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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.195 OF 2012

Cuttack this the 15th NOVEMBER 2013.

Sri Bharat Jaly...Applicant

-VERSUS-

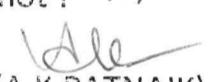
Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Ys*

2. Whether it be referred to CAT, PB, New Delhi or not ? *Ys*

  
(R.C. MISRA)  
MEMBER(A)

  
(A.K. PATNAIK)  
MEMBER(J)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK**

**O.A.No.195 OF 2012**

Cuttack this the **15th NOVEMBER** 2013  
**CORAM**

**HON'BLE SHRI A.K.PATNAIK, MEMBER(J)  
HON'BLE SHRI R.C.MISRA, MEMBER(A)**

Sri Bharat Jaly  
Aged about 39 years  
S/o.Mr.Ghanashyam Jally  
Postal Assistant  
At present working as Development Officer,  
Postal Life Insurance  
Office of the C.P.M.G., Orissa Circle  
Bhubaneswar  
At/PO-Bhubaneswar  
Dist-Khurda

**...Applicant**

By the Advocate(s)-M/s.B.Dash

C.Mohanta  
S.Das

**-VERSUS-**

Union of India represented through

1. Director General of Posts  
Ministry of Communications & I.T. Department  
New Delhi-110 116
2. The Chief Post Master General  
Orissa Circle,  
At/PO-Bhubaneswar  
Dist-Khurda
3. Manoj Kumar Behera  
At present working as Postal Assistant  
Aska Division  
At/PO-Aska  
Dist-Ganjam

**...Respondents**

By the Advocate(s)-Mr.S.B.Jena

ORDERHON'BLE SHRI R.C.MISRA, MEMBER(A):

The applicant in the present Original Application has approached this Tribunal with a prayer for quashing the letter dated 22.2.2012(Annexure-A/7), wherein Respondent No.1 has cancelled the provisional candidature of the applicant and recommended the case of Res.No.3 for promotion. His further prayer is for direction to be issued to official Respondents to declare his result and issue the order of promotion in his favour as Inspector of Posts with immediate effect.

Facts of the matter:

2. The applicant joined as Postal Assistant on 19.10.1995 and claims to have served till the year 2006 in the Department to the utmost satisfaction of his authorities without any blemish in his service career. While working as such, on 27.10.2006, a departmental proceeding was initiated against him under Rule-14 of CCS(CCA)Rules, 1965 which outlines the procedure for imposing major penalties. The charges against the applicant in this proceeding were of unauthorized absence from duty and favouring one Postal Assistant. During the course of the departmental proceedings, the applicant had appeared in the departmental examination for the post of Inspector of Posts for the vacancy year 2008 being provisionally permitted by the concerned authorities. The applicant did well in the departmental examination and was assigned Sl.No.17 in the respect of Odisha Merit List and Sl.No.945 in the All India Merit List. This merit list was also circulated on 18.9.2009, which has been annexed to the O.A. as Annexure-A/1. One Manoj Kumar Behera, who is Respondent No.3 in this O.A. was junior to the applicant in the cadre of Postal Assistant and he had also appeared in the





said departmental examination. He was assigned Sl.No.24 in respect of Odisha Merit List and S.No.952 in the All India Merit List which indicates that Respondent No.3 was placed lower in ~~the~~ both the merit lists than the applicant. Thereafter, the departmental proceeding against the applicant was finalized in imposition of punishment, which reads as under.

“... awarded the punishment of reduction of pay of Sri Bharat Jally by two stages from Rs.14,420.00 to Rs.13,600.00 in the pay band of Rs.5200 - Rs.20,000/- with grade pay Rs.2800/- if he continues officiating in the cadre of DO, PLI or Rs.13,600.00 to Rs.12,810.00 in the pay band of Rs.5200/- to Rs.20,2000/- with grade pay of Rs.2400/-(in case of reversion to PA cadre) for a period of six months with effect from 01.10.2010. It is further directed that Sri Jally will not earn increment of pay during the period of reduction and that on expiry of the period, the reduction will not have the effect of postponing his future increment of pay”.

