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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.279 OF 1995

Cuttack, this the 12th day of April, 1999

Goutam Kumar Das Applicant

Vrs.

State of Orissa 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)

Commr. in Jm.
(SOMNATH SOM)
VICE-CHAIRMAN
12.4.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK

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Cuttack, this the 12th day of April, 1999

CORAM:

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

....

Goutam Kumar Das, aged 47 years,
son of late K.C.Das
at present Deputy Secretary to Government,
Water Resources Department, Secretariat Building,
Bhubaneswar, Dist.Khurda **Applicant**

Advocates for applicant - M/s K.P.Nanda
S.Patnaik
B.Mohanty

Vrs.

1. State of Orissa through the Secretary to Government of Orissa, General Administration Department, Bhubaneswar.
2. Union of India through Secretary, Ministry of Home Affairs, Department of Personnel, New Delhi.
3. Union Public Service Commission through Secretary, Dholpur House, New Delhi.
4. Shri U.K.Mishra, Officer-on-Special Duty-cum-Ex-Officio Joint Secretary to Government of Orissa, G.A.Deptt., Bhubaneswar, District-Khurda.
5. Rabindranayak Pani, Joint Secretary to Government of Orissa, G.A. Department, Bhubaneswar, Dist.Khurda.
6. Sambhu Nayak, Deputy Secretary to Government of Orissa, Department of School & Mass Education, Bhubaneswar.
7. Digambar Mohanty, Project Officer, D.R.D.A., Cuttack.
8. Manoranjan Saran Secretary, Orissa Public Service Commission, Cantonment Road, Cuttack.
9. Suresh Chandra Patnaik, Project Officer, D.R.D.A., Keonjhar, Dist.Keonjhar.
10. Batakrushna Das, Settlement Officer, Ganjam Major Settlement, Berhampur.
11. C.B.S.R.Rao, Collector, Bhadrak.

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12. Binaya Ch. Patra, Joint Secretary, to Government of Orissa, Fisheries & DRD Department, Bhubaneswar, District-Khurda.
13. Duryodhan Naik, Joint Secretary to Government, H.U.D. Department, Bhubaneswar.
14. P.K. Tripathy, Secretary, Orissa Subordinate Staff Selection Commission, Cuttack.
15. N.K. Mishra, Director of Estate, G.A. Department, Bhubaneswar, Dist. Khurda.
16. D.K. Pujhari, M.D., Bhaskar Textiles, Jharsuguda.
17. Parthasarathi Guha, Joint Secretary to Government of Orissa, Revenue Department, Bhubaneswar.
18. Prasant Kumar Chand, Dy. Secretary to Government, Tribal & Welfare Department, Bhubaneswar, Dist. Khurda.
19. Alekha Charan Sahu, Financial Advisor, Board of Revenue, Orissa, Cuttack.
20. Purna Chandra Pal, Joint Secretary, Board of Revenue, Orissa, Cuttack.
21. Srihari Nayak, Joint Secretary to Government of Orissa, Revenue Department, Bhubaneswar.
22. Bhagaban Chandra Das, Joint Secretary to Government of Orissa, Steel & Mines Department, Bhubaneswar.
23. Suryanarayan Panda, Joint Secretary to Government of Orissa Health & Family Welfare Department, Bhubaneswar.
24. Loknath Mishra, Dy. Secretary to Government of Orissa, Agril. Department, Bhubaneswar

..... Respondents

Advocates for respondents - M/s K.C. Mohanty, G.A.,
 S.B. Jena, ASC(C),
 P.K. Choudhury, S. Mohanty,
 S. Patnaik.

ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for an order "declaring the assessment made under executive instructions as ultravires of regulation 5(4) of the 1955 Regulations". He has also sought for a declaration that the constitution of Selection Committee was bad and illegal. The third prayer is for declaring the selection made by the Selection Committee as bad and illegal being violative of regulation 3 of 1955 Regulations. The last prayer is for a declaration that non-consideration/non-selection of the applicant is illegal and unconstitutional. Facts of this case fall within a small compass and can be briefly stated.

2. The applicant is a senior officer of Orissa Administrative Service. He joined as direct recruit in Orissa Administrative Service, Class II in 1974 and was allotted 1971 as his year of allotment. Throughout his career in OAS he got his legitimate promotion in due time. After having served for about 21 years with utmost sincerity, honesty and efficiency the applicant was hopeful of getting promotion to Indian Administrative Service in 1995, but he was surprised to learn from the news item published in the daily 'SAMAJ' dated 27.2.95 (Annexure-1) and English version thereof at Annexure-2 that the Selection Committee which met at Bhubaneswar on 23.2.1995 to select OAS officers for promotion to IAS, have not included his name. Twenty-one OAS officers including one of his juniors who are, according to the applicant, in no way superior than him by any standard, were selected for promotion to IAS, but the

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applicant's name did not find place in the list though he was within the zone of consideration. The applicant has referred to Regulation 5(4) & (5) of Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as "Promotion Regulations, 1955") and has made the following averments. Firstly, it has been stated that the Selection Committee in their meeting held on 23.2.1995 had relied on CCRs of officers coming within the zone of consideration for the last five years only. According to Regulation 5(4) the Selection Committee shall classify the eligible officers as Outstanding, Very Good, Good and Unfit on an overall relative assessment of their service records. The applicant's case is that service records of an officer do not mean CCRs only, much less CCRs of preceding five years. CCRs no doubt constitute the basic input of the service records of an officer. Nevertheless there are other important components of the service records like gradation list, nature of assignment/posts held in the past and experience gathered, performance under difficult situation like election/ law and order, natural calamities, etc., allegation and proceedings, commendation and letters of appreciation received from different quarters and reputation of the officer concerned. But the Selection Committee has not taken into consideration any of these service records except CCRs for five years. His second point is that even assuming for the sake of argument that CCRs for preceding five years only have been rightly considered by the Selection Committee to the exclusion of all other documents, even then the applicant should have been taken to be of Outstanding category. The

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applicant has stated that he must have had a number of Outstanding entries for most of his service career including the aforesaid five years. He has further stated that while assessing the service records, if all the facts mentioned earlier would have been taken into consideration, the petitioner would have ranked as an Outstanding officer. His third point is that while assessing his performance, the Selection Committee has not made a correct assessment. In support of this, the petitioner has referred to the grading given to him by different officers for different years. It is not necessary to refer to these submissions of the applicant at this stage because pursuant to our direction the CCRs of the applicant have been produced before us and we have perused the same. In course of our discussion dealing with various submissions made by the learned counsel for the petitioner, we would be referring to the grading of the applicant for different years and at that stage we would take note of the submissions made by the applicant about different gradings given by the reporting and reviewing officers in his CCRs for different years. His fourth point is in a way related to his first point. He has stated that the Promotion Regulations, 1955 lay down that an officer should be graded on the basis of overall relative assessment of his service records. The Selection Committee has violated the mandate of the statutory Regulations by keeping their consideration confined to CCRs for the preceding five years. His fifth point is that when it is alleged that the

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Selection Committee has violated the statutory Regulations in the matter of assessing the service records of an officer, it is open for the Courts and Tribunals to consider the matter and give appropriate relief. He has also stated that the list prepared by the Selection Committee is not final. It is only a recommendation made to Union Public Service Commission and only after concurrence of U.P.S.C. and the decision taken by Union of India, the list becomes a select list and can be acted upon. It is further stated that no reasons have been assigned by the Selection Committee in the matter of supersession. Had such reasons been assigned by the Selection Committee, then UPSC or Government of India or a judicial authority could have come to a conclusion whether the supersession has been rightly done or not. It has been further stated that the constitution of the Selection Committee is a statutory one and this could not have been changed by executive order. It has been alleged that in disregard of the statutory requirement, Selection Committee was not duly constituted. Lastly, it has been submitted that the proceedings of the Selection Committee meeting held on 22.2.1995 (sic) for selection of suitable officers for promotion to IAS against the vacancies for the year 1995 are also under challenge in OA No.173/95. In that OA, the Union Public Service Commission has been cited as respondent no.3 and in paragraph 7 of their counter filed in OA No.173/95 UPSC have admitted that only five years' CRs have been taken into consideration. The petitioner has stated that the Selection Committee ought to have selected the petitioner for inclusion in the select list because the

