

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00787/2017

DATED THIS THE 06TH DAY OF MARCH, 2019

**HON'BLE DR.K.B.SURESH, MEMBER (J)**

**HON'BLE SHRI C V SANKAR, MEMBER (A)**

Dr. Y. Manjunath,  
S/o Y. Devendrappa,  
Aged about 40 years,  
Joint Commissioner of Excise,  
Belagavi Division, Belagavi,  
Residing at No. 449, Scheme -13  
T.V. Centre, Hanumannagar  
Belagavi

.....Applicant

(By Advocate M/s Subbarao & Co.)

Vs.

1. Union of India,  
Represented by its Secretary,  
Department of Personnel, Public Grievances,  
& Pension Department, North Block,  
New Delhi – 110 001

2. The State of Karnataka,  
Represented by its Principal Secretary,  
Dept. of Personnel & Administrative Reforms  
Vidhana Soudha,  
Bengaluru – 560 001

3. Additional Chief Secretary to Government  
Finance Department,  
Vidhana Soudha,  
Bengaluru – 560 001

4. The Commissioner of Excise  
Department of Excise,  
Vokkaligara Bhavan,  
K.R. Circle, Bengaluru – 560 001

5. Union Public Service Commission,  
Dholpur House, Shahjahan Road,  
New Delhi – 110 001  
By its Secretary

.....Respondents

(By Shri R.B. Sathyanarayana Singh, Counsel for the State Government  
and Shri M. Rajakumar, Counsel for Respondent No.5)

ORDER

DR. K.B. SURESH, MEMBER (J):

The applicant entered service as a Gazetted Probationer in the year 2002. He was promoted to the cadre of Superintendent of Excise in the year 2005 and as Deputy Commissioner of Excise in the year 2008. Thereafter he was promoted as Joint Commissioner and is working as such. Apparently his name was recommended for appointment to the cadre of Indian Administrative Service during the year 2016 but could not succeed. The second respondent had by letter dated 19.06.2017 called for the proposal of Non-State Civil Service officers of outstanding merit and ability for being appointed to the IAS but while recommending his name a note was made against the applicant that a departmental enquiry is pending against him. The enquiry under Rule 14 (A) of the Karnataka Civil Services (CCA) Rules, 1957 had been quashed by the Karnataka

State Administrative Tribunal in Application No. 5582/2015 vide its order dated 24.11.2017. For better elucidation, we are quoting from the said judgment of the Karnataka Administrative Tribunal.

**“ORDER**

*Heard the learned counsel for the applicant and the learned Government Pleader for the Respondents.*

2. *The applicant has sought for the following reliefs:*

1) *Call for the records leading to the issue of impugned order bearing No. Aa.E 143 EPS 2014 dated 16.05.2015 (Annexure-A4) passed by the 1<sup>st</sup> Respondent Government and after perusal to issue a writ of certiorari or any other appropriate writ or order quashing the same, in so far as it relates to the applicant.*

2) *To pass such other order/s, as this Hon'ble Tribunal deems fit in the facts and circumstances of the case, in the interest of justice.*

3. *The applicant is presently working as Joint commissioner of Excise in the Department of Excise, Government of Karnataka. He was working as Deputy Commissioner of Excise at Mysore from February 2001 to August 2013. On 27.06.2012, a search was conducted in the office of the Deputy Commissioner of Excise, officers of the Inspectors of Excise Range 1 to 4 and search of the house of one Sri Nagaraj, Excise Guard. The said searches were conducted by the Karnataka Lokayukta police on an allegation that the officials of the Department of Excise had been demanding bribe and receiving bribe.*

4. *The learned counsel for the applicant submits that during search of the office of the applicant at Mysore, the Lokayukta police could not find any material or amount stated to be bribe. On the same day i.e., on 27.06.2012, the Lokayukta police had searched the offices of the Inspectors of Excise, Range 1 to 4 at different places. On completion of the search of the office of the applicant, he was asked to give statement and accordingly, the applicant gave his statement on 27.06.2012 explaining that he was in no way responsible for the amount found in the house Inspectors of Excise and that the search was conducted at Nazarbad and if the Lokayukta police found any materials in the office of the Inspectors of Excise, he cannot be held responsible.*

5. *A case had been registered against the applicant and others in Crime No.11&12/2012. Ultimately, criminal cases registered against the applicant is quashed by the Hon'ble High Court of*

Karnataka.

6. In the meanwhile, the Karnataka Lokayukta had taken up suo-rnoto proceedings under Section 7 of the Karnataka Lokayukta Act, 1984(for short 'Act 1984') and Observation Note dated 13.12.2013 (Annexure— A2) as required under Sec.9(a) of the Act 1984 was prepared and served to the applicant. The applicant submitted his reply to the Observation Note as per Annexure-A3 dated 31.07.2014 in which he had made it clear that he could not be held responsible for the amounts said to have been recovered from other Inspectors and in the house of one Sri Nagaraj. Ultimately, being not satisfied with the reply of the applicant, the Upalokayukta submitted report dated 03.09.2014 in terms of Section 12(3) of the Act 1984 recommending to the Government to entrust the matter to it under Rule 14-A of the K.C.S. (CCA) Rules, 1957 (for short 'CCA Rules').

7. On receipt-of the said report sent under Section 12(3) of the Act 1984, the Government has entrusted the departmental enquiry to the Lokayukta in terms of Rule 14-A of the CCA Rules and the same is at Annexure-A4. This entrustment order is called in question. What is argued before this tribunal by Sri P.S. Rajagopal, learned Senior Counsel representing the applicant is that the investigation is not properly conducted by the Lokayukta and that the Government has mechanically accepted the 12(3) report without critically examining the materials placed on record. It is further contended that the mandate of Section 12(4) of the Act 1984 is not complied with. It is further contended that apart from Section 12(4), the Government is expected to examine such records and that no examination is done by the Government.

8. In the present case, reply statement is filed by the learned Government Pleader. It is averred that the Lokayukta, after conducting investigation in terms of Section 7 of the Act 1984 submitted a report. It is further submitted that the applicant was expected to properly supervise the work of his subordinates working at Mysore and during raid conducted by the Lokayukta police, a sum of Rs.1,64,000/- and Rs-82,000/- was seized respectively from the office of the Inspectors of Excise, Range 1 to 4. Sri Chandrashekar, owner of the Janatha Wines had presented 2 CDs and 4 audio clips of containing conversation between the applicant and Sri Chandrashekar and one CD containing conversations of Sri Guruswamy and the applicant. It is further submitted that the details of conversations are very relevant and they substantiate the involvement of the applicant. It is further submitted that the Government has not mechanically accepted the 12(3) report of the Act 1984 and that it has entrusted the enquiry only after careful examination of the materials placed on record.

Hence, he prays for dismissal of this application.

9. Sri Mallikarjuna Basaraddi, learned counsel representing Lokayukta is present. Similar reply statement is filed on behalf of the Lokayukta also. He has adopted the arguments advanced by Sri S.B. Shahapur, learned Government Pleader for respondents 1 & 2. The learned counsel for the Lokayukta has submitted that the Lokayukta had submitted a detailed report in terms of Section 12(3) of the Act 1984 and the same is proper. Considering the report submitted under Section 12(3) of the Act 1984 the Government has entrusted the enquiry to the Lokayukta.

10. Perused the records and pleadings.

11. Rule 14-A of the CCA Rules, 1957 under which the Government has entrusted the enquiry to the Lokayukta is relevant and is extracted below.

**"14-A. Procedure in cases entrusted to the Lokayukta.-**

(1) The provisions of sub-rule (2) shall, notwithstanding anything contained in Rules 9 to 11-A and 13, be applicable for purposes of proceeding against Government Servants whose alleged misconduct has been investigated into by the Lokayukta or an Upalokayukta either under the provisions of the Karnataka Lokayukta Act, 1984 or on reference from Government or where offences alleged against them punishable under the Prevention of Corruption Act, 1947, or the Prevention of Corruption Act, 1988 has been investigated by Karnataka Lokayukta Police before 21<sup>st</sup> day of December, 1992.

(2) (a) Where an investigation into any allegation against.-

(i) a member of the State Civil Services Group 'A' or Group 'B'; or

(ii) a member of the State Civil Services Group 'A' or Group 'B'; and a member of the State Civil Services Group 'C' or Group 'D'; or

(iii) a member of the State Civil Services Group 'C' or Group 'D'; the [Lokayukta or the Upalokayukta or (before the 21.12.1992), the Inspector General of Police or the Karnataka Lokayukta Police is of the opinion], that disciplinary proceedings shall be taken he shall forward the record of the investigation along with his recommendation to the Government and the Government, after examining such record, may either direct the inquiry into the case by the Lokayukta or the Upalokayukta or direct the appropriate disciplinary authority to take action in

accordance with Rule 12.

(b) Where it is proposed to hold an enquiry into a case under clause (a) the enquiry may be conducted either by the Lokayukta or the Upalokayukta, as the case may be, or an officer on the staff of the Lokayukta authorized by the Lokayukta or the Upalokayukta to conduct the enquiry.

”

12. Rule 14-A of the K.C.S. (CCA) Rules mandate that the Lokayukta or the Upalokayukta or the Inspector General of Police of Karnataka Lokayukta has to forward the record of investigation and its recommendation to the Government. In case it feels that the departmental enquiry is required to be entrusted to the Lokayukta, the government has to examine such records. The report submitted by then the Lokayukta to the Government under Section 12(3) of the Act, 1984 is dated 03.09.2014. In Para-I of the said report, the Lokayukta has referred to the explanation submitted by the applicant to the Observation Note to him. What is mentioned in Para-2, is extracted below.

(2) .....

But the comments submitted by the Respondents 1 to 8 are not acceptable for the reason that as per the direction of Respondent No.8 the Respondent No. 1 to 7 have collected the excess licence renewal fee amount as bribe from the licence holders and when search was made by obtaining search warrant from District & Sessions Court, Mysore, by the Lokayukta Police, Mysore in Region No.1 and 4 at Mysore on 27.06.2012.....”

13. What exactly is explained by the applicant is that the examination done by the authority is not forthcoming in the report submitted under 12(3) report in terms of order dated 16.05.2015 at Annexure-A4. There is only a reference about the service of Observation Note caused to the applicant and other DGOs and denial of the facts mentioned therein. In the subsequent paragraph there is only a reference about the report submitted by the Lokayukta under Section 12(3) of the Act 1984 r/w Rule 14-A of the CCA Rules.

14. On going through the contents of Annexure-A4, this Tribunal is of the opinion that what is examined by the Government is only in regard to the Writ Petition No.7053/2013 filed by the applicant and A.No. 5821/2013 filed by one Sri K.M Thammanna. What is observed is that in spite of registration of criminal case, initiation of departmental enquiry is proper. The contents of the Observation Note prepared by the Lokayukta and the explanation submitted by

the applicant and the contents of the report submitted under Section 12(3) of the Act 1984 have not at all been considered. It is in this regard, the learned counsel for the applicant has relied upon the decision of the Apex court in the case of *M/s. Maharaja Mills (Private) Ltd., -Vs- The Income Tax Officer, Porbander* reported in AIR 1959 SC 881. In para-14 of the said decision, the words 'apparent from the record' have been considered. It is made clear that the word 'record' does not mean only the order of assessment but it comprises all proceedings on which the assessment order is based. Hence, it is made clear that the Income Tax Officer is entitled for the purpose of exercising his jurisdiction under Sec. 35 to look in to the whole evidence and the law applicable to ascertain whether there was an error.

15. In the present case also, the government has only made reference to the report submitted to it under Section 12(3) of the Act 1984 and Observation Note. The contents of the reply submitted to the Observation Note by this Applicant is not at all forthcoming. Hence, there is no consideration of the reply submitted by the applicant, as could be seen in Para-2 of the entrustment order dated 16.05.1995.

16. The learned counsel for the applicant has relied upon the decision by the Constitution Bench of the Apex court rendered in ***The Barium Chemicals Ltd., & Another —Vs— S.J. Rana & Others*** reported in (1972)<sup>1</sup> SCC 240. In Para-14 of the said decision the words 'considers it necessary' postulate that the authority concerned has thought over the matter deliberately and it has been found necessary as a result of such thinking to pass the order. The dictionary meaning of the word 'consider' is 'to view attentively, to survey, examine, inspect (arch), to look attentively, to contemplate mentally, to think over, mediate on, give heed to, take note of, to think deliberately, bethink oneself, to reflect. In the light of the decisions of the Apex Court referred to above, this Tribunal is of the opinion that no such examination of the materials placed has been done in the present case

17. In the case of ***H.N.Nirajnan— Vs- State of Karnataka & Others*** (A.No.725/2014 decided on 27.11.2014), this Tribunal had an opportunity to deal with the scope of Section 12(3)& 12(4) of the Act 1984. Para-7 of the said decision is relevant and is extracted below

"7..... When the statute mandates examination of the report, the competent authority has to comply such mandate and failure in that regard invalidates the decision taken on such report. A reading of the impugned Government Order dated 12.11.2013 nowhere indicates that the first respondent has

examined the report sent under Section 12(3) of the Lokayukta Act .....

Being aggrieved by the final order dated 27.11.2014 passed by this Tribunal in A.No.725/2014 in the case of **H.N. Nirajnan - Vs- State of Karnataka & Others**, the Lokayukta has taken up the matter before a Division Bench of the Hon'ble High Court of Karnataka in Writ petition No.43079/2075 which was ultimately dismissed. What is further held by the division bench of the Hon'ble High Court of Karnataka is that when a statute mandates examination of the report sent under Section 12(3) of the Lokayukta Act, it is the bounden duty of the competent authority to which the said report is sent, to examine the report before taking any decision on the recommendation made in the report under Section 12(3) of the Lokayukta Act. The object of examination of the report sent under Section 12(3) of the Lokayukta Act is to ensure that the public servant concerned is not subjected to any unwarranted disciplinary action. When the statute mandates examination of the report, the competent authority has to comply such mandate and failure in that regard invalidates the decision taken on such report.

18. A reading of the impugned order at Annexure-A4, the order of entrustment and the report of the Section 12(3) of the Karnataka Lokayukta Act, 1984, it is evident that critical examination as contemplated under Section 12(4) of the Act 1984 is not done. Some valid and cogent reasons forthcoming to accept the report submitted under Section 12(3) of the Act, 1984 while discharging the duties as per Section 12(4) of the Act 1984. When there is no proper examination of the report submitted under Section 12(3) by the Government in terms of the mandate under Rule 14-A of the CCA Rules, it cannot be said that the Government has applied its mind properly before entrusting the matter to the Lokayukta for conducting enquiry. .

19. In this view of the matter, this Tribunal is of the opinion that Annexure-A4 is liable to be quashed. Hence, the following:

#### **ORDER**

- 1) The application is allowed.
- 2) The impugned Government Order bearing No.AaE 143 EPS 214, Bangalore, dated 16.05.2015 passed by the 1<sup>st</sup> Respondent in so far as it relates to the applicant, is quashed.
- 3) Matter is remitted to the first respondent to pass appropriate orders within four months from the date of receipt of a copy of this order.”

2. Therefore, the applicant would say that the note against his name



which was the cloud against him has now been removed. He would also rely on an order passed by this Tribunal wherein we had directed the UPSC to commence proceedings afresh without looking into Regulation 5 (c) within the next 30 days.

3. Apparently this was challenged by the UPSC in Writ Petition No. 11077/2018 and 26123/2018 before the Hon'ble High Court of Karnataka and vide its order dated 14.09.2018 the order of the Tribunal was upheld by the Hon'ble High Court which we quote:

**“ORDER**

*The petitioner - Union Public Service Commission (UPSC for short) is before this Court in this petition assailing the order dated 09.02.2018 passed in OA No.170/00883-884/2017 by the Central Administrative Tribunal, Bengaluru Bench (CAT for short). The CAT through the said order has issued the declaration that the respondents No.1 and 2 herein who are the applicants therein and other similarly placed Officers in the proposal dated 21.12.2017 of the State of Karnataka has preeminent right to be considered for promotion by selection into IAS Karnataka cadre of 2016. Hence the petitioner herein was directed to process the proposal issued by the State of Karnataka and call for the selection committee meeting and finalise the selection of 2016 of Karnataka cadre within the time frame indicated therein. The petitioner therefore claiming to be aggrieved is before this Court.*

*2. The brief facts are that the selection to the IAS from the non-service cadre is to be made in terms of the provisions contained in the Indian Administrative Service (Appointment by Selection) Regulations, 1997 ('Regulations, 1997' for short). The State Government in that light is required to send the proposal for consideration by the committee as constituted under Regulation 3 thereof. The Regulation also provides that the committee is to hold its meeting every year to consider the proposal if sent by the State Government. The State Government had accordingly prepared a list dated 25.07.2017 for selection from among the said Officers to the 3 posts that was available for the year 2016, which included the names of the respondents No.1 and 2 herein. However, due to the proceedings before the Tribunal relating to such selection in the applications in OA Nos.170/01007/2016, 170/00237/2017 and*

170/00750/2017 (the last of which pertains to the respondent No.2 herein) was pending and due to the interim order granted therein, the matter could not be proceeded with by the State Government by forwarding the list prepared, which was under challenge and the Committee Meeting to consider the same also could not be convened.

3. The said proceedings before the CAT was ultimately disposed of by the order dated 15.12.2017 wherein the CAT allowed the application bearing No.170/00750/2017 relating to the respondent No.2 herein with a direction to immediately complete the process of appointment and grant that benefit from the earliest point it is available to them. Pursuant to such direction, the State Government has thereafter dispatched the proposal to the petitioner on 21.12.2017. The petitioner herein was to convene the meeting of the committee and consider the proposal as per the Regulations, but had failed to do so. As such the respondents No.1 and 2 herein preferred the instant application in OA No.883-884/2017 before the CAT seeking for issue of mandamus to direct the respondents to convene the selection committee and prepare the select list and appoint the applicants as expeditiously as possible in compliance of the directions in OA No.170/00750/2017. The CAT after making a detailed consideration has through the order dated 09.02.2018 issued mandamus to the petitioner to process the proposal issued by the State of Karnataka and call for the selection committee meeting and finalise the selection of 2016 of the Karnataka cadre within 30 days from the order. The Union Government and the Government of Karnataka were also directed to take all such steps to facilitate the declaration given. The petitioner herein who is to convene the selection committee meeting and consider the same is before this Court in these petitions, assailing the order dated 09.2.2018 passed by the CAT.

4. In the above background we have heard Sri V.Narasimha Holla, learned counsel for the petitioner, Sri Udaya Holla, learned Advocate General along with Sri.I.Taranath Poojary, learned Government Advocate for respondents No.4 to 6, Sri Ashok Haranahalli, learned senior counsel along with Sri.K.Satish, learned counsel for respondents No.1 and 2, Sri.C.Shashikantha, learned Asst. Solicitor General and perused the petition papers.

5. The entire emphasis by the learned counsel for the petitioner is on Regulation 5(c) of the Regulations 1997 to justify their action and to contend that the meeting of the committee is to be held during the year. In that light it is sought to be contended that the meeting as per the Regulation was required to be convened in the instant case on or before 31.12.2017 since it is provided that the meeting is to be held during the year. To express

*the inability of convening the meeting, it is contended that the pendency of the proceedings in OA No.170/00750/2017 and connected applications had delayed the proceedings up to 15.12.2017. On disposal of the same the State Government forwarded the list by letter dated 26.12.2017 along with the proposal. On examination certain deficiencies were noticed in the ACR dossiers of some Officers included in the eligibility list. Therefore the petitioner through their letter dated 27.12.2017 requested the State Government to rectify the deficiencies which was clarified by the State Government only on 29.12.2017. It is in that view contended that the meeting could not be held thereafter, as 30.12.2017 being a Saturday and 31.12.2017 being Sunday, both days were Holidays. Hence it is contended that the meeting could not be held as on the last day of the year 2017 and they seek to contend that the Regulation does not provide for holding the meeting thereafter for the particular year.*

*6. Learned Advocate General appearing for the State, as also the learned senior counsel representing the private respondents would seek to sustain the order passed by the CAT and as such they refer to the consideration as made by the CAT. It is pointed out that admittedly the proceedings in OA No.170/01007/2016 and connected applications were pending before the CAT and the interim order was in operation. If that be the position, the State Government was not entitled to proceed further till its disposal. Undisputedly the said applications were disposed of on 15.12.2017 and immediately thereafter the State Government had processed the matter and the list was submitted to the petitioner herein. Though the petitioner had sought for certain clarification, the same was also furnished well within the end of year 2017. Even if it is accepted that the last two days of the year were holidays, in the instant facts the Regulation 5 cannot be considered as a bar to hold the meeting nor would there be contravention of the Regulation if in the present facts the consideration was made immediately thereafter. It is contended that none of the parties were responsible for the delay in sending the proposal and in a circumstance when the prospects of the officers who have served the State is kept in view, the pendency of the proceedings before the Court cannot be allowed to affect their right. In such event the Court has a duty to protect the interest and in that circumstance when the CAT has directed consideration, such order will not call for interference, is their contention.*

*7. Since the consideration herein would be as to whether the Regulation 5(c) of Regulations 1997 could be treated as an absolute bar for the petitioner to process the matter subsequent to the last day of the particular year as contended by them, it would*

be appropriate to take note of the Regulation 5 as contained in Regulations, 1997. The same is as extracted hereinbelow:

*“5. Preparation of a list of suitable Officers by Committee-The committee shall meet every year to consider the proposal of the State Government made under regulation 4 and recommend the names of the persons, not exceeding the number of vacancies to be filled under regulation 3, for appointment to the Service. The suitability of a person for appointment to the service shall be determined by scrutiny of service records and personal interview:*

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

*(a) xxxxx*

*(b) xxxxx*

*(c) the Commission, either on its own or on a proposal made by the Central Government of the State Government, considers that it is not practicable to hold a meeting of the Committee during the year, in the facts and circumstances of each case.*

*(Emphasis supplied)*

8. A perusal of the same with specific attention to the emphasised portion would no doubt provide that a committee shall meet every year to consider the proposal of the State Government made under Regulation 4 and recommend the names of the persons, after the suitability of a person for appointment is determined. The proviso read with the sub-proviso (c) indicates that no meeting of the committee shall be held and no list for the year in question shall be prepared when the Commission either on its own or on a proposal made by the Central Government or the State Government considers that it is not practical to hold a meeting of the committee during the year in the facts and circumstance of each case.

9. The learned counsel for the petitioner would at the outset also contend that Regulation 8(2) provides for the mode of recruitment to IAS by induction of non-SCS Officers, which is to be resorted only in special circumstances on the recommendation of State Government in consultation with the petitioner. Thus it is not a mode of induction by appointment through promotion and does not confer any right of consideration or appointment to the Non SCS officers and it is to be resorted to only under special circumstance that the State Government have Non SCS Officers of outstanding merit and ability and the State Government desire to earmark vacancies to be filled up by these Officers and it has to be done only in that year and the petitioner cannot be compelled.

10. Though such contention is put forth, the same does not merit consideration in the present circumstances. This is for the reason that the matter was before the CAT in the earlier situation and subsequent to disposal on 15.12.2017 the State Government has sent the recommendation and as such the other requirements having been complied the first part of the process was completed. Further, there was also a direction by CAT to consider. The petitioner has also contended that on examining the recommendation certain defects were noticed in the ACR and therefore clarifications were sought which means the process was underway. The justification sought to be put forth is only that there were two days remaining for the close of the year which were holidays and the meeting could not be convened. If that be the position, non-consideration is not for the reason that there was no vacancy and there was no requirement or that there were no qualified officers. In that circumstance the petitioner cannot repel the prayer of the private respondents by raising such contentions.

11. Therefore the only contention that needs to be examined herein is as to whether the petitioner can be allowed to get away from not performing its function of convening the meeting because the year had elapsed. On that aspect, as noticed the learned counsel for the petitioner is seeking to bank on Regulation 5(c) and in that regard is seeking to contend that the meeting can be convened only before the end of year and not thereafter. To support such contention, the learned counsel for the petitioner is seeking to rely on the order dated 13.03.2015 passed by a co-ordinate Bench of this Court in the case of **State of Karnataka Vs. Sri. Y.C.Shivakumar and others (W.P. No.59962/2014)** wherein the order passed by the CAT directing consideration of the case of respondent No.1 therein was set-aside. The learned counsel for the petitioner seeks to refer para 18 to 21 thereof, since such decision is rendered by the co-ordinate Bench by relying on the conclusion of the Hon'ble Supreme Court in the case of **Parameshwar Prasad Vs. Union of India and others [(2002)1 SCC 145]**.

12. In order to appreciate the said contention we have carefully perused the decision of the co-ordinate Bench as also the decision in **Parameshwar Prasad's case** (supra) relied upon therein. In **Y. Shivakumar's case**, it was a situation that the selection process was not made from the Non SCS Officers during the year 2010, 2011 and 2012 though there were vacancies and the said officer, among others was also eligible. However when the meeting was convened for selection in the year 2014, the said officer had crossed the age of 54 years and thus being ineligible as on 01.01.2014 his request was rejected by the endorsement dated

03.09.2014 which was assailed before the CAT in O.A. No.1115/2014 and was quashed by the CAT through the order dated 14.11.2014 so as to provide the benefit for selection. It was that order which was set-aside by the co-ordinate Bench since his case could not have been considered after he had crossed the age limit, notwithstanding the fact that the meetings were not held earlier. On the other hand, in the very decision it is held by the Co-ordinate Bench that in order to avoid such heart-burn among the officers, the process be held every year.

13. The case of **Parameshwar Prasad** (supra) decided by the Hon'ble Supreme Court, relied upon by the co-ordinate Bench is also a case wherein no meeting of the State Committee for short-listing of candidates took place for the years 1994-95 and 1995-96 for the Non SCS officers. But in 1996 when the said officers name was recommended by his department, the State Scrutiny Committee did not favourably consider his claim as he was 54 years of age as on 01.04.1996 and as such was not called for interview. His claim was that since there was no meeting of the State Scrutiny Committee for the years 1994-95 and 1995-96, the cut-off date ought to have been a date other than 01.04.1996 so as to make him eligible by giving him benefit for the earlier years. In that circumstance it was the Officer himself who sought to rely on Regulation 5(3) to contend that there is an obligation on the State Government to convene the meeting every year and the failure to convene has denied the benefit. However, in that circumstance the Hon'ble Supreme Court held that it only provides for the State Government to consider the selection from time to time and was of the opinion that Officers beyond 54 years cannot be considered by the State Government. That position would no doubt apply if barred by age as on the date of consideration.

14. In that circumstance having given our thoughtful consideration, we are of the opinion that neither of the decisions would come to the aid of the petitioner in the present facts. On the other hand if the said decisions were taken in its true spirit, the petitioner ought to have convened the meeting. That is so, because in the instant case the State Government as per the requirement under Regulation 4 had processed the consideration but could not send the recommendation to the petitioner immediately thereafter in view of the interim order dated 07.09.2017 passed by the CAT in O.A. No.170/01007/2016 being in force till 15.12.2017. Hence, the consideration of the recommendation at the end of the State Government for the year 2016 was already made and after the judicial process which was an impediment came to an end, the list/recommendation had been sent to the petitioner during the year i.e., before expiry of 2017 and

*in that situation the meeting could have been convened by the petitioner even if it was after 31.12.2017 since it was only a continuation of the process and the observation in the earlier decision of the Co-ordinate Bench is that the process should be done every year so as to avoid heart burn among officers.*

*15. In that regard a closer perusal of Regulation 5(c) will indicate that there is no bar for the meeting to be held if not held before 31st day of December of the particular year even in circumstance where the process had commenced. On the other hand it gives a discretion to the petitioner, Central Government or the State Government not to hold the meeting if it considers that it is not practicable to hold a meeting of the Committee during the year, in the facts and circumstance of each case. It would only mean that the Regulation does not compel holding of the meeting every year irrespective of, or by ignoring every other relevant fact. In other words the Non-service Officers need not be selected to the IAS cadre mandatorily every year for just exceptions and it is to that extent the discretion is given so that the said authorities shall not be compelled. That would not be relevant in the present case since as already noticed the State Government had finalized the list but was prevented from sending due to judicial proceedings and it had sent the recommendation to the petitioner herein only on conclusion of the pending judicial proceedings. Hence, in the facts and circumstance of the instant case the meeting ought to have been held, more particularly when there was a direction in O.A. No.170/00750/2017 as late as on 15.12.2017 and the said order had attained finality. The discretion given to the petitioner, Central Government or State Government is for any other reason they find that in a particular year it would not be practicable to hold the meeting of the Committee and select non service SCS to the IAS Cadre, which is not the case in the present circumstance and the petitioner in a casual manner cannot shirk its responsibility to the detriment of the career prospects of the eligible candidates including the private respondents who would have had the benefit of the consideration and such legitimate expectation cannot be denied.*

*16. In that regard the learned Advocate General has relied on the decision of the Hon'ble Supreme Court in the case of **Union of India and another Vs. Hemraj Singh Chauhan and others [(2010)4 SCC 290]** wherein it is held as hereunder:*

*"42. Concurring with the aforesaid interpretative exercise, we hold that the statutory duty which is cast on the State Government and the Central Government to undertake the cadre review exercise every five years is ordinarily mandatory subject to exceptions which may be justified in the*

*facts of a given case. Surely lethargy, in-action, an absence of a sense of responsibility cannot fall within category of just exceptions.*

*43. In the facts of this case neither the appellants nor the State of Uttar Pradesh has justified its action of not undertaking the exercise within the statutory time-frame on any acceptable ground. Therefore, the delayed exercise cannot be justified within the meaning of 'ordinarily' in the facts of this case. In the facts of the case, therefore, the Court holds that there was failure on the part of the authorities in carrying out the timely exercise of cadre review.*

*44. In a somewhat similar situation, this Court in Union of India and Ors. vs. VipinchandraHiralal Shah (1996) 6 SCC 721, while construing Regulation 5 of the IAS (Appointment by Promotion) Regulations, 1955 held that the insertion of the word 'ordinarily' does not alter the intendment underlying the provision. This Court in that case was considering the provision of Clause (1) of Regulation 5 of the IPS (Appointment by Promotion) Regulations along with other provisions of Regulation 5. The interpretation which this Court gave to the aforesaid two Regulations was that the Selection Committee shall meet at an interval not exceeding one year and prepare a list of members who are eligible for promotion under the list. The Court held that this was mandatory in nature.*

*45. It was urged before this Court in Hiralal Shah case that the insertion of the word 'ordinarily' will make a difference. Repelling the said contention, this Court held that the word 'ordinarily' does not alter the underlying intendment of the provision. This Court made it clear that unless there is a very good reason for not doing so, the Selection Committee shall meet every year for making the selection. In doing so, the Court relied on its previous decision in Syed Khalid Rizvi vs. Union of India - 1993 Supp. (3) SCC 575.*

*46. In Syed Khalid Rizvi (Sic.) the Court was considering Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955 which also contained the word 'ordinarily'. In that context the word 'ordinarily' has been construed as: (Syed Khalid Rizvi, SCC p.586, para9)*

*"9. ....since preparation of the select list is the foundation for promotion and its omission impinges upon the legitimate expectation of promotee officers for consideration of their claim for promotion as IPS officers, the preparation of the select list must be construed to be mandatory. The Committee should, therefore, meet every year and prepare*



*the select list and be reviewed and revised from time to time as exigencies demand."*

*The same logic applies in the case of cadre review exercise also.*

*47. Therefore, this Court accepts the arguments of the learned counsel for the appellants that Rule 4(2) cannot be construed to have any retrospective operation and it will operate prospectively. But in the facts and circumstances of the case, the Court can, especially having regard to its power under Article 142 of the Constitution, give suitable directions in order to mitigate the hardship and denial of legitimate rights of the employees."*

*17. Though in this case the Hon'ble Supreme Court has also referred to exercise of its exclusive power under Article 142 of the Constitution to mitigate the denial of legitimate right of the employees, in the instant case the direction issued by the CAT is as a means to implement its earlier order and also keeping in perspective the facts and circumstance of the instant case where the only exercise remaining was for the petitioner to convene the meeting and take a decision.*

*18. In addition, as already noticed, though the process had commenced by the State Government much earlier, the same had prolonged to the fag end of the year due to the judicial proceeding and the stay operating in the proceedings. Hence, the maxim "Actus curiae neminem gravabit" i.e., the act of Court shall prejudice none, will come into play. In that regard it is necessary to take note of the decision relied on by the learned Advocate General, rendered by the Hon'ble Supreme Court in the case of **Rameshwar and others Vs. Jot Ram and another [(1976) 1 SCC 194]** wherein it is held as hereunder:*

*"The philosophy of the approach which commends itself to us is that a litigant who seeks justice in a perfect legal system gets it when he asks for it. But because human institutions of legal justice function slowly, and in quest of perfection, appeals and reviews at higher levels are provided for, the end product comes considerably late. But these higher Courts pronounce upon the rights of parties as the facts stood when the first Court was first approached. The delay of years flows from the infirmity of the judicial institution and this protraction of the Court machinery shall prejudice no one. Actus curiae neminem gravabit(1). Precedential support invoked by the appellant's counsel also lets him down provided we scan the fact situation in each of those cases and the legal propositions therein laid down."*

*19. In the decision in the case of **Atma Ram Mittal Vs.***

**Ishwarf Singh Punia [(1988)4 SCC 284)** relied upon by the learned Advocate General also, the Hon'ble Supreme Court has held as hereunder:

