine on or after the appointed day. As per sub-section (4), members of each of the said services borne on the Andhra Pradesh cadre immediately before the appointed day shall be allocated to the successor State cadres of the same service constituted under sub-section (2) in such manner and with effect from such date or dates as the Central Government may, by order, specify. Sub-section (5) clarifies that nothing in Section 76 shall be deemed to affect the operation, on or after the appointed day, of the All India Services Act, 1951 or the rules made thereunder.

31.4. Section 79 provides for provisions as to continuance of officers in the same post. It says that every person who immediately before the appointed day was holding or discharging the duties of any post or office in connection with the affairs of the existing State of Andhra Pradesh in any area which on that day fell within one of the successor States shall continue to hold the same post or office in the successor State and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or other appropriate authority in that successor State. As per the proviso, nothing in Section 79 shall be deemed to prevent a competent authority, on and from the appointed day, from passing in relation to such person any order affecting the continuance in such post or office.

32. Section 80 of the Reorganisation Act being relevant, the same is extracted hereunder:

**80. Advisory committees:** (1) The Central Government may, by order, establish one or more Advisory Committees, within a period of thirty days from the date of enactment of the Andhra Pradesh



Reorganisation Act, 2014, for the purpose of assisting it in regard to:

- (a) the discharge of any of its functions under this Part; and
- (b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this Part and the proper consideration of any representations made by such persons.

(2) The allocation guidelines shall be issued by the Central Government on or after the date of enactment of the Andhra Pradesh Reorganization Act, 2014 and the actual allocation of individual employees shall be made by the Central Government on the recommendations of the Advisory Committee:

Provided that in case of disagreement or conflict of opinion, the decision of the Central Government shall be final:

Provided further that necessary guidelines as and when required shall be framed by the Central Government or as the case may be, by the State Advisory Committee which shall be approved by the Central Government before such guidelines are issued.

32.1. From a perusal of the above, it is seen that as per sub-section (1) of Section 80, the Central Government may by order establish one or more advisory committees within a period of thirty days from the date of enactment of the Reorganisation Act for the purpose of assisting it in regard

to (a) the discharge of any of its functions under Part VIII and (b) ensuring fair and equitable treatment to all persons affected by the provisions of Part VIII and the proper consideration of any representations made by such persons. In terms of sub-section (2), allocation guidelines shall be issued by the Central Government on or after the date of enactment of the Reorganisation Act and the actual allocation of individual employees shall be made by the Central Government on the recommendations of the advisory committee. As per the first proviso, in case of disagreement or conflict of opinion, the decision of the Central Government shall be final. Second proviso says that necessary guidelines as and when required shall be framed by the Central Government or as the case may be by the State Advisory Committee which shall be approved by the Central Government before such guidelines are issued.

33. Section 81 empowers the Central Government to issue directions. Central Government may give such directions to the State Government of Andhra Pradesh and

the State Government of Telangana as may appear to it to be necessary for the purpose of giving effect to the provisions of Part VIII and the State Governments shall comply with such directions.

**Material Papers:**

34. We may now refer to the material papers having a bearing on the *lis*. By G.O.Rt.No.837 dated 28.02.2014 issued by the Secretary to the Government of Andhra Pradesh, General Administration (Spl.A) Department, it was mentioned that Government of Andhra Pradesh had granted extension in service of Dr. Prasanna Kumar Mohanty, IAS (1979) who was the Chief Secretary at that point of time and who was due to retire from service on 28.02.2014 AN under the third proviso to Rule 16(1) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 and as per approval accorded by the competent authority for a period of four months beyond 28.02.2014 upto 30.06.2014 in public interest. It was notified that Dr. Prasanna Kumar Mohanty, IAS (1979) would retire from service on the afternoon of 30.06.2014.

35. By subsequent G.O.Rt.No.1999 dated 12.05.2014 of the Secretary to the Government of Andhra Pradesh, General Administration (Spl.A) Department, it was mentioned that Dr. P.K.Mohanty, IAS had requested the Government to permit him to retire from IAS voluntarily with effect from 01.06.2014 duly waiving the three months notice period as provided under the All India Services (Death-cum-Retirement Benefits) Rules, 1958. State Government agreed to such request and permitted Dr. P.K.Mohanty, IAS to retire from service voluntarily with effect from 01.06.2014 AN in terms of sub-rule (2) of Rule 16 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 read with the second proviso thereunder waiving the three months notice period. Accordingly, notification to that effect was issued notifying retirement of Dr. P.K.Mohanty, IAS (1979) from IAS with effect from 01.06.2014 AN.

