

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**OA No.1028 of 2012
OA No. 440 of 2013**

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

Srikanta Chandra Sundar Ray, aged about 52 years, S/o Anaryami Sundar Ray, Postal Assistant in Dhenkanal HO.

.....Applicant

VERSUS

1. Union of India represented through its Director General of Posts, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110001.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist.-Khurda.
3. The Postmaster General, Sambalpur Region, Sambalpur.
4. The Director of Postal Services, O/o the Postmaster General, Sambalpur Region, Sambalpur.
5. The Superintendent of Post Offices, Dhenkanal Division, Dhenkanal, Pin – 759001.

.....Respondents

For the applicant : Mr.G.Rath, Sr. counsel

For the respondents: Mr.G.R.Verma, counsel (OA 1028/2012)
Mr.J.K.Nayak, counsel (OA 440/2013)

Heard & reserved on : 3.3.2020

Order on : 06.05.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

Both the OAs are filed by the same applicant who challenges the disciplinary proceeding initiated against him (OA No. 1028/12) vide the charge-sheet dated 6.6.2007 (Annexure-A/1) and the punishment imposed on him by the disciplinary authority (in short DA), which was upheld by the Appellate Authority (in short AA). Other OA has been filed to challenge the decision of the authorities not to allow the benefit of financial upgradation under the MACP Scheme due to pending disciplinary proceeding (in short DP) and currency of the punishment imposed against him. Since the disputes in both the OAs arise on account of the DP, both the OAs were heard together and are being disposed of by this common order.

2. The reliefs sought for in both the OAs are as under:-

OA 1028/2012

“(i) To quash the charge sheet dated 06.06.2007 under Annexure A/1; report of the IO in so far as holding the applicant guilty is concerned at Annexure A/4; the order of punishment dated 24.2.2011 under Annexure A/6 and the order of the Appellate Authority dated 21.10.2011 under Annexure A/8;

- (ii) To direct the Respondents to pay the Applicant all consequential service and financial benefits retrospectively;
- (iii) To direct the Respondents to release the pay and other allowances from the date of punishment with 12% interest;
- (iv) To allow this OA with costs;
- (v) To pass any other order/orders as deemed fit and proper.”

OA 440/2013

- “(i) To quash the order dt 21.02.2012 under Annexure A/5.
- (ii) To direct the Respondents to grant two financial upgradation under MACP scheme to the applicant w.e.f. 01/09/2008 and pay him the consequential service and financial benefits retrospectively.
- (iii) To pass any other order/orders as deemed fit and proper.”

OA No. 1028/2012

3. The applicant was issued a charge-sheet dated 6.6.2007 (A/1) containing 3 charges alleging that the applicant while working as SPM Athmallik SO retained excess cash on different dates showing false liability. The charge in Article-IV was as under:-

“Article-IV

That the said Sri Sundar Ray while functioning in the aforesaid capacity showed the closing balance Rs.263455.30 on dt. 28.8.06 of Athamallik S.O. (inclusive of cash, cheque, revenue stamps, CRF stamps and BO balance). In addition to the said closing balance a sum of Rs.20,300/- was shown under ‘C’ item of the S.O. account dtd. 28.8.06. As such the total closing balance of Athamallik S.O. dated 28.8.06 comes to Rs.283755.30. but on physical verification by Sri D.P.Satapathy IPOs Angul (West) Sub Division at the beginning of the office dated 29.8.06, Sri Sundar Ray produced cash, cheque, revenue stamps, CRF stamps and BO balance for Rs.186279.30. Thus the said Sri Sundar Ray has kept shortage of Rs.97476.00 at Athamallik S.O. on that date.

Sri Sundar Ray made good Rs.19012.00 on dt. 29.8.06. But he could not make good the rest amount Rs.78464.00 till the closing of account dt. 29.8.06. so the said SPM Sri Sundar Ray charged the net shortage of Rs.78464.00 under “Unclassified payment” in the S.O. account of dt. 29.8.06 of Athamallik S.O. By the above action of the Sri Sundar Ray the department sustained loss of cash Rs.78464.00 on dt. 28.8.06 & 29.8.06 and Sri Sundar Ray committed grave misconduct and violated provisions of Rule 84 of Postal manual Volume VI Part III 6th edition corrected up to 30.6.1986.

It is therefore imputed that Sri Srikanta Chandra Ray in his aforesaid capacity of SPM Athamallik S.O. failed to maintain absolute integrity, devotion to duty and acted in a manner which is unbecoming on the part of a Govt. servant as enjoined in Rule 3(1)(i), Rule 3(1)(ii) and Rule 3(1)(iii) respectively of C.C.S. (Conduct) Rules, 1964.”

4. After considering representation of the applicant dated 28.10.2010 (Annexure-A/5) on the report of the IO, the DA passed the punishment order dated 24.2.2011 (Annexure-A/6) imposing the punishment of reduction to lower post till found fit after a period of 10 years as under:-

“In view of the above the charges made out against the CO under Article-I, II, III & IV stands proved. I also agree with the findings of the IO that charge under Article-V is not proved. The charges proved against the CO are of serious in nature, and depict innumerable instances of malfeasance. Those are acts of commission and not that of omission. There are deliberate attempts on the part of the CO to show false liabilities. At the time of committing the aforesaid irregularities the C.O. had completed 20 years of Government Service. As an

official holding a supervisory post, he was expected to be aware of the Rules of the Department. In such a scenario continuance of the CO in Govt. service, especially in a post which carry financial responsibility and opportunity for breach of faith will not be desirable.

However, I Shri L. Pradhan, Director Postal Services, Sambalpur Region, Sambalpur taking into account the length of service rendered by the C.O. in the Department take a lenient view and hereby order that the said Sri Srikanta Chandra Sundar Ray, APM, Dhenkanal HO be reduced to a lower post of Postal Assistant until he is found fit, after a period of ten years from the date of this order, to be restored to the higher post in the cadre of LSG, with further direction that the CO will not regain the original seniority in the post as and when it will be restored."

5. The applicant filed the appeal dated 11.4.2011 (Annexure-A/7) and the AA modified the punishment of reduction to lower post for 10 years to 5 years, vide the AA's order dated 21.10.2011 (Annexure-A/8). Both the orders of the DA and the AA have been impugned by the applicant in this OA.

6. The respondents have filed Counter, stating that the authorities have passed the orders after completing the formalities and the rules and taking into account the gravity of misconduct. It is stated that the AA has also reduced the period for which the applicant will be reduced to lower grade. The allegation in the OA that the punishment has been imposed with no evidence is denied.

7. The applicant has filed Rejoinder countering the averments in the Counter. Learned Senior counsel for the applicant was heard in the matter. He submitted that the punishment imposed is not permissible under law as the DA has included penalties in the impugned punishment order at Annexure-A/6 which are not permissible in view of the word "or" in the rule 11 (vi). It is also stated that the findings of the IO are based on no evidence. Regarding the charge of shortage of cash to the extent of Rs. 78,644/-, it is stated that the notes got wet due to heavy rain for which he had given it in the bank for exchange (as stated in the Rejoinder). It is also submitted by learned counsel for the applicant that there was violation of the rule 14(18) of the CCS (CCA) Rules, 1965 by the IO. Learned Senior counsel argued that the authorities have interpreted the word "or" in the rule 11(vi) of the CCS (CCA) Rules, 1965 to be equivalent to "and" while passing the impugned punishment order.

8. Heard learned counsel for the respondents, who submitted that the applicant has been allowed reasonable opportunity of hearing as per law. It was further submitted that in the report of the IO all the charges are proved except one charge in Article V of the charge-sheet and the applicant has not pointed out any procedural lapses during the inquiry. Learned counsel also stressed the point relating to the limited power of the Tribunal to interfere in the disciplinary proceedings. It is also submitted by the respondents' counsel that the applicant was issued another charge-sheet on 26.2.2016 copy enclosed at Annexure R/8, in which the DA has passed the order of

punishment of removal from service on 18.10.2019 and this order is the subject matter in another OA No. 614/2019 filed by the applicant. Learned counsel for the respondents has filed a written note of submissions reiterating the stand taken in the Counter. One point mentioned in the written note is that no separate order is required to be passed with regard to accrual or non-accrual of increments, with implications that during punishment period no increment will accrue to the applicant. It is also stated that the applicant suppressed the fact that he had filed another OA No. 641/2011.

9. With regard to the submissions and pleadings of both the parties, the question to be decided is whether the punishment imposed vide order dated 24.2.2011 (A/6) as modified by the AA vide his order dated 21.10.2011 (A/8) is in accordance with the rule 11(vi) of the CCS (CCA) Rules, 1965 taking into consideration the submissions of learned counsel for the applicant and averments in the OA. The said rule 11(vi) as amended up to 15.10.2018 as seen from the DOPT website is same as enclosed at Annexure-R/3 of the Counter and it states as under:-

“(vi) reduction to lower time-scale of pay, grade, post or Service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post or Service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period –

- (a) the period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and**
- (b) the Government servant shall regain his original seniority in the higher time scale of pay, grade, post or service;”**

10. As per the rule 11(vi) of the CCS (CCA) Rules, 1965, the order for reduction to a lower grade/post is required to specify: (i) the period for which such reduction in grade/post will be in force; (ii) whether he will be get back his earlier grade at the end of the specified period of penalty; (iii) whether the said period of reduction will postpone future increments of his pay and if so, to what extent; and (iv) whether the employee concerned will regain his original seniority in earlier grade/post in which he was posted before the punishment of reduction in grade/post. In the impugned order of penalty, no order has been passed as to whether the applicant would earn the increment of pay during the punishment period of 5 years after modification of the punishment period by AA to 5 years and in this case, no specific order has been passed by the DA or AA in respect of the increment of pay during the aforesaid punishment period. We are unable to agree with the contentions of the respondents' counsel in his written note that no order regarding increment is to be passed by the authorities. The implication of no specific order regarding

increment of pay to be earned by the applicant during the period of punishment is that the applicant will earn the increments of pay at lower grade and on his being found fit for promotion to higher grade (grade prior to his reduction in grade) at the end of the punishment period of 5 years, he will be entitled for fixation of pay at higher grade taking into account the increments for the period of punishment. It is further seen that except for the increment as discussed above, the impugned order has specified/directed all other aspects as per the requirement of the rule 11(vi).

11. Another point raised by the applicant about the impugned order is that the punishment order does not specify the date from which the punishment will commence. It is not necessary to do so as per the provisions of the rules. The implication of not mentioning the date of commencement of punishment is that said punishment will be applicable prospectively immediately after the punishment order and non-specification of the date of commencement will not invalidate the impugned order of punishment.

12. From the discussions above, it is clear that the contentions of the applicant that the impugned order of punishment at Annexure-A/6 read with the order of the AA at Annexure-A/8 is not in accordance with the rule 11(vi) of the CCS (CCA) Rules, 1965, have no force.

13. Another ground urged by the applicant is non-compliance of the rule 14(18) of the CCS (CCA) Rules, 1965 which states as under:-

“(18) The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.”

The applicant has cited the judgment in the case of **B. Dabhade vs. Pr. Chief Postmaster General, Maharashtra Circle & Ors.** 2012 (3) (CAT) 267. However, the respondents in para 14 of the Counter have stated the IO has complied with the rule 14(18) as he had put questions to the applicant on the evidence against him. A copy of his examination has been enclosed at Annexure-R/4. Moreover, the applicant has not stated how he was prejudiced due to the alleged non-compliance of the rule 14(18). We take note of the judgment of Hon'ble Apex Court in the case of **State Bank of Patiala & Ors. vs. S.K. Sharma in Civil Appeal No. 5129 of 1996**, laying down the principle that if any deviation from the procedure resulted in prejudice caused to the charged officer, then the disciplinary proceeding will be vitiated, otherwise not. In this case, it is not revealed how non-adherence to the rule 14(18) has prejudiced the applicant.

14. In the OA, the applicant has also averred that the findings of the IO and DA are based on no evidence. We have extracted the charge in Article IV at paragraph 3 of this order. The findings of the IO as per his report at Annexure-A/4 of the OA on this charge are as under :-

"Article-IV"

The S.W-8 has visited Athamallik SO on 29.08.2006 at about 09.15 hours and verified the cash stamps of the SO with reference to the balance as shown in the Ext.S-21 and found shortage of cash to the tune of Rs.78464.00. The s.W-8 prepared the Ext.S-16 at Athamallik SO in respect of the cash and stamps, which constitutes the parts of SO account balance as mentioned therein and arrived at the conclusion that there is a shortage of cash balance. Thus the shortage amount has been charged under head Unclassified payment in order to regularize the balance of the SO as per the provision. The same has been reflected in the Ext.S-21, Ext.S-22 and Ext.S-6. In this connection, the C.O. in his defence brief stated that on 28.08.2006 there was a heavy rain at Athamallik and as the plinth of the Office room is in low level from the surface and hence the office room was full of water due to leakage of water from roof. This fact was adduced by the S.W 4 D.W-1 and D.W-2 in their deposition. The cash and stamps become wet and hence the C.O. personally went to bank to exchange wet currency notes. The wet stamps and stationeries are kept in the table to recover to their normal position. This position was seen by the D.W-1 and D.W-2 meanwhile the S.W-8 came to the office for verification of cash and stamps. He was explained the position but did not take into account of the narration of the C.O. rather threatened otherwise. The shortage of cash was actually given to bank for exchange as these have been got wet. However, the shortage of cash was made over to the Treasurer Sri Bhikari Charan Naik who has been directed to work as such from the afternoon of 29.08.2006 in the evening of date 29./08.2006. The Treasurer received the same and kept in the 'C' Item as amount could not be taken into account as the S.W-89 left the office with S.O account book and Treasurers Cash book much earlier as seen by SW-6 and S.W-7. The s.W-3 has noted the same in the Ext.D-1. As the amount of shortage of Rs.78464.00 was kept under 'C' Item and which form a part of cash. Thus, there is no shortage of cash in the office on 29.08.2006 for which the C.O. was blamed.

Generally, the 'C' Item does not form the part of cash balance as per the provision, though kept in the office overnight for adjustment on the next working day. Had the cash being remitted to bank, the S.W-8 could have very well judged the situation of wet notes. On the other hand, neither the State witnesses nor the defence witnesses has witnessed the transactions with the bank as narrated by the C.O with regard to exchange of currency notes in bank though he stated have gone to bank If the case admitted to be true, then the C.O might have brought back the same within the working hours, but could not be able to do so through out the working hours of Post office or bank, thus the plea of the C.O is not believable."

15. From above, it cannot be said that the findings of the IO and DA/AA are not based on any evidence. As per the settled law, this Tribunal cannot interfere in the disciplinary proceedings in judicial review except on limited grounds like violation of the statutory rules, the findings not based on evidence and shockingly disproportionate penalty imposed by the authorities etc. From the materials placed before us, we are of the view that no case has been made out by the applicant in OA No. 1028/2012 to call for any interference of this Tribunal in the matter except for the observations with regard to accrual of increments during punishment period as stated in paragraph 10 of this order.

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16. The applicant's case in this OA is that as per the guidelines of the MACP Scheme, the applicant was entitled for two financial upgradations after completion of 20 years i.e. w.e.f. 11.12.2006 after completion of 20 years of service and since the MACP Scheme was launched w.e.f. 1.9.2008, the benefit of such upgradations will accrue to the applicant from 1.9.2008. But the respondents did not allow the benefit to the applicant, for which the applicant submitted a representation dated 22.2.2011 (Annexure-A/4). When no decision was taken, the applicant filed OA No. 578/2011 which was disposed of directing the respondents to dispose of his representation. Thereafter, the respondent no.5 rejected the applicant's case vide order dated 21.2.2012 (Annexure-A/5 of the OA). The applicant impugns the said order in this OA.

17. The grounds in the impugned order are that there is a disciplinary proceeding is pending against the applicant. It is stated that as per the para 18 of the MACP guidelines (Annexure-R1 of the Counter), grant of MACP benefit when the disciplinary proceeding is pending, will be governed as per the same rule that is applicable for promotions. It is further stated that as on 1.9.2008, there was a rule-14 disciplinary proceeding pending against the applicant, the MACP benefit will not be admissible to the applicant as per the provisions of the guidelines applicable to promotions. It is stated in the Counter that the proceeding initiated against the applicant as per the charge-sheet dated 6.6.2007 was pending as on 1.9.2008 for which his case for MACP benefit was not considered. The said disciplinary proceeding has been completed with order dated 24.2.2011 (Annexure-R/4) of the DA and order dated 21.10.2011 (Annexure-R/5) of the AA. It is further averred in the Counter that the said punishment was effective from 28.2.2011 and it will remain in force till 27.2.2016 and till that date, the applicant will not be eligible.

18. Under the rule 11(vi) of the CCS (CCA) Rules, 1965, the currency of the punishment will be a bar on promotion. Hence, from 1.9.2008 till 27.2.2016, the applicant will not be eligible to avail the benefit of the MACP as stated in the Counter. The applicant has averred that he was eligible for the MACP benefit w.e.f. 11.12.2006 after completion of 20 years of service, when there was no disciplinary proceeding which was pending against the applicant and he cannot be debarred for the fact that as on the date of issue of the MACP guidelines, a disciplinary proceeding was pending against the applicant.

19. We are unable to accept such a contention of the applicant. The MACO guidelines were issued by the DOPT on 19.5.2009, but effective from 1.9.2008 (Annexure-R/1 of the Counter). The guidelines states in para 9 as under:-

“9. Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the MACP Scheme shall be given by the Department of Personnel and Training (Establishment-D). The scheme would be operational w.e.f. 01.09.2008. In other words, financial upgradations as per the provisions of the earlier ACP Scheme (of August, 1999) would be granted till 31.08.2008.”

It is clear from above that the MACP Scheme will not be in force prior to 1.9.2008, even if the applicant will be eligible for two MACP benefits after completion of 20 years on 11.12.2006. Para 18 of the Annexure-I of the MACP guidelines at Annexure-R/1 of the Counter, states as under:-

“18. In the matter of disciplinary/ penalty proceedings, grant of benefit under the MACPS shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of the CCS (CCA) Rules, 1965 and instructions issued thereunder.”

20. In view of the above discussions, the respondents are directed to consider the case of the applicant for the MACP benefits w.e.f. 1.9.2008 after completion of the period of punishment imposed in pursuance to the charge-sheet dated 6.6.2007 (Annexure-A/1 of the OA No. 1028/12) vide order dated 21.10.2011 (Annexure A/8 of the OA No. 1028/2012) by the Appellate Authority and allow the consequential benefits as per the rules, by passing an appropriate order within six weeks from the date of receipt of a copy of this order.

21. The OA No. 1028/2012 is disposed of with observations in the paragraph 15 and 10 of this order. The OA No. 440/2013 is also disposed of in terms of the paragraph 20 of this order. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath

