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**(1996) 11 SC CK 0224**

**In the Supreme Court Of India**

**Case No : Civil Appeals Nos. 14745-746 Of 1996**

State of Orissa and Others

APPELLANT

Vs

Kshetrabasi Mohanti and Others

RESPONDENT

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**Date of Decision : 08-11-1996**

**Acts Referred:**

**Citation : (1997) 11 SCC 638 : (1998) SCC(L&S) 327**

**Hon'ble Judges : A. M. Ahmadii, C.J;Sujata V. Manohar, J**

**Bench : Division Bench**

**Final Decision : Disposed Of**

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## **Judgement**

A.M. Ahmadi, C.J. and; Sujata V. Manohar, J.-Special leave granted.

2. The respondent-employee was found guilty for temporary misappropriation after a departmental enquiry held against him. He was visited with the punishment of withholding of two future increments. However, subsequently it was found that he had reached the maximum of the scale and hence it was not possible to implement the punishment meted out to him. It was, therefore, proposed to substitute that punishment for which he was served with a show-cause notice. Thereafter, the order of punishment was reviewed by the Governor and the substituted punishment imposed was that he should not be considered for promotion till the end of March 1980. Thereupon, the delinquent questioned the substituted punishment. He also filed another writ petition for being promoted on the ground that he was due for promotion since his juniors had been promoted. During the pendency of these writ petitions the Orissa Administrative Tribunal came to be constituted. Thereupon, both the writ petitions were transferred to the Tribunal. They were heard together and by a common judgment dated 8-8-1991 the Tribunal set aside the substituted punishment and directed that he should be promoted with effect from 23-5-1977. The State of Orissa has questioned the correctness and validity of the Tribunal's order in the present two appeals.

3. When these special leave petitions came up for admission before us on 23-3-1992 we passed an interim order directing the State to consider if the respondent would have been entitled to promotion with effect from 23-5-1977 as ordered by the Tribunal even if no punishment was imposed after he was found guilty of misappropriation. In response to this query raised by the Court the Under-Secretary to the Government of Orissa in the Agriculture Department has filed an affidavit and in paragraph 3 thereof he has stated as under:

"The authorities have decided that even if no punishment had been imposed on Shri Mohanty as a result of the Enquiry Report, he would have been considered for promotion only after the recommendations of the Orissa Public Service Commission dated 13-11-1978 finding Shri Mohanty fit for promotion were accepted by the Government. Even if the OPSC's recommendations had been accepted by the Government, Shri Mohanty's promotion could only have been prospective, he would not have been promoted with retrospective effect i.e. from 23-5-1977."

4. We have heard the learned counsel for the State of Orissa. He has submitted that when the delinquent was visited with the punishment for temporary misappropriation the authorities were not aware of the fact that he had reached the maximum of the time-scale and, therefore, it was wellnigh impossible to implement any order for withholding of future increments. When this mistake became known, the Government in exercise of power of review under Rule 31 of the Orissa Civil Services (CCA) Rules issued the show-cause notice and thereafter, substituted the punishment by directing withholding of promotion up to the end of March 1980. The learned counsel took serious exception to the observations of the Tribunal in paragraph 13 of the impugned order. We consider it appropriate at this stage to reproduce paragraph 13:

"In the theory of punishment either in criminal courts or in disciplinary proceeding the intention of law is not to make a profit to Government by imposition of penalty of withholding any increment. The purpose is to set an example to criminals or delinquents that punishments of this nature can be imposed when they misbehaved or committed crime. Therefore, the argument of Government that since the petitioner had reached the last stage of increment, the punishment could not be imposed is totally a wrong logic to alter the punishment. The punishment could have been imposed on paper and recorded in the CCR. It could have been recorded that in view of his end of the scale in the time-scale, the money cannot be recovered. That would be the correct legal position. Just because the amount of money involved in the penalty imposed in the punishment cannot be recovered, that cannot be the reason to alter the punishment. We are not prepared to accept that because his increment cannot be stopped because he reached at the end of the scale, the power of review can be involved by the Governor. The punishment could have been ordered on paper and recorded that such punishment cannot be actually implemented because of the difficulty pointed out in the counter-affidavit. We are not satisfied that just

for this reason the extraordinary power of the Governor to review beyond the period of limitation could be used. Hence we hold that the power of review under Rule 33 of OCS (CCA) Rules has been wrongly used by the Governor and we quash the same."

5. In the concluding part of this paragraph the rule mentioned is Rule 33 which is a mistake and it should be Rule 31. The learned counsel for the State submitted that the entire approach of the Tribunal was totally misconceived and as a result thereof it reached the wrong conclusion.

6. The learned counsel for the delinquent also found it difficult to support this line of reasoning adopted by the Tribunal but he contended that having regard to the nature of the misconduct proved in the departmental proceedings the authorities could have closed the chapter by imposing a minor penalty of censure or the like rather than visit the delinquent with the substituted penalty of withholding of promotion. He submitted that the Tribunal directed that he be promoted with retrospective effect i.e. 23-5-1977 as his juniors were promoted by that date. He further submitted that now that the delinquent had retired from service this Court should refuse to interfere in exercise of jurisdiction under Article 136 of the Constitution.

7. We think that it is necessary to correct the approach of the Tribunal. In the first place it must be realised that the delinquent was found guilty of misappropriation, temporary no doubt. All the authorities have upheld the order finding him guilty of that misconduct. So, that aspect of the matter stands concluded. The only question that remained was in regard to the penalty to be imposed on the basis of the guilt established. The amount of misappropriation was Rs 2837.12p, Rs 746.64p and Rs 5992.22p. Although the amount of misappropriation may not be large, it is the tendency of a government servant that matters. Once it was found by the Governor that the penalty of withholding of two future increments could not be implemented as he had reached the maximum of the scale, the Governor had to substitute that punishment by an appropriate punishment which he thought should be withholding of promotion till the end of March 1980. The Tribunal's approach in regard to the culpability and punishment seems to be a misconceived one. If the punishment meted out to the delinquent is commensurate with the nature of misconduct it is not for the Court to sit in judgment to alter the punishment. It is only in those rare cases where the punishment is so disproportionate to the misconduct that it would shock the conscience of the Court that the Court would exercise its jurisdiction to alter the punishment if the rules or law permitted. But in the instant case it cannot be said that the punishment of withholding the promotion till March 1980 was a disproportionate one. We fail to understand how the Tribunal could say that the ends of justice would have been satisfied if there was only a paper punishment without actual implementation. We also fail to understand how the Tribunal could say that by implementing the punishment the Government would have made profit. We do not see any lack of logic in the approach of the Government in

substituting the punishment which was not capable of implementation by a punishment capable of implementation. There was no question of recovery of money because the punishment of withholding of increments would be related to future increments and not past increments. Therefore, we think that the entire line of reasoning of the Tribunal is unsustainable and we do not see any infirmity in the order passed by the Governor after review. It is another matter that if it was possible to implement the punishment of withholding of future increments that would have caused monetary loss to the delinquent but that is the purpose of punishment. Therefore, to say the least the entire line of reasoning of the Tribunal in the aforequoted paragraph from the order is difficult to comprehend. Once we set aside the order of the Tribunal based on the line of reasoning in paragraph 13, the question of granting promotion before March 1980 does not arise. Therefore, the Tribunal's order of direction to grant promotion with effect from 23-5-1977 is also unsustainable.

8. In the result, we allow these appeals, set aside the order of the Tribunal and affirm the order of the Governor. We, however, make no order as to costs since the delinquent has retired.