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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK


OA No. 331 of 2011


Cuttack, this the 22nd Day of February, 2012

Sri Rabi Narayan Nanda Applicant
Versus
Union of India & Others Respondents

FOR INSTRUCTIONS

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


(C.R. MOHAPATRA)
Member (Admn.)


(A.K. PATNAIK)
Member (Judl.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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Cuttack, this the 22nd Day of February, 2012

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THE HON'BLE MR.C.R.MOHAPATRA, MEMBER(ADMN.)

And

THE HON'BLE MR.A.K.PATNAIK, MEMBER(JUDL.)

Sri Rabi Narayan Nanda, aged about 57 years, Son of Late Fakir Mohan Nanda permanent resident of Gandarpur, Cuttack-3 and at present working as Municipal Commissioner, Cuttack Municipal Corporation, Cuttack, Odisha.

....Applicant

By legal practitioner: M/s.K.C.Kanungo,
H.V.B.R.K.Dora,
Counsel.

-Versus-

UNION OF INDIA REPRESENTED THROUGH

1. Secretary to Government of India, Ministry of Personnel, Public Grievances and Pension, Deptt of Personnel & Training, North Block, New Delhi-110 001.
2. State of Orissa represented through Chief Secretary to Govt. of Orissa, Orissa Secretariat, Bhubaneswar-751 001, Dist. Khurda, Odisha.
3. Union Public Service Commission, represented through its Secretary, Dholpur House, Sahajahan Road, New Delhi-1100069.
4. Naba Kumar Nayak, IAS at present Joint Secretary to Govt, W& CD Department, Orissa Secretariat, Bhubaneswar-1, Dist. Khurda, Odisha.
5. Smt. Manasi Mohanty, IAS, at present Joint Secretary to Government Department of Planning and Coordination Orissa Secretariat, Bhubaneswar-1, Dist. Khurda, Odisha.
6. Shri Bishnu Prasad Panda, IAS at present Joint Secretary to Government and working as Director Fisheries, Odisha, Cuttack.
7. Shri Sailendra Narayan Dey, IAS, District Magistrate and Collector, Bolangir, Dist. Bolangir, Odisha.

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8. Sri Krushna Chandra Mishra (2), IAS, Joint Secretary to Govt. Finance Department, Odisha Secretariat, Bhubaneswar-75100, Dist. Khurda, Odisha.
9. Shri Pradipta Kumar Pattnaik, IAS, District Magistrate and Collector, Kendrapara, At/Po/Dist. Kendrapara, Odisha.
10. Shri Gagan Bihari Swain, IAS, District Magistrate and Collector, Sonapur, At/Po/Dist. Sonapur, Odisha.
11. Sri Sibabrata Dash, IAS, District Magistrate and Collector, Nawarangpur, At/Po/Dist. Nawarangpur, Odisha.
12. Sri Bhagirathi Mishra, IAS, District Magistrate and Collector, Bargarh, At/Po/Dist. Bargarh, Odisha.
13. Sri Muralidhar Barik, IAS, Secretariat, State Election Commission, Odisha, Bhubaneswar, Odisha.
14. Sri Anirudha Rout, IAS, Joint Secretary to Govt. Higher Education Department, Odisha Secretariat, Bhubaneswar-75100, Dist. Khurda, Odisha.

.....Respondents

By legal practitioner: Mr.U.B.Mohapatra, SSC
 [For Res.No.1]
 Mr.G.C.Nayak,GA
 [For Res.No. 2]
 Mr.R.C.Swain,ASC
 [For Res. No. 3]
 Mr.S.K.Nayak, Counsel
 [For Res.Nos.4&13]
 M/s.P.R.Dash,J.Sahu,K.Raj,
 S.K.Mohapatra, Counsel
 [For Res.Nos.7]
 M/s.B.R.Sarasngi,S.K.Najal,
 D.Nayak,S.K.Sethi, Counsel
 (For Res.Nos.5, 6, &9]
 M/s.S.Mohanty,S.Moharana,
 S.Rouitray,N.Tripathy,
 [For Res.Nos.12&14]

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O R D E R

A.K.PATNAIK, JUDICIAL MEMBER:

This case relates to appointment/promotion of
 the State Civil Service Officers to the Indian Administrative
 Service by way of the Indian Administrative Service

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[Appointment by Promotion] Regulations, 1955 "hereinafter called as '**Regulations, 1955**'. Therefore, before going deep into the matter, it is worthwhile to quote relevant provisions of Regulations, 1955 which is stated herein below:

"5. THE INDIAN ADMINISTRATIVE SERVICE (APPOINTMENT BY PROMOTION) REGULATIONS, 1955

In pursuance of sub-rule (1) of rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954, the Central Government in consultation with the State Governments and the Union Public Service Commission hereby makes the following regulations, namely:-

1. Short title.- These regulations may be called the Indian Administrative Service (Appointment by Promotion) Regulations, 1955.

2. Definitions.- 2(1) In these regulations unless the context otherwise requires -

(a) "Cadre Officer" means a member of the Service;

(b) "Cadre Post" means any of the posts specified as such in the regulations made under sub-rule (1) of rule 4 of the Cadre Rules;

(c) "Cadre Rules" means the Indian Administrative Service (Cadre) Rules, 1954;

(d) "Committee" means the Committee set up in accordance with regulation 3;

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3 Constitution of the Committee to make Selection:- 3(1) There shall be constituted for a State Cadre or a Joint Cadre specified in column 2 of Schedule, a committee consisting of the Chairman of the Commission or where the Chairman is unable to attend, any other member of the Commission representing it and other members specified in the corresponding entry of column 3 of the said Schedule:

Provided that -

(i) no member of the Committee other than the Chairman or the member of the Commission shall be a person who is not a member of the Service;

7(iA) the nominee of the Government of India shall not belong to the cadre of the State for which the meeting of the Committee is to be held;

(ii) the Central Government may after consultation with the State Government concerned amend the Schedule.

3(2) The Chairman or the member of the Commission shall preside at all meetings of the Committee at which he is present.

(3) The absence of a member, other than the Chairman or member of the Commission, shall not invalidate the proceedings of the Committee if more than half the members of the Committee had attended its meetings.

5 Preparation of a list of suitable officers:- 5(1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Civil Service as are held by them to be suitable for promotion to the Service. The number of members of the State Civil Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under rule 9 of the recruitment rules. The date and venue of the meeting of the Committee to make the selection shall be determined by the Commission:

Provided that no meeting of the Committee shall be held, and no list for the year in question shall be prepared when,

(a) there are no substantive vacancies as on the first day of January of the year in the posts available for the members of the State Civil Service under rule 9 of the recruitment rules; or

(b) the Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for the members of the State Civil Service under rule 9 of the recruitment rules:

Provided further that where no meeting of the Committee could be held 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 31st December of each year;

Explanation- In the case of joint cadres, a separate select list shall be prepared in respect of each State Civil Service;

5(2) The Committee shall consider for inclusion to the said list, the cases of members of the State Civil Services in the order of a seniority in that service of a number which is equal to 15three times the number referred in sub-regulation (1):

Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times the maximum permissible size of the Select List and in such a case the Committee shall consider all the eligible officers:

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulation (3) shall be excluded:

Provided also that the Committee shall not consider the case of a member of the State Civil Service unless, on the first day of January of the year for which the Select List is prepared he is substantive in the State Civil Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government.

Provided also that in respect of any released Emergency Commissioned or Short Service Commissioned Officers appointed to the State Civil Service, eight years of continuous service as required under the preceding proviso shall be counted from the deemed date of their appointment to that service, subject to the condition that such officers shall be eligible for consideration if they have completed not less than four years of actual continuous service, on the first day of the January of the year for which the select list is prepared, in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government.

Explanation:- The powers of the State Government under the third proviso to this sub regulation shall be exercised in relation to the members of the State Civil Service of a constituent State, by the Government of that State.

5(3) The Committee shall not consider the cases of the members of the State Civil Service who have attained the age of 25 years on the first day of January of the year for which the Select List is prepared:

Provided that a member of the State Civil Service whose name appears in the Select List [prepared for the earlier 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 for which the select list is prepared 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 under item (b) of the proviso to sub-regulation (1).

