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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 90 OF 1991
Cuttack, this the 3rd day of May, 1999

Rama Chandra Mishra Applicant

Vrs.

Union of India and others Respondents
FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

SOMNATH SOM
VICE-CHAIRMAN

3.5.99

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Rama Chandra Mishra, son of Lokanath Mishra, aged about 56 years, At-Aska, PS/Munsifi-Aska, District-Ganjam, at present working as Joint Secretary to Government, Health & Family Welfare Department, Bhubaneswar, District-Puri

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Applicant

Advocates for applicant - M/s R.K.Mohapatra
R.K.Dash
B.Routray

Vrs.

1. Union of India, represented through the Secretary, Ministry of Home Affairs, Department of Personnel, New Delhi.
2. State of Orissa, represented through the Secretary, General Administration Department, AT/pO/PS/Munsif-Bhubaneswar, District-Puri.
3. Union Public Service Commission, New Delhi, represented through its Secretary ... Respondents

Advocates for respondents -Mr.U.B.Mohapatra
ASC, &
Mr.K.C.Mohanty
Govt.Advocate, &
O R D E R Mr.Aswini Ku.Misra

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 16.11.1990 of the Selection Committee and communicated to the applicant in memo dated 25.2.1991 at Annexure-5 refusing to give retrospective promotion to the applicant to Indian Administrative Service. The second prayer is for a

direction to Union of India (respondent no.1) and State of Orissa (respondent no.2) to give promotion to the applicant to IAS with retrospective effect with consequential benefits.

2. Facts of this case, according to the applicant, are that the applicant joined as Deputy Collector in 1959, was appointed as Sub-Divisional Officer in 1966 and Additional District Magistrate in 1976. In 1981 he was superseded by his junior, Shri Pitabas Patnaik who was respondent no.3 in TA No. 364/86 for promotion to Indian Administrative Service. TA No. 364 of 1986 was disposed of by the Tribunal in the order dated 19.2.1990. The applicant has stated that his supersession by his junior Shri Pitabas Patnaik was without any basis because at that time the applicant had excellent and outstanding remarks in his CCRs. He has also stated that in the previous year persons like S/Shri K.C.Mishra and K.Biswanathan, who had much worse CR than him, were promoted to IAS. In 1986 the applicant was superseded by Shri S.C.Patnaik (respondent no.5 in OA No. 364/86) and in 1987 he was superseded by S/Shri A.N.Das and R.N.Mishra. The applicant earned outstanding remarks in his CCR in the years 1980-81, 1981-82 and 1982-83 from different reporting officers. But the then Chief Secretary, Shri S.M.Patnaik, who was respondent no.2 in TA no. 364/86, toned down such remarks as "Good" without any basis due to mala fide. The applicant has further stated that he had "Outstanding" remarks in his CCR after the retirement of Shri S.M.Patnaik, from 1983-84 onwards. As a result he was promoted to IAS in the year 1988 on the basis of selection made in 1987. The applicant has stated that in 1987 selection on the basis of which he was promoted in 1988 he was categorised as

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"Very Good" and some of his juniors had more number of "Outstanding" remarks in their CCR than the applicant. Had this principle been adopted earlier, supersession of the applicant in 1981 could have been avoided. The applicant has stated that promotion to IAS is regulated under Indian Administrative Service (Appointment by Promotion) Regulations, 1955 and under these Regulations promotion is usually made on the basis of seniority subject to elimination of unfit. The applicant has further stated that Regulation 5(5) provides that if a junior officer is of exceptional merit and suitability the Committee can assign him a place in the list higher than the officers senior to him. Regulation 5(7) provides that if in the process of selection it is proposed to supersede any member of the State Civil Service, the Committee should record its reasons for the proposed supersession. But after amendment of the Regulation in the year 1977, the Selection Committee is required to classify the eligible officers as "Outstanding", "Very Good", "Good" and "Unfit", as the case may be, on overall relative assessment of their service records. Clause (7) of Regulation 5 which required reasons to be assigned for any proposed supersession has been omitted in the amendment of 1977. The applicant has mentioned the averments which he had made in TA 364/86. It is not necessary to recount these averments because TA No. 364/86 was disposed of by the Tribunal in order dated 19.2.1990 which is at Annexure-1. The Tribunal observed that as respondent no.2 Shri S.M. Patnaik, the then Chief Secretary, was prejudiced against the applicant, the remarks passed by respondent no.2 could not be taken into account for assessing the performance of or grading the applicant for the purpose of promotion. It was also observed that as opposite party no.2 was a member of the Selection Committee by virtue of his position as Chief

