

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 476 of 2014

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. Anand Mathur, Member (A)

Junesh Chandra Behera, Group 'D' aged bout 49 years, S/o Late Hemesh Chandra Behera, At-Bijipur Tank road, PO-Berhampur BO, Dist-Ganjam (O), 760001, presently working as Postman, Panigrahi Pentha SO, Berhampur, Dist-Ganjam (O).

.....Applicant

VERSUS

1. Union of India, represented through its Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. Chief Post Master General, Orissa Circle, At/PO-Bhubaneswar, Dist-Khurda-751001.
3. Director of Postal Services, Berhampur Region At/PO-Berhampur, Dist-Ganjam (O), 760001.
4. Sr. Superintendent of Post Offices, Berhampur Division, At/PO-Berhampur, Dist-Ganjam (O), 760001.

.....Respondents

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.A.K.Mohapatra, counsel

Heard & reserved on : 11.12.2020 Order on : 06.01.2021

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

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

"In view of the facts stated above, it is therefore humbly prayed that the Hon'ble Tribunal may be graciously be pleased to quash Annexure A/1, A/4, A/5 and A/10 and direct the Respondents to refund the recovered amount along with GPF interest with cost.

And any other order(s) as the Hon'ble Tribunal deems just and proper in the interest of justice."

2. The brief facts of the case are that the applicant was appointed as Group 'D' on 16.1.1985. The applicant was found adopting unfair means in the departmental examination for PA from amongst Lower Grade Officials (in short LGOs) on 23.5.2004 and was charge sheeted by respondent No.4 on 2.6.2004. He was debarred to sit in the next examination, expelled from that examination and punished with reduction of 5 stages and stoppage of increments for 2

years. The applicant made representation to the authorities and those being rejected approached this Tribunal in OA 549/2010. This Tribunal vide order dated 12.2.2013 (Annexure A/8) remanded the matter back to respondent No.2 with the following direction :

“.....In view of this, re remit the matter back to the Reviewing Authority viz. Chief Post Master General, Orissa Circle, Orissa (Respondent No.2) to reconsider the matter in the light of what has been discussed above and communicate the decision to the applicant within a period of two months from the date of receipt of this order. In effect, we quash the impugned Memo No. ST/53-06/2007 dated 10.9.2009 (Annexure A/6).

With the above observation and direction, this OA is disposed of. No costs.”

The other defects in the departmental proceeding were not interfered by the Tribunal. The applicant again represented before respondent No.2 on 25.2.2013 (Annexure A/9). On 30.9.2013 respondent No.2 modified the punishment to reduction of pay by 5 stages for 2 years with the following order:

“In the backdrop of the above position relating to the matter and in view of order dated 12.2.13 in OA No. 549/2010 of CAT Cuttack Bench a need for reconsideration of the order dated 10.9.2009 has arisen. Taking all the aspects into consideration it is ordered that the punishment imposed on the applicant may be modified as follows. The pay of Sri Junesh Chandra Behera be reduced by 05 stages instead of 14 stages for a period of 02 years instead of three years as ordered earlier.”

The applicant’s case is that the respondents have already reduced the pay by 14 stages for a period of 3 years, instead of adjusting the punishment and refunding the amount already recovered, again the punishment dated 30.9.2013 has been implemented and as a result the applicant is punished twice for the same offence. Hence the applicant has filed the present OA.

3. The respondents have filed their Counter. It is submitted by the respondents that the applicant has been expelled from the examination hall on 23.5.2004 as he was caught by the vigilance squad while in possession of unauthorized Photostat copy of question paper-I with answers to questions No. 1 to 4 written thereon and the applicant was proceeded against under major penalty proceeding. The applicant approached this Tribunal in OA 549/2010 and in compliance to the order of this Tribunal respondent No.2 reconsidered the matter and issued order dated 30.9.2013 modifying the earlier punishment of reduction of pay imposed on the applicant from 14 stages for three years to

the extent of reduction of pay to 5 stages for two years. Debarring/expelling from the examination for resorting to malpractice cannot be said to be a punishment. It is an immediate preliminary process of initiating disciplinary proceeding. Therefore the contention of the applicant that he has been punished in violation of the principle of double jeopardy cannot be sustained in the eye of law. As regards refund of the deducted amount made as per the earlier penalty order, the fact is that there was over payment of arrear pay and allowances to the applicant from January 2006 to March 2008 while fixation of his pay on receipt of 6th CPC benefit and the amount of over payment was adjusted after modification of his earlier penalty of reduction from 14 stages for 3 years to 5 stages for 2 years. Still then over payment of Rs.1296/- is to be recovered from the applicant which will be adjusted after disposal of the present OA. The respondents have therefore prayed for dismissal of the present OA being devoid of any merit and since the present OA is filed with self same prayer as in earlier OA 549/2010.

4. We have gone through the pleadings and citations relied upon by the learned counsels for both sides including those citations mentioned in the written note of submissions of both sides.

5. Learned counsel for the respondents has also filed an order dated 7.12.2020 regarding pay of the applicant which reads as follows :

“It is to intimate that the pay of the applicant has been fixed after the punishment period basing on his pay scale as prior to his punishment in compliance to the order dated 30.9.2013 of the reviewing authority (A/10) without having any effect to the postponement of future increment of the applicant”.

