

13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

O.A.No.815 of 2006

Bidyadhar Sabar & Another ... Applicants

Versus

Union of India & Others ... Respondents

O.A.No.816 of 2006

Rabinarayan Rout ... Applicants

Versus

Union of India & Others ... Respondents

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Date of decision: Cuttack, this the <sup>24</sup>~~17~~<sup>th</sup> day of August, 2007 .

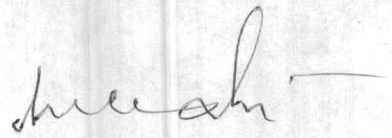
FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *yes*.

2. Whether it be circulated to all the Benches of the CAT  
or not? *yes*.

  
(N.D. Raghavan)

Vice-Chairman

  
(P.K. Chatterjee)

Member(Admn.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

O.A.Nos. 815 & 816 of 2006

Cuttack, this the ~~16~~<sup>24</sup> August, 2007

O.A.No.815/2006

1. Bidyadhar Sabar, aged about 57 years, S/o.Late Bhikari Sabar, working as Additional Secretary to Government of Orissa, Food Supply and Consumer Welfare Department, Bhubaneswar, Dist.Khurda.
2. Sri Schidranath Panigrahi, aged about 47 years, S/o.Late Banchhanidhi Panigrahi working as Controller of Legal Meteorology, Director of Consumer Affairs and Ex-Officio Additional Secretary to Government of Orissa, Food Supply and C.W. Department, Bhubaneswar, Dist. Khurda.

...Applicants

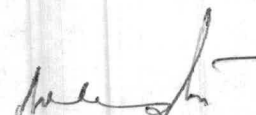
By legal practitioner: M/s.Srinivas Mohanty, S Routray,

J.R.Rath,R.C.Patnaik,

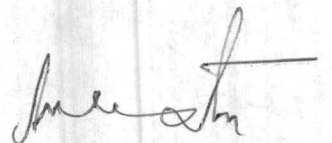
D.Barik, Advocate.

-Versus-

1. Government of India represented through its Secretary, Department of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), North Block, Central Secretariat, New Delhi.



2. Government of Orissa represented through its Chief Secretary, Orissa Secretariat, Sachivalaya Marg, Bhubaneswar, Dist. Khurda.
3. Sri Bibhu Prasad Mishra, Secretary to Lokpal, Bhubaneswar, Dist. Khurda.
4. Sri Aswini Kumar Das, Special Secretary to Government of Orissa, P & C Department, Bhubaneswar, Dist. Khurda.
5. Sri Dolagovinda Tripathy, Additional Secretary to Government of Orissa, Higher Education Department, Bhubaneswar, Dist. Khurda.
6. Sri Narayan Prasad Das, Director, S.T. & S.C. Development & Additional Secretary to Government of Orissa, S.T. & SC Development Department, Bhubaneswar, Dist. Khurda.
7. Sri Pramod Chandra Patnaik, District Magistrate and Collector, Nuapada, At/Po/Dist.Nuapada.
8. Sri Binod Bihari Patnaik, Director, Indian Medicines and Homoeopathy & Ex-Officio Additional Secretary to Government of Orissa, H & FW Department, Bhubaneswar, Dist. Khurda.
9. Sri Krushna Chandra Mohanty, Director, P.R. & Ex-officio Addl. Secretary to Government of Orissa, P.R. Department and additional charge M.D., Orissa State Commercial Transport Corporation, Cuttack.



10. Sri Himansu Sekhar Samantray, Managing Director, Orissa Lift Irrigation Corporation, Bhubaneswar, Dist. Khurda.
11. Sri Raj Kishore Behera, Member Secretary, State Commission for OBC, Bhubaneswar, Dist. Khurda.
12. Secretary, UPSC, Dholpur House, Sahajan Road, New Delhi.

....Respondents

By legal practitioner : Mr.U.B.Mohapatra, Sr.SC.

(For Res.No.12)

Mr.G.Singh, ASC

(For Respondent No.1)

Mr.A.K.Bose, G.A,

(For Res.No.2)

M/s.K.C.Kanungo,S.Beura,

S.K.Patnaik,Advocates

(For Resp.Nos.4&5)

O.A.No.816/2006.