36. On 01.06.2014, G.O.Rt.No.2339 was issued by the Government of Andhra Pradesh in the General

Administration (Spl.A) Department stating that consequent upon voluntary retirement of Dr. P.K.Mohanty, IAS (1979), Chief Secretary to the Government of Andhra Pradesh on 01.06.2014 AN, Sri I.Y.R.Krishna Rao, IAS (1979), Chief Commissioner of Land Administration and Special Chief Secretary was placed in full additional charge of the post of Chief Secretary to the Government of Andhra Pradesh until further orders.

36.1. We will deal with the issue as to whether Dr. P.K.Mohanty was in service as on 01.06.2014 when we will analyse the decision of CAT pertaining to the above aspect.

37. Government of India in the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training issued notification dated 28.03.2014. The said notification mentioned that in exercise of powers conferred by sub-section (1) of Section 80 of the

Reorganisation Act, the Central Government constituted an advisory committee comprising of the following:

1. Sri Pratyush Sinha, IAS (BH) (1969) - Chairman
2. Chief Secretary, Govt. of AP - Member
3. Special Secretary (IS), MHA, New Delhi- Member
4. IG (Forests)-cum-SS, Ministry of Environment and Forest, New Delhi - Member
5. Additional Secretary (Services & Vigilance), DOPT, New Delhi - Member Secretary

37.1. The terms of reference of the advisory committee were as under:

(i) To make suitable recommendations regarding determination of the cadre strength of the three All India Services, namely, IAS, IPS & IFS of the two successor States, namely, Andhra Pradesh and Telangana on the basis of objective and transparent principles to be evolved by the committee within one week from the date of this notification.

(ii) To consider and take a view on any representation(s)/comment(s) made by the stakeholder(s) with reference to such determination of cadre strength and principles, after the same is placed on the respective website of the three AIS for a period of one week and thereafter make suitable recommendations regarding the issues that may be raised through these representations, within a period of one week.

(iii) To recommend objective and transparent criteria for the allocation/distribution of personnel belonging to the three All India Services, i.e. IAS, IPS & IFS & borne on the existing cadre of Andhra Pradesh between the two successor States namely Andhra Pradesh and Telangana within three weeks from the date of the notification.

(iv) To further subdivide the total authorized strength of the three All India Services as approved by the competent authority after final recommendation of the committee as mentioned in Para (ii) above, into Direct Recruitment Quota and Promotion Quota wise; Unreserved, OBC, SC and ST wise; and Insider and Outsider wise for the two successor States namely Andhra Pradesh and Telangana arising out of the existing State of Andhra Pradesh immediately after approval of the determination of cadre strength, as mentioned at Point No. (ii) above or approval of the criterion for allocation/distribution by the competent authority, as mentioned at Point No.(iii) above, whichever is later.

(v) To recommend specific individual allocation/distribution of All India Service officers in accordance with the allocation guidelines as approved by the competent authority, within one week after completion of the further sub-division of authorized cadre strength, as mentioned at Point No.(iv) above.

(vi) To consider any representation(s) made by an All India Service officer(s) who is/are affected by such recommendations regarding individual allocation/distribution, as mentioned at point No.(v) above after the same is placed in the websites of the respective cadre controlling authority of AIS, for one week, inviting representations, in order to ensure a fair and equitable treatment to all and make appropriate recommendations, if any, within one week from the closure of accepting representations from stakeholders.

37.2. Thus, the mandate of the advisory committee was to make suitable recommendations regarding determination of the cadre strength of the three All India Services of the two successor States of Andhra Pradesh and Telangana on the basis of objective and transparent principles to be evolved by the committee. The advisory committee was also under a mandate to consider any representation made by a stakeholder and take a view thereon. Advisory committee was required to recommend objective and transparent criteria for allocation/distribution of personnel belonging to the three All India Services borne on the existing cadre of Andhra Pradesh between the two successor States of Andhra Pradesh and Telangana; to



further subdivide the total authorised strength of the three All India Services as approved by the competent authority after final recommendation of the committee into direct recruit quota and promotion quota; unreserved, OBC, SC and ST; and insider and outsider-wise; for the two successor States arising out the existing State of Andhra Pradesh. Thereafter, the advisory committee was required to recommend specific individual allocation/distribution of All India Service officers in accordance with the allocation guidelines as approved by the competent authority.

