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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A No. 294 of 2009

Cuttack, this the ~~29~~ day of September, 2011

CORAM:

**THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
AND
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)**

.....

Brahma Kesava Rao, Aged about 54 years, Son of B. Jagannath Rao, working as BCRPA, Postal Printing Press, Bhubaneswar, Orissa Circle, L-5/3 Housing Board Colony, Ambapua, Berhampur (GM)-10.

.....Applicant

By legal practitioner: Mr.P.K.Jena, Counsel.

-Versus-

1. Union of India represented through its Secretary, Ministry of Communication and IT Cum Chairman, Postal Services Board, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. The Chief Postmaster General, Orissa Circle, At/Po.Bhubaneswar, Dist. Khurda.
3. Vigilance Officer, Office of the Chief Postmaster General Orissa, At/Po.Bhubaneswar, Dist. Khurda.
4. Postmaster General, Berhampur Region, At/Po.Berhampur, Dist. Ganjam.

....Respondents

By legal practitioner: Mr.R.C.Swain, ASC

ORDER

Per-MR. C.R.MOHAPATRA, MEMBER (ADMN.):

Facts which are not in dispute are that vide Memorandum dated 19th December, 1991 charge sheet under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 was issued to the Applicant. The charge was that the Applicant while appearing at the IPOs/IRMs Examination in paper III held at Berhampur Centre on 25.6.1991

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had kept unauthorized book of reference with him in the examination Hall despite being cautioned by the Supervisor before commencement of the examination. Thereafter, the Disciplinary Authority, vide order under Annexure-5 dated 28th February, 1997, imposed the punishment of 'Compulsory Retirement' and on appeal the Appellate Authority modified the punishment to that of reduction of pay by four stages for a period of four years vide order under Annexure-7 dated 17.11.1997. As per the order of the Revisionary Authority under Annexure-8 dated 23.09.1998, the matter was reconsidered de novo and vide order under Annexure-10 dated 27.03.2000, the applicant was imposed with the punishment of reduction of pay by four stages for a period of four years with further order that the applicant will not earn increments of pay during the period of reduction and that on the expiry of the period the reduction will have the effect of postponing his future increments of pay. On appeal, the Appellate Authority vide order under Annexure-11 dated 01-05-2001 held the punishment imposed on the applicant as inactive and directed the applicant to draw his regular pay and allowances and pursuant to the above order, the Assistant Director (Staff), O/O PMG, Sambalpur Region vide order under Annexure-12 dated 08-05-2001 intimated to the PMG, Berhampur Region that when the punishment order is held

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infructuous appeal against the order is meaningless and the case is treated as closed. The Vigilance Officer, who had passed the order of punishment under Annexure-10 dated 27.03.2000 re-imposed the punishment under Annexure-14 dated 07.08.2001. After a protracted correspondence in the matter between the Applicant and his authority, the Revisionary Authority/Respondent No.2 vide order under Annexure-19 dated 12.2.2004 modified the order of punishment of reduction of pay from the stage of Rs. 5000/- to Rs.4800/- in the time scale of pay of Rs.4000-100-6000/- for a period of two years with further direction that the Applicant will not earn increments of pay during this period of reduction and that on expiry of this period the reduction will have the effect of postponing his future increments of pay. Against the above order under Annexure-19, Applicant preferred review Petition to the President of India on 27.7.2004 which was rejected on 15.4.2005, again on 30.11.2006 requesting reconsideration of the order dated 15.4.2005, on 30.3.2007, 6.3.2007 and on 15.10.2007 to the Chairman Postal Services Board and Director General Department of Posts which were rejected and communicated to the Applicant in letter dated 06.08.2008. Hence this OA with prayer to quash the order under Annexure-14 dated 07.08.2001, Annexure-19 dated 12.2.2004, Annexure-21 dated 15.4.2005, Annexure-23 dated

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06.08.2008 and to direct the Respondents to grant him all consequential service and financial benefits retrospectively.

2. The Respondents filed their counter *inter alia* requesting therein not to interfere in the order of punishment which was imposed on the applicant when his conduct was found unbecoming on the part of a Government Servant and the said punishment was imposed on him with due application of mind, following the procedure laid down under the Rules and giving him fullest opportunity in course of conducting the proceedings. The Applicant was held guilty of resorting to unfair means in departmental examination during enquiry. As per Rule 2 & 13 of Part II of Appendix-37 of P&T Manual Volume IV & Rule 3 (1) (i) of CCS (Conduct) Rules, 1964 the Applicant could have been imposed with the punishment of dismissal/removal from service. But the Disciplinary, Appellate and Revisionary Authority took a lenient view on the Applicant and imposed the punishment of reduction of pay from the stage of Rs. 5000/- to Rs.4800/- in the time scale of pay of Rs.4000-100-6000/- for a period of two years with further direction that the Applicant will not earn increments of pay during this period of reduction and that on expiry of this period the reduction will have the effect of postponing his future increments of pay which needs no interference especially after rejection of the Review

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Petition preferred by the Applicant to the President of India. On the above grounds, it has been contended by the Respondents that this OA being devoid of any merit is liable to be dismissed.

3. Applicant filed rejoinder after serving copy thereof on the other side in which more or less he has reiterated the stand taken in his OA. However, no reply was filed by the Respondents to the said rejoinder of the Applicant.

4. Heard the rival submissions of the parties and perused the materials placed on record. The contention of the Applicant's counsel is that the enquiry based on which he has been imposed with the punishment was made in the most irregular and perfunctory manner inasmuch as he was deprived of the documents which he had asked for and his request for calling witness for examination was rejected without any valid and cogent reason. The punishment was grossly disproportionate and that the delay in initiating and completing the proceeding was not at all considered by the competent authority while proceeding in the matter. After holding the order of punishment as ineffective in Annexure-11 and treating the case as closed in Annexure-12, the same authority who has imposed the punishment which was held to be ineffective and thereby closing the proceeding under Annexure-11&12 became *functus officio* and should not have imposed the punishment in

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Annexure-14 and while modifying the order of punishment by the next higher authority before modifying the order of punishment should have looked into this aspect. Further it was contended by the Applicant's counsel that that it was not the case of the Respondents that the applicant was doing any mal practice or copying from the books by adopting unfair means in the examination hall. However, for this reason the applicant was kept out of the examination and, therefore, imposition of punishment amounts to double punishment which is not sustainable in the eyes of law.

On the other hand it is the contention of the Respondents' Counsel that the Tribunal while exercising jurisdiction available under section 19 of the A.T. Act, 1985 is not hearing an appeal against the decision of the competent authority imposing punishment on the applicant. The Jurisdiction exercised by the Tribunal is limited one and while exercising the power of judicial review, the Tribunal cannot set aside the punishment altogether or impose some other penalty unless they find that there has been a substantial non compliance with the rules and procedure or a gross violation of rules of natural justice which caused prejudice to the employee and has resulted in miscarriage of justice or the punishment is shockingly disproportionate to the gravity of the charge. In this

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regard by referring to some of the stand taken in the counter, as noted above, Respondents' Counsel contended that as the applicant was found in possession of books in the examination hall which was contrary to the Rules, proceedings were initiated against him. After following Rules and principles of natural justice, the applicant was held guilty of the charge leading to the order of punishment by the competent authority. Review Petition preferred by him was duly considered but in a reasoned/speaking order the same was rejected and communicated to the Applicant. The punishment was imposed by the authority who was fully empowered and competent and there is absolutely no ambiguity on the same. Accordingly, Respondents' Counsel prayed for dismissal of this OA.

5. We have given our thoughtful consideration to every aspect of the respective case of the parties with reference to the pleadings so also rules and instructions issued in the matter. The cardinal principle of disciplinary proceedings is whether the person concerned had a reasonable opportunity of presenting his case and the authority acted fairly, justly, reasonably and impartially. In the instant case for possessing the book the applicant was debarred from the examination/ to know the result of the examination. The charge was not that the applicant adopted the unfair means of copying out the answer from the

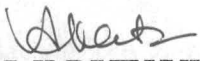
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book. He has been punished for possession of the book. It is common knowledge that in all other examinations if a candidate is found in possession of any material and copying from the same either the candidate is debarred from appearing from the examination, his result of the said examination is withheld or he is declared expelled in the examination. Besides the points raised by the applicant in support of the relief, it has specifically been stated that the punishment imposed on him is disproportionate and discriminatory. In support of this contention he has cited the cases of Shri B.Tripathy, UDC, Ms. Sabitri Jena, PA, Puri Head Post Office and Shri Mahendra Kumar Nayak, PA in the office of the Sr.Suptd. of Post Offices, Berhampur against whom disciplinary proceedings were initiated for possessing books/documents in the examination hall but they were imposed with the lesser punishment whereas the applicant has been visited with the punishment other than what was imposed on the others. The Respondents have denied this allegation by stating that the cases cited by the applicant appear to be of different dates and places and each case is decided on its own merit and hence the cases of others cannot be compared with the case of the applicant. But we do not agree with the contentions put forward by the Respondents as it is the specific stand of the Respondents in their counter that as per


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Rule 2 & 13 of Part II of Appendix-37 of P&T Manual Volume IV & Rule 3 (1) (i) of CCS (Conduct) Rules, 1964 adopting unfair means by keeping books being serious in nature deterrent punishment is warranted. If it is so then appearing at the examination in different years and different places cannot be a ground to impose different punishment for the same offence. It is trite law that the authority cannot be permitted to resort to selective treatment for same and similar offence. Arbitrariness in whether legislative or administrative or quasi judicial decision is anathema to our Constitutional system particularly with reference to Article 14 of the Constitution.

7. Since the impugned order is grossly disproportionate and discriminatory, the order of disciplinary authority imposing punishment on the appellant as also the orders of appellate and revisionary authorities confirming the said order are unfair, arbitrary and against the doctrine of equality and hence are quashed. The applicant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-à-vis Shri B.Tripathy, UDC, Ms. Sabitri Jena, PA, Puri Head Post Office and Shri Mahendra Kumar Nayak, PA in the office of the Sr.Suptd. of Post Offices, Berhampur. Accordingly the matter is remitted back to the Respondents for passing orders in the

light of the observations and direction made above within a period of 90(ninety) days from the date of receipt of copy of this order. With the aforesaid observation and direction this OA stands disposed of. No costs.


(A.K.PATNAIK)
Member (Judicial)


(C.R.MOHAPATRA)
Member (Admn.)