CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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O. A. No. 260/00256 OF 2016
Cuttack, this the 22nd day of June, 2017

Amulya Prasad Panda ..... Applicant

Versus

Union of India & Ors. ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to CAT, PB for circulation?

(R.C.MISRA)
Member (Admn.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00256 OF 2016
Cuttack, this the 22nd day of June, 2017

CORAM
HON'BLE MR. R. C. MISRA, MEMBER (A)

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Sri Amulya Prasad Panda
aged about 39 years
son of Sri Aparti Kumar Panda,
permanent resident of Vill. Palasuni,
PO. Naragang, Via, Banki, Dist-Cuttack
at present working as Office Supervisor,
O/o Sr. Superintendent of Post Offices,
Cuttack City Division, Cuttack-753001.

...Applicant

(By the Advocate-M/s. H. K. Mohanty, B. M. Biswal, D. K. Pradhan)

-VERSUS-

Union of India Represented through

1. Director General, Department of Posts, Govt. of India, Dak Bhawan, New Delhi.

2. Chief Postmaster General, Odisha Circle, Bhubaneswar-751001.

3. Director of Postal Services, (Hqrs), O/o the Chief Postmaster General, Odisha Postal Circle, Bhubaneswar-751001.

4. Sr. Superintendent of Post Offices, Cuttack City Division, Cuttack-753001.

...Respondents

By the Advocate- (Mr. S. Behera)

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ORDER

R. C. MISRA, MEMBER (A):

The applicant, in this O.A. is an employee of the Department of Post working as Officer Supervisor in the office of Sr. Superintendent

of Post Offices, Cuttack City Division, Cuttack. He has approached this Tribunal making the following prayers:

> "(i) Direction/directions may be issued quashing Annexure- 5, 7, 9 and 11 and/or
>
> (ii) Any other directions/directions may be issued....."

2. The facts of this case, briefly stated, are that the applicant while working as Inspector of Posts in Balugaon Sub Division under the Puri Postal Division issued a notification on 22.02.2013 for engagement of a GDS MD in Niladriprasad BO in account with Gambharimunda SO under Khurda HO. 19 candidates, in total, submitted their application in response to the notification. One Sri Lachhaman Muduli made an application dated 06.04.2013 for withdrawing his candidature from the aforesaid recruitment. The applicant allowed his withdrawal of candidature and later on considering the other candidates selected one Mrs. Jinu Satpathy, who secured highest marks among the remaining candidates. She was given an order of engagement and she joined her post. Against this background, Respondent No.3 in this O.A., i.e. Director of Postal Services, issued a memorandum of charges dated 08.01.2015 proposing to take action against the applicant under Rule 16 of the CCS (CCA) Rules, 1965. There were two article of charges framed against the applicant. The article No.1 stated that the said Lachhaman Muduli has secured the higher marks in the merit list. The applicant ignored the candidature of said L. Muduli by allowing him to withdraw his

candidature as GDS MD in Niladriprasad B.O. In the recruitment notification there was a categorical condition that no correspondence should be undertaken by the candidates after submission of application. The applicant ignored this condition and allowed the candidature of L.Muduli to be withdrawn when the process of recruitment had been already initiated. By that action, he violated the provision of rules and the guidelines of notification which demonstrated that the applicant failed in his duty to maintain his integrity and high ethical standards. The second article of charge contained the allegation that after the said Mrs. Jinu Satpathy joined as GDS MD, the applicant engaged her through re-deployment as GDS BPM, Antarkiary BO and the later on as GDS MD/MC at Baradi Harikund BO during the period when she was on leave and, therefore, it was not admissible to engage her in another GDS post. The applicant also allowed one substitute at Niladriprasad BO in place of the said Mrs. Jinu Satpathy when there was no requirement of one additional GDS staff and the existing two GDS employees were managing the work by combining their duties. The applicant, thus, made irregular arrangement without taking approval of the higher authorities and on account of this engagement the said Jinu Satpathy received an amount of Rs. 57029/- as TRCA. This faulty arrangement made by the applicant reflected his lack of integrity and lack of devotion to duty. The applicant made a representation on 19.01.2015 denying the various allegations made against him. The Respondent No.3, Director of Postal Services, after

considering the representation of the applicant imposed the punishment of reduction to a lower stage in the time scale of pay by one stage for a period of six months without cumulative effect and not adversely affecting his pension on the applicant by an order dated 03.02.2015. Being aggrieved by the penalty, the applicant submitted a revision petition to the Respondent No.2, i.e Chief Postmaster General, Orissa Circle, on 16.07.2015. The Respondent No.2 issued a notice to the applicant proposing to enhance the penalty from reduction of one stage for six month to stoppage of next increment for three years without cumulative effect. The applicant strongly contested this notice by filing a representation dated 23.12.2015. However, the Respondent No.2 issued an order dated 27.01.2016 enhancing the punishment to withdrawal of next increment of pay in the pay scale for a period of three years from the date of next increment when it falls due without cumulative effect and not adversely affecting his pension. Thus, aggrieved by this order of the Revisional Authority dated 27.01.2016, the applicant has approached the Tribunal .