6. The applicant was caught while doing malpractice. He was caught red-handed with one paper for the purpose of copying in the examination in question as a departmental candidate. Therefore the submission of learned counsel for the applicant that the said conduct in the examination in question does not come under the purview of official duty and therefore it cannot be said that there was any misconduct on the part of the Govt. servant, cannot be accepted. This Tribunal is unable to accept the said submission of learned counsel for the applicant as it is clear that he as a departmental candidate was

appearing in the examination in question which was also conducted by the same department, hence the malpractice by him in the examination in question clearly comes within the purview of misconduct by him as a Govt. servant. The charge memo dated 2.6.2004 served on the applicant reads as follows :

“Statement of article of charge framed against Sri Junesh Chandra Behera, Group ‘D’, Berhampur City SO

That the said Sri Junesh Chandra Behera Group ‘D’ Berhampur City SO while appearing in the Paper-I of the examination of the lower grade officials for promotion to PA cadre held in Berhampur Centre on 23.5.04 (Sunday) was found by the Vigilance squad of the Regional office to have adopted unfair means in the said examination and photocopy of the page 1 and 2 of the question paper (Paper-I) with answers to questions No.1 to 4 written thereon from which the said Sri Behera copied the answers in his answer book was seized by the Supervising Officer from his custody. By his action as aforesaid the said Sri Junesh Chandra Behera committed grave misconduct and thereby failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. servant violating provisions of Rule-3(1)(i) and 3(1)(iii) of CCS (Conduct) Rules, 1964.”

The order of punishment dated 29.3.2005 reads as under :

“In view of the above, I Shri B.C.Mohanty, Sr. Supdt. of Post Offices, Berhampur Division, Berhampur (Gm) hold Shri Junesh Chandra Behera guilty of the charge leveled against him. It is therefore ordered that the pay of Sri Junesh Chandra Behera, Gr.-D, Berhampur City SO be reduced by 14 (Fourteen) stages from Rs.3580/- to Rs.2650/- in the scale of pay Rs.2650-65-3300-70-4000 for a period of three years with effect from 1.4.2005. It is further ordered that Sri Behera will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will not have the effect of postponing his future increments of pay.”

This punishment order was modified by the Appellate Authority vide order dated 30.9.2013 as under :

“In the backdrop of the above position relating to the matter and in view of order dated 12.2.2013 in OA No. 549/2010 of CAT Cuttack Bench a need for reconsideration of the order dated 10.9.2009 has arisen. Taking all the aspects into consideration it is ordered that the punishment imposed on the applicant may be modified as follows. The pay of Sri Junesh Chandra Behera be reduced by 05 stages instead of 14 stages for a period of 02 years instead of three years as ordered earlier.”

7. The first punishment order imposed by the disciplinary authority dated 29.3.2005 is at Annexure A/4. Thereafter the applicant had filed OA and order was passed to that effect vide Annexure A/8. Thereafter the punishment order was modified vide Annexure A/10 by directing reduction of salary at five stages for a period of 2 years without any clarification whether it will be cumulative or not. The appellate authority then passed the order vide Annexure A/10

modifying the said sentence and imposed punishment to the effect of five stages in two years instead of three years. Although learned counsel for the applicant had submitted that the appellate authority has not independently applied his mind, after the perusal of material on record and the order of the appellate authority this Tribunal is satisfied that no irregularity or illegality has been committed by the appellate authority while passing the order in question and the applicant has no way been prejudiced by decision making process followed by the appellate authority.

8. Learned counsel for the applicant has strenuously submitted that once the applicant was expelled from examination in question and debarred to sit in the next examination, therefore no punishment could have been imposed against him in the disciplinary proceeding in question on the ground of principle of double jeopardy. We are unable to accept the said submission of learned counsel for the applicant since this Tribunal is of the opinion that imposition of punishment in the departmental proceeding is due to misconduct of the applicant in his capacity as govt. servant because he clearly stands in a separate footing and different from action of the other authority i.e. competent authority conducting the examination for expelling the candidate from examination in question. Learned counsel for the applicant had submitted that in similar circumstances another person in OA No. 294/2009 which was disposed of on 27.9.2011 has been let off with punishment of censure. Accordingly he submits that there has been discrimination while imposing harsh punishment on the applicant and provision of article 14 of the constitution has been violated as the applicant has been differently treated although the said person in OA No. 294/2009 and the present applicant stood in similar footing. This Tribunal is unable to accept the said submission of the learned counsel for the applicant on the ground that fact and circumstances of both the cases are different. Besides that the decision in question as dealt in OA 294/2009 cannot be relied upon in this case as the said decision is judgment in personem and not judgment in rem. The gravity of the misconduct depends upon the facts and circumstances of each case including the post

which the concerned person was holding, the manner in which there was misconduct and the background and circumstances of this case. Besides that taking into consideration the nature of the misconduct and punishment imposed upon the applicant we are not satisfied that the punishment is highly disproportionate. The conscience of this Tribunal is also not shocked due to the punishment imposed upon the applicant as the same is quite reasonable and commiserate with the nature of misconduct of the applicant.

9. It was submitted by learned counsel for the respondents that the applicant has not prayed for quashing of the order dated 10.9.2009 (Annexure A/6). Therefore in the circumstances the matter is remanded back to the competent authority to consider regarding the amount of differential salary to which the applicant is entitled in view of the modification of the order passed by appellate authority vide Annexure A/10, by modifying the order of punishment imposed by the disciplinary authority. The said exercise must be completed within a period of three months and the applicant should be communicated a reasoned and speaking order to that effect by the competent authority within the said stipulated period.

10. OA is accordingly disposed of with the above observation. There will be no order as to costs.

(ANAND MATHUR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

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