*"8. It is well-settled that no man should suffer because of the fault of the Court or delay in the procedure. Broom has stated the maxim "actus curiae neminemgravabit" – an act of Court shall prejudice no, man. Therefore, having regard to the time normally consumed for adjudication, the ten years' exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of finally. It is common knowledge that unless a suit is instituted soon after the date of letting it would never be disposed of within ten years and even then within that time it may not be disposed of. That will make the ten years holidays from the Rent Act illusory and provide no incentive to the landlords to build new houses to solve problem of shortages of houses. The purpose of legislation would thus be defeated. Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else."*

20. On the above aspect, the learned Senior Counsel for the private respondents has relied on yet another decision of the Hon'ble Supreme Court in the case of **Kalabharathi Advertising Vs. Hemant Vimalnath Narichania and others [(2010)9 SCC437]** wherein it is held as hereunder:

*" 16. In Ram Krishna Verma &Ors. v. State of U.P. &Ors., [(1992)2 SCC 620], this Court examined the issue while placing reliance upon its earlier judgment in Grindlays Bank Limited v. Income Tax Officer, Calcutta &Ors., AIR 1980 SC 656 and held that no person can suffer from the act of the Court and in case an interim order has been passed and the petitioner takes advantage thereof, and ultimately the petition stands dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized.. A similar view has been reiterated by this Court in Mahadeo Savlaram Shelke &Ors. v. Pune Municipal Corporation &Anr., (1995) 3 SCC 33.*

*17. In South Eastern Coalfields Ltd. v. State of M.P. &Ors., [(2003)8 SCC 648], this Court examined this issue in detail and held that no one shall suffer by an act of the Court. The factor attracting the applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the court; the test is whether an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage it would not*

*have otherwise earned, or the other party suffering an impoverishment which it would not have suffered but for the order of the Court and the act of such party. There is nothing wrong in the parties demanding to be placed in the same position in which they would have been had the Court not intervened by its interim order, when at the end of the proceedings, the Court pronounces its judicial verdict which does not match with and countenance its own interim verdict. The injury, if any, caused by the act of the Court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the Court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences.”*

21. Therefore, if all the above facts and law are taken into consideration, the petitioner cannot put forth such a casual contention to deny the legitimate expectation of the private respondents and other eligible candidates when there is no fault on their part and the process had also commenced as provided under the Regulations but was interrupted by judicial proceedings, which was also concluded with appropriate direction. Hence, irrespective of the fact whether any other party had derived benefit from the pending proceeding before the CAT in the first round, the fact remains that the interim order and the pendency had prevented the process from being completed. Hence the situation is to be salvaged by the Court itself by enabling the completion of the process. In such situation, the conclusion reached by CAT in the present proceedings through the order dated 09.02.2018 which is impugned herein is also justified and does not call for interference. However since the time framing fixed by the CAT has expired, the process shall now be complied by the petitioner within 30 days from the date of receipt of a copy of this Order.

Accordingly, these writ petitions being devoid of merit stand dismissed. No order as to costs.”

4. Following this, the UPSC vide letter F. No. 11/01/2018-AIS dated 26.12.2018 had issued a letter to the Chief Secretary, Government of Karnataka as follows, which we quote:

“F. No. 11/01/2018-AIS  
**UNION PUBLIC SERVICE COMMISSION**  
 DHOLPUR HOUSE, SHAHJAHAN ROAD,  
 NEW DELHI – 110 069

Dated: 26.12.2018

To

The Chief Secretary,  
Government of Karnataka,  
Bengaluru

**[Kind Attn: Dr. G. Kalpana, Addl. Chief Secretary,  
Personnel (DP&Admission Register-1)]**

**Subject: Order dated 09.02.2018 of the Hon'ble CAT, Bangalore Bench in O.A. No. 170/00883-884/2017 filed by Dr. A. Lokesh & Anr as affirmed by the Hon'ble High Court of Karnataka vide order dated 14.09.2018 and by the Hon'ble Supreme Court vide order dated 14.12.2018 – Convening of Selection Committee Meeting for preparation of Select List of 2016 for selection of Non-SCS officers for appointment to the IAS of Karnataka Cadre.**

Sir,

I am directed to say that the OA No. 170/00883-884/2017 filed by Dr. A. Lokesh & Anr for consideration of selection of Non-SCS officers for appointment to IAS of Karnataka Cadre against 03 vacancies determined for the year 2016 for which the SCM could not be held by the end of December, 2017 was disposed of by the Hon'ble CAT, Bangalore Bench, vide order dated 09.02.2018 with the following direction:

“54. Therefore the following mandate is issued:

- a) There will be a mandate to the UPSC to process the proposal issued by the State of Karnataka and call for a Selection Committee Meeting and finalize the selection of 2016 of Karnataka Cadre as stated in the body within the next 30 days without any reference to Regulation 5 (c)
- b) The Union Government and the Government of Karnataka to take all such steps to facilitate the declaration given in the light of the mandate of fundamental right of applicants.”

2. The WP No. 11077/2018 filed by the Commission against the order dated 09.02.2018 of the Hon'ble Tribunal was dismissed by the Hon'ble High Court of Karnataka vide order dated 14.09.2018. The SLP (C) No. 30123/2018 filed by the Commission against the order dated 14.09.2018 of the Hon'ble High Court has also been

*dismissed by the Hon'ble Supreme Court vide order dated 14.12.2018. In view of this, the Commission has decided to convene the SCM for preparation of Select List of 2016 for selection of Non-SCS officers for appointment to IAS of Karnataka Cadre.*

3. *The State Government is, therefore, requested to get the vacancies confirmed from the Government of India, DoP&T, for preparation of Select List of 2016 for selection of Non-SCS officers for appointment to IAS of Karnataka Cadre [it is mentioned that 03 vacancies were determined for Select List of 2016 for Karnataka Cadre of IAS (Non-SCS) vide DoP&T letter dated 10.02.2017]. Thereafter, the changes, if any, in the information in respect of the particulars of the Non-SCS officers proposed earlier by the State Government for consideration for the Select List of 2016 for selection for appointment to IAS of Karnataka Cadre, may be furnished alongwith fresh integrity certificate in respect of all the Non-SCS officers to be considered, to enable the Commission to convene the SCM in this regard.*

*Yours faithfully,  
Sd/  
(G.C. Saha)  
Under Secretary (AIS)”*

5. The respondents had filed a detailed reply in which they would say that while the applicant claims that all persons who fulfilled the criteria prescribed under the rule for such selection should be considered vide our order in OA No. 787/2017 dtd.10.10.2018, Karnataka Government has taken a view that only the names of persons of outstanding merit and ability who have the basic qualification prescribed under the rules could be recommended by individual departments. This Tribunal in its order dtd.10.10.2018 in OA.No.787/2017 has also stated as follows:

*“As the respondents have made clear that they had considered his name in the past and it was not suggested this time because of his non-fulfilling the criteria of being a suitable officer having outstanding merit. Though the disciplinary action against him was*

*quashed by the Karnataka State Administrative, the matter was still under consideration of the Government.”*

The respondents have further stated that against the order of Hon'ble Karnataka Administrative Tribunal in Application No.5582/2015 quoted above, the Karnataka Lokayukta preferred a Writ Petition No.40570/2018 before the Hon'ble High Court and the matter is still pending before the High Court. The respondents have also stated that while the applicant is contending that neither as on that date of consideration nor as on today a departmental enquiry is pending against him, on the date of consideration i.e.25.7.2017, departmental enquiry was pending against him and subsequently Hon'ble KAT passed order on 24.11.2017. They have stated that since the matter is now pending before the Hon'ble High Court, the contention of the applicant is not correct. They have also stated that grant of integrity certificate for consideration for selection to IAS under Non-SCS category based on the vigilance status of the officer is in the exclusive domain of the competent authority and in view of the above vigilance status, the competent authority has taken a decision not to recommend the case of the applicant under Non-SCS category. The case of the applicant could not be considered for the reasons narrated above. Hence, there is no justification in the allegation of the applicant that non forwarding of the applicant's name for appointment to IAS under Non-SCS category is arbitrary, unfair and unreasonable. Now the applicant would contend that, as the Hon'ble Karnataka Administrative

Tribunal had quashed all these proceedings and also in separate cases relating to the convening of the selection committee, the Hon'ble High Court had upheld the responsibility of the UPSC to convene the proceedings afresh vide the order which we have quoted from earlier, then there is no bar for him to be considered. The respondents state, however, that against this order of KAT, Karnataka Lokayukta preferred Writ Petition No.40570/2018 before Hon'ble High Court and the matter is still pending before Hon'ble High Court. We therefore, find that while the question of the pending departmental enquiry has been quashed by the Hon'ble KAT vide its order dtd.24.11.2017, that matter has not reached its finality in view of the Writ Petition No.40570/2018 filed before the Hon'ble High Court of Karnataka by the Karnataka Lokayukta.

But then there is no stay order in WP No. 40570/2018 and therefore not much ground in the contention of the respondent. Further the applicant's counsel submits that the government has refused to grant permission to prosecute the applicant. He says that this alleged infraction can only be a conspiracy against the applicant especially since the alleged amount is too low.

6. But the respondents contend that this is not a matter for ordinary promotion within the same department and, therefore, the application of the Hon'ble Apex Court ruling in the Janakiraman's case wherein a sealed cover procedure was mandated only after filing of chargesheet may not be very apt. They would also say that the procedure for selection to the vacancies upto 2017 has already lapsed. It would also be infructuous to send the matter back for consideration of the department at this stage.

7. But then this contention of the respondents also may not be very valid as the Hon'ble High Court said “**However since the time framing fixed by the CAT has expired, the process shall now be complied by the petitioner within 30 days from the date of receipt of a copy of this Order.**” Therefore, since the Hon'ble High Court had fixed that despite the time fixed by the CAT, this also to be in contradiction to Regulation 5 (c) in the particular circumstances of that case. It has to be now re-implemented says the applicant.