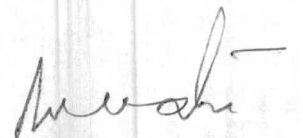
Rabinarayan Rout, aged about 56 years, Son of Late B.C.Rout, at present Additional Secretary, Revenue and Disaster Management, Government of Orissa, Bhubaneswar, Dist. Khurda.

....Applicant

By legal practitioner: M/s.Srinivas Mohanty, S. Routray, J.R.Rath, R.C.Patnaik, D.Barik, Advocates.

-Versus-

1. Government of India represented through its Secretary, Department of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), North Block, Central Secretariat, New Delhi.
2. Government of Orissa represented through its Chief Secretary, Orissa Secretariat, Sachivalaya Marg, Bhubaneswar, Dist. Khurda.
3. Sri Bibhu Prasad Mishra, Secretary to Lokpal, Bhubaneswar, Dist. Khurda.
4. Sri Aswini Kumar Das, Special Secretary to Government of Orissa, P & C Department, Bhubaneswar, Dist. Khurda.
5. Sri Dolagovinda Tripathy, Additional Secretary to Government of Orissa, Higher Education Department, Bhubaneswar, Dist. Khurda.
6. Sri Narayan Prasad Das, Director, S.T. & S.C. Development & Additional Secretary to Government of Orissa, S.T. & SC Development Department, Bhubaneswar, Dist. Khurda.
7. Sri Pramod Chandra Patnaik, District Magistrate and Collector, Nuapada, At/Po/Dist.Nuapada.
8. Sri Binod Bihari Patnaik, Director, Indian Medicines and Homoeopathy & Ex-Officio Additional Secretary to Government of Orissa, H & FW Department, Bhubaneswar, Dist. Khurda.



18

9. Sri Krushna Chandra Mohanty, Director, P.R. & Ex-officio Addl. Secretary to Government of Orissa, P.R. Department and additional charge M.D., Orissa State Commercial Transport Corporation, Cuttack.
10. Sri Himansu Sekhar Samantray, Managing Director, Orissa Lift Irrigation Corporation, Bhubaneswar, Dist. Khurda.
11. Sri Raj Kishore Behera, Member Secretary, State Commission for OBC, Bhubaneswar, Dist. Khurda.
12. Secretary, UPSC, Dholpur House, Sahajan Road, New Delhi.

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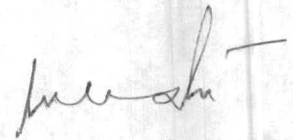
Mr.A.K.Bose, G.A,

(For Res.No.2)

M/s.K.C.Kanungo, S.Beura,

S.K.Patnaik, Advocates.(For

Resp.Nos.4&5.

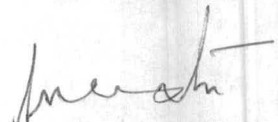


ORDER

MR.P.K.CHATTERJEE, MEMBER(ADMN.)

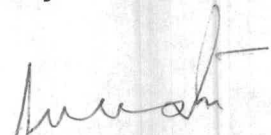
Both the O.A Nos.815 & 816 of 2006 have been filed by three Officers of Orissa State Civil Service seeking nomination to the Indian Administrative Service. The Applicants in both the Original Applications are similarly circumstanced and have sought for the same relief. The only difference is that their position in the seniority list of the State Civil Service Officers was different. Therefore, we are disposing of both the OAs by this common order.

2. The Indian Administrative Service Officers are mainly selected through competitive examinations conducted by the Union Public Service Commission. There is, however, a provision for nominating Senior Officers of the State Civil Service on the basis of their seniority and suitability to the Indian Administrative Service in a given proportion of the total cadre strength of the Indian Administrative Service. This



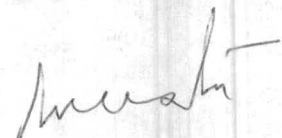
process is called 'appointment by promotion' and the process is governed by the Indian Administrative Service (Appointment by Promotion) Regulations, 1955.

