AFR

ORISSA HIGH COURT : CUTTACK

WA No.432 of 2025

In the matter of an Appeal under Article 4 of
the Orissa High Court Order, 1948
read with
Clause 10 of the Letters Patent constituting
the High Court of Judicature at Patna
and
Rule 6 of Chapter-III and Rule 2 of Chapter-VIII
of the Rules of the High Court of Orissa, 1948

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Sanjita Das
Aged about 59 years
Wife of Asitav Mohanty
Resident of Satabdi Vihar,
P.S.: Bidanasi, District: Cuttack,
Presently working as
Special Secretary,
Board of Revenue, Odisha. ... Appellant

-VERSUS-

1. State of Odisha
Represented through
Chief Secretary
Lok Seva Bhawan,
Bhubaneswar, District: Khordha
(Opposite Party No.1 in the original
Writ Application)

2. The Principal Secretary to Government
Revenue & Disaster Management Department
Government of Odisha

Lok Seva Bhawan
Bhubaneswar, District: Khordha
(Opposite Party No.2 in the original
Writ Application)

3. The Special Secretary to Govt.,
General Administration Department,
Govt. of Odisha, Lok Seva Bhawan,
Bhubaneswar, District: Khordha
(Opposite Party No.3 in the original
Writ Petition)

4. The Secretary, Board of Revenue,
Odisha, Cuttack
(Opposite Party No.4 in the original
Writ Application) ... Respondents.

Counsel appeared for the parties:

For the Appellant : M/s. Durga Prasad Nanda,
Senior Advocate,
Rupesh Kumar Kanungo,
A. Acharya, P. Roy, D. Nayak,
D. Nanda and A. Aslesh,
Advocates

For the Respondents : Mr. Saswat Das,
Additional Government Advocate

P R E S E N T:

HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON

AND

HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN

Date of Hearing : 12.05.2025 :: Date of Judgment : 19.06.2025

JUDGMENT

MURAHARI SRI RAMAN, J.—

This intra-Court appeal is directed against the judgment dated 25.06.2024 passed in W.P.(C) No.7375 of 2021, dismissing the petition on the ground that the petitioner should have taken steps to implement the minor punishment awarded in the departmental proceeding instituted while she was working as the Administrative Officer at Srirama Chandra Bhanja Medical College & Hospital, Cuttack and should have objected to the subsequent increments sanctioned in her favour.

Facts:

2. A brief narration of facts emanating from the pleadings contained in the writ petition would suffice to determine the issue raised in the present case that whether the petitioner is responsible for implementation of minor punishment enumerated under Rule 13 of the Odisha Civil Services (Classification, Control and Appeal) Rules, 1962, awarded against her in the departmental proceedings.

2.1. The petitioner, appointee of the year 1987 borne in the Odisha Administrative Service Cadre, while posted as Additional Executive Officer under the Cuttack Municipal Corporation from 09.08.1995 to 31.01.2000, on the allegation of illegal engagement of persons as

Daily Labour Roster/DLR, a departmental proceeding was initiated against her on 16.04.2002 and as against fourteen charges, two charges, on the basis of enquiry report submitted, could be established. Accordingly, communication was issued *vide* Memo appended to the Order dated 29.07.2011 indicating minor punishment, *i.e.,* withholding one annual increment without cumulative effect as has been awarded by the Disciplinary Authority. Such punishment being one of the minor punishments enumerated in Rule 13 of the Odisha Civil Services (Classification, Control and Appeal) Rules, 1962, remained unchallenged.

2.2. The appellant was transferred to function as the Administrative Officer of Srirama Chandra Bhanja Medical College & Hospital, Cuttack ("SCBMCH", for short) by Order dated 04.11.2011. Since the punishment was not implemented by the District Administration, the appellant wrote a letter to the Superintendent of SCBMCH, Cuttack requesting him to take appropriate steps for implementation of the order of punishment. Though such was the position and the authorities were conscious about the punishment with direction to reflect the same in her service records, the appellant was given promotions till the year 2020.

2.3. While the matter stood thus, on 12.06.2020, when her case came up for consideration for promotion to the

Odisha Cadre of Indian Administrative Service, the Administrative Officer, SCBMCH, intimated the Additional Secretary to Government of Odisha, General Administration Department for taking appropriate steps for implementation of the order of punishment imposed in the year 2011. Accordingly, the said order of punishment was implemented on 05.11.2020 with reference to said letter.

2.4. The appellant challenged such action by way of filing a writ application, registered as W.P.(C) No.7375 of 2021, which stood dismissed by Judgment dated 25.06.2024.

2.5. Review of said Judgment in RVWPET No.185 of 2024, was sought for inasmuch as the role of the appellant could not be attributed for non-implementation of the minor punishment awarded in the disciplinary proceeding in the year 2011 by the authorities concerned. Furthermore, notwithstanding such order of punishment being carried out with much delay in the year 2020, the same should have been appreciated that it related to the year 2011; so that it would not have any repercussion on consideration of her case for promotion to the Cadre of Indian Administrative Service. Said review too stands dismissed by Judgment dated 08.01.2025 holding that she cannot escape the consequences of her inaction. The delayed enforcement

of the punishment does not render the action of the authorities unjustified.

Hearing:

3. Having considered the fact scenario of the present matter, this Court condoned the delay in filing of writ appeal *vide* Order dated 04.04.2025. Thereafter, the matter got listed on 30.04.2025, 08.05.2025 and 09.05.2025. At the request of counsel for both the sides, the matter again appeared on board on 12.05.2025.

3.1. Short point being involved and the case of the appellant being ignored for consideration of promotion to the Indian Administrative Service (Odisha) Cadre with respect to the vacancies till 2019, as there was delay in implementation of punishment awarded way back in the year 2011 in the departmental proceeding, on the consent of counsel for both sides, the writ appeal is taken up for final hearing on 12.05.2025. It is also noticed that pleadings in the matter was completed at the stage of hearing of writ petition and no new fact or evidence needed to be placed by the counsel for respective parties.

3.2. Accordingly, heard Sri Durga Prasad Nanda, learned Senior Advocate assisted by Sri Rupesh Kumar Kanungo, Advocate appearing for the petitioner and Sri

Saswat Das, learned Additional Government Advocate appearing for the respondents.

3.3. On conclusion of hearing on 12.05.2025, the matter stood reserved for preparation and pronouncement of Judgment/Order.

Arguments advanced on behalf of the appellant:

4. With the aforesaid factual backdrop, Sri Durga Prasad Nanda, learned Senior Advocate strenuously argued that ignoring to implement the punishment despite communication by the appellant to the Competent Authority at the relevant point of time in the year 2011 itself and three promotions thereafter being accorded to the appellant, would demonstrate that it is the fault of the authorities to suggest implementation of minor punishment at a belated stage in the year 2020. Such purported action of the authority is indicative of the fact that it is only to get the appellant out of the list of officers whose cases have been taken up for promotion to the Cadre of Indian Administrative Service. Having not noted the punishment in the original service book relevant for the year 2011, it is submitted that the appellant cannot be made to suffer for the mistake committed by the authorities.

4.1. He went on to argue that the learned Single Judge misdirected himself by resting *onus* on the appellant as

if she was instrumental for non-implementation of punishment awarded against her in the departmental proceeding. Had the authorities implemented the award of punishment in the year 2011, the appellant could not have been debarred from being considered for promotion by the Indian Administrative Service Selection Committee constituted under the provisions of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, in the meeting held on 17.12.2020. He pointed out that despite implementation of such punishment in the year 2020, the same would relate back to the year 2011; as such her case for promotion to the Cadre of Indian Administrative Service for the vacancies in the year 2019 could not have been kept aside. The conduct of the opposite parties is tell-tale that in order to deprive the appellant of legitimate consideration, the implementation of minor punishment after nine years has been carried out, which is contrary to the Circulars/Instructions issued by the Central Government.

