

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 518 of 2012

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Amarendera Kumar Rath, aged 56 years, S/o Late Akrura Charan Rath, permanent resident of Vill/PO – Bijaya Nagar, PS – Mahakalapada, Dist. – Kendrapara, Odisha, at present working as Additional Secretary to Govt., Steel & Mines Department, Govt. of Odisha, Bhubaneswar – 751001, Dist. – Khurda, Odisha.

.....Applicant

VERSUS

1. Union of India, represented through the Secretary, Ministry of personnel, Public Grievance and Pension, Dept. Of Personnel & Training, North Block, New Delhi – 110001.
2. State of Orissa represented through Chief Secretary to Govt. of Odisha, Orissa Secretariat, Bhubaneswar-751001, Dist. – Khurda.
3. Union Public Service Commission represented through its Secretary, Dholpur House, Sahajahan Road, New Delhi – 110069.
4. Dillip Kumar Mohanty (3), IAS, Joint Secretary to Chief Minister, Odisha Secretariat, Bhubaneswar, Odisha.
5. Dhruba Charan Panchabhaya, CEO, Western Odisha Development Council, Rajeev Bhawan, Bhubaneswar, Odisha.
6. Hadibandhu Singhsardar, IAS, Secretary, State Transport Authority, Board of Revenue Building, Cuttack, Odisha.
7. Balakrushna Behera, IAS, Joint Secretary to Government, Water Resources Department, Rajeev Bhawan, Bhubaneswar, Odisha.
8. Sudarsan Das, IAS, Joint Secretary to Government, Commerce & Transport Department, Odisha Secretariat, Bhubaneswar, Odisha.
9. Julius Lakra, IAS, District Magistrate & Collector, Deogarh, AT/PO/Dist-Deogarh, Odisha.
10. Basanta Kumar Behera, IAS, Joint Secretary to Government, H & FW Department, Odisha Secretariat, Bhubaneswar, Odisha.
11. Debi Prasad panda, IAS, Administrator, NITI, Sri Jagannath Temple, AT/PO/Dist-Puri, Odisha.
12. Pradeep Kumar Rath, Director of Estates & Ex Officio Joint Secretary to Government, General Administration Department, Odisha Secretariat, Bhubaneswar, Odisha.
13. Bishnu Prasad Sahoo, IAS, Joint Secretary to Government, Home Department, Odisha Secretariat, Bhubaneswar, Odisha.
14. Debraj Mishra, IAS, Joint Secretary to Governor, Rajbhawan, Bhubaneswar, Odisha.
15. Sangram Keshari Ray, IAS, Registrar, Odisha University of Agriculture & Technology (OUAT), Bhubaneswar-3, Dist. – Khurda, Odisha.
16. Laxminarayan Mishra, IAS, Joint Secretary, Orissa Public Service Commission (OPSC), PO/PS- Cantonment Road, Cuttack, Odisha.
17. Sushil Kumar Das – 3, Director of Culture, Sanskrutu Bhawan, Museum complex, Bhubaneswar, Odisha.

18. Harekrishna Behera, IAS, Joint Secretary to Government, Excise Department, Odisha Secretariat, Bhubaneswar, Odisha.
19. Chudamani Seth, PD, DRDA, AT/PO/Dist-Koraput, Odisha.
20. Govind Chandra Sethi, IAS, Joint Secretary to Government Steel & Mines Department, Odisha Secretariat, Bhubaneswar, Odisha.

.....Respondents.

For the applicant : Mr.K.C.Kanungo, counsel

For the respondents: Mr.S.Behera, Sr. panel counsel
Mr.J.Pal, counsel
Mr.S.B.Jena, counsel

Heard & reserved on : 10.7.2019 Order on : 25.7.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- "(i) the order of promotion dtd. 23.9.2002 under Annexure A/9 so far as respondents 5 to 13 are concerned may be quashed/set aside, and
- (ii) the applicant No. 1 to 3 may be declared as promoted as Superintendent of Central Excise, Custom & Service Tax w.e.f. 23.9.2002 with all consequential service benefits like scale of pay, arrear of salary, increments etc. and seniority above the respondents 5 to 13, and
- (iii) the applicant No.4 may be declared as promoted as Superintendent of Central Excise, Custom & Service Tax w.e.f. 31.12.2002 with all consequential service benefits like scale of pay, arrear of salary, increments etc. and seniority above the respondents 5 to 13, and
- (iv) the applicants may be given further promotion as Asst. Commissioner of Central Excise, Customs & Service Tax if the juniors to the applicants are so promoted during pendency of this OA."