3. The Applicants in both the Original Applications, belong to Orissa Administrative Service became eligible for their appointment by promotion to the Indian Administrative Service with effect from 1<sup>st</sup> January, 2003. They have challenged the legality and validity of the Notification No. 14015/17/2006-AIS(I)-A, dated 17<sup>th</sup> November, 2006 (Annexure-1). By this impugned notification, the Respondents notified a select list of 9 (nine) Officers for promotion to Indian Administrative Service for the year 2003. In the same notification a select list of 2004 for 8 (eight) Officers, a select list of 2005 for 10 (ten) Officers and a select list of 2006 for 9 (nine) Officers were issued. Applicants in both the OAs are aggrieved by the fact that although they were eligible for appointment by way of promotion, their names did not figure in any of the select



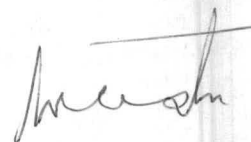
lists. It has been pointed out by the Applicants that there were infirmities in the impugned Notifications for the reason they became eligible for appointment by way of promotion regulations, 1955 to the Indian Administrative Service in the year 2003 and the DPC of 2003 was deferred and finally carried forward to 2006. But while considering the Officers coming within the zone of consideration, the Applicants were ignored except for the year 2003 and 2004 (only for Applicant in OA No. 816 of 2006) on the ground of they are being over-aged although proviso to Regulations 5 (3) makes them eligible for such appointment and implication of such provision was, as a matter of precedent followed in DOP&T Letter No.14015/5/98/AIS(I) dated 14.09.1998.

4. Applicants further contended that according to the Regulations 5 (5), the select list should be prepared by including the required number of names first from amongst the officers finally classified as 'Outstanding', then from amongst those similarly classified as 'Very Good' and



22

thereafter from amongst those classified as 'Good'. The selection of Officers is based on merit-cum-suitability-cum-seniority but in the impugned Notification the select list for 2003 was mechanically drawn up ignoring the bad antecedent of some of the Officers. According to the Applicants, first there should be a classification of officers according to their merit, thereafter suitability should become the next point for consideration. But the instant case is one where seniority has become the criteria regardless of the service records. In support of this contention, the Applicants have stated that the Respondents have placed some Officers in the select list having bad antecedent and they have been kept as provisional candidates subject to their coming out of the respective departmental proceedings. The Applicants have stated that in this way their legitimate aspiration for getting appointment by way of promotion to Indian Administrative Service has been belied. For the State Civil Service Officers the appointment by way of promotion to IAS

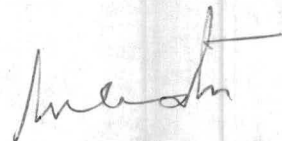


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is a cherished desire and reward for life long dedicated service but the Applicants have been denied this opportunity in spite of they being eligible in all respects including merit.

5. By making the above mentioned submission, the Applicants have sought for quashing the impugned Notification dated 17.11.2006 along with consequential Notification appointing the selected Officers in the Indian Administrative Service. The grounds which have been stated, besides the above mentioned points for canceling the notification is that the Respondents did not take into consideration the merit in the process of selection and the provision of 5 (3) of appointment by promotion regulations, 1955 has been given a complete go-by. The relevant proviso 5(3), therefore, needs to be cited:

“5(3) The Committee shall not consider the cases of the members of the State Civil Service who have attained the age of 54 years on the first day of January of the year in which it meets:



24/

Provided that a member of the State Civil Service whose name appears in the Select List (prepared for the either year) before the date of the meeting of the Committee and who has not been appointed to the Service only because he was included (provisionally in that Select List) shall be considered for inclusion in the fresh list to be prepared by the Committee, even if he has in the meanwhile attained the age of fifty four years:

Provided further that a member of the State Civil Service who has attained the age of fifty-four years on the first day of January of the year in which the Committee meets shall be considered by the Committee, if he was eligible for consideration on the first day of January of the year or of any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year or years".

*[Signature]*

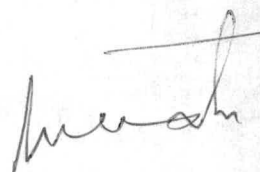
23

6. Replies were filed on behalf of the State Government of Orissa, UPSC and Private Respondent No.5. We will take up the above mentioned replies one by one. First the reply furnished by UPSC.

