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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 1255 OF 2003  
Cuttack this the 3rd day of Nov, 2004

Aswini Kumar Das

...

Applicant(s)

- VERSUS -

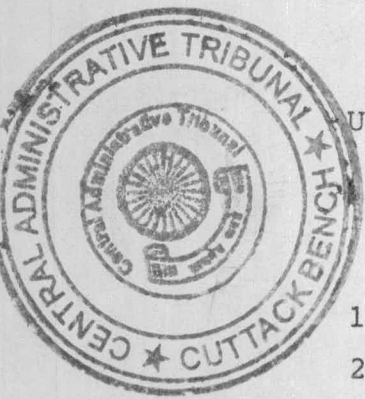
Union of India & Ors.

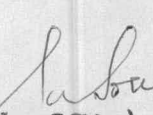
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Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 72
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 45

  
03/11/04  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
(B.N. SOM)  
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.1255 OF 2003  
Cuttack this the 3rd day of Nov, 2004

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN  
AND  
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

...

Sri Aswini Kumar Das, aged about 54 years,  
S/o. late Bipin Bihari Das, resident of  
Village-Anantapur, PS-Soro, Dist-Balasore -  
at present Member of Orissa Administrative  
Service (SG) and posted as Additional Chief  
Electoral Officer-cum-Additional Secretary,  
Home Election Deptt., Govt. of Orissa,  
Nirbachan Sadan, Dist-Khurda

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Applicant

By the Advocates

M/s. K.C. Kanungo  
S. Behera  
Ms. C. Padhi

- VERSUS -

1. Union of India represented through Secretary,  
Ministry of Personnel, Public Grievance and  
Pension, Deptt. of Personnel & Training, Govt.  
of India, North Block, New Delhi-1
2. State of Orissa represented through Chief Secretary  
to Govt. of Orissa, Bhubaneswar, Dist-Khurda
3. Union Public Service Commission represented through  
its Secretary, Dhoolpur House, New Delhi
4. Shri Raj Kishore Jena, OAS, Secretary to Lokpal,  
Office of Lokpal, Bhubaneswar, Dist-Khurda
5. Shri Manoranjan Mishra, CDI & Ex-Officio, Addi-  
tional Secretary to Government, G.A. Deptt.,  
Bhubaneswar, Dist-Khurda
6. Shri Krishna Chandra Mohapatra, District Magistrate  
& Collector, At/PO/Dist-Khurda
7. Shri Jagadish Prasad Agarwala, M.D., Orissa Small  
Scale Industries Corporation (Addl. Charge of M.D.,  
Orissa Film Development Corporation), Govt. of  
Orissa, Bhubaneswar, Dist-Khurda
8. Shri Pramod Kumar Pattnaik, District Magistrate  
and Collector, Nuapada, Dist-Nuapada
9. Shri Jyoti Prakash Das, D.M. & Collector, Jharsuguda
10. Shri Balakrishna Sahoo, Special Secretary to Orissa  
Public Service Commission, Cantonment Road,  
Cuttack, Dist-Cuttack

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Respondents

By the Advocates

M/s. A.K. Bose (R.1 & 2)  
Mr. T. Dash, GA (R.2)  
Mr. U.B. Mohapatra (R.1 & 3)

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M/s.B.K.Dash  
R.C.Swain  
(Res. 8)

M/s.Durga P.Pattnaik  
Tutu Pradhan  
(Res. 9)

M/s.B.R.Sarangi  
P.K.Kar  
L.Bhuyan

M/s.K.K.Jena  
A.K.Biswal  
(Res. 7)



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O R D E R

MR.B.N.SQM, VICE-CHAIRMAN: Applicant (Shri A.K.Das),  
an officer of Orissa Administrative Service (Selection Grade)  
(in short 'OAS(SG)') has filed this Original Application  
under Section 19 of the A.T.Act,1985, assailing the  
recommendations of the Selection Committee, which met on  
13.5.2003 in terms of the I.A.S.(Appointment By Promotion)  
Regulations, 1955 (in short Regulations 1955) and recommended  
a list of officers of Orissa State Civil Services for  
promotion to the Indian Administrative Service (in short  
I.A.S.) cadre of Orissa for the year 2002 by ignoring the  
case of the applicant. He has, therefore, prayed for the  
following reliefs :

"... to quash the proceedings and recommendation  
of the Selection Committee dated 13.5.2003;  
... to quash Annexure-10 for the ends of justice;  
and to direct the Respondents (1 to 3) to have  
fresh/review meetings of the Selection Committee  
taking the full service particulars of the  
applicant and Respondent Nos. 4 to 10 in  
accordance to Rules and procedure and recommend  
his name for consideration for appointment to  
I.A.S."

