

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Original Application No. 907 of 2013  
Cuttack, this the 10<sup>th</sup> day of March, 2016

Bijay Mishra ..... Applicant  
Versus  
Union of India & Ors. ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to PB for circulation?

  
(R.C.MISRA)  
Member (Admn.)

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

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O. A. No. 907 OF 2013**  
Cuttack, this the 10<sup>th</sup> day of March, 2016

CORAM  
**HON'BLE MR. A.K. PATNAIK, MEMBER (J)**  
**HON'BLE MR. R.C.MISRA, MEMBER (A)**

.....

Bijay Mishra,  
aged about 54 years,  
S/o Late Sudarshan Mishra,  
Residing at Qr. No. 3RF, 16/1,  
Unit 9 (Flat), Bhubaneswar  
At present working as Deputy Registrar,  
Co-operative Society (Fisheries)  
Office of the Director Fisheries Orissa, Cuttack.

.....Applicant

By the Advocate(s)-M/s. G.Rath, S.Rath, B.K.Nayak-3

**-Versus-**

Union of India represented through

1. Secretary to Govt. of India,  
Department of Personnel & Training,  
Ministry of Personnel, Public Grievances and Pensions,  
North Block, New Delhi-111001.
2. Union Public Service Commission represented through its  
Secretary, UPSC, Dholpur House,  
Sahajan Road, New Delhi.
3. State of Orissa represented through its  
Chief Secretary to Govt. of Orissa,  
Bhubaneswar, Dist- Khurda-751001.
4. State of Orissa represented through its  
Special Secretary to Govt. GA Department,  
Bhubaneswar, Dist- Khurda-751001.
5. Commissioner Cum Secretary to Govt.,  
Cooperation Department, Odisha Secretariat,  
Bhubaneswar, Dist- Khurda.
6. Shri Smruti Ranjan Pradhan,  
Deputy Director, (Industries),  
P.R. Department, Secretariat, Bhubaneswar.

Respondents.

By the Advocate(s) - Mr. S.Behera, Mr. P.R.J.Dash,  
Mr. G.C.Nayak and Mr. Amitav Pradhan

*Behera*

## ORDER

### A.K.PATNAIK, MEMBER (JUDL.):

The applicant is a Non State Civil Service Officer of the State of Odisha. The Respondent-Department i.e. State of Odisha, in order to fill up 2(two) vacancies of IAS of the year 2013 (out of Non-State Civil Service Officers' of the State of Odisha), in terms of Indian Administrative Service (Appointment by Selection) Regulation, 1997, constituted a committee to scrutinize and recommend the names of eligible NSCS Officers of the State of Odisha for appointment/selection through a duly constituted Committee. The committee constituted for the purpose, considered the eligible NSCS Officers of the State of Odisha and recommended (Annexure-A/3), the following names:

Sri Debenedra Kumar Jena
Shri Gauranga Charan Dash
Shri Gopabandhu Satpathy
Shri Niranjan Sethi
Shri Prasanna Kumar Jena
Shri Smruti Ranjan Pradhan
Shri Sunil Kumar Panda
Shri Suresh Chandra Dalai

2. Being aggrieved by the non inclusion of his name, the applicant submitted representation which having been rejected vide letter dated 28<sup>th</sup> October, 2013 (Annexure-A/7), this OA has been filed seeking the following reliefs:

“To quash the letter of rejection dated 28<sup>th</sup> October, 2013 at Annexure-A/7;

And

To direct the Respondent Nos. 3 & 4 to include/recommend the name of the Applicant in the list recommended Annexure-A/3 to the Respondent No.1&2 and to direct the Respondent Nos.1&2 to consider the case of the applicant along with others at one slot by one Selection Committee for consideration for selection/



appointment against 2(two) vacancies of IAS of the year 2013, in terms of the IAS (Appointment by Selection) Regulation, 1997;

And

To pass any other order/orders as deemed fit and proper.”

3. By way of ad interim measure, he has also sought the following direction:

“Pending final decision on this OA, the Hon’ble Tribunal may graciously be pleased to direct the Respondents 1 to 5 not to hold selection for appointment/promotion against 2(two) vacancies of IAS of the year 2013, in terms of IAS (Appointment by Selection) Regulation, 1997 in pursuance of the recommendation at Annexure-A/3”.