Secretary, he might have had indirectly influenced the decision of the Committee. Having regard to all the circumstances, the Tribunal directed that a special Selection Committee with the composition according to the rules be formed within a month's time to consider the case of the petitioner ignoring the remarks of Shri S.M.Patnaik and to decide whether the applicant would have been promoted to IAS cadre when his juniors were promoted. The Tribunal also ordered that if the Committee is of the opinion that the applicant should have been promoted earlier, he should be given notional promotion with effect from that date but should not be entitled to back wages though his present pay on promotion would be fixed on the basis of the date of his notional promotion. On 20.9.1990 the State Government (O.P.No.1 in TA No. 364/86) filed MA no.363/90 (Annexure-2) praying for extension of time till end of December 1990 to implement the judgment. By order dated 25.9.1990 the Tribunal granted one month's time to implement the judgment. On 24.10.1990 the State Government filed another MA No. 416/90 asking for time at least till end of December 1990. By order dated 25.10.1990 the Tribunal directed the Government Advocate appearing on behalf of State Government to inform the Tribunal by 12.11.1990 regarding the steps taken for convening the meeting of the Review DPC. Ultimately, after hearing the learned Government Advocate on 13.11.1990, the Tribunal allowed time till end of December 1990 for implementation of the judgment and accordingly MA no.416/90 was disposed of. On 29.12.1990 the applicant requested the Joint Secretary to Government, General Administration Department to communicate a copy of the order passed by the State Government regarding implementation of the judgment of

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the Tribunal in TA No. 364/86. In the letter dated 15.1.1991 the Joint Secretary, General Administration Department informed the applicant that the meeting of the Review Selection Committee has been held on 16.11.1990 and orders are awaited. Ultimately, in Memo dated 25.2.1991 (Annexure-5) the applicant was informed by the Joint Secretary, General Administration Department that the Review Selection Committee which met on 16.11.1990 categorised the applicant as "Very Good" even after ignoring the remarks recorded by Shri S.M.Patnaik in all the relevant years and accordingly the Committee did not recommend any change in the recommendation of the Selection Committee as contained in the minutes of the meetings held in 1980, 1981, 1985, 1986 and 1987. It has been further stated that the State Government have agreed with the recommendation of the Review Selection Committee and the Union Public Service Commission have also approved the above recommendation of the Review Selection Committee and therefore there is no case for retrospective appointment of the applicant to IAS. The applicant has stated that the basis on which the Review Selection Committee came to the conclusion that categorisation of the applicant is "Very Good" has not been communicated. The reason for which the recommendations of the Committee for the years 1983 and 1984 were not reviewed has also not been communicated. The applicant has stated that the decision of the Review Selection Committee which met on 16.11.1990 is grossly arbitrary and illegal. It is further stated that even though the Tribunal in their order dated 19.2.1990 directed convening a Special Selection Committee for considering the case of the applicant for retrospective promotion of the applicant to IAS, no such Special Selection Committee was convened. On the other hand, the

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case of the applicant was hurriedly placed before the Selection Committee which met for other purposes on 16.11.1990. State Government in MA No. 416/90 filed on 24.10.1990 in TA No. 364/86 have averred that the Selection Committee was scheduled to meet on 16.11.1990 to consider the case of Choudhury R.K.Nanda. It has been stated that the meeting of the Selection Committee was scheduled to be held on 16.11.1990 to consider the cases of non-State Civil Service Officers for promotion to IAS which involved interview of the concerned candidates besides scrutiny of service records. The case of Choudhury R.K.Nanda was also scheduled to be considered on that day. But the case of the applicant was not scheduled to be considered on that day. It is also stated that according to the established practice a memo stating the subject-matter is to be placed before the Selection Committee and though such a memorandum was prepared for the case of Choudhury R.K.Nanda, no such memorandum was prepared for consideration of the case of the applicant on 16.11.1990. The applicant has also stated that in paragraph 5 of their order in TA No. 364/86 the Tribunal had observed that the applicant was promoted to OAS-I (Senior) in 1976 and therefore, examination of his records only after that year would be relevant for the purpose of classification. This observation has also been lost sight of. The applicant has further stated that apprehending that he would not get retrospective promotion in the hands of the Selection Committee, he had filed SLP No. 16481 of 1990 along with application for stay before the Hon'ble Supreme Court. The SLP was dismissed as withdrawn and as the Hon'ble Supreme Court were not inclined to interfere with the order of the Tribunal dated 19.2.1990 in TA No. 364/86. The applicant has also stated that in paragraph 3 of MA No. 416/90 the

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State Government had indicated that CCRs of 122 officers were placed for scrutiny of the Review Selection Committee. The applicant states that only the CCRs of four officers junior to the applicant, namely, S/Shri Pitabas Patnaik, S.C.Patnaik, A.N.Das and R.N.Mishra were relevant. The CCRs of two other officers who are senior to the applicant, S/Shri K.C.Mishra and K.Biswanathan, who were categorised as "Outstanding" in 1979 with worse CCRs than the applicant, were also relevant. These averments had been made by the applicant in TA No. 364/86. But instead of placing only the CCRs of these six persons, CCRs of 122 officers were placed before the Selection Committee to create confusion. The applicant has stated about what categorisation was given to him by the reporting officer and the countersigning officer in 1980-81, 1981-82, 1982-83, 1983-84, 1984-85 and 1985-86. He has also stated that in 1980-81, 1981-82 and 1982-83 Shri S.M.Patnaik, the then Chief Secretary, the accepting officer categorised him as "Good". After these remarks of Shri S.M.Patnaik have been ignored, the applicant has stated that it is not known how his categorisation will continue to be "Very Good". The applicant has further stated that on 16.11.1990 the Selection Committee allowed retrospective promotion to Choudhury R.K.Nanda in pursuance of the judgment of the Orissa Administrative Tribunal in OA No.30/86 in which the Orissa Administrative Tribunal had issued a direction that case of Choudhury R.K.Nanda should be considered afresh by the Review Selection Committee ignoring the adverse entries in the CRs for certain years. The applicant has also referred to the case of Shri P.R.Mohanty who was allowed retrospective promotion in pursuance of the order of the Tribunal in TA No. 445/86. In the context of the above facts, the applicant has come up in this petition with the prayers referred to earlier.

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3. State Government in their counter have stated that the case of the applicant was duly considered by the Review Selection Committee on 16.11.1990 for his promotion to IAS retrospectively. But the Committee did not recommend any change in the recommendations of the Selection Committee as contained in the minutes of the meetings held in 1980, 1981, 1982, 1985, 1986 and 1987. It is, therefore, not correct to state that the applicant's case has not been considered in accordance with the direction given by the Tribunal. It is also stated that as per the judgment of the Tribunal in TA No. 364/86 the remarks recorded by Shri S.M.Patnaik, ex-Chief Secretary, have been obliterated and the same have not been taken into account while reviewing the case of the applicant for retrospective promotion to IAS. Respondent no.2 has also stated that as a matter of practice after the judgment of the Tribunal in TA No. 364/86 was received, the Law Department was consulted. The Law Department decided not to file an appeal before the Hon'ble Supreme Court against the order of the Tribunal and this was accepted by the State Government. As Government of India was also a party, they were also consulted. As Union Public Service Commission was moved to review the case of the applicant for different years, it was necessary that the CRs of all the officers considered for different years were to be placed before the Review Selection Committee. It is also stated that Government is not bound to inform an employee about the reasons why he has been categorised in a particular grade. It is also stated that during 1983 and 1984 the name of the applicant was not within the zone of consideration for promotion to IAS and therefore, it was not necessary to review the selection made during these two years. It is further stated that the State Government

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had moved Union Public Service Commission (respondent no.3) to fix a date of meeting of the Review Selection Committee and the UPSC decided to hold the meeting on 16.11.1990. On 16.11.1990 UPSC had fixed another Review Selection Committee meeting for reviewing the case of Choudhury R.K.Nanda for retrospective promotion to IAS in pursuance of the judgment of Orissa Administrative Tribunal in OA No. 30/86. Besides, another meeting was also fixed by UPSC on 16.11.1990 for selection of non-State Civil Service Officers for appointment to IAS by selection. State Government have also submitted that it was not necessary to place any memorandum by the State Government before the Review Selection Committee. In the proposal, submitted by the State Government to the Union Public Service Commission for convening a Review Selection Committee, elaborate narration of the case of the applicant was made. As full facts of the case of the applicant were available with UPSC, it was possible on the part of the Review Selection Committee to furnish their recommendation. Respondent no.2 has further stated that Shri S.M.Patnaik, ex-Chief Secretary had retired from service since long and the apprehension of the applicant that he had influenced the Review Selection Committee is preposterous and imaginary. It is also stated that the review of selection was made on the basis of CCRs which were placed before the Committee originally. As such placement of all such CCRs along with the CCRs of the applicant was necessary as a matter of formality. In view of this, respondent no.2 has denied that confusion was created by placing the CCRs of 122 officers before the Review Selection Committee. Respondent no.2 has also stated that case of Choudhury R.K.Nanda has no relevance to the present case. The case of Shri P.R.mohanty deals with promotion of an officer to IPS and that is also not relevant. It is stated that the

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recommendation of the Review Selection Committee has been agreed to by the State Government and approved by UPSC and Government of India. As such respondent no.2 has opposed the prayers of the applicant.

4. The applicant has filed a rejoinder to the counter filed by the State Government. In the rejoinder he has reiterated some of the points made in his OA and it is not necessary to cover the same grounds again. The applicant has stated that the Tribunal may see the CCRs of the petitioner and those of his juniors like Shri N.K.Baliarsingh, K.C.Patnaik, etc. and may come to the conclusion. It is also stated that the petitioner could not have been classified as "Very Good" after the categorisation "Good" made by Shri S.M.Patnaik, ex-Chief Secretary, was ignored. The applicant has further stated that even though he was not within the zone of consideration in 1983, he was actually within the zone of consideration in 1984. Moreover, zone of consideration is not relevant for a case in which orders of the Tribunal were to be complied with. The applicant has further stated that as some of the members of the Review Selection Committee worked under Shri S.M.Patnaik and some of them were helped by him during their service career, Shri S.M.Patnaik influenced the Review Selection Committee to come to the conclusion to deny retrospective promotion to the applicant. It is stated that a person who could influence the members of the Selection Committee in 1980 could also have influenced some of the members in 1990 since they had worked under him and had been benefitted by him. It is also stated that case of P.R.Mohanty, who is an IPS officer is relevant because principles of categorisation in both the Services are the same. On the above grounds, the applicant has reiterated his prayers in the OA.

