

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION No. 170/00872/2017

TODAY, THIS THE 20th DAY OF DECEMBER, 2019

HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Sri Bhyrappa P.V.
Son of Sri.Venkateshappa
Aged about 32 years
On probation as Assistant Commissioner
Indian Revenue Service
(Customs and Central Excise)
National Academy Customs and Indirect Taxes & Narcotics
Faridabad, Sector-29
Pin code 121008
Haryana.

Residing at National Academy Customs
And Indirect Taxes & Narcotics
Hostel Complex, Faridabad, Sector-29
Pin Code 121008, Haryana.

Permanent Address:
Padavanahalli Village
Dadinayakanadoddy Post
Malur Taluk, Kolar District
Karnataka-563139.

...Applicant

(By Advocate Smt.Ashwini Rajagopal & Asso.)

Vs.

1. Union of India
Represented by its Secretary
Department of Personnel & Training
North Block
New Delhi-110 001.

2. Union Public Service Commission
Dholpur House, Shahjahan Road

New Delhi-110 001

by its Secretary.

3. Secretary

Department of External Affairs

North Block, New Delhi-110 001.

4. Secretary

Department of Revenue

North Block

New Delhi-110 001.

5. Pawan Kumar

S/o Late Kawarpal Singh

Panipat-132113

Haryana.

Rank 505

(Indian Foreign Service)

6. Mr.Nithin Raj T.N.

Resident of Sapthagiri, 4th Main

Valmiki Nagar

Tumkur-572 103

Karnataka.

Rank-476.

7. Ms.Jabeen Fathima J

Resident of Building 69, Door 366
Shirke Apartments KHB Colony Kengeri
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Rank-525.

8. Ms.Vasagiri Shilpa
Resident of 87-1197-1, Hosanna Mandir Road
Revenue Colony-2, B-Camp Post Office
Kurnool-518 002
Andhra Pradesh.
Rank-547.

9. Ms.Chelsasini V
Resident of A 69 NGO Colony
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Kanyakumari
Tamil Nadu.
Rank-572.

10. Mr.V.A.T.V.Kumar
Resident of 39-27-40, 10.6, Opp Ganesh Temple
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Rank-593.

11. Mr.Kavad Kalpesh Raghavbhai

Resident of 12, Sarjan Raw-House

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Rank 618.

12. Mr.Ananthagiri VLN Mahesh

Resident of 1-1-768, SAI Santosh Nilayam

Gandhinagar

Rangareddy-500 097

Telangana.

Rank 623.

13. Mr.Prabodh Yadav

Resident of 2-773, Vinay Khand-2

Gomti Nagar

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Uttar Pradesh.

Rank 630.

14. Ms.Bankar Vaishnavi Satish

C/o Satish Bankar
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Maharashtra.
Rank 651.

15. Mr.Vaishak PR
Resident of SreeSylam, Kuzhiyam South
Chandanathoppe PO
Kollam-691 014
Kerala.
Rank – 659

16. Ms.Bhumika Saini
Resident of 6-379, Malviya Nagar
Jaipur-302 017
Rajasthan.
Rank-664

17. Mr.Surendra Singh Charan
Resident of Behind Border Home Guard
Near Sanskrit School, Akashwani Road
Indranagar
Barmer-344 001.
Rajasthan.
Rank-667.

18. Mr.Jagtap Milind Ajay

Resident of House No.3532, Ward No.4A

Opposite Shirsath Accident Hospital

Northern Branch

Shrirampur-413 709

Ahmednagar

Maharashtra.

Rank – 671.

19. Ms.Shalini

Resident of 46-A, Subramaniar Koil Street

Lawspet

Pondicherry-605 008

Puducherry.

Rank – 677.

20. Mr.Jagadeesh B.

Resident of Sharanappa Balaganur

3rd Ward, Naval

Koppal-583 229

Karnataka.

Rank – 678.

21. Mr. Sudhir Patil

Resident of H.No.1039 Devanga Nagar

Sulebhavi

Belgaum – 591 103

Karnataka.

Rank – 680.

