

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/211/2017 & No.260/155/2019

Date of Reserve: 08.08.2019

Date of Order:30.09.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

IN O.A.No.260/211/2017

Rajani Kanta Mahapatra, aged about 64 years, S/o. Late Santha Charan Mahapatra, Office Superintendent (Retired), Plot No.2308, Suvangan, Sithal Sasthi Lane, Old Town, West Bindu Sagar, Bhubaneswar-751 002, District-Khurda.

...Applicant

By the Advocate(s)-M/s.D.R.Pattnaik

N.Biswal
L.Pradhan
P.C.Nayak

-VERSUS-

1. Union of India Ministry of AYUSH, Government of India, Jawahar Lal Nehru Bharatiya Chikista Evam Homoeopathy Anusandhan Bhawan represented through its Secretary, 61-65, Institutional Are, Opposite-'D' Block, Janak Puri, New Delhi-110 058.
2. Central Council for Research in Ayurvedic Sciences represented through its Director General, Member-Secretary, Jawahar Lal Nehru Bharatiya Chikista Evam Homoeopathy Ansuandhan Bhawan, represented through its Secretary, 61-65, Institutional Area, Opposite-'D' Block, Janak Puri, New Delhi-110 058.
3. Chief Vigilance Officer, Central Council for Research, Ayurvedic Sciences, Jawahar Lal Nehru Bharatiya Chikistsa Eveam Homeopathy, Anusandhan Bhawan, represented through its Secretary, 61-65, Institutional Area, Opposite-'D' Block, Janak Puri, New Delhi-110 058.
4. Director, Ayurvedic Research Institute for Hepatobilliary Disorder, formerly known as National Research Institute for Ayurvedic Drugs Development, At-Bharatpur, Bhubaneswar-751 029.
5. Enquiring Authority (Sudipt Kar) No.CCRAS/DP/2017, Central Council for Research in Ayurvedic Sciences, JLNBCAHAB No.61-65, Institutional, Area, Opposite-'D' Block, Janak Puri, New Delhi-110 058.

...Respondents

By the Advocate(s)-Mr.G.R.Verma

Mr.A.Mohanty

IN O.A.No.155/2019

Rajani Kanta Mahapatra, aged about 66 years, S/o. Late Santha Charan Mahapatra, Office Superintendent (Retired), Plot No.2308, Suvangan, Sithal Sasthi Lane, Old Town, West Bindu Sagar, Bhubaneswar-751 002, District-Khurda.

...Applicant

By the Advocate(s)-M/s.D.R.Pattnaik
N.Biswal
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-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of AYUSH, Jawaharlal Nehru Bharatiya Chikitsa Evam Homoeopathy Anusandhan Bhawan, 61-65, Institutional Area, Opposite-'D' Block, Janak Puri, New Delhi-110 058.
2. Central Council for Research in Ayurvedic Sciences represented through its Director General & Member-Secretary (Governing Body), Jawahar Lal Nehru Bharatiya Chikitsa Evam Homoeopathy Ansuandhan Bhawan, represented through its Secretary, 61-65, Institutional Area, Opposite-'D' Block, Janak Puri, New Delhi-110 058.
3. Chief Vigilance Officer, Central Council for Research, Ayurvedic Sciences, Jawahar Lal Nehru Bharatiya Chikitsa Eveam Homeopathy, Anusandhan Bhawan, 61-65, Institutional Area, Opposite-'D' Block, Janak Puri, New Delhi-110 058.
4. Director, Ayurvedic Research Institute for Hepatobiliary Disorder, formerly known as National Research Institute for Ayurvedic Drugs Development, At-Bharatpur, Bhubaneswar-751 029, Dist-Khordha.

...Respondents

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

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant in both the above mentioned Original Applications is one and the same. In O.A.No.260/211 of 2017 he has challenged the legality and validity of initiation of disciplinary proceedings after his retirement from service and in O.A.No.260/155/2019, he has challenged the order of punishment as imposed by the Disciplinary Authority. For the sake of clarity, the reliefs sought for by the applicant in O.A.No.260/211/2017 and O.A.No.260/155/2019, respectively, are quoted hereunder:

O.A.No.260/211/2017:

- i) The proceeding so initiated pursuant to Annexure-4 series, i.e., memorandum no.4213 dated 28.12.2016 against the applicant be declared as time barred and consequently be quashed.
- ii) Pass any such further order as deemed fit and proper.

O.A.No.260/155/2019

- i) To quash the entire disciplinary⁸ proceeding as well as charges issued vide order No.4213 dated 28.12.2016 under Annexure-A/2 series.
- ii) To quash the impugned order of punishment issued vide order No.4710 dated 29.01.2019 under Annexure-A/9.

- iii) To declare the initiation of the disciplinary proceeding under Annexure-A/2 series as illegal and violative of Rule-9(2)(b)(ii) of CCS(Pension) Rules, 1972.
- iv) To direct the respondents to grant all consequential benefits to the applicant within a time framed by this Hon'ble Tribunal.
- v) To pass such order/directions as deemed fit and proper.
- vi) To allow the Original Application.

2. Perusal of the reliefs sought for by the applicant in both the OAs are more or less the same except) in O.A.No.260/155/2019 wherein the relief for is to quash the impugned order of punishment dated 29.01.2019 (A/9) with consequential benefits. Be that as it may, since the reliefs sought for by the applicant in both the OAs are consequential and dependent upon each other, this common order is being passed. It is to be noted that since the applicant has raised the authority of the respondents in initiating disciplinary proceedings against him after his retirement on superannuation in O.A.No.260/211/2017, it would be prudent if the said O.A. is considered and decided in the first instance. In view of this, the pleadings of both the sides in O.A.No.260/211/2017 are reduced to writing herein below:

3. The facts in a nutshell are that the applicant while working as Office Superintendent in National Research Institute for Ayurvedic Drugs Development (in short NRIADD), Bharatpur, Bhubaneswar (Respondent No.4), retired from service on superannuation with effect from 31.01.2013. On 16.08.2016 (A/2 series), the applicant was communicated with a letter issued by Respondent No.3 calling upon him to submit reply/clarification on the following points:

- 1. As per records in the F.No.2-5/2001-CCRAS/Estt.Vol.I at Page 13 & 14N of note sheet (copy enclosed) Mr.R.N.Sharma, Assistant on 11.06.2002 recorded at Page 13N that out of 3 posts to be filled by promotion, 2 posts are UR and 1 post is reserved for ST. Office Superintendent was on leave and this file was marked to Mr.D.S.Meena, the then Assistant Director (Coord.). Subsequently, he marked it to Mr.A.L.Vachher, the then Deputy Director (Admn.) and who has marked to the then Director. Further, on 17.06.2002, you as Assistant mentioned in note sheet referring the orders at pre-page and

submitted a fair U.O. Note for signature of Director. The note was marked to Mr.N.K.Joshi, Office Superintendent who marked to Mr.D.S.Meena and he marked it to Deputy Director (Admn.).

In this connection, your attention is drawn towards DoPT O.M.No.36012/6/85-Estt.(SCT) dated 01.11.1990 (copy enclosed) in which it has been mentioned that in promotion by selection within Group 'A', there is no reservation. Since, the Department of ISM&H as well as DPC was given wrong information, Dr.M.M.Rao got unintended benefit of promotion from Research Officer (Ayurveda) to Assistant Director (Ayurveda) for which he was not eligible. His seniority was not within zone of consideration to be selected, if no reservation was applicable.

So, you are hereby instructed to clarify as to while the file was dealt with by you multiple times, as an administrative staff why you did not put your remarks about correct rule position that in promotion within Group 'A', there is no reservation.

Your specific reply with exact rule position if any should reach to undersigned within 7 days of receipt of this letter".

4. In response to this, the applicant vide his letter dated 03.09.2016 (A/3) submitted his reply, which reads as follows:

"Reference is made to your letter No.F.No.2-1/2016- CRAS/Vig/1413) dated 16.08.16 regarding selection of Asst. Director and to state that generally the file is moved through the concerned officials as per set rules.

In this case, it may be stated that Dr.M.M.Rao was promoted to the post of Asst.Director when there was no reservation for promotion as stated in Para-2 of the letter.

However, generally, the files are moved through the concerned officials and as such, the matter may please be settled as per set rules which might have been left due to oversight.

Further, needless to mention that it would have been better if the case would have come to my notice while I was in service.

Needless to mention that I have retired from service since 31.1.2013.

Inconvenience if caused in this regard is regretted".

5. While the matter stood thus, a Memorandum of Charge dated 28.12.2016 (A/4 series) was received by the applicant proposing to hold an inquiry against him under Rule-14 and 15 of CCS(CCA) Rules, 1965, inter alia, with an instruction to file written statement

of defence and also to state whether he desired to be heard in person. The Statement of Article of Charge framed against the applicant reads as follows:

"That while Shri R.K.Mahapatra was working as Assistant at CCRAS Hqrs. Vide file No.2-5/2001-CCRAS/Estt/Vol.I on 17.06.2002 submitted a note orders at pre-page and fair U.O. Note for signature of Director and marked to the Office Superintendent Shri N.K.Joshi which was then signed by Shri D.S.Meena, Assistant Director (Coord) and Deputy Director (Admn.) Shri A.L.Vachher which was then signed by the then Director Dr.G.Veluchamy. The U.O. Note signed by Dr.G.Veluchamy, Director was sent to Department of ISM & H on 25.06.2002 mentioning that out of three posts of Assistant Director (Ayurveda) to be filled by DPC, two pertains to UR and one is reserved for ST. While submitting the UO note to higher authorities Shri R.K.Mahapatra failed to mention the correct rule position that for promotion by selection within Group-A, there is no reservation.

Sh.R.K.Mahapatra has acted in a manner unbecoming of a public servant by doing above, which also exhibits his doubtful integrity. He has therefore, contravened the rule 3 (1)(i) and (iii) of CCS(Conduct) Rules, 1964".

6. The applicant submitted his reply vide letter dated 13.01.2017 (A/5) to the following effect:

"That the file No.2.5/2001-CCRAS/Estt./vol.1 on 17.06.2002 was submitted to me on the concerned officials as per rules and procedure which was signed by and marked to the Office Supdt. And accordingly the said note sheet might have been signed by the high officials as per set rules and might not have thoroughly seen/verified before putting the signature.

As stated in Para-3 of my earlier representation dated 3.9.2016 in reply to your letter No.F.No.2-1/2016-CCRAS/Vig/ 1413 dated 16.08.2016 before putting the signature and passing on to the O.S. the fact would have been properly examined and submitted to the office superintendent which might have been left due to over sight.

I may mention here that I have not done it deliberately and it might have been done as a routine work and hence, I feel Sir I have not contravened the Rule-3(1)(i) and (iii) of CCS(CCA) Rules, 1965 and I may please be excused if I have committed any mistake in passing on the file putting my signature and hence the charge sheet which has been framed against me may please be dropped I being a retired employee since 31.1.2013 and a pensioner too".

7. Being not satisfied, the Director General & Member-Secretary of the Governing Body of CCRAS, in the capacity of Disciplinary Authority vide order dated 02.05.2017 (A/6) appointed Inquiry Officer and the Presenting Officer to enquire into the charge, in pursuance of which, the I.O. vide A/8 dated 20.03.2017 issued notice to the applicant to attend the preliminary inquiry to be held at Committee Room, 2nd Floor, CCRAS Hqrs., No.61-65, Institutional Area, Opp. 'D' Block, Janakpuri, New Delhi-110 058 at 11.00 AM on 12.04.2017. Aggrieved with this, the applicant has approached this Tribunal in O.A.No.260/211/2017, seeking for the reliefs as already mentioned above.

8. This matter came up on 11.04.2017 for admission and this Tribunal, as an interim measure, directed that no action shall be taken by the respondents in pursuance of the Memorandum dated 28.12.2016 (Annexure-A/4) against the applicant. While the matter stood thus, vide order dated 18.01.2018, this Tribunal vacated the interim order of stay.

9. The sole ground urged in this O.A. is that the alleged misconduct on the part of the applicant having taken place way back in the year 2002, the proceedings initiated by the respondents is hopelessly time-barred inasmuch as, it does not come within the scope of Rule-9 of CCS(Pension) Rules, 1972, which provides that if the departmental proceeding is not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall not be in respect of any, event, which took place more than four years before such institution. In view of this, it is the contention of the applicant that the departmental proceedings initiated against him vide Memorandum dated 28.12.2016 (A/4) being grossly time-barred, does not stand the judicial scrutiny and therefore, the same should be quashed and set aside.

10. Respondents have filed their counters separately opposing the prayer of the applicant. While admitting that the disciplinary proceeding has been initiated against the applicant in respect of an incident that had taken place 15 years ago, they have pointed out that such an event came to the notice in the year 2014 only. Thereafter, there was a thorough examination of the same, views of the Disciplinary Authority, i.e., Governing Body

were obtained and after following the advice of the CVC, Memorandum of Charge was issued to the erring official before completion of his four years of retirement with effect from 31.01.2013. Therefore, it is the case of the respondents that Rule-9(2) of CCS(Pension) Rules, 1972, as cited by the applicant in support of his contentions, may not be squarely applicable to his case. Respondents have pointed out that GI(1) for Rule-9, CCS(Pension) Rules, 1972, as last amended by Notification No.7/14/90-P & PW(F) dated 23.08.2991 and No.38/189/88-P & P.W(F) dated 04.02.1992, the departmental proceeding may be instituted within four years from the retirement of Government servant. Respondents have further pointed out that as per instruction vide GI, DoP&T, O.M.No.28027/3/87-Estt.(A) dated 29.06.1990, disciplinary proceedings can continue after retirement even in case where there is no pecuniary loss. Furthermore, where the charges are grave in nature and the mistakes have been committed due to serious lapse of the concerned Government employee, disciplinary proceedings could be drawn up against such employee, as the applicant herein. By citing the decision of CAT (Full Bench) in Amarjit Singh vs. UOI, wherein it has been held that institution/continuation of the proceedings is not dependent upon the pecuniary loss being occasioned to the Government.. Even in the absence of any pecuniary loss, the pension of a pensioner may be withheld or withdrawn in whole or part, after following the prescribed procedure, for an act of misconduct/negligence committed while in service. In all, it is the contentions of the respondents that they have acted within the four corners of rule and the proceedings so initiated against the applicants warrants no interference.

11. Applicant has filed rejoinder to the counter which is more or less reiteration of the same facts as averred in the O.A.

12. Heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of submissions filed by both the sides. From the pleadings of the parties, the short point to be decided in O.A.No.260/211/2017 is whether the departmental proceedings initiated against the applicant, who is a retired employee under the respondents, is sustainable or otherwise on account of being time barred.

13. In the written note of submission, the applicant has brought to the notice of this Tribunal Rule-9(2)(b)(ii) of CCS(Pension) Rules, 1972 and has submitted that since the event relates to 14 years back in general and four years before his retirement in particular, the very initiation of disciplinary proceedings against him is grossly time barred and hence, the same is *void ab initio*. On the other hand, it is the contention of the respondents that the misconduct of the applicant came to the knowledge in the year 2014 whereafter, the proceeding was initiated against the applicant after obtaining the approval of the Governing Body, apart from, the advice tendered by the CVC dated 13.12.2016 and therefore, the provisions as envisaged under Rule-9(2) (b)(ii) of CCS(Pension) Rules, 1972 do not apply to his case.

14. In support of his contentions, the applicant has relied on the following decisions:

- i) State of U.P. & Ors. Vs. Krishna Pandey (AIR 1996 SC 1656) (MANU/SC/0430/1996 (Para-6).
- ii) Basudev Chaterjee vs. Grid Corporation of Orissa & Ors. In W.P.(C) No.3434/2016 (MANU/OR/0065) Para-10,13,17 & 24).
- iii) Brajendra Singh Yambem vs. Union of India & Ors. (AIR 2016 SC 4107) (MANU/sc/0942/2016 (Para-32,33,34,36 & 37).

15. We have considered the rival arguments as advanced by the learned counsels for both the sides. At the outset, it would be profitable to quote hereunder Rule-9 of CCS(Pension) Rules, 1972 - "Right of President to withhold or withdrawn pension":

- (1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if in any department or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

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XXX

XXX

- (2)(a) The departmental proceedings referred to in Sub-rule(1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement

of the Government servant, be deemed to be proceedings under this Rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

Provided, that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

- (b) The departmental proceedings, is not instituted while the Government servant was in service, whether before his retirement or during his re-employment-
 - (i) shall not be instituted save with the sanction of the President.
 - (ii) shall not be in respect of any event which took place more than four years before such institution; and
 - (iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in relation to the Government servant during his service.

16. From the above position of Rule, two aspects regarding initiation of disciplinary proceedings against a retired Government employee is very clear and conspicuous, i.e., (i) departmental proceedings shall not be instituted "save with the sanction of the President" and (ii) "shall not be in respect of any event which took place more than four years before such institution". It is the settled principle of law that departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner. In the instant case, by the issuance of Memorandum of Charge vide A/4 series, the departmental proceedings against the applicant is deemed to have been instituted on 28.12.2016. It is pertinent to note that in the introductory sentence of the said Memorandum, it has been mentioned that *"in pursuance of the sanction accorded by the Governing Body of CCRAS under Rule-9 of the Central Civil Services (Pension) Rules, 1972, for initiating departmental proceedings against Shri R.K.Mahapatra, Es.Office Superitndentd CARIHD, Bhubaneswar (the then Assistant, CCRAS Hqrs.), it is proposed to hold an inquiry against the said Shri R.K.Mahapatra in accordance with the procedure laid down in Rule 14 and 15 of the CCS(CCA) Rules, 1965"*. From this, a question arises whether such a Memorandum, prima facie, is sustainable in the forefront of

the provisions of Rule-9 (b) (i) as quoted above, which unequivocally lays down that the departmental proceedings shall not be instituted save with the sanction of the President. Our answer to this, is in the negative. Since the applicant has already retired on superannuation with effect from 31.01.2013, it is was incumbent on the part of the respondent-authorities to obtain the approval of the President under Rule-9 of CCS(Pension) Rules, 1972. This apart, admittedly, the event in respect of which the departmental proceedings has been initiated vide Memorandum dated 28.12.2016 had taken place on 17.06.2002, which is undoubtedly of about 14 years, whereas, Rule-9(b)(ii) of CCS(Pension) Rules, 1972, as quoted above, provides such an action should not be taken in respect of any event which took place more than four years before such institution. Therefore, on this ground also, Memorandum dated 28.12.2016 does not have the sanction or approval of rules as statutorily provided under the CCS(Pension) Rules, 1972 and hence, the same is not tenable. We would, at this stage, like to note that the explanation offered by the respondents in support of the delay that they detected this lacuna in the year 2014 and after approval of the Governing Body as well as the advice tendered by the CVC, they initiated the proceedings against the applicant, does not persuade us to come to a conclusion that such a course of action is reasonable and considerate..

17. At this juncture, we would like to quote hereunder the observations of the Hon'ble Supreme Court in Paragraph-6 of the judgment in State of U.P. & Ors. Vs. Krishna Pandey (supra):

"6.It would thus be seen that proceedings are required to be instituted against a delinquent officer before retirement. There is no specific provision allowing the officer to continue in service nor any order passed to allow him to continue in re-employment till the enquiry is completed, without allowing him to retire from service. Equally, there is no provision that the proceedings be initiated as disciplinary measure and the action initiated earlier would remain unabated after retirement. If Rule 351-A is to be operative in respect of pending proceedings, by necessary implication, prior sanction of the Governor to continue the proceedings against him is required. On the other hand, the rule also would indicate that if the officer caused pecuniary loss or committed embezzlement etc. due to misconduct or negligence or dereliction of duty then proceedings should also be instituted after retirement

against the officer as expeditiously as possible. But the events of misconduct etc. which may have resulted in the loss to the Government or embezzlement, i.e., the cause for the institution of proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted before lapse of four years from the date on which the event or misconduct etc. had taken place. Admittedly, in this case the officer had retired on March, 31, 1987 and the proceedings were initiated on April, 21, 1991. Obviously, the event of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the State had disabled itself by their deliberate omissions to take appropriate action against the respondent and allowed the officer to escape from the provision of Rule 351-A of the rules. This order does not preclude proceeding with the investigation into the offence and taking action thereon”.

18. It is the categorical and unambiguous finding of the Hon'ble Supreme Court that the departmental proceedings must be instituted before lapse of four years from the date on which the event or misconduct etc. had taken place. As already mentioned above, the event having taken place in the year 2002, the departmental proceedings was initiated against the applicant in the year 2016, which is much after the prescribed period of four years. In view of this, we answer the point in issue that the departmental proceedings initiated against the applicant in O.A.No.260/211/2017 is flawed being hopelessly time barred is not tenable in the eye of law. Accordingly, we quash and set aside the Memorandum No.4213 dated 28.12.2016.

19. Coming to the facts adduced in O.A.No.260/155/2015, we would like to note that after vacation of the interim order of stay vide order dated 18.01.2018 of this Tribunal, the respondent-authorities went ahead with the departmental proceedings and vide Order F.No.2-1/2016-CCRAS/Vig..4710 dated 29.01.2019 (A/9), the Director General & Member-Secretary, Governing Body, CCRAS (Respondent No.2) imposed punishment on the applicant, which reads as follows:

“10.Now, therefore, considering the records, facts, and circumstances of the case, it would be appropriate at the end of justice if above penalty i.e., “forfeiture of 5% (five percent) monthly pension on permanent basis” is imposed on him. Accordingly, the above said penalty is hereby imposed on Shri

R.K.Mahapatra, Office Superintendent (Retired), CARIHD, Bhubaneswar, with immediate effect, i.e., with effect from the date of issue of this Memorandum”.

20. Applicant has challenged the legal propriety of the aforesaid punishment order in this O.A. and has sought for the reliefs as mentioned above.

21. This matter came up for admission on 11.03.2019, when this Tribunal, while admitting the O.A., had directed notice to the respondents. No counter has been filed by the respondents. However, keeping in view the factual matrix of this O.A., this Tribunal, vide order dated 11.03.2019 directed this matter to be heard and disposed of along with O.A.No.260/211/2017. Since, this Tribunal has arrived at a conclusion that the very proceedings initiated against the applicant vide Memorandum dated 28.12.2016 is flawed and hopelessly time-barred and resultantly quashed the same, the punishment order dated 29.01.2019 which has been imposed on the applicant as a follow up action to the aforesaid Memorandum does not have any leg to stand on the doctrine of “sublato fundamento cadeit opus” – which means, “when the foundation is removed, the structure falls”.

22. Having regard to the aforesaid discussions, order F.No.2-1/2016-CCRAS/Vig..4710 dated 29.01.2019 (A/9) in O.A.No.260/155/2019 is quashed and set aside and accordingly, the Respondents are directed to release the dues accrued towards 5% of the monthly pension which been directed to forfeit from monthly pension permanently, in favour of the applicant within a period of thirty days from the date of receipt of this order, along with interest at the prevalent rate on the said amount.

23. In the result, both the OAs are allowed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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