2. The applicant was initially appointed in Odisha Administrative Service (in short OAS) on 6.1.1982 by Government of Odisha (respondent no.2). He is aggrieved by non-consideration of his name for promotion to Indian Administrative Service (in short IAS) under the provisions of the IAS (Appointment by Promotion) Regulations, 1955 (in short 'Regulations 55', while his juniors were considered by the Selection Committee in its meeting held on 8.8.2011 (Annexure-A/10) for such promotion for the year 2010 and they were also promoted, ignoring the applicant's case. It is the case of the applicant that for the Selection Committee for the year 2010 when 18 vacancies were there, names of 54 eligible officers, including the name of the applicant, were sent by

the respondent No. 2 to the UPSC. He had filed the OA no. 568/2011 before Tribunal, when he came to know that his name has not been considered for inclusion in the select list for promotion to IAS. The Tribunal, vide order dated 30.8.2011 (Annexure-A/2) disposed of the OA directing the respondent No. 2 and 3 to consider the representation of the applicant in this regard. In response, the respondent No.2 passed the order dated 1.10.2011 (Annexure-A/3) rejected the representation since it was considered to be premature as the select list was not finalized so far and his representation dated 16.8.2011 was forwarded to UPSC (respondent no. 3). UPSC in its letter dated 21.10.2011 (A/4) disposed of the said representation reiterating the observation of the respondent No. 2 that the select list has not been finalized so far.

3. Thereafter, the respondent No.2 passed the order dated 1.6.2012 (A/5) finalized the Select List of 17 officers for promotion to IAS including the names of the juniors of the applicant, whose name was not included. Names of 4 officers were included in the list provisionally subject to clearance in the criminal proceedings pending against them. Then respondent No. 1 issued the notification dated 1.6.2012 (A/6) appointing 13 officers out of 17 (leaving the names of the persons who were included provisionally in the list). Vide order dated 22.6.2012 (A/7), the respondent No. 2 issued the posting order in IAS in favour of 13 officers including some of the officers who were junior to the applicant. Being aggrieved, the applicant has challenged the orders at A/5, A/6 and A/7 incorporating his juniors whose promotion has also been challenged.

4. Respondent No. 1 in their Counter, stated that the State Government is required to send the list of the State Civil Service Officers to the UPSC for consideration of the Selection Committee for preparation of the select list for promotion against the identified vacancies. The list included the name of the applicant, but he was assessed to be unfit for promotion by the Select Committee. It is stated that the applicant's contention that his case should have been considered as per the para-B(3) of the internal guidelines of the UPSC, is to be considered by the respondent No. 2 and 3. The respondent No. 1 has acted as per the Select list recommended by the Selection Committee and hence, there is no violation of the rules.

5. The respondent No. 2 has filed their Reply stating that names of 55 officers were recommended by the respondent No.2 to the UPSC for 18 vacancies for the year 2010. The applicant was also duly considered by the Selection Committee and he was not found to be fit for promotion for which his name was not included in the Select list. Subsequently, the number of vacancies was reduced to 17 due to appointment of one officer as per the order of the Tribunal. It is stated that the applicant could not be included in the

Select list as he was assessed to be unfit and some of his juniors were included in the Select list as they were found suitable by the Select Committee.

6. The respondent No. 3 has filed Counter stating that the Select Committee considered the case of all 54 officers including the applicant sent by the State Government, for promotion to the IAS in terms of the regulation 5(4) of the Regulations, 55 and found the applicant unfit for promotion. It is stated that the Committee was not guided merely by overall grading, but make their own assessment on the basis of the entries in the ACR of the officer. The para 13.3 and 13.4 of the reply of the respondent No.3 state as under:-

"13.3 In the guidelines procedures have been indicated for categorization of officers as ' Outstanding', 'Very Good', 'Good' & 'Unfit' as the case may be on the basis of assessment of their service records. As per above guidelines an officer may be categorized as 'Unfit' if his reports are lacking any positive merit or whose performance is not generally satisfactory or if there are entries in some of the latest ACRs which adversely reflect on his suitability for promotion. Similarly an officer can also be categorized as 'Unfit', if the ACRs contain orders of penalty which in the opinion of the Selection Committee would render the officer unsuitable for promotion.