4. This matter was listed on 26<sup>th</sup> December, 2013 for considering on the question of admission and grant of the ad interim order, as above and, after hearing at length of the learned counsel for both sides, the following order was issued:

“Heard Mr.G.Rath, Learned Senior Counsel appearing for the Applicant assisted by Mr. Sambit Rath, Mr. U.B.Mohapatra, Learned Senior CGSC appearing for the Respondent No.1, Mr.G.C.Nayak, Learned Government Advocet for the State of Odisha (Respondent Nos. 3,4, and 5) and Mr.P.R.J.Dash, the learned nodal Counsel for the Respondent No.2 and perused the records. **Admit. Issue notice to the Respondents returnable in four weeks. Counter, if any, be filed within another period of four weeks after serving copy thereof on the other side.**

2. In so far as interim relief sought in this O is concerned, after hearing learned counsel for both sides, while granting fifteen days time to the Respondents to file their reply, if any, to the interim relief, by way of ad interim measure, Respondent Nos. 1 to 5 are hereby directed to maintain status-quo in so far as post/selection for filling up of two vacancies of IAS of the year 2013, in terms of IAS (Appointment by Selection) Regulation, 1997 in pursuance of the recommendation at Annexure-A/3. List this matter

Wishes

**week commencing 6<sup>th</sup> January, 2014 for giving further consideration in the matter.”**

5. Despite service of notice and adequate opportunities, no reply has been filed by the Respondent No.1 i.e. DoP&T. The Respondent No.2 i.e. UPSC vide letter dated 6<sup>th</sup> May, 2014 (Annexure-R-3/2) doesn't want to make separate appearance and defend the matter; as it relates to forwarding the names of eligible non SCS Officer of the State Government for selection to IAS which comes within the exclusive purview of the Government of Odisha.

6. Similarly, in spite due service of notice and opportunities being granted, none represented for the Respondent No.6.

7. However, the Respondent Nos. 3 & 4 filed their counter objecting to the prayer of the applicant.

8. The applicant has also filed his rejoinder. This being a matter of 2013, the same was taken up for hearing and final disposal.

9. Heard all concerned and perused the pleadings and materials appended thereto by the respective parties. We have also gone through the Regulations based on which selection was scheduled to be held.

10. The learned Senior Counsel appearing for the applicant, placing reliance on the averments in the OA and rejoinder, and the documents placed in support thereof, submitted that in order to fill up 2(two) vacancies of IAS of the year 2013 (out of Non-State Civil Service Officers' of the State of Odisha), in terms of Indian Administrative Service (Appointment by Selection) Regulation, 1997, the nodal Department i.e. General Administration Department of the Government of Odisha, vide letter dated 15.4.2013 requested all the Departments of

*[Signature]*

the Government of Odisha to send the names of eligible/suitable NSCS Officers by 10.5.2013. In response thereto, all total 15 names were received by the G.A Department (Res.No.4). After receipt of names, preliminary scrutiny committee was constituted on **28.05.2013**, in terms of the provision of IAS (Appointment by Selection) Regulation, 1997, who considered the names of NSCS Officers and recommended names of 8(eight) NSCS Officers for selection against 2(two) vacancies of IAS for the year 2013. It has been stated that despite deficiencies and discrepancies viz; (i) the nomination of Shri Gauranga Charan Jena was received by Respondent Nos.3&4 after the cut-off date for which his name was shown in separate list at Sl.No.1; (ii) the name of Shri Gopabandhu Satpathy was shown at Sl.No.2 whose CCR/ACR for two years were wanting; (iii) as against the name of Shri Prasanna Kumar Jena (Sl.No.4) it would be evident that his ACR/CCR for two years were wanting ; (iv) as against the name of Shri Smruti Ranjan Pradhan (Sl.No.13) it would be evident that his one year ACR/CCR was wanting. Though the post in which Shri Pradhan was continuing was not declared equivalent yet he was considered and recommended. Whereas, the Applicant (at Sl.No.3) who is having outstanding caliber and ability throughout (except very good for the period from 08.08.08 to 31.03.2009) was excluded. The applicant submitted representation dated 19.7.2013 against non-inclusion of his name and he was intimated vide letter dated 28.10.2014 that his representation has been considered and rejected being devoid of merit.