8. The Hon'ble Apex Court in B. Amrutha Lakshmi Vs. State of Andhra Pradesh and others and connected cases reported in (2013) 16 SCC 440 had held “**once a candidate comes into the zone of consideration, and satisfies all the requirements, his candidature cannot be rejected only because he is junior in the seniority. Where rules for selection contain a requirement, the same has to be 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 any additional criteria are to be imposed, they would no longer remain an exercise of discretion, but would result in discrimination. It would mean treating similarly situated employees dissimilarly, and denying equal opportunities in the matter of public employment. In the absence any rule, the decision of the respondents to forward the names of only the higher officials of Non-State Civil Service who are eligible for consideration as per the rules and consequently rejecting the appellant's case is held unsustainable. Appellant is entitled to positive declaration and that she and persons similarly situated were entitled to be considered by the Selection Committee IAS (Appointment by Selection) Regulation 1997, Regulation 3 and 4, and Constitution of India Article 16 & 14"

9. At this stage, we will now quote from this judgment of the Hon'ble Apex Court.

#### *"J U D G E M E N T*

*H.L. Gokhale J.*

*Leave Granted.*

2. *We will first deal with the facts and legal submissions of the first SLP (C) 23761 of 2011. This appeal by Special Leave seeks to challenge the judgment and order dated 31.12.2010, rendered by a Division Bench of the Andhra Pradesh High Court in Writ Petition No. 32290/2010, dismissing the same. The said*

*Writ Petition sought to challenge the order passed by the Central Administrative Tribunal (CAT) Hyderabad, dated 20.12.2010, on the Interim Application moved by the appellant in her Original Application No. 1291/2010, wherein, the CAT rejected the said Interim Application.*

*Facts leading to this appeal are as follows:-*

*3. The appeal is concerning the right of the appellant for being considered for the selection into the Indian Administrative Services (IAS) from the Non-civil services in the state of Andhra Pradesh. The selection into the IAS is governed by the [All India Services Act](#) 1951, and IAS (Recruitment) Rules 1954. There are three sources for being selected into the IAS as per the IAS (Recruitment) Rules 1954. They are:- (i) by direct recruitment; (ii) by promotion of a substantive member of a state civil service and (iii) by selection from amongst those persons who hold gazetted posts in substantive capacity in connection with the affairs of the State, and who are not members of a State Civil Service.*

*4. The vacancies in the IAS cadre for each particular State are notified by the Central Government. In the present case, we are concerned with the three vacancies meant for category (iii) above viz. the officers of Non State Civil Services, which were notified for the year 2011. The case of the appellant is that, though she was eligible for being taken into the panel for consideration, she lost her opportunity due to the erroneous interpretation of the relevant rules by the respondent No. 1, State of Andhra Pradesh. At the relevant time, she was working as the Assistant Commissioner of the Sales Tax, and she satisfied all the eligibility criteria, yet the Principal Secretary, Department of Revenue (Commercial Tax) Department, Hyderabad, Andhra Pradesh, and the Commissioner of Commercial Taxes, Hyderabad, Andhra Pradesh, respondent Nos. 2 and 3 respectively, restricted the zone of consideration only to the higher officers amongst the eligible candidates viz., to the Joint and Additional Commissioners of the Commercial Tax Department.*

*5. The appellant, therefore, filed Original Application No. 1291 of 2010 before the Central Administrative Tribunal (CAT) and prayed for the following main reliefs:-*

*“1.) This Hon’ble court may be pleased to declare that the action of the 3rd respondent in not considering the case of the applicant for being proposed for appointment to I.A.S., in terms of I.A.S. (appointment by selection) Regulation 1997 is illegal and is contrary to and violation of Regulation 4 of I.A.S. (appointment by*

selection) Regulation 1997 and is also violative of [Article 14](#), [16](#) and [21](#) of the Constitution of India.

2). This Hon'ble Tribunal may be pleased to declare the action of the 5th respondent in not forwarding the name of the applicant to 3rd respondent is illegal and contrary to G.O.Ms NO. 634 dated 24.8.2007 and is also contrary to Regulation No. 4 (1) of I.A.S. (appointment by selection) Regulation 1997.

3). This Hon'ble Tribunal may be pleased to declare that applicant is entitled to be considered by the Committee (as constituted under Regulation 3) by 2nd respondent for appointment to I.A.S., by selection based on her outstanding merit and ability and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstance of the case."

6. The appellant prayed for the interim order which read as follows:-

"In the above circumstances this Hon'ble Tribunal may be pleased to direct the 2nd respondent not to convene the meeting of the Committee and not to consider the case of any other candidate(s) proposed by the 3rd respondent for appointment to I.A.S. by selection (of A.P. State Non-SCS Officers), pending disposal of O.A., and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

In the alternative direct the 3rd respondent to consider and propose the name of the applicant for consideration by the 2nd respondent for appointment by selection to I.A.S. before the cases of other candidates are considered and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

7. The CAT, however, declined to grant the interim relief that the appellant had prayed for. The appellant therefore, carried the matter to the Andhra Pradesh High Court, where the High Court has held the restriction of the zone of consideration to be valid. Being aggrieved by this order, the appellant has filed this appeal by Special Leave.

8. Mr. P.S. Narshimha, learned senior counsel appeared for the appellant, Mr. A.T.M. Rangaramanujam, learned senior counsel appeared for the first respondent State of Andhra Pradesh, and the Principal Secretary to the Department of Revenue (Commercial Taxes) Andhra Pradesh, and the Commissioner of Commercial Tax, Andhra Pradesh. Mr. P.P. Malhotra, Additional Solicitor General has appeared for respondent No. 4 Union of India and Mr. Radhakrishnan, learned senior counsel for respondent No. 5 Union Public Service Commission.

9. It was pointed out by Mr. Narshimha, learned counsel for the appellant, that the relevant regulations for our purpose are the I.A.S. (Appointment by Selection) Regulations, 1997. Clause No. 3, regulation Nos. 3 and 4 thereof, are relevant for our 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, which is the committee constituted under regulation No. 3 of the Indian Administrative Services (Promotion by Appointment) Regulations 1955. These 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 the 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 in 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.

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.”

10. As can be seen from these two regulations, the Central

*Government has to determine the number vacancies for which recruitment may be made each year, which is to be done in consultation with the State Government. The number of vacancies to be determined, shall not exceed the number of substantive vacancies, as on the first day of January of the year, in which the meeting of the selection committee is held. Regulation No. 4 lays down, that the State Government has to send the proposal for consideration of the committee. It is important to note that while sending the recommendations from Non Civil Services section, the Government has to see that (i) the person concerned is a person of outstanding merit and ability,*

*(ii) he holds a Gazetted post in a substantive capacity, (iii) he has completed at least 8 years of continuous service on the first day of January of the year in which his case is being considered, (iv) the person must belong to a post which has been declared equivalent to the post of Deputy Collector in the State Civil Service, (v) the number of persons proposed for consideration of the committee shall not exceed five times the number of vacancies, and (vi) the persons to be recommended should not have attained the age of 54 years on the first day of January of that year in which the names are considered by the committee.*

*11. As far as the equivalence with the post of Deputy Collector is concerned, the Andhra Pradesh Government came out with a G.O.Ms No. 634 of the General Administration (Special Department) dated 24.8.2007, which provided as follows:-*

*“NOTIFICATION In supersession of the order issued in G.O.Ms, General Administration (Special.A) Department, Dated: 08.06.2006, G.O.Ms. No. 807, General Administration (Special A) Department, Dated: 23.12.2006, read with G.O.Ms No. 63 General Administration (Special A) Department, Dated: 08.02.2007, and in the exercise of powers conferred under sub- regulation (iii) of regulation 4(1) of the Indian Administrative Service (Appointment by Selection) Regulations, 1997, the Government hereby declare that, all the post carry the scale of pay of Rs. 10,845-22,995 and above (revised scales of 2005) in all the departments under the Govt. of Andhra Pradesh, barring the services viz. (i) State Police Service,*

*(ii) State Forest Services, and (iii) Judicial Service, are equivalent to the post of Deputy Collector in the State Civil Service for the limited purpose in regulation ibid. Officers who have completed 8 years of continuous service in the said scale as on 1st January of the year for which selection is made and are substantive in the above scale of pay as stipulated in IAS (Appointment by Selection) Regulations 1997, are eligible for consideration.*

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH) J.HARI NARYAN CHIEF SECRETARY TO GOVERNMENT

12. Thus, as can be seen, sub-regulation (iii) of regulation 4 (1), referred to above, includes all the posts which carry the scale of pay of Rs. 10,845-22,995 and above, and (ii) persons from all the departments under the Government of Andhra Pradesh except State Police Service, State Forest Service and Judicial Service are eligible to be considered. The notification declared such posts to be equivalent to the post of Deputy Collector in the State Civil Service, for the limited purpose specified in the Regulations. The Principal Secretary to the Government accordingly, wrote to the different departmental heads to send the full particulars of eligible Non Civil Services officers who fulfill the criteria. In para 4 of this letter he specifically stated as follows:-

“4. The Regulations stipulate that the Non-SCS Officers to be considered for selection should be of outstanding merit and ability. This aspect should be thoroughly ensured before sending the proposals. An Officer who is facing disciplinary enquiries and against whom adverse remarks are recorded in the ACR or whose integrity is not certified, cannot unequivocally be said to be of outstanding merit and ability.”

13. The Commissioner of Commercial Tax, Andhra Pradesh by his letter dated 18.6.2010 sought a clarification whether all the eligible officers in the cadre of Assistant Commissioner and above would be considered as eligible, if they were of substantive ability, had completed the minimum years of service, and had not crossed the age of 54 years as on 1.1.2010. The Commissioner got a reply that the necessary instructions may be adhered to scrupulously. He subsequently got another letter dated 1.7.2010 from the Principal Secretary, of the Revenue (CT-I) Department, that the names of officers from the cadre of Assistant Commissioner of Commercial Taxes and above, who are of outstanding merit and are eligible, may be forwarded. It so happened, that the names which were sent for consideration were, however, only of the Joint Commissioners and Additional Commissioners and not Assistant Commissioners. It is, therefore, that the appellant filed the above Original Application and applied for interim relief which came to be declined, and the order of the CAT was left undisturbed by the High Court. This has led to the present Civil appeal.

14. According to Mr. Narshimha, the relevant rules were very clear, and the appellant satisfied all those requirements. The appellant was a Gazetted Officer in a substantive capacity, and she had completed more than 8 years of continuous service as an Assistant

*Commissioner of Sales Tax which was a post declared to be equivalent to the post of Deputy Collector. She had not completed the age of 54 years, and there was no dispute about her outstanding merit and ability. The CAT, however, rejected the prayer for interim relief, solely on the ground that by the time the matter was considered by the CAT, the selection had already been completed, and therefore, the interim prayer as sought could not be granted. In the High Court, it was however contended on behalf of the Commissioner for Commercial Tax, that if the criterion was to be applied as it is, the number of officers to be considered from the Commercial Tax Department itself would be more than 300. It was submitted that there are in all 30 departments in the State Government, and therefore, the Commissioner and other heads of department were well within their power to restrict the zone of consideration up to a particular level, from which the names may be forwarded. It was also pointed out on behalf of the Government that, if the criterion as insisted by the appellant was applied, some of the persons of the rank of Assistant Commissioners or Deputy Commissioners will get selected, they will become superior to Joint and Additional Commissioners, and will write the Annual Confidential Reports of such officers who were presently holding posts higher to them. The High Court posed the question, as to whether the names of these junior officers should be mechanically forwarded. In paragraph 19 of the judgment the High Court held as follows:-*

*“19. In the present case, the Commissioner did not strictly go by rule of seniority among the eligible officers in the Commercial Taxes Department. The course adopted by him is that since a large number of officers have to be forwarded going by the criteria of eligibility as per Regulation 4 (iii) and G.O.Ms No. 634, he restricted the zone or level of officers for consideration upto the level of Additional Commissioners and Joint Commissioners. Thus this is a case where the seniority rule has not been followed but the zone of consideration has been restricted upto a particular level.....”*

*15. Again, in paragraph 23, the High Court observed that just because the appellant officers satisfy the criteria and are eligible officers, their names could not be forwarded. This is because the number of vacancies to be filled was 3, and the number of candidates to be recommended will be 5 times that number i.e. 15 only. The High Court therefore, held that the Commissioner of Commercial Taxes had the power to restrict the zone of consideration in sending the names above the level of Additional Commissioners and Joint Commissioners. The Writ Petition filed*



*by the appellant was, therefore, dismissed.*

*16. It is material to note, that a counter affidavit has been filed on behalf Government of Andhra Pradesh, where in para 4 it is stated as follows:-*