Submissions of the learned Additional Government Advocate:

5. *Per contra,* Sri Saswat Das, learned Additional Government Advocate, in order to justify action of the respondents in not considering her case for promotion in the Cadre of Indian Administrative Service, would urge

that the learned Single Judge has taken appropriate decision warranting no interference. He submitted that by way of disciplinary proceeding once punishment is imposed, it must be seen to have led to logical conclusion by its implementation to preserve the smooth administration. The delay in implementation is wholly and solely attributable to the conduct of the appellant. At the relevant point of time, as she was functioning in the capacity of the Administrative Officer at SCBMCH, Cuttack, she was supposed to implement the order of punishment. She could have brought to the notice of the Competent Authority for withholding of increment at the time of drawal of salary; rather she deliberately intimated regarding this aspect to the Superintendent of the SCBMCH, who is not the appropriate authority. Having committed such mistake by the appellant, the non-implementation of order of punishment could not come to fore till the year 2020. On the insistence of the Administrative Officer of SCBMCH, step could be taken at appropriate level for implementation in the year 2020. Therefore, no infirmity could be imputed against the judgment(s) of the learned Single Judge.

5.1. As her attempt to have the judgment in writ petition in her favour failed, the appellant knocked the doors of this Court by way of review petition; but that too was lost. The appellant has now taken the recourse of this intra-

Court appeal. It is arduously argued by Sri Saswat Das, learned Additional Government Advocate that the scope of intermeddling with the Judgment(s) of the learned Single Judge is very limited in view of restricted perspective contained in provisions of Article 4 of the Odisha High Court Order, 1948 read with Clause 10 of the Letters Patent constituting the High Court of Judicature at Patna and Rule 6 of Chapter-III and Rule 2 of Chapter-VIII of the Rules of the High Court of Odisha, 1948.

5.2. Therefore, he prays for dismissal of the writ appeal in absence of contradictory material placed on record by the appellant. He would suggest that lacking merit in the matter, the writ appeal is to be dismissed with cost.

Analysis and discussions on pleadings and rival contentions:

6. This Court having perused the Judgment dated 25.06.2024 in W.P.(C) No.7375 of 2021 and the Judgment dated 08.01.2025 passed in RVWPET No.185 of 2024 could cull out the undisputed facts as emanating from the documents available on record relating to writ petition that Order No.IIIE-PD-IV-14/2011-1405/R(CS) dated 29.07.2011 has been issued by the Government of Odisha in Revenue and Disaster Management Department on consideration of the

enquiry report *vide* Letter No.3092/Con, dated 16.07.2009, wherefrom it is transpired that:

*"****

Now, after careful consideration of draft charges, explanation of D.O., findings of Inquiring Officer and in consultation of Odisha Public Service Commission, Government have been pleased to impose the punishment to withhold one annual increment without cumulative effect for her lapses in the case."

6.1. Careful scrutiny of Memo bearing No.1406/R(CS) dated 29.07.2011 appended to said Letter signed by the Additional Secretary to Government, reflects as follows:

"*Copy in triplicate forwarded to* ***the Sub-Collector, Bhubaneswar with a request to serve one copy of the order on Smt. Sanjita Das, OAS, Ex-Additional Executive Officer, Cuttack, at present working as Deputy Collector, Office of the Additional District Magistrate, Bhubaneswar, Khordha*** *and return the served copy with date acknowledgement of Smt. Das thereon.*

The third copy is for record in his office."

6.2. From the above it is abundantly clear that the copy of order of punishment was directed to be served on the appellant, but no indication therein is available to show that the appellant was to implement the terms of order of punishment; rather it was addressed to competent authorities to take steps. Thus, the contention of the learned Additional Government Advocate that at the

relevant point of time since the appellant was holding the position, she was instrumental for non-implementation of punishment is a falsity.

6.3. On 27.12.2011 the present Appellant while working as Administrative Officer, by a letter intimated the Superintendent, SCBMCH, Cuttack with a Memo to the Additional Secretary to Government, Revenue and Disaster Management Department requesting to take steps to withhold one annual increment without cumulative effect in terms of order of punishment imposed by the Disciplinary Authority. The text of said letter is extracted hereunder for profit of understanding:

"To

The Superintendent,
SCB Medical College and Hospital,
Cuttack.

Sub.: Withholding one annual increment without cumulative effect.

Ref.: Order No.1405/R (CS) dated 29.07.2011 of Revenue & Disaster Management Department.

Sir,

With reference to above, I am to say that order No.1405/R(CS) dated 29.07.2011 of Revenue & Disaster Management Department has not been implemented by Additional District Magistrate, Bhubaneswar. Now, that my pay has been fixed up vide Order No.26015/ dated 27.12.2011 by your

goodself, Drawing and Disbursing Officer may be directed to do the needful as per the said Order of Revenue & Disaster Management Department dated 29.07.2011.

Yours faithfully
Sd/- 27.12.2011

Encl: Order No.1405/R (CS), Sanjita Das
Dated 29.7.2011 Administrative Officer
SCB Medical College and Hospital.

Memo No.26521 Dated 29.12.2011

Copy ***forwarded to*** *Additional Secretary to Government* ***Revenue & Disaster Management Department*** *with reference to their Memo No.1406/R, dated 29.07.2011 for information.*

Sd/- 27.12.2011
DDO for needful *Sanjita Das*
Sd/- *Administrative Officer*
27.12.2011 *SCB Medical College and Hospital."*

6.4. Said document forming part of writ application manifests that while the appellant was working in the capacity of Additional Executive Officer in the Cuttack Municipal Corporation, the Order of punishment dated 29.07.2011 was served. On her transfer to the SCBMCH, Cuttack as Administrative Officer, she requested the Superintendent, SCBMCH, Cuttack for withholding of annual increment without cumulative effect on 27.12.2011 by enclosing copy of Order dated 29.07.2011. Careful scrutiny of such

document apparently discloses that the Superintendent at the left hand bottom portion marked the document with instruction note to the Drawing and Disbursing Officer (DDO) to do the needful. It is, therefore, incumbent upon the duty of the DDO to have taken necessary steps in this regard to comply with the order of punishment. Nothing is placed by the opposite parties on record to suggest that the DDO was taken to task for such lapses in conduct of his duty. Said document also makes it unambiguous that she has intimated such request to the Superintendent and the DDO of SCBMCH, Cuttack was also instructed for withholding of one annual increment. It also further discloses that the said document is communicated to the Additional Secretary to Government, Revenue and Disaster Management Department with reference to the said Order dated 29.07.2011 for information.

6.5. It is of interest to notice that the Superintendent nor the DDO of SCBMCH has never denied the fact contained in the Letter dated 27.12.2011 and there was no dispute by them with respect to marking of the document to the DDO with the instructions by the Superintendent.

6.6. Notwithstanding such glaring fact transpires from the evidence on record that the appellant at the relevant point of time in the year 2011 has intimated proper quarters requesting for withholding increment without cumulative effect, the Administrative Officer of SCBMCH, Cuttack on 12.06.2020 issued a letter to the Additional Secretary to Government, General Administration & Public Grievance Department indicating non-entry of Order dated 29.07.2011 of Revenue and Disaster Management Department in the original service book of the appellant. Nevertheless, there appears no explanation either emanate from the counter affidavit or does the fact disclose from the correspondences made part of the writ petition as to why it took for the opposite parties to take steps around nine years (2011 to 2020) for recording such fact of punishment in the original service record, particularly when the name of the appellant found place in the list of officers for consideration of promotion to the Cadre of Indian Administrative Service.