38. Advisory committee after due consultation and deliberation made the recommendations, whereafter Central Government approved a set of guidelines for allocation of All India Service officers borne on the undivided cadre of Andhra Pradesh between the two successor States of Telangana and Andhra Pradesh. As per paragraph 1 of the guidelines, the main features of All India Service cadre of the undivided State of Andhra Pradesh with respect to direct recruits and promotees as well as reserved and general categories should be reflected

in the cadres of the two successor States to the extent possible. In terms of paragraph 2, allocation of such officers should correspond to the cadre strength distributed to the two successor States in the ratio of administrative districts i.e., 13 in residual Andhra Pradesh and 10 in the State of Telangana, meaning thereby that allocation of officers would also be done in the same ratio.

38.1. Paragraph 3 says that direct recruit and promotee officers borne on the cadre of undivided Andhra Pradesh on the day immediately before the appointed day i.e., 02.06.2014 would be distributed between the two successor States in the same ratio in which the respective cadre strength of direct recruits and promotion quota have been distributed between them.

38.2. As per paragraph 5.1, the first task would be to compute the number of direct recruit insider officers of each category i.e., UR, OBC, SC and ST to be allocated to the two successor States. Paragraph 5.2 says that the

same procedure adopted for computing the number of direct recruit insider category would be adopted for determining the number of categorywise direct recruit outsider officers to the two successor States.

38.3. Paragraph 7 deals with promotion quota and direct recruit insiders. Likewise paragraph 8 deals with direct recruit outsiders. Allocation of officers under the direct recruit outsider category was to be done on the basis of lottery. Based on the outcome of the lottery, the size of the roster block would be decided.

38.4. Paragraphs 8.4 and 8.5 are relevant and those are extracted as under:

8.4 The tentative allocation for all the 80 officers thus having been determined, the officers of one batch will be grouped together. Depending on the outcome of the lottery, the first opportunity to either go to the state to which he/she is earmarked or attempt to swap with another in the batch who would like to go to that state instead, would be that of the officer falling on the roster point. The modalities thereafter would be the same as has been described in para 7.1 & 7.2 above.

8.5 Since there may be very few SC, ST and OBC officers in a batch, in order to facilitate greater choice to them, such officers need not be grouped batch-wise but the allocation would be done from the roster block which in the normal course would be spanning a few batches.

38.5. Thus as per paragraph 8.4, officers of one batch would be grouped together. Depending on the outcome of the lottery, the first opportunity to either go to the state to which he/she was earmarked or attempt to swap with another in the batch who would like to go to that state instead would be that of the officer falling on the roster point. However, as per paragraph 8.5, there being very few SC, ST and OBC officers in a batch, in order to facilitate greater choice to them such officers need not be grouped batch-wise but allocation would be done from the roster block which in the normal course would be spanning a few batches.

38.6. Paragraph 9 provided a grievance redressal mechanism to an aggrieved All India Service officer to make a representation to the Central Government which

would be considered by the advisory committee by ensuring a fair and equitable treatment to all.

39. We find that a notification dated 30.05.2014 was issued by Government of India in the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, provisionally allocating 44 IAS officers borne on the undivided cadre of Andhra Pradesh to the State of Telangana cadre of IAS with effect from 02.06.2014. This was followed by G.O.Rt.No.2332 dated 31.05.2014 of the Government of Andhra Pradesh in the General Administration (Spl.A) Department notifying the said list of 44 officers provisionally allocated to the State of Telangana. Name of first respondent was not included in the list of Indian Administrative Service officers allocated to the State of Telangana though he had given option for Telangana.

40. Insofar the first respondent is concerned, he was allotted to Andhra Pradesh on the basis of roster point and roster block. In the remarks column, it was remarked

against his name that he was a single officer belonging to direct recruit unreserved category of his batch (1989). Therefore, swapping was not possible. Accordingly, vide the revised allocation list dated 05.03.2015, his allocation to Andhra Pradesh was maintained.

**Analysis:**

41. Having surveyed the legal position and material papers, we may now examine the correctness of the findings of CAT.

42. The first issue examined by CAT and as already discussed above was whether the guidelines framed by the Central Government on the basis of the recommendations of the advisory committee (Pratyush Sinha committee) were illegal, arbitrary and in violation of the All India Services Act, 1951.