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Mr. Rath drew our attention to the appointment to IAS in terms of IAS (Appointment by Selection) Regulation, 1997 to submit that the Regulation 4 of IAS (Appointment by Selection) Regulations, 1997 (hereinafter called as 'Regulation, 1997) provides that the State Government may, from time to time, consider the cases of persons not belonging to the State Civil Service but serving in connection with the affairs of the State for appointment to IAS by Selection. Keeping in view the Regulation 4 of IAS (Appointment by Selection) Regulation, 1997 the Government of Odisha, GA Department vide OM No. 1148/AISI dated 11.1.2005 and OM No. 15145/AIS.I dated 31.7.2010 declared 31 services as Non-State Civil Service equivalent to the post of Deputy Collector for the purpose of selection to IAS as per Regulation, 1997. In terms of Regulation-III of the Indian Administrative Service Regulation, 1997 the number of Non-SCS Officers, proposed for consideration for the Selection Committee shall not exceed 5 times of the number of vacancies. The Regulation 4 of the Regulation, 1997 further envisages that the State Govt. from time to time consider the cases of the persons not belonging to the State Civil Service serving in connection with the affairs of the State for appointment to the IAS by way of Selection and they should have out-standing merit and ability, have completed not less than 8 years of service on the day of 1st January in Gazetted Post under the State Govt. and have not attained the age of 54 years, on the 1st day of January of the year in which the meeting is held.

In exercise of the powers conferred under the Regulation, 1997 the Government of Odisha invited names of eligible/suitable NSCS



Officers vide letter dated 15.4.2013 for selection and appointment to IAS in terms of Regulation, 1997/appointment to posts concerning to Union Government. The Committee constituted for the purpose was also within the frame work of Regulation, 1997. The Committee when acts, they act under a statute or a rule; provision of which binds from all cornered, the act of the concerned authority. There is no unfettered or unbridled discretion/power available with the Committee as the same was formulated under Regulation, 1997. The discretion of the authority is to be in accordance with rules, reasons and justice and not on the *ipso dixit*. If there is any infraction to the rules it cannot be presumed that the act of the Committee is sustainable. As stated the Committee constituted for the purpose acted in a pick and chose manner dehors the Regulation, 1997 meaning thereby treating similarly situated employees dissimilarly, and denying equal opportunity for appointment to IAS resulting into violation of Articles 14 and Article 16(1) of the Constitution of India. Such non recommendation by the State for appointment to IAS came up for consideration before the Hon'ble Hyderabad Bench of the Tribunal in OA No. 1291 of 2010 (B.Amrutha Lakshmi –Vrs- State of Andhra Pradesh and Ors.) and finally, the injustice caused to Ms.B.Amrutha Lakshmi was held to be illegal and arbitrary by the Hon'ble Supreme Court reported in AIR 2014 (SC) page- 751.

It has been submitted that the mandate of Art.13 (1&2) reads with definition of “law” in clause 3(a) provides that any order which takes away or abridges the fundamental right shall be void. The Art.14 of the Constitution mandates that the State shall not deny any



person equality before the law or equal protection of the laws. Similarly the Art. 16 (1) mandates that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Therefore, the doctrine of uniformity and doctrine of consequential order applies. Once the inclusion of name by the committee does not pass the test of reasonableness, fairness, and regulations, the same is void *ab initio* and therefore, if selection is held on the basis of the said list/incomplete list, this would be a nullity in the eyes of law. Mr. Rath contended that in the meantime Shri Gopabandhu Dash has already been appointed/promoted to IAS. If Shri Pradhan and Shri Dash are excluded there will be six names as against the two vacancies which cannot meet the very aim and object of the system that more the number of candidate best person can be selected in the interest of the State.

Next limb of submission of Mr. Rath is that trite is the proposition of law that there should be no discrimination between one homogenous group of employees or discretion can be exercised discriminatorily. It is the cardinal principles that the Government is to ensure the rule of law and to see that the authorities' act fairly and give a fair deal to its employees consistent with the requirements of the Articles 14 and 16 of the Constitution of India which is absent in the instant case as could be evident from the materials placed on record. Confining the names of eight officers as against ten is also not sustainable in the eyes of law as mandate enshrined in Articles 14 and 16 of the Constitution of India strike the arbitrariness in State's action. The provision provides that



the State action must be based on valid relevant principles applicable alike to all similarly situated persons and it must not be guided by any extraneous or irrelevant considerations because that would be a denial of equality. Where the operative reason for State's action as distinguished from the motive inducting from the ante chamber of the mind is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would tantamount to the mala-fide exercise of power and hence hit by Article 14 and 16 of the Constitution of India. In the given case as the recommendation is based on irrelevant consideration actuated with oblique motive, the said recommendation is not sustainable in the eyes of law. Accordingly, to buttress his claim by placing reliance on the decision of the Hon'ble High Court of Orissa in regard to maintainability of this OA rendered in the case of Budhimanta Das -Vs- State of Orissa and others, 2003 (II) OLR 504; this Tribunal in the case of Gopabandhu Biswal -Vs- Union of India and others in TA No. 01/1999 dated 24.12.1991; the Hon'ble High Court of Jharkhand at Ranchi, in WP ( C ) No. 2464 of 2006 disposed of on 21.8.2009 (State of Jharkhanda V UOI and others) has prayed for allowing this OA.

11. Per contra, Mr. G.C.Nayak, learned Government Advocate appearing for the State of Odisha, placing reliance on the averments made in the counter submitted that as per the regulation, a preliminary scrutinizing committee meeting was held on 28.05.2013 for forwarding names of not exceeding 10 eligible NSCS Officers of the State for selection to IAS for the year 2013. On evaluation of CCR records as a



whole, other relevant documents and general assessment of the work of all 15 officers sponsored by different departments, the Committee decided to recommend the names of eight non state civil service officers for consideration by the selection committee on the basis of outstanding ability and merit. It is a fact that inclusion of the name of Shri Smruti Ranjan Pradhan was not justified for which his name was excluded from the said list and such fact was also intimated to the UPSC vide letter dated 09.04.2014. It is also a fact that the nomination of Shri Gouranga Charan Dash was received after the cut off date. As the meeting of the committee was held on 28.5.2013 and the nomination of his named was received on 17.5.2013, his name was taken into consideration by the committee which cannot be found faulted with. In terms of the regulation, the number of Non State Civil Service Officers proposed for consideration by the selection committee shall not exceed five times the number of vacancies to be filled up by selection during the relevant year. As two vacancies were determined by the Govt. Of India, maximum ten number of officers were to be recommended. But it is not mandatory to recommend exact ten number of officers for consideration. Furthermore, Mr. Nayak drew our attention to the provision 5 of Regulation, 1997 to state the period within which the selection was to be held, having been expired, this OA is rendered infructuous. Accordingly, Mr. Nayak prayed for the dismissal of this OA.

12. The learned advocates appearing for the Union of India and UPSC also supported the arguments advanced by the State of Odisha and



have prayed that this OA being devoid of any merit is liable to be dismissed.

13. Before proceeding further, we would like to deal with regard to the preliminary objection raised by the learned counsel for the respondents that this being a matter of Government of Odisha falls within the jurisdiction of the State Tribunal and the CAT has no jurisdiction. Instead of delving the matter into great detail in this regard, it would suffice to place the reliance on the decision of the Hon'ble High Court of Orissa rendered in the case of Budhimanta Dash -Vs- State of Orissa and others, reported in 2003 (II) OLR 504 (paragraph 8) and hold that this Tribunal has the jurisdiction to entertain and decide the matter on merit. Hence, the argument advanced by the learned counsel for the respondents with regard to the maintainability of this OA before this Tribunal is hereby overruled.

14. In so far as the validity of the selection committee is concerned in view of regulation 5 of the IAS (Appointment by Selection) Regulation, 1997, we do not see any force in the said submission as much before the expiry of the validity period, the applicant has filed this OA and the selection was stayed by this Tribunal and in the said circumstances by applying the principle lis-pendence we hold that there is no force in the said submission of the respondent's counsel which is also over ruled.

15. Further before adverting upon the submissions made by the respective parties, it is worthwhile to mention that the relevant Regulations for our purpose are the IAS (Appointment by Selection)



Regulations, 1997. Clause No.3, Regulation Nos. 3 & 4 thereof, are relevant for this purpose. Regulation 3 deals with the determination of vacancies to be filled. Regulation No. 4 lays down the provisions for the State Government to send proposals for consideration of the Committee referred to in Regulation No.3, for which the committee was constituted to scrutinize & recommend the names for consideration to be appointed to the Indian Administrative Services (Promotion by Appointment) Regulations, 1955. These are two Regulations Nos. 3 and 4 read as follows:

**“3. Determination of vacancies to be filled:**

The Central Government shall in consultation with the State Government concerned determine the number of vacancies for which recruitment may be made under these Regulations each year. The number of vacancies shall not exceed the number of substantive vacancies as on the first day of January of the year, in which the meeting of the Committee to make the selection is held.

**4. State Government to send proposals for consideration of the Committee.**

1) The State Government shall consider the case of a person not belonging to State Civil Service but serving in connection with the affairs of the State who,

(i) is of outstanding merit and ability and  
(ii) holds a Gazetted post in a substantive capacity; and

iii) has completed not less than 8 years of continuous service under the State Government on the first day of January of the year in which his case is being considered in any post which has been declared equivalent to the post of Deputy Collector I the State Civil Service and propose the person for consideration of the committee. The number of persons proposed for consideration of the committee shall not exceed five times the number of vacancies proposed to be filled during the year.