6.7. Despite indolence of the opposite parties is manifested on the face of the record, careful reading of the Judgment dated 25.06.2024 of the learned Single Judge would reveal that following factor(s)

weighed in forming the decision while considering the merit of the writ petition:

"*11. As the Administrative Officer of the organization, the Petitioner was in charge of executing the administrative functions of the organization, with the Superintendent being the overall head.* ***It was the petitioner's primary duty to ensure the implementation of the punishment. Being a responsible officer, she could have directly overseen the enforcement of the punishment order, making it unnecessary to write to the Superintendent of the Medical College****. If the matter had inadvertently escaped the attention of the Superintendent's office, the petitioner, upon receiving her salary for the month following the sanction of the increment, could have highlighted the inconsistency and deposited the incremental value immediately.* ***Therefore, it was largely incumbent upon the petitioner to inform the relevant authorities about the irregularity in the non-implementation of the punishment.*** *Instead, she continued to follow the process until it was discovered, at that point she realized it might affect her potential promotion to IAS.*

12. It is reiterated that the petitioner was no less than the Administrative Officer at SCB Medical College, where she herself could have taken steps to implement the Government order. Furthermore, she could have objected to the subsequent increments sanctioned in her favour. At no point did she bring to the attention of any office where she worked, following the award of the punishment that one

annual increment in her favor was supposed to be withheld."

6.8. Examination of above paragraphs of the impugned judgment demonstrate that as if the appellant had not taken any step for seeking implementation of punishment in the year 2011, the learned Single Judge has rested *onus* on her. The facts which led to dismissal of the writ petition by the learned Single Judge appear to be perverse when tested with the aforesaid facts as established from the documents placed at Annexures-1 and 2 of the writ petition. Annexure-1, *i.e.*, Order dated 29.07.2011 reveals that Smt. Sanjita Das (appellant) on the date of punishment was not the Additional Executive Officer of Cuttack Municipal Corporation. However, the Letter dated 27.12.2011 depicts that the Superintendent, SCBMCH, Cuttack, requested the DDO to do the needful upon acknowledging receipt of said document with his signature. This document evinces that the competent authority of SCBMCH was fully aware with respect to the context and necessity of taking steps at his end. From Memo appended to the said Letter dated 27.12.2011 also discloses that such fact was also communicated to the Additional Secretary to Government, Revenue and Disaster Management Department. Such factual scenario clinches that the appellant had discharged her *onus*. It was the burden on the opposite parties which they failed to discharge till

2020. This Court finds from the correspondences enclosed to the writ petition and discussed hitherto that the appellant could not be held responsible for compliance of order of punishment awarded by the Disciplinary Authority and she could not be instrumental for non-reflection of such punishment in her service record.

6.9. Nonetheless, the documents enclosed to the writ petition and referred to above reveal that award of minor punishment as imposed in the Departmental Proceeding *vide* Annexure-1 was not only made known to the Authorities of Revenue and Disaster Management Department but also the Cuttack Municipal Corporation where she was working as Additional Executive Officer and thereafter the authorities of SCBMCH, Cuttack where she worked as the Administrative Officer during the relevant period of time, *i.e.*, 2011. Despite her letters to the Superintendent of SCBMCH, Cuttack and the Department of Revenue and Disaster Management Department, the opposite parties-authorities having not carried out the order of punishment, and recording the fact in the original service record, the responsibility could not have been shifted to the shoulder of the appellant. Such perversity of fact is writ large on the face of the impugned judgment(s) of the learned Single Judge.

6.10. The other documents enclosed to the writ petition depict that the appellant in the year 2021 having no option left made communications upon deposit of the requisite amount in connection with the aforesaid punishment *vide* Order dated 29.07.2011 (Annexure-1) to the authorities concerned. Such gesture being shown by the appellant, this Court feels it expedient to interfere with the Judgment dated 25.06.2024 of the learned Single Judge.

7. Pertinent factor which could have been appropriately taken into consideration by the learned Single Judge is that, at paragraph 4 of the Additional Affidavit dated 18.04.2024 filed on behalf of the respondents before the Writ Court clearly establishes the fact that:

"That it is humbly submitted that, the General Administration & Public Grievance Department ***was not aware of the fact of non-implementation*** *of the punishment order of the Revenue & Disaster Management Department. It was only on receipt of the Letter No. 11897 dated 12.06.2020 (Annexure 3 to the Writ Petition) from the Administrative Officer, SCBMCH; the General Administration & Public Grievance Department found that the Order of punishment dated 29.07.2011 (Annexure 1 to the Writ Petition) was not recorded in the Service Book of the petitioner.* ***This indicated that the punishment order was not implemented till the year 2020.*** *Then the Board of Revenue, i.e. Controlling Authority of petitioner (the petitioner was working as the Additional Secretary, Board of Revenue, Odisha, Cuttack) was*

requested vide General Administration and Public Grievance Department Letter No. 23083/Gen. dated 15.10.2020 (Annexure 4 to the Writ Petition) to take immediate necessary steps to implement the order of punishment issued by the Revenue & Disaster Management Department and reflect the same in the Service Book of the petitioner. ***In response, the Board of Revenue implemented the punishment Order vide their Office Order No.1016/CS dated 05.11.2020 by withholding one annual increment falling due on 01.11.2020****."*

7.1. It cannot be believed that the authorities concerned including the Government were not aware of punishment being awarded against the appellant in the departmental proceeding. In Paragraphs 11, 12 and 13 of the counter affidavit of the respondents (sworn to by the Additional Secretary to Government, General Administration and Public Grievance Department) filed before the learned Single Judge the stance of the respondents was that Order dated 29.07.2011 was not implemented as the appellant was "in-Charge of its implementation" and "the Superintendent of SCBMCH was not the authority to carry out the punishment order rather she herself was the appropriate authority to implement the said order."

7.2. Such a plea of the respondents appears to be contrary to the document at Annexure-2 to the writ petition which has already been analysed. It is not denied by the said respondents that the Superintendent of SCBMCH,

Cuttack has marked the Letter dated 27.12.2011 of the appellant with copy of Order dated 29.07.2011 enclosed thereto to the DDO to take steps for doing the needful to implement the order of punishment. The Memo appended to said letter also clearly mentioned that the Memo has been assigned with a diary number bearing 26521, dated 29.12.2011. These facts render the stand taken by the respondents a myth and far from truth. The respondents appear to be in a mood to shirk responsibility and vest the same on the appellant, as if it is the delinquent-employee who is required to carry out the terms of order of punishment including reflecting such fact in her service book.

7.3. A reference to *D.S. Jassal Vrs. Union of India, 2015 SCC OnLine P&H 6307* may have significance. In the said case, the Hon'ble Punjab and Haryana High Court in the context of consideration of penalty imposed in a departmental proceeding *vis-à-vis* promotion has been pleased to hold as follows:

> *"11. In Union of India Vrs. K.V. Jankiraman, (1991) 4 SCC 109, three Judge Bench of Hon'ble Supreme Court has held as follows:*
>
> *'We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank.* ***On principle, for the same reasons, the officer cannot be rewarded by***

promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. *The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when, in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when, for his conduct before that date, he is penalised in praesenti.* ***When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account.*** *A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct.'*

12. *It has been very emphatically declared by the Hon'ble Supreme Court that an employee has no right to promotion, but has a right to be considered for promotion.* ***Unless an unblemished service has been put in by an employee, the question of promoting him to the next cadre does not arise. An employee who was found guilty of***

irregularity cannot claim parity with an employee who has put in excellent service to the Department sans any scar on his track record. *It has been held in the above decision by the Hon'ble Supreme Court that different treatment given to an employee who has committed a misconduct and an employee who has rendered exceptional service cannot be attacked on the ground of discrimination.* ***An employee who has been visited with penalty in the disciplinary proceedings conducted as against him cannot claim promotion retrospectively from the date when he committed the misconduct. But his case for promotion will have to be taken up in the DPC held thereafter, of course, considering the impact of penalty imposed on him.*** *In the background of the above authoritative decision pronounced by the Hon'ble Supreme Court, the submission made by learned counsel appearing for the writ petitioner that claim for promotion made by the writ petitioner shall be considered retrospectively by constituting special review DPC against the vacancies that arise in 1999-2000 stands rejected.*