2. The facts of the case in brief are that the  
applicant, who is 1975 direct recruit to the Orissa  
Administrative Service (in short O.A.S.) has claimed that

he has rendered outstanding performance all through his service career and obtained promotion to respective higher grade(s) as and when due. The names of Res.Nos. 8 and 9, who were below him in the seniority list of O.A.S.(SG) were included in the Select List whereas his case was ignored although according to his seniority position, he was eligible for consideration for appointment by promotion to I.A.S. He further submits that whereas the Selection Committee is required to follow the well established procedure as set out in the Regulations, 1955, the Selection Committee appears to have deviated from the said procedure, i.e., for the purpose of promotion, the Annual Confidential Report (in short ACR) of preceeding five years are required to be assessed objectively on the basis of the final gradings, they seem to have made their own grading. In addition, eight years' ACRs are also required to be looked into for a fair assessment of the consistency in the performance level of the officers in the zone of consideration. The applicant believes that during last eight years he had been continuously graded as 'outstanding' in his ACR and therefore, non-inclusion of his name in the select list has puzzled him. Further, that the Selection Committee has not only evaluated Res.Nos. 8 and 9, who are admittedly junior to superior in merit, him, but have also ~~not~~ overlooked certain blemishes in their service records. He has also alleged that one -Shri Satyananda Sethi, whose name finds place in the select list, was superseded <sup>once earlier</sup> in the State Service and he was relegated to 1972 batch of O.A.S. On the other hand, Respondent No.7 (Shri Jagadish Prasad Agarwal) whose

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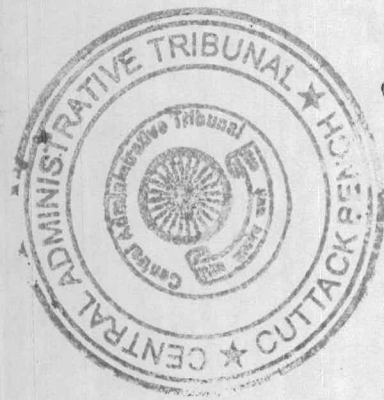
involvement in a departmental proceedings ended in punishment of 'Censure' during the year 1996 and was also superseded in State Civil Service, but his name figures in the Select List. He has further submitted that Res. No.4 (Shri Raj Kishore Jena) could not have been adjudged better than him (applicant) as his integrity was not above board. The applicant has also claimed that his ACRs from the year 1991 onwards is believed to be better than that of Res. No.4. His further submission is that Res. Nos. 8, 9 and 10, who were juniors to him in the State Civil Service, had never superseded him, even in the recent case of promotion to O.A.S. (Supertime Scale Grade). He has, therefore, submitted that with the same set of ACRs the applicant could not have been superseded by those officers. With the above facts of the case, the applicant has prayed for the reliefs as referred to above.

3. The Respondents have opposed the application by filing separate counters. In its counter filed by Res. No.2, the facts of the case have been repudiated. It has been submitted that since the application is not tenable on the facts, it should be dismissed. The main thrust of the objection of Res. No.2 is that the applicant had filed this O.A. on the basis of a newspaper report published in The Oriya daily "The Matruvasa", vide Annexure-8 dated 17.8.2003 of the O.A. and had not challenged any order issued by the Respondents. Secondly, that the Selection Committee Meeting took place strictly in accordance with the procedures laid down in the Regulations, 1955 and that the allegations made in the O.A. have been denied. It has been submitted by Res. No.2 that the Selection Committee, while making an overall