42.1. CAT took the view that allowing options for *inter se* swapping to one set of officials and denying the same to another set of officers was an irrational classification. While an officer belonging to the unreserved category in

direct recruit or promotee quota could exercise the option of swapping only with an officer belonging to the unreserved category of the same batch, option of swapping was available to the reserved category officers for more than one batch. This was held to be irrational besides not meeting the requirement of fair and equitable treatment as contemplated under Section 80(1)(b) of the Reorganisation Act. We are afraid CAT has misconstrued the guidelines framed in this regard. It was mentioned in paragraph 8.5 that there being very few SC, ST and OBC officers in a batch, in order to facilitate greater choice to them, such officers were not grouped batch-wise but a roster block was maintained covering more than one batch. This explanation is a reasonable one and cannot simply be brushed aside as being irrational. The said provision was made to ensure fair and equitable treatment to officers belonging to the aforesaid categories. It is an admitted fact which was also acknowledged by CAT that first respondent was the only officer belonging to the unreserved direct recruit outsider category of 1989 batch.

Though he sought for swapping with another officer, namely Sri Rajat Bhargava who was allotted Telangana State, mutual swapping was not possible because Sri Rajat Bhargava belonged to the 1990 batch. Merely on the above basis, CAT was not justified in holding such guidelines to be violative of Articles 14 and 16 of the Constitution of India. Further, CAT has not given any reason as to how such guidelines can be construed to be violative of the All India Services Act, 1951.

42.2. That apart, CAT was not justified in taking the view that the guidelines framed by the Central Government on the basis of the recommendations of the advisory committee were dissimilar to the guidelines framed by the Central Government pursuant to the recommendations of the U.C.Agarwal committee pertaining to reorganisation of the State of Uttar Pradesh; rather the view taken is that recommendations of the U.C.Agarwal committee were not incorporated in the present guidelines; unlike in the present case, guidelines framed by the Central Government on the basis of the U.C.Agarwal committee



recommendations did not make any classification for exercising the option of swapping. While the U.C. Agarwal committee was set up under the Uttar Pradesh Reorganisation Act, 2000, the advisory committee or the Pratyush Sinha committee was set up under the Reorganisation Act. Both enactments are different. Merely because guidelines were issued by the Central Government in both the cases and subject matter being the same, i.e., allocation of officers of the erstwhile combined state to the successor states, it does not mean that recommendations of the Pratyush Sinha committee or the guidelines framed by the Central Government based thereon, would have to conform to the recommendations of the Agarwal committee or the guidelines framed by the Government of India on the basis of the recommendations of the Agarwal committee. Because the two sets of guidelines are different and because guidelines framed under the Reorganisation Act do not conform to the Central Government guidelines in respect of Uttar Pradesh would not render the guidelines under the Reorganisation

Act illegal, arbitrary or violative of Articles 14 and 16 of the Constitution of India.

42.3. That being the position, CAT was not justified in holding the guidelines for allocation of All India Service officers borne on the undivided cadre of Andhra Pradesh between the two successor States of Telangana and Andhra Pradesh as illegal, arbitrary and violative of the All India Services Act, 1951.

43. The second issue dealt with by CAT was whether inclusion of Dr. P.K.Mohanty as a member in the advisory committee had vitiated its deliberations because two of the officers who were required to be allocated were his daughter and son-in-law. Insofar this issue is concerned, CAT had observed that there was nothing to prove that Mohanty's daughter and son-in-law were benefited by the guidelines; that the guidelines were manipulated by Mohanty in order to ensure that his daughter and son-in-law could get their preferred choice i.e., Telangana cadre. It was further held by CAT that Dr. P.K.Mohanty as a

member of the advisory committee was not sitting on his own cause but went on to hold that the nearness of his relationship with two of the officers to be allocated gave an impression that Dr. P.K.Mohanty was espousing the cause of his daughter and son-in-law.

43.1. It is trite law that one cannot be a judge in his own cause. Further, there need not be any actual instance of any bias. However, having noticed that, it needs to be mentioned that Dr. P.K.Mohanty was not a member of any selection committee or a committee of like nature where his daughter and son-in-law were candidates for selection. He was made a member of the advisory committee by virtue of the office which he was holding i.e., Chief Secretary of the combined State of Andhra Pradesh to make recommendations to the Central Government to frame guidelines for allocation of officers borne on the cadre of the composite State of Andhra Pradesh to the two successor States of Telangana and Andhra Pradesh. The advisory committee of which he was a member was headed by Sri Pratyush Sinha who is unconnected with

the State of Andhra Pradesh. Mandate of the advisory committee, as discussed above, was to make recommendations to frame guidelines for allocation of All India Service officers borne on the cadre of the composite State of Andhra Pradesh to the successor States of Telangana and Andhra Pradesh. Advisory committee had submitted its recommendations, whereafter it was the Central Government which had issued the guidelines. It is nobody's case that Dr. P.K.Mohanty had influenced the advisory committee to make certain recommendations so as to benefit his daughter and son-in-law; it is nobody's case that he had influenced the Central Government to approve such recommendations and issue the necessary guidelines benefiting his daughter and son-in-law. As a matter of fact, nothing has been pointed out or nothing has been alleged as to which of the guidelines had benefited the daughter and son-in-law of Dr. P.K.Mohanty. We may mention that at the time of actual allocation of the officers to the two successor States i.e., on 10.10.2014 and finally on 05.03.2015,

Dr. P.K.Mohanty was no longer in service having retired much earlier and therefore he no longer continued in the advisory committee.