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5. Union Public Service Commission (respondent no.3) have filed a counter. In their counter UPSC have stated that Shri Pitabas Patnaik was included in the select list drawn up on 22.10.1980 because on the basis of overall assessment of service records he earned a higher grading compared to the applicant in that year. On the same grounds, Shri S.C.Patnaik and Shri R.N.Mishra, juniors to the applicant, were included in the select lists for 1985 and 1986 respectively. It is stated that selection of a junior in preference to a senior does not amount to supersession when the criteria for selection is merit. Respondent no.3 has drawn attention to the observation of the Hon'ble Supreme Court in this connection in the case of R.S.Dass v. Union of India, AIR 1987 SC 593. It is denied that juniors of the applicant were selected without any basis. The Selection Committee which met in 1987 categorised the officers strictly in accordance with the provisions of the 1955 Regulations and no officer junior to the applicant earned a higher grading compared to the applicant in 1987. Union Public Service Commission have also stated in their counter that the 1955 Regulations do not provide for assigning reasons for supersession. In this connection, they have drawn attention to the observations of the Hon'ble Supreme Court in the case of Union Public Service Commission v. H.L.Dev and others, AIR 1988 SC 1069. It is also denied that no Special Selection Committee was convened and the case of the applicant was hurriedly dealt with. A duly constituted Review Selection Committee met on 16.11.1990 and considered the case of the applicant for inclusion in the select lists prepared in 1980, 1981, 1982, 1985, 1986 and 1987. The Review Selection Committee also separately considered the case of Shri Choudhury R.K.Nanda. The Review Selection

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Committee did not lose sight of any observation/direction of the Tribunal in their order dated 19.2.1990. The direction of the Tribunal was fully complied with and was not circumvented, as has been alleged by the applicant. It is also denied that Shri S.M.Patnaik, ex-Chief Secretary, who was respondent no.2 in TA No.364/86 influenced the Review Selection Committee which met on 16.11.1990. As regards the petitioner's averment about categorisation which should have been given ^{to} him after the remarks of Shri S.M.Patnaik, ex-Chief Secretary, were ignored, the Union Public Service Commission have pointed out that the applicant is substituting his own judgment to that of the duly constituted Review Selection Committee. It has been further submitted that the applicant has wrongly compared his case with that of Choudhury R.K.Nanda. The two cases are quite different. The case of Choudhury R.K.Nanda was taken up by the Review Selection Committee in pursuance of the order dated 26.7.1988 of Orissa Administrative Tribunal in OA No. 30/86 and the Review Selection Committee recommended inclusion of the name of Shri Nanda in the select lists of 1982, 1983 and 1984. UPSC have denied that the Review Selection Committee which met on 16.11.1990 to reconsider the case of the applicant acted in any arbitrary manner. On the above grounds, respondent no.3 have opposed the prayers of the applicant.

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6. The applicant has filed a rejoinder to the counter filed by UPSC in which he has repeated the points made by him in his OA and it is not necessary to recount the same. With reference to the submission of UPSC that where selection is made on merit inclusion of a junior in the select list in preference to his senior does not amount to supersession, the applicant has drawn attention to the observations of the Hon'ble Supreme

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Court in R.S.Dass's case (*supra*) where the Hon'ble Supreme Court have observed that in order to rule out any grievance actual or fancied, some objective basis for the categorisation should be laid down. It is further stated that as the Review Selection Committee was convened in pursuance of the direction of the Tribunal, the applicant is entitled to know the reasons for his low grading by the Review Selection Committee. The other averments are repetitions about non-circulation of memorandum for considering the case of the applicant by the Review Selection Committee and the fact that Shri Choudhury R.K.Nanda was recommended for inclusion in the select lists of 1982, 1983 and 1984 but the applicant's case was ignored for these years. In the rejoinder, the applicant has reiterated his prayers made in the OA.

7. Respondent no.2 State Government have filed a counter to the rejoinder of the applicant. But from the ordersheet as also from the copy of the counter of the State Government to the rejoinder of the applicant, it does not appear that copy of this counter to the rejoinder has been served on the applicant. As such we do not take any notice of this counter filed by the State Government to the rejoinder of the applicant because the applicant has not been given a copy of this counter. At least there is no record of this either in the ordersheet or in the counter itself.

8. Learned counsel for the petitioner and the learned Government Advocate for the State Government (respondent no.3) have filed written notes of submissions which have also been taken note of.

9. From the above recital of averments in the pleadings of the parties, it is clear that the applicant's grievance in the present Application is that

the respondents, especially Union Public Service Commission have not complied with the direction of the Tribunal issued in order dated 19.2.1990 in TA No.364/86. The operative portion of this order dated 19.2.1990 in paragraph 12 is quoted below:

"12. Since we have reached the conclusion that O.P.no.2 was prejudiced against the applicant, the remarks passed by O.P.No.2 could not be taken into account for assessing the performance of or grading the applicant for purpose of promotion. It is also undisputed that O.P.No.2 as the Chief Secretary was a member of the Selection Committee and by virtue of his position he might have had indirectly influenced the decision of the Committee. Since the date when O.P.no.2 first sat in the Selection Committee in his capacity as the Chief Secretary, quite a number of years have elapsed. Having regard to all the circumstances we direct that a special Selection Committee with composition according to Rules, be formed within a month's time to consider, ignoring the remarks of O.P.No.2, whether the applicant would have been promoted to the IAS cadre when his junior(s) was or were promoted. If the Committee be of the opinion that the applicant should have been promoted earlier, he should be given notional promotion with effect from that date but should not be entitled to back wages though his present pay, on promotion, be fixed on the basis of the date of his notional promotion. Such a direction becomes necessary for avoiding other complications such as creation of post etc."