7. The back ground of the matter furnished by the UPSC in the reply filed on 13<sup>th</sup> February, 2007 is that the selection for the years 2003, 2004 and 2005 was kept in abeyance because of the fact that the matter was subjudice before the Hon'ble High Court of Orissa. It has been explained that the State Government forwarded a proposal for convening selection committee meeting for preparing select list of 2002 and 2003 for appointment by way of promotion to IAS. However, on 06.08.2003 the Commission received an order of the Hon'ble High Court of Orissa dated 30.07.2003 wherein the Hon'ble High Court upheld the order dated 22.11.2003 of the Orissa Administrative Tribunal regarding revision of the seniority of Shri Benudhar Dash and some other SCS Officers. As a matter of fact decision in

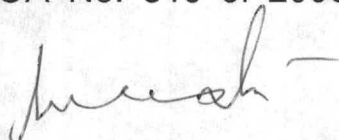
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regard to seniority of the SCS Officers comes under the purview of the State Government and they were requested to take immediate action and report the matter to the Commission. The State Government by letter dated 11.08.2003 intimated that some other Writ Petitions filed by the State Government and other affected Officers were also pending before the Hon'ble High Court of Orissa against the order dated 22.11.2002 of the Administrative Tribunal. As these Writ Petitions were not disposed of it was not possible to take decision on the part of the State Government. They had also intimated that the judgment of the Hon'ble High Court and the Orissa Administrative Tribunal had not effected on the eligibility list of State Civil Service Officers for the selection year 2002. Therefore, selection for 2002 was concluded by the Committee. However, in respect of the select list for 2003 it was decided to take action only after the decision of the Hon'ble High Court in the matter.



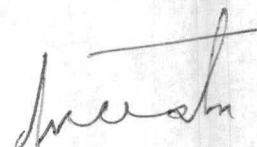
8. Vide letter dated 25.03.2006 the State Government intimated the Commission that the Hon'ble High Court finally disposed of the Writ Petitions on 21.02.2006 quashing the order of the Orissa Administrative Tribunal dated 22.11.2002. The State Government also confirmed the seniority list of Orissa Administrative Service Officers and furnished the same to the Commission. The State Government also determined the year-wise vacancies for 2003, 2004, 2005, 2006 as 09, 05 ~~and~~ 06 and 04 respectively. The State Government forwarded the proposal for preparation of year-wise select list from 2003 to 2006 and accordingly, the Selection Committee met on 5<sup>th</sup> and 6<sup>th</sup> October, 2006 and prepared the year-wise select list for 2003, 2004, 2005 and 2006.

9. It has further been clarified by the UPSC that for the year 2003, as against the 09 vacancies, as per Rules, 27 Officer from Orissa Administrative Service grade were considered. Applicants in OA No. 815 of 2006 were at Sl.



Nos. 11 and 12 of the eligibility list. Selection Committee examined the service record of the Officers named in the eligibility list and assessed 26 of them as 'Very Good' and one as 'Unfit'. On the basis of the assessment of the selection committee, 09 officers were included in the select list of 2003 on the basis of their seniority as against 09 vacancies. Shri K.C.Mohanty and Shri N.P.Das were included in the select list provisionally subject to clearance of the disciplinary proceedings pending against them whereas Shri Rajkishore Behera was included in the select list provisionally subject to conclusion of the disciplinary as well as criminal proceedings pending against him. Two Applicants in OA No. 815 and one Applicant in OA no. 816 of 2006 could not be included in the select list as they did not come within the first vacancies of nine.

