

Manish Kumar and Ors. Vs.union of India and Ors.

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Court : Delhi

Decided On : Apr-03-2019

Appellant : Manish Kumar and Ors.

Respondent : Union of India and Ors.

Advocate for Pet/Ap. : Mr. Rajshekhar Rao

Judgement :

\$~ IN THE HIGH COURT OF DELHI AT NEW DELHI * % + W.P.(C) 109/2019 & C.M. Nos.618/2019, 11454/2019, 11597/2019 Judgment delivered on:

03. 05.2019 Judgment reserved on:

16. 04.2019 HIMANSHU KUMAR VERMA AND ANR.

... Petitioner

s Through Mr.Sandeep Sethi & Mr. Neeraj Malhotra, Senior Advocates with Mr.Parmatma Singh, Mr.Madhur Jain, Advs. versus UNION OF INDIA AND ORS.

.....

... RESPONDENTS

Through Mr. K.M. Nataraj, ASG and Ms.Suparna Srivastava, CGSC with Mr. Shailesh Madiyal & Mr. Debasish Raut, Advs R-1, 2 & 3. Mr. Naresh Kaushik, Adv for R-4. + W.P.(C) 862/2019 & CM APPL. 3903-3905/2019 HAARIS RASHEED & ORS

... Petitioner

s Through Mr. Rajshekhar Rao with Mr.Ankur Khandelwal, Mr.Utkarsh Sharma, Mr.Gowrang, Advs. versus UNION OF INDIA & ORS

... RESPONDENTS

Through Mr. K.M. Nataraj, ASG and Mr.Manish Mohan, CGSC with Ms.Manisha Saroha, Mr.Shailesh Madiyal, Mr.Debasish Raut, Advs for R-1,2 & 3. Mr.Naresh Kaushik, Adv for R-4. W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 1 of 62 + W.P.(C) 864/2019 & CM APPL. 3906-3908/2019 MANISH KUMAR AND ORS.

... Petitioner

s Through Mr.Rajshekhar Rao with Mr.Ankur Khandelwal, Mr. Utkarsh Sharma, Mr. Gowrang, Advs. versus UNION OF INDIA AND ORS. Through Mr. K.M. Nataraj, ASG

... RESPONDENTS

and Mr.Manish Mohan, CGSC with Ms.Manisha Saroha, Mr. Shailesh Madiyal, Mr. Debasish Raut, Advs R- 1,2 & 3. Mr. Naresh Kaushik, Adv for R-4. + W.P.(C) 869/2019 & CM APPL. 3922-3923/2019 AJAY GANDHI AND ORS.

... Petitioner

s Through Mr.Rajshekhar Rao with Mr.Ankur Khandelwal, Mr.Utkarsh Sharma, Mr.Gowrang, Advs. versus UNION OF INDIA AND ORS.

... RESPONDENTS

Through Mr.K.M.Nataraj, ASG and Mr.Manish Mohan, CGSC with Ms. Manisha Saroha, Mr. Shailesh Madiyal, Mr. Debasish Raut, Advs R- 1,2 & 3. Mr. Naresh Kaushik, Adv for R-4. CORAM: HON'BLE MR. JUSTICE VIPIN SANGHI HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 2 of 62 VIPIN SANGHI, J.

1. W.P.(C) No.109/2019 has been preferred by two petitioners to assail the order dated 20.12.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No.4576/2018. The petitioners also seek a writ of certiorari quashing the notification dated 19.12.2018 issued under Rule 5(1) of the Indian Police Service (Cadre) Rules, 1954 by the Central Government, allocating the cadres to the candidates allocated to the Indian Police Service (IPS) on the basis of the results of the Civil Services Examination (CSE), 2017. The petitioners also seek a writ of mandamus to the respondents to issue a new list allocating the respective cadres to the selected IPS candidates in the CSE, 2017, purely on the basis of merit and preferences indicated in the online form, by correctly interpreting the Office Memorandum (OM) dated 05.09.2017.

2. W.P.(C) Nos. 862/2019, 864/2019, and W.P.(C) No.869/2019 have been preferred by the petitioners directly to this Court, without preferring Original Applications before the Tribunal to seek similar relief as in W.P. (C) No.109/2019. The further particulars of these petitions are as follows: (A) The petitioners in W.P.(C) Nos. 862/2019 and 864/2019 have been allocated to the Indian Administrative Service (IAS) on the basis of CSE, 2017 and they are aggrieved by the allocation of cadres by the Central Government vide communication dated 03.12.2018. The said petitioners also seek a writ of mandamus to direct the respondents to undertake the task of cadre allocation strictly in accordance with the terms and mandate of the cadre allocation policy contained in the OM dated 05.09.2017. W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 3 of 62 (B) The petitioners in W.P.(C) No.869/2019 have directly approached this Court to assail the notification dated 19.12.2018 (which is also assailed in W.P.(C.) No.109/2019). The petitioners in this writ petition have also been allocated to the IPS on the basis of CSE, 2017. They also seek a writ of mandamus to the respondents to undertake the task of drawing a new list as per the cadre allocation policy contained in the OM dated 05.09.2017.

3. The reason given by the writ petitioners in W.P.(C.) Nos. 862/2019, 864/2019 and 869/2019 for directly approaching this Court, and not approaching the Tribunal in the first instance, is that the Tribunal has already taken a view in the matter in O.A. No.4576/2018 and, thus, it would serve no useful purpose for them to

approach the Tribunal in the first instance with their grievance. They also state that there is grave urgency in the matter, which has also been noticed in the impugned order dated 20.12.2018 passed by the Tribunal in O.A. No.4576/2018.

4. At the outset, we accept the aforesaid explanation furnished by the petitioners in W.P.(C.) Nos. 86/2019, 864/2019 and 869/2019 for directly approaching this Court by filing their respective writ petitions and by- passing the Tribunal to seek relief as sought by them. No useful purpose would be served by relegating them to the Tribunal, since the Tribunal has already formed its view in O.A. No.4576/2018 on the issues raised by these petitioners. Undoubtedly, there is urgency in the matter, and to send these petitioners to the Tribunal would seal their fate. We, therefore, proceed to examine their claims in their respective writ petitions. W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 4 of 62 5. The brief factual background is that all the petitioners in these four writ petitions participated in the CSE, 2017. All of them were successful and were allocated either to the IAS, or to the IPS, as already taken note of hereinabove, depending upon their merit and preference. The case of the petitioners is that the candidates who appeared in the CSE, 2017 had filled up the online forms giving their preferences for cadres under the preferred zones. These preferences were called for, before the declaration of the final results of the selection process, and when the petitioners were not aware of their merit positions.

6. The respondents, in respect of CSE, 2017, adopted a new method of allocation of cadres to the successful candidates appointed, inter alia, to the IAS and IPS, which was different from the method of allocation of cadres prevalent for the earlier years. The method of allocation of cadres in respect of successful IAS/ IPS officers in relation to CSE, 2017 was notified vide OM dated 05.09.2017.

7. The respondents resorted to cadre allocation in respect of the selected IAS officers vide their impugned communication dated 03.12.2018 in respect of CSE, 2017. Cadre allocation in respect of IPS officers in pursuance of CSE, 2017 was done vide the impugned notification dated 19.12.2018. The petitioner No.1 in W.P.(C.) No.109/2019, even before the issuance of the notification dated 19.12.2018, apprehended that the respondents may resort to the method of

allocation of cadres as done in respect of the selected IAS officers and, consequently, he made a representation to the respondents on 06.12.2018, calling upon the respondents to adopt - what he considered, as the correct method of the W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 5 of 62 cadre allocation, emerging from the OM dated 05.09.2017. The basis for the apprehension entertained by the petitioners in W.P.(C.) No.109/2019 was the manner in which cadre allocation was done in respect of IAS officers on 03.12.2018.

8. The petitioners in W.P.(C.) No.109/2019 thus, preferred W.P.(C.) No.13360/2018 directly before this Court as early as on 10.12.2018 i.e. before the issuance of the notification dated 19.12.2018, whereby the cadre allocation was undertaken in terms of Rule 5(1) of the Indian Police Service (Cadre) Rules, 1954. The said writ petition was listed before the learned Single Judge on 11.12.2018. The learned Single Judge directed transfer of the writ petition to the Tribunal with a further direction that the matter be placed before the Tribunal on 14.12.2018.

9. A perusal of the impugned order dated 20.12.2018 passed by the Tribunal in O.A. No.4576/2018 shows that the matter was partially heard on 14.12.2018 and, thereafter on 20.12.2018 - when the impugned order came to be passed. In the meantime, on 19.12.2018, the impugned notification was issued by the Central Government - allocating the cadres to the appointed IPS officers.

10. We have consciously not elaborated on the particulars of each of the petitioners in each of these petitions, and how they claim that the cadre allocation resorted to by the respondents is illegal or arbitrary, for the reason that they all are raising the issue of erroneous interpretation and application of the OM dated 05.09.2017 by the respondents and, consequent, wrong W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 6 of 62 allocation of cadres as arbitrary and illegal. We will, however, illustrate the position a little later in our judgment.

11. The grievance of the petitioners, in substance, is that the respondents have not allocated the cadres to them as per their declared policy of merit- cum- preferences and, even though they were higher in merit and ought to have been allocated the cadres as per their respective preferences - despite the availability of

vacancies in the preferred cadres when their respective turns came for consideration according to their respective merit, they were not allocated their preferred cadres and were allocated cadres which they had not opted for. On the other hand, candidates who ranked lower in merit, when compared to them, were allocated cadres which they had individually given their preferences for and, therefore, the method of allocation of cadres resorted to by the respondents is unfair, unjust, arbitrary and illegal. Their grievance is that in the matter of cadre allocation, the respondents did not exhaust all the cadre preferences given by each of them before allocating the cadres to each of them - which they had not even opted for.

12. Since the entire dispute relates to allocation of cadres to the successful IAS/IPS officers in terms of the OM dated 05.09.2017, we may extract some of the relevant portions of the said OM at this stage. In its material part, the said OM reads as follows: No.13013/2/2016-AIS.I Government of India Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training North Block, New Delhi W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 7 of 62 Dated 05 .09.2017. OFFICE MEMORANDUM Subject: Cadre Allocation Policy for the All India Services- IAS/IPS/IFoS - Reg. The undersigned is directed to say that the Central Government, after consultation with State Governments, has revised the policy for cadre allotment for the All India Services- Indian Administrative Service (IAS)/Indian Police Service (IPS)/Indian Forest Service (IFoS)- as follows:

1. The Cadre Controlling Authorities, namely, the Department of Personnel and Training (Do PT) / Ministry of Home Affairs (MHA) / Ministry of Environment, Forests and Climate Change (Mo EF&CC) shall determine the vacancies including the break-up into Unreserved (UR)/ Scheduled Caste (SC)/ Scheduled Tribe (ST)/ Other Backward Classes (OBC)/ Insider/ Outsider vacancies for each of the cadres as per the established procedure.

2. The States/Joint Cadres shall be divided into the following five Zones: i. ii. iii. iv. v. (AGMUT, Zone-I and Kashmir, Himachal Pradesh, Uttarakhand, Punjab, Rajasthan and Haryana) Jammu Zone-II (Uttar Pradesh, Bihar, Jharkhand and

Odisha) Zone-III Pradesh and Chhattisgarh) (Gujarat, Maharashtra, Madhya Zone-IV Meghalaya, Manipur, Tripura and Nagaland) (West Bengal, Sikkim, Assam-Zone-V Andhra Karnataka, Tamil Nadu and Kerala) (Telangana, Pradesh, W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 8 of 62 3. The candidates shall first give their choice in the descending order of preference from amongst the various Zones. Thereafter the candidates will indicate one preference of cadre from each preferred zone. The candidates will indicate their second cadre preference for every preferred zone thereafter. Similar process will continue till a preference for all the cadres is indicated by the candidate. It is to be noted that preference for the zones will remain in the same order and no change in the order of preference for the zones/ cadres will be permitted.

4. If a candidate does not give any preference for any of the Zones/Cadres, it will be presumed that he has no specific preference for those Zones/cadres. Accordingly, if he is not allocated to any one of the cadres for which he has indicated the preference, he shall be allotted along with other such candidates in the order of rank to any of the remaining cadres, arranged in an alphabetical order, in which there are vacancies in his category after allocation of all the candidates who can be allotted to cadres in accordance with their preference. 5.

6.

[illegible]

be done in the following manner: (a) The first choice for the Cadre in the first preferred Zone would be considered in the order of merit. (b) If the candidate does not get allocated to the 1st preferred Cadre of his 1st preferred Zone, then he would be considered for the first preferred cadre of his 2nd preferred Zone and so on till the 1st preferred cadre of the 5th preferred Zone. (c) If the candidate does not get allocated to the 1st preferred cadre(s) of any Zone, then he would be considered for the 2nd preferred cadre of the 1st preferred Zone and so on. (d) 9. x x x x x x x x x x x x x x x x 10. Allocation with reference to limited preference candidates shall be governed in accordance with the procedure outlined in para 4. Normally, limited preference candidates are assigned cadre in the end. However, policy also lays down allocation of such candidates in their respective category. Therefore, because of migration of general merit candidates to their own category, a situation may arise where both reserved category and general category vacancies are left unfilled. As general candidates cannot be allocated against reserved vacancies, it is mandatory to first allocate cadres to these general category limited (equal) preferences candidates. In order to ensure that adjustment of unallocated reserved category candidates does not result into higher ranked candidates being allocated to lower preferred cadre within a W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 10 of 62 particular Zone vis-a-vis lower ranked candidates, it is stipulated that Cadre Controlling Authority (CCA) would: (a) pool together all reserved category candidates (except general merit candidates) who have been already allocated cadre plus unallocated reserved candidates; (b) pool together all the cadres allocated to reserved candidates against Outsider vacancies plus unutilized UR vacancies; and (c) thereafter, all reserved category candidates will be arranged according to their rank and cadres will be allocated keeping in view the provisions as mentioned in para 8 (iii).

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

12. This cadre allocation policy issues in supersession of the existing cadre allocation policy and comes into effect with the Civil Services Examination - 2017/ Indian Forest Service Examination - 2017. (emphasis supplied) 13. Thus, the candidates were required to give their preferences zone wise and cadre wise. The petitioners submit that the candidates had the option of placing zones and cadres under non-preferred category, by assigning their preference as 99. By way of illustration, and to demonstrate how the allocation system adopted by the respondents has worked unfairly and thrown up absurd, arbitrary and illegal results, the petitioner No.2 in W.P.(C.) No.109/2019 has set out the preferences given by him in respect of different zones and cadres. We may observe that the two petitioners in W.P.(C.) No.109/2019 had secured All-India Ranks 676 and 196, W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 11 of 62 respectively and were allocated to the Nagaland cadre, which was not one of the cadres for which the petitioners had given any preference. The options given by petitioner No.2 were as follows: Order of Preference for State/ Joint Cadre within Zone Zones Order (with State of preference Cadres/ preference for Joint Zones Cadres)

Zone I	AGMUT Haryana Himachal Jammu & Punjab Rajasthan Uttarakhand	2	3	4
99	6	1	5	Pradesh Kashmir Zone II
99	99	99	99	99
Pradesh Zone 2	Chhattisgarh Gujarat Madhya Maharashtra III Pradesh	4	3	2
1	Zone 99 Assam- Manipur Nagaland Sikkim Tripura West IV Meghalaya Bengal	99	99	99
99	99	99	99	99
Zone V	1 Andhra Karnataka Kerala Tamil Nadu Telangana Pradesh	0	2	4
3	1	14.		

14. When the same is rearranged, the tabulation reads as follows:

1st Preferred	2nd Preferred	3rd Preferred	Non- preferred	Non- preferred	Non- preferred	Zone
Zone	Zone	Zone	Zone	ZONE V	ZONE III	ZONE I
Zone	Zone	Zone	ZONE II	ZONE IV	1st Preferred	
Cadre	Telangana	Maharashtra	Rajasthan	2nd Preferred	Cadre	Karnataka
Pradesh	AGMUT	3rd Preferred	Cadre	Tamil Nadu	Gujarat	Haryana
4th Preferred	Cadre	Kerala	Chhattisgarh	Himachal Pradesh	5th Preferred	Cadre
Not preferred	6th Preferred	Cadre	Uttarakhand	Punjab	Not preferred	W.P.(C.)
Nos.109/2019,	862/2019,	864/2019	& 869/2019	Page 12 of 62	15.	

The petitioners submit that the case of petitioner No.2 (in W.P.(C.) No.109/2019) should have been considered on merits, first for the 1st preferred Cadre in the 1st preferred zone i.e. for Telangana, then for the 1st preferred cadre in the 2nd preferred zone i.e. for Maharashtra, and then for the 1st preferred cadre in the 3rd preferred zone i.e. Rajasthan. The same

process should have been adopted for the 2nd preferred cadres in the second preferred zone, and so on - horizontally, for other preferred zones and Cadres. Only if, after exhaustion of all the preferred Cadres in all the preferred zones, the petitioner No.2 was not able to get any preferred cadre in any of the preferred zones as per merit, paragraph 4 of the OM dated 05.09.2017 could be made applicable to the petitioner No.2.

16. The petitioners submit that the said petitioner No.2 submitted his preferences for the States/ Cadres Tamil Nadu, Haryana, Himachal Pradesh, Chhattisgarh and several others. Even though, he was not allocated to one of those cadres, several other candidates - much lower in merit, have been allocated to the said cadres. The following tabulation shows other candidates with lower merit than petitioner No.2, who were allocated cadres for which petitioner No.2 (in W.P.(C.) No.109/2019) had given his preference, and the said petitioner was allocated to Nagaland cadre, which was not even his preferred cadre. Rank 198 201 Candidates Roma Srivastava (TN) Siddhant Jain (Haryana) W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 13 of 62 208 217 219 222 228 229 233 237 242 244 245 Nikita Khattar (Haryana) Illma Afroz (HP) Smit Lodha (Chattisgarh) Ankit Jain (Tamil Nadu) Pushkar Sharma (Chattisgarh) Srishti Pandey (HP) Deepak Siwach (Tamil Nadu) Rajat Chaturvedi (Tamil Nadu) Vivek (Tamil Nadu) Harsh Singh (Tamil Nadu) Chandeesh (Tamil Nadu) 17. Similar situation has arisen in respect of the other petitioners in all these petitions. However, since we are concerned with the legality/ illegality of the interpretation and application of OM dated 05.09.2017, we need not get into the detailed particulars of each case.

18. At the outset, Mr. Sandeep Sethi, learned senior counsel for the petitioners points out that, admittedly, the cadre allocation policy contained in the OM dated 05.09.2017 is a new policy and this is evident from W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 14 of 62 paragraph 12 of the OM dated 05.09.2017, which states that the said cadre allocation policy is issued in supersession of the existing cadre allocation policy, and comes into effect with the Civil Services Examination - 2017/ Indian Forest Service Examination -2017. Thus, the successful candidates had no guidance on the manner in which the said policy

would be interpreted and implemented by the respondents. The petitioners went by the plain grammatical meaning which emerged on a reading of the OM dated 05.09.2017 and accordingly, exercised their options while filling in the online preference forms.

19. The submission of Mr. Sethi is that on a plain reading of the OM dated 05.09.2017, it is clear that it was open to the candidates to give their choices/ preferences of zones and cadres without any restrictions, and without any compulsion that the candidates must necessarily opt for all the zones, or cadres. He submits that from paragraph 3 of the OM dated 05.09.2017, it appears that the candidates were required to indicate their preference for cadres from each preferred zones. He submits that the use of the expression each preferred zone shows that the candidates could also omit any one or more of the five zones from their preferences. They were not bound to prefer each and every zone, much less, each and every cadre in every zone. He submits that the option to give a preference for a particular zone/ cadre, also includes the option to exclude a particular zone/ cadre from ones preferences. Mr. Sethi submits that paragraph 4 of the OM dated 05.09.2017 clearly conveys that if a candidate does not give a preference for any of the zones/ cadres, it would be presumed that he had no specific preference for those zones/ cadres. However, the same does not mean that W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 15 of 62 such a candidate would be treated as having opted for those zones/ cadres, or that his candidature for the preferred zones/ cadres would not be considered according to his merit in the matter of cadre allocation. He submits that paragraph 4 of the said OM dated 05.09.2017 also clearly states that if the candidate is not allocated to any one of the cadres for which he has indicated his preference, he shall be allotted, along with other candidates, in the order of rank, to any of the remaining cadres arranged in an alphabetical order in which there are vacancies after allocation of all the candidates who can be allotted to the cadres according to their preferences. Thus, before a candidate is allotted a cadre for which he has not given a preference by following the procedure indicated in paragraph 4, namely in the order of rank to any of the remaining cadres, arranged in an alphabetical order, in which there are vacancies in his cadre, it was necessary for the respondents to first exhaust the cadres which were available, and which could be allotted to the

candidate as per his/ her rank and preference.

20. Mr. Sethi refers to the procedure disclosed for making of cadre allocation in paragraph 8 (iii) of the OM dated 05.09.2017, which lays down the manner of allocation of cadres against outsider vacancies. He submits that clauses (a), (b) and (c) of paragraph 8(iii) also leave no manner of doubt that when the matter of cadre allocation in respect of a candidate is taken up for consideration (which would be done rank wise), depending upon his/ her preferences for zones/ cadres, the availability of vacancies would be examined preference wise. He submits that there is nothing to indicate even in paragraph 8 of the OM dated 05.09.2017, that if a candidate does not give his preference for all the zones/ cadres, and when the time for consideration W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 16 of 62 of his candidature arises he cannot be allocated a cadre according to his preference, he would be thrown in the residual pool, merely because he may not have opted for all the zones, or all the cadres within each zone. Lastly, he refers to paragraph 10 of the said OM dated 05.09.2017, which merely states that allocation with reference to limited preference candidates shall be governed in accordance with the procedure outlined in paragraph 4.

21. Mr. Sethi submits that the manner of allocation of cadres adopted by the respondents is grossly unfair, unjust and arbitrary. The same is violative of the principle of equality in as much, as, the more meritorious candidates, who have ranked higher in CSE, 2017, have been denied allocation to cadres for which they had given their preferences, and less meritorious candidates have been allocated to the said cadres. Mr. Sethi submits that the respondents have sought to explain the method of cadre allocation resorted to by them in their counter-affidavit, which method is not borne out from a plain reading of the said OM dated 05.09.2017. In this regard, reference may be made to the following extract from the counter-affidavit filed in W.P.(C.) No.109/2019 on behalf of the respondents No.1 and 2: 5.3.1 However, Para 4 of the Cadre Allocation Policy- 2017 provides the eventualities if a candidate does not give any preference for any of the Zones/Cadres, in that case it will be presumed that he has no specific preference for those Zones/cadres. Accordingly, if he is not allocated to any one of the cadres for which he has indicated the preference, he shall be allotted along with other

such candidates in the manner prescribed. The candidates are required to apply their prudence while for Zones/Cadres because of the fact that the liberty of not exercising preferences comes with a caution that they would be their order of preferences filling W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 17 of 62 allocated in a manner prescribed in Para 4 of the Cadre Allocation Policy-2017. Therefore, it may be appreciated that merely indication of preference does not guarantee allocation to a particular cadre and allocation against the outsider vacancy has to be done as per the modalities defined in Para 8(iii) of the CAP-2017. A candidate cannot be allocated to a cadre for which he has indicated preference in violation of the guide line given in paragraph 8(iii) of Cadre Allocation Policy-2017 such as explained in the following situations.

5.3.2 When a candidate does not indicate preference for any cadre in the sequential order as explained in Para 5.3 (A) & (B) above; in that situation it is to be seen as to whether only those preferences, indicated by the candidate wherein the provisions of Para 8(iii) of Cadre Allocation Policy has been ignored, has to be operated while allocating the candidate against the outsider vacancies or only those preferences have to be considered where a candidate has completed the sequence of preference as per the provisions of paragraph 8(iii) of the Cadre Allocation Policy. It may be appreciated that when the Cadre Allocation Policy has given an option to the candidate for "not to opt" particular cadre(s)/ zones, then it has a provision of allocation of cadre to such limited preference candidates, thus it may be seen that the candidates have to use their right of not opting a cadre/ zone wisely because of the fact that the outsider allocation has to be done in manner prescribed in Para 8(iii) of the CAP-2017 that provides for making sequence for considering a particular candidate in the order of preferences for first zone to fifth zone. Thus, as soon as a candidate gives nil/no preference for a cadre in the said sequential order, and if he could not be allocated to a cadre, for want of vacancy in his category, for which he has indicated preferences before indicating nil preference for the cadre in the sequence as mentioned above, he would be considered as equal (limited) preference candidate and allocated to a cadre as per such provision. (emphasis supplied) W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 18 of 62 22. In response to paragraph 19, 23 and 25 of the writ petition, the stand taken by the respondents is as follows: This humble

Respondent would like to draw attention of this Honble High Court that the petitioners, have tried to impress upon the fact that they have liberty to give preference in their own way for allocation to a particular cadre and it has nothing to do with the provisions of Para 8(iii) of the Cadre Allocation Policy-2017. What the petitioners aspires that can be explained by an example that a candidate does not opt Zone, IV (West Bengal, Sikkim, Assam- Meghalaya, Manipur, Tripura and Nagaland), then as per the contentions of the petitioners, he would not be considered for this Zone at the time of allocation along with all those candidates who eventually opted this Zone. What happens in that case, if Mr. A ranked 5th does not opt for Zone-IV whereas Mr. B ranked 4th opts for this Zone, then Mr. B higher in rank than Mr. A will be considered for allocation to a cadre in Zone-IV, there will be chances that Rank 4th gets allocated to any of the cadres in this Zone but at the same time Rank 5th has taken the liberty to skip this Zone and is to be initially considered for allocation to a cadre other than this Zone-IV. Hence, despite being meritorious, Rank 4 does get allocated to a cadre in Zone-IV but Rank 5 skipped the chances of being allocated to a cadre in this Zone-IV which is his un-preferred zone. This phenomenon had been foreseen and thus the modalities given in Para 8(iii) have been made in order to ensure that allocation is run in a manner explained in Para 5.2 above to ward off such situations. It is most humbly submitted that the policy applicable prior to implementation of the extant policy, the candidates were required to indicate order of preferences for all the cadres. It was very evident at that point of time that cadres in North Eastern part of the country used to be least preferred cadres. If what the petitioners are contending is accepted or treated as correct, a situation may arise that, all the cadres of North East, which used to be least preferred cadre, may not be opted by most of the candidates in the present scheme too, thereby creating a situation where W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 19 of 62 number of candidates who are allocated to these cadres shall be the lower ranked candidates of each category, which was actually the situation getting created as per the earlier cadre allocation policy. Therefore, the current policy ensures that merit is equally distributed among all the Cadres and minimizes the chances of creation of cluster of (merit or language) officers in a particular part of the country. Further if a candidate does not opt for a cadre in a Zone he is actually deciding his term of

being considered for a specific cadre. For Example in Zone I if someone has opted for all the cadres but not Jammu & Kashmir and similarly leaving one or two cadres in every zone, thus he actually forms a Roster for himself as per his choice by lowering his chances of being allocated to a cadre he prefers least. This is not the provision and spirit of the Cadre Allocation Policy-2017. It is humbly submitted that the major shortcoming of the earlier Cadre Allocation Policy-2008 (which was done based on analysis of trend of Cadre allocation from CSE- 2008 to CSE-2016) was that the all India character of the All India Services like IAS, IPS, and IFoS was being lost and it was becoming more of a regional service. The candidates were mostly preferring and going to their home region/ states. Therefore, after an in-depth analysis, a need was felt for striking a balance between merit and preferences given by the candidates for various cadres/states for minimizing the scope of getting AIS reduced to mere regional services. Therefore, the Zonal system of cadre allocation was introduced vide Cadre Allocation Policy - 2017. The All India Services are a unique feature of our Constitution, which were created for fortifying the strong federal structure of the country besides being a powerful unifying influence in binding the constituent states and also to counter act regional/ parochial tendencies. All India Services helps the States which are not able to provide manpower of the requisite strength and calibre for various government functions and development projects. The All India composition of the Service emphasizes the unity of India and helps in bringing about national integration to a substantially vast extent. By skipping the preferences for certain so called least preferred W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 20 of 62 cadres, the candidates are trying to defeat or bypass the very purpose of introducing the new Cadre Allocation Policy- 2017 and the in-built concept of All India Services in the Constitution of India. This type of tendency impacts on the all India character of the service, as an AIS officer has a liability to serve in any part of the Country. Therefore, the Honble High Court may appreciate that not only the cadre allocation to the petitioners have been done strictly in accordance with the provisions of cadre allocation with a proper and just interpretation but also by upholding the sanctity of the All India Services. (emphasis supplied) 23. We may also refer to Note 3 and Note 4 below Rule 3 of the Civil Services Examination Rules, 2017, which has been relied upon by the

respondents and which reads as follows: Note 3: A candidate who wishes to be considered for Indian Administrative Service or Indian Police Service shall be very careful while indicating preferences for various cadres. The candidate is advised to indicate all the cadres in the order of preference in his Detailed Application form which is to be filled in case of his selection for the Civil Services (Main) Examination. In case he does not give any preference for any cadre it will be assumed that he does not have a specific preference for any cadre. Note4: If he is not allotted to anyone of the cadres for which he has indicated preference, he shall be allotted to any of the remaining cadres in which there are vacancies after allocation of all the candidates who can be allocated to those cadres in accordance with their preferences. 24. Mr. Sethi submits that on a plain reading of the OM dated 05.09.2017, or even the Civil Services Examination Rules, 2017, it does not emerge that the candidates were obliged to necessarily fill up all the zones and all the cadres as their preferences. Mr. Sethi submits that the respondents may not W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 21 of 62 have been obliged to call for preferences from the candidates, and possibly could have resorted to allocation of cadres to the candidates by adoption of any non-arbitrary or just method of allocation. However, once having called for preferences from the candidates, the preferences have to be honoured and allocation made according to merit. Disregard of merit in the matter of cadre allocation would be arbitrary and illegal. It would fall foul of the Wednesbury Principle of Reasonableness. He submits that there is no rational nexus between the interpretation/ application of the policy adopted to by the respondents, and the objects sought to be achieved.

25. Mr. Rajshekhar Rao, learned counsel for the petitioners in W.P.(C.) Nos. 862/2019, 864/2019 and 869/2019 has adopted the submissions of Mr. Sethi. He further submits that the respondents have realized their mistake in the matter of cadre allocation to the successful candidates in CSE, 2017, and have made changes in their software for the subsequent year. According to the changed software, whenever a candidate fills 99 for the first time, the remaining zones/ cadres automatically get populated as 99. He submits that the said change to Online Cadre Preference Form (OCPF) is an improvement in the system to remove the lacuna of which the petitioners are the victims. The submission is that

since the declared policy of the respondents as contained in the OM dated 05.09.2017 did not convey to the candidates that it was essential for them to give their preferences for all the zones and cadres - and that if they omitted to indicate their preferences in respect of any particular zones/ cadres, their preferences - which do not come in a sequence, would not be regarded, the petitioners are entitled to be W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 22 of 62 considered for the preferences indicated by them in accordance with their merit.

26. Mr. Rao places reliance on C.M. Thri Vikrama Varma v. Avinash Mohanty and Others, (2011) 7 SCC385 to submit that in the matter of cadre allocation, particularly when the Government has invited preferences, the preferences should be considered according to merit and, secondly, that complexity of the decision-making process cannot be a defence, when a grievance is made before the Court by a citizen that his fundamental right to equality has been violated. When such a grievance is made before the Court, the authorities have to justify their impugned decision by placing relevant material before the Court. The relevant extract from this decision reads as follows: 20. In fact, the object of the principles of allocation indicated in different clauses in the Letter dated 31-5-1985 is not only to implement the policy having 2 outsiders and 1 insider in each cadre, but also to ensure that general and reserved candidates selected and appointed to the All-India Service get a fair and just treatment in the matter of allocation to different cadres. This will be clear from Clause (2) of the Letter dated 31-5-1985 which states that the vacancies for the Scheduled Castes and Scheduled Tribes in the various cadres should be according to the prescribed percentage and from Clause (3) which states that the allocation of insiders, both men and women, will be strictly according to their ranks, subject to their willingness to be allocated to their home States. This will also be clear from Clause 4(vii) which explains how the candidates belonging to the reserved category and the general category will be dealt with. These principles have been laid down in the Letter dated 31-5-1985 because while making allocations of different candidates appointed to the service to different State cadres or Joint cadres, the Central Government W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 23 of 62 has also to discharge its constitutional obligations contained in the equality principles in

Articles 14 and 16(1) of the Constitution. A member appointed to the All-India Service has no right to be allocated to a particular State cadre or Joint cadre, but he has a right to a fair and equitable treatment in the matter of allocation under Articles 14 and 16(1) of the Constitution. x x x x x x x x x 25. Admittedly, Avinash Mohanty had secured a higher rank than Vikrama Varma in the Civil Services Examination, 2004 and both Avinash Mohanty and Vikrama Varma are insiders. Clause (3) of Para 3 of the Letter dated 31-5-1985 states that allocation of insiders, both men and women, will be strictly according to their ranks, subject to their willingness to be allocated to their home States. Hence, Avinash Mohanty was required to be considered for allocation to the Andhra Pradesh cadre if he had given his willingness for being allocated to his home State, Andhra Pradesh, before Vikrama Varma could be considered for such allocation. If, however, the vacancy for which consideration was being made was a vacancy for an insider OBC candidate in the 30-point roster, Vikrama Varma would have preference over Avinash Mohanty. But the High Court has come to a finding that the number of vacancies in the 30-point roster filled up by OBC candidates from Civil Services Examinations, 1999-2003 were 9 and had exceeded the 27% reservation for OBC candidates and hence there could not be an insider OBC vacancy in which Vikrama Varma could have been allocated. The High Court was, therefore, right in coming to the conclusion that allocation of Vikrama Varma to the Andhra Pradesh cadre was in violation of the guidelines contained in the Letter dated 31-5-1985 and was clearly arbitrary and not equitable.

26. In our view, complexity of a decision-making process cannot be a defence when a grievance is made before the Court by a citizen that his fundamental right to equality has been violated. When such a grievance is made before the W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 24 of 62 Court, the authorities have to justify their impugned decision by placing the relevant material before the Court.

27. As has been held by a Constitution Bench of this Court in *M. Nagaraj v. Union of India* [(2006) 8 SCC212: (2007) 1 SCC (L&S) 101

(SCC p. 277, para

118) law but with 118. The constitutional principle of equality is inherent in the rule of law. However, its reach is limited because its primary concern is not with the content of the its enforcement and application. The rule of law is satisfied when laws are applied or enforced equally, that is, even-handedly, free of bias and without irrational distinction. The concept of equality allows differential treatment but it prevents distinctions that are not properly justified. Justification needs each case to case-to-case basis. be decided on (emphasis supplied) 27. Mr. Neeraj Malhotra, learned senior counsel who appears for some of the petitioners has also adopted the submissions advanced by the other counsels for the petitioners. He points out that if the meaning and spirit of paragraph (4) of the OM dated 05.09.2017 were that every candidate had necessarily to opt for all zones, and all cadres within all the zones, there would be no question of any vacancy in any cadre requiring the filling up of the same in the manner prescribed in paragraph 4 of the OM dated 05.09.2017. He has also placed reliance on the decision in Gurudevdatla VKSSS Maryadit and Ors. v. State of Maharashtra and Ors., (2001) 4 SCC534 to submit that the cardinal principle of interpretation of statute is that the words of statutes must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 25 of 62 construction leads to some absurdity, or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of the statute must, prima facie, be given their ordinary meaning. When the words of a statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences.

28. He further submits that the respondents did not clearly indicate to the candidates, either in the OM dated 05.09.2017, or any other documents, the drastic consequence that they would face if they did not fill up all preferences, for all the zones and cadres sequentially. There is nothing to indicate that it was mandatory for the candidates to necessarily fill up all the zones/ cadres in seriatim/ sequentially. He has also shown to the Court the screenshot of the Note which appeared on the computer screens of the candidates at the time of their filling up the OCPF. The said option form contained the Note as follows: Note: for no preference, please enter 99 29. Thus, the candidates were prompted to enter 99,

rather than cautioning them against entering 99 at their own peril. Mr. Malhotra submits that, in fact, no candidates should have been permitted to fill 99 as a preference for any particular zone or cadre, and the computer software of the respondents should not have accepted the online form unless the candidates had filled their preferences for all the zones and cadres in seriatim. He submits that even after the petitioners had filled 99 in respect of some of the zones/ cadres, the computer system/ software evolved by the W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 26 of 62 respondents continued to accept preferences of the candidates for other zones/ cadres. This was meaningless and misleading for the candidates.

30. On the behalf of the respondents Mr. K.M. Nataraj, learned ASG has advanced his submissions. He, firstly, submits that there is no challenge to the policy of the Government in relation to the allocation of cadres as contained in OM dated 05.09.2017. He further submits that there are no allegations of mala fides in the matter of cadre allocation, and it is not the petitioners case that they have been deliberately denied allocation of cadres as per their merit and preference. He submits that the entire process of cadre allocation is done electronically, i.e. by employing a computer program/ software. The same is not done manually. He submits that 330 candidates have been allocated to different cadres by adopting the same system as adopted in relation to the petitioners, and the petitioners should have impleaded all those candidates who are likely to be affected on account of the present challenge. He submits that the present petition is bad for non- joinder of necessary parties.

31. He submits that in the matter of cadre allocation to the IAS/ IPS Officers, the Rules provide that the 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. He submits that the IAS and IPS are All-India Services, and carry with them the obligation on the appointed officers to serve in any part of the country. The Government is not bound to allocate any officer to any particular cadre of his choice. W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 27 of 62 32. Mr. Nataraj places reliance on the decision of the Supreme Court in Union of India and Others v. Rajiv Yadav, IAS and Others, (1994) 6

SCC38 in this regard. In *Rajiv Yadav (supra)*, the Supreme Court 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 State of his choice or to his home State. The Central Government is under no legal obligation to call for options or even preferences from the officer concerned. Rule 5 of the Indian Administrative Service (Cadre) Rules, 1954 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 as a policy. The Supreme Court further held that: 6. 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. 33. Mr. Nataraj submits that the training of all the selected candidates as IAS/ IPS Officers is already underway. So far as the IAS Officers are concerned, who have been selected on the basis of the CSE, 2017 (2018 Batch), the foundation course started on 27.08.2018 and ended on 07.12.2018. Phase-I of their training commenced on 10.12.2018 and would end on 10.05.2019. The candidates would then have to undergo district training from 15.05.2019 to 15.05.2020 and would undergo Phase-II of their training from 18.05.2020 to 26.06.2020. He submits that the selected candidates are required to undergo language courses specific to the cadre/ W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 28 of 62 State allocated to them, which has already commenced in February 2019 and would continue till April 2019. However, the language examination will be scheduled with the final exam only, i.e. in May 2020.

34. Mr. Nataraj submits that a total of 180 vacancies in the Indian Administrative Service were notified in respect of CSE, 2017. The candidates who indicated (99) as a preference, either in a zone or cadre, were 71 in number. Out of the said 71 candidates, 47 candidates came to be allotted the cadres as per their merit and preference, since there was no break in the sequential pattern qua them till the time their turn came for allotment of cadre. There were 24 candidates, like the petitioners in W.P.(C.) No.862/2019 and 864/2019, who were allocated their cadres through the limited preference category route, i.e. by application of

paragraph 4 of the OM dated 05.09.2017, since they had indicated 99 in respect of one or more zones/ cadres, and before their turn came according to their merit for allocation of cadre, the sequential chain was broken. He submits that 109 candidates had filled all the preferences of zones and cadres, and were allocated the cadres according to their merit and preference in the normal course.

35. So far as the IPS Officers of 2018 Batch (those who were qualified in CSE, 2017) are concerned, Mr. Nataraj submits that they have to undergo 104 weeks scheduled training commencing from 27.08.2019 to 28.08.2020, which includes the foundation course held at LBSNAA, Mussorie and at other places. The 15 weeks foundation course ended at Mussorie/ Bhopal/ Hyderabad on 07.12.2018. The basic training - which is a 42-week course, commenced on 17.12.2018 and would continue till 05.10.2019. W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 29 of 62 36. The basic training includes outdoor periodical tests; IB Module and Traffic Management Module; ITBP attachment, rock climbing and river rafting. The said training modules are common to all cadres of IPS Officers, and the same ended on 06.04.2019. After a mid-term break, further training in respect of IPS Officers would commence from 17.06.2019 onwards. So far as the IPS Officers are concerned, they too have to undergo language classes on the basis of allocation of their cadres during their training at the Academy. During the training at the Academy, 40 periods are allocated for each language with duration of 40 minutes. For the 2018 Batch, the language classes are likely to commence from May 2019 onwards.

37. Mr. Nataraj submits that a total of 150 IPS vacancies were notified in CSE, 2017. 50 of the selected candidates had indicated 99 either in zone/ cadre as a preference, out of 150 candidates. Out of the said 50 candidates, 27 were able to get their preferred cadre through allocation made in the normal course. 23 candidates - who fell in the limited preference category, were allocated cadres by invoking paragraph 4 of the OM dated 05.09.2017. The petitioners in W.P.(C.) No.109/2019 and 869/2019 also fall in the said category. 100 candidates out of 150 had filled all the preferences of zones and cadres, and were allocated cadres through the normal cycle. Mr. Nataraj submits that there would be great administrative inconvenience if the respondents are now required to re-shuffle the

cadre allocation of all the candidates on the basis of merit-cum-preference.

38. Mr. Nataraj submits that since the cadre allocation policy contained in the O.M. dated 05.09.2017 has been evolved by the Government, the same has to be interpreted in accordance with the understanding of the W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 30 of 62 Government which has laid down the policy. In this regard, he places reliance on *Spentex Industries Limited Vs. Commissioner of Central Excise & Others*, (2016) 1 SCC780 The Supreme Court observed in this decision as follows: 25. It is to be borne in mind that it is the Central Government which has framed the Rules as well as issued the notifications. If the Central Government itself is of the opinion that the rebate is to be allowed on both the forms of excise duties, the Government is bound thereby and the rule in question has to be interpreted in accord with this understanding of the rule-maker itself. The law in this respect is well settled and, therefore, it is not necessary to burden this judgment by quoting from various decisions. Our purpose would be served by referring to one such decision in *R & B Falcon (A) Pty Ltd. v. CIT* [(2008) 12 SCC466 wherein interpretation given by the Central Board of Direct Taxes (CBDT) to a particular provision was held binding on the Tax Authorities. The Court explained this principle in the following manner: (SCC pp. 478- 79, paras 33-37) 33. CBDT has the requisite jurisdiction to interpret the provisions of the Income Tax Act. The interpretation of CBDT being in the realm of executive construction, should ordinarily be held to be binding, save and except where it violates any provisions of law or is contrary to any judgment rendered by the courts. The reason for giving effect to such executive construction is not only same as contemporaneous which would come within the purview of the maxim *temporaria caste pesto*, even in certain situation a representation made by an authority like Minister presenting the Bill before Parliament may also be found bound thereby. W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 31 of 62 34. Rules of executive construction in a situation of this nature may also be applied. Where a representation is made by the maker of legislation at the Bill or construction thereupon is put by the executive upon its coming into force, the same carries a great weight. introduction of time of the Asylum 35. In this regard, we may refer to the decision of the House of Lords in *R. (Westminster City Council) v. National Support Service* [(2002) 1 WLR2956: (2002) 4 All ER654(HL)].

and its the decision in *Pepperv. Hart* [1993 AC593: (1992) 3 WLR1032: (1993) 1 All ER42(HL)]. on the question of executive estoppel. In the former decision, Lord Steyn stated: (WLR p. 2959, para

6) interpretation of there is in found If exceptionally 6. the Explanatory Notes a clear assurance by the executive to Parliament about the meaning of a clause, or the circumstances in which a power will or will not be used, that assurance may in principle be admitted against the executive in proceedings in which the executive places a contrary contention before a court. 36. A similar interpretation was rendered by Lord Hope of Craighead in *Wilson v. First County Trust Ltd. (No.2)* [(2004) 1 AC816: (2003) 3 WLR568: (2003) 4 All ER97(HL)]. , wherein it was stated: (WLR p. 600, para

113) 113. As I understand it [*Pepper v. Hart* [1993 AC593: (1992) 3 WLR1032: (1993) 1 All ER42(HL)].], it recognised a limited exception to the general rule to Hansard was that resort inadmissible. Its purpose the executive seeking to place a meaning on words to prevent is W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 32 of 62 used in legislation which is different from that which Ministers attributed to those words when promoting the legislation in Parliament. 37. For a detailed analysis of the rule of executive estoppel useful reference may be made to the article authored by Francis Bennion entitled *Executive Estoppel: Pepper v. Hart* [1993 AC593: (1992) 3 WLR1032: (1993) 1 All ER42(HL)]. Revisited, published in *Public Law*, Spring 2007, p. 1 which throws a new light on the subject- matter. 26. We are also of the opinion that another principle of interpretation of statutes, namely, principle of contemporanea expositio also becomes applicable which is manifest from the act of the Government in issuing two notifications giving effect to Rule 18. This principle was explained by the Court in *Desh Bandhu Gupta and Co.v. Delhi Stock Exchange Assn. Ltd.* [(1979) 4 SCC565 in the following manner: (SCC pp. 572-73, para

9) 9. It may be stated that it was not disputed before us that these two documents which came into existence almost simultaneously with the issuance of the notification could be looked at for finding out the true intention of the Government in issuing the notification in question, particularly in regard to the manner in which

outstanding transactions were to be closed or liquidated. The principle of contemporanea a statute or any other document by reference to the exposition it has received from contemporary authority) can be invoked though the same will not always be decisive of the question of construction (Maxwell 12th Edn., p. 268). In Crawford on Statutory Construction (1940 Edn.) in para 219 (at pp. 393-95) it has been stated (i.e. that administrative construction expositio (interpreting W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 33 of 62 it persuasive. placed construction is overturned; contemporaneous by administrative or executive officers charged with executing a statute) generally should be clearly wrong before such a construction commonly referred to as practical construction, although not is nevertheless entitled to considerable weight; it is In Baleshwar highly Bagarti v. Bhagirathi Dass [ILR (1908) 35 Cal 701]. reiterated in Mathuramohan Saha v. Ram Kumar Saha [1915 SCC OnLine Cal 1

ILR (1916) 43 Cal 7

AIR1916 Cal 136]. has been stated by Mookerjea, J.

thus: (Baleshwar Bagarti case [ILR (1908) 35 Cal 701]. , ILR p.

713) the principle, which was controlling, that courts It is a well-settled principle of interpretation in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it. I do not suggest for a moment that such interpretation has by any means a controlling effect upon the courts; if such be occasion disregarded and persuasive reasons, and, in a clear case of error, a court would without hesitation refuse to follow such construction. interpretation may, arises, for have cogent to Of course, even without the aid of these two documents which contain a contemporaneous exposition of the Government's intention, we have come to the conclusion that on a plain construction of the notification the proviso permitted the closing W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 34 of 62 out or liquidation of all outstanding transactions by entering into a forward contract in accordance with the rules, bye-laws and regulations of the respondent. (emphasis supplied) 39. He submits that the Principle of Contemporaneous Expositio was applied by the Supreme Court

also in State of Tamil nadu Vs. Mahi Traders & Others, (1989) 1 SCC724 He placed reliance on paragraph 8 of this decision, which reads as follows: 8. It has been pointed out by this Court in Desh Bandhu Gupta v. Delhi Stock Exchange Assn. Ltd. [(1979) 4 SCC565 and K.P. Varghese v. ITO [(1981) 4 SCC173:

1981. SCC (Tax) 2

(1981) 131 ITR597 that a contemporaneous exposition by the administrative authorities is a very useful and relevant guide to the interpretation of the expressions used in a statute. Considering that the above clarification was sought for at the earliest point of time when a doubt arose as to the scope of the expression used by the statute and given after considering the technicalities of the processes employed in the manufacture of finished leather by the department fully conversant with this branch of trade and in the context of the provisions of this very statute, the terms of the statute can well be construed by reference to such exposition, in the absence of anything in the statute to indicate the contrary. Indeed, such interpretation should be shown to be clearly wrong before it is overturned. (emphasis supplied) 40. On the same aspect, he placed reliance on Ajeet Singh Singhvi Vs. State of Rajasthan, 1991 Supp. (1) SCC343 41. Mr. Nataraj further submits that the UPSC had, in its examination notice for CSE, 2017 issued on 22.02.2017 provided the facility, telephone contact numbers for guidance/ information/ clarification to the candidates. If the petitioners had any doubt, it was open to them to seek clarification W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 35 of 62 with regard to the manner in which the online preference forms had to be filled.

42. Mr. Nataraj submits that, as aforesaid, the object of the cadre allocation policy contained in the O.M. dated 05.09.2017 is to ensure proper distribution of meritorious candidates in all the cadres so that, unlike the past, the meritorious candidates do not get concentrated in their home cadres/ zones, and zones/ cadres/ States such as the North-East, Jammu & Kashmir, etc. do not have to make do with the less meritorious candidates.

43. Mr. Nataraj has also referred to the file notings which contain the reasons for adoption of the new policy and procedure for allocation of cadres for CSE, 2017

and thereafter. One of the major shortcoming/ disadvantage of the earlier prevalent policy, which was in vogue since CSE, 2008 was that the All-India character of the IAS/ IPS and IFoS Services was being lost, and the services had become more of a regional service. The candidates were mostly preferring and going to their home region states. The generally least preferred cadre states of North East were getting candidates who are lower in rank in the merit list. The swapping of vacancies (inter category within States) and consequent pseudo allocation of vacancy in another state, in order to achieve maximum candidates satisfaction in terms of cadre allocation, had led to distortion in actual filling up of vacancies within the cadre states.

44. Mr. Natatraj submits that one of the features of the proposed policy, which were evidently implemented vide OM dated 05.09.2017, was that the candidates would be required to give preferences for all the zones in the W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 36 of 62 order of descending priority, as well as preference for cadres States within each zones in descending order. He, particularly refers to the following Remarks contained in column 6.1 of the tabulation in the office note dated 18.07.2017, which sets out the comparative statement in respect of existing cadre allocation policy - 2008, and the proposed cadre allocation policy. One of the shortcomings of the present policy is losing of an all India character of the All India Services. Hence, it is proposed to give due regard to merit in cadre allocation to ensure that all the meritorious candidates are appropriately distributed across the country to the extent possible. Therefore, the proposed policy of zone-wise cadre allocation would distribute all the candidates across the country keeping in view their preferences for various zones and cadres and help enhance the all India character of the service. It will also imply even lower ranking candidates would have greater opportunity of being allocated to higher preferred cadres.

45. Mr. Nataraj submits that while interpreting a Statute, the Court must strive to interpret the same as to promote or advance the object and purpose of the enactment. To promote the object of the enactment, where necessary, the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the Court would be well justified in departing from the so-called golden rule of

construction so as to give effect to the object & purpose of the enactment by supplementing the written words, if necessary. In *M/s Girdhari Lal & Sons Vs. Balbir Nath Mathur & Others*, 1986) 2 SCC237 the Supreme Court, inter alia, held:

12. In *Seaford Court Estates Ltd. v. Asher* [(1949) 2 All ER155 164]. Lord Denning, who referred to Plowden's Reports already mentioned by us said: W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 37 of 62 for them in free terms Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide from all ambiguity.... [A]. judge, cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a construction of the social conditions which gave rise to it and of the mischief which it was passed to remedy and then he must supplement the written words so as to give force and life to the intention of the legislature. . . . Put into homely metaphor it is this: A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out?. He must then do as they would have done. A Judge should not alter the material of which the Act is woven, but he can and should iron out the creases, (emphasis added)

13. In *Rugby Joint Water Board v. Footit* [(1972) 1 All ER1057 1076, 1077]. Lord Simon of Glaisdale said: The task of the courts is to ascertain what was the intention of Parliament, actual or to be imputed, in relation to the facts as found by the court... . On scrutiny of a statutory provision, it will generally appear that a given situation was within the direct contemplation of the draftsman as the situation calling for statutory regulation: this may be called the primary situation. As to this, Parliament will certainly have manifested an intention - the primary statutory intention. But situations other than the primary situation may present themselves W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 38 of 62 for judicial decision - secondary situations. As regards these secondary situations, it may seem likely in some cases that the draftsman had them in contemplation; in others not. Where it seems likely that a secondary situation was not within the draftsman's contemplation, it will be necessary for the court to impute an intention to Parliament in the way I have described, that is, to determine

what would have been the statutory intention if the secondary situation had been within parliamentary contemplation (a secondary intention). x x x x x x x x x taken the view 16. Our own court has generally that ascertainment of legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred which advances the purpose and object of a legislation and that though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices or absurdities, vide K.P. Varghese v. ITO [(1981) 4 SCC173:

1981. SCC (Tax) 293]. , State Bank of Travancore v. Mohd. M. Khan [(1981) 4 SCC82 , Som Prakash Rekhi v. Union of India [(1981) 1 SCC449:

1981. SCC (L&S) 200]. , Ravula Subba Rao v. CIT [AIR 1956 SC604:

1956. SCR577 , Govindlal v. Agricultural Produce Market Committee [(1975) 2 SCC482: AIR 1976 SC263: (1976) 1 SCR451 and Babaji Kondaji v. Nasik Merchants Coop. Bank Ltd. [(1984) 2 SCC50 46. Mr. Nataraj submits that since the process of cadre allocation is already complete, the present petitions are also barred by laches. In this regard, he placed reliance on G. Srinivas Rao Vs. Union of India & Others, (2011) 8 SCC123 and in particular on paragraph 23 thereof, which reads as follows: W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 39 of 62 23. Nonetheless, we find that the appellant was allocated to the Manipur-Tripura Cadre on 27-7-1999 and was intimated about such allocation by the Letter dated 2-10-1999. Instead of challenging the allocations made in 1999 at the earliest, the appellant filed the OA before the Tribunal only in 2001 by which time the 36 candidates including Respondent 4, who had been selected and appointed to the IPS on the basis of Civil Services Examinations, 1998 and had been allocated to different cadres, had already joined their respective cadres and undertaken training in their respective States. The High Court thus held in the impugned order that the wholesale or extensive review of the cadre allocation at a belated stage was not conducive to public interest. For granting relief to the appellant, the Tribunal or the Court will have to direct Respondent 1 to undertake afresh the exercise of allocation in accordance with the roster system as provided in the Letter dated 31-5-1985 and allocate the 36 officers of the IPS appointed on

the basis of the Civil Services Examinations, 1998 and such an exercise will disturb the allocation of several members of the IPS. 47. In their rejoinder, learned counsels for the petitioners have sought to counter the submissions of the learned ASG. Firstly, it is submitted that since the petitioners have no grievance against any of the other candidates who have been allocated to the IAS/ IPS, and their grievance is only against the manner of interpretation of the O.M. dated 05.09.2017 and its application, and it is only the conduct of the respondent authorities which is called in question, it is not necessary for the petitioners to implead any of the other selected IAS or IPS Officers. None of the selected IAS/ IPS Officers had any role to play in the matter of erroneous interpretation and application of the OM dated 05.09.2017. W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 40 of 62 48. Learned counsels further submit that so far as the petitioners/ IPS Officers are concerned, they had raised the issue initially before this Court, well before the allocation of cadres was made on 19.12.2018. They first approached this Court; their writ petition was transferred to the Tribunal and the Tribunal had even partly heard the submissions in O.A. No.4576/2018. During pendency of the said O.A., the cadre allocation in respect of the IPS Officers was made on 19.12.2018. Thus, it was not necessary for the petitioners to implead any of the other selected IAS or IPS Officers. They further submit that even the IAS officers raised their grievance promptly and without any delay. The selected IAS officers are still undergoing the general training, which is not specific to the cadres to which they have been allocated. Thus, no harm or prejudice would be suffered by any of the IAS officers or even the administration, if course correction is made at this stage.

49. Same is given as the reason for countering the submission of Mr. Nataraj that the present petitions are barred by delay and laches. Learned counsels submit that they have approached this Court at the earliest point of time. They submit that the training schedule of both the IAS and IPS Officers would show that they have yet to commence their on-site training on the basis of the cadre allocation made by the respondents. Till now, the training that all of them are undergoing is general and common in all respects. So far as the language training is concerned, the submission of learned counsels is that the examination for the same would be held only at the end of the training period and there is ample time available with the

candidates to undergo the same. In respect of the IPS Officers, the language training, even according to the respondents, is likely to commence in May W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 41 of 62 2019 and so far as the IAS Officers are concerned, though the same started in December 2018, the examination for the same would be scheduled with the final examination only in the year 2020.

50. Mr. Sethi has submitted that the interpretation of the policy adopted by the respondents is unreasonable; it fails on application of Wednesbury principle and; there is no rational nexus between the interpretation accorded to the said policy by the respondents, and the object sought to be achieved. Mr. Sethi submits that an interpretation which would render the cadre allocation policy unfair, unjust, arbitrary and discriminatory should be rejected. In this regard, the petitioners placed reliance on the observations made by this Court in Chandransh Pandey(Shri) Vs. Union of India, 2010 II AD Delhi 208, and in particular on paragraph 31 thereof. He emphasizes that the impugned cadre allocation would have the effect of altering the course of careers of the petitioners for all times to come. It is pointed out on behalf of the petitioners that out of about 900 candidates - who had filled up their preference online for cadre allocation, about 360 had left one or more cadres invalid, i.e. by assigning 99, which translates to nearly 37%. Thus, it could not be said that there was no ambiguity, or that there was complete clarity about the manner in which the candidates were called upon to exercise their options.

51. In relation to the Spentex Industries Limited (supra), the petitioners submit that the said decision, in fact, supports the petitioners inasmuch, as, the Supreme Court held the Central Government to their declared opinion/ stand. The Supreme Court held that since the Central Government had itself formed and declared the opinion that rebate is to be allowed on the two W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 42 of 62 kinds of excise duties involved in that case, the Government was bound by the said opinion. The Supreme Court invoked the principle of contra- prefertum, i.e. that a document would be read against its author. In this regard, reliance is placed on Prem Parkash Pahwa Vs. United Commercial Bank & Another, (2012) 1 SCC123 and in particular at paragraph 17,

wherein the Supreme Court observed: 17. In our opinion, relevant Clause 3.1.3(F)(d)(ii) of the 1981 Promotion Policy is not happily worded or rather it is worded in a manner which would create confusion rather than help the aspirant. In such a situation, in our opinion, it will have to be interpreted in favour of the appellant bearing in mind the fact that at one point of time, as per 1975 Promotion Policy, he was, in fact, given weightage of three (3) marks as he possessed Diploma in Office Organisation and Procedures of a recognised university. Unfortunately, he did not get the necessary marks under other heads and, hence, he could not get the benefit of those three (3) marks. The appellant has, thereafter, bona fide prosecuted these proceedings since 1979. The appellant the year 1973. Considering the peculiar circumstances of this case, we think that interests of justice would be served if weightage of three (3) marks is given to him in the examination conducted on 17-1- 1982. joined Respondent 1 in 52. The petitioners further pointed out that the respondents do not invite any clarifications or questions regarding the submission of preference for cadre allocation. The respondents invited queries only about trivial matters like attestation forms, etc.

53. We have heard the submissions of learned counsels, perused the record and the decisions relied upon and given our thoughtful consideration to the entire matter. Firstly, we may deal with the W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 43 of 62 objections raised by Mr. Nataraj with regard to non-joinder of the other selected IAS/ IPS officers, whose cadre allocation may undergo change in case the petitioners succeed in the present petitions.

54. The Supreme Court has dealt with similar situations where some of the employees assailed the action of the Government/ State in the matter of fixation of seniority. A perusal of these decisions do show that it is not that in every case, it would be necessary for the petitioners to implead either as necessary, or as proper parties, all the affected persons where the grievance raised by the petitioners is in relation to the conduct/ actions of the Government/ State. We may refer to the decision of the Supreme Court in A. Janardhana v. Union of India and Others, AIR 1983 SC769 in this regard.

55. In this case, the Supreme Court was dealing with a seniority dispute. One of the objections raised by the respondents was that persons who scored a march over the appellants in an earlier seniority list had not been impleaded as respondents and thus, no relief could be given to the appellants. This objection was rejected by the Supreme Court by holding as follows: ..However, there is a more cogent reason why we would not countenance this contention. In this case, appellant does not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 44 of 62 quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents. We may in this connection refer to G.M., South Central Railway, Secundrabad v. A.V.R. Siddhanti [(1974) 4 SCC335:

1974. SCC (L&S) 2

AIR 1974 SC1755: (1974) 3 SCR207 2

1974 Lab IC587: (1974) 1 LLJ312 . Repelling a contention on behalf of the appellant that the writ petitioners did not implead about 120 employees who were likely to be affected by the decision in the case, this court observed that [SCC para 15, p. 3

SCC (L&S) p. 296]. the respondents (original petitioners) are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned

Ministry and not against any individual nor any seniority is claimed by anyone individual against another particular individual and therefore, even if technically the direct recruits were not before the court, the petition is not likely to fail on that ground. The contention of the respondents this additional reason must also be negated. (emphasis supplied) for 56. In the present case as well, the petitioners are only questioning the manner in which the respondents have interpreted and implemented the OM dated 05.09.2017. There is no dispute between the petitioners on the one hand, and the other IAS/ IPS Officers on the other hand with regard to their inter se merit, or even with regard to the preferences that each one of them gave by filling the online form. W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 45 of 62 The task of cadre allocation has been undertaken wholly and solely by the respondents on the basis of the preferences filled by the candidates in their respective preference forms, without any further interaction with the selected candidates or their involvement. This being the position, we are of the view that there is no merit in this submission of the Ld. ASG that the present petitions are liable to be dismissed on account of non joinder of the other IAS/ IPS selected officers since they are not necessary parties. In fact, when the two IPS officers approached the Court/ Tribunal (Petitioners in WP(C) No.109/2019), cadre allocation had not even been done. Thus, they could not have impleaded any private respondents. The subsequent declaration of cadre allocation on 19.12.2018 would not be a reason to ask them to implead all the other IPS officers.

57. We also do not find any merit in the objections raised by Mr. Nataraj with regard to the timing of the petitions preferred by the petitioners. So far as the IPS officers are concerned, namely the petitioners in W.P.(C.) No.109/2019, they had raised their grievance even before the respondents undertook cadre allocation under Rule 5(1) of the Indian Police Service (Cadre) Rules, 1954 on 19.12.2018. The said petitioners possibly could not have come earlier to the Tribunal/ Court. So far as the petitioners in W.P.(C.) Nos. 862/2019, 864/2019 and 869/2019 are concerned, they are selected IAS/ IPS officers and they have approached this Court directly well within time. Their cadre allocation took place on 03.12.2018/ 19.12.2018 and at the time when they preferred the writ petitions, these selected W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 46 of 62 IAS/ IPS

officers were undergoing training, which they continue to undergo even now. The said training is not cadre specific till this stage and, therefore, if they were to succeed in the writ petitions, and the cadres of the petitioners and other selected candidates were to be re-allocated, no prejudice would be suffered either by the other selected candidates, or even by the respondents.

58. Reliance placed by Mr. Nataraj on G. Srinivas Rao (supra) is misplaced. The relevant extract from the said decision set out hereinabove itself shows that the appellant assailed the cadre allocation made on 27.07.1999, and intimated vide letter dated 02.10.1999, only in the year 2001 by when 36 candidates, including the private respondent had been selected and appointed to the IPS on the basis of Civil Services Examination, 1998 and had been allocated to different cadres where they had already joined their respective cadres and undertaken training in their respective states. These facts themselves bring out the distinction between the said case, and the facts of the present cases. As noticed above, the petitioners have approached the Tribunal/ this Court at the earliest, when the candidates are still undergoing training and they have not yet joined their respective state cadres - not even to undergo onsite training in the allocated cadres.

59. We may, at this stage, also deal with the submission of Mr. Nataraj that the entire exercise of cadre allocation, if required to be revised at this stage, would lead to great inconvenience. We do not agree with this submission for two reasons. Firstly, when the W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 47 of 62 fundamental rights of the citizens are pitted against some administrative inconvenience that the respondents may suffer in case relief were to be granted to the aggrieved petitioners, the so-called administrative inconvenience has to give way to the fundamental rights of the citizens. Secondly, even the respondents state that the entire process of cadre allocation has been undertaken electronically i.e. through a computer system/ software and that being the position, we do not see as to what administrative inconvenience would be caused if the said process were to be undertaken again keeping, in view the merit positions and preferences given by the selected candidates. It should be possible to complete the said process in a matter of a couple of days, considering that the respondents already have the requisite data, and the allocation has to be done

electronically.

60. The submission of Mr. Nataraj that a vast majority of candidates correctly understood the policy with regard to the manner of cadre allocation as contained in OM dated 05.09.2017 also has no merit. The facts placed before us by the respondents themselves show that a very high percentage i.e. 37% of the selected candidates - in both streams i.e IAS and IPS, gave 99 as a preference in respect of one or more zones/ cadres. This itself shows that a very large percentage of candidates were clueless about the manner in which the respondents actually understood and implemented their new cadre allocation policy, which was framed and implemented for the first time in respect of selected candidates under the CSE, 2017. W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 48 of 62

61. Mr. Nataraj also sought to invoke the Principle of Contemporaneous Expositio to submit that the manner in which the respondents have understood and implemented their policy for cadre allocation, as contained in OM dated 05.09.2017, should be the basis for interpretation of the said OM dated 05.09.2017. In the facts of the present case, the said principle is not at all attracted. The respondents came out with a new cadre allocation policy vide OM dated 05.09.2017. There was no exposition of the said policy contemporaneous, or otherwise, put forward by the Government before calling upon the successful candidates of CSE- 2017 to give their preferences for cadre allocation.

62. For the first time, the interpretation and application of the said policy has taken place with the cadre allocation made by the government, which is impugned herein. Thus, there was no previous well established interpretation or practice available to the candidates in respect of policy contained in the OM dated 05.09.2017 by which they could have been guided.

63. Reliance placed by Mr. Nataraj on several decisions in this regard appears to be misplaced. In Spentex Industries Limited (supra), the said principle was invoked to hold the Government to its opinion on the interpretation of the rules/ notifications. Thus, the Government could not turn around and advance an interpretation of the rules/ notifications contrary to its declared interpretation. This principle cannot be invoked in the present fact situation when, firstly, the

respondents - apart from coming out with their policy with regard to the cadre allocation vide OM dated 05.09.2017, W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 49 of 62 did not publicly come out with its interpretation of the manner in which the same would be applicable. Thus, the Principle of Contemporary Expositio cannot be invoked by the respondents against the petitioners who had no clue in advance of their filling up of online preferences for cadre allocation, about the manner in which the cadre allocation policy contained in the OM dated 05.09.2017 has been interpreted and worked by the respondents. The interpretation advanced by the Government/ its authorities in regard to a particular Statute or policy would ordinarily bind the Government (and not the citizens - who would be entitled to canvass an interpretation which, according to them, is the correct interpretation), if the same is not contrary to, or violates any provision of law or any judgments rendered by the Courts. The decision in Spentex Industries Limited (supra) shows that the said principle has been understood as executive estoppel. Thus, though the Government may be bound by its exposition of the law or its policy, the subjects cannot be bound down to the said interpretation or understanding, unless there is material to show consistent interpretation/ application of the law/ policy over a period of time by the Government.

64. Mr. Nataraj has also sought to place reliance on the office note found on the file notings which preceded the formulation of the cadre allocation policy to submit that the new policy for cadre allocation was notified on 05.09.2017 with the object of retaining the All India Character of the All India Services, and for ensuring that meritorious selected officers do not get concentrated in particular zones/ cadres, and that such officers are available to serve in the less preferred zones/ cadres, such as the North-East, Jammu & Kashmir and Naxal-affected areas. W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 50 of 62 65. There can be no quarrel with the object & purpose with which the respondents may have framed the new cadre allocation policy contained in OM dated 05.09.2017. The said object is laudable and in our view, the government would be entitled to implement that objective/ policy. The question, thus, arises, whether the said object & purpose, was clearly set out and communicated to the persons concerned, including the petitioners and other candidates, before they were called upon to give their

preferences online?. The office note - which forms the basis of the new cadre allocation policy, remained in the confines of the files of the Government and, thus, it would have to be examined whether the said stated purpose & object was sufficiently elaborated and communicated, when the new cadre allocation policy was formulated and circulated vide OM dated 05.09.2017.

66. Before we embark upon examination of the OM dated 05.09.2017, we may deal with other submissions advanced by learned counsels. Mr. Nataraj has argued, on the basis of the decision of the Supreme Court in *Rajiv Yadav (supra)*, that a person appointed to an All India Service having various State cadres has no right to claim allocation to a State of his choice, or to his home State. The Central Government is under no obligation to call for options or even preferences from the concerned officers. It is for the Central Government to allocate members of the service to various cadres and it is not obligatory for the Central Government to frame rules/ regulations or otherwise notify the principles of allocation, as a policy.

67. There can be no quarrel with the aforesaid proposition. However, if the Central Government has chosen to declare its policy in the matter of cadre allocation, and the central theme of that policy is to allocate cadres as W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 51 of 62 per the preferences of the selected candidates on the basis of their merit, then the Government cannot be heard to say that it can disregard its declared and stated policy. Denial of preference made by a more meritorious candidate, and allocation of cadres in violation of the stated policy would clearly constitute breach of the fundamental rights of such candidates under Articles 14 & 16 of the Constitution of India.

68. In *C.M. Thri Vikrama Varma (supra)*, the Supreme Court was dealing with a dispute relating to cadre allocation on the basis of a declared policy contained in the letter dated 31.05.1985. The Supreme Court held that a member appointed to an All India Service has no right to any particular State cadre, or a joint cadre. He has a right to fair and equitable treatment in the matter of allocation under Articles 14 & 16 of the Constitution. The Supreme Court agreed with the finding of the High Court that allocation made in violation of the guidelines contained in the declared policy vide letter dated 31.05.1985 was arbitrary, and not equitable. The Supreme

Court also rejected the defence of the Government that the complexity of the decision making process, i.e. allocation of cadres, cannot be a defence when a grievance is made before a Court by a citizen that his fundamental right to equality has been violated.

69. Mr. Nataraj has submitted that the petitioners could have sought further information/ clarification in relation to the manner in which they were required to give their preferences, if they were not clear about the policy declared vide OM dated 05.09.2017. We do not find any merit in this submission, since it is the case of the petitioners that the said policy left the petitioners with no doubt about the manner of its interpretation, and on a W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 52 of 62 plain reading thereof, it appeared to the petitioners that they were entitled to give their preferences for zones/ cadres and could also exclude certain zones/ cadres by not opting for them and by assigning 99 against them in the online preference option form. Since there was no doubt in the mind of the petitioners, there was no question of the petitioners approaching the respondents to seek any clarification.

70. We may now turn to the fundamental issue, namely, the interpretation of the OM dated 05.09.2017 in relation to cadre allocation.

71. As pointed out by Mr. Sethi, the respondents came out with a new policy for cadre allocation for All India Services, i.e. IAS/ IPS/ IFoS vide OM dated 05.09.2017. Thus, the successful candidates who were called upon to give their preferences for cadre allocation had no previous precedents to follow qua the said policy. They were entitled to proceed on the basis of the plain grammatical meaning emerging on a reading of the said OM. Though the said OM set out a new policy for cadre allocation, it did not indicate the purpose or objective with which the old policy was replaced with the new policy. Thus, the successful candidates had no clue as to what was it that the Government had in mind, while framing the new policy and with what objective the said new policy had been framed. They had no idea of the object that the respondents were seeking to achieve by implementation of the new cadre allocation policy. Though, the respondents had a good reason to evolve and lay down a new policy for cadre

allocation - as would be evident from the office noting relied upon by the respondents, it needs examination whether the Government sufficiently conveyed that object and purpose to the candidates/ officers, and also whether the W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 53 of 62 interpretation of the OM adopted by the respondents, was borne out from the said OM.

72. On a reading of paragraphs 3 & 4 of the said OM, what emerges is that the candidates were required to indicate their choice in descending order of preference from amongst various zones and from amongst the several cadres in each preferred zones. These two paragraphs also show that the candidate was given the freedom not to give any preference for any of the zones/ cadres. Therefore, the candidates could choose to give their preferences in respect of the some, and not all zones, and some, and not all cadres within the preferred zones. The use of the expression each preferred zone in paragraph 3 is a clear pointer - when read in conjunction with paragraph 4, that there could be zones which are not preferred zone. Similarly, there could be cadres, which are not preferred cadres. How does one indicate ones preference, not to give a preference for a particular zone/ cadre?. The answer to this lies in the practice that the respondents have been following, and followed even in the process of cadre allocation in question. The candidates were prompted to fill 99 against those zones/ cadres, for which they did not wish to give a preference. What is the meaning of a candidate not giving preference for a particular zone/ cadre?. It only means that when his case is taken up for cadre allocation in his turn, according to his merit, if a vacancy is available in a cadre falling in a zone/ cadre which he has not preferred, the same should be bypassed and the next vacancy in one of the preferred cadres, according to availability and preference, should be considered for allocation. W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 54 of 62 73. A reading of paragraph 4 of the OM dated 05.09.2017 shows that a candidate who does not give any preference for any of the zones/ cadres, it will be presumed that he has no specific preference for those zones/ cadres. The presumption raised is not that he would be presumed to have given a preference - such that, despite being entitled to allocation of one of the preferred cadres according to his merit, he would be thrust with one of the not - preferred cadres, as if he has preferred the same.

74. Paragraph 10 of the OM dated 05.09.2017 states that allocation with reference to the limited preference candidates shall be governed by procedure outlined in paragraph 4. Paragraph 4 plainly states that if he is not allocated to any one of the cadres for which he has indicated a preference, .., only then he shall be allotted a cadre along with other such candidates in the order of rank to any of the remaining cadres, arranged in alphabetical order.... Thus, paragraph 4 mandates that the allocation of cadres, first & foremost, would be done in terms of the preference indicated subject, of course, to the merit position of candidates and availability of vacancies. If, and only if, a candidate is not able to get allocated to any of the cadres that he has given his preference for, on account of his merit position and on account of non-availability of vacancies in the preferred cadres when his case is taken up for allocation, then alone his case would be considered for allocation in the remaining cadres, arranged in alphabetical order in which there are vacancies, and this process would be undertaken in the order of rank. On a plain and grammatical reading of OM dated 05.09.2017, it nowhere emerges that if a candidate cannot be allocated to one of the preferred cadres in one of the preferred W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 55 of 62 zones, according to his merit - without breaking the chain, he would be relegated to consideration only in the remaining cadres arranged in alphabetical order.

75. The stand taken by the respondents in their counter-affidavit, relevant part whereof has been extracted hereinabove and which has also been explained by Mr. Nataraj, is nowhere reflected on a plain reading of the OM dated 05.09.2017. The respondents state in paragraph 5.3.1 of their counter- affidavit which is extracted hereinabove, that A candidate cannot be allocated to a cadre for which he has indicated preference in violation of the guide line given in para 8 (iii) of the Cadre Allocation Policy - 2017 . (emphasis supplied) 76. We fail to appreciate as to how the respondents could consider the giving of limited preference by a candidate as a violation of the guide line given in para 8(iii) of the Cadre Allocation Policy - 2017, which is extracted above. A violation pre supposes a breach of a Rule. But there is no hard and fast Rule that all the candidates must, necessarily, indicate their preferences for all the zones and all the cadres. The candidates should have been put to notice that non - preference of all zones and cadres would tantamount to a violation of the guide line given in paragraph 8(iii) of Cadre

Allocation Policy - 2017 We, thus, get the impression that the respondents have sought to penalize the petitioners and other candidates, who gave only limited cadre preference even though there was no indication in the OM dated 05.09.2017 that candidates who give limited preference would not be considered, according to their merit, in respect of the cadres they have given their preference for. W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 56 of 62 77. Pertinently, in response to paragraph 19, 20 & 25 of the writ petition, the respondents sought to explain the so called anomaly which, according to them, would emerge, if the petitioners submissions regarding cadre allocation were to be accepted.

78. We find the explanation given by the respondents in their counter- affidavit rather curious. At the cost of repetition, we set out hereinbelow a portion of the counter-affidavit, which would demonstrate that the logic/ reasoning disclosed by the respondents, in fact, defeats the main purpose and object sought to be achieved by the new Cadre Allocation Policy - 2017. The respondents, inter alia, stated in their counter-affidavit: What the petitioners aspires that can be explained by an example that a candidate does not opt Zone, IV (West Bengal, Sikkim, Assam- Meghalaya, Manipur, Tripura and Nagaland), then as per the contentions of the petitioners, he would not be considered for this Zone at the time of allocation along with all those candidates who eventually opted this Zone. What happens in that case, if Mr. A ranked 5th does not opt for Zone-IV whereas Mr. B ranked 4th opts for this Zone, then Mr. B higher in rank than Mr. A will be considered for allocation to a cadre in Zone-IV, there will be chances that Rank 4th gets allocated to any of the cadres in this Zone but at the same time Rank 5th has taken the liberty to skip this Zone and is to be initially considered for allocation to a cadre other than this Zone-IV. Hence, despite being meritorious, Rank 4 does get allocated to a cadre in Zone-IV but Rank 5 skipped the chances of being allocated to a cadre in this Zone-IV which is his un-preferred zone. (emphasis supplied) 79. Thus, on the one hand, the now disclosed objective of the Cadre Allocation Policy - 2017 is to ensure that meritorious candidates also get allocated to the less preferred cadres and the All India character of the W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 57 of 62 services is maintained, on the other hand, the respondents seek to espouse the cause of the more meritorious candidates by claiming that the more meritorious candidates may get allocated to

the less preferred zones and cadres, while lesser meritorious candidates may get allocated to the higher preferred zones and cadres.

80. The respondents have, for the first time, in their counter-affidavit sought to explain the method of cadre allocation resorted to by them. For the first time, they bring in the concept of continuity and sequence of preference. There is not a whisper in the Cadre Allocation Policy - 2017 about these aspects. There is absolutely nothing at all to indicate in the said Cadre Allocation Policy that, if the chain is broken while considering the preferences of a candidate, he would be condemned for consideration of his case for cadre allocation, irrespective of his merit, in the residue/ remaining cadres. Unfortunately, the policy contained in the OM dated 05.09.2017 was completely bereft of any examples or illustrations so as to guide the candidates and enable them to make an informed decision with regard to giving of their preferences.

81. As rightly pointed out by the petitioners, the conduct of the respondents, in fact, led to the petitioners being misled. The petitioners are right in contending and pointing out that the respondents should not have prompted the candidates to enter 99 in respect of the zones/ cadres for which they have no preference. The screenshot of the computer screen has been tendered in Court which shows that at the time of filling the online cadre preference form, the candidates were told that for no preference please enter 99. In fact, the candidates should have been clearly informed W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 58 of 62 that giving no preference by entering 99 is not an option available to them. There is no denial to this fact, and there can be none, that when the petitioners entered 99 in respect of a particular zone/ cadre and the preference/ choice were not in seriatim (sequential), the computer system accepted the same and neither cautioned the candidates, nor automatically populate all other zones/ cadres with 99. The petitioners have pointed out that in the following year, the respondents have removed these lacunas in their computer software. The respondents cannot seek to take advantage of their laconic computer systems/ software to the grave prejudice of the more meritorious candidates, like the petitioners, particularly when it is a question of their long term career and it entails a clear breach of Articles 14 & 16 of the Constitution.

82. We agree with the petitioners that the interpretation and implementation of the Cadre Allocation Policy - 2017 resorted to by the respondents is unreasonable and arbitrary since the more meritorious candidates have been denied the cadres to which they were otherwise entitled according to their preference, and the same have been allocated to the less meritorious candidates. There can be no gain saying that the common thread running in the said Cadre Allocation Policy - 2017 is to reward merit. The more meritorious candidates are entitled to consideration for allocation of cadres before the less meritorious candidates are considered. This is clear from the overall scheme/ policy and is specifically set out at the end of paragraph 10. That principle has been clearly breached by the respondents due to the manner in which they have interpreted and implemented the OM dated 05.09.2017. W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 59 of 62 83. In our view, the decision in C.M. Thri Vikrama Varma (supra) is attracted in the facts of the present cases. The respondents have clearly breached their disclosed policy for cadre allocation contained in the said OM and, in the process, disregarded merit.

84. We also agree with the submissions of Mr. Malhotra that the cardinal principle of statutory interpretation - that the words of a statute must be understood in their natural, ordinary and popular sense and construed according to their grammatical meaning, is attracted in the facts of the present cases. The words of the OM dated 05.09.2017 are clear, plain and unambiguous and they must be given effect to, irrespective of the consequences.

85. Mr. Nataraj has relied upon M/s Girdhari Lal & Sons (supra) in support of his submissions that this Court should adopt an interpretation of the OM dated 05.09.2017, which promotes and advances the objects and purpose of the new Cadre Allocation Policy. We would have done so, if there was room in the declared cadre allocation policy to do so. As noticed above, the object & purpose of the new Cadre Allocation Policy - 2017 was never made public by the respondents. It was not disclosed either before the issuance of the OM dated 05.09.2017, or as a part of the said OM, or even thereafter before the candidates were called upon to indicate their preferences for zones/ cadres. The object & purpose of a legislation, which is not disclosed and which remains within the confines of an office file,

cannot be pressed into service to advance an interpretation, which otherwise, is clearly not made out on a plain & grammatical reading of the disclosed policy. If the OM in question were capable of two interpretations - one W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 60 of 62 furthering the object & purpose of the Cadre Allocation Policy - 2017, most certainly, this Court would have leaned in favour of that interpretation, but, unfortunately, that is not the case.

86. For all the aforesaid reasons, we are inclined to allow these writ petitions and to quash the cadre allocations made by the respondents of the IAS Officers vide communication dated 03.12.2018, and the IPS Officers vide OM dated 19.12.2018. We, accordingly, direct so.

87. We are inclined to grant relief to the petitioners considering that they have approached this Court at the very earliest and at a stage when neither the IAS officers, nor the IPS officers of the 2018 batch have commenced their on-site training which are cadre specific. We also accept the submission of the petitioners that cadre allocation is a matter which would affect their careers for all times to come, and re-allocation of cadres by the respondents should not take much time considering that the same is done electronically, i.e. through the computer program or software. The respondents are already possessed of the requisite data in this regard.

88. We, therefore, direct the respondents to undertake fresh cadre allocation of the successful candidates allocated to the IAS and IPS, according to their merit and by taking into consideration the preferences given by the candidates irrespective of whether they have filled 99 in any of the zones or cadres. If a candidate is not able to get any of the preferred cadres according to his rank, cadre allocation in respect of such a candidate may be resorted to in the manner set out in later part of paragraph 4 of the OM dated 05.09.2017, i.e. he may be allotted along with other such candidates in the order of rank to any of the remaining cadres, arranged in W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 61 of 62 alphabetical order, in which there are vacancies in his category if allocation of all the candidates who could be allotted to cadres in accordance with their

preference.

89. The petitions stand disposed of in the aforesaid terms. The parties are left to bear their respective costs. MAY03 2019 (VIPIN SANGHI) JUDGE (REKHA PALLI) JUDGE W.P.(C.) Nos.109/2019, 862/2019, 864/2019 & 869/2019 Page 62 of 62

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