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14. *A Single Judge of this Court in Major Singh Gill Vrs. State of Punjab, CWP No. 10359 of 1991, decided on 03.12.1991 held as follows:*

> *'8. *** After hearing learned counsel for the parties, I find force in the submissions of learned counsel for the petitioner.* ***The punishment when awarded would relate back to the period when the alleged offence/misconduct was committed or in***

any case when the same was detected. Even if any punishment is awarded to the petitioner now that would relate back to the year 1973 when the alleged misconduct/irregularities took place or the year 1975 when the charge-sheet was served (as it can be said that the irregularities were detected about that time)*.'*

15. *The above decision was put to challenge before the Division Bench of this Court by the State of Punjab and another. In the said case in State of Punjab Vrs. Major Singh Gill, 1994 (2) RSJ 100, it was held as follows:*

> *'8. The position, that thus emerges, is that the only material adverse to Major Singh, in his service records, is this incomplete enquiry, which, even if it were to conclude now,* ***with the awarding of the proposed punishment of the stoppage of one increment, it would relate back to the year 1973 or at any rate 1975, when the charge-sheet was served upon him****.'*

16. ***On a careful perusal of the facts noted in the above case, it was found that 5 years' service records prior to the date when the case of the employee was taken up for consideration for promotion had to be evaluated by the DPC. As it would be unjust to direct such an employee to wait for another years from the expiry of currency of penalty to assess his service records, this Court made an observation in the special circumstances of the above case that***

penalty imposed would relate back to the date when the misconduct was committed. *It is to be noted that in the above case this Court has never laid down a principle of law that if an employee who was found guilty and penalized is entitled to promotion retrospectively from the date when the misconduct was committed. The proposition that an employee who was found guilty and penalized should be considered for promotion retrospectively would lead to a situation where he was treated equally with an employee who had put in unblemished service. Such a premium to an employee who committed misconduct is unknown to service jurisprudence.*

***

19. ***It was the admitted case that for the irregularity allegedly committed by the writ petitioner way-back on 27.8.1990, he was charge-sheeted on 21.6.1993 and penalty of 'censure' was imposed on him on 18.5.1999. It is not as if earlier irregularity allegedly committed by the writ petitioner during the year 1989-90 was not in the notice of the official respondents.*** *They, in fact, seized of such an irregularity and launched civil proceedings before competent Civil Court against the company concerned. But unfortunately, Annexure R-1 which reflects chronology of events reflecting the disciplinary proceedings initiated against the writ petitioner would go to establish that the complaint against the writ petitioner was forwarded to the Authority concerned only on 07.06.1994 after a lapse of about 4 long years. It is really shocking that*

an employee was charge-sheeted for the irregularity he committed after 13 long years. Such an employee may not be in a position to recall what actually transpired at the time when he allegedly committed irregularity. It would be an uphill task for him to collect materials to defend himself. In other words, an employee who has been charge-sheeted and directed to defend will be virtually defenceless after a lapse of 13 years.

20. *Of course, chronology of events discloses that there had been correspondence between Departments. But such correspondence which had consumed 13 long years had created adverse impact on the promotional prospects of the writ petitioner.* ***The Department is not supposed to handle the disciplinary proceedings of an employee exhibiting such a lackadaisical attitude.***

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24. *Apart from the delay and latches pointed out by us, the charge-sheet issued against the writ petitioner just 2 or 3 months prior to holding of DPC speaks volumes of mala fides on the part of the official respondents. An irregularity which was committed 13 years ago was intentionally taken up by the official respondents even after the subsequent irregularity committed by the writ petitioner had culminated in infliction of penalty of 'censure' as early as on 18.05.1999.* ***In the above background of the case, the writ petitioner has demonstrated that charge-sheet was issued on 08.10.2002 just before holding DPC for the year 2002-2003 for the misconduct allegedly committed by him about 13 years ago in order***

to deprive him of his due promotion against the vacancy taken up for consideration by the DPC held in 2002-03. *For all these reasons, we have no hesitation to hold that the entire disciplinary proceedings which culminated in passing the final order imposing penalty of 'censure' on 08.11.2005 is liable to be set aside."*

7.4. As brought to notice by Sri Durga Prasad Nanda, learned Senior Advocate, this Court now wishes to take cognizance of Annexure-8 of writ petition, *i.e.*, Instruction/Circular No.749/SE, dated 20.02.2007 issued by the Government of Odisha in General Administration (SE) Department which is addressed to all Principal Secretaries to Government/ Commisionerates/Secretaries to Government/All Heads of Departments/All concerns, which reads thus:

"Sub.: Punishment awarded in subsequent year and its relation to year of offence.

Sir,

I am directed to invite a reference to para-II(vii) of Memo No. 10918 (110) Pro, dated 23.11.1987 and para-9(iv) of Memo No.1199 and 1200/PRO, dated 26.04.2006 issued by General Administration (SE) Department which provides that all punishments awarded or any delinquent Government servant duly proposed against whenever punishment is one of the penalties specified in Rule 13 of the Odisha Civil Services (Classification, Control and Appeal) Rules, 1962 should be placed in the CCR/PAR of the

officer concerned. ***But it is often seen that punishment are being awarded to delinquent officers much after the occurrence of the incidence. Doubts have arisen as to which year such penalty will relate when orders awarding the penalty are passed.*** *Government have now been pleased to decide that, that was committed irrespective of the year in which it is awarded.* ***Accordingly, the order of punishment may be kept in the CCR/PAR of the year to which the charges relate****.*

This may kindly be brought to the notice of all concerned."

7.5. Said Circular dated 20.02.2007 has been withdrawn with the following clarification:

"Government of Odisha
General Administration Department

No.467/PRO-1/2007/SE, dated 03.03.2008

From

Shri M. Saran, IAS
Special Secretary

To

All Principal Secretary/
All Commissioner-cum-Secretary/
All Heads of Departments/
All Collectors

Sub.: Placing of order of punishment in CCR/PAR Ledger

Sir,

I am directed to say that Government after careful consideration, has been pleased to withdraw this correspondence Letter No.749/SE, dated 20.02.2007 on the aforementioned subject and to clarify that ***the copy of the order awarding the penalty to a delinquent officer should be placed in the CCR/PAR of the year in which it is awarded****.*

This may kindly be brought to the notice of all concerned.

Yours faithfully,
Sd/-
Special Secretary to Government"

7.6. Conjoint reading of the Circulars *vide* Letter dated 20.02.2007 and Clarification dated 03.03.2008 would go to show that the penalty enumerated under Rule 13 of the Odisha Civil Services (Classification, Control and Appeal) Rules, 1962 should be placed in the CCR/PAR of the year in which it was awarded.

7.7. Referring to Minutes of the Meeting of Selection Committee constituted under Regulation 3 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 for preparation of a list of such members of the State Civil Services (SCS) of Odisha who were suitable for promotion to the Indian Administrative Service (IAS) against the vacancies of 2019 held on 17.12.2020 considered the case of the appellant with an approach contrary to above Circulars. In the said

Meeting it was remarked against the appellant that "penalty was imposed on 29.07.2011 annual increment has been stopped with effect from 01.11.2020". On perusal of said Minutes it is further revealed that "The Selection Committee would go through the service records of each of the eligible officers with special reference to the performance of the officer **during the preceding 5 years including the vacancy year**, and after deliberations will record the assessment of the Committee". Thus, the Selection Committee was required to consider performance of the officer since 2015 as the vacancy year under consideration was 2019.