43.2. In our view, CAT on the basis of general principles had arrived at a sweeping conclusion that inclusion of Dr. P.K.Mohanty in the advisory committee as a member had vitiated its deliberations and ultimately the allocations. Such a farfetched conclusion is not supported by the record and is not at all logical.

44. That brings us to the third and fourth issues which are, whether Dr. P.K.Mohanty had retired on 01.06.2014 and therefore, ought to have been included in the list of officers borne on the cadre of undivided State of Andhra Pradesh as on 01.06.2014 and who was required to be allocated to either of the two successor States. The fourth issue is corollary to the above, i.e., whether the date of retirement of Dr. P.K.Mohanty (01.06.2014) could be construed as a non-working day, though a Sunday?

45. Coming to the third issue, the same pertains to the list of officers borne on the cadre of the undivided State of Andhra Pradesh as on 01.06.2014 for allocation to the successor States of Telangana and Andhra Pradesh. The same was held to be illegal and arbitrary on account of non-inclusion of the name of Dr. P.K.Mohanty in the said list, though he was working on 01.06.2014 i.e., one day prior to the appointed day which is 02.06.2014.

45.1. Paragraph 3 of the guidelines is relevant for the present discourse. It reads as under:

3. Direct recruit (DRs) and Promoted Officers (PQs) borne on the undivided Andhra Pradesh cadre on the day immediately before the appointed day i.e., 2<sup>nd</sup> June, 2014, would be distributed between the two successor States in the same ratio in which the respective cadre strength of DR and PQ quota have been distributed between them i.e., any surpluses or deficits of officers in position *vis-à-vis* the total authorized strength of the undivided state would be divided proportionately between the successor States, to the extent it is possible to do so.

45.2. From the above, what is discernible is that direct recruit and promotee officers borne on the cadre of

undivided Andhra Pradesh on the day immediately before the appointed day would be distributed between the two successor States in the same ratio in which the respective cadre strength of direct recruit and promotion quota have been distributed between them. Appointed day being 02.06.2014, the day immediately before that day would be 01.06.2014. Therefore, this guideline provides that those officers who were in the cadre of undivided Andhra Pradesh as on 01.06.2014 would be allocated to the two successor States.

45.3. According to the first respondent, Dr. P.K.Mohanty was in service as on 01.06.2014. Therefore his name should have been included in the list for allocation. Had his name been included in the list of officers eligible for allotment, it would have ensured that the first respondent would have been allocated as per his option i.e., State of Telangana. Agreeing with the aforesaid contention of the first respondent, CAT had noted that Government of Andhra Pradesh had permitted Dr.P.K.Mohanty to go for voluntary retirement on 01.06.2014 AN. Dr.P.K.Mohanty

had attended office on 01.06.2014 and had issued a number of government orders on that day. Therefore, according to CAT, he was in service as on 01.06.2014. As per the aforesaid guidelines, his name should have been included in the list of officers for distribution between the two successor States. Even as per sub-section (4) of Section 76, name of Dr. P.K.Mohanty should have been included. Therefore, CAT held that non-inclusion of Dr. P.K.Mohanty in the list of officers for the purpose of allocation to the two successor States was illegal and arbitrary.

45.4. Sub-section (4) of Section 76 of the Reorganisation Act reads as follows:

(4) The members of each of the said services borne on the Andhra Pradesh cadre immediately before the appointed day shall be allocated to the successor State cadres of the same service constituted under sub-section (2) in such manner and with effect from such date or dates as the Central Government may, by order, specify.

45.5. Thus, what sub-section (4) of Section 76 contemplates is that members of each of the three All



India Services borne on the Andhra Pradesh cadre immediately before the appointed day (02.06.2014) shall be allocated to the successor States' cadres of the same service. This position is clarified in paragraph 3 of the guidelines as extracted above, which says that an officer must be borne on the cadre of undivided Andhra Pradesh as on 01.06.2014 to be included in the list for allocation to the two successor States.