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Provided that the State Government shall not consider the case of a person who has attained the age of 54 years on the first day of January of the year in which the decision is taken to propose the names for the consideration of the Committee.

Provided also that the State Govt. shall not consider the case of a person who having been included in an earlier select list has not been appointed by the Central Government in accordance with the provisions of Regulation 9 of these Regulations."

16. We have gone through the details of all the eight recommended officers vis-à-vis the applicant prepared by the Committee, which is at page 34 of this O.A.

17. The proceeding of the meeting of the committee dated 28.05.2013 is as under:

"On evaluation of ACR/PAR records and general assessment of the work of the officers sponsored by different Departments, the Committee decided to recommend the names (Arranged alphabetically) of the following 8 (Eight) Non-State Civil Service Officers for the consideration of the Selection Committee on the basis of outstanding merit.

- i. Shri Debendra Kumar Jena, Odisha Finance Service
- ii. Shri Gauranga Charan Dash, Odisha Planning Service
- iii. Shri Gopabandhu Satapathy, Odisha cooperative Service
- iv. Shri Niranjan Sethi, Odisha Information Service
- v. Shri Prasanna Kumar Jena, Odisha Cooperative Service.
- vi. Shri Smruti Ranjan Pradhan, Dy. Director (Industries), P.R.Deptt.
- vii. Shri Sunil Kumar Panda, Odisha Service of Engineers (Elect.)
- viii. Shri Suresh Chandra Dalai, Odisha Service of Engineers (Civil)"

18. The representation submitted by the applicant against his non inclusion was considered and result thereof was intimated to the

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applicant in letter dated 28<sup>th</sup> October, 2013 (Annexure-A/A/7) is as under:

“I am directed to invite reference to your representation dtd. 19.07.2013 on the subject cited above and to say that your representation has been considered and rejected being devoid of merit.”

19. We find that the relevant rules are very clear and it is not in dispute that the applicant satisfied all those requirements. The applicant was a gazetted officer in a substantive capacity and he had completed more than eight years of continuous service which was a post declared to be equivalent to the post of Deputy Collector. He had not completed the age of 54 years and from the relevant records, quoted above, it is not also in dispute about his outstanding merit and ability. However the committee did not recommend his name while recommending the names of the officer who was not at all eligible as per the Regulation or whose application has been received beyond the cutoff date. The representation submitted by the applicant was also rejected without assigning any reason though assigning reason and meeting and answering the points raised by the applicant in the representation is sine qua non being one of the cardinal principles of natural justice. The Committee also did not give any reason while declining to recommend the name of the applicant. It has been stated by the respondents in the counter that on evaluation of CCR records as a whole, other relevant documents and general assessment of the work of all 15 officers sponsored by different departments, the Committee decided to recommend the names of eight non state civil service officers for consideration by the selection



committee on the basis of outstanding ability and merit. But the proceeding of the recommendation and subsequent communication made in this regard or even the counter is conspicuously silent on what basis the respondents thought is just and proper to withhold the name of the applicant while recommending the name of ineligible officer and even name of officer whose application received after the cutoff date fixed for this purpose. We are also told in course of hearing that another recommended officer namely Shri Gopabandhu Dash has in the meantime been appointed to IAS against 2010 vacancies. However, in the counter it has been stated that the name of the said officer has been excluded. If it is so, then the list of recommended officers shall be lesser than not only ten but also eight which would not meet the requirement of the regulation in which it has been provided that the number of persons proposed for consideration of the committee shall not exceed five times the number of vacancies. This provision has got interpreted by the Hon'ble Apex Court in the case of **B.Amrutha Lakshmi v State of Andhra Pradesh and Ors**, reported in AIR 2014 SC 751. The relevant paragraphs are quoted herein below:

17. The question for our consideration is whether such a restriction of the candidates to be considered, who were otherwise eligible, was permissible under the rules. It is not disputed that the petitioner was very much eligible for being considered, and there were so many similar eligible candidates. It was being portrayed by the respondents that from every department 300 persons were eligible, and there are 30 departments and therefore, the number would go to some 9,000 and above. Now, what is to be noted is that all that the eligible officers concerned have, is a limited right of being considered, though they do not have a right of promotion, as held in Shankarsan