7.8. To have clear perception of the concept of "year"[1], the following observations made in *Parveen Kumar Vrs. Union Public Service Commission, 2010 (1) ILR-Punjab and Haryana 1015 = 2010 SCC OnLine P&H 1498* are noteworthy:

> *"(20) The sole question which emerges for determination of this Court is whether the age of eligibility is required to be considered with reference to January 1st of the year for which the select list is prepared or any other date. A plain reading of the expression 'year' in Regulation 2(1)(l) shows that* ***a year would mean the period commencing on January 1st***

[1] Definition of the term "year" has been laid down in *Regulation 2(1)(l)* of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, which stands as follows:

"(l) 'YEAR' means the period commencing on the first day of January and ending on the thirty first day of December of the same year."

and ending on December 31st of the same year. *A further perusal of Regulation 5(3) would make it evident that the Committee is debarred from considering the cases of such officer of the State Civil Service who have attained the age of 54 years. The Regulation further says that the age of 54 years is required to be determined on January 1st of the year for which the select list is prepared. In the present case 4 vacancies are of the year 2006 and one vacancy of earlier years became available in the year 2006 on account of non-joining of Shri Joginder Lai Jain, PCS. It has been rightly contended that the emphasis in Regulation 5(3) is on the expression 'the year for which the Select List is prepared5, which would mean that meeting of the Committee may be held in a subsequent year but the eligibility of the officers in so far his age is concerned would remain intact. It has to be judged with reference to the year for which the select list is prepared.*

(21) *We find substantive support to the aforesaid submission in unnumbered proviso to Regulation 5(1). According to the aforesaid proviso if no meeting of the Committee could be held during a year then whenever the committee meets again, the select list has to be prepared separately for each year during which the committee could not meet as on December 31st of each year. The aforesaid proviso is consistent with the definition of expression 'year' in Regulation 2(1)(l). Therefore, the vacancies for the year 2006 i.e. from 1st January, 2006 to 31st December, 2006 have to be determined as on December 31st of that year. The select list, which has been erroneously styled as 'Select List of 2007' in fact, is the select list for the year 2006. Therefore,*

the age of the petitioner has to be determined as on 1st January, 2006. Accordingly, he would be eligible.

(22) It is true that for the vacancies of the year 2006, the Committee would meet in the year 2007. It does not follow that if meeting of the Committee is held in 2007 then it would alter the eligibility in so far age of a candidate is concerned, which is provided by Regulation 5(3). The effect of any contrary interpretation would be that the officers like the petitioners would be deprived of entering the zone of consideration without any fault of theirs. For example, the petitioner would not be eligible in respect of the vacancies, which have arisen in January 2006 although he was not yet 54 years of age nor he would be eligible for vacancies of the year 2007 because he would cross 54 years of age. The consideration of all eligible candidates annually in respect of vacancies which have arisen during that year is to avoid any such anomaly. It is also to facilitate the work of the Committee so that all vacancies of that year are considered in one meeting instead of holding a meeting for every single vacancy and then determining eligibility.

(23) To better understand, another hypothetical situation could be considered. Let us assume that the date of birth of an officer is 31st December, 1952. As on 1st January, 2006, he would be less than 54 years of age but on 1st January, 2007 he would certainly cross the age of 54 years. Therefore, if the reasoning adopted by the Tribunal and the respondents is applied then such an officer would never enter the zone of consideration for the vacancies of year 2006.

(24) *The intention of the framers of the Regulations further become discernible from the reading of un-amended Regulations, which have linked the age of 54 years to the 1st of April of the year of meeting. The framers of the Regulations must have found that the year of meeting has no relationship for determination of the age of eligibility as it was wholly fortuitous.* ***Therefore, to keep the eligibility intact in respect of the year for which the select list is prepared, amendment has been incorporated in the year 2000 and an effort has been made to link the age of eligibility to the occurrence of vacancies and to de-link the same from the year of meeting. If we construe the Regulation 5(3) to mean that age has to be determined by reference to the year of meeting then the mischief which is sought to be remedied would perpetuate and amendment would lose its object. The aspirations of a brilliant and meritorious officer working in the State cannot be defeated by any arbitrary method of fixing the age of eligibility, which has got nothing to do with the basic principles of service jurisprudence, namely, occurrence of vacancy.*** *Therefore, we find that the Tribunal has committed a grave error by presuming that the age of eligibility has to be determined in respect of the year when the Committee is supposed to meet, which is wholly unsustainable."*

7.9. From the Minutes of Meeting of the Selection Committee as at Annexure-10 enclosed to the rejoinder affidavit filed in the writ proceeding it is apparent that the

appellant was considered disqualified for consideration in the Cadre of Indian Administrative Service as the punishment awarded in the year 2011 being carried out in the year 2020. At this stage the following dicta of the Hon'ble Supreme Court of India rendered in the case of *Sarva U.P. Gramin Bank Vrs. Manoj Kumar Chak, (2013) 2 SCR 562* is apposite to be referred to:

> *"36. There is no doubt that punishment and adverse service record are relevant to determine the minimum merit by the DPC.* ***But to debar a candidate, to be considered for promotion, on the basis of punishment or unsatisfactory record would require the necessary provision in the statutory service Rules. There is no such provision under the 1998 Rules****.*
>
> ***
>
> *38. The reliance placed by Mr. Dhruv Mehta on the judgment of this court in the case of Ram Ashish Dixit Vrs. Chairman, Purvanchal Gramin Bank, 2013 (6) SCALE 345 = (2012) 13 SCR 332 is also misconceived. In the aforesaid case, the officer had been considered for promotion during the pendency of the departmental proceedings to Middle Management Grade II. However, the result was kept in a sealed cover. After finalization of the proceedings, the appellants requested the authority to open the sealed cover. He was, however, informed that he cannot be promoted in view of the bank Circular dated 28th March, 1998 as he had been punished. Subsequently, again his case was to be considered for promotion in September, 1999.*

However, he was denied consideration for promotion in view of the conditions contained in Circular dated 28th March, 1998. It was submitted on behalf of the appellants that the punishment imposed upon the staff of the Bank cannot be treated to be an ineligibility for promotion since the eligibility for promotion is prescribed under the RRB Rules, 1988. It was submitted on behalf of the bank (respondent therein) that since stoppage of increment for 3 years is a punishment imposed upon the appet1ants, during the period, he would be undergoing punishment, he could not have been considered to be eligible for promotion. Therefore, according to the bank, respondent had been rightly held to be ineligible under Circular dated 28th March, 1998. It was also claimed by the bank that the Circular is supplementary in nature and cannot be said to be in any manner inconsistent and ultra vires of the rules. In answering the rival submissions, this Court held as under:

'The criteria for promotion from Junior Manager Grade-I to Middle Management Grade-II is on the basis of the seniority-cum-merit. Clearly therefore, the fact that the appellant has been punished for a misconduct, the same would form a part of his record of service which would be taken into consideration while adjudging his suitability on the criteria of seniority-cum-merit. If on such assessment of his record of service the appellant is not promoted, it cannot be said to be by way of punishment. It is a non-promotion on account of the appellant not reaching a suitable standard to be promoted on the basis of the criteria.'

39. *We also do not find any merit in the submission of Mr. Dhruv Mehta that the Circular No.17 of 2009 dated 30th November, 2009 and Circular dated 12th July, 2010 are to ensure that the individual members of the DPC do not recommend for promotion an individual officer despite having been punished in the preceding 5 years. Such curtailment of the power of the DPC would have to be located in the statutory service rules.* ***The 1998 Rules do not contain any such provision.*** *The submission needs merely to be stated, to be rejected. We also do not find any merit in the submission of Mr. Mehta that without the aforesaid guidelines, an officer, even though, he has been punished for gross misconduct would have to be permitted to be promoted as no minimum marks are prescribed for interview or performance appraisal. In our opinion, it is fallacious to presume that under the 1998 Rules, once an officer gets the minimum marks in the written examination, he would be entitled to be promoted on the basis of seniority alone. There is no warrant for such a presumption. The misconduct committed by eligible employee/officer would be a matter for DPC to take into consideration at the time of performance appraisal. The past conduct of an employee can always be taken into consideration in adjudging the suitability of the officer for performing the duties of the higher post.*

40. *There is another very good reason for not accepting the submissions ma de by Mr. Dhruv Mehta. Different rules/regulations of the banks provide specific punishments such as 'withholding of promotion, reduction in rank, lowering in ranks/pay scales'.* ***However, there is another range of***

penalty *such as censure, reprimand,* ***withholding of increments*** *etc. which are also prescribed under various staff regulations.* ***To debar such an employee from being considered for promotion would tantamount to also inflicting on such employee, the punishment of withholding of promotion.*** *In such circumstances, a punishment of censure/reprimand would, in fact, read as censure/reprimand + 5 years debarment from promotion. Thus the circulars issued by the bank debarring such employees from being considered would be clearly contrary to the statutory rules. The circulars clearly do not fall within the ratio in Sant Ram Sharma Vrs. State of Rajasthan, (1968) 1 SCR 111."*

7.10. In *Union of India Vrs. Sangram Keshari Nayak, (2007) 5 SCR 896* it has been laid down that:

"11. Promotion is not a fundamental right. Right to be considered for promotion, however, is a fundamental right. Such a right brings within its purview an effective, purposeful and meaningful consideration. Suitability or otherwise of the candidate concerned, however, must be left at the hands of the DPC, but the same has to be determined in terms of the Rules applicable therefor. Indisputably, the DPC recommended the case of the respondent for promotion. On the day on which, it is accepted at the bar, the DPC held its meeting, no vigilance enquiry was pending. No decision was also taken by the employer that a departmental proceeding should be initiated against him.

12. *Terms and conditions of an employee working under the Central Government are governed by the Rules framed under the proviso appended to Article 309 of the Constitution of India or under a statute.* ***The right to be promoted to a next higher post can, thus, be curtailed only by reason of valid Rules. Such a Rule again, however, cannot be construed in a manner so as to curtail the right of promotion more than what was contemplated by law.***"

7.11. Under the aforesaid premise, it is, thus, perceived that had the Selection Committee kept in view the Circulars, notwithstanding the fact of compliance of punishment in the year 2020 with respect to an award made in the year 2011, the same would have to be construed to have effect for the year 2011. Such recording of punishment in the service record, to be more clarified, can be said to have no effect or impact for consideration of service records for the years 2015, 2016, 2017, 2018 and 2019. Therefore, service records of five years of the appellant should have been considered without taking cognizance of punishment which related to 2011.

7.12. The learned Single Judge in his Judgment dated 08.01.2025 in RVWPET No.185 of 2024 held that the appellant cannot escape the consequences of her inaction, which has now come to light and adversely impacted her position. It is further observed that the delayed enforcement of the punishment does not render

the action unjustified; rather, it underscores the necessity of adherence to established rules and procedures. It is also observed that disciplinary actions, once concluded, must be implemented in full measure to preserve the integrity of the administrative system and uphold accountability. On minute scrutiny this Court finds that the learned Single Bench ignored to take into consideration the effect of Circular dated 03.03.2008 (copy of which was available at Annexure-9 attached to Rejoinder Affidavit dated 22.08.2023 filed by the appellant). Hence, had the learned Single Judge taken into consideration effect and impact of such Circular to the fact-situation of the present case, the resultant of the writ petition warranted to be reviewed, inasmuch as the punishment carried out in the year 2020 would relate back to the year 2011, *i.e.,* the year in which award of penalty was passed.

7.13. The learned Single Judge in his Judgment dated 25.06.2024 observed that the appellant, as the Administrative Officer of SCBMCH was saddled with the responsibility for implementing the punishment. It is further observed in the said impugned judgment that it was the primary duty of the appellant to ensure the implementation of the punishment. Being a responsible officer, she could have directly overseen the enforcement of the punishment order, making it unnecessary to write

to the Superintendent of the Medical College. While so stating, what is missed by the learned Single Judge to bear in mind that the Superintendent of SCBMCH has endorsed the letter of the appellant to the DDO for carrying out the terms of award and the Memo appended to such letter also bore issue number of the SCBMCH to indicate that the same was communicated to the appropriate authority for information. Therefore, the mistake is attributable to the appropriate authority for not entering said fact in the service record relevant to 2011; for the same purpose, the appellant could not be said to have been held responsible. On the contrary the evidence on record clearly suggests that the appellant had taken appropriate steps for compliance of the award of punishment in the year 2011 itself. Had the authorities taken steps at the right point of time, the appellant would have been considered for the promotion in the Indian Administrative Service Cadre with respect to the vacancies of the year 2019. The performance of the appellant has been well judged by the authorities concerned since 2011 till 2019 and the promotions granted to her during the said period stand testimony of such fact.

7.14. Even otherwise, the service record would reflect such punishment relating to 2011, but such recording of punishment would not in any way affect service records

from 2015 to 2020, as the Circular dated 03.03.2008 referred to above envisages the recording of punishment in the service book would relate to the year of award, *i.e.,* 2011. Therefore, performance of the appellant for five years prior to 2019 would be from 2015 as per the terms of conditionalities specified in the Meeting dated 17.12.2020 read with said Circular dated 03.03.2008 for consideration of promotion in the Indian Administrative Service Cadre. Thus, at any rate the punishment awarded which required to be reflected in the service record being related to the year 2011, the same would not fall for consideration in the year 2020 for consideration of promotion in the Indian Administrative Service Cadre relating to vacancies upto 2019.

Scope of interference in the Judgment of learned Single Judge in the writ appeal:

8. Having thus found the conclusion as arrived at by the learned Single Judge on perception of fallacious factual foundation, this Court takes note of a principle laid down in the decision rendered by this Court in *State of Odisha & Others Vrs. Shradhanjali Dash*, *Writ Appeal No.1204 of 2022 vide Order dated 26.03.2025*, wherein the scope of interference in the Judgment of learned Single Judge in an intra-Court appeal has been discussed in the following terms:

"In the case of Management of Narendra & Company Pvt. Ltd. Vrs. Workmen of Narendra & Company, reported in (2016) 3 SCC 340, it has been observed as follows:

*'5. *** Be that as it may, in an intra-Court appeal, on a finding of fact, unless the Appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief.'*

In the case of Wander Ltd. Vrs. Antox India (P) Ltd., reported in 1990 Supp. SCC 727, following observation has been made:

'14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. ***In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions.*** *An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Court below if the one reached by that court was reasonably possible on the material. The Appellate Court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered*

the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the Appellate Court would have taken a different view may not justify interference with the trial court's exercise of discretion.'

In the case of Anindita Mohanty Vrs. The Senior Regional Manager, H.P. Co. Ltd., Bhubaneswar reported in 2020 (II) ILR-CUT 398, this Court had the occasion to examine the scope of intra-Court appeal and observed as follows:

*'11. *** Let us first examine the power of the Division Bench while entertaining a Letters Patent appeal against the judgment/order of the Single Judge. This writ appeal has been nomenclatured as an application under Article 4 of the Orissa High Court Order, 1948 read with Clause 10 of the Letters Patent Act, 1992. Letters Patent of the Patna High Court has been made applicable to this Court by virtue of Orissa High Court Order, 1948. Letters Patent Appeal is an intra-Court appeal where under the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as vested in the Single Bench. (Ref: (1996) 3 SCC 52: Baddula Lakshmaiah Vrs. Shri Anjaneya Swami Temple).* ***The Division Bench in Letters Patent Appeal should not disturb the finding of fact arrived at by the learned Single Judge of the Court unless it is shown to be based on no evidence, perverse, palpably unreasonable or inconsistent with any particular position in law. This scope of interference is within a narrow compass.***

Appellate jurisdiction under Letters Patent is really a corrective jurisdiction and it is used rarely only to correct errors, if any made.'

In the case of B. Venkatamuni Vrs. C.J. Ayodhya Ram Singh reported in (2006) 13 SCC 449, it is held that in an intra-Court appeal, ***the Division Bench undoubtedly may be entitled to reappraise both questions of fact and law, but entertainment of a Letters Patent Appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the Single Judge.*** *Even a Court of first appeal which is the final Court of appeal on fact may have to exercise some amount of restraint. Thus a writ appeal is an appeal on principle where the legality and validity of the judgment and/or order of the Single Judge is tested and* ***it can be set aside only when there is a patent error on the face of the record or the judgment is against established or settled principle of law.*** *If two views are possible and a view, which is reasonable and logical, has been adopted by a Single Judge, the other view, howsoever appealing may be to the Division Bench; it is the view adopted by the Single Judge, which would, normally be allowed to prevail. If the discretion has been exercised by the Single Judge in good faith and after giving due weight to relevant matters and without being swayed away by irrelevant matters and if two views are possible on the question, then also the Division Bench in writ appeal should not interfere, even though it would have exercised its discretion in a different manner, were the case come initially before it.* ***The exercise of discretion by the Single Judge should manifestly be wrong which would then give scope of interference to the Division Bench.***"

8.1. With the delineated position as enunciated in the aforesaid judgment of this Court, there is no confusion in mind that in case of finding of fact which has gone into the decision making process of the learned Single Judge if found to be perverse or *de hors* the evidence/ materials available on record, this Court in exercise of the power under Article 4 of the Rules of Orissa High Court, 1948 read with Clause 10 of the Letters Patent constituting the High Court of Judicature at Patna can interfere with the impugned judgment.

8.2. In the case at hand, as discussed in the foregoing paragraphs, it is held that

i. the appellant could not be held responsible for implementing the order of penalty awarded against her in the departmental proceedings;

ii. it could not be said that she had not taken appropriate step for implementation of such order as overwhelming evidence available on record to suggest that the Superintendent had instructed the DDO to take steps in this regard;

iii. as per Circular dated 03.03.2008 the punishment if carried out in the year 2020, it would relate to the year of award of punishment, *i.e.,* 2011 and, in such view of the matter, even if the punishment is carried out in the year 2020, the reflection of

remarks in the service record would be relevant for the year 2011, but not 2019 or 2020;

iv. the Selection Committee was required to consider performance of five years prior to the year of vacancy, *i.e.,* since 2015 for the purpose of assessing eligibility for promotion to the Cadre of Indian Administrative Service.

8.3. It is not a case of possibility of two views; rather the evidence made available in the record relating to writ petition and not disputed by the respondents before the learned Single Judge lead to suggest only one conclusion that the appellant could not be held responsible for implementing the punishment awarded against her and she could not be said to be instrumental for non-recording of such fact in her service record.

Conclusion and decision:

9. The entry in the service book regarding a disciplinary action relates back to the date of the order passed by the disciplinary authority, even if the punishment or penalty was carried out or complied with at a later date or belated stage. This is because the disciplinary order itself is the triggering event that affects the employee's service record. The subsequent implementation of the punishment is considered as a consequence of the original order, not a separate event that alters the

effective date of the disciplinary action in the service record. The underlying principle remains consistent. The rationale behind this approach is to ensure that the service record accurately reflects the date when the disciplinary action was initiated and decided upon. This is crucial for transparency and fairness in employment matters. This service record is the reflection of the timeline of events and the impact of disciplinary actions on an employee's service history.

9.1. The effect of a penalty imposed in disciplinary proceedings is typically fixed to the year in which the order or award of punishment was made. In other words, if there is any administrative or implementation delay, the penalty is still treated as if it were effective from that original date. This means that once the "currency of the penalty" has elapsed or if the officer is deemed fit by the Selection Committee despite the penalty, the delayed implementation does not count as an additional or continuing detriment when the officer's promotion is considered later. The rationale behind this approach is to ensure fairness. An employee should not suffer a compounded disadvantage simply because there was a delay in the administrative process. The service record remains tied to its award year, and any delay in its execution is not meant to extend its impact on the officer's future career progression. Moreover, judicial

pronouncements have stressed that disciplinary proceedings should not be allowed to drag on indefinitely, which reinforces the principle that administrative delays must not unjustly hinder an officer's prospects for promotion once the disciplinary matters are resolved.

10. Promotion is an integral part of any formal sector employment. The principal object of a promotion system is to secure the best possible incumbents for higher positions while maintaining the morale of the whole organization. In the matter of formulation of a policy for promotion to a higher post, the two competing principles which are taken into account are *inter-se* seniority and comparative merit of employees who are eligible for promotion. The principles for assessing merit of the candidate for promotion as summarized by the Hon'ble Supreme Court of India in the case of *Ravikumar Dhansukhlal Maheta Vrs. High Court of Gujarat, (2024) 5 SCR 1074* may be extracted hereunder:

> *"98. The various decisions of this Court have only developed upon the principles of 'Merit-cum-Seniority' and 'Seniority-cum-Merit' by explaining the criterions that may be postulated within the framework of these principles for the purpose of promotion. The scope of the aforesaid principles is summarized below:*

I) *The principle of 'Seniority-cum-Merit' postulates that:*

i. *Minimum requirement of merit and suitability which is necessary for the higher post can be prescribed for the purpose of promotion.*

ii. *Comparative Assessment amongst the candidates is not required.*

iii. *Seniority of a candidate is not a determinative factor for promotion but has a predominant role.*

iv. *Upon fulfilling the minimum qualifications, promotions must be based on inter-se seniority.*

II) *The principle of 'Merit-cum-Seniority' postulates that:*

i. *Merit plays a predominant role in and seniority alone cannot be given primacy.*

ii. *Comparative Assessment of Merit is a crucial, though not a mandatory, factor.*

iii. *Only where merit is equal in all respects can inter-se seniority be considered. Meaning that a junior candidate can be promoted over the senior if the junior is more meritorious.*

99. *The underlying reason why the afore-stated postulations ought not be understood as mandatory stems from the very fact that they are not a result of a legislative creation, but rather one of judicial*

interpretation whilst dealing with different promotion policies, different service conditions, the varied nature and requirement of posts and more importantly different sets of rules. Since, these postulations have been laid down in different context and varied facts, it would be preposterous to say that such postulations will apply uniformly to all services and matters of promotion including the judicial services.

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109. The principle of 'Merit-cum-Seniority' and 'Seniority-cum-Merit' are a flexible and a fluid concept akin to broad principles within which the actual promotion policy may be formulated. They are not strict rules or requirements and by no means can supplant or take the place of statutory rules or policies that have been formulated, if any. These principles are dynamic in nature very much like a spectrum and their application and ambit depends upon the rules, the policy, the nature of the post and the requirements of service.

***

114. While laying down the promotion policy or rule, it is always open to the employer to specify the area and parameter or the weightage to be given in respect of merit and seniority separately, so long as the policy is not a colourable exercise of power, nor has the effect of violating any statutory scope of interference and other relatable matters."

10.1. In the wake of the above discussions and legal perspective of promotion, the conclusion arrived at by

the learned Single Judge in the Judgment dated 25.06.2024 that it was the responsibility of the appellant for implementation of the Order dated 29.07.2011 indicating minor punishment for withholding of one annual increment without cumulative effect as has been awarded by the Disciplinary Authority is without any foundation and in complete ignorance of Circulars as made available at Annexures-8 and 9 of the Rejoinder Affidavit.