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relative assessment of 24 officers, who were in the zone of consideration for filling up of 8 vacancies for the year 2002, had examined the service records of each of the 24 officers and after detailed deliberation on the merits of the officers as indicated in the various columns recorded by the reporting/reviewing officers or the accepting authority in the ACRs arrived at the classification as assigned to each of the officers. They have also submitted that the Selection Committee had also kept in view the orders awarding penalties or adverse remarks, if any, communicated to the officers. They have reiterated that the Selection Committee categorized only those officers as 'outstanding' in respect of whom the service records reflected that they were of outstanding merits, possessing exceptional attributes and abilities and that the Selection Committee had adopted uniform standard in categorizing the eligible officers for inclusion of their names in the select list. They have disclosed that the Committee had categorized four officers as 'outstanding' and the rest as 'very good', and had prepared the select list consisting of 8 SCS officers. The name of the applicant could not be placed in the select list because of his relative merit/seniority position vis-a-vis the officers, whose names have been included in the select list. It has been clarified that the name of Shri Satyananda Sethi was incorporated in the select list at Sl. No.3 provisionally due to pendency of disciplinary proceedings against him. However, before the final notification could be issued

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by the Government of India, Shri Sethi had expired. With regard to the allegation that with the same set of confidential reports and service records, the applicant could not have been assessed inferior to Res. 8 and 9, for the reason that he was graded superior to them (Res. 8 & 9) while his case was considered for O.A.S. (Supertime Scale), it has been submitted by the Respondents that consideration of promotion to O.A.S. (Supertime Scale) and consideration of O.A.S. officers for promotion to I.A.S. are two different aspects of the matter and that the selection to I.A.S. has been made strictly in accordance with Regulations 5(4) and as such these two aspects cannot be equated. It has been emphasized by Res.No.2 that selection of junior officers in preference to senior officers has been made strictly in accordance with the provisions of the Regulations. Referring to the decision of the Hon'ble Supreme Court in the case of R.S.Dass vs.Union of India & Ors (reported in AIR 1987 SC 593) Res. No.2 has tried to convince the <sup>that</sup> Tribunal/in the matter of promotion to I.A.S. the procedure adopted by the Selection Committee cannot be faulted. For the sake of clarity, we would like to quote hereunder the relevant portion of the aforesaid judgment of the Hon'ble Supreme Court.

"The amended provisions of Regulations 5 have curtailed and restricted the role of seniority in the process of selection as it has given priority to merit. Now the Committee is required to categorise the eligible officers in four different categories, viz., 'Outstanding', 'very good', 'Good', 'Unfit' on an overall relative assessment of their service records. After categorisation is made the committee has to arrange the names of the officers in the select list in accordance with the procedure laid down in Regulation 5(5). In arranging the names in the Select List the Committee has to follow the inter-seniority in the State Civil Service.





The same principle is followed in arranging the list from amongst the officers falling in the category of 'Very Good' and 'Good'. Similarly, if a junior officer's name finds place in the category of 'Outstanding', he would be placed higher in the select list in preference to a senior officer finding place in the 'Very Good' or 'Good' category. In this process, grading would supersede his seniors. This cannot be helped".

In the said case the Hon'ble Supreme Court have further held that :

"The Selection Committee is constituted by high ranking responsible officers presided over by Chairman or a Member of the Union Public Service Commission. There is no reason to hold that they would not act in fair and impartial manner in making selection".

Relying on the above judgment, it has been submitted by Res.No.2 that the plea of the applicant that he should have been graded better than the other officers in the zone of consideration is based on presumption and as such the applicant is substituting his own subjective opinion over the judgment of a statutorily appointed Selection Committee having competence and expertise to make objective assessment of eligible officers. Referring to the case of U.P.S.C. vs. H.L.Dev & Ors., Res. No.2 has tried to throw light on the power, function and jurisdiction of the Selection Committee. In the said judgment reported in AIR 1988 SC 1069, the Hon'ble Supreme Court held as under:

"How to categorise in the light of relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee. The jurisdiction to make the selection is vested in the Selection Committee".

4. Respondent No.3 has also opposed the application by filing its counter separately. While rebutting the case of the applicant, Res.No.3 has placed reliance on the

judgment in the case of R.S.Das vs. Union of India & Ors. (supra), Durga Devi & another vs. State of Himachal Pradesh and other case laws as referred to in the counter filed by the State Government of Orissa. For the sake of brevity, we are not referring to this counter in greater detail.

5. The applicant has filed rejoinder to the counter of Res.No.3. In his rejoinder, the applicant while opposing the stand taken by Res. Nos. 2 and 3 in pursuance of the ratio of the judgments of the Apex Court in the cases of Naresh Dutta vs. Union of India & Ors., Durga Devi vs. State of H.P., State of M.P. vs. Srikanth Chapektar and Dalpat Abasaheb Solanki vs. B.S.Mahajan and Smt.Anil Katia vs. Union of India & Ors, with regard to limited scope of judicial review, of the function of the Selection Committee/D.P.C. and that the Tribunal cannot sit as an appellate authority over the Selection Committee, has strenuously urged that the Selection Committee having not been provided with entire service records of the officers eligible for consideration, it was not possible for it to go through the ins and outs of the matter for the purpose of examination of the service records to assess the quality of the officers as required under Regulations, 1955, for categorising them as 'Outstanding', 'Very Good', 'Good' etc. Had this consideration been implemented in full, the Selection Committee in this case could not have recommended the names of Res.Nos. 7 and 8 in the select list, because, Res. 7 had a tainted service record and Res.8 did not have clean chit in the integrity column in his A.C.R. for the year 2001-2002 and Res.Nos. 9 and 10 could not have been assessed



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better than the applicant. His plea is that he could not have been graded 'Very Good' by applying the yardstick prescribed by the U.P.S.C. itself. Error in judgment, if any, took place, because the entire service records had not been looked into. Referring to the decision of the Apex Court reported in AIR 1987 SC 593 (R.S.Dass vs. Union of India & Ors.) the applicant has stated that the Apex Court has observed that when power is vested with the higher authority, there is presumption that the same will be exercised in a reasonable manner and if at all the selection is made in arbitrary manner, the Courts have ample power to strike it down and that is an adequate safeguard against the arbitrary exercise of power. He has also submitted that the Committee is not free to categorise officers at its sweetwill. There is hardly any scope for applying different standards/grades at different times as the service records, viz., the Confidential Report/entries therein would indicate the quality of the officers as adjudged by the authorities in their Annual Confidential Report. To buttress his allegation that the Selection Committee did not assess the officers in the zone of consideration properly, because, all the relevant records were not placed before them, he filed an affidavit on 9.9.2004, wherein he made the following allegations.

Firstly, that Res.No.7(Shri Jagadish Prasad Agarwal) who was graded 'Outstanding' and whose name appears at Sl.No.4 in the zone of consideration was inflicted with the penalty of 'censure' through a departmental proceedings vide Govt. of Orissa Order No. Misc.(A)-82/94-23573/Gen. dated 26.8.1996. Secondly, that Res. No. 8( Shri Pramod



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Kumar Patnaik) whose name appears at Sl. No.11 in the zone of consideration and was assessed 'Outstanding', his integrity was not certified by the Reporting Officer during 2001-02, although, the Minister as the accepting authority had overruled the observation of the Reporting Officer. Thirdly, that Res. No.10 (Shri Balakrishna Sahoo) placed at Sl.No.20 in the zone of consideration who was graded as 'Outstanding' was superseded by his junior on promotion to O.A.S. Class-I in 1985 and had adverse entries in his Confidential Reports for the years 1979-80 and 1989-90. Lastly, that late Satyabadi Sethi (Sl.No.5) in the zone of consideration, who was graded 'Very Good' had received penalty of stoppage of one increment with cumulative effect during the year 1996-1997 (December, 1996).



Referring to the averment made in the counter filed by Res.No.3, it has been submitted by the applicant that while making an overall assessment the Selection Committee has to take into account the orders regarding appreciation of meritorious work done by the concerned officer or to keep in view the orders awarding penalties or any adverse remarks communicated to the officers which are not expunged. This procedure having not been followed, the selection as made by the Selection Committee is vitiated and hence liable to be set aside.

6. We have heard the learned counsel appearing for the parties and have also perused the materials placed before us. We have also perused the various case laws cited relied on by the parties.

7. The applicant has made a strong plea that the recommendation of the Selection Committee was not based on

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the provisions of Regulations 5(4) nor the Committee had strictly followed the procedures as advocated by the Union Public Service Commission (UPSC) in their counter (Res.3). In their counter at Para-4.2 the Respondent No.3 has stated as under :

"... The Selection Committee is not guided merely by the overall grading that may be recorded in the ACRs but in order to ensure fairness and objectivity makes its own assessment on the basis of in-dept examination of service records of eligible officers, deliberating on the quality of the officers on the basis of performance as reflected under various columns recorded by the Reporting/Reviewing Officer/Accepting Authority in ACRs for different years and then finally arrives at the classification to be assigned to each eligible officer in accordance with provisions of Promotion Regulations. While making an overall assessment, the Selection Committee takes into account orders regarding appreciation for meritorious works done by the concerned officer. Similarly, the Selection Committee also keeps in view orders awarding penalties or any adverse remarks communicated to the officer, which, even after due consideration of his representation have been completely expunged".



8. The applicant has tried to substantiate his contention by citing examples of Res.No.7, who had received penalty of 'Censure' during the year 1996, Res.No.8, whose C.R. of the year 2001-02 had some grey areas, Res.No.10, who had adverse entries in his C.R. for the years 1979-80 and 1989-90 and the case of late Satyabadi Sethi (Sl.No.5) in the zone of consideration who had received punishment of stoppage of increment with cumulative effect in the year 1992. On the face of it, undoubtedly, these are serious allegations which call for raising of the veil by the Court to meet the

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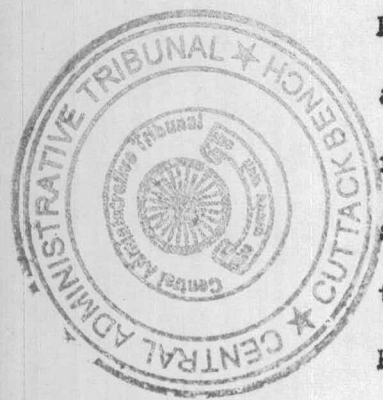
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ends of justice. We agree with the submission made by the applicant that if the selection is made on an extraneous consideration or in an arbitrary manner, the Courts have ample power to strike down the same and that is necessary to safeguard against the arbitrary exercise of powers. The allegations are so serious, if these are allowed to stand without verification, it will render a crushing blow on the public confidence on the Selection System in Public Service and the principles of fairness will be given a go bye. We had, therefore, called upon the applicant to file an affidavit serving copies thereof on the other sides, so that we could go into the matter in depth. He has filed the affidavit to which no reply has been filed by the Respondents. We had also called upon Res.No.2 to produce the records of the Selection Committee with all service particulars of the applicant and Res. Nos. 4 to 10.

9. We have perused the records. The Selection Committee which met on 13.5.2003 for preparation of select list for the year 2002 had evaluated the confidential reports of all the ~~ye~~ 24 officers in the zone of consideration for five years, i.e., from the year 1996-97 to 2000-2001. The Respondents in their counter have stated that the Selection Committee classified the officers in the zone of consideration on the basis of the 'service records' placed before it. The word/term "service record" as interpreted by the applicant means - Confidential Reports for the entire service career and also the other records of service pertaining to work and conduct of the officer under



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consideration. The Respondents, on the other hand, have clarified that the term 'service records' mean - Annual Confidential Reports. Res.3 has also confirmed this meaning of the word 'service record' by filing a written statement. On perusal of the service records for five years in respect of Res.Nos. 7, 8, 9 and 10 vis-a-vis the applicant, we find that all the above private Respondents have been assessed as 'Outstanding' for each of the five years strictly according to the entries contained in their respective Confidential Reports. However, we do not find in the confidential report folder of Res.No.7 any copy of the punishment order dated 26.8.1996 nor has there been any entry made to that effect in his A.C.R. It is an well established procedure of personnel management that whenever an officer is visited with punishment or even non-statutory warning, a copy of the punishment and/or warning is placed in his confidential report folder and a remark regarding awarding of punishment also is recorded in the annual confidential report of the year. In the instant case, apparently, this action was not taken as a result of which, the Selection Committee did not have any occasion to know that Shri Agarwal (Res.7) was in fact awarded a punishment of 'Censure' in the year 1996-97. The allegation brought against Res.No.8 however, does not stand to reason, firstly, because, the alleged remarks by his reporting officer regarding his integrity pertains to the year 2001-02, but the confidential report of that year was not seen by the Selection Committee as it was outside the five years period considered by them. That apart also, as



admitted by the applicant that the Minister-in charge had overruled the remarks made by the reporting officer, this allegation has no legal standing. With regard to late Satyabadi Sethi, our observation is akin to the one that we have made in case of Shri Agarwal, i.e., a copy of the punishment order does not find place in the C.R. folder. As regards the objection to the selection of Res.No.10 in 'Outstanding' category, we would like to state that we agree with the submission made by Res.No.2 that the assessment made by the Selection Committee for promotion to O.A.S. officers cannot be treated as bench mark by the Selection Committee for considering promotion to I.A.S., firstly, because, these are two different Committees having no nexus with each other and the bench marking of officers for categorisation for promotion by the two Governments are not the same.

10. We are also beholden to the observation of the Hon'ble Apex Court in this regard that it is not our function to hear appeal over the decision of the Selection Committee and to scrutinise the relative merits of the candidates. Because, the fitness of the candidates has to be decided by the Selection Committee and that, how to categorise in the light of the relevant records and what norms are to apply in making the assessment are exclusively the functions of the Selection Committee. We also hold that the Selection Committee having been constituted with high ranking responsible officers presided over by the Chairman or Member of the U.P.S.C., there is no reason to hold that they would not

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act in fair and impartial manner in making the selection.

11. However, certain startling facts have been brought to our notice by the applicant in his application as well as by filing an affidavit separately that some of the officers whose names find place in the select list did not enjoy blemishless service career and therefore, categorization of some of them as 'Outstanding' has caused disappointment and disgruntlement. Undoubtedly, an officer to be selected from the State Civil Service to the Indian Administrative Service has to be an officer of spotless service record, striding tall over his peers. He should be like Ceasar's wife, beyond suspicion. Nodoubt 'to err is human'. But if because of erring in performance of official duties some one had to receive statutory punishment order, his classification as 'Outstanding' would not receive acceptance at any platform - much less in public estimation. It is, therefore, necessary that the selection procedure should be such that it will be able to scan through and detect eliminate such unacceptable ones. We have no doubt that had the State Government developed the system of keeping punishment orders in A.C.R. folders and had laid down the procedure that all instances of bad work or conduct including punishment received should invariably be reflected in the confidential report of the officer concerned, such omission, as has been pointed out in this case could not have taken place and this type of incongruity in categorisation of officers as 'Outstanding', although visited with punishment, could have been avoided.

12. This also brings to fore another point for consideration by Res. Nos. 1 and 3 that for selection of



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officers from State Civil Service to Indian Administrative Service, consideration of confidential reports should not be limited to five years only. It should be atleast extended to eight years of service, i.e., the minimum period of qualifying service that a State Civil Service Officer has put in to be considered for selection. However, in case an officer is to be graded as 'Outstanding', we recommend that the ACRs in respect of such an officer should be scanned for his entire service period to see that his categorization as 'Outstanding' can never be called in question by anyone on the ground that once upon a time, he did not enjoy a very good service record. If the officer to be categorized as 'Outstanding' is put to such a rigorous test, it will instill greater public acceptability and lesser amount of friction and litigation.

13. For the reasons that we have discussed above, we direct the Respondents to convene a review meeting of the Selection Committee to consider the punishment orders passed against some of the officers in the zone of consideration and to make fresh list of officers for promotion to I.A.S. for the year 2002 in the light of the observations as made above. In effect, we hereby quash the orders of promotion of O.A.S. Officers to I.A.S. as ordered on 6.2.2004 vide Annexure-10. This exercise (meeting of the Review Committee) shall be completed within a period of 120 days from the date of receipt of this order.

14. With the above observations and directions, this O.A. is disposed of. No costs.

(M.R. MOHANTY)  
MEMBER (JUDICIAL)

BJY

(B.N. SOM)  
VICE-CHAIRMAN



03/11/2004