13.4 In the instant case, it is humbly submitted that the applicant was considered at S.No.15 of the Eligibility List for the Select List of 2010. The Selection Committee took into consideration ACRs of the applicant for the period 2005-06 to 2009-10. On an overall relative assessment of his service records, the Selection Committee assessed him as 'Unfit'. On the basis of this assessment, he could not be included in the Select List. Regarding the contentions that he has outstanding service records, the Deponent respectfully submits that the applicant is substituting his own judgment to that of the statutorily set up Selection Committee consisting of high ranking and responsible officers which is presided over by the Chairman/Member of the UPSC. The case of the applicant has been considered by the Selection Committee strictly in accordance with the provisions of the Promotion Regulations and the internal guidelines which has been upheld by the Hon. Supreme Court.

13.5 Regarding the contentions of the petitioner about non-initiation of disciplinary proceedings against him, absence of adverse remarks, etc., the deponent most respectfully submits that the promotion of State Civil Service officers to the IAS is made on merits in accordance with the provisions of IAS (Appointment by Promotion) Regulations. The Hon'ble Supreme Court in the case of Mir Ghulam Hussain and Others –vs- UOI & Others [Air 1971 SC 1138] have held as under :

'Promotion is not made on the basis of absence of complaint but on the basis of positive merit. Absence of adverse remarks is not the criteria of the quality of an officer. Therefore, the claim that since there was nothing adverse against him and the applicant was entitled to be selected for promotion is completely misconceived.' "

7. The applicant has submitted his Rejoinder to the Counter/Reply filed by the respondents. The grounds taken in the OA were reiterated. With reference to the procedure adopted by Selection Committee as stated in the Reply of the respondent No. 3, it is stated that in his case, the ACRs reflect positive attributes under different headings and the Committee do not have any other material for grading him as 'unfit'. It is further stated that the applicant was promoted in OAS by State Government primarily based on the ACR entries. The

applicant cites the judgment of Hon'ble Apex Court in the case of R.S. Dass vs. Union of India AIR 1987 SC 593. He also cited the judgment dated 10.1.2006 of Hon'ble Apex Court in the case of Aswini Kumar Das vs. Union of India in which it was held that if the Government has failed to exercise or wrongly exercised the discretion malafide or on irrelevant considerations, then Court can exercise its power of judicial review.

8. We have heard learned counsels for the rival parties and examined the pleadings on record. Learned counsel for the respondent no. 2 has also handed over a copy of the proceedings of the Selection Committee (copy also enclosed at A/10 of the OA) and copy of the ACRs of the applicant for the years from 2005-06 to 2009-10 at the time of hearing which was taken on record.

9. The stand of the applicant is that although there is no adverse entry in his ACRs and on the basis of his ACRs he was promoted to higher posts in OAS, still he was found unfit for promotion to IAS, while his juniors in service were found fit. Such finding in respect of the applicant is stated to be arbitrary. The respondents have taken a stand that the Selection Committee has taken a view about suitability of the applicant after assessing his ACR in accordance with the provisions of the Regulations, 55 and there is nothing on record to prove that the Committee was biased or unfair to the applicant.

10. On perusal of the Minutes of the Selection Committee, it is seen that the following procedure was adopted as stated therein:-

"4.3 It was further brought to the notice of the Committee that, as informed by the State Government:

- (i) the integrity in respect of all the eligible officers have been certified by the State Government;
- (ii) no penalties have been imposed during the last ten years on any of the eligible officers; and
- (iii) no adverse remarks in the ACRs of the eligible officers are pending for communication/expunction.