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applicant satisfied the requirement as stated by UPSC in paragraph 7 of their counter in OA No. 173/95. In the context of the above facts, the applicant has come up in the petition with the prayers referred to earlier.

3. In this petition twenty-one officers have been cited as private respondent nos. 4 to 24. Notices were issued to them. In response, respondent nos. 6 to 9 have filed counter. In their counter these four respondents have opposed the prayer of the applicant and have stated that the Selection Committee has been rightly constituted. At this stage, it is necessary to note that in support of their contention that the Selection Committee has been rightly constituted, these four respondents have made several averments how Shri R.K. Bhujabal, IAS, the then Additional Chief Secretary was rightly included as a Member of the Selection Committee. It will be adequate to dispose of this aspect of the matter by noting at this stage ⁱⁿ that the applicant besides stating his OA as also in the amended Application that the Selection Committee has not been properly constituted, has not specifically stated as to how the Selection Committee was not properly constituted. All the averments made by respondent nos. 6 to 9 that the inclusion and participation of Shri R.K. Bhujabal, IAS, as a Member in the Selection Committee have been rightly done, need not be considered by us because inclusion of Shri R.K. Bhujabal as a Member of the Selection Committee has not been specifically averred by the applicant in his OA.

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These respondents have stated that the averment of the applicant that the Selection Committee did not make an overall relative assessment of service records of the eligible officers is a bald statement without any supporting proof and therefore, this should be ignored. They have also stated that non-inclusion of the name of the applicant in the select list is based on a newspaper item enclosed by the applicant as Annexures 1 and 2 which should not be relied upon. It is stated that the State Government as such have no role to play in the process of selection and therefore, the State Government are not in a position to know about the proceedings of the Selection Committee and to deny the averment of the applicant. The applicant has not made the members of the Selection Committee as parties in this O.A. and therefore, these averments of the applicant should be ignored. These respondents have referred to the decisions of the Hon'ble Supreme Court in the case of R.S. Dass v. Union of India, AIR 1987 SC 593, and the case of Parvez Qadir v. Union of India, AIR 1975 SC 446, and have stated that adjudging the merit of an officer on the basis of CRs has been rightly done and the applicant's grievances are without any basis and should be rejected. It is further stated that the applicant has made elaborate averments about his own CRs. As he has no access to these documents, these averments should be ignored. They have also contested the averments of the applicant that reasons should have been recorded for supersession of officers. It is further stated that for 1995 selection there were 18 anticipated vacancies

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and against those vacancies the selection has been rightly made. Lastly, it has been stated that under Administrative Tribunals Act, 1985, an applicant has a right to file a petition when by virtue of an order passed by an authority condition of his service is affected. In this case, no such order has been passed. The action of the Selection Committee is just a recommendation and it has not resulted in any order adversely affecting the rights of the applicant and therefore, the Application at this stage is not maintainable.

4. In this case, Union of India (respondent No.2) have not filed any counter.

5. State Government (respondent no.1) in their counter have stated that the Selection Committee in their meeting held on 23.2.1995 recommended names of twenty-one officers to Union Public Service Commission for approval and the list so far has not been approved. Therefore, there is no order against which the application u/s 19 of A.T. Act can lie. The application is thus premature. It is further stated that the Selection Committee formulated their own norm in fixing the period of CCRs to be taken into consideration and apart from CCRs other service records like vigilance allegation, integrity of the officer and pendency of departmental proceedings were also taken into consideration while adjudging the suitability of officers for promotion to IAS. As regards averment of the applicant that experience, performance under difficult situations like election, law and order, natural calamities, commendations and appreciations should have been taken into consideration,

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it has been stated that these factors have been taken into consideration while writing CCRs of officers and no separate record is maintained in respect of these matters. Respondent no.2 has further stated that the applicant in his petition has made several averments with regard to his own performance and his CRs which are only surmises and are not correct. He has also not disclosed the source of his knowledge and therefore, no reliance can be placed on this. It is further stated that the grievance, if any, of the officer with regard to toning down his grade from 'Outstanding' to 'Very Good' in his CRs is a matter to be challenged before the State Administrative Tribunal and not before this forum. It is further stated that the averment of the applicant that the Selection Committee has adjudged suitability on the basis of preceding five years CRs is not supported by any evidence and this is denied. The Selection Committee has taken into consideration the overall assessment of service records which they are competent to do under the Rules. With regard to composition of the Selection Committee, the State Government have pointed out that the petitioner has not put forward any material to substantiate this allegation except making a bald statement. It is further stated that according to the petitioner himself the recommendation of the Selection Committee is not final. This can be acted upon only after concurrence of UPSC and the decision of Government of India and therefore, at this stage the applicant has no cause of action and the petition is premature. In support of their contention, respondent no.2 have relied on the decision of the Hon'ble Supreme Court

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reported in AIR 1994 SC 2737. It is further stated that according to the law as laid down by the Hon'ble Supreme Court, the Selection Committee need not record reasons for non-inclusion of a person in the select list and this aspect of the case of the petitioner is without any basis. It is also stated that the applicant has filed this petition on the basis of an unconfirmed news item in an Oriya daily and on that basis no cause of action has arisen. On the above grounds, respondent no.2 has opposed the prayer of the applicant.

6. The Union Public Service Commission (Respondent no.3) have filed a detailed counter in which they have stated that in accordance with Regulation 3(1) of Indian Administrative Service (Appointment by Promotion) Regulations, 1955, the Selection Committee was rightly constituted and the selection was made strictly in accordance with the Regulations, and the officers have only a right for consideration and have no legitimate right for promotion. The Promotion Regulations, 1955 provide for primacy of merit over seniority. It is further submitted that selection/non-selection of a State Civil Service officer in higher cadre of the State Service is quite different from selection of a State Civil Service officer for promotion to IAS and the two cannot be equated. It is further stated that the Selection Committee considered the applicant whose name was at serial no.51 of the eligibility list on the basis of seniority and on an overall assessment of service record, the applicant was assessed as 'Very Good'. But on the basis of this grading, his name could not be

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included in the select list due to statutory limit on the size of select list. On the other hand, one officer junior to the applicant had on an overall assessment of his service career earned a higher grading and his name was included in the select list. Respondent no.3 has referred to the law as laid down by the Hon'ble Supreme Court in R.S.Dass's case (supra) providing that no Government servant has a legal right to insist for promotion nor any such right is protected by Article 16 of the Constitution. It is further stated that according to Regulation 5(4) of the Promotion Regulations, 1955 the Selection Committee shall classify the eligible officers as Outstanding, Very Good, Good and Unfit on the basis of an overall relative assessment of service records. It is further stated that for making such an overall assessment, the Selection Committee which met on 23.2.1995 examined the overall service records of each of the officers with special reference to the latest performance of the officer during the last five years and finally arrived at a classification assigned to each officer after detailed mutual deliberation and discussion. The Selection Committee took into account the orders regarding appreciation of meritorious work and all the pros and cons reflecting the merit of the performance. Similarly, the Selection Committee also kept in view orders awarding penalty and adverse remarks, if any, communicated to an officer which even after due consideration of his representation have not been expunged. Conversely, the Selection Committee did not take into consideration adverse remarks which were not communicated to an officer. Categorisation of the officer was done on that basis. It is further stated that according to