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Dash Vs. Union of India 1991 (3) SCC 47. Mr. Narshimha submitted that this limited right should not be denied to the candidates like the appellant, on the basis of the ground that in such a case a large number of names will have to be forwarded. That apart, he submitted that there was no substance in this justification, and it was merely a bogie. This is because what the State Government had to do first was to find out as to who fulfilled the criteria. Undoubtedly, a large number of persons will fulfill the criteria, being Gazetted Officers with more than 8 years of service, and less than 54 years of age on the relevant date. They would also have to be in the required pay scale. However, as stated in paragraph 4 of the Principal Secretary's letter, while considering the outstanding merit and ability, those with adverse remarks and those facing departmental enquiries were to be excluded. Therefore, there was no difficulty in excluding such persons on those grounds. Thereafter, what remained to be seen was as to who were the persons with outstanding ability and merit amongst them? The State Government maintains their annual appraisal reports, and for such selection it lays down some criteria of maintaining the outstanding merit and ability over certain period viz. that in previous five years the officer must have 3 outstanding reports, or that in the previous 3 years the officer concerned must have all throughout an outstanding rating etc. It is for the State Government to lay down by rules as to how the outstanding merit and ability is to be assessed, and over how much period. After all these tests are applied, the number of persons to be recommended will not be very large. However, once a candidate comes into the zone of consideration, and satisfies all the requirements, including that of outstanding merit and ability, he cannot be told that merely because he is junior in the seniority, his name will not be forwarded for consideration. The rule requires that from amongst the outstanding officers, 15 names are to be forwarded to the Central Government, and hence it is possible that amongst these 15, a junior officer may as well figure, depending upon the assessment of his merit. He cannot be eliminated merely on the ground that he is a junior officer, and that if selected he will write the ACRs of his superiors.

18. We have got to accept that, if the rules for selection contain a requirement, the same has to be

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applied uniformly and strictly, and none from the eligible group can be eliminated from being considered on any criteria, other than those which are provided in the rules. If there is a criteria laid down for selection, the Administration has to confine to the same, and it cannot impose an additional criterion over and above whatever has been laid down. If that is done, it will no longer remain an exercise of discretion, but will result into discrimination. It will mean treating similarly situated employees dissimilarly, and denying equal opportunity to some of them in the matter of public employment on the basis of a criterion which is not laid down, resulting into violation of Articles 14 and Article 16(1) of the Constitution of India. If the rules were to provide that in the event of large number of persons coming into the zone of consideration, the names of the senior most alone will be forwarded, then it would have been a different situation. In the absence any such restrictive rule, as in the present case, the decision of the respondents cannot be justified.

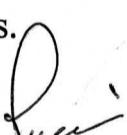
19. In view of the reasons stated above, we accept the submissions canvassed on behalf of the appellant. The prayers in the O.A. filed by the appellant were negatively worded viz. to declare that the action of the respondents not to consider the case of the appellant, and not to forward her name, was illegal. In a way it was a prayer for a positive declaration viz., that the appellant and persons situated like her were entitled to be considered by the committee, if they are otherwise eligible. We are of the view that, the appellant is entitled to such a positive declaration, which order takes care of the prayer as made in the Original Application.

20. In view of the discussions made above and the law enunciated by the Hon'ble Apex Court, it can safely be held that although the applicant was having outstanding merit and ability so as to be included in the list of recommended NSCS Officer for consideration to IAS as per the Regulation, his name was unjustly and illegally excluded whereas the name of ineligible officer and the officer whose



application was received much after the cutoff date were included. Since in the meantime the respondents already excluded the name of such ineligible officers, and quashing of the list of names is not one of the reliefs sought by the applicant in this OA, ends of justice would be met if we quash the order of rejection dated 28<sup>th</sup> October, 2013 (Annexure-A/7), direct the Respondent Nos. 3 and 4 to include the name of the applicant in the list of NSCS Officers already sent and make the necessary communication in this regard to the UPSC within a period of thirty days from the date of receipt of a copy of this order. On receipt of the name of the applicant, the Respondent Nos. 1 and 2 are directed to accept the name of the applicant, as one of the recommended NSCS Officers of the State of Odisha for the vacancies, in question, and, as considerable time has already been elapsed, they should conduct and complete the selection of the NSCS Officers for the two vacancies, within a period of two months from the date of receipt of the name of the applicant from Respondent Nos. 3 and 4. **Ordered accordingly.**

21. In the result, this OA stands allowed to the extent <sup>stated</sup> above. No costs.

  
(R.C.MISRA)  
Member (Admn.)

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