5.1 The Committee were also informed that promotion to the IAS of Orissa Cadre are governed by the provisions of the IAS (Appointment by Promotion) Regulations, 1955. The provision of Regulation 5(4) and 5(5) reads as under :

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

5(5) The List shall be prepared by including the required number of names first from amongst the officers finally classified as "Outstanding" then from amongst those similarly classified as "Very Good" and thereafter from amongst those similarly classified as "Good" and the order of names inter-se within each category shall be in the order of their seniority in the State Civil Service.

5.2 Thus in accordance with Regulation 5(4) of the Promotion Regulations, the Selection Committee has to classify the eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit' as the case may be on an overall relative assessment of their service records as made available by the State Govt. The Selection Committee would go through the service records of each of the eligible officers and after deliberation will record the assessment of the Committee.

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6. The Selection Committee examined the records of the officers, whose names are included in the Annexure and who fulfilled the conditions of eligibility, upto the year 2009-10. On an overall relative assessment of their service records, the Committee assessed them as indicated against their names in the Annexure. The Committee did not take into consideration the adverse remarks if any, in the ACRs of the eligible officers which were not communicated to them, while assessing their suitability."

Thus the assessment of the applicant as 'unfit' has been recorded for the applicant as mentioned in the Annexure of the Minutes dated 8.8.2011 (A/10) and as recorded in para 6, it was done after 'overall relative assessment of their service records' by the Committee.

11. We have gone through the ACRs of the applicant for the period from 2005-06 till 2009-10 which were considered by the Selection Committee. Copy of these ACRs was furnished by learned counsel for the respondent no. 2 at the time of hearing of the OA. Although the overall gradings of the applicant in the ACRs for the above period were found to be 'very good' or 'outstanding' except for the year 2005-06 for which his grading was 'average'. The Committee has not recorded the specific reason for assessing the applicant as unfit in the Minutes except for the fact that it was based on overall relative assessment of the eligible officers as stated in para 6 of the Minutes. We have also perused the guidelines of UPSC regarding the procedure to be adopted by Selection Committee which is enclosed at Annexure-A/9 of the OA and there is no provision in the guidelines or the Regulations, 55 which requires the Committee to record the specific reason for assessing each officer under zone of consideration. The applicant in para 7 of the Rejoinder to the Reply of the respondent no. 3 has not disputed the averment that the Selection Committee is not bound to disclose the reason for its findings. Hence, it cannot be said that the Selection Committee's assessment in respect of the applicant are not based on the records placed before it or it was arbitrary.

12. We are unable to accept the contention of the applicant that since he was promoted in OAS, he should have been promoted in IAS also. As stated in the Counter filed by the respondent no. 3 (UPSC) that in the case of Mir Ghulam Hussain and Others vs. Union of India & Others reported in AIR 1971 SC 1138, Hon'ble Apex Court has held that promotion is on the basis of merit and not on the basis of absence of any adverse records. Further, it has not been demonstrated by the applicant if the norms and criteria adopted for promotions in OAS are same as the norms and criteria applicable for promotion from OAS to IAS. The judgments cited by the applicant in his Rejoinder to the Reply of the respondent no. 3 are not helpful to the applicant since there is nothing on record to prove the contention that the findings of the Selection Committee in respect of the applicant are arbitrary or biased. As stated in the Reply of the

respondent No.3, Hon'ble Apex Court in the case of Sh. M.V.Thimmaiah & Ors. vs. UOI & Ors. in Civil Appeal No. 5883-5891 of 2007 has held as under:-

"9. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory Rules. The Courts cannot sit as an appellate authority to examine the recommendations of the Selection Committee like the Court of appeal. This discretion has been given to the Selection Committee only and Courts rarely sit in court of appeal to examine the selection of the candidates nor is the business of the Court to examine each candidate and record its opinion."

13. In view of the reasons as discussed above, we are of the view that the applicant has failed to furnish adequate grounds in his pleadings to justify any interference of this Tribunal through judicial review. There is nothing on record to corroborate the contention that Selection Committee has erred in properly assessing his case for promotion to IAS as per provisions of law.

14. Accordingly, the OA being devoid of merit is liable to be dismissed and hence, it is dismissed. There will be no order as to cost.

(SWARUP KUMAR MISHRA)

MEMBER (J)

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath