

Before Ranjit Singh, J

GHANSHAYAM DASS SHARMA,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondents

C.W.P. No. 7303 of 1999

28th July, 2009

Constitution of India, 1950—Art. 226—Haryana Subordinate Agriculture (Group C) Service Rules, 1993-Rls. 9 & 12—Joint seniority list of administrative cadre and Soil Conservation Cadre—Bifurcation of cadres—Option for absorption in Soil Conservation Cadre given— Name of petitioner excluded from tentative seniority list of persons absorbed in Soil Conservation Cadre—Name of officials junior to petitioner included in seniority list—Action of respondents in assigning cadre by ignoring seniority and option given cannot be sustained—Petitions allowed, respondents directed to reconsider and re-decide entire issue, give due consideration to seniority and resultant effect thereof while allocating officials to different cadres—However, petitioners who failing to exercise their option held not entitled to such re-consideration of assignment of their cadre.

Held, that the respondents, as a matter of course, should have obtained an option from the individual concerned, when cadre was bifurcated and if it is not possible to accommodate all the employees in one cadre as per their choice, then to categorize them, keeping in view their option in the order of their seniority. The action of absorbing them in a cadre on the basis of their posting would not be the appropriate and proper criteria as that was not within the hands of the employees and is a fortuitous circumstance purely dependent upon the posting given to such employee by the employer. The action of the respondents in assigning the cadre by ignoring the seniority and the option given cannot be sustained. The respondents are, therefore, directed to reconsider and re-decide the entire issue in the light of observations made and give due consideration to the seniority and the resultant effect thereof while allocating the officials to

different cadres. The petitioners, who had not given their options, however, would not be entitled to such re-consideration of assignment of their cadre and they will continue to remain in a cadre, which has been assigned to them by the respondents. There has been no allegations of mala fide on the part of the respondents and it is only the resultant consequences which have been taken into consideration while directing the respondents to redo this exercise and as such, the officials who had not exercised their option would not be entitled to any reconsideration.

(Paras 13 & 14)

Puneet Bali, Advocate, *for the petitioner.*

Harish Rathee, Sr. DAG, Haryana, *for the State.*

RANJIT SINGH, J.

(1) Bifurcation of cadre of Agriculture Development Officer has led to spate of litigation, forcing numerous officers to challenge the order assigning them to a cadre of Agriculture Development Officers. They all pray for their absorption in the Soil Conservation Cadre, which was created after bifurcation. Their grievance primarily is on the ground that their further advancement in the service career would suffer a prejudice in as much as persons who are junior to them in a joint cadre would now steal a march over them and would receive promotion ahead of them whereas the petitioners, who have been assigned, ADOs cadre would continue to suffer and stagnate and would become juniors also. A large number of petitioners assigned to ADO cadre, have filed these writ petitions. Civil Writ Petition No. 7303 of 1999 (**Ghanshayam Dass Sharma and others (by 1 petitioner) versus State of Haryana and others**), is being taken as a lead petition and is being disposed of alongwith connected Civil Writ Petition Nos. 4204 of 1999 (**Satyavir Singh and others (by 2 petitioners) versus State of Haryana and others**), 4407 of 1999 (**Bhalle Ram (by 1 petitioner) versus State of Haryana and others**), 4526 of 1999 (**Mahavir Singh and others (by 3 petitioners) versus State of Haryana and others**), 5463 of 1999 (**Surinder Kumar (by 1 petitioner) versus State of Haryana and others**), 9100 of 1999 (**Om Vir Singh Tomar and others (by 5 petitioners) versus State of Haryana and others**), 14789 of 1999 (**Ram Kishan and another (by 2 petitioners) versus State of Haryana**

and others), 3860 of 2000 Ajmer Singh and 1 others (by 7 petitioners) versus State of Haryana and others), 6945 of 2001 (Surinder Kumar (by 1 petitioner) versus State of Haryana and others), 6991 of 2001 (Om Parkash Punia and others (by 15 petitioners) versus State of Haryana and others), 7548 of 2001 (Uttam Singh and another (by 2 petitioners) versus State of Haryana and others), 7857 of 2001 (Mange Ram (by 1 petitioner) versus State of Haryana and others), and 7954 of 2001 (Chander Shekar Singh (by 1 petitioner) versus State of Haryana and others).