It is also admitted by both the parties that the case of the applicant was considered in a Review Selection Committee meeting held on 16.11.1990. The Review Selection Committee graded him as "Very Good" for the relevant years and in view of this, did not recommend any change in the select lists of those years by inclusion of the name of the applicant. It is this recommendation of

Review Selection Committee agreed to by the State Government and accepted by UPSC and Government of India which has been challenged here. For considering the submissions of the applicant, it is not necessary to rehash the contentions of the applicant raised in TA No. 364/86. The matter has been concluded by the order of the Tribunal dated 19.2.1990, the operative portion of which has been quoted above. The applicant has challenged the recommendation of the Review Selection Committee on various grounds which are discussed below.

10. The first point urged by the applicant is that the Tribunal has directed that a Special Selection Committee with composition according to Rules should consider the case of the applicant ignoring the remarks of Shri S.M.Patnaik, ex-Chief Secretary. The applicant has submitted that this would mean that a special meeting should have been held only for considering the case of the applicant. But on 16.11.1990 a meeting of the Review Selection Committee was convened for considering the case of Shri Choudhury R.K.Nanda in pursuance of the direction of the Orissa Administrative Tribunal in OA No. 30/86 and the case of the applicant was hurriedly placed before the said meeting and therefore, this was not a meeting of the Special Selection Committee, as ordered by the Tribunal. It is also stated that on the same day, UPSC Selection Committee met for considering the case of promotion of non-State Civil Service officers to IAS which process involved interviewing the candidates. On the above grounds, it is urged that no Special Selection Committee meeting was held on 16.11.1990, as directed by the Tribunal. The selection of candidates belonging to non-State Civil Services for promotion to IAS is a separate process in which, as has been mentioned by the applicant, the

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candidates are interviewed. It is possible for the UPSC to hold two meetings on the same day. We have gone through the proceedings of the Review Selection Committee and in these proceedings of the Review Selection Committee the cases of non-State Civil Service officers were not considered and therefore, it cannot be accepted that the same Committee considered the cases of non-State Civil Service officers along with the applicant. This contention of the applicant is held to be without any merit and is rejected.

11. As regards consideration of the case of Shri Choudhury R.k.Nanda, in his case also the Orissa Administrative Tribunal directed consideration of his case after expunction of certain adverse entries in his CCR, by a Review Selection Committee. It is only proper that two such cases of review of candidates for retrospective promotion were taken up on the same day because some of the Members of the Selection Committee like Chief Secretary, Member of Board of Revenue and seniormost Revenue Divisional Commissioner, etc., were the same. We have gone through the minutes of the meeting of the Review Selection Committee which considered the case of the applicant on 16.11.1990. From the minutes it is clear that the case of Shri Ch.R.K.Nanda was not considered in the meeting. It is, therefore, wrong to say that the case of Shri Ch.R.K.Nanda was taken up in the same meeting as that of the petitioner. This contention is, therefore, held to be without any merit and is rejected.

12. The second contention of the petitioner is that according to the established procedure, a memorandum has to be circulated in the meeting for consideration of the case of the petitioner, but no such memorandum was circulated. The State Government in their counter have stated that for convening the meeting of the

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Review Selection Committee the State Government had moved the Union Public Service Commission giving full details of the case of the petitioner and these details were available with the UPSC and therefore, it was not necessary to circulate a memorandum for considering the case of the petitioner. From the direction of the Tribunal it is clear that all that the Special Selection Committee was required to do is to re-assess the gradation of the applicant on the basis of CCRs, after ignoring the remarks given by Shri S.M.Patnaik, ex-Chief Secretary. From the proceedings of the Review Selection Committee, it is seen that the CCRs of the applicant for all the relevant years were considered by the Committee and thus the direction of the Tribunal in this regard has been complied with. The Tribunal did not direct that his case should be considered on the basis of a memorandum to be prepared by the State Government. The applicant has not quoted any rule or instruction in support of his contention that the case of the applicant should have been placed before the Review Selection Committee on the basis of a memorandum. Had such memorandum been prepared, we are quite sure that preparation of the memorandum would have been subject-matter of controversy before us on the ground that the memorandum has not been properly prepared and that has influenced the decision of the Selection Committee. The Selection Committee considered the CCRs of the applicant by ignoring the remarks of Shri S.M.Patnaik, ex-Chief Secretary and this is what they were required to do. Absence of a memorandum by itself does not invalidate the decision of the Review Selection Committee. This contention of the petitioner is also held to be without any merit and is rejected.