10. For the year 2004, 2005 and 2006, two applicants in OA No. 815 of 2006 were not considered eligible as their dates of birth were '01.07.1949' and



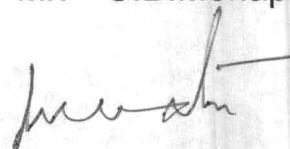
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'02.04.1949' respectively. They had completed 54 years of age on the 1<sup>st</sup> January of the year of Selection and, therefore, according to regulations, 1955 they became ineligible. Applicant in OA no. 816 of 2006, however, was still eligible for consideration in the year 2004 as he had not exceeded the age of 54 years on the crucial date. Five vacancies were declared by the State Government for the year 2004. Therefore, 18 officers were considered in the zone of consideration. Applicant was at Sl.No.9 of the eligibility list and the selection committee assessed him as 'Very Good' on the basis of service records. Three Officers who were included in the select list of 2003 provisionally were also considered in addition to the normal zone of consideration as per the provisions of 5(3) of the Regulations, 1955. Thereafter, the selection committee considered the merit-wise and seniority-wise position for final selection. On the basis of the assessment, the applicant in OA No. 816 of 2006 could not find a place in the select list of

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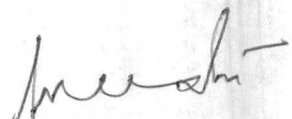
officers for the year 2004. The Applicant Shri R.N.Rout was not eligible for consideration in the select list of 2005 and 2006 as he was more than 54 years of age on the 1<sup>st</sup> January of the select list year his date of birth being '15.01.1950'.

11. By giving the above mentioned material facts, the UPSC has strongly denied the allegations stating that it has carried out its mandate strictly in accordance with the provisions of regulations, 1955 after the State Government forwarded the list of vacancies and the eligibility list. The UPSC has explained in detail the circumstances under which the selection for the year 2003, 2004 and 2005 could not take place in time. However, when it met it followed the regulations fully without any deviation. In reply, the UPSC also defended their action in the matter of grading and assessment of the service records of the eligible state service officers. It was clarified in the reply and also by the Learned Senior Standing Counsel Mr. U.B.Mohapatra



appearing for the UPSC during his submission that the grading which the Selection Committee made is based on the assessment of the last five years entry in the CRs. On the basis of these five years service records, the Selection Committee classifies the Officers as 'Outstanding', 'Very Good', 'Good' and 'Unfit'. In the matter of selection, 'Outstanding' Officers come above the other categories regardless of seniority list. Similarly, those classified as 'Very Good' would enblock be considered above of those classified as 'Good'. Learned Senior Standing Counsel for the UPSC drew our attention to the observations of the Hon'ble Supreme Court quoted in Para 7.5.3, 7.5.4 and 7.5.5 upholding these process of classification and selection which are as under:

"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 categories the eligible officers in four different categories



32 ✓

viz. "Outstanding", "Very Good", "Good" & "Unfit" on overall relative assessment of their service records. After categorization 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-se Seniority of officers within each category. If there are five officers who fall within "Outstanding" category their names shall be arranged in the order of their inter-se 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 a junior Officer having higher grading would supersede his seniors. This cannot be helped. Where selection is made on merit alone for promotion to a higher service selection of an officer though junior in service in preference to senior does not

*[Signature]*

37

strictly amount to supersession." (R.S.Dass – AIR 1987 SC 593).

"That being the legal position, the Court should not have faulted the so called down gradation of the 1<sup>st</sup> respondent for one of the years. Legally speaking, the term "down gradation" is an inappropriate expression. The power to classify as 'outstanding', 'very good', 'good' and 'unfit' is vested with the Selection Committee. That is a function incidental to the selection process. The classification given by the State Government authorities in the ACRs is not binding on the Committee. No doubt, the Committee is by and large guided by the classification adopted by the State Government but, for good reasons, the Selection Committee can evolve its own classification which may be at variance with gradation given in the ACRs. That is what has been done in the instant case in respect of the years 1993-1994. Such classification is within the prerogative of the Selection Committee and no reasons need be recorded, though it is desirable that in a case of gradation at variance with that of

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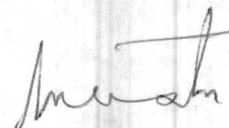
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the State Government, it would be desirable to record reasons. But having regard to the nature of the function and the power confined to the Selection Committee under regulation 5 (4), it is not a legal requirement that reasons should be recorded for classifying an officer at variance with the State Government's decision." (2005 SCC (L&S) 738=2005 AIR SCW 3275).

"When a high level Committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion this court cannot sit over the assessment made by the DPC as an appellate authority." (Nutan Arvind vs. Union of India and others – (1996) 2 SCC 488).

Learned Senior Standing Counsel for the UPSC also defended their action in making year-wise selection by citing the second proviso under regulation 5(l) which is as follows:

"Provided further that where no meeting of the Committee could be held



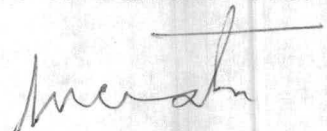
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during a year for any reason other than that provided for in the first proviso as and when the Committee meets again, the Select List shall be prepared separately for each year during which the Committee could not meet as on the 31<sup>st</sup> December of each year."

This provision was incorporated by an amendment which was published in part II, Section 3 Sub Section (1) of Gazette of India; Extraordinary dated 25<sup>th</sup> July, 2000.

12. As far as the factual position is concerned, the above position submitted by UPSC was corroborated by the Government of Orissa and private Respondents in their submissions. Therefore, it is not necessary to reiterate them. Mr.K. C. Kanungo, Learned Counsel for private Respondents has made the legal submission:

- (a) promotion is not a matter of right. Only consideration for promotion was a matter of right. Applicants should not have any grievance because their cases were considered, however, due to situation over



which the Respondents have no control they could not be given promotion. But no rights of the Applicants have been violated.

- (b) The Courts/Tribunal have no authority to go into the correctness of the decision. It is only the decision making process which can be challenged and examined by the Courts/Tribunal. In the two OAs under consideration, there was no flaw in the decision making process as the procedure which was followed was strictly in conformity with the IAS (Appointment by Promotion) Regulations, 1955 as amended from time to time. The Applicants have challenged the decision of the Respondents in making years-wise selection although it was done by the same selection committee in the year 2006. Even when the selection is deferred and met subsequently such selection has to be made year-wise as provided in the amended 2nd proviso of Regulation 5(1) ;(
- (c) There is flaw in the relief sought for by the Applicants. If the entire selection as notified in the impugned notification is quashed it would affect the interest of all offices who

*Murath*

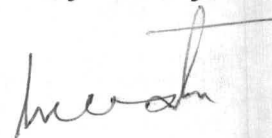
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were selected. Therefore, they being the necessary parties, ought to have been impleaded in the OAs which has, however, not been done. Therefore, both the OAs are flawed.

- (d) With regard to the point made by the Applicants that the selection committee ignored their merit and service records in making the selection, the Learned Counsel stated that the Selection Committee is vested with the powers to classify the officers in the eligibility list in different categories like outstanding, very good etc. after going through the last five years service records. The classification may not agree with the grading of an officer in any particular year of the preceding five years. It is assigned on a general assessment of the records for five years. Learned Counsel further stated that the decision of the Selection Committee is not questionable by any Courts/Tribunal which can only examine the manner in which the selection is made and not the correctness or otherwise of the classification.

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We have considered this aspect. However, the settled position seems to be that it would not be necessary to implead all the affected persons as parties. If some of the affected parties are impleaded in a representative capacity that would suffice. In these OAs two such private Respondents have been impleaded and, therefore, in this respect, the matter cannot be questioned.

13. The State Government in their reply also summarized the background as already explained. They have strongly defended their action in forwarding year-wise eligibility list by stating that the concerned regulation makes it clear that even when the selection is deferred due to such reason the selection has to be made year wise whenever it is held. Mr. A.K.Bose, Learned Government Advocate for the State of Orissa opposed the contention of the Learned Counsel for Applicants that on the analogy of the selection for the year 1997, the applicants should have been considered for selection in the subsequent years by relaxing



their age. Learned GA has strongly refuted this argument by stating that this order was in pursuance of the relevant provisions of Section 5 of the regulations. By this order no concession beyond whatever is stipulated in the regulation can be conceded. On the contrary provisions in the relevant regulations make it clear that whenever selection is to be made the eligibility has to be decided on the basis of age as on 1<sup>st</sup> January of the selection year. There was no scope for making any concession in the matter and therefore, on these grounds the action of the State Government cannot be assailed. It has repeatedly and categorically been stated by the Learned GA for the State of Orissa that under no provision of the Regulations the eligibility of the candidates for selection can be extended beyond whatever is permissible so far as age is concerned.

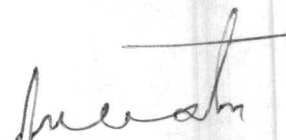
14. Mr. Srinivas Mohanty, Learned Counsel for the Applicants made further submission in addition to his initial submission as stated above, after hearing the submissions

*Mohanty*

made by three opposite counsel. The points which he made at this stage are as follows:

- (i) As on 1<sup>st</sup> January, 2006 vacancies were 26. So zone of consideration should have been 72. All the Applicants in these two OAs were within the 1<sup>st</sup> 24 as they were classified as 'Very Good', all of them would have been selected. In 2006 they were already above 56 years of age.
- (ii) However, they were all considered by virtue of proviso (2) of Regulations 5 (3). If so, it is inconsistent with the stand taken by the Respondents that none of the three Applicants would be considered beyond the selection year 2004.

At this stage it was pointed out to the Learned Counsel for Applicants that the two stands taken by him were contradictory. If he takes the point that in the year 2006 when the selection committee met all the vacancies for the four years should have been clubbed together and selection should have been made for all 24 vacancies out of eligibility list of 72 officers it would be inconsistent with the other stand



taken by him that for year-wise selection the applicants should have been considered for subsequent years i.e. 2004, 2005 and 2006 regardless of their age. If the Applicants stick to the claim that the selection of 2006 being a composite selection of four years, all the 24 vacancies should have been filled up in one go out of the eligibility list of 72 officers, he has to <sup>e</sup>forgo the other point that the applicants should have been considered for selection beyond 2004 ignoring their age. Obviously the two claims would not go together. This being pointed out, the applicants, however stuck to his contention that the selection should have been done in one go for all 24 vacancies.

15. We have, however, considered the matter from both angles. Having gone through the pleadings and after hearing the submissions of the parties, we have applied our mind to the entire factual matrix. Regarding the point made by the Learned Counsel for the Applicants that all 24 vacancies should have been filled up together out of the

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zone of consideration of 72 officers, we are of the view that this is inconsistent with the second proviso of Section 5(I) of the regulations as incorporated on 25<sup>th</sup> July, 2000 and as submitted by UPSC vide paragraph 4.1 of their reply to OA No. 815 of 2006. Therefore, this view is not tenable. We are of the opinion that the decision of the Respondents in making the year-wise selection cannot be flawed.

16. If on the other hand, we take the other point that for the years 2005 and 2006 also the Applicants should have been considered regardless of their age, this also does not appear to be borne out by the provisions of the concerned regulation. The Applicants' Counsel has tried to take the help of DOP&T letter No.14015/5/98-AIS(I) dated 14.09.1998 which is as follows:

"6. State Civil Service officers who crossed 54 years of age during 1.4.1997 and 31.12.1997 and where no selection committee met to consider their promotion to IAS during this period, are eligible to be considered by the Selection Committee

*Murthy*

meeting in 1998, in terms of the second proviso to Regulation 5(3) of the Promotion Regulations."

17. It would be clear from the above that this decision is taken in terms of the 2<sup>nd</sup> proviso to Regulation 5 (3) of the promotion regulation which is already cited above. The proviso 2 of regulation 5(3) makes it clear that for deferred selection taking place latter, the eligibility of an officer would be considered on the basis of his age of 1<sup>st</sup> day of January of the selection year. Therefore, on this point also we are not able to provide any relief to the Applicants.

18. We also applied our mind to the contention of the Applicants that the Selection Committee ignored their merit and service records and persons inferior in merit and in terms of records were selected. However, we thought the argument put forth by the Learned Counsel for private respondents which are recorded in para 12 (d) is quite convincing and should lay this matter to rest.

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44

20. It would therefore be clear on the basis of the above mentioned discussions and considerations that there is no merit in these two OAs. Therefore, we are not able to provide the relief as sought for in both the OAs. Accordingly, both the OAs stand dismissed by leaving the parties to bear their own costs.

  
(N.D. RAGHAVAN)

Vice-Chairman

  
(P.K. CHATTERJEE)

Member(Admn.)

KNM/PS