45.6. Insofar Dr. P.K.Mohanty is concerned, his date of retirement from service on attaining the age of superannuation was 28.02.2014 AN. On that day he had attained the age of sixty years. However, by G.O.Rt.No.837 dated 28.02.2014, he was given extension of service for a period of four months in public interest. It was mentioned in the said G.O.Rt.No.837 that Dr. P.K.Mohanty would retire from service on the afternoon of 30.06.2014. Thereafter G.O.Rt.No.1999 dated 12.05.2014 was issued which says that Dr. P.K.Mohanty had requested the Government to permit him to retire from service voluntarily with effect from 01.06.2014 by waiving the

three months notice period in terms of Rule 16(2) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 which was accepted. Accordingly, Government of Andhra Pradesh notified retirement of Dr. P.K.Mohanty from service with effect from 01.06.2014 AN.

45.7. Consequently, G.O.Rt.No.2339 dated 01.06.2014 was issued stating that consequent upon the voluntary retirement of Dr. P.K.Mohanty, Chief Secretary to the Government of Andhra Pradesh on 01.06.2014 AN, Sri I.Y.R.Krishna Rao was given full additional charge of the post of Chief Secretary. As already noticed above, the date of superannuation of Dr. P.K.Mohanty was 28.02.2014 AN when he had completed sixty years. He was given four months extension in public interest up to 30.06.2014.

45.8. Much before 30.06.2014, in fact much before 01.06.2014, Dr. P.K.Mohanty had requested the Government to allow him to retire from service voluntarily with effect from 01.06.2014 by waiving the three months notice period. This was accepted by then Government of

Andhra Pradesh vide G.O.Rt.No.1999 dated 12.05.2014. Accordingly, it was notified by the Government of Andhra Pradesh vide G.O.Rt.No.2339 dated 01.06.2014 that Dr. P.K.Mohanty had retired from service with effect from 01.06.2014AN and that on his retirement, Sri I.Y.R. Krishna Rao was made the Chief Secretary. Therefore, a view could be taken that Dr. P.K.Mohanty had ceased to be in the cadre of the undivided State of Andhra Pradesh on 01.06.2014. Such a view has been taken by the Central Government and in our view, it is both a plausible and a reasonable view; a pragmatic view as well. Dr. P.K.Mohanty having retired from service, there was no question of his further allocation or re-allocation to any of the successor States. Therefore, his name could not have been included in the list of officers belonging to the Indian Administrative Service borne on the cadre of the undivided State of Andhra Pradesh for the purpose of allocation to the successor States of Telangana and Andhra Pradesh.

45.9. We have already noticed in the earlier part of this judgment that as per Rule 16(1) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, a member of the service shall retire from the service with effect from the afternoon of the last day of the month in which he attains the age of sixty years. Insofar Dr. P.K.Mohanty is concerned, the date of retirement as per sub-rule (1) of Rule 16 was 28.02.2014. Thereafter he was on extended service courtesy the Government of Andhra Pradesh for a limited period of four months upto 30.06.2014, but before that he had applied for voluntary retirement which was accepted by the State Government after waiving of the three months notice. Rule 16(2) provides for giving of such three months previous notice. Further, as per the second proviso, the State Government may waive off or relax the period of such notice on the request made by the concerned officer. This was done in the case of Dr. P.K.Mohanty on 12.05.2014. Therefore, CAT was not justified in coming to the conclusion that non-inclusion of the name of Dr. P.K.Mohanty in the list of officers for

allocation vitiated the said list in its entirety. There was no justification for coming to such a drastic conclusion.

46. The consequential issue, issue No.(iv), is whether date of retirement of Dr. P.K.Mohanty i.e., 01.06.2014 could be considered as a non-working day. As already noticed above, Government of Andhra Pradesh had accepted the request of Dr. P.K.Mohanty to retire voluntarily from his extended service with effect from 01.06.2014, on which date Mr. I.Y.R.Krishna Rao was made the Chief Secretary. 01.06.2014 was in fact a Sunday, a non-working day. That apart, Note-2 below the Explanation to Rule 16(3) mentions that in the case of a member of service who retires under Rule 16(2) of the All India Services (Death-cum-Retirement Benefits) Rules, 1959, the date of retirement shall be treated as a non-working day. Therefore, factually and legally the date of retirement of Dr. P.K.Mohanty i.e., 01.06.2014 would have to be treated as a non-working day. CAT fell in error in treating the same as a working day and thereafter holding that name of Dr. P.K.Mohanty should have been

included in the list of officers for allocation, further holding that such non-inclusion had vitiated the entire list. Such a finding is incorrect and is liable to be set aside.