3. Since the period of punishment was going to be over in 31<sup>st</sup> March, 2011, the applicant made a representation dated 8.3.2011(Annexure-A/3) to Respondent No.2 requesting him to issue the order of promotion in his favour after declaring the withheld result of I.P. Examination, 2008. Pursuant to the representation as aforesaid, Respondent No.2, sent a letter dated 19.7.2011(Annexure-A/4) to Respondent No.1 mentioning that the applicant was allowed to appear <sup>in</sup> the I.P. Examination 2008 as a provisional candidate since a major penalty proceeding was initiated against him. Now the disciplinary proceedings against the applicant have ended with imposition of punishment of reduction of pay by two stages and the period of punishment is over. At present there is no disciplinary or vigilance case pending against him and there is no adverse entries in his ACRs since 2006-07. It was also mentioned in that letter that in accordance with the

instructions contained in Para-5 of Directorate letter dated 18.9.2009, the provisional candidature of the applicant has been regularized. While declaring the result of I.P. Examination, 2008, it was stated that the result of one S.C. vacancy of Odisha Circle will be declared later on. Shri Jali is a Scheduled Caste candidate. The above facts having been pointed out, a request was made by Respondent No.2 to Respondent No.1 to declare the result of SC vacancy of IPO Examination, 2008. Since there was no response from Res.No.1, the applicant also made a representation dated 23.9.2011(Annexure-5) followed by another representation dated 17.12.2012(Annexure-A/6) addressed to A.D.G., Department of Posts for an early action in the matter. Thereafter, the A.D.G., in the Office of Res.No.1 wrote to the Chief Post Master General, Orissa Circle, Res.No.2 vide his letter dated 22.2.2012,(Annexure-A/7) the contents of which indicate that on the basis of the proposal sent by Respondent No.2 vide letter dated 20.01.2012, the matter has been examined. It was mentioned therein that while publishing main result of IP Examination 2008 on 18.9.2009, the result of one SC vacancy was withheld and it was indicated that it will be declared later on. It is further indicated in this letter that the competent authority has approved the proposal of Respondent No.2 in not regularizing and cancelling the provisional candidature of the applicant and to declare the result of the next eligible SC candidate. Accordingly, Shri Manoj Kumar Behera (Res.No.3) in the present O.A. was found to be the next eligible SC candidate and being qualified under relaxed standards was selected against one SC vacancy of the IP Examination, 2008 of the Orissa



Circle. This letter was issued by Res.No.1 is the subject matter of challenge in this O.A.

4. The grievance of the applicant is that the cancellation of the provisional candidature of the applicant is illegal and unjustified since he has secured higher marks than Respondent No.3 in the I.P. Examination , 2008 and also is senior to Respondent No3 as per his date of joining. In the letter dated 19.7.2011, Respondent No.2 had regularized the provisional candidature of the applicant and recommended for the declaration of his result. In the face of this recommendation, Respondent No.1 has issued a grossly ~~an~~ unjust letter mentioning that the competent authority has approved the proposal of Respondent No.2 in not regularizing and cancelling the provisional candidature of the applicant.

5. Respondent-Department have filed their counter affidavit opposing the prayer of the applicant. In the counter-affidavit, it is admitted that the applicant belongs to SC community and since he was facing a departmental proceedings <sup>under</sup> Rule-14 of CCS(CCA) Rules, 1965, he was permitted provisionally to appear the I.P. Examination, 2008. In the said examination one SC vacancy was notified for the Orissa Circle. When the results were declared on 18.9.2009, it was indicated that the result of one SC vacancy will be declared later on. It is further admitted that Respondent No. 2 had reported in a letter dated 19.7.2011 that the disciplinary proceedings against the applicant have been completed and that the duration of penalty period has expired. It was also intimated that the provisional candidature was regularized and the Respondent No.2 had also requested for declaring the result of one SC vacancy which was earlier withheld. This proposal was

examined in the Office of Res.No.1. The instructions contained in letter No.7/31/63-SPB-II dated 25.6.1965 has provided guidelines about the provisional admission of the candidates who are facing departmental proceeding, which reads as under.

"It has now been decided in consultation with Ministry of Home Affairs that such an official might be admitted to the examination even though he may be under suspension or disciplinary proceedings might have been initiated against him, if he satisfies all the other conditions prescribed for admission to such examination. The official can, however, be promoted only after disciplinary proceedings are over and he is completely exonerated.

In para-2 of the said letter, it was provided that if on the basis of the disciplinary proceedings, any punishment is imposed, the appointing authority should consider each case on its merits to see whether a person should be promoted in spite of the penalty imposed on the basis of results of the examination which he has passed. If it is decided to promote him, then he should be promoted only after expiry of the penalty(other than Censure), but his seniority in the higher grade may be determined on the basis of the rank obtained in the competitive examination".

6. Therefore, attention of Respondent No.2 was drawn to this instruction and he was requested to examine this aspect thoroughly. Accordingly, Respondent No.2 submitted a report on 20.1.2012. This report indicated that the applicant while functioning as Sub Post Master,Gambharimunda S.O. in Puri Postal Division of Odisha Circle, remained unauthorizedly absent from duty permitting one unauthorized person to manage the work of the S.O. For this reason a major penalty proceeding was initiated against the applicant. The Disciplinary Authority, on conclusion of the said proceedings awarded the punishment of



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 reduction of pay by two stages for a period of six months from 1.10.2010. It was further reported to Res.No.2 that since the charges were serious and reflected adversely on the integrity of the applicant and since the applicant did not prefer any appeal against the penalty order, Respondent No.2 held that the applicant is not suitable for promotion as IPO and recommended for cancellation of his provisional candidature. On the basis of the 2<sup>nd</sup> report, Respondent No.1 cancelled the provisional candidature of the applicant and declared the result of one withheld SC candidate in the merit list in favour of Res.No.3. The counter affidavit further mentions that although the penalty imposed is only for six months, it reflects <sup>adversely</sup> ~~purely~~ on the integrity and devotion to duty of the applicant and further he has not been exonerated completely in the departmental proceedings. One of the major penalties was imposed on him. In so far as withholding of the result of the SC vacancy is concerned, it was stated that the result of the SC vacancy will be declared later on and nothing was mentioned about the applicant as such. On the other hand, Private Respondent No.3 being a regular candidate in the I.P. Examination, 2008, who qualified under the relaxed standards even though admittedly scored less marks than the applicant was considered to be the next eligible SC candidate. In the circumstances, it has been submitted by the Respondents that the O.A. being devoid of merit is liable to be dismissed.

7. Private Respondent No.3 has neither appeared nor filed any counter.
8. Applicant has filed a rejoinder to the counter and a written note of submission. It has been submitted that the applicant had scored the highest marks among the SC candidates and his result was not declared only





because of disciplinary proceedings pending against him. On conclusion of the disciplinary proceedings, the punishment of reduction of pay by two stages was for a period of six months from 1.10.2010 and therefore, the punishment lasts till 31.3.2011. The further argument advanced by the learned counsel for the applicant is that the Chief Post Master General, Odisha Circle in his letter dated 19.7.2011 had regularized the candidature of the applicant and one Shri B.B.Mohanty, Assistant Director for CPMG, Odisha Circle had signed this letter. Therefore, the very same officer could not have issued another letter dated 20.1.2012 which mentions that the applicant's case has been further reviewed in accordance with the instructions contained in Directorate's letter dated 25.6.1965. Further, the D.G.(Posts), i.e. Res.No.1 could not have imposed his views on the CPMG and since the punishment which was imposed has already spent its force, the matter should have been closed.

9. The learned counsel for the Respondents has submitted that even though Respondent No.2 had sent a letter dated 19.7.2011, regularizing the provisional candidature of the applicant, Res.No.1 advised him further that the case needs to be examined in the light of Directorate's letter No.7/31/63/SPB-II dated 25.6.1965. After due examination in accordance with rules, Res.No.2 sent another letter dated 20.1.2012 in which he recommended that for the reasons he has stated in the letter the provisional candidature of the applicant deserves to be cancelled and the unfilled SC vacancy in the Orissa Circle relating to IP Examination, 2008 may be considered to be filled up by the candidature of Res.No.3. On the basis of this recommendation, Res.No.1 has taken a final decision vide his letter



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dated 22.2.2012. Therefore, the matter has been decided in full consonance <sup>with</sup> *of* the rules governing the field. When the competent authority has taken a decision in the case of the applicant regarding his candidature on the conclusion of the departmental proceedings and imposition of punishment, the applicant has no further case to agitate before the Tribunal.

10. We have heard the learned counsel for both the sides. In the light of submissions made above, we have also examined the records.

11. From the pleadings of the parties, the point in issue to be determined is whether the Official Respondents, while refusing to regularize the provisional candidature of the applicant thereby depriving *of* *h*im the opportunity of promotion have correctly followed and applied the Rules issued by their Department.

12. The instructions contained in letter dated 25.6.1965 issued by the D.G.(Posts) which have been quoted already in this order provides that an official who is under a departmental proceeding might be admitted to appear in a departmental examination, if he satisfies all other conditions prescribed for the same, but he can be promoted on the basis of the result of such examination only after the disciplinary proceedings are over and he is completely exonerated. If on the basis of the disciplinary proceedings any punishment is imposed (other than removal, dismissal or retirement) in which case the question would not arise, the appointing authority should consider each case on its merit to see whether a person should be promoted in spite of penalty imposed on the basis of the result of the examination which he has passed. If it is decided to promote him, then he

*R. Rao*

should be promoted only after the expiry of the penalty (other than censure), but his seniority in the higher grade may be determined on the basis of the rank obtained in the competitive examination. Therefore, in view of the rules, after the conclusion of the departmental proceeding and the punishment by way of reduction in pay by two stages for a period of six months imposed on the applicant, his case definitely needed to be considered by the authorities. It is also admitted that the applicant <sup>is</sup> not only permitted provisionally to appear in the departmental examination, but it also is a fact that the result in respect of one SC vacancy in Odisha Circle was withheld because of this factor. From the first letter sent by Respondent No.2 to Respondent No.1 it is quite clear that the former regularized the candidature of the applicant and recommended that the result of the SC vacancy may be declared. Letter dated 19.7.2011 also indicates that the disciplinary proceeding against the applicant ended with the imposition of punishment of reduction of pay by two stages and the punishment is over now. There is no disciplinary or vigilance case pending against him and there is no adverse entries in his ACR since 2006-07. Then thereafter it is indicated in the same letter that in accordance with the instructions contained in Para-5 of the Directorate letter under reference provisional candidature of Shri Jali (the present applicant) has been regularized. The Assistant Director in the Office of CPMG, Odisha Circle writing on behalf of CPMG has made a request to Res.No.1 that the result of SC vacancy of IP vacancy of 2008 maybe declared. Therefore, it appears that the CPMG, Odisha Circle had dealt with the matter of the applicant and has regularized his provisional candidature. That means, he has declared



him eligible for participating in the I.P.Examination examination and therefore, has recommended that the result of SC vacancy which was withheld only because the candidature of the applicant was provisional should be now declared. It reveals from the record that on receipt of the said letter, Respondent No.1 issued letter dated 30.11.2011 (Annexure-R/3) in response to which the same Assistant Director who had issued the first letter issued another letter dated 20.1.2012 inviting reference to Directorate's letter dated 30.11.2011. In the 2<sup>nd</sup> letter it is mentioned that the provisional candidature of Sri Jally deserves to be cancelled for the reasons mentioned therein and unfilled SC vacancy of the Circle relating to IP Examination 2008 may be considered to be filled up by the candidature of Sri Manoj Kumar Behera (Res.No.3) who still awaits absorption in IP cadre as a surplus IP candidate. Therefore, the Respondent No.2 has in compliance of the direction issued by Respondent No.1 reviewed and reversed its own decision of regularizing the candidature of the applicant. Respondent No.1 has approved the 2<sup>nd</sup> proposal by issuing a letter dated 22.2.2012. Therefore, the final decision was taken by Respondent No.1 that the provisional candidature of the applicant is cancelled and Res.No.3 is selected against the withheld SC vacancy for the IP Examination, 2008, Odisha Circle.

13. The learned counsel for the applicant in his rejoinder has drawn our attention to the fact that the Respondent No.3, Manoj Kumar Behera qualified in the IP Examination, 2008 and was declared as a surplus SC Candidate. He was to be considered for promotion and absorption in IP Cadre only after the review of failed SC Candidates was over and in the said



circumstances, he was not allowed in IP Examination of 2009. Respondent No.3 had filed O.A.No.866 of 2010 challenging the decision of Respondent No.2 in not appointing him as Inspector of Posts as a surplus SC candidate and at the same time denying him chance to appear at the IP Examination, 2009. With the fear of getting involved in the legal tangle, the Respondent No.2 gave benefit to Respondent No.3 at the cost of the applicant.

14. On a perusal of the record of O.A.No.866 of 2010, we have found that Respondent No.3 in the present O.A. was the applicant in that case. The applicant in O.A.No.866 of 2010 had alleged that he was not issued with hall permit to appear in the Inspector of Posts Examination, 2009, and when he wanted to know the reasons, the Respondents informed him that he has been declared as surplus candidate in the Inspector of Posts Examination, 2008, and as he has exercised option for posting in other Circle he was not permitted to appear at the IPO Examination, 2009. The applicant in O.A.No.866 of 2010 had approached the Tribunal seeking a relief that Respondents should be directed to issue order of appointment as Inspector of Posts in the SC vacancy for the year 2008. On 29<sup>th</sup> September, 2011, this Tribunal has noted that no notice is required to be issued as already counter and rejoinder have been received. While admitting the O.A., the Tribunal observed as follows.

“Pendency of this OA shall not stand as a bar for the Respondents to consider the case of the applicant for appointment as Inspector of Posts since he was already a surplus qualified candidate in 2008”.



15. Subsequently, on 14.3.2012, the learned counsel for the applicant submitted that as the relief sought for had already been granted by the Respondents, the O.A. may be dismissed as infructuous.

16. In view of the submission, the Tribunal had dismissed O.A.No.866 of 2010 as infructuous.

17. It is now required to look at the facts of the present O.A. very carefully. In the letter dated 19.7.2011 issued from the Office of the CPMG to the Department of Posts, the provisional candidature of Shri Bhara Jally the applicant was regularized, in view of the fact that the period of punishment in the pending disciplinary case was over, there was no other proceeding pending against him, and there was no adverse entry in his ACR since 2006-07. It was, therefore, a decision taken by the competent authority. A recommendation was made to the Department of Posts that the result of SC vacancy of IP Examination, 2008 should be declared.

Respondent No.1 did not agree with this recommendation of Respondent No.2 and asked him to examine the case from the point of view of guideline dated 25.6.1965. On receiving this direction, Respondent No.2 revisited their earlier decision, and communicated Respondent No.1 vide letter dated 20.1.2012 that the provisional candidature of Shri Bharat Jally deserves to be cancelled for the reasons stated therein and the SC vacancy should be considered to be filled up by the candidature of Shri Manoj Kumar Behera who was a-waiting absorption as surplus SC candidate. In the letter it is also mentioned that Shri Behera had filed O.A.No.866 of 2010 in the Tribunal seeking his relief. On the basis of revised proposal, Respondent No.1 in their letter dated 22.2.2012 cancelled the candidature of Bharat

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Jally(applicant herein) and Maoj Kumar Behera was selected against the one withheld SC vacancy of IP Examination, 2008 of Odisha Circle under relaxed standards.

18. On 14.3.2012, in respect of O.A.No.866 of 2010, the applicant's counsel made a submission that relief had been granted to him rendering his O.A. infructuous. The Tribunal, therefore, did not adjudicate the matter further and dismissed O.A.No.866/2010 as infructuous.

19. This is how it can be seen that the consideration of the representation of Bharat Jally, applicant in the present O.A. was running concurrent to filing O.A.No.866 of 2010 by Manoj Kumar Behera, Respondent No.3. But, there is no adjudication of the case on merit in O.A.No.866 of 2010, since the O.A. was dismissed as infructuous on the submission of applicant that he has got relief from the Respondents. In the O.A.No.866 of 2010, the present applicant, Bharat Jally was not impleaded as a private Respondent.

20. Turning our attention to the present case, we have to first observe that the present applicant's candidature was regularized by the Respondent No.2, the competent authority in view of the fact that his period of punishment was over, there was no other departmental proceeding against him, and his ACR did not have any adverse entry since 2006-07. Practically speaking, letter dated 19.7.2011 was a recommendation for declaring his result in IP Examination 2008. Admittedly, he had scored higher marks than Respondent No.3 who was finally selected. Respondent No.1 for some reason directed Respondent No.2 to review the case of the present applicant in the light of instructions dated 25.6.1965. This circular envisages

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that each case where disciplinary proceeding has been initiated should be considered in its own merit. In the present case, in letter dated 21.1.2012, Respondent No.2 has completely reversed its finding. It is admitted that the period of punishment imposed was over on 31.3.2011. But it was found

that the charges on the basis of which disciplinary proceeding was drawn were serious in nature and reflected adversely on the integrity of the official. The official did not also prefer any appeal against the order of punishment. On a judicious application of mind, this observation is not supported by records. The charges were specifically unauthorized absence of duty and allowing one Bhramarbar Sahoo, GDS, BPM to manage the office work unauthorizedly. The charges were proved, penalty was awarded, and period of penalty was over. The Respondent No.2 recorded that no other proceeding was pending, and no adverse entry was there in ACR since 2006-07. As per the instructions, promotion can be considered on merit after the period of penalty was over. The applicant cannot be subjected to further punishment, once he has already gone through the punishment imposed on him in the disciplinary proceeding. We do not find any facts on the basis of which the further adverse observation about integrity was recorded. If the applicant has not filed any appeal against the order of punishment in the disciplinary case, how does it make him unsuitable for promotion ? This is not comprehensible.

21. In the letter dated 20.1.2012, the Respondent No.2 has re-examined the case of the applicant in deference to direction of Respondent No.1, since proposal in letter dated 19.7.2011 of Respondent No.2 was not accepted by Respondent No.1. In the same letter it was mentioned that

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 Majoj Kumar Behera, declared surplus qualified SC candidate had filed O.A.No.866 of 2010 in this Tribunal, and his case was recommended, giving rise to an impression that the case of Bharat Jally in itself was not given a strictly fair consideration particularly in the context of the fact that Respondent No.2 completely reversed his earlier recommendation sent to the Respondent No.1 in letter dated 19.7.2011. The principle of natural justice demands that the consideration of the case of aggrieved persons should be guided by fairness and merit. The applicant in the present O.A. was provisionally allowed to appear in the examination; then his period of punishment in the disciplinary case was over. His case was recommended on 19.7.2011 for declaration of result. Here is therefore a case where the applicant had a reasonable expectation to be selected and appointed against the post. However, Respondent No.1 gave some further direction to re-examine the case. But, Respondent No.1 did not reverse the finding of Respondent No.2. On the other hand, <sup>he f</sup> it gave a direction to Respondent No.2 to re-examine the matter. On the same set of facts, Respondent No.2 reversed its own recommendation, resulting in a completely different decision. In such a matter, where the reasonable expectation of a particular employee is defeated the authorities should have been objective and fair. Here they have given rise to a speculation that because Respondent No.3 has approached the Tribunal, they have the added pressure of rejecting the case of applicant in the present O.A. to give relief to the applicant in O.A.No.866 of 2010. Whereas, the fact is that in that O.A. there was no direction of the Tribunal, and on the prayer of the applicant's counsel, the O.A. was dismissed as infructuous vide order dated

