

B. AMRUTHA LAKSHMI

v.

STATE OF ANDHRA PRADESH AND ORS.

(Civil Appeal No. 9193 of 2013 etc.)

OCTOBER 18, 2013

[H.L. GOKHALE AND J. CHELAMESWAR, JJ.]

INDIAN ADMINISTRATIVE SERVICE (APPOINTMENT BY SELECTION) REGULATIONS, 1997:

Regulation 4 r/w Regulation 3 – Selection to I.A.S. under non-State Civil Services category for the year 2011 – State Government to send proposals for consideration of Committee – Held: Names of officers from the cadre of Assistant Commissioner of Commercial Taxes and above, who were of outstanding merit and were eligible, were to be forwarded, but names which were sent for consideration were, only of Joint Commissioners and Additional Commissioners and not Assistant Commissioners -- Appellants were very much eligible for being considered, and there were so many similar eligible candidates -- 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 -- When there is a criteria laid down for selection, Administration has to confine to the same, and it cannot impose an additional criterion, as 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 Arts. 14 and 16(1) of the Constitution -- The decision of respondents not to consider appellants for selection was violative of Art. 14 and Art. 16(1) of the Constitution, since it was arrived at on the basis of a criterion which was not laid down -- Indian Administrative

A *Service (Promotion by Appointment) Regulations, 1955 – Constitution of India, 1950 – Arts. 14 and 16(1).*

JUDGMENT:

B *Prospective operation of judgment – Names of appellants not sent by department for selection to IAS -- Held: Since the selection for the year 2011 had been over even before the interim application in CAT was decided, setting aside the selection conducted some two years back, and asking the respondents to re-do the exercise after considering the appellants and other similarly situated candidates, would create lot of uncertainty, in as much as appellants and such other similarly situated candidates, might or might not finally succeed in the selection process -- Therefore, it will not be proper to set aside the selections made -- Though the declaration is being granted that the appellants and persons situated like them were entitled to be considered by the Committee, no further relief in that behalf can be granted to them -- The opinion rendered by the Court will have to operate prospectively in the matter of application of the relevant rules, for the future selections.*

ADMINISTRATIVE LAW:

F *Public employment – Non-consideration of claim of candidates on unjust grounds -- Damages – Held: Even though appellants cannot get the relief sought, they must get damages for non-consideration on unjust grounds, as Commissioner for Commercial Tax had acted to reduce the zone of consideration, contrary to the rules, and instructions -- The award of damages is necessary also as those who are responsible for administration cannot trample upon rights of others on the grounds which are unsustainable in law -- Therefore, State Government is directed to pay to appellants the damages and litigation costs, as ordered in the judgment and may recover the amounts from erring officer(s) – Damages.*

**B. AMRUTHA LAKSHMI v. STATE OF ANDHRA 1085
PRADESH**

The appellant in C. A. No. 9193 of 2013, an Assistant Commissioner of Sales Tax, filed an O.A. before the Central Administrative Tribunal challenging the action of the State Government in not considering her case for being proposed for appointment to I. A. S. in the non-State Civil Services category. The appellant prayed for an ad interim order, inter alia “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”. The interim relief having been declined both by the Tribunal as also the High Court, the instant appeals were filed.

Allowing the appeals in part, the Court

HELD: 1.1 Regulation Nos. 3 and 4 of the Indian Administrative Services (Promotion by Appointment) Regulations 1955 make it evident that the Central Government has to determine the number of vacancies for which recruitment may be made each year, which is to be done in consultation with the State Government. 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

A (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. [para 10] [1094-D-E, F-H; 1095-A]

B 1.2 It is evident from the 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 were of outstanding merit and were eligible, were to be forwarded, but the names which were sent for consideration were, however, only of the Joint Commissioners and Additional Commissioners and not Assistant Commissioners. [para 13] [1096-G-H; 1097-A]

D 1.3 It is not disputed that the appellant was very much eligible for being considered, and there were so many similar eligible candidates. It is to be noted that the eligible officers concerned have a limited right of being considered, though they do not have a right of promotion. 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. 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, therefore, 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. [para 17] [1099-A-C, D-H; 1100-A-C]

Shankarsan Dash Vs. Union of India 1991 (2) SCR 567 = 1991 (3) SCC 47- referred to.

1.4 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, as 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 Arts. 14 and 16(1) of the Constitution. In the instant case, the decision of the respondents cannot be justified. [para 18] [1100-D-G]

1.5 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,

A 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. This Court is of the view that, the appellant is
B entitled to such a positive declaration, which order takes
care of the prayer as made in the Original Application. In
the circumstances, the impugned judgment and order of
the High Court as well as of the Central Administrative
Tribunal, are set-aside and the relief as prayed in the O.A.
C is modified, and it is held 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 Art. 14 and Art.
D 16(1) of the Constitution, since it was arrived at on the
basis of a criterion which was not laid down. [para 19-20]
[1100-H; 1101-A-D]

1.6 However, the selection for the year 2011 had been
over, even before the interim application in the CAT was
E 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
F similarly situated candidates, might or might not finally
succeed in the selection process. Therefore, it will not be
proper now to set aside the selections made. Therefore,
though this declaration is being granted, viz. that the
appellant and persons situated like her were entitled to
G be considered by the Committee, no further relief in that
behalf can be granted to them. The opinion rendered by
this Court will have to operate prospectively in the matter
of application of the rules, for the future selections. [para
20] [1101-D-G]

H 2.1 The appellants had to resort to this litigation for no

fault of theirs. The non consideration of their claim was totally unjust. Therefore, even though the appellants cannot get the relief sought, they 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 in spite 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, as those who are responsible for administration of the State cannot trample upon the rights of others on the grounds which are unsustainable in law. Therefore, the State Government is directed to pay to the appellants the damages with the litigation cost as ordered in the judgment. It will be open to the State Government to recover the said amounts from officer(s) who were responsible for the non-consideration of the claim of both the appellants. [para 21 and 23] [1101-G-H; 1102-A-D, G-H]

Case Law Reference:

1991 (2) SCR 567 referred to para 17

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9193 of 2013.

From the Judgment and Order dated 31.12.2010 of the High Court of Andhra Pradesh in W.P. No. 32290 of 2010.

WITH

C.A. No. 9194 of 2013.

P.P. Malhotra ASG, P.S. Narashimha, ATM Rangaramanujam, K. Radhakrishan, T.V. Ratnam, Munnawwar Naseem, Yasir Rauf, B.V. Balram Das, G.N. Reddy, B. Debojit,

A Bala Shivudu M., Aadithya, Kiran Bhardwaj, S.U.K. Sagar (for Lawyer's Knit & Co.) for the appearing parties.

The Judgment of the Court was delivered by

B **H.L. GOKHALE J.** 1. 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.

G 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, H 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

A in the circumstance of the case."

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

B "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
C pass such other order or orders as this Hon'ble Tribunal
may deem fit and proper in the circumstances of the case.

D 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."

E 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
F 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
G 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
H 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

A 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.

B 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.

C 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."

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 E 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. A

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:- B

"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. C
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(BY ORDER AND IN THE NAME OF THE
GOVERNOR OF ANDHRA PRADESH)

J.HARI NARYAN
CHIEF SECRETARY TO GOVERNMENT H

A 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
 B 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
 C 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
 D 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
 E 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
 F 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,
 G 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
 H 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:-

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A "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
B 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
C 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
D 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
E 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:-

F "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
G 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
H 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.

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- A 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. A
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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. C
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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 H

A 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
 B 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
 C 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
 D 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
 E 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,
 F 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
 G 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.

H R.P.

Appeals partly allowed.