47. From a careful analysis of the above, we are of the unhesitant opinion that CAT fell in error in interfering with the allocation list and setting aside the same *qua* the allocation of the first respondent to the State of Andhra Pradesh. The order of CAT to that effect is legally and factually untenable. That apart, the further direction of CAT to treat the first respondent as an All India Service officer of the State of Telangana with all consequential benefits is wholly without jurisdiction. Such a direction could not have been issued by CAT, the cadre controlling authority being the Central Government. It is evident that CAT had examined the challenge to the allocation order made by the first respondent like an appellate authority substituting its views for that of the Central Government which is not permissible in law.

48. In **Union of India v. Rajiv Yadav**<sup>1</sup>, one Rajiv Yadav had challenged the reservation provided in the process of allocation by the Central Government in different States in respect of direct recruits to the Indian Administrative Service. Full Bench of CAT held that no reservation can be provided for the Scheduled Castes/Scheduled Tribes while allocating the members of IAS to various cadres. This decision of CAT was challenged by the Central Government before the Supreme Court. It was in that context the Supreme Court referred to Rule 5 of the Indian Administrative Service (Cadre) Rules, 1954, including sub-rule (2) thereof, and held that when a person is appointed to an All India Service, having various state cadres, he has no right to claim allocation to a particular 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. A selected candidate has a right to be considered for appointment to the IAS but has no such right to be allocated to a cadre of

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<sup>1</sup> (1994) 6 SCC 38

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. It was held as follows:

5. We have given our thoughtful consideration to the reasoning and the conclusions reached by the tribunal. We are not inclined to agree with the same. Rule 5 of the Cadre Rules provides that the allocation of the members of the IAS to various cadres shall be made by the Central Government in consultation with the State Government or the State Governments concerned. Sub-rule (2) of Rule 5 further provides that a cadre officer can be transferred from one cadre to another. When a person is appointed to an all-India Service, having various State Cadres, he has no right to claim allocation to a State of his choice or to his home State. The Central Government is under no legal obligation to have options or even preferences from the officer concerned. Rule 5 of the Cadre Rules makes the Central Government the sole authority to allocate the members of the service to various cadres. It is not obligatory for the Central Government to frame rules/regulations or otherwise notify "the principles of allocation" adopted by the Government as a policy. The letter dated 31-5-1985 shows that the Central Government has always been having guidelines either in the shape of "limited zonal preferences system" or "Roster System" for the exercise of its discretion under Rule 5 of the Cadre Rules. Simply because the principles of allocation called "Roster System" were not



notified, it is no ground to hold that the same are *non est* and the Central Government cannot follow the same. In any case the “Roster System” has stood the test of time. It was operative during the years 1966 to 1977 and again it is being followed from 1985 batch onwards. The fact that the “Roster System” is being followed in practice by the Central Government for all these years, is in itself a sufficient publication of its principles.

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. It is common knowledge that the Scheduled Caste/Scheduled Tribe candidates are normally much below in the merit list and as such are not in a position to compete with the general category candidates. The “Roster System” ensures equitable treatment to both the general candidates and the reserved categories. In compliance with the statutory requirement and in terms of Article 16(4) of the Constitution of India 22

1/2% reserved category candidates are recruited to the IAS. Having done so both the categories are to be justly distributed amongst the States. But for the “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.

49. This decision of the Supreme Court has been followed in **Union of India v. Mhathung Kithan**<sup>2</sup> and again in **G.Srinivas Rao v. Union of India**<sup>3</sup>.

50. We find that while passing the impugned judgment and order CAT had placed reliance on the decision of the Supreme Court in **S.Ramanathan v. Union of India**<sup>4</sup>. Question before the Supreme Court in that case was whether the appellants who were State Police Service officers and who were promoted to the Indian Police Service, could maintain a writ petition alleging inaction on the part of the competent authority to have triennial review? Consequential question was whether such inaction would entitle the appellants to have a mandamus from the Court

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<sup>2</sup> (1996) 10 SCC 562