(3A) The Committee shall not consider the case of such member of the State Civil Service who had been included in an earlier Select List and -

(a) had expressed his unwillingness for appointment to the Service under regulation:

Provided that he shall be considered for inclusion in the Select List, if before the commencement of the year, he applies in writing, to the State Government expressing his willingness to be considered for appointment to the service;

(b) was not appointed to the Service by the Central Government under regulation.

5(4) The Selection Committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit', as the case may be, on an overall relative assessment of their Service records.

5(5) The list shall 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 thereafter from amongst those similarly classified as 'Good' and the order of names *inter-se* within each category shall be in the order of their seniority in the State Civil Service.

Provided that the name of any officer so included in the list, shall be treated as provisional, if the State Government, withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal, are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

Provided further that while preparing year-wise select lists for more than one year pursuant to the second proviso to sub-regulation (1), the officer included provisionally in any of the select list so prepared, shall be considered for inclusion in the select list of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis, such inclusion shall be in addition to the normal size of the select list determined by the Central Government for such year.

Explanation I: The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a Court, as the case may be.

Explanation II: The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the Service shall be treated as having come to the notice of the State only if the same have been communicated to the Central Government and the Central Government is satisfied that the details furnished by the State Government have a bearing on the

suitability of the officer and investigation thereof is essential.

6. Consultation with the Commission:- This list prepared in accordance with regulation shall then be forwarded to the Commission by the State Government along with-

(i) the records of all members of the State Civil Service included in the list;

(ii) the records of all members of the State Civil Service who are proposed to be superseded by the recommendations made in the list;

(iv) the observations of the State Government on the recommendations of the Committee.

6-A. The State Government shall also forward a copy of the list referred to in regulation to the Central Government and the Central Government shall send their observations on the recommendations of the Committee to the Commission.

7. Select List:- 39(1) The Commission shall consider the list prepared by the Committee along with-

(a) the documents received from the State Government under regulation;

(b) the observations of the Central Government and, unless it considers any change necessary, approve the list.

7(2) If the Commission considers it necessary to make any changes in the list received from the State Government, the Commission shall inform the State Government [and the Central Government] of the changes proposed and after taking into account the comments, if any, of the State Government [and the Central Government], may approve the list finally with such modification, if any, as may, in its opinion, be just and proper.

7(3) The list as finally approved by the Commission shall form the Select List of the members of the State Civil Service.

Provided that if an officer whose name is included in the Select List is, after such inclusion, issued with a charge-sheet or a charge-sheet is filed against him in a Court of Law, his name in the Select List shall be deemed to be provisional.

7(4) The Select List shall remain in force till the 31st day of December of the year in which the meeting of the selection committee was held with a view to prepare the list under sub-regulation (1) of regulation 5 or upto sixty days from the date of approval of the select list by the Commission under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2), whichever is later:

Provided that where the State Government has forwarded the proposal to declare a provisionally included

officer in the select list as "unconditional", to the Commission during the period when the select list was in force, the Commission shall decide the matter within a period of forty-five days or before the date of meeting of the next selection committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the select list as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government under regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the select list ceased to be in force.

Provided further that in the event of any new Service or Services being formed by enlarging the existing State Civil Service or otherwise being approved by the Central Government as the State Civil Service under Clause (j) of sub-regulation (1) of regulation 2, the Select List in force at the time of such approval shall continue to be in force until a new select list prepared under regulation 5 in respect of the members of the new State Civil Service, is approved under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2).

Provided also that where the select list is prepared for more than one year pursuant to the second proviso to sub-regulation (1) of regulation 5, the select lists shall remain in force till the 31st day of December of the year in which the meeting was held to prepare such lists or upto sixty days from the date of approval of the select lists by the Commission under this regulation, whichever is later.

9. Appointments to the Service from the Select List.- 9(1) Appointment of a member of the State Civil Service, who has expressed his willingness to be appointed to the Service, shall be made by the Central Government in the order in which the names of the members of the State Civil Service appear in the Select List for the time being in force during the period when the select list remains in force :

Provided that the appointment of members of the State Civil Service shall be made in accordance with the agreement arrived at under clause (b) of sub-rule (3) of rule 8 of the Recruitment Rules in the order in which the names of the members of the State Civil Service occur in the relevant parts of the Select List for the time being in force.