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14.3.2012. The Respondents appear to have failed to establish their objectivity in passing their orders contained in letters dated 20.1.2012(Annexure-R/4) and dated 22.2.2012(Annexure-R/5).

22. Reconsideration of the case of applicant in letter dated 20.1.2012(Annexure-R/4) by Respondent No.2 on the basis of direction issued by Respondent No.1 has been vitiated because of fresh observations about integrity not supported by records, and non-filing of appeal against the order of punishment that is wholly unsustainable. In letter dated 19.7.2011 placed at Annexure-A/4, the Office of the CPMG, Odisha Circle had intimated the Department of Posts, New Delhi that the period of punishment in respect of the applicant is over, that at present there is no disciplinary or vigilance case pending against him and that there <sup>are</sup> ~~is~~ no adverse remarks in his ACRs since 2006-07. Subsequently, in letter dated 20.1.2012 (Annexure-R/4) the same officer in the Office of CPMG, Odisha Circle has written that the charges in the disciplinary proceedings which are serious in nature are found to be proved and that it reflects adversely on the integrity of the official. It is an admitted fact that the charges framed in respect of the disciplinary proceedings have already been considered by the departmental authorities, who imposed punishment of reduction by two stages for a period of six months on the applicant with effect from 1.10.2010, the duration of which is over. On the self-same grounds a fresh observation about the integrity is uncalled for. The applicant has already gone through the period of punishment for which there should be no bar to consider his case for promotion if he is qualified on merit. It is also to be



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noted that in letter at Annexure-A/4 it is clearly observed that there is no adverse remarks in the applicant's ACR since the year 2006-07. In the face of this record, the authorities cannot alter their position and pass an adverse remark about the integrity of the applicant. It is an accepted principle that any adverse remark about the integrity must be supported by records and vague allegations regarding integrity cannot stand the test of law. We therefore, find that this ground taken in letter dated 20.1.2012(Annexure-R/4) has no foundation. Therefore, this is not an objective consideration in accordance with instructions dated 25.6.1965 that each case should be considered on the basis of its own merit. On the other hand, the recommendation contained in letter dated 19.7.2011 of Respondent No.2 was made on objective grounds. Therefore, the letter dated 20.1.2012 of Respondent No.2(Annexure-R/4) and letter dated 22.2.2012(Annexure-R/5 & Annexure-A/7 of O.A.) are quashed. The Respondent No.1 is directed to issue orders on the basis of the Respondent No.2's recommendation conveyed in letter dated 19.7.2011 in favour of the applicant in so far as filling up the vacancy is concerned. However, Respondent No.1 has also selected Respondent No.3 in this O.A. as the next eligible candidate who has qualified under relaxed standards. It is admitted that he was awaiting absorption as a surplus SC candidate. Respondent No.1 is therefore directed to absorb the Private Respondent No.3 in this O.A. against any other vacancy outside the Circle, consequent upon the absorption of the applicant in the SC vacancy in the Odisha Circle against the IP Examination, 2008.

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In the result, the O.A. is allowed to the extent indicated above.

However, there shall be no order as to costs.

(R.C.MISRA)  
MEMBER(A)

*Alles*  
(A.K.PATNAIK)  
MEMBER(J)

BKS