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13. The third contention of the applicant is that in TA No. 364/86 the applicant had mentioned about cases of some of his juniors who were included in the select lists for different years ignoring his case. The CCRs of those persons might have had some relevance while considering the case of the petitioner by the Review Selection Committee. The CCRs of some other officers who were categorised as "Outstanding" might also be relevant for the purpose of maintaining uniformity in the norm of selection. CCRs of all such officers had been produced by the State Government before the Tribunal at the time of hearing of TA No. 364/86 on the request of the petitioner. But instead of placing the relevant CCRs, the State Government placed CCRs of 122 officers before the Review Selection Committee in order to create confusion. It is also stated that it is doubtful if the Review Selection Committee really could scrutinise the 122 CCRs on 16.11.1990 in their meeting. The State Government in their counter have taken the stand that review selection is made on the basis of CCRs which were considered originally by the Selection Committee. As such placement of all such CCRs before the Review Selection Committee along with CCRs of the applicant, is necessary. Therefore, the State Government have stated in their counter that they have done the right thing by placing the CCRs of 122 officers before the Review Selection Committee. Again going back to the order of the Tribunal in TA No. 364/86, the operative portion of which has been extracted by us earlier, it is absolutely clear that the direction of the Tribunal was to consider, ignoring the remarks of Shri S.M.Patnaik, ex-Chief Secretary, whether the applicant would have been promoted to IAS when his juniors were promoted. Therefore, all that the Review

Selection Committee was to do is to consider the CCRs of the applicant alone and not the CCRs of his juniors who were promoted or the 122 officers who came within the zone of consideration in all the relevant years. We find that the Review Selection Committee has strictly followed the direction of the Tribunal and has considered the CCRs of the applicant alone ignoring the remarks given by Shri S.M.Patnaik, ex-Chief Secretary. The Review Selection Committee has not considered the CCRs of 122 officers. In view of the above, the contentions of both the applicant and the State Government (respondent no.2) are held to be without any merit and are rejected.

14. As regards the applicant's contention that the CCRs of his juniors who were included in the select lists for different years ignoring his case should have been considered along with his CCRs by the Review Selection Committee and the Review Selection Committee should have considered the CCRs of certain other officers who have been adjudged "Outstanding" in order to establish the norm of gradation, it is not for the applicant to lay down as to what norm the Review Selection Committee should follow. The mandate to the Review Selection Committee is absolutely clear and that is the order of the Tribunal extracted by us above. According to this direction of the Tribunal, his CCRs are to be considered ignoring the remarks of Shri S.M.Patnaik, ex-Chief Secretary for a decision whether the applicant would have been promoted to IAS in years when his juniors were so promoted. The Review Selection Committee has followed this direction strictly and therefore, it was not necessary for the Review Selection Committee to re-assess the CCRs of his juniors who got promotion to IAS before him or the CCRs of some other officers who were adjudged "Outstanding", for

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establishing the norm of gradation. This contention of the applicant is therefore held to be without any merit and is rejected.

15. The fact that the Review Selection Committee has followed the direction of the Tribunal to the letter is borne out by one circumstance which is indicated below. The applicant became eligible for promotion to IAS cadre from 1978 onwards. The Selection Committee duly considered his case for promotion from 1978 to 1986 except for the years 1983 and 1984 when, according to the respondents, he was not within the zone of consideration. In 1978 and 1979 none of his juniors was promoted and therefore, the Review Selection Committee strictly following the direction of the Tribunal, did not re-assess his CCRs for inclusion in the select lists for the years 1978 and 1979. This question can be viewed from another angle. The direction of the Tribunal was for re-assessment of his CCRs and categorisation after ignoring the remarks given by Shri S.M.Patnaik, ex-Chief Secretary and for consideration for inclusion of his name for promotion to IAS cadre when his juniors were promoted. The direction of the Tribunal is not to the effect that if after ignoring the remarks of Shri S.M.Patnaik, ex-Chief Secretary, the categorisation of the applicant becomes "Outstanding", he would be given promotion over the head of his seniors. His case has to be considered for inclusion in the select lists only for the years in which officers junior to the applicant were promoted. Viewed from this angle all that was necessary for the Review Selection Committee is to consider the CCRs of the petitioner afresh, ignoring the remarks of Shri S.M.Patnaik, ex-Chief Secretary, for consideration for inclusion of the applicant's name in the select lists for the years in which his juniors were included and he

was ignored. For this purpose, it is not necessary for the Review Selection Committee to reconsider the CCRs of his juniors including in the select lists and CCRs of certain other officers who were adjudged "Outstanding". This contention of the applicant is therefore rejected.

16. Another contention of the applicant is that in their order in TA No. 364/86 the Tribunal has held that Shri S.M.Patnaik, ex-Chief Secretary, who was a Member of the Selection Committee prior to his retirement in 1983 had influenced the Review Selection Committee towards non-inclusion of the name of the applicant. The petitioner has stated that if Shri S.M.Patnaik, ex-Chief Secretary could have influenced the Members of the Selection Committee in the year 1980, then he also could have influenced the members of the Review Selection Committee in 1990 when the Review Selection Committee met on 16.11.1990. As a further limb of this contention, it is stated by the applicant that officers who were members of the Review Selection Committee on 16.11.1990 had worked under Shri S.M.Patnaik during their younger days and Shri S.M.Patnaik had benefitted them and therefore, Shri S.M.Patnaik might have influenced the decision of the Review Selection Committee meeting held on 16.11.1990. The basis of this contention of the applicant is misconceived. The Tribunal in TA No. 364/86 did not come to a finding that Shri S.M.Patnaik, ex-Chief Secretary, had influenced the Selection Committee for non-inclusion of the name of the applicant in the select lists for the relevant years. We have extracted the relevant portion of the conclusion above. The Tribunal have merely noted the possibility that as a Member of the Selection Committee and by virtue of his position, Shri S.M.Patnaik might have had indirectly influenced the

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decision of the Committee. From this observation, the applicant has jumped to the conclusion that the Tribunal has given a specific finding that Shri S.M.Patnaik had actually influenced the deliberation of the Selection Committee in their meetings in which the applicant was not selected but his juniors were selected. The other contention that even after his retirement in 1983 Shri S.M.Patnaik might have influenced the decision of the Review Selection Committee in their meeting held on 16.11.1990 is absolutely without any foundation. The only ground is that three officers of the State Government, i.e., the then Chief Secretary, Member of Board of Revenue and seniormost Revenue Divisional Commissioner, who were members of the Review Selection Committee had worked under Shri S.M.Patnaik. As Shri S.M.Patnaik had worked as Chief Secretary and Member, Board of Revenue, as it appears from the proceedings of the Review Selection Committee, all the IAS officers in the Orissa Cadre who were not on Central deputation, would have worked under him. On that basis it cannot be said that Shri S.M.Patnaik had influenced the proceedings of the Review Selection Committee on 16.11.1990. The applicant has indulged in the wildest possible allegations with the hope that some of them might stick. We unequivocally reject this contention of the applicant.

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17. The next contention of the applicant is about non-consideration of his case by the Review Selection Committee for the years 1983 and 1984. The State Government in their counter have pointed out that in these two years his name was not within the zone of consideration. The applicant in his rejoinder has admitted in paragraph 13 that he was not within the zone

of consideration in 1983 but has asserted that he was actually within the zone of consideration in 1984. He has further stated that zone of consideration is not relevant when the order of the Tribunal is to be complied with. Once again the applicant has misread the direction of the Tribunal. The Tribunal's direction is for reconsideration of the case of the applicant after ignoring the remarks of Shri S.M.Patnaik for the relevant years. Such reconsideration has to be done strictly in accordance with the Rules and therefore, if the applicant did not come within the zone of consideration in 1983 obviously the Review Selection Committee could not have considered his case. There is no direction of the Tribunal to the Review Selection Committee to do so. As regards the year 1984, the applicant has not indicated any facts and figures except his bland assertion that he was within the zone of consideration in 1984. In view of the specific assertion of the State Government that the applicant was not within the zone of consideration in 1984, it is not possible to accept this contention of the petitioner that he was within the zone of consideration in 1984 without any supporting evidence provided by him.

18. The next contention of the applicant is that the Review Selection Committee have not given reasons in support of their conclusion for not changing the recommendations with regard to the applicant for inclusion of his name in the select lists for the relevant years. Union Public Service Commission in their counter have pointed out that after the amendment of the Promotion Regulations in 1977 the Selection Committee is not required to record any reason for non-selection of a particular officer. The applicant has further contended

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that as his case was considered in terms of the direction of the Tribunal, such reasons should have been recorded. As the relevant Regulations which are statutory in nature do not provide for recording reasons for non-inclusion, the Review Selection Committee cannot be held to be obliged to do so. The applicant himself has noted in paragraph 4(iii) of his O.A. that Regulation 5(7) originally provided that if in the process of selection it is proposed to supersede any member of the State Civil Service, the Committee should record its reasons for the proposed supersession. But the applicant has noted that clause (7) of Regulation 5 which required reasons to be assigned for any proposed supersession, was omitted by the Amendment Regulation 1977. Here also the contention of the applicant is misconceived. The Tribunal had not directed that if the applicant is not recommended for inclusion in the select list for a particular year even after reconsideration of his case, reasons for his non-inclusion should be recorded by the Review Selection Committee. We, therefore, reject this contention of the applicant.

19. It is next contended by the applicant that while assessing the CCRs of officers for the purpose of categorisation different ^{norms} have been adopted by the Selection Committee in different years. More particularly it has been submitted that in the selection for the year 1987 on the basis of which he was promoted to IAS in 1988 he was categorised as "Very Good" and some of his juniors had more number of "Outstanding" remarks in their CCRs than the applicant. But even then they were not allowed by the Selection Committee to go over the applicant in the select list. Basing on this, it has been submitted

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that had this principle been adopted earlier the applicant would have been promoted in 1981 and would not have been superseded by his juniors. We have recorded the above contention only for the purpose of its summary rejection because what is involved here in this OA is whether the direction of the Tribunal has been complied with in letter and spirit by the respondents, particularly Union Public Service Commission. The applicant cannot reopen the entire issue of his supersession which was the subject-matter in TA No. 364/86 which is no longer relevant except for the operative portion of the final order of the Tribunal. In view of this, we decline to embark on a fruitless examination if the Selection Committee in different years have adopted different norms for categorisation of officers because it is beyond the scope of the direction of the Tribunal in TA No. 364/86. Moreover the Hon'ble Supreme Court in the case of Union Public Service Commission v. H.L.Dev and others, AIR 1988 SC 1069, have held that the Tribunal cannot substitute its judgment with regard to the norm to be applied in making assessment as this is exclusively the function of the Selection Committee. If the Selection Committee had actually adopted different norms in different years and the petitioner has been adversely affected thereby, then the petitioner would have raised the matter in TA No. 364/86 and could have obtained an order from the Tribunal on this point. In the absence of that, it is not necessary to go into this aspect.

20. The last contention of the petitioner is that he has been wrongly categorised as "Very Good" in the relevant years even after ignoring the remarks of Shri S.M.Patnaik, ex-Chief Secretary. Before considering

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this submission, one aspect with regard to production of records before the Tribunal has to be noted. The respondents have produced in a sealed cover the minutes of the Selection Committee meetings held on 27.12.1979, 22.12.1980, 27.12.1985, 8.12.1986, 9.12.1987, 12th and 13th December 1988 and 31.3.1990 and the minutes of the Review Selection Committee meeting held on 16.11.1990. The CCRs of the applicant and 122 other officers have also been produced. Apparently in course of the pendency of this application before the Tribunal some controversy was raised whether the applicant would have access to the records. The then Chairman, Union Public Service Commission has filed an affidavit on 10.1.1992 claiming privilege with regard to these minutes on the ground that these are unpublished official records relating to the affairs of the State and their disclosure will cause injury to public interest and will materially affect the freedom and candour of expression of opinion in the determination and execution of public policy. He had, therefore, withheld permission under Section 123 of Evidence Act, 1872 to produce these documents and claimed privilege under the said Act. In the same affidavit, the then Chairman, UPSC has mentioned that he has no objection whatsoever to these documents with regard to which privilege has been claimed, being produced for perusal by the Members of the Tribunal for satisfying themselves about the bona fides and genuineness of the privilege. We have already made reference to the minutes of the Review Selection Committee of 16.11.1990 but have left this question of claim of privilege by the UPSC to be considered later in connection with the minutes of a large number of meetings of the Selection Committee as mentioned above along with the minutes of the Review

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Selection Committee held on 16.11.1990. As earlier mentioned, in this Application the petitioner has challenged the conclusion of the Review Selection Committee meeting held on 16.11.1990. Reference to the minutes of that meeting is material for the purpose of adjudicating the dispute. The Chairman, UPSC has mentioned in his affidavit that privilege is claimed in respect of minutes of this meeting as also minutes of the Selection Committee meetings held in earlier years. As for the purpose of adjudicating this dispute, reference to these minutes is necessary, we do not agree that privilege has been rightly claimed in respect of these minutes. Moreover, the State Government who have the custody of these minutes have filed copies of the same minutes without claiming privilege. Former Chairman, UPSC in his affidavit has asserted that reference to these minutes would affect the freedom and candour of expression of opinion which the Members are expected to exercise and that would be against public policy. On reference to the minutes of these meetings, we find that in none of these minutes the views of individual Members have been separately noted. What has been recorded is the unanimous opinion of the Committee in the concerned meeting arrived at no doubt after full and free discussion, the details of which are not recorded in the minutes. Therefore, we do not accept the claim of privilege and in view of this we have examined in detail the minutes of the earlier Selection Committee meetings as also the minutes of the Review Selection Committee meeting held on 16.11.1990. For our purpose, it is not necessary to go into the matter in great detail. According to the direction of the Tribunal, the CCRs of the applicant are to be re-assessed ignoring the remarks given by Shri S.M. Patnaik, ex-Chief Secretary. We have perused the CCRs of the applicant and we find that these remarks have been obliterated. These

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remarks, therefore, were not before the Review Selection Committee who have also noted in their minutes that they have ignored these remarks. After ignoring the said remarks the applicant has been adjudged "Very Good". After going through the CCRs of the applicant, we find that this is a correct assessment. It is not necessary for us to go into who has written what in the CCR of the applicant in different years. The position of law is well settled that it is for the Selection Committee to assess the CCR and the Tribunal cannot act as an appellate authority and substitute its assessment for the assessment made by the Selection Committee unless the assessment of the Selection Committee is patently perverse and is not based on record. After going through the CCRs of the applicant for the relevant years we do not find that the assessment and categorisation "Very Good" given to the applicant by the Review Selection Committee, after ignoring the remarks given by Shri S.M.Patnaik, ex-Chief Secretary, are perverse and are not based on remarks recorded in his CCRs. In view of this, we hold that the Review Selection Committee have rightly categorised the applicant as "Very Good" in all these years. It is also to be noted that in the years when the applicant was considered and was not included in the select list by the Selection Committee of that year, in the minutes of the meeting of the Selection Committee for each of those years, the applicant was graded as "Very Good" and in some years all the officers who were rated as "Very Good" like the applicant and were included in the select list were senior to him. The persons who went over him like S/Shri Pitabas Patnaik, S.C.Patnaik and R.N.Mishra were graded "Outstanding" and that is how they went over not only the applicant but/ several other officers senior to the applicant in some years on account

of their being rated "Outstanding". As the assessment of the CCRs of the applicant, after ignoring the remarks given by Shri S.M. Patnaik, ex-Chief Secretary, has remained "Very Good", which was the assessment made by the original Selection Committee in different years, naturally there was no scope for giving him retrospective promotion. The recommendation of the Review Selection Committee on this account cannot be found fault with.

21. In the result, we hold that the applicant has not been able to make out a case for the relief claimed by him. The Application is held to be without any merit and is dismissed but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

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VICE-CHAIRMAN
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