Provided further that the appointment of an officer, whose name has been included or deemed to be included in the select list provisionally under the proviso to sub-regulation (5) of regulation 5 or under the proviso to sub-regulation (3) of regulation 7, as the case may be, shall be made within sixty days after the name is made

unconditional by the Commission in terms of the first proviso to sub-regulation (4) of regulation 7:

Provided also that in case a select list officer has expressed his unwillingness for appointment to the service, he shall have no claim for appointment to the service from that select list unless he informs the Central Government through the State Government before the expiry of the validity period of the select list, revoking his earlier expression of unwillingness for appointment to the service.

10. Power of the Central Government not to appoint in certain cases:- Notwithstanding anything contained in these Regulations [] the Central Government may not appoint any person whose name appears in the Select List, if it is of opinion that it is necessary or expedient so to do in the public interest.

Provided that no such decision shall be taken by the Central Government without consulting the Union Public Service Commission.

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2. Facts of the matter are that the Applicant, in the instant OA is a State Civil Service Officer in OAS (Super Time Scale). In accordance with Regulations, 1955, the Selection Committee Meeting was convened on 01-11-2010 for preparation of the Select Lists for promotion of State Civil Service Officers to the IAS of Orissa Cadre against the vacancies for the year 2006, 2007, 2008 and 2009. The total number of vacancies of the year 2008 was TEN. The name of the Applicant was included at Sl.No.9 of the list of State Service Officers who were to be considered against the TEN vacancies of IAS of the year 2008. As per the provisions, the Selection Committee considered the CCRs/ACRs of the preceding five years besides the other relevant service

records of each of the eligible officers included in the zone of consideration and after making over all assessment recommended TEN names including names of TWO Officers (who are junior to the Applicant) as against the TEN vacancies of the year 2008 but could not recommend the name of the Applicant for promotion to IAS, as on overall assessment of the preceding five ACRs/CCRs and other service records, the Applicant was found/declared **unfit** by the Committee. The recommendations of the Selection Committee were approved by the Commission vide letter dated 05-01-2011 and, thereafter, appointment notification was issued by the Government of India on 24.02.2011. The names of the State Civil Service Officers who were recommended and appointed/promoted to IAS as per Regulations, 1955 as against the vacancies of 2008 under Annexure-A/1 dated 24.02-2011 are given herein below:

Sl.No.	Names of the Officers (S/Shri)
1.	Naba Kumar Nayak
2.	Smt.Manasee Mohanty
3.	Bishnnu Prasad Panda
4.	Sailendra Narayan Dey
5.	Krushna Chandra Mishra No.2
6.	Pradipta Kumar Patnaik
7.	Gagan Bihari Swain
8.	Sibabrata Dash
9	Bhabagrahi Mishra
10	Muralidhar Barik

3. Similarly as against NINE vacancies of the year 2009, NINE State Civil Service Officers, who were found fit by the Selection Committee, were appointed/promoted vide notification under Annexure-A/1 dated 24-02-2011. As the Applicant was over aged his name could not be considered by the Selection Committee against the vacancies of the year 2009. The names of the State Civil Service Officers who were considered by the Selection Committee and promoted vide notification under Annexur-A/1 against the vacancies of the year 2009 are given herein below:

Sl.No.	Name of the Officer(S/Shri)
1	Janaki Ballav Mishra
2.	Guru Prasad Mishra
3.	Akshay Kumar Pani
4.	Srikanta Kabi
5.	Yudhistir Sethi (SC)
6.	Durga Prasad Behera
7.	Ashok Kumar Tarenia
8	Dukhishyam Satpathy
9.	Ramanarayan Dash

4. Alleging injustice in the decision making process of the matter of selection to Indian Administrative Service, Applicant sought its rectification by way of making representation under Annexure-A/6 series which did not yield any result, he has approached this Tribunal in the instant OA with the following reliefs:

“Your Lordship may be graciously pleased to admit this Application call for the records and upon hearing the

parties be pleased to quash the proceedings of the Selection Committee dated 01-11-2010 at Annexure-A/5 to the extent the Select List of 2008 is concerned, Notification dated 24.02.2011 of Government of India at Annexure-A/1 to the extent the Respondent No.4 to 13 are concerned and the Notification dated 24.2.2011 of Government of Orissa at Annexure-A/2 to the extent the Respondent No.4 to 14 are concerned for the ends of justice.

And

Be further pleased to direct the Respondents (1 to 3) to have review meetings of the Selection Committee for assessment and recommendation of the name of the Applicant for promotion to Indian Administrative Service by incorporating the name of the Applicant in the Select List-2008 for the ends of justice;

And

Be further pleased to hold that the Applicant is entitled to be empanelled in the select list of 2008 and to be promoted to Indian Administrative Service in respect of the year 2008 w.e.f. Dt.24.02.2011 with all consequential benefits and entitlements with arrears for the ends of justice;

And

Be further pleased to issue any other/further order(s) or direction(s) on the Respondents in the interest of justice."

5. Although Respondents have filed counter separately contesting the case of the Applicant, the stand taken therein is basically one and the same. Therefore, to avoid repetition, we proceed to place on record the stand taken in the counter filed by the Respondent No.3 [Union Public Service Commission, represented through its Secretary, Dholpur House, Sahajahan Road, New Delhi-1100069] in which it has been stated that the name of the Applicant was placed at Sl.No.9 of the eligibility list of State Civil Service Officers who were to be considered by the

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Commission as against the vacancies of 2008. On receipt of names of eligible State Civil Service Officers meeting was convened on 01-11-2010 to consider and recommend the names of suitable officers found fit for promotion to IAS as against the TEN vacancies of the year 2008. The Committee sat for the purpose, as per the consistent practice followed in the matter of induction to All India Services, examined the service records of each of the eligible officers with special reference to the performance of the officers during the last five years including the vacancy year, deliberating on the quality of the officer as indicated in various columns recorded by the reporting/reviewing officer/accepting authority in the ACRs for different years and then after detailed deliberation and discussion finally arrived at a classification to be assigned to each officer. The Selection Committee was not merely guided by the overall grading recorded in the ACRs of an officer but also took into account the appreciation/commendations, if any, received for the meritorious work done by the officers concerned vis-a-vis the orders awarding penalties/adverse remarks duly communicated to the officers which, even after due consideration of representation was not expunged. It has

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been stated that as informed by the State Government, a penalty of '**Censure**' was imposed on the applicant vide **order dated 06.08.2008**. The said position was brought to the notice of the Selection Committee. On overall assessment of the service records, preceding five years ACRs/CCRs of the applicant vis-à-vis the penalty of '**Censure**' imposed on the Applicant, he was graded '**unfit**' for inclusion in the Select List of the year 2008 for appointment/promotion to Indian Administrative Service under Regulations, 1955. It has been stated that Promotion Regulations do not provide for detailed method to be followed in the matter of assessment of officers. The Commission, have, therefore, evolved certain guidelines to be followed by the Selection Committee for categorization of State Civil Service Officers in terms of Regulation 5(4) of the Promotion Regulations. The said guidelines, as revised from time to time, are being uniformly followed for all the States/Cadres in the matter of induction to all India Service. As per the provisions of the aforesaid guidelines, the currency of '**Censure**' is taken as one year from the date from which it is imposed. In the cases where the Selection Committee meets to prepare the current Select List along

with the year wise Select Lists for earlier years, if the currency of the '**Censure**' flows into the SCM year, the officer would be graded as "Unfit" in the Overall Assessment for the first Select List prepared in which he is eligible to be considered and ignored for the subsequent Select Lists.

As regards the stand of the Applicant that despite having punishment of "**Censure**", Respondent No.14 (Shri Anirudha Rout) was considered and included in the list of promotion to IAS from State Civil Service Officers of the State of Orissa is concerned, it is the stand of the Respondents/UPSC that Shri Anirudha Rout was considered for promotion to the IAS against the vacancies of two Select Lists year i.e. 2006-A and 2007 in the same SCM. As intimated by the State Government, the Selection Committee were informed that a penalty of 'Censure' was imposed on Shri Rout vide order dated 19-06-2007. The Selection Committee took cognizance of it and assessed Shri Rout as '**Unfit**' for the first Select List under preparation i.e. 2006-A and ignored its effect for the subsequent Select List 2007 under the Scheme of the internal guidelines. Accordingly, on overall relative assessment of his service records, Shri Rout was assessed as 'Very Good' for the

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Select List of the year 2007 and his name was included in the Select List of 2007. Hence it has been stated that the example of Shri Rout is of hardly any help to the Applicant. Accordingly, Respondents have prayed for dismissal of this Original Application being devoid of any merit. The Applicant has filed rejoinder trying to justify his claim by reiterating more or less the stand taken in this OA.

6. According to Mr. K.C. Kanungo, Learned Counsel for the Applicant the issue determinable in this Original Application is whether the proceedings of the Selection Committee held on 01-11-2010 was in due conformity to the Statutory provisions of the Regulations, 1955 and whether the Selection Committee misdirected itself by taking extraneous or irrelevant materials in respect of the applicant into consideration and thereby depriving him from his lawful claim for promotion to IAS from the Select List of the year 2008. In this regard it was contended by him that the Selection Committee is required to go through the service records of the members of State Civil Service (ACRs) for the preceding five years who are coming under the zone of consideration. The Applicant was at Sl.No.9 of the eligible officers for consideration for promotion against TEN

vacancies for the year 2008. By drawing our attention to the proceedings of the Selection Committee placed at Annexure-A/5 (para 9.2., page 46 to the OA) it was contended by Mr. Kanungo, Learned Counsel for the Applicant that admittedly, preceding five years ACRs i.e. 2003-2004, 2004-05, 2005-06, 2006-07 and 2007-08 are the relevant and reckonable ACRs of the officers to be taken into consideration by the Committee for the vacancy year 2008. The Government of Orissa and for that matter all the State Governments maintain ACRs financial year wise (i.e. 1st April of the year to the 31st March of the succeeded year). Therefore, the order of punishment, if any, in respect of eligible officer(s) is required to be placed in the ACR dossier of the concerned officer(s). In support of the above submission, Mr. Kanungo, Learned Counsel for the Applicant has placed reliance on the **Book Circular No. 46 Gen Admn.(SE) Deptt Memo No.741-PRO-11/81(SE) dated 05.02.1982** and **Gen. Admn. Deptt Pro-692-10247 (110)/SE Dt.04.11.1993**. Citing the above, it was contended by him that the punishment of '**Censure**' was imposed on the Applicant vide order dated 06.08.2008 and, therefore, the Selection Committee should not have taken

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into consideration the punishment of '**Censure**' for adjudging the applicant '**unfit**' for appointment/promotion to IAS against the vacancies of the year 2008.

Further contention of the Learned Counsel for the Applicant is that para 2.1 of the Internal Guidelines of 2005 clearly defines that the year in which the Selection Committee actually meets (i.e. SCM year) is co terminus with the definition under Regulation 2(1)(1). The said regulations also provide that the SCM year as calendar year. By taking recourse of the aforesaid provision, it was contended by him that the SCM year of the applicant was 2010 and, therefore, in 2010 the punishment of '**censure**' has never flown. Therefore, the applicant ought not to have been graded as "**unfit**" in terms of para 4.5 of the internal Guidelines. His stand is that the currency of the penalty 'censure' is for ONE year i.e. from 06.08.2008 to 06.08.2009 and, therefore, even for the sake of argument if the calendar year is taken, still then it expired on 31.12.2009 and as such the currency of penalty ceased and did not flow to the SCM year i.e. 2010 and, therefore, the Applicant ought not to have been found '**unfit**' had there been proper application of mind by the Selection Committee.

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By placing reliance on the provisions made in paragraph 4.6.1 (d) of the Internal Guidelines in which it has been provided that "If the currency/effect of 'Censure' lapses before the SCM year, but is having implications on any of the years in the Assessment Matrix, the Committee would categorize the officer as **"unfit"** for the relevant year, when the Censure was current. Thereafter, the overall assessment of the officer may be made as per the procedure given in Section B.3 above" it was contended by Mr. Kanungo, that the Assessment Matrix of the Applicant from 2003-04 to 2007-08 cannot have any implication on the punishment since that was not then in existence. Therefore, declaring the applicant unfit by the Selection Committee being contrary to the Internal Guidelines, the applicant is entitled to the relief claimed in this OA.

Similarly, relying on the decision of the Hon'ble High Court of Orissa **dated 10-01-2006 in WP (C) No. 13132 of 2005** rendered in the case of **Krushna Chandra Mohapatra -V- Union of India and others**, it was contended by Learned Counsel for the Applicant that since declaring the applicant unfit is bereft of any reason and

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materials, the Applicant is entitled to the relief claimed in this OA.

In the above circumstances, by placing reliance on the decision of the Hon'ble Apex Court in the cases of **R.S. Dass -V- Union of India**, AIR 1987 SC 593 (page 607) & **M.V.Thimmaiah and Others -V- Union of India**, 2008(2) SCC 119 (para 19) has sincerely prayed to grant the relief as sought in this OA.

7. On the other hand, it was contended by Respondents counsel that there was no irregularity and illegality committed by the Selection Committee in assessing the Applicant unfit for inclusion in the Select List of 2008 for appointment/promotion to IAS as per Regulations, 1955. It was contended that on an overall relative assessment of the service records, the Committee assessed the eligible officers and graded them fit or unfit in accordance with the provisions of the promotion Regulations, 1955 and as per the Internal Guidelines of the Commission issued for the purpose. The case of the applicant was duly considered by the Selection Committee against the vacancies of the year 2008 at Sl.No.9 in the eligibility list. On an overall assessment of his service records the Committee found him

'unfit' and as such the applicant was not included in the Select List of 2008 due to availability of officers with higher/better grading without any order of punishment. It was contended that the Selection Committee does not base its assessment only on the overall ACRs grading of an officer but deliberates at length on his attributes as reflected under various columns of his ACR and assigns its own grading to each officer. Thus the final grading assigned to an officer by the Selection Committee may not necessarily be the same as the overall ACR grading of the officer. As such an officer's inclusion/non-inclusion in a select list would depend on the grading assigned by the selection committee which may be different from the ACR grading assigned to him by the reporting/reviewing officer. It was further contended that when the high level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, the Tribunal cannot sit over the assessment made by the DPC as an Appellate Authority and in this regard the Respondents have placed reliance on the decision of the Hon'ble Apex Court in the case of **Nutan Arvind -V- Union of India and Others, (1996) 2 SCC 488**. Further contention of the of the

Respondents' Counsel is that how to categorise the officers in the light of the 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. As such the Tribunal should not interfere in the matter. In support of the above proposition, the Respondents' Counsel placed reliance on the decision of the Hon'ble Apex Court in the case of **UPSC -V- H.L.Dev and others**, AIR 1988 SC 1069. Similarly, it was contended by Respondents' Counsel that law is well settled in the case of **Dalpat Abasaheb Solanke - V- B.S.Mahajan**, AIR 1990 SC 434 that it is not the function of the Tribunal to hear appeal over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates and that whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject and as such Respondents' Counsel sincerely prayed that there having no irregularity in the process of finding the applicant unfit, the Tribunal should not interfere in the matter. Next contention of the Respondents counsel is that promotion of SCS Officers to the IAS is not only a

promotion but is also an induction into the All India Services. As per the provisions of the Promotion Regulations, the Selection is based on merit. Where Selection is made on merit alone, a senior officer has no legal right to promotion but only has a right for consideration and if any officer junior to him is selected for promotion on merit, the senior officer is not legally superseded. In other words, the selections to the All India Services are primarily made on the basis of merit and seniority plays a secondary role. An element of supersession is also inherent in the selection process. In support of the stand that the Tribunal being not the appellate authority cannot sit over the assessment/recommendation made by the Selection Committee and that judicial review on the recommendation of the Selection Committee is limited, Respondents' Counsel has placed reliance on the decisions of the Hon'ble Apex Court in the cases of **Smt. Anil Katiyar V UOI and others**, 1997 (1) SLR 153, **UPSC V K.Rajaiah and others**, *(2005) 10 SCC 15, **Sh.M.V.Thimmaiah and Ors V UOI and others**, 2008 (2) SCC 199 and **Union of India V Mohan Lal Kapoor AIR 2005 SC 2853** and have prayed for dismissal of this OA.

8. After giving deep thoughts to the rival submissions of the parties, we have perused the materials placed on record vis-à-vis various provisions made in Regulations, 1955, Internal guidelines and the decisions relied on by the respective parties. We have also perused the relevant file [No. AIS/I 12/09] produced by the Respondent-Department.