*“4. I say and submit that there may be large number of officers who will meet above eligibility but number has to be restricted to five times the vacancies for consideration from all departments put together. Commercial Taxes Department is one of departments in the State. There are more than 30 departments in the State. There were only (3) vacancies. Hence maximum number that could be considered by the Committee was (15) for all departments put together. In order to have healthy competition and to avoid unhealthy competition, out of all eligible persons having outstanding merit and ability, persons having highest seniority were recommended. ...”*

*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 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 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 the circumstances we allow this appeal, set-aside the impugned judgment and order of the High Court as well as of the Central Administrative Tribunal, modify the relief as prayed in the O.A., and hold that the decision of the Respondents not to consider the appellant for the selection, amounted to her being treated dissimilarly, though she was situated similarly to the recommended officers. The decision was violative of [Article 14](#) and [Article 16\(1\)](#) of the Constitution, since it was arrived at on the basis of a criterion which was not laid down. However, the selection for the year 2011 was over, even before the interim application in the CAT was decided. Setting aside the selection conducted some two years back, and asking the respondents to re-do the exercise after considering the appellant and other similarly situated candidates, would create lot of uncertainty, in as much as the appellant and such other similarly situated candidates, might or might not finally succeed in the selection process. Hence, it will not be proper now to set aside the selection of the selected candidates. Therefore, though this declaration is being granted, viz. that the appellant and persons situated like her were entitled to be considered by the committee, no further relief in that behalf can be granted to them. The opinion rendered by us will have to operate prospectively in the matter of application of the concerned rules, for the future selections. Hence, this appeal is being allowed in part.*

*21. We cannot, however, ignore that the appellant had to resort to this litigation for no fault of hers. The non consideration of her claim was totally unjust. Hence, even though for the reasons that we have stated earlier, the appellant can not get the relief in the nature of a direction to consider her for the selection which she had sought, she must get the damages for non-consideration on unjust grounds. This is because, the Commissioner for Commercial Tax had acted to reduce the zone of consideration, contrary to the rules, and inspite of a letter dated 1.7.2010 from the Principal Secretary Revenue (CT-I) Department, which had clarified that the Commissioner may send the proposals of the eligible candidates of the cadre of Assistant Commissioners and above, who were of outstanding merit. The award of damages is necessary also because, a message must go down that those who are responsible for administration of the State cannot trample upon the rights of others on the grounds which are unsustainable in law. We, therefore, direct the State of Andhra Pradesh to pay the damages of rupees fifty thousand to the appellant. This will be over and*

*above the litigation cost of rupees twenty five thousand, which we hereby award.*

*22. The issue involved in the appeal arising from the second SLP (C) No. 16042/2012 is same as the one in the earlier matter. We have heard Mr. Jayant Bhushan, learned senior counsel for the petitioner in the second matter, as well as, the counsel for the respondents. For the reasons stated in the first matter, we grant leave in this matter and pass the same order, as in the first one. This appeal will also stand allowed, accordingly, with damages quantified at rupees fifty thousand, and cost of rupees twenty five thousand to be paid by the first respondent.*

*23. We direct that the amounts towards the damages and the cost be paid to both the appellants within six weeks from the receipt of a copy of this order. In both these appeals, it will be open to the State Government to recover these amounts from the then Commissioner of Commercial Tax, and/or whoever were the officers responsible for the non-consideration of the claim of both the appellants.”*

10. The Hon'ble Apex Court in Union of India and Another Vs. Hemraj Singh Chauhan and Others reported in (2010) 4 SCC 290 had held:

- 1) The holding of cadre review is mandatory except where there is some valid justification for not doing so. Lethargy, inaction, lack of sense of responsibility on the part of the Government are not just exceptions.
- 2) Cadre review ordinarily operate prospectively but in certain circumstances like this case it operate retrospectively so that even though those who have become age barred by virtue of Government delay will be considered for promotion.
- 3) Right to be considered in time and by not doing so rendering eligible employees as ineligible is an infraction of Constitutional

guarantee of equality.

4) The word 'ordinarily' has to be understood that it cannot be interpreted in such a way that consideration for promotion is postponed indefinitely.

5) The right for being considered for promotion is almost a Fundamental Right.

11. In this case, applicant having been selected for consideration once retains his claim for being considered. The obstacle having been removed by cogent judicial interference there is, thus, no impediment as of now.

12. To elucidate this point we quote from the said judgment of the Hon'ble Apex Court:

***“A.K. GANGULY, J- Leave granted. In SLP (C) Nos.6758-6759/2009, Union of India and the Secretary, Union Public Service Commission are in appeal impugning the judgment and order dated 14.11.2008 delivered by the Delhi High Court on the writ petition filed by Hemraj Singh Chauhan and Ramnawal Singh, the respondents herein.***

***2. The respondents are members of the State Civil Service (S.C.S.) of the State of Uttar Pradesh and according to them completed eight years of service on 23.07.85 and 4.6.86 respectively. The contention of the respondents is that in terms of Regulation 5(3) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, a member of the S.C.S., who has attained the age of 54 years on the 1st day of January of the year in which the Committee meets, shall be considered by the Committee, provided he was eligible for such consideration on the 1st day 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.***

3. Those regulations have been framed in exercise of power under Sub-Rule 1 of Rule 8 of Indian Administrative Service Recruitment Rules, 1954 and in consultation with the State Government and the Union Public Service Commission.

4. Regulation 5 (1) of the said Regulation provides that such Committee shall ordinarily meet every year and prepare a list of such members of the S.C.S. as are held to be suitable for promotion to the service. The number of members of the said civil services to be included in this list shall be determined by the Central Government in consultation with the State Government concerned but shall not exceed the number of substantive vacancies in the year in which such meeting is held.

5. It may be mentioned in this connection that as a result of bifurcation of the State of Uttar Pradesh as a result of creation of the State of Uttaranchal in terms of the State Reorganization Act, namely Uttar Pradesh State Reorganization Act 2000, two notifications were issued on 21.10.2000. The first was issued under [Section 3\(1\)](#) of the All India Services Act, 1951 read with [Section 72](#) (2) and (3) of the Reorganization Act and Rule 4 (2) of the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1956 (hereinafter referred to as the "Cadre Rule").

6. Thus, the Central Government constituted for the State of Uttaranchal an Indian Administrative Service Cadre with effect from 1.11.2000. On 21.10.2000 another notification was issued fixing the cadre strength of State of Uttar Pradesh thereby determining the number of senior posts in the State of Uttar Pradesh as 253.

7. The case of the appellants is that the next cadre review for the State of Uttar Pradesh fell due on 30th April, 2003. To that effect a letter dated 23.1.2003 was written by the Additional Secretary in the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India to the Chief Secretary, Government of Uttar Pradesh.

8. The further case of the appellants is that several reminders were sent on 5th March, 3rd September, 17th September and 8th December, 2003 but unfortunately the Government of Uttar Pradesh did not respond. Then a further reminder was sent by the Government of India stating therein that four requests were made for the cadre review of the I.A.S. cadre of Uttar Pradesh but no response was received from the Government of Uttar Pradesh. In the said letter the Government of India wanted suitable direction from the concerned

*officials so that they can furnish the cadre review proposal by 28.2.04. Unfortunately, there was no response and thereafter subsequent reminders were also sent by the Government of India on 14.06.2004/17.06.2004 and 8.10.2004.*

*9. Ultimately, a proposal was received from the Government of Uttar Pradesh only in the month of January 2005 and immediately preliminary meeting was fixed on 21.02.2005. Thereafter, a cadre review meeting was held under the Chairmanship of the Cabinet Secretary on 20.04.2005 and the Minutes duly signed by the Chief Secretary, Government of Uttar Pradesh were received by the appellants on 27th June, 2005. After approval was given to the said Minutes, notification was issued on 25.08.2005 re-fixing the cadre strength in the State of Uttar Pradesh.*

*10. Challenging the said notification, the respondents herein approached Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as C.A.T.) by filing two O.As, namely, O.A. No.1097/2006 and O.A. No.1137/2006 praying for quashing of the said notification. The respondents also prayed for setting aside the order dated 1.2.2006 whereby vacancies were increased as a result of the said cadre review adding to the then existing vacancies for the year 2006.*

*11. In those O.As the substance of the contention of the respondents was that the last cadre review of the I.A.S. in Uttar Pradesh cadre was conducted in 1998 and the next cadre review was therefore due in April 2003. As such it was contended that the cadre review which was conducted in August 2005 should have been given effect from April 2003 so that the respondents could be considered for promotion against the promotion quota.*

*12. The stand of the State of Uttar Pradesh before C.A.T. was that with the issuance of notification issued by the Department of Personnel and Training on 21.10.2000 bifurcating cadre of undivided Uttar Pradesh to I.A.S. Uttar Pradesh and I.A.S. Uttaranchal upon the Uttar Pradesh Reorganization Act, cadre review has already taken place and as such the next review was due in 2005 only. The stand of the appellants both before the C.A.T. and before the High Court was that the cadre review was due in 2003.*

*13. However, the C.A.T. after hearing the parties upheld the contention of the State of Uttar Pradesh and held that the cadre review carried out in 2005 cannot be given retrospective effect. The Tribunal dismissed O.A. No.1097/06 and partially allowed O.A. No.1137/06, inter alia, directing the respondents to convene the*

*meeting of D.P.C. Selection Committee to fill- up the posts which were not filled up in the year 2001, 2002 and 2004 and to consider all eligible S.C.S. Officers in the zone of consideration including the officers who were put in the select list of those years but could not be appointed in the absence of integrity certificate.*

*14. However, the respondents being aggrieved by the judgment of the C.A.T. filed a writ petition before the Hon'ble High Court on 18.12.2006 contending therein that the cadre review of the I.A.S. of Uttar Pradesh cadre was due in 2003 and was delayed by the State of Uttar Pradesh as a result of which some of the S.C.S. Officers were deprived of their promotion to the I.A.S. Their specific stand in the writ petition was if the increased vacancies were available in 2004 as a result of the cadre review in 2003, they could have been promoted to I.A.S.*

*15. However, before the High Court the stand of the Central Government was that the cadre review of the I.A.S. of Uttar Pradesh was due in 2003 but unfortunately it was held in 2005 when State of Uttar Pradesh had sent its proposal. Such review was made effective from 25.8.2005 when the revised cadre strength of the I.A.S. cadre of Uttar Pradesh was notified in the official Gazette in terms of the statutory provisions. The further stand of the appellants was that the cadre review undertaken in 2005 cannot be given retrospective effect.*

*16. However, before the High Court the stand of the Uttar Pradesh Government was slightly changed and it filed a 'better affidavit' and took the stand that they have no objection to any direction for exercise of cadre review to be undertaken with reference of the vacancy position as on 1.1.2004.*

*17. The High Court after hearing the parties was pleased to set aside the judgment of C.A.T. dated 15.12.2006 and the notifications dated 1.2.2006 and 25.8.2005 were set aside. The State Government and the Central Government were directed that the cadre review exercise should be undertaken as if it was taking place on 30th April, 2003 with reference to the vacancy position as on 01.01. 2004.*

*18. In order to resolve the controversy in this case, the relevant statutory provisions may be noted. The respondents being S.C.S. Officers, are seeking promotion to I.A.S. in terms of Rule 4(1)(b) of the relevant recruitment rules. Rule 4(1)(b) of the Indian Administrative Service (Recruitment) Rules, 1954 is set out:-*