<sup>3</sup> (2011) 8 SCC 123

<sup>4</sup> (2001) 2 SCC 118

for review and for reconsideration of their case for promotion to the Indian Police Service from an anterior date. In that case, Tribunal, though came to the conclusion that there was no such triennial review for redetermination of the cadre strength, however declined to issue mandamus. In the above factual backdrop, Supreme Court considered as to what would be the effect of infraction of Rule 4(2) of the Indian Police Service (Cadre) Rules, 1954, which is *pari materia* to the Indian Administrative Service (Cadre) Rules, 1954, and what direction can be issued in the event of such infraction. It was noticed that four different benches of CAT had issued directions to the Central Government as well as the State Governments to hold triennial review and reconsider the case of promotion of the concerned State Police Service officers. Those decisions were accepted and implemented by the Central Government as well as by the State Governments without any murmur. Supreme Court considered the language of sub-rule (2) of Rule 4 as it stood prior to its amendment in the year 1995 and held

that it required the Central Government to re-examine the strength and composition of each cadre in consultation with the State Government concerned. While acknowledging that an infraction of the aforesaid provision did not confer a vested right upon an officer for requiring the Court to issue any mandamus but at the same time if there has been an infraction and no explanation is forthcoming from the Central Government indicating the circumstances under which the exercise could not be undertaken, the aggrieved party may well approach a Court and the Court in its turn would be well within its jurisdiction to issue appropriate directions depending upon the circumstances of the case. It was in that context, Supreme Court held that when certain power has been conferred upon the Central Government for examining the cadre strength, necessarily the same is coupled with a duty to comply with the requirements of law and any infraction on that score cannot be whittled down on the hypothesis that no vested right of any employee is being jeopardised. Therefore, Supreme Court set aside the order

of CAT and directed the Union of India as well as the State Government to reconsider the question of promotion of the state cadre officers to the Indian Police Service on the basis of the re-determined strength of the cadre; if on such reconsideration relief would be available to any of the state cadre officers for promotion to IPS on the basis of the quota available to them in the cadre, the same may be given to them.

51. We are afraid, decision of the Supreme Court in **S.Ramanathan** (surpa) was rendered in a completely different factual context. The same could not have been applied to the facts of the present case and that too for directing the Central Government and the State to treat the first respondent as an officer belonging to the State of Telangana. Such a direction of CAT is totally untenable and impermissible.

52. In **Indradeo Paswan v. Union of India**<sup>5</sup> Supreme Court was considering the issue arising out of Bihar

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<sup>5</sup> (2007) 7 SCC 250

Reorganisation Act, 2000, on the basis of which two separate States of Jharkhand and Bihar came into existence on 15.11.2000. Appellant therein had given his preference to be allocated to the State of Jharkhand, but he was allocated to the reorganized State of Bihar. This came to be challenged by the appellant before the High Court of Jharkhand in a writ proceeding which was however dismissed. Writ appeal filed before the Division Bench was also dismissed, whereafter matter reached the Supreme Court. Supreme Court noticed that no case of *mala fides* or irrationality was made out in the matter of allocation of the appellant to the reorganized State of Bihar. Main contention of the appellant for preferring Jharkhand was that he had worked in Jharkhand for a major part of his service. Rejecting the claim of the appellant Supreme Court held that allocation of officers to successor States should not be interfered with on individual grievances relating to non-acceptance of options exercised, unless clear illegality or Wednesbury unreasonableness is established.

53. Before concluding, we may mention that no prejudice in the legal sense can be said to have been caused to the first respondent by his allocation to the State of Andhra Pradesh. In terms of Rule 6(1) of the Indian Administrative Service (Regulations of Seniority) Rules, 1987 read with Rule 10 of the Indian Administrative Service (Probation) Rules, 1954, seniority of the first respondent in his cadre will not be disturbed and will remain the same. As has been held by the Supreme Court in **Rajiv Yadav** (supra), allocation to a cadre is an incidence of service and no officer has a vested right to claim allotment to a particular cadre.

**Conclusion:**

54. That being the position and upon a thorough consideration of all aspects of the matter, we have no hesitation in holding that CAT had grossly erred in interfering with the allocation of the first respondent to the State of Andhra Pradesh. Consequently, judgment and order dated 29.03.2016 passed by CAT in O.A.No.1241 of

2014, being clearly unsustainable in law and on facts, is hereby set aside and quashed.

55. Writ petition is accordingly allowed. However, there shall be no order as to costs.

Miscellaneous applications, pending if any, shall stand closed. There shall be no order as to cost.

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**UJJAL BHUYAN, CJ**

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**SUREPALLI NANDA, J**

Mr. M.Avinash Reddy, learned counsel representing respondent No.1 prays for keeping the judgment in abeyance for a period of three weeks to enable respondent No.1 to avail his remedy.

Having considered the matter in detail and pronounced the judgment, we are not inclined to stay the same.



Accordingly, the prayer is declined.

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**UJJAL BHUYAN, CJ**

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**SUREPALLI NANDA, J**

10.01.2023

Note: LR copy be marked.  
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