9. At the out set we would like to put it on record that discretion available with the authority cannot be used discriminatorily. If it is so then the action taken in exercising the discretionary power is not sustainable in the litmus test of judicial scrutiny. Similarly, it is well settled law that every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary

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hence legally unsustainable. On examination of the concerned file dealing with the selection of the applicant and others keeping in mind the aforesaid dicta, we are of the view that the decision of the Selection Committee declaring the applicant '**unfit**' is not sustainable as the decision of the Selection Committee is bereft of any reason and supported with materials. Exercise of discretion by the Selection Committee discriminatorily is well evident from the fact that despite the order of punishment of censure Shri Rout was considered and appointed to IAS from State Civil Service of the State of Orissa. Similarly, SCS officers having punishment of censure had been considered and appointed/promoted to IAS. It is not in dispute that the SCM year is when the Selection Committee actually meets. It is also not in dispute that the ACRs of the State Civil Service Officers like the present Applicant are maintained financial year wise i.e. from 1st April of the year to the 31st March of the succeeding year. The vacancies were of the year 2008. The Applicant was awarded with the punishment of Censure for one year vide order dated 06-08-2008 and as such, the Selection Committee ought not to have taken into consideration such punishment of censure imposed on the

applicant after the assessment period and, therefore, the inevitable conclusion is that the elimination of the applicant in declaring him 'unfit' was made by taking into consideration extraneous material which is not sustainable in the eyes of law. We may note from paragraph 5.1.2 of the counter filed by the UPSC (Respondent No.3) that the Commission have evolved certain guidelines to be followed by the Selection Committee for categorization of State Civil Service Officers in terms of Regulation 5(4) of the Promotion Regulation, 1955 and they are being uniformly followed for all the States in the matter of induction to the All India Service. It has further been submitted by the Respondent No.3 (UPSC) that the currency of '**Censure**' is taken as one year from the date from which it is imposed. In the cases where the Selection Committee meets to prepare the current Select List along with the year-wise Select Lists for earlier years, if the currency of the Censure flows into the SCM year, the officer would be graded as "Unfit" in the Overall Assessment for the first Select List prepared in which he is eligible to be considered and ignored for the subsequent Select Lists. While applying this criterion to the case of the Applicant, we find that there has been gross

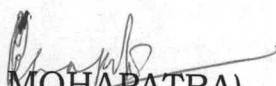
misinterpretation and misapplication of the guidelines. The Selection Committee Meeting took place on 01-11-2010. The penalty of censure was imposed on the Applicant vide order dated 06-08-2008. Hence the currency period of this penalty which is one year expires on 05.08.2009. The SCM is 2010. We are of the view that the currency of the censure which terminates on 05-08-2009 cannot and does not flow into the SCM year 2010. Therefore, the gradation of the Officer/Applicant as 'unfit' in overall assessment for the first select list in which he was eligible to be considered was absolutely illogical being contrary to its own guidelines. Hence the assessment of the applicant ought to have been made treating the punishment of '**Censure**' as *non est* when the Selection Committee met to consider the cases on 1-11-2010.

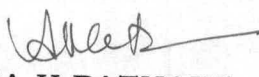
We also observe that in similar circumstances Respondent No. 14(Shri Anirudha Rout) who had faced the punishment of 'Censure' was promoted and because of the age constraint the applicant has been deprived of consideration for induction to All Indian Service against the vacancy of 2009. The ingenuity shown in dealing with the case of Respondent No.14 ought to have been extended to

the case of the Applicant without making any invidious distinction between the two.

10. In view of the above the applicant who was very much eligible in terms of his age deserves to be reconsidered along with all other eligible officers against 2008 vacancies by reviewing the proceedings of the Selection Committee which met on 01-11-2010 by treating the penalty of '**Censure**' as *non-est* during 2010. Accordingly, the Respondents 1 to 3 are hereby directed to do/complete the entire exercise within a period of 60(Sixty) days from the date of receipt of copy of this order and issue a revised order of promotion.

11. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(C.R. MOHAPATRA)
Member (Admn.)


(A.K. PATNAIK)
Member (Judl.)