*"4. Method of recruitment of the Service (1) \* \* \**

*(b) By promotion of a substantive member of a State Civil*



*Service;"*

*19. In tune with the said method of recruitment, substantive provisions have been made under Rule 8 for recruitment by promotion. Rule 8(1) of the Recruitment Rules in this connection is set out below:-*

*"8. Recruitment by promotion or selection for appointment to State and Joint Cadre:- (1) The Central Government may, on the recommendations of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make, recruit to the Service persons by promotion from amongst the substantive members of a State Civil Service."*

*20. Under Rule 9, the number of persons to be recruited under Rule 8 has been specified, but in this case we are not concerned with that controversy.*

*21. The other regulation which is relevant in this case is Rule 5 of Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as, 'the said regulation'). These regulations have been referred to in the earlier part of the judgment. Rule 5(3) of the said regulation, relevant for the purpose of this case, is set out below:-*

*"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:*

*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 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."*

22. *Another regulation relevant in this connection is Indian Administrative Service (Cadre) Rules, 1954 (hereinafter referred to as, 'the Cadre Rules'). Under Rule 4 of the said Cadre Rules, the strength and composition of the Cadres constituted under Rule 3 shall be determined by regulation made by the Central Government in consultation with the State Government and until such regulations are made, shall be as in force immediately before the commencement of those rules.*

23. *Rule 4(2) has come up for interpretation in this case and to appreciate its true contents, the said Rule 4(2) is set out below:-*

*"4.(2) The Central Government shall ordinarily at the interval of every five years, re-examine the strength and composition of each such cadre in consultation with the State Government or the State Governments concerned and may make such alterations therein as it deems fit.*

*Provided that nothing in this sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any other time:*

*Provided further that State Government concerned may add for a period not exceeding two years and with the approval of the Central Government for a further period not exceeding three years, to a State or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts."*

24. *The main controversy in this case is, whether re-examination on the strength and composition of cadre in the State of Uttar Pradesh had taken place in accordance with the mandate of Rule 4 sub-rule (2).*

25. *It appears clearly that the authorities who are under a statutory mandate to re-examine the strength and composition of cadre are the Central Government and the concerned State Government. It can be noted in this connection that word 'ordinarily' in Rule 4(2) has come by way of amendment with effect from 1.3.1995 along with said amendment has also come the amendment of 5 years, previously it was 3 years.*

26. *From the admitted facts of this case, it is clear that Central Government had always thought that cadre review in terms of Rule 4(2) of the cadre Rules was due in 2003. In several letters written by the Central Government, it has been repeatedly urged that the cadre review of I.A.S. cadre of Uttar Pradesh is due on 30th April, 2003. The*

letter dated 23/24 January, 2003 written to that effect on behalf of the appellant to the Chief Secretary, Government of Uttar Pradesh, Lucknow is set out below:-

"Dear Shri Bagga,

The cadre review of IAS cadre of Uttar Pradesh is due on 30.04.2003. The Supreme Court in 613/1994 (TANSOA vs. Union of India) has stated that the Central Government has the primary responsibility of making cadre reviews and to consider whether it is necessary or not to encadre long existing ex-cadre posts. Delay in conducting the cadre review results in avoidable litigation as officers of the State Civil Service approach the Courts that the delay has stalled their promotional avenues. It is important that the cadre reviews are held on time.

2. I shall, therefore, be grateful if you could look into the matter personally and instruct the concerned officials to sponsor the review proposals in the prescribed proforma, after taking into consideration the requirement of the State Government by 28th February, 2003 to this Department for processing the case further.

With regards"

27. In various subsequent letters, namely dated 5th March, 2003, 3rd September, 2003, 17th September, 2003, 8th December, 2003, the Central Government reiterated its stand that cadre review has to be done by 2003. Admittedly, the Central Government took the aforesaid stand in view of the law laid down by this Court in the case of T.N.

[Administrative Service Officers Association and another v. Union of India and others](#), reported in (2000) 5 SCC 728.

28. It cannot be disputed that the Central Government took the aforesaid stand in view of its statutory responsibility of initiating cadre review as a cadre controlling authority. In fact in the letter dated 29th August, 2005 by Neera Yadav, on behalf of the State of Uttar Pradesh, it has been categorically admitted in paragraph 3 of the said letter that the previous cadre review was done in 1998. The stand is as follows:-

"Thus, the cadre review for alteration was to be done under Rule 4(2) of the Indian Administrative Service Cadre Rules, 1954 as on 30.04.2003. The Department of Personal & Training, through D.O. letter No.11031/5/2003- AIS-II dated 23.01.2003 requested that State Government to sponsor the review proposal on the prescribed proforma as cadre review as cadre review of Indian Administrative Service, Uttar Pradesh cadre was due on 30.04.2003."

29. In the affidavit of the appellant, filed before Central Administrative Tribunal, the following stand has been categorically taken:-

*"It is submitted that the last cadre strength of the IAS cadre of unified cadre of Uttar Pradesh was notified on 30.04.1998. Therefore, as per Rule 4(2) of the IAS (Cadre) Rules, 1954, the next review was due on 30.4.2003."*

*It was also stated that the reference by the State Government to order dated 23.9.2000 was not one of cadre review. It was a reference of the State Government in connection with the bifurcation of Uttar Pradesh and Uttaranchal, pursuant to Uttar Pradesh Reorganization Act, 2000. It was admitted that the I.A.S cadre of Uttaranchal was constituted later i.e. on 21.10.2000.*

30. In so far as the State of U.P. was concerned, the State filed an application for a 'better affidavit' before the High Court and in paragraphs 4 and 5 of the said application the State Government reiterated the reasons for filing a 'better affidavit'. In those paragraphs, the stand of the Central Government was reiterated, namely, that the last cadre review was done in 1998 and the subsequent cadre review under Rule 4(2) of the Cadre Rules was due on 30.04.2003.

31. In the 'better affidavit', which was filed on behalf of the State of Uttar Pradesh before the High Court, in paragraph 8, the stand taken is as follows:-

*"..In this view of the matter, since the last "Quinquennial Cadre Review" of the IAS Cadre was held on 30.4.1998, the next "Quinquennial Cadre Review" of the IAS cadre became due on 30.4.2003 as stated by the Cadre Controlling Authority in para 9 of its counter affidavit."*

32. It is thus clear that both the authorities under Rule 4(2) of the Cadre Rules accepted on principle that cadre review in Uttar Pradesh was due in 2003.

33. Appearing for the appellants the learned counsel urged that the judgment of the High Court in so far as it seeks to give a retrospective effect to the cadre review is bad inasmuch as the stand of the appellants is that the Notification dated 25.8.2005 makes it explicitly clear that the same comes into force on the date of its publication in the Official Gazette. Relying on the said Notification, it has been urged that since the same has been made explicitly prospective and

*especially when the Rule in question, namely, Rule 4(2) of the Cadre Rules is expressly prospective in nature, the cadre review exercise cannot be made retrospective. This seems to be the only bone of contention on the part of the appellants.*

*34. However, from the discussion made hereinbefore, the following things are clear:*

*(a) Both the appellants and the State Government in accordance with their stand in the subsequent affidavit accepted that Cadre Review in the State of U.P. was made in 1998 and the next Cadre Review in that State was due in 2003;*

*(b) Neither the appellants nor the State Government has given any plausible explanation justifying the delay in Cadre review;*

*(c) From the materials on record it is clear that the appellant as the Cadre Controlling authority repeatedly urged the State Government to initiate the review by several letters referred to hereinabove;*

*(d) The only reason for the delay in review, in our opinion, is that there was total in-action on the part of the Uttar Pradesh Government and lackadaisical attitude in discharging its statutory responsibility.*

*35. The Court must keep in mind the Constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a Welfare State.*

*36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under [Article 16](#) of the Constitution. The guarantee of a fair consideration in matters of promotion under [Article 16](#) virtually flows from guarantee of equality under [Article 14](#) of the Constitution.*

*37. [In The Government Branch Press and Anr. vs. D.B. Belliappa](#) - (1979) 1 SCC 477, a three judge Bench of this Court in relation to service dispute, may be in a different context, held that the essence of guarantee epitomized under Articles 14 and 16 is "fairness founded on reason" (See SCC p. 486, para 24).*

*38. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion has been defeated by the acts of the government and if not of the Central Government, certainly the unreasonable in-action on the part of the Government of*

*State of U.P. stood in the way of the respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. Now the question which is weighing on the conscience of this Court is how to fairly resolve this controversy.*

39. Learned counsel for the appellants has also urged that the statutory mandate of a cadre review exercise every five years is qualified by the expression 'ordinarily'. So if it has not been done within five years that does not amount to a failure of exercise of a statutory duty on the part of the authority contemplated under the Rule.

40. This Court is not very much impressed with the aforesaid contention. The word 'ordinarily' must be given its ordinary meaning. While construing the word the Court must not be oblivious of the context in which it has been used. In the case in hand the word 'ordinarily' has been used in the context of promotional opportunities of the Officers concerned. In such a situation the word 'ordinarily' has to be construed in order to fulfill the statutory intent for which it has been used.

41. The word 'ordinarily', of course, means that it does not promote a cast iron rule, it is flexible ([See Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed and Others](#) - (1976) 1 SCC 671, at page 682 (para 35). It excludes something which is extraordinary or special [[Eicher Tractors Limited, Haryana vs. Commissioner of Customs, Mumbai](#) - (2001) 1 SCC 315, at page 319 (para 6)]. The word 'ordinarily' would convey the idea of something which is done 'normally' [[Krishan Gopal vs. Shri Prakashchandra and others](#) - (1974) 1 SCC 128, at page 134 (para 12)] and 'generally' subject to special provision [[Mohan Baitha and others vs. State of Bihar and another](#) - (2001) 4 SCC 350 at page 354].

42. Concurring with the aforesaid interpretative exercise, we hold that the statutory duty which is cast on the State Government and the Central Government to undertake the cadre review exercise every five years is ordinarily mandatory subject to exceptions which may be justified in the facts of a given case. Surely, lethargy, in-action, an absence of a sense of responsibility cannot fall within category of just exceptions.

43. In the facts of this case neither the appellants nor the State of U.P. has justified its action of not undertaking the exercise within the statutory time frame on any acceptable ground. Therefore, the

*delayed exercise cannot be justified within the meaning of 'ordinarily' in the facts of this case. In the facts of the case, therefore, the Court holds that there was failure on the part of the authorities in carrying out the timely exercise of cadre review.*

44. In a somewhat similar situation, this Court in [Union of India and Ors. vs. Vipinchandra Hiralal Shah](#) - (1996) 6 SCC 721, while construing Regulation 5 of the I.A.S. (Appointment by Promotion) Regulations, 1955 held that the insertion of the word 'ordinarily' does not alter the intendment underlying the provision. This Court in that case was considering the provision of Clause (1) of Regulation 5 of the IPS (Appointment by Promotion) Regulations along with other provisions of Regulation 5. The interpretation which this Court gave to the aforesaid two Regulations was that the Selection Committee shall meet at an interval not exceeding one year and prepare a list of members who are eligible for promotion under the list. The Court held that this was mandatory in nature.