(2) The facts which are common and identical in all these petitions, in brief, are that the petitioner after obtaining degree in B.Sc. was appointed on 24th February, 1997 as Agriculture Development Officer (hereinafter referred to as “ADO”) by way of direct recruitment. His services were regularized with effect from 1st January, 1980. Rules known as Haryana Subordinate Agriculture (Group C) Service Rules, 1993 (hereinafter called as “1993 Rules”) were enacted in the year 1993. In the year 1996, some of the employees working in the Department filed Civil Writ Petition No. 13885 of 1996 praying for a direction to the respondents to prepare and maintain correct seniority list in terms of the Service Rules. This writ petition was disposed of with a direction to the respondents to prepare the seniority list of the employees governed by the Rules in terms of Rule 12 of 1993 Rules.

(3) The service conditions of all the employees then working in the Department, though may be on different posts/cadre, were governed by 1993 Rules. Part 2 of 1993 Rules governed the recruitment to the service. Rule 7 provided that no person shall be appointed to any post in the service unless he is in possession of qualification and experience specified in Column 3 of Appendix B of the said Rules, in case of direct recruitment and those specified in Column 4 of the aforesaid Appendix in case of appointment other than by direct recruitment. For promotion to the post of Technical Assistant, 5 years experience as ADO was the requirement as is given in Appendix B. The academic qualifications are degree in B.Sc. (Honours) in Agriculture from any recognized University. Rule 9(1)(3) lays down that recruitment to the service in the case of Technical Assistant shall be made either by promotion from amongst ADOs or by transfer or by deputation of an officer already in service of

the State Government or Government of India. Rule 9(1)(e) provided that promotion to the post of Technical Assistant would be from amongst the ADOs (Soil Conservation/Soil Survey). Against the post of Soil Conservation/Soil Survey and Soil Testing Cadre (for short, "Soil Conservation Cadre"). In addition, such promotion could be by transfer or deputation of an official already in the service of any State Government or the Government of India. Such promotions, in terms of Rule 9(2) were to be made on the basis of seniority-cum-merit. Seniority alone was not to confer any right on such promotions. In this background, Rule 12 of 1993 Rules made a provision for *inter-se* seniority of the Members of service and it was to be determined on the basis of length of continuous service on any post in the service. For ready reference, the provisions of Rule 9(1)(3), 9(1)(e), 9(2) and 12 of 1993 Rules are reproduced hereunder :—

"9(1)(3) in case of Technical Assistant :—

- (i) by promotion from amongst Agricultural Development Officers ; or
- (ii) by transfer or deputation of an officer already in the service of any State Government or the Government of India.

9(1)(e) Soil Conservation/Soil Survey and Soil Testing Cadre :—

(1) in case of Technical Assistant—

- (i) by promotion from amongst the Agricultural Development Officers (Soil Conservation/Soil Survey) ; or
- (ii) by transfer or deputation of an official already in the service of any State Government or the Government of India.

9(2) All promotions unless otherwise provided, shall be made on seniority-cum-merit basis and seniority alone shall not counter any right to such promotions.

12. Seniority inter se of the members of the Service shall be determined by the length of continuous service on any post in the service :

Provided that where there are different cadres in the service, the seniority shall be determined separately for each cadre :

Provided further that in case of members appointed by direct recruitment, the order or merit determined by the Board or any other recruiting authority as the case may be, shall not be disturbed in fixing the seniority :

Provided further that in the case of two or more members appointed on the same date, their seniority shall be determined as follows :—

- (a) a member appointed by direct recruitment shall be senior to a member appointed by promotion or by transfer ;
- (b) a member appointed by promotion shall be senior to a member appointed by transfer ;
- (c) in the case of members appointed by promotion or by transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and
- (d) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member, who was drawing a higher rate of pay in his previous appointment; and if the rates of pay drawn are also the same, then by the length of their service in the appointments, and if the length of such service is also the same, the older member shall be senior to the younger member ;
- (e) in case of more than one person of the same category happen to join the same day, their inter se seniority will be determined in accordance with the Civil Services Rules.”

(4) In the year 1997, to be precise, on 5th June, 1997 the Director, Agriculture, sanctioned 1159 posts of ADOs in Administrative cadre and 141 posts of ADOs in Soil Conservation Cadre in the Department of Agriculture in the State. In addition, it was decided that the cadres of above lines be maintained separately in accordance with the new service Rules of 1993 Rules. The petitioners in all these petitions claim that they were eligible for both the Cadres, the qualification and experience prescribed under the Rules being identical. Accordingly, option under the prescribed proforma was invited from the interested employees, who fulfilled the qualification and experience, for their absorption in these two cadres. They were to submit their options by 25th June, 1997. Majority of the petitioners have given their consent/option on the prescribed proforma for their permanent absorption in Soil Conservation Cadre. The petitioner in this case gave such option on 30th June, 1997. Some of the petitioners, however, did not give any option, reference to which would be made in the subsequent portion of this order. The options given by the petitioner and his alike were forwarded to the Directorate by the Divisional Conservation Officer. In the seniority list of joint cadre seniority was jointly maintained of the administrative cadre as well as Soil Conservation Cadre. The name of the petitioner as on 1st January, 1983 figured at Sr. No. 910 in the seniority list. The petitioner, though has opted for Soil Conservation Cadre but has been assigned an administrative cadre and has been given re-determined seniority and his name now figures at Sr. No. 812. The name of the petitioner has been excluded from the tentative senior list prepared of those persons who have been absorbed in the Soil Conservation Cadre. The name of certain officials who were much junior to the petitioner in the joint cadre now stands included in the seniority list of Soil Conservation Cadre issued on 9th June, 1998. The tentative seniority list approving cadre-wise seniority list of ADOs and Soil Conservation Cadre is accordingly circulated. The petitioner filed representation on 6th July, 1998 in the form of objection against the seniority list. His plea is that he fulfilled all the prescribed qualification for his absorption in the Soil Conservation Cadre as well as in the general cadre and had exercised option for being absorbed in the Soil Conservation Cadre. The petitioner accordingly pleaded that the tentative seniority list should have been drawn on the basis of seniority taking into account the length of service and, thus, the officer absorbed in the respective cadre on the basis of their option either in the Soil Conservation Cadre or administrative cadre. The

petitioner also gave names of certain officials who are now impleaded as respondents in the writ petition and who were chosen for placement in the Soil Conservation Cadre but were junior to the petitioner. The petitioner and his likes had also prayed for grant of opportunity of personal hearing before the list of the respective cadre is finalised. In addition, the petitioner also pleaded that he has an experience of 6 years 6 months and 16 days as Assistant Soil Conservation Officer. The final seniority list of both the cadres was, however, finalised on 1st March, 1999. The name of the petitioner was excluded from the seniority list of Soil Conservation Cadre and included in the administrative cadre. Name of the private respondent Nos. 5 to 115 were included in the said list of Soil Conservation Cadre, though they were junior to the petitioner in the general cadre of ADOs, as per the seniority list framed prior to the bifurcation of the cadre. Terming this action to be against the provisions of 1993 Rules and which is also arbitrary and illegal, the petitioner has filed the instant writ petition. Similar is the grievance of the petitioners in the remaining connected writ petitions.

(5) Notice of motion was issued in this case on 2nd June, 1999. During the pendency of writ petition, various miscellaneous applications were filed, making a grievance that the respondents were transferring the employees, who had come to this Court by way of writ petitions. This Court accordingly directed status-quo in regard to further transfers to be maintained. The writ petition was admitted on 17th July, 2001 and was ordered to be listed for hearing as well.

(6) In the reply filed on behalf of the State, it is pointed out that 1159 posts of ADOs in the administrative cadre and 141 posts of ADOs in Soil Conservation Cadre were already in existence and it is only these cadres were bifurcated on 5th June, 1997. It is pointed out that as per Rule 9 of 1993 Rules, 5 Cadres, namely, administrative cadre, agriculture Engineering Cadre, Agricultural Statistical Cadre, Geology/Hydrology Cadre and Soil Conservation Cadre have been created. It is conceded that Soil Conservation is a new cadre, which is to be bifurcated from the common administrative cadre. It is also not disputed that options for posting to these two bifurcated cadres were invited from all ADOs working in the common administrative cadre. It is then pointed out that after receipt of the option, a Committee consisting of four senior officers was constituted to process and examine the options of ADOs to assist the competent authority i.e. the Director in finalising the allocation of the officials to these two cadres.

While finalising the seniority list cadre-wise, it was decided to give weightage to the experience of the candidates acquired in the Soil Conservation side/ the administrative side. Other things being equal, preference was given to those persons who had passed B.Sc./M.Sc. Agriculture with Soil Science as major subject. It is then averred that the employees who had longer experience in the service career in the administrative side have been adjusted in the administrative cadre and those person who have longer experience in working in Soil Conservation side have been adjusted in the Soil Conservation Cadre. This is stated to be done to have the experienced hands in the respective cadres so that the work under the respective schemes could function smoothly and in a better manner to fulfill the purpose of bifurcating the cadres. It is further stated that while doing so, it was decided that category-wise ratio of the filled up posts may be worked out and officials may be adjusted in both the cadres in proportion to the sanctioned posts in the schemes of respective cadres. Due representation was also given to the reserved category in both the cadres in accordance with the ratio of the posts required to be filled up. The Committee accordingly submitted its recommendation on 13th January, 1998. The tentative seniority lists so prepared were circulated, inviting objections. On receipt of the objections, the same were examined. Opportunity of personal hearing was also afforded by the Director, Agriculture and the objections raised were duly examined in detail. It was only thereafter, the Committee after examining the entire matter, gave its recommendation for finalising the cadre-wise seniority list. The seniority of the officials assigned to different cadres as contained in the original seniority list have not been disturbed. The respondents, thus, have justified the assignment of cadres to different officials on the basis of their experience. As per the respondents, their act in choosing the persons from different cadres is fair, just and reasonable and as such, would not call for any interference.

(7) The brief resume of facts as noticed above would show that prior to 1993, all the officers i.e. the petitioner as well as the private respondents were working in one administrative cadre and were posted as ADOs. New Rules in the year 1993 came into existence. A new cadre referred as Soil Conservation Cadre was created after bifurcating the administrative cadre. Both the cadres were given different strength and accordingly the officers were to be assigned to different cadres after bifurcation of the earlier cadre into two. While the cadres were being

finalised, one Gulbir Singh filed Civil Writ Petition No. 13885 of 1996 and this Court gave direction on 10th September, 1996 to the respondents to prepare a cadre-wise seniority list after affording reasonable opportunity of hearing to the affected persons. In order to satisfy this requirement of reasonable opportunity, options were invited from all the ADOs, including the petitioner and the private respondents, for allocating them these two different cadres. As already noticed, majority of the petitioners as well as private respondents submitted their options by 25th June, 1997. However, it may need a notice that Ram Kumar, Satbir Singh, Ashok Kumar, Ram Phal Singh and Amolak Singh in Civil Writ Petition No. 6991 of 2001 either did not give any option or their options were not received. So is the case in respect of Ram Sarup in Civil Writ Petition No. 3860 of 2000 and Mange Ram, petitioner in Civil Writ Petition No. 7857 of 2001.

(8) In order to justify their action, the respondents would say that they had adopted a reasonable criteria and had appointed a Committee to decide this issue, which considered all the aspects and gave its recommendation after affording opportunity of hearing to all the affected persons. The criteria as adopted by the respondents is that all the candidates, who had 7 years experience in soil conservation were allotted to Soil Conservation Cadre without disturbing their *inter se* seniority in the general administrative cadre. The petitioner, who did not possess 7 years experience in soil conservation, was accordingly allocated to the general administrative cadre. It is also seen that some of the ADOs, who were allocated to soil conservation Cadre, but still were working in the administrative cadre, filed Civil Writ Petition No. 14760 of 2000 seeking direction for their posting to Soil Conservation Cadre. This writ petition was disposed of without issuing notice to the respondents on 1st November, 2000 as per the following order :—

“Heard learned counsel for the petitioners. The main grievance of the petitioners is that they belong to S.C./S.T./S.S. cadre. However, they have been posted on the General Administrative Cadre posts, thereby losing experience, which is required for promotion to the higher posts. They have already represented to the respondents for the same relief as is claimed in this petition. However, no action is being taken by the concerned authority. The respondents are required to take a conscious decision on the claim of the petitioners before they can be allowed to approach this court by way of writ petition. The petition is disposed of finally with a direction to the concerned authority

to consider and decide the representation, Appexure P-1, of the petitioners, by a speaking order, expeditiously say within six months of the receipt of a certified copy of this order.”

(9) It was then that the respondents had issued an order posting 114 ADOs to their respective cadres on 10th May, 2001. It was against this order that a Civil Miscellaneous Application referred to above was filed, when status-quo order in respect of further transfers was made on 22nd May, 2001. To ensure compliance of this direction of status-quo, directions were issued by the respondents on 11th June, 2001. This order was again challenged by filing Civil Miscellaneous Application and the operation of this order was suspended. The respondents thereafter appear to have moved an application seeking clarification/modification of the order passed by this Court on 22nd May, 2001, which was disposed with a direction to list all the 13 petitions for final hearing. Another attempt to seek modification/vacation of the order passed by this Court on 22nd May, 2001 was made in the year 2004, which invited the following order from the Court :—

“Taking into consideration that these orders were passed in the year 2001, it would not be proper for this Court, at this stage, to vacate the order of stay, save and except to record that in view of what the State has to say and that is, that a large number of posts are lying vacant but they are not being filled up on account of these orders, it would only be proper to direct this matter to be placed immediately before Hon’ble the Chief Justice so that all the 13 cases referred to in Paragraph 5 of the instant application, can be placed before a regular Bench as per roster, so that they can be finally disposed off.

The office shall do the needful as indicated above and shall place the records of this case immediately before Hon’ble the Chief Justice.”

The writ petitions have, thus, come up for hearing now.

(10) Mr. Puneet Bali, appearing for the petitioner, would contend that the respondents were not fair in allocating the cadre to the officers after its bifurcation and as a result thereof, the petitioner would suffer prejudice in further advancement to his service career. The officers in both the cadres would strive for promotion in the post of Technical Assistant and the ones who are assigned Soil Conservation Cadre, though were junior, would achieve promotion to the posts of Technical Assistant ahead of the officers

who were much senior to them in the joint seniority list. On the other hand, the respondents would justify their action by saying that they have adopted a just and reasonable criteria for assigning the cadre to these officials. Those who were well versed in the soil conservation field and had experience in the said field have been chosen and assigned the said cadre whereas those persons who had gained experience in the administrative side have been assigned the administrative cadre.

(11) It is, thus, seen that the objection is not as much in assigning of the cadre as such, but the resultant consequences that are flowing from assigning different cadres to different officials ignoring the joint seniority. It is the consequence which is pinching the petitioners and, thus, he and others have approached this Court, challenging the action of the respondents in assigning him/them the cadre assigned. The criteria adopted by the respondents may not prima facie suffer from the vice of any arbitrariness. There may not be any apparent or a clear motive to favour any particular person but if the assignment of cadre leads to some unfair consequences whereby some junior persons are made to obtain march over the seniors, then that effect, is bound to create heart burning and should have, in fairness, been looked into. Still, this plea raised by the petitioner may not have been worthy of any consideration unless it could be established that indeed some persons who were miles junior to the petitioner, have now taken march over him for the purpose of next promotion. Incidentally, this fact is also available on record. When asked to demonstrate, Mr. Bali drew my attention to the Miscellaneous Application filed in this regard. He would first refer to the contents of Civil Miscellaneous Application No. 19595 of 2006. In this application, reference is made to status-quo order dated 22nd May, 2001 whereby the respondents were restrained from promoting juniors of the petitioner over him. It is then pointed out that Shri Satyabir Singh and Raj Kumar have been promoted in the Soil Conservation Cadre, who are junior to the petitioner. Similarly, Mahabir Singh, who was junior to the petitioner, was statedly promoted on 20th June, 2002. It is then pointed out that respondents have called the service record of persons who are much junior to the petitioner and that the respondents have not only promoted junior persons to the petitioner but were going to promote number of other persons who were otherwise junior to the petitioner in the joint seniority list where the cadre was joint. Another application No. 3798 of 2007 was filed for directing the respondents to maintain the status quo order as made on

22nd May, 2001 and for staying the subsequent order promoting some of the persons in violation of the said status quo order during the pendency of the present petition. In this application, also the reference is made to the promotion orders of Shri Hari Pal Singh and Shri Krishan Pal Singh, who are junior to the petitioner. Another Application No. 21184 of 2007 was filed for staying the promotion order dated 10th December, 2007 and 11th December, 2007 promoting large number of persons who are junior to the petitioner but had been promoted. Thus, the effect of absorption of the petitioner and the private respondents in different cadres while ignoring the seniority is definitely leading to an unfair result. The validity of this action, thus, is required to be appreciated. The criteria adopted by the respondents apparently does not suffer from any vice of being unfair or unjust but the respondents apparently have not taken into consideration the effect of directing absorption of various persons by ignoring the common seniority of all the officials when they were in same common cadre. The petitioner is justified in making a grievance that some of the officers, who have been absorbed in the Soil Conservation Cadre, are so junior to him but would now be able to steal march over him and, thus, have gained an advantage of years and years. It can be seen that the consequence of the absorption in this manner is having an unfair operation. This could have easily been avoided in case the seniority had also been kept in view while allocating the different cadres after bifurcation to these officers who were earlier working in the common cadre.

(12) What was the purpose of seeking option or for affording an opportunity of hearing to the affected persons, if they were to be absorbed purely on the basis of the criteria which was adopted and the seniority was to be ignored? The options may have been necessary to see in case one was not interested in being absorbed in the cadre where he was being sent on the basis of the criteria adopted. It is the 7 years experience in the soil conservation, which has outweighed all the other considerations for the respondents to assign cadres to different officials earlier working in the common cadre. The respondents have not been able to rebut this fact that the seniority of these officials will ultimately get affected. There is a substance in the submissions made by counsel for the petitioners, when they urge that they hardly had any option for working in a particular side while they were in a common cadre. Thus, the criteria adopted to assign cadre merely because some one has worked on a particular side is something which is being done on the basis of a circumstance, which was really not in their respective control. A single cadre in this case has been bifurcated and

divided into two. Certainly the respondents would not urge that they can arbitrarily categorise employees in a different cadre at their whims. Such a course obviously may play havoc with the position of seniority and promotional chances of employees in the same cadre. Chances of promotion may as such, be not a right for one to claim. This has to be viewed differently, when one earlier cadre is bifurcated into two. While doing so, the aspect that chances of promotion of one cadre would either get accelerated or retarded, as the case may be, cannot be completely ignored. In such circumstances, it may become essential for employer to give option to its employees for their absorption in one cadre or the other as per their choice. Indeed, such an option was sought in this case. Since it was so done, it would have been appropriate to categorise them in order of their seniority keeping in view their option. This course would have been rational criteria for division of an existing cadre into more than one cadre. To categorise employees in a different cadre purely on the basis of a nature of work on the last posting would not be fair because each one happen to be posted there fortuitously. When the cadre was one and a person working on the administrative side and the one on the Soil Conservation side could not have been categorised on bifurcation of the cadre only on the basis of the last posting held by the individual. The seniority could not have been completely ignored, especially so when it has resulted in an unfair consequence for those who were assigned administrative cadre. The persons who have been assigned the Soil Conservation Cadre have certainly benefitted and would become senior to those who are working in the administrative cadre, though earlier they were much much junior to them. The option exercised by such officials could have been validly ignored. The counsel for the petitioner invited my attention to the case of **G.D. Sharma versus Cotton Coporation of India and others, (1)** wherein similar observations were made. On query by the Court, it revealed that in an appeal filed against this judgment, the Hon'ble Supreme Court had remanded the case back for fresh decision on the ground that the judgment passed by Single Judge was set-aside by one Division Bench whereas it was upheld by another. The case was accordingly remanded back to the High Court for fresh disposal. What happened thereafter is not forthcoming. The observation made may be relevant for considering the case before me. Moreover, it is the effect of the decision which is leading to unfair and inequitable consequences and prejudice to a class of employees.

(1) 1997 (1) SLR 294

(13) To further highlight this aspect of unfair prejudice, the counsel appearing in the cases have drawn my attention to the fact that 19 persons were appointed as ADOs after 1993, when the rules were in operation but have now been assigned to Soil Conservation Cadre. They have a potential to become senior to some of the petitioners, who are in service since 24th February, 1977. The State counsel could not justify the action of such employees being absorbed in Soil Conservation Cadre, when they were appointed as ADOs after the bifurcation of the cadre. It would, thus, be appropriate to observe that the respondents, as a matter of course, should have obtained an option from the individual concerned, when cadre was bifurcated and if it is not possible to accommodate all the employees in one cadre as per their choice, then to categorise them, keeping in view their option in the order of their seniority. The action of absorbing them in a cadre on the basis of their posting would not be the appropriate and proper criteria as that was not within the hands of the employees and is a fortuitous circumstance purely dependent upon the posting given to such employee by the employer.

(14) In view of the above, the action of the respondents in assigning the cadre by ignoring the seniority and the option given cannot be sustained. The respondents are, therefore, directed to re-consider and re-decide the entire issue in the light of observations made above and give due consideration to the seniority and the resultant effect thereof while allocating the officials to different cadres. The petitioners, who had not given their options, however, would not be entitled to such re-consideration of assignment of their cadre and they will continue to remain in a cadre, which has been assigned to them by the respondents. There has been no allegations of *mala fide* on the part of the respondents and it is only the resultant consequences which have been taken into consideration while directing the respondents to redo this exercise and as such, the officials who had not exercised their option would not be entitled to any re-consideration.

(15) The writ petitions are, therefore, allowed to the extent as stated above and in respect of those petitioners who have exercised their options. The case of such petitioners for absorption in the cadre on the basis of their seniority be accordingly considered.

R.N.R.