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the decision 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 for the Selection Committee to decide how to categorise in the light of relevant records and what norms apply in making the assessment. The Tribunal cannot make a conjecture as to what the Selection Committee would have done or resort to conjecture as to the norms to be applied for this purpose. The contention of the applicant that the nature of duties performed by an officer has not been taken note of by the Selection Committee. Respondent no.3 has pointed out that duties assigned to each officer in the functioning of Government are of equal importance. It is not important what function is assigned to a particular officer. What is important is how well that assignment is carried out by the officer. In this connection, respondent no.3 has relied on observation of the Hon'ble Supreme Court in Parvesh Qadir's case (supra). Respondent no.3 has also submitted that the applicant has no locus standi to comment as to how the remarks of reporting officer and reviewing officer are to be analysed and grading assigned. Lastly, it is submitted that the Selection Committee prepared the list strictly in accordance with the relevant statutory rules and the applicant has no legitimate grievance because his name was not included in the list. On the above grounds, respondent no.3 has opposed the prayer of the applicant.

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7. We have heard Shri K.P.Nanda, the learned counsel for the petitioner; Shri K.C.Mohanty, the learned Government Advocate appearing for the State Government; and Shri S.B.Jena, the learned Additional Standing Counsel appearing for Union of India and U.P.S.C. Learned counsel appearing

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for respondent nos.6 to 9 was not present on 16.2.1999 when the matter was heard nor was any request made on his behalf seeking adjournment. In view of this, the matter was heard on 16.2.1999 and was reserved for orders. The learned Government Advocate was directed to produce the minutes of the Selection Committee met on 23.2.1995 and the C.R.folder of the applicant. The learned Government Advocate wanted three weeks' time to file these documents. When the documents were filed on the next day the learned counsel for the petitioner submitted that paragraph 7 of the counter filed by UPSC in OA No.173/95 which is analogous to this case may be taken into consideration in cases where UPSC have not filed counter. We have noted the submissions of the learned counsels for both sides and have perused the records.

8. Before considering the various submissions made by the petitioner, one point raised by the learned Government Advocate will be considered first. It has been submitted by the learned Government Advocate that the applicant has filed this petition on the basis of a report regarding selection of State Civil Service officers to the Indian Administrative Service by the Selection Committee in their meeting held on 23.2.1995. The Selection Committee is only a recommendatory body. Its recommendation has to be accepted by the Union Public Service Commission and Government of India. Only thereafter it can be acted upon. The State Government in paragraph 2 of their counter have mentioned that UPSC have so far not approved the list. In view of this, it has been urged that the Application is premature and is not maintainable. The

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case of the applicant here is that though his name was considered, the Selection Committee illegally did not include his name in the select list. Private respondent nos. 6 to 9 have also pointed out that the petitioner has challenged the action of the Selection Committee in not including his name in their list, but without making any of the members of the Selection Committee as party in this O.A. It is obvious that the recommendation of the Selection Committee is one of the stages leading finally to promotion of State Civil Service officers to the Indian Administrative Service. Prima facie at any of the intermediate stages the process cannot be challenged. But in this case, subsequently the list has been approved and promotions have been given according to that list. In view of the above, this contention of the learned Government Advocate is held to be without any merit and is rejected.

9. The main ground of attack of the applicant is that even though sub-regulation (4) of Regulation 5 of Indian Administrative Service (Appointment by Promotion) Regulations, 1955 lays down that the Selection Committee shall classify the eligible officers as Outstanding, Very Good, Good and Unfit, as the case may be, on the overall relative assessment of their service records, in the instant case the Selection Committee has merely gone by the CRs for the immediately preceding five years and have not taken note of other service records. Thereby the Selection Committee has not taken note of overall service records which they are obliged to do because of the direction in the above regulation. Union
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Public Service Commission in their counter have stated that the Selection Committee which met on 23.2.1995 examined the overall service records of each of the eligible officers with special reference to the latest performance of the officer during the last five years and then finally arrived at a classification assigned to each officer after detailed deliberation and mutual discussion. It is stated by the UPSC that the Selection Committee took into account the orders regarding appreciation for meritorious works done by the officer as also orders awarding penalties and adverse remarks communicated to the officer and not expunged even after consideration of the representation. The Selection Committee did not take note of the adverse remarks which were not communicated to the officer. From this it is clear that the UPSC have denied the averment of the applicant that only the CCRs of the preceding five years were seen and nothing else. The applicant has stated that the gradation list, nature of assignment/post held in the past, experience gathered, performance under difficult situations like election, law and order and natural calamities; allegations and proceedings, commendations, letters of appreciation and reputation of the officer concerned, should also have been taken note of. Some of the above items like gradation list have obviously taken note of by the Selection Committee because the names of the eligible officers have been placed before them in order of seniority. The nature of assignment/post held is reflected in the CR itself. CR is the only reliable document to know the performance of different officers under difficult situations. As such the contention of the applicant that

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the Selection Committee merely went by the CRs for the preceding five years to the exclusion of all other records cannot be accepted.

10. The learned counsel for the petitioner has, in course of his submissions, drawn our attention to paragraph 7 of the counter filed by UPSC in OA No. 173/95. The relevant paragraph has been quoted in extenso in the amended consolidated petition filed by the applicant. As in this case, the UPSC have filed their counter, it is not necessary for us to look into the counter filed by the UPSC in an analogous matter, OA 173/95. Even then we have looked into the extract of paragraph 7 of the counter filed by UPSC in OA No. 173/95 quoted by the applicant and we find that in this paragraph also the UPSC have mentioned that the Selection Committee which met on 23.2.1995 examined the service record of each of the eligible officers with special reference to the latest performance of the officer during the last five years. Thus, the contention of the learned counsel for the petitioner that in paragraph 7 of the counter filed by UPSC in OA 173/95 it has been admitted that the Selection Committee considered only the CRs for the last five years is held to be without any merit. There is no such averment in paragraph 7 of the counter filed by the UPSC in OA No. 173/95. Besides, it has been pointed out by the UPSC that the nature of assignment/post held by an eligible officer is not a relevant consideration. We entirely agree with this. The eligible officers who are considered by the Selection Committee are not responsible for the postings they have got in their career and therefore, the persons who have got what they feel as more important postings cannot steal a march over others who have got so called less important postings. The performance of an

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officer is recorded in the CR and this is the most important and reliable document reflecting the performance of an officer in different assignments. The action of the Selection Committee in giving special attention to the preceding five years CRs cannot also be faulted because five years is a fairly long period in the service career of an officer who has come within the zone of consideration and has still some years to go before retirement with or without promotion to IAS. It has been pointed out by the Hon'ble Supreme Court in the case of R.S.Dass (supra) and this has also been mentioned by the UPSC in their counter that the Promotion Regulations, 1955 have given primacy to merit over seniority and while adjudging merit, it is reasonable to give more importance in the preceding five years. If this is not done, then an officer whose CR in the preceding five years is indifferent but who has got excellent CR before that period would also be considered suitable for promotion even though his performance in the immediately preceding five years is less than Outstanding or Very Good.

11. The second point of the petitioner is that even taking the CRs for the last five years, i.e., from 1989-90 to 1993-94, the Selection Committee should have rated him as Outstanding. The petitioner has made various averments as to who has written what in his CR during this period. It is not necessary to record those averments because we have had the benefit of going through the CRs of the petitioner. We note from this that out of these five years from 1989-90 to 1993-94, in three of the five years the petitioner has been graded as Outstanding. Out of these three years, in one year the petitioner

has been graded by two sets of officers because of change of assignment and both the officers have graded him as Outstanding. For the remaining two years, in one year he has been assessed by two sets of officers. In one assessment he has been graded as Very Good and in another assessment, while the reporting officer has graded him as Very Good, the countersigning officer has graded him as outstanding. Thus, in that year his CR is not uniformly Outstanding. For the remaining year, the applicant has been assessed by three sets of officers because of change of the reporting officer and also because of change of the assignment of the applicant. Of these three sets of CRs in this year, in one case he has been rated as Outstanding. For another period he has been rated as Very Good and for the other period the reporting officer has found him Average but the countersigning officer has graded him as Outstanding. Thus, taking the CRs of these two years and the other three years, we find nothing wrong on the part of the Selection Committee to grade the applicant as Very Good. It is also to be noted here that it is well settled position of law that the Tribunal cannot interfere in the assessment made by the Selection Committee and substitute its judgment with regard to the assessment of CRs of an officer. The only scope of interference can be when on the face of it the assessment made by the Selection Committee is not based on record produced before them or is otherwise perverse. We have found no evidence of either in this case. This contention of the learned counsel for the petitioner must also, therefore, fail.

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12. The next point made by the petitioner is that the Selection Committee has given no reasons for superseding the

applicant. Had such reasons been given, then it would have been possible for the Tribunal to take a view if the supersession of the applicant is justified. It is further stated that when a statutory body like the Selection Committee allegedly does not function in accordance with the statutory requirement, the Courts/Tribunals have the power to interfere in the selection made by the Selection Committee. The question whether the Selection Committee is obliged to record reasons for non-inclusion of an officer has been considered by the Hon'ble Supreme Court in R.S.Dass's case (supra). There the Hon'ble Supreme Court have pointed out that earlier the selection for inclusion in the select list for promotion to IAS from the State Civil Service was based on merit and suitability in all respects with due regard to seniority. This was amended in 1977 and sub-regulation (4) of Regulation 5 of the Promotion Regulations, 1955, came into existence, which speaks of classifying the eligible officers as Outstanding, Very Good, Good and Unfit, as the case may be, on an overall relative assessment of their service records. The Hon'ble Supreme Court have pointed out that in the amended regulation primacy has been given to merit over seniority. His Lordship, Hon'ble Savyasachi Mukherji, J. (as he then was) has mentioned in his separate judgment that in a case where selection is based on merit primarily, non-inclusion of an officer in the select list cannot really be called a case of supersession. In any case, in paragraph 15 of this judgment, the Hon'ble Supreme Court have pointed out that the amended regulation does not require the Selection Committee to record any reason for non-inclusion of an officer in the select list. The

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contention of the applicant that non-inclusion by the Selection Committee of his name is bad because of non-recording of reasons, therefore, is held to be without any merit and is rejected.

13. We have also gone through the minutes of the Selection Committee meeting held on 23.2.1995 and we find that the Committee took note of number of vacancies as twenty-one and considered the officers three times the number of vacancies according to their seniority which included the applicant. According to seniority, the applicant was rather low in the list. His name has been mentioned against serial no.51. He was graded as Very Good, as has been mentioned by the UPSC in their counter. We also note that in the select list there are 21 officers and all these twenty-one officers are senior to the applicant except one. That particular officer has been graded Outstanding and has therefore been included in the select list. That particular officer has gone above fifteen other officers who have been graded as Very Good on the basis of their CRs by the Selection Committee. Many of these fifteen officers are much senior to the applicant. On going through the proceedings of the Selection Committee, we do not find any evidence that Selection Committee has acted not in accordance with the requirements of the Promotion Regulations, 1955.

14. The last contention of the petitioner is that the Selection Committee has not ^{been} properly constituted. We have already dealt with the matter earlier in our discussion and it is not necessary to record anything further except to note that we have rejected this contention.

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15. In the result, therefore, we hold that the applicant has not been able to make out a case for any of the reliefs claimed by him. The Application is held to be without any merit and is dismissed. No costs.

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(G.NARASIMHAM)
MEMBER(JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN

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