45. It was urged before this Court in Hiralal Shah case that the insertion of the word 'ordinarily' will make a difference. Repelling the said contention, this Court held that the word 'ordinarily' does not alter the underlying intendment of the provision. This Court made it clear that unless there is a very good reason for not doing so, the Selection Committee shall meet every year for making the selection. In doing so, the Court relied on its previous decision in [Syed Khalid Rizvi vs. Union of India](#) - 1993 Supp. (3) SCC 575.

46. In Syed Khalid Rizvi the Court was considering Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955 which also contained the word 'ordinarily'. In that context the word 'ordinarily' has been construed as: (Syed Khalid Rizvi, SCC p. 586, para 9)

*"9.....since preparation of the select list is the foundation for promotion and its omission impinges upon the legitimate expectation of promotee officers for consideration of their claim for promotion as IPS officers, the preparation of the select list must be construed to be mandatory. The Committee should, therefore, meet every year and prepare the select list and be reviewed and revised from time to time as exigencies demand."*

*The same logic applies in the case of cadre review exercise also.*

47. Therefore, this Court accepts the arguments of the learned counsel for the appellants that Rule 4(2) cannot be construed to have



*any retrospective operation and it will operate prospectively. But in the facts and circumstances of the case, the Court can, especially having regard to its power under [Article 142](#) of the Constitution, give suitable directions in order to mitigate the hardship and denial of legitimate rights of the employees.*

*48. The Court is satisfied that in this case for the delayed exercise of statutory function the Government has not offered any plausible explanation. The respondents cannot be made in any way responsible for the delay. In such a situation, as in the instant case, the directions given by the High Court cannot be said to be unreasonable. In any event this Court reiterates those very directions in exercise of its power under [Article 142](#) of the Constitution of India subject to the only rider that in normal cases the provision of Rule 4(2) of the said Cadre Rules cannot be construed retrospectively.*

*49. With the aforesaid modification/direction, the appeals filed by the Union of India are disposed of. There shall be no order as to costs.”*

13. Besides in Criminal Petition No. 4680/2012, which we quote, the Hon'ble High Court had exonerated the applicant and thus he appears to be free of any obstacles.

#### **“ORDER**

*In this petition filed under Section 482 of Cr.P.C., the petitioner arraigned as accused No.1 in Crime No.12/12 of Lokayuktha police, Mysore, for the offence punishable under Section 13(1)(d)(e) r/w. 13(2) of the Prevention of Corruption Act and Sections, 14, 32 and 32-A of the Karnataka Excise Act, 1965, has sought for quashing the FIR registered by the respondent-police inter alia on the ground that no case is made-out against him for any of the offences alleged and that the registration of the case on the basis of the search and seizure conducted is illegal and contrary to the law laid-down by this Court in several decisions.*

*2) According to the case of the prosecution, the Dy.S.P., Lokayuktha, Mysore, on receiving some information about corrupt activities going-on in the office of the Deputy Commissioner of Excise, Mysore District, Mysore, obtained a search warrant from the Special Court, Mysore, for searching the office premises of the petitioner. Pursuant to such search warrant, the Dy.S.P. along with the panchas and the staff, went to the office of the Deputy*

Commissioner of Excise, Mysore, at about 12.45 Noon on 27.06.2012 and inside the office, they noticed several officers and officials sitting at their specified places and also several publics. The Dy.S.P. and his staff after entering the office premises, collected the attendance register as well as the cash declaration register and thereafter, verified the cash in possession of each of the officials working therein. They were found to be tallying with the declarations made in the register. Thereafter, the publics present there, were also searched and they found possessing cash with them. However, since all of them stated that the cash in their possession belong to them, they were allowed to retain the same. Thereafter, the chambers of the officers and the places where the officials working were searched and no incriminating materials were found in possession of any of the officers or officials. When the raiding party went inside the record room, there, they found an employee by name M. Nagaraju, who is working as Excise Guard and when questioned as to whether he knows about the ill-gotten money, he though initially stated that he does not know, later, took-out some currency notes from a plastic vessel kept inside the record room behind the iron rack and on verification, the currency notes found to be Rs.6,160/-. The same was seized. Thereafter, suspecting that huge cash may be found in the house of the said Nagaraju, the raiding party went to the house of the said Nagaraju and there, the search revealed that the said Nagaraju was possessing cash of Rs.1,49,000/- in the house. The said cash was also seized. Some whisky bottles found in the record room at the place where the said Nagaraju was sitting were also seized. A detailed mahazar was drawn in the presence of panchas and the explanation of the said Nagaraju was obtained, in which the said Nagaraju stated that the amount of Rs.6,160/- belong to him and he had brought it from the house for purchase of cloths and other article for his children and cash of Rs.1,49,000/- found in his house also belong to him, as he had kept the same for the marriage of his daughter and for the educational expenses of his children. Explanation of this petitioner also obtained, wherein, he expressed his ignorance about the cash found in the house of the Nagaraju as also the cash produced by the said Nagaraju. Thereafter, the Dy.S.P. drew-up a report, based on which, the case in Crime No. 12/2012 came to be registered against this petitioner: Y. Manjunath as Accused No.1, Accused No.2-M. Nagaraju and Accused No.3 – N. Rajesh.

3) On coming to know of the registration of the case against him, the petitioner has presented this petition. The respondent-Lokayuktha Police is represented by its standing counsel Sri. B.A. Belliappa.



4) *I have heard Sri. C.V. Nagesh, learned Senior Counsel for the petitioner and Sri. B. A. Belliappa, learned counsel appearing for the respondent.*

5) *The principal contention urged by the learned Senior Counsel is that, as no case is made-out against this petitioner, the registration of the case against this petitioner for any of the offences was uncalled for and it is illegal, as such, it is liable to be quashed.*

6) *Having perused the contents of the panchanama drawn in the office of the Deputy Commissioner of Excise, Mysore and also the report submitted by the Dy.S.P. of Lokayuktha, based on which the case came to be registered subsequently, I see considerable force in the contention of the learned senior counsel.*

7) *As noticed supra, the contents of the mahazar drawn in the office of the Deputy Commissioner, Excise, clearly indicates that no amount was found in possession of this petitioner. No incriminating material was also found in possession nor under his control. Even according to the contents of the panchnama, the cash of Rs.6,160/- found in the record room was produced by one M.Nagaraju (Accused No.2) and later the cash of Rs.1,49,000/- was recovered from his house. The explanation offered by the said Nagaraju was that the cash seized both at the office and in his house belong to him. Thus, absolutely, no incriminating circumstance existed to indicate any of the offences alleged against this petitioner. Merely because this petitioner was working as Deputy Commissioner of Excise at the time of the raid, search and seizure conducted by the Dy.S.P., the respondent could not have registered the case against this petitioner for any of the aforesaid offences. In my considered opinion, no case is made-out against this petitioner, as such, registration of the case against this petitioner is wholly without jurisdiction and is without any basis. In addition to this, it is also necessary to note that before proceeding to conduct search and seizure, no FIR had been registered as required by Section 154 of Cr.P.C. The case in Crime No.12/2012, as noticed supra, came to be registered only after the search and seizure conducted by the Dy.S.P.. This Court in catena of decisions has held that such procedure adopted is illegal and contrary to law. The search and seizure can be held only after the registration of the case, as required under Section 154 of Cr.P.C.*

8) *Having regard to the above discussions, I am of the considered opinion that the FIR registered by the respondent-Lokayuktha Police against this petitioner is liable to be quashed. Hence, the petition is allowed. The FIR registered in Crime No.12/2012 by Lokayuktha Police, Mysore, against this petitioner, is hereby quashed."*

14. With regard to the above case, the respondents have stated as follows:

“It is submitted that, the applicant while he was working as Deputy Commissioner of Excise, Mysore during the year 2012, the Lokayukta police on 27.6.2012 had searched the Excise offices Range-1 and Range-4 of Mysore and seized illegal money of Rs.2,46,000/-. Therefore, on the basis of the available materials Lokayukta Police filed an FIR No.11/2012 u/s 13(1) (d) (e) r/w 13(2) of the P.C. Act in Mysore Lokayukta Police Station on 27.6.2012 against the applicant and seven others. The Karnataka Lokayukta Police Wing, Mysore, completed the investigation of this case and submitted the final investigation report through ADGP Karnataka Lokayukta along with relevant records seeking sanction of prosecution in respect of the applicant in the competent court of law as the investigation has disclosed commission of offence under PC Act. This proposal was pending consideration before the State Government at the time of consideration of the case of the applicant for recommending the name under Non-SCS category. In view of this vigilance status, as the competent authority was required to certify the integrity of the officer, a conscious decision was taken not to recommend the name of the applicant for consideration for selection to IAS under Non-SCS category.

It is submitted that, Departmental Enquiry was entrusted to Hon'ble Lokayukta under rule 14(A) of the KCS(CCA) Rules, 1957 in respect of the applicant vide order dtd.16.5.2015 and although the Hon'ble Karnataka Administrative Tribunal granted an interim order of stay to the said GO, the basic fact remains that the State Government has entrusted the enquiry to Hon'ble Lokayukta. It is also submitted that the proposal for the sanction of prosecution as sought by the Lokayukta Police Wing was also pending consideration at that point of time.”

It is not clear whether the sanction for prosecution was subsequently issued and anything is pending at the level of the Government subsequent to the orders of the Hon'ble High Court of Karnataka in Criminal Petition No.4680/2012 dtd.15.2.2013. There is no mention regarding this sanction for prosecution in the above orders of the High Court. Why the orders of the Hon'ble High Court of Karnataka was not brought before us either by the applicant or by the respondents is also not clear.

15. In our earlier order dtd.10.10.2018, we had mentioned that since the procedure for selection to the vacancies up to 2017 has already elapsed, it will be infructuous to send this matter back for consideration by the department at this stage. It was ordered that the department will be free to consider his case afresh for the vacancies in the subsequent years if they find him suitable as per the prescribed criteria and therefore, the OA was dismissed. However, following the decision of the Hon'ble High Court of Karnataka in WP.No.11077/2018 & 26123/2018(S-CAT), it is apparent that the time frame for consideration is still available and therefore it will be appropriate for the respondents to consider the case of the applicant for appointment to the IAS de hors regulation 5 in the light of the above cases especially the orders of the Karnataka Administrative Tribunal quashing the disciplinary proceedings and the Criminal Petition also having been quashed by the Hon'ble High Court of Karnataka and pass appropriate orders within the time frame granted by the Hon'ble

High Court of Karnataka. It should not be that the orders of the Hon'ble High Court and the Hon'ble KAT are without any value whatsoever. Therefore, the applicant will be considered with reference to the earliest point of time. The OA is allowed with the above orders. No costs.

(C V SANKAR)  
MEMBER (A)

(DR.K.B.SURESH)  
MEMBER (J)

/ksk/

**Annexures referred to by the applicant in OA No.170/00787/2017**

Annexure-A1: Copy of the letter dated 19.06.2017 of 2<sup>nd</sup> respondent calling proposals of non-state civil service officers for being appointed as IAS

Annexure-A2: Copy of the letter dated 16.06.2017 of 4<sup>th</sup> respondent

Annexure-A3: Copy of the Government order dated 16.05.2015

Annexure-A4: Copy of the order dated 24.11.2017

Annexure-A5: Copy of the circular dated 18.02.2010

**Annexures with reply statement**

Annexure-R1: Copy of the order dated 24.11.2017

Annexure-R2: Copy of the letter dated 14.01.2019

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