3. The applicant has challenged the order of the Disciplinary Authority as well as Revisional Authority on the ground that he is not guilty of any irregularity in the selection of Mrs. Jinu Satpathy as GDS MD, Niladriprasad, B.P.O. The withdrawal of candidature by Sri L. Muduli was voluntary and without any outside reference. The applicant was satisfied about the genuineness of the withdrawal application of the said Sri Muduli. In fact Sri Muduli never raised any objection to the

withdrawal of candidature and never raised any allegation against the applicant. The selection of Mrs. Jinu Satpathy was made on account of the fact that she had got the higher marks after the withdrawal of candidature by Sri Muduli. When there is no complaint or allegation made by Sri Muduli, the Respondent authorities have only abused their powers by drawing of a minor penalty proceeding against the applicant. The applicant further pleads that the acceptance of withdrawal application may be at its worst an irregularity without prejudice to anybodies' interest but the same can never be termed a misconduct calling for penalty. The applicant also pleads that no irregularity was committed by him in granting leave to the said Mrs. J. Satpathy since she was directed to work in different post in a different place by providing a substitute in her own post as per Rule 7 of the GDS (C&E) Rules, 2011. Such arrangements are being allowed by various officials and in the case of the applicant, the Respondent authorities have made a mountain of a molehill. The submission of the applicant, therefore, is that since he did not commit any misconduct or did not violate any provision of the rules, the order of punishment as such was not called for in his case.

4. In addition to the above, the applicant also submits that the notice issued by the Respondent No.2 proposing the enhancement of penalty is a blatant example of arbitrary exercise of power under Rule 29 (1) (v) of the CCS (CCA) Rules, 1965. The Appellate Authority can exercise his revisionary power within six months of the order proposed

to be revised. In the present case, the order of punishment was issued on 03.02.2015 and, therefore, the Appellate Authority could have exercised his revisional power before 03.08.2015. however, notice for enhancement of punishment was issued by the Appellate Authority on 08.12.2015. Therefore, the applicant pleads that this power having been exercised beyond a period of six months as laid down in the statute should be interpreted as an abuse of authority by the Respondent No.2.

5. The Respondents have filed a counter affidavit in this regard in which they have reiterated the facts of the case as submitted by the applicant in this O.A The sum and substance of the assertion made in the counter affidavit is that the said Mr. Muduli should have been listed by the applicant in the merit list for selection. According to the conditions of recruitment, before selection allowing Mr. Muduli to withdraw his candidature was an act of irregularity. Moreover, the Respondents have inferred that selection of Mrs. J. Satpathy in place of Sri L. Muduli was willful and intentional on the part of the applicant. The applicant has admitted to have committed this irregularity by his written statement dated 30.10.2014. Therefore, the minor penalty imposed on the applicant was justified. Further, it is submitted that the competent authority after going through the gravity of offence exercised the power under Rule 29 (1) (vi) of CCS (CCA) Rules, 1965 and issued a notice for enhancing the punishment. The revision was not made on suo motu basis by the Respondent No.2, on the other hand, it was taken up for consideration on the basis of the petition filed by the

applicant. The applicant himself filed a revision petition after more than 5 months. Since the competent authority has to dispose of this petition, he issued a show cause notice to the applicant and finally passed orders for enhancing the penalty. This process has taken some time. However, the revision was made on the basis of the petition of the applicant himself and now he is trying to take advantage of a point of law because the Revisional Authority passed an order, which was not palatable to him. By, thus, submitting the Respondents have asserted that there is no irregularity either in the order of punishment or in the order of Revisional Authority enhancing the punishment imposed on the applicant.

6. I have perused the records of this case and also heard the Ld. Counsels for both the sides, in extenso.

7. The first point to be taken up for consideration is whether the order of the Disciplinary Authority dated 03.02.2015 imposing the punishment is justified in view of the charges framed against the applicant. In the written notes of submission, the Ld. Counsel for the applicant has argued that the applicant's action did not amount to a misconduct. He did not have any malafide in the matter and he acted under the genuine belief that the said Mr. L. Muduli had wanted to withdraw his candidature. However, it is admitted by the applicant that the candidature was allowed to be withdrawn during the process of selection, which was against the condition laid down in the recruitment notification. The applicant should not have ignored the condition which

he himself had imposed in the recruitment notice. By doing that he created scope for suspicion that he wanted to favour the next meritorious candidate, i.e. Mrs. J. Satpathy. Since the actions of the applicant are open to public scrutiny, he should not have done something which would lead to doubt in various quarters about his motives. No ground for malafide has emerged in this case and, therefore, I am not going into such issue, however, irregularity done by the applicant comes out clearly from the various submissions in this case. With regard to the allegation that the applicant allowed leave to the said Mrs. J. Satpathy and during her period of leave posted her to other offices allowing a substitute to work in his place, the Ld. Counsel for the applicant submits that many such practices are being followed in the department and nobody takes any action in this regard. In his case, however, the authorities have singled him out only for harassing him. This argument, in my opinion, is not acceptable. If there is an irregular practice, it cannot be condoned by the authorities. If they are condoning such practices in case of others, it can be safely concluded that they are in the wrong. But the applicant to say that he should not be proceeded against on this charge because others are allowed to do so with impunity, it will be like claiming "negative equality", which is not admissible under the law. In short, therefore, I would express an opinion that the Respondents cannot be faulted with drawing of minor penalty charges against the applicant. Therefore, the order of punishment imposed by the Disciplinary Authority vide order dated

03.02.2015 is, in my opinion, sustainable under the law.

8. The next question is whether the notice issued by the Revisional Authority dated 08.12.2015 and the order of enhanced punishment dated 27.01.2016 are sustainable under the law. The facts of the case indicates that after receiving the order of punishment dated 03.02.2015, which was imposed upon the applicant by the Director of Postal Services (Respondent No.3), the applicant preferred an application under Rule 29(3) of the CCS (CCA) Rule, 1965 to the Respondent No.2, i.e. CPMG, for revision of punishment. In this case, the Director of Postal Service, had exercised the power of Disciplinary Authority overlooking the Sr. Suptd. of Post Offices, who would be normally the Disciplinary Authority for the applicant. Therefore, the CPMG, Respondent No.2, is the Appellate Authority in respect of the order of punishment. However, the applicant preferred a revision petition to the CPMG, Orissa on 16.07.2015, which was after 5 months of the receipt of the order of punishment. Be it noted that he did not file any appeal against the order of punishment but a revision petition to Respondent No.2. Respondent No.2, the CPMG, issued a notice to the applicant on 08.12.2015 as a show cause by proposing to enhance the punishment imposed upon him. The applicant made a representation/show cause reply on 23.12.2015 and then, on consideration of the matter, Respondent No.2 issued the order dated 27.01.2016 imposing the enhanced punishment on the applicant. In that process, when the punishment order was issued on 03.02.2015, the

order of enhancement was issued on 27.01.2016 which is more than 6 months and in fact a little less than one year after the order of punishment. We need to here examine the provision of Rule 29 of the CCS (CCA) Rules, 1965. This Rule lays down that the Appellate Authority within six months of the date of order proposed to be reviewed may either on his motion or otherwise call for the records of any inquiry and revise any order made under these rule or under the rules repealed by Rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, confirm, reduce, enhance or set aside the penalty imposed by the order. In the present case, the Respondent No.2 becomes the Appellate Authority since the Respondent No.3 exercised the powers of the Disciplinary Authority. Therefore, the Respondent No.2 can revise the order only within six months of the date of order of the punishment since no appeal petition was preferred. Beyond the period of six months, the Appellate Authority will be debarred from making a revisional order in respect of the order of punishment. If the applicant preferred a revision petition instead of filing an appeal and the said petition was disposed of by Respondent No.2, it has to be done within the scope of Rule 29 of the CCS (CCA) Rules. If the applicant filed the revision petition after 5 months of the order of punishment, he should have been told about the provision of the rules. The order of enhancement dated 27.01.2016 in any case falls beyond the period of six months of the order of punishment and is hit by the provision of

Rule 29 of the CCS (CCA) Rules, as discussed above. The ground that it was not a suo motu revision but it was done on the basis of the revision petition filed by the applicant is not a very valid argument since the revision under Rule 29 can be done by the authorities either on his own motion or otherwise. It has to be further noted in this regard that as prescribed under Rule 29, the Member (Personnel), Postal Services Board, in case of a Govt. Servant serving in or under the Postal Services Board is the authority prescribed under the Rules to exercise the revisional power. It is not understood why the Respondents did not advise the applicant accordingly and did not forward the revision application to the Member (Personnel), Postal Services Board for disposal, according to law. If the Appellate Authority would exercise the power of revision, the limitation of six month has been provided under Rule 29. However, such limitation does not appear to apply to any revision taken up by the normal revisional authority. I am of the view that the Respondent No.2, i.e. CPMG, was the Appellate Authority in this case because the Respondent No.3, Director of Postal Services, assumed the power of Disciplinary Authority. According to the provision of Rule, as stated above, he cannot exercise revisional power unless it is within six month of order of punishment when an appeal petition was not filed. Whatever be the other circumstances of the case, therefore, I am of the opinion that the exercise of the revisional power by the Respondent No.2 is not in accordance with the statutory provision. Based upon the above premises, the order of

Revisional Authority dated 27.01.2016 cannot be sustained under the law.

9. Based on the above discussions, I find that the order of punishment dated 03.02.2015 cannot be faulted with and there is no irregularity in effecting this order. However, the order of Revisional Authority dated 27.01.2016 is held to be not sustainable under the law as per the discussions made above and is, thus, quashed and set aside.

10. The O.A. is allowed to the extent as stated above with no order as to costs to the parties.

(R.C.MISRA)
Member (Admn.)

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