22. Mr. Vinod Choudhary

Resident of V.P.O. Kenpura

Kherwa, Pali-306 501.

Rajasthan.

Rank – 681.

23. Mr. Anubhav Singh

Resident of House Number – 105

Village Daser, Bhopatpur

Allahabad – 221 503

Uttar Pradesh.

Rank – 683.

24. Mr. Thakare Shubham Dnyandearao

Resident of Narayan Nagar

Near TV Centre

Daryapur

Amravati – 444 803

Maharashtra.

Rank – 686.

25. Mr. Lakkappa Uddappa Hanamannavar

C/o Uddappa K Hanamannavar

AP Jaganur
Belgaum – 591 305
Karnataka.
Rank – 688.

26. Mr. Dheerendra Kumar
Resident of Commercial Tax Office
Tallital
Nanital – 263 002
Uttarkhand.
Rank – 689.

27. Mr.Mote Sachin Bira
Resident of at post Vibhutwadi
Tal – Atpadi
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Maharashtra.
Rank – 690.

28. Ms.Sweedha T.
Resident of Amusammal Thottam
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Rank – 695.

29. Ms. Garima Gaur

C/o Mr.B.P.Singore
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Rank – 696.

30. Ms.Ashwini Gotyal
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31. Mr.Dhas Kishor Ramchandra
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Beed District, Sarni
Beed – 431 123
Maharashtra.
Rank – 700.

32. Ms.Neha Devising Rathod
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Savitribai Phule Chowk
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Rank – 702.

33. Mr.Avhad Nivrutti Somnath
Resident at Post – Gulvanch, Tal-Sinnar
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Rank – 706.

34. Mr.Amit Kumar
Resident of Hawaldar Prajapati
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35. Ms.Syama Saji
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36. Ms.Sharayu Aadhe
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Amravati – 444 604

Maharashtra.

Rank – 727.

...Respondents

(By Advocates Shri Vishnu Bhat, Sr.PC for CG for R1 & Sri M.Rajakumar for R2)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that in response to the Union Public Service Commission(UPSC) recruitment notification dtd.27.4.2016(Annexure-A2) inviting applications for the Civil Service Examination(CSE) 2016 to fill up approximately 1079 vacancies, the applicant applied under the OBC category with Locomotor Disability of 'One-Leg' indicating his preferences as 1. Indian Administrative Service, 2. Indian Foreign Service 3. Indian Revenue Service(IT)(Annexure-A3). He had earlier participated in the Civil Services Examination 2015 and was selected and appointed to the Indian Revenue Service (Customs & Central Excise, Grade-A) and he joined the service on 19.12.2016. The applicant secured 132 marks in the preliminary examination of CSE-2016 as against the minimum qualifying marks of 110.66 secured by the last recommended candidate under OBC and 75.34 secured by a candidate under Physically Handicapped-1(Locomotor disability) (Annexure-A4). He secured 997 marks in the Main Examination securing a rank of 475, as against the minimum qualifying marks of 988 secured by the last recommended candidate

under General Merit, 951 marks secured by candidate under OBC and 927 marks secured by a candidate under Physically Handicapped-1(Annexure-A5). The marks sheet declared the result of the applicant as 'recommended'. Copy of the table indicating the minimum qualifying marks secured by the last recommended candidates under different categories is annexed at Annexure-A6. The UPSC published a merit list for the CSE, 2016 on 31.5.2017(Annexure-A7) with the name of the applicant at Sl.No.475 under category-3(OBC). Applicant and 6th respondent have secured 997 marks in the Main Examination. The applicant secured 475th rank whereas the 6th respondent has secured 476th rank as the applicant is senior in age to the 6th respondent. On visiting the website of UPSC, the applicant came to know that his allocation to any service is deferred due to limited preferences(Annexure-A8). Shocked by his exclusion and inclusion of persons lower in rank, the applicant made representation on 4.8.2017 to the Under Secretary to DoP&T requesting for consideration of his candidature as being meritorious and requested for being recommended for selection and appointment(Annexure-A9). He pointed out that persons less meritorious than him as per ranking made by the UPSC have been allocated to IFS and IRS (IT). Further, during the interaction with the Addl.Secretary, DoP&T on 10.8.2017(Annexure-A10), he handed over a representation dtd.9.8.2017(Annexure-A11) and during that meeting, the applicant was given to understand that physically handicapped candidates are considered only against the quota for physically handicapped and not under any other category which is wholly contrary to the reservation policy as applicable to the Civil Services. As per the proviso to Rule 17 notified on 27.4.2017(Annexure-A1) where a physically handicapped candidate obtains minimum qualifying marks in his own merit in the requisite number for General or the Scheduled Caste or Scheduled Tribe or Other

Backward Class category candidates, then the extra physically handicapped candidates i.e. more than the number of vacancies reserved for them shall be recommended by the UPSC on the relaxed standards. Very much aggrieved by his non-selection under OBC category in spite of his merit, the applicant has filed the present OA seeking the following relief:

- a. *Issue a writ in the nature of mandamus directing the respondent No.1 to select and recommend the name of the applicant to the Indian Foreign Service/Indian Revenue Service (IT Grade-A) considering the merit of the applicant and grant all consequential benefits.*
- b. *Issue such other appropriate writ, order or direction as this Hon'ble Tribunal deems fit to grant in the interest of justice and equity, including the award of costs of this application.*

2. The applicant submits that the recommendation of the respondents No.5 to 36 for selection and appointment made by the 2nd respondent is illegal. The applicant being meritorious is selected on his own merit under the OBC category and by permitting the respondents No.5 to 36 to march ahead of the applicant, the official respondents have subverted the reservation policy. When the applicant made applications under RTI(Annexure-A12 & A13) to obtain information regarding the reason for the deference of allocation of service to the applicant, the 1st respondent has replied by letter dtd.24.11.2017(Annexure-A14) stating that the service allocation to the candidates recommended by the UPSC is not yet completed. The 4th respondent has issued offer of appointments to candidates selected for appointment as Assistant Commissioner of Income Tax in the Indian Revenue Service by letter dtd.3.11.2017(Annexure-A15). The 5th respondent who belongs to OBC with the rank of 505, has been allocated to Indian Foreign Service, marching over the applicant who is more meritorious with a rank of 475 under the OBC category. The applicant has learnt that the respondents No.5 to 36 have been called for training in the Foundation Course whereas the applicant has spent considerable time in trying to

obtain information and documents pertaining to the present OA. The rejection of selection and recommendation of the applicant is wholly contrary to the law laid down by the Apex Court in *Rajesh Kumar Daria v. Rajasthan Public Service Commission* (2007) 8 SCC 785. It is settled law that the proper and correct course is to first fill up the Open Competition quota(50%) on the basis of merit, then fill up each of the social reservation quotas i.e. SC, ST and OBC, the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied, in case it is an overall horizontal reservation, no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates there from. Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the open competition quota. It is settled law that vacancies reserved for persons with disabilities are not open to others but candidates who are persons with disabilities cannot be denied selection and appointment against vacancies not reserved for that category of physically handicapped as long as the category of disability is notified as employable against a particular service. His non-selection and non-recommendation is in violation of the rules notified for the CSE 2016 and violative of Rights of Persons with Disabilities Act 2016 as also Articles 14, 15, 16 & 21 of the Constitution.

3. Per contra, the respondents have submitted in their reply statement that the applicant was recommended at Sl.No.475 under Locomotor Disability & Cerebral Palsy sub-category candidate of PH category by UPSC for service allocation on the

basis of Civil Services Examination-2016. The Cadre Controlling Authorities(CCAs) for the Civil Services are various Ministries/Departments under the Government of India and they determine number of vacancies to be filled in the respective services/posts during a particular CSE year and intimate the same to UPSC as well as DoPT including those meant for PH category. All the candidates recommended by UPSC have to undergo medical examination at the seven designated hospitals in Delhi i.e. Dr.RML Hospital, Safdarjung hospital etc. The medical examination of the applicant was scheduled at Dr.RML hospital and he was declared a valid PH candidate under LDCP sub-category with 50% disability(Annexure-R2). First of all, allocation is made to PH category candidates. The horizontal reservation for PH candidate involves allocation of vacancies first to the PH candidates from the category UR, OBC, SC & ST to which the successful PH category candidate belongs. Service allocation of PH candidates is done taking into account their rank, preferences, medical findings with the Functional Classification(FC) and Physical Requirements(PR) and availability of vacancy in his sub-category of PH at his/her turn. Thereafter, service allocation to the Non-PH candidates recommended by UPSC is done based on their rank, preferences indicated for various services, medical status, availability of vacancy in his/her category at his/her turn. In respect of OBC candidates(PH as well as Non-PH), their non-creamy layer status is also verified before service allocation. After allocation of service to all eligible PH candidates as per rules, the non-PH candidates are considered for service allocation against the remaining vacancies. More clearly, the reservation of PH category candidates is horizontal in nature which cuts the vertex of each category and each service. The reservation for non-PH candidates is vertical. It is therefore, the service allocation to PH candidates is done first and the vacancies thus allocated are

deducted from the services and from the respective category to which the PH candidates belong. Against the remaining vacancies, non PH candidates are allocated to service. The PH candidates can be allocated to services only against the vacancies reserved for PH category candidates. Rule-17 of Civil Services Examination does not allow the PH candidates for their allocation against non-PH vacancies. This concept is under subjudice before the Hon'ble Supreme Court in Civil Appeal No.3303/2015 in the case of *UOI vs. Pankaj Kr.Srivastava & Ors.*

4. The respondents submit that since the applicant has opted for only three services i.e. IAS, IFS and IRS(IT) and no vacancy in IAS, IFS & IRS(IT) is available for LDCP category at his turn. Therefore, he was not allocated to any service as per CSE Rules-2016. Due to Limited Preferences of services which he preferred in the Detail Application Form (DAF) submitted during the Mains Examination of CSE-2016, the applicant could not be allocated to any service. The respondents have given the details of LDCP category candidates of CSE-2016 who have been allocated services against the vacancies reserved for LDCP in CSE-2016 in a tabular form. The applicant has qualified the CSE-2016 as PH candidate and he was recommended by UPSC under LDCP sub-category of PH category in the final result. Therefore, he cannot be considered against vacancies/posts earmarked for non-PH candidates or identified posts for PH candidates which are earmarked for other sub categories of PH category. The applicant has no claim for consideration against vacancies earmarked for non-PH belonging to UR, SC, ST or OBC categories, just as SC and ST category candidates have no claim for consideration against OBC vacancies or general vacancies and vice versa. Therefore, the applicant cannot be considered against vacancies/posts earmarked for non-PH General/OBC/SC/ST category as per Rules of CSE-2016. As the applicant was not meeting the minimum physical

requirements required from a non-PH candidate, he was not eligible for non-PH vacancies of any categories including OBC-Non PH. Therefore, he cannot claim parity with non-PH candidates of any category. The respondents relied on the decisions of the Hon'ble Apex Court in the case of *Indra Sawhney vs. UOI (1992) Supp.(3) SCC 217*, in *UOI & Anr. Vs. National Federation of Blind & Ors in CA.No.9096/2013* and in *Rajesh Kumar Daria & Ors. Vs. RPSC & Ors in CA.No.3132/2007* in support of their claim. It is submitted that reservation to persons with disabilities is a horizontal reservation and therefore a person with disability has no category of his own and only after getting selected, he is counted against vacancies of the category to which he belongs to. As he availed facility of relaxed medical standard specially available to persons with disability as per Rule 21 of CSE Rules 2016, he may not be allocated against the vacancy which is not reserved for PH candidates. Therefore, the applicant is not entitled for any relief and the OA is liable to be dismissed.

5. The applicant has filed rejoinder with the repetition of the contentions made in the OA and submits that as per the updated service allocation of candidates, who appeared in the CSE-2016, 972 candidates have been selected. According to this list, the last candidate under the OBC category who has been allotted IFS has secured a rank of 615 and the last candidate under OBC category who has been allotted IRS(IT) has secured rank of 734(Annexure-A16). The applicant who has secured a rank of 475 is much more meritorious than the last candidate under OBC category to have been allotted IFS and IRS(IT). The working of horizontal reservation as enumerated in the reply is contrary to the law laid down by the Constitution Bench of the Hon'ble Apex Court in *Indra Sawhney vs. UOI (1992) Supp (3) SCC 217 and Rajesh Kumar Daria vs. Rajasthan Public Service Commission (2007) 8 SCC 785*.

Admittedly, reservation for PH candidates is a horizontal reservation. This being the case, first vertical reservation(social reservation) has to be operated and then, horizontal reservation, if need be. The applicant had applied under the OBC category, as a PH candidate. Therefore, if first, vacancies with vertical reservation-social reservation were filled, the applicant, who had secured 475th rank would have gotten selected. The approach of the respondent No.1 in allocating services to PH candidates against vacancies reserved for PH vacancies, without first filling the vacancies based on vertical reservation(under OBC category in his case) is upturning the reservation policy in India, which is wholly impermissible and is violative of Articles 14, 16 of the Constitution. It is settled law that a reserved candidate can seek selection to an unreserved vacancy, however, an unreserved candidate cannot seek selection to a reserved category. In the instant case, the applicant is entitled by virtue of his merit as an OBC candidate to seek selection under OBC category for IFS and IRS(IT). The contention of the respondents that Rule 17 of CSE-2016 does not allow a PH candidate for his allocation against non-PH vacancies is wholly untenable and contrary to law. Rule 17 permits a PH candidate to be considered in his own merit. Rule 21 states that a person has to be free from any physical defect which is likely to interfere with the discharge of his duties as an officer of the service. A PH candidate can apply to only such services which are identified as suitable for the physically disabled category on fulfilling the physical requirements and the functional classifications. The services which the applicant is seeking selection are identified as suitable for person with disabilities. The applicant fulfils the physical requirements and the functional classifications. Therefore, the physical disability or physical defect of the applicant is not likely to interfere with the discharge of his duties. The applicant has fulfilled all medical requirements. Therefore, considering this as a concession or

relaxation is wholly irrational and preposterous and the applicant is entitled for consideration by virtue of his own merit.

6. We have heard the Learned Counsels for both the parties and perused the materials placed on record in detail. The applicant has filed synopsis of submissions along with citations which he has relied upon. Certain facts in this case are not in dispute. As seen at Annexure-A3, the applicant belongs to OBC (3) and he does not come under the creamy layer. The applicant is also physically challenged and comes under the LDCP sub-category. It is a fact that he scored 997 marks in the Civil Services Examination 2016 and the cut off marks for OBC candidates for selection is 951. It is also a fact that based on his disability, even though he is eligible for other services, he has opted only for three services viz. IAS, IFS and Indian Revenue Service(IRS) (IT) Group A. As per the notification of UPSC at Annexure-A1, the IAS, IFS and Indian Revenue Service (IT) Gr-A are some of the services identified suitable for Physically Disabled Category persons vide Appendix-IV. There is also no dispute in the fact that while the applicant has secured the rank of 475 in the overall merit list, the last candidate who is allotted to Indian Foreign Service under the OBC category is ranked 615 with total marks of 988 and the last person to be included in IRS(IT) Gr-A is ranked 734 with the marks of 970. It is therefore obvious that the applicant with 997 marks is more meritorious than the above two persons. It is a fact that the applicant, even though he is a PH candidate, had not claimed any relaxation in terms of age or attempts at the examination on par with other Physically Handicapped OBC candidates. Regarding the suitability or otherwise of his being considered for a non-PH vacancy, we have to see the Rule No.21 in Annexure-A1 wherein the respondents have stated that a candidate must be in good mental and bodily health and free from any physical defect likely to interfere with the discharge of his duties as

an officer of the service. We have already seen at Appendix-IV in the same notification at Annexure-A1 that IAS, IFS & IRS(IT) Gr.A are among the services identified suitable for physically challenged persons like the applicant. The respondents would contend in para-14 of their reply that a PH candidate with limitation cannot be accepted under the Rule-21 since a special dispensation has been given to such candidates under the PwD Act, 1995. In para-13 of the reply, they have reiterated the contention stating mainly that he could not be considered for services/posts earmarked for Non PH candidates. They also state in para-13(C) that without the claim of belonging to physically handicapped category, the applicant will be required to fulfil the minimum physical requirements stipulated in the CSE Rules 2016 in which he had failed to qualify, due to disability. As applicant was not meeting the minimum physical requirements required from a non-PH candidate, he was not eligible for non-PH vacancies of any categories including OBC-Non PH. We are unable to find any justification or document to sustain this claim of the respondents. The applicant has undergone a detailed physical and medical examination which the respondents themselves have enclosed vide Annexure-R2. It can be seen from there that apart from his disability which has been acknowledged, the applicant is in no way not meeting the physical/medical requirements for the services to which he has applied. In fact in Part-D, the recommendation of the Board is that the candidate is fit for all services except III(a) wherein it is written that the candidate is fit for all services except technical services of Ortho PH Quota 50% except IRTS. Therefore, the claim of the respondents that he was meeting the physical standards only if he is considered as physically handicapped person and not the general physical requirement for a non-PH candidate is clearly wrong. The medical board has certified that he is fit for all services except technical services particularly IRTS. The medical

board would not have any information regarding the relative merit of the candidate and they can only certify if he is otherwise eligible to be considered under the PH quota. This does not mean that he is fit only for the PH quota and that he does not meet any standard for non-PH quota posts in the relative services. At the cost of repetition, we have to state that the three services the applicant had applied for i.e IAS, IFS and IRS(IT) Gr.A do not certainly have any extra physical requirements as can be seen from the notification. Therefore, we have to accept the contention of the applicant when he states that he is only seeking allocation to the services which are identified suitable for Physical Disabled Category and the physical disability or physical defect of the applicant is not likely to interfere with the discharge of his duties. The medical board certificate confirms that the applicant has fulfilled all the medical requirements except for technical services specifically IRTS. Therefore, considering him as a PH candidate is a concession or relaxation by the respondents is clearly irrational and uncalled for. A Physically Handicapped candidate can apply only to such services which are identified as suitable for the physically disabled category on fulfilling the physical requirements and the functional classifications. Therefore, looking at from any angle, the applicant clearly meets the standards as specified in Rule-21 and there is no iota of proof that his physical defect is likely to interfere with the discharge of his duties as an officer of the services he has applied for.

7. Now we have to come to Rule 17 where the specific provisions relating to the physically handicapped candidates are mentioned. The Rule-17 reads as follows:

17. The Minimum qualifying marks as specified under rules 15 and 16 may be relaxable at the discretion of the Commission in favour of physically handicapped candidates in order to fill up the vacancies reserved for them:

Provided that where a physically handicapped candidate obtains the minimum qualifying marks in his own merit in the requisite number for General, or the Scheduled Caste or the Scheduled Tribe or Other Backward Class category candidates, then, the extra physically handicapped candidates, i.e. more than the number of vacancies reserved for them shall be recommended by the Commission on the relaxed standards and consequential amendments in the rules will be notified in due course.

The proviso to the rules clearly states that where a physically handicapped candidate obtained the minimum qualifying marks in his own merit in the requisite number for General, or SC, or ST or OBC category candidates, then the extra physically handicapped candidates, i.e. more than the number of vacancies reserved for them shall be recommended by the Commission on the relaxed standards and consequential amendments in the rules will be notified in due course. At this point, we also need to look at Rule-16(1) where the provisions are given relating as to how the order of merit and recommendations of UPSC is to be done. Rule-16(1) reads as follows:

16(1): After interview, the candidates will be arranged by the Commission in the order of merit as determined by the aggregate marks finally awarded to each candidate in the Main Examination. Thereafter, the Commission shall, for the vacancies, fix a qualifying mark (hereinafter referred to as general qualifying standard) with reference to the number of unreserved vacancies to be filled up on the basis of the Main Examination. For the purpose of recommending reserved category candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes against reserved vacancies, the Commission may relax the general qualifying standard with reference to number of reserved vacancies to be filled up in each of these categories on the basis of the Main Examination:

Provided that the candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes who have not availed themselves of any of the concessions or relaxations in the eligibility of the selection criteria, at any stage of the examination and who after taking into account the general qualifying standards are found fit for recommendation by the Commission shall not be recommended against the vacancies reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes.

8. Vide para-16(4) of the same rules, it is specified that while recommending the candidates, the Commission shall, in the first instance, take into account the total number of vacancies in all categories. This total number of recommended candidates shall be reduced by the number of candidates belonging to the SC, ST and OBC who acquire the merit at or above the fixed general qualifying standard without availing themselves of any concession or relaxation in the eligibility of selection criteria in terms of the proviso to sub-rule(1). As we have already seen, the applicant belongs to OBC category but has not availed any concession in terms of the number of attempts or age. His total marks in the examination are also clearly above the last candidate recommended for IFS and IRS(IT) Gr.A. Vide para-13 in their reply, the respondents themselves have quoted the orders of the Hon'ble Apex Court vide its order dtd.18.7.2007 in *Civil Appeal No.3132/2007* titled as *Rajesh Kumar Daria & Ors. Vs. RPSC & Ors.* The relevant portion of which we quote:

"7. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are 'vertical reservations'. Special reservations in favour of physically handicapped, women etc., under Articles 16(1) or 15(3) are 'horizontal reservations'. Where a vertical reservation is made in favour of a backward class under Article 16(4), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. [Vide - Indira Sawhney (Supra), R. K. Sabharwal vs. State of Punjab (1995 (2) SCC 745), Union of India vs. Virpal Singh Chauhan (1995 (6) SCC 684 and Ritesh R. Sah vs. Dr. Y. L. Yamul (1996 (3) SCC 253)]. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-Women'. If the

number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of scheduled caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example :

If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC women candidates, then there is no need to disturb the list by including any further SC women candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four women SC candidates. [But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess women candidate on the ground that 'SC-women' have been selected in excess of the prescribed internal quota of four.]

8. *In this case, the number of candidates to be selected under general category (open competition), were 59, out of which 11 were earmarked for women. When the first 59 from among the 261 successful candidates were taken and listed as per merit, it contained 11 women candidates, which was equal to the quota for 'General Category - Women'. There was thus no need for any further selection of woman candidates under the special reservation for women. But what RPSC did was to take only the first 48 candidates in the order of merit (which contained 11 women) and thereafter, fill the next 11 posts under the general category with woman candidates. As a result, we find that among 59 general category candidates in all 22 women have been selected consisting of eleven women candidates selected on their own merit (candidates at Sl.Nos.2, 3, 4, 5, 9, 19, 21, 25, 31, 35 & 41 of the Selection List) and another eleven (candidates at Sl.Nos.54, 61, 62, 63, 66, 74, 75, 77, 78, 79 & 80 of the Selection List) included under reservation quota for 'General Category-Women'. This is clearly impermissible. The process of selections made by RPSC amounts to treating the 20% reservation for women as a vertical reservation, instead of being a horizontal reservation within the vertical reservation.*

9. Vide para-13(1), the respondents would make a concomitant claim that there is no concept of own merit in horizontal reservation. Taking cue from the Hon'ble Apex Court order(supra) that women selected on merit within the vertical reservation quota

will be counted against the horizontal reservation for women. The claim of the applicant is that he belongs to both OBC category as well as the Physically Disabled category. The medical board certified him for all services except the technical service specifically IRTS. Contrary to the claim of the respondents, there are no other standards for the 3 services the applicant has opted for i.e. IAS, IFA & IRS(IT) Gr.A except Rule-21 which we have already seen. The particular disabilities and services to which persons with such disabilities can be considered are mentioned in Appendix-IV. It is obvious that the respondents have considered persons with certain physical disabilities as being not capable of discharge of duties required in those particular services. We are unable to find any justification for this claim of the respondents. In other words, the nature of work in such services will be such that even persons with the disabilities as mentioned in Appendix-IV would be quite capable of discharging their duties without any detriment to the work output or efficiency. Further, there are no higher standards of physical or mental abilities required in these services. The applicant's disability is only locomotive disability but otherwise he has been found to meet all the physical and medical standards as would be required from a non-PH candidate. The last point which the respondents make is that certain posts are allocated for PH category in each service and the higher ranked people are accommodated in the said nominated posts in the category and thereafter only a vertical reservation is taken up. While on the one hand the respondents would quote the Hon'ble Apex Court judgment in *Rajesh Kumar Daria* stating very specifically that first it is the vertical reservation that has to be done and thereafter, horizontal reservation will come in, they continue to labour on the point of not having any vacancies for PH candidates in the said services. The category of PH is clearly a horizontal reservation and as we have already seen under Rule-16(4), the order of

merit has to be organized first in terms of the various services in a vertical manner for all the social categories namely SC, ST & OBC. By all canons of natural justice and selection by merit, a candidate with higher marks should definitely find a place in the service requested by him provided he is well within the cut off marks. As we have already seen, the last candidate selected under OBC for IFS is ranked 615 while the applicant's rank is 475. Similarly, the last person to be recommended for IRS(IT) under OBC category is ranked 734. The weird logic of the respondents in fixing first the post for physically challenged candidate and then denying it to a candidate belonging to OBC who has higher merit than the last selected candidate defies logic and is against all judicial wisdom and their own rules. Therefore, we hold that the applicant is eligible for being appointed to IFS as well as the IRS(IT) Gr.A as per his choice and apparently he has chosen IFS as the second option after IAS to which, of course, he is not eligible. The respondents are therefore directed to issue necessary orders for recommendation and other concerned departments of the Government viz., DoP&T and MEA should pass necessary orders for giving him appointment which he has requested with all consequential benefits. He should be ordered to be belonging to the concerned service based on the results of Civil Services Examination-2016 with appropriate seniority and other consequential benefits. This they shall do so within a period of two(2) months from the date of issue of this order. The applicant is at liberty to choose either IFS or IRS (IT) Gr.A and the respondents shall take necessary action accordingly.

10. The OA is allowed with the above observations. No costs.

(C.V.SANKAR)

(DR. K.B. SURESH)

MEMBER(A)

MEMBER(J)

/ps/

Annexures referred to by the applicant in OA.No.170/00872/2017:

Annexure-A1: Rules notified for conduct of the Civil Services Examination 2016

Annexure-A2: Recruitment notification dtd.27.4.2016

Annexure-A3: Application of the applicant for Civil Services Examination 2016

Annexure-A4: Marks of the applicant in the preliminary examination

Annexure-A5: Marks of the applicant in the Main examination

Annexure-A6: Table indicating the minimum qualifying marks secured by the last
recommended candidates under different categories

Annexure-A7: Merit list published by the UPSC on 31.5.2017

Annexure-A8: Message displayed on the website of the respondent

Annexure-A9: Representation dtd.4.8.2017 made to the Under Secretary, DoPT

Annexure-A10: Visitor Pass dtd.10.8.2017

Annexure-A11: Representation dtd.9.8.2017

Annexure-A12: RTI application bearing No.DOP&T/R/2017/54581

Annexure-A13: RTI application bearing No.DOP&T/R/2017/54943

Annexure-A14: Reply of the respondent No.1 to the RTI application

Annexure-A15: Letter dtd.3.11.2017, offering appointments in the Indian Revenue
Service

Annexures with reply statement:

Annexure-R1: Copy of the Appendix IV of the CSE Rules 2016

Annexure-R2: Copy of the medical report

Annexures with rejoinder:

Annexure-A16: Updated List of selected candidates with their service allocation for the Civil Services Examination 2016, uploaded on the website maintained by the respondent No.1

Annexures with synopsis submitted by the applicant:

Annexure-1: (2007) 8 SCC 785, Para 9 -

Annexure-2: (2005) 13 SCC 721, Paras 9,10,12,13 & 29

Annexure-3: ILR 1999 Kar 3411, para 20

Annexure-4: ILR 2003 Kar 51, para 10