10.2. On the analysis of documents available on record, the untrammelled facts lead to obvious conclusion that even if the minor punishment enumerated under Rule 13 of the Odisha Civil Services (Classification, Control and Appeal) Rules awarded in the departmental proceeding has been implemented in the year 2020, there is no room left for the appellant to record such a fact in her service record. Even as such an aspect was required to be recorded in the service record by authority concerned, the same being relatable to 2011, *i.e.,* the year of order of punishment being passed by the Disciplinary Authority, the Selection Committee constituted under Regulation 3 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 for preparation of a list of such members of the State Civil Service (SCS) of Odisha who are suitable for promotion to the Indian Administrative Service (IAS) against the vacancies of

2019 in its Meeting held on 17.12.2020 (Annexure-10 enclosed to the rejoinder affidavit) could not have ignored to assess the candidature of the appellant.

10.3. The Minutes of said Meeting reflect thus:

> *"****
>
> *4.2. Thus, in accordance with Regulation 5(4) of the Promotion Regulations, the Selection Committee have to classify the eligible Officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit' as the case may be on an overall relative assessment of their service records as made available by the State Government.* ***The Selection Committee would go through the service records of each of the eligible Officers with special reference to the performance of the Officer during the preceding five years including the vacancy year, and after deliberations will record the assessment of the Committee****.*
>
> *4.3. The Committee were further informed as the overall assessment of an Officer cannot be withheld because of non-availability of ACRs, the Selection Committee have to make a categorization on the basis of available ACRs. Thus, where one or more ACRs of an Officer have not been written for a year or more on account of his being on leave, training or because no Officer supervised his work for more than three months or for any other valid reason during the relevant period, the Selection Committee should consider in lieu thereof the available ACR(s) of the year(s) immediately preceding the period of*

last five years so that the requirement of consideration of ACRs of at least 5 years is met.

***

6. Further, as intimated by the State Government, the Committee were informed that as on date of the meeting:

***

(iv) Penalties indicated against their names have been imposed on the following officers:

Sl. No.	*Name of Officers S/Shri/Smt.*	*Nature of penalty*	*Remarks*
***	***	***	***
4.	*Sanjita Das*	*Withholding of one annual increment without cumulative effect*	*Penalty was imposed on 29.07.2011. Annual increment has been stopped with effect from 01.11.2020."*
***	***	***	***

***

8. ***The Committee examined the service records of the Officers up to the year 2018-19, whose names are included in the Annexure and who fulfilled the conditions of eligibility.*** *On an overall relative assessment of their service records, the Committee assessed them as indicated against their names in the Annexure.*

***"

10.4. It is unequivocal from the above that the Selection Committee took up service records of five years up to the year 2018-19 for examination. The ground of the Selection Committee to eliminate the appellant from

being considered for promotion in the Cadre of Indian Administrative Service stands contradictory to the clarification contained in the Circular dated 03.03.2008 (Annexure-9) to the effect that "the copy of the order awarding the penalty to a delinquent officer should be placed in the CCR/PARs of the year in which it was awarded".

10.5. Furthermore, as it appears from this that the service records of the appellant from 2015 to 2019 (five years prior to the year of vacancy, as the Selection Committee examined service records up to the year 2018-19) were required to be considered by the Selection Committee. Even though the order of punishment was carried out in the year 2020, the service record of 2011 would have to be reflected with such fact in view of Clarification contained in Circular dated 03.03.2008. There is nothing placed by the respondents before this Court with regard to any adverse entry in the service records for five years up to the year 2018-19. No impediment is cited in the Minutes of Meeting of the Selection Committee for consideration of the case of the appellant that notwithstanding the minor penalty being imposed in the year 2011, she was unfit or not suitable for promotion. Rather the fact adumbrated and remained undisputed that after 2011, she was given promotions to the higher ranks till 2020.

10.6. A reference can be had to the "Guidelines on treatment of effect of penalties on promotion— role of Departmental Promotion Committee" *vide* Office Memorandum No.22011/4/2007-Estt. (D), dated 28.04.2014 issued by the Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, wherein it has clearly been stipulated that

> *"All the administrative authorities in the Ministries/ Department are advised to place relevant records, including chargesheet, if any, issued to the officer concerned, penalty imposed, etc., before the DPC/ACC who will decide the suitability of officer for promotion keeping in view the general service records of the officer including the circumstances leading to the imposition of the chargesheet or penalty imposed. If such an officer is found suitable, promotion will be given effect after the currency of the penalty is over."*

Taking cue from the above, it can safely be said that the Selection Committee in the present case should have considered the service records of the appellant for the purpose of promotion in the Cadre of Indian Administrative Service.

10.7. It has already been discussed if at all the authorities are required to reflect the minor punishment being awarded *vide* Order dated 29.07.2011 with Memo to appropriate authorities indicating supply of copy of order thereof in the service records of the appellant, it has to be related and relevant to the year of award of punishment, *i.e.*,

2011. Notwithstanding recording of the punishment awarded in the year 2011 was shown to have been entered in the service record in the year 2020 as claimed to have been placed before the Selection Committee, such factor could not be taken as disqualification for consideration of promotion in the Cadre of Indian Administrative Service relating to vacancies up to the year 2019 as the performance of eligible officers were to be assessed as per the material available in the service records since 2015.

10.8. This aspect was brought to the notice of the learned Single Judge by way of an Affidavit dated 30.09.2022, wherein it was asserted as follows:

> *"Subsequently the said Notification was modified to the extent that a copy of the Order awarding penalty to a delinquent should be placed in the CCR/PAR of the year in which it is awarded vide Letter dated 03.03.2008."*

10.9. Such assertion of the appellant by way of affirmation in the affidavit has not been countered or controverted by the respondents. Hence, this Court is persuaded by the argument of the learned Senior Advocate Sri Durga Prasad Nanda that the learned Single Judge should have refuted the contention of the respondents that the punishment awarded *vide* Order dated 29.07.2011, being carried out in the year 2020, the same could not be construed as ineligibility of the appellant for the

purpose of her consideration for promotion in the Cadre of Indian Administrative Service.

11. Under above premises, the Judgment dated 25.06.2024 of the learned Single Judge cannot be countenanced in the eye of law and, hence, this Court has no hesitation to set aside the impugned Judgment dated 25.06.2024 of the learned Single Judge rendered in the writ petition. Consequently, the writ appeal stands allowed and accordingly the writ petition is also allowed to the extent indicated above.

11.1. It may be apposite to observe that the deposits/ recoveries as stated to have been made in compliance of the Order dated 29.07.2011 (Annexure-1), is to be treated as if the same is made in the year 2011 itself.

11.2. Non-recording of fact of punishment being awarded *vide* Order dated 29.07.2011 of the Revenue and Disaster Management Department in the service book cannot be attributable to the appellant-delinquent. So, this Court having allowed the writ appeal and as a consequence thereof the writ petition, accedes to the prayer(s) of the writ petitioner.

11.3. It is, therefore, directed that the respondents are required to reckon the date of punishment with effect from 29.07.2011 and recovery of the amount(s) as awarded in the Order of punishment dated 29.07.2011

would relate back to the year 2011. Accordingly, the appellant deserves to be extended all consequential benefits.

11.4. It is also directed that the case of the appellant for promotion be undertaken and the consequential effect of result in the writ petition/writ appeal being allowed be extended preferably within a period of three months from date in the light of the observations made herein above.

12. With the aforesaid observations and directions, this Writ Appeal stands disposed of along with all the pending interlocutory applications, if any, but in the circumstances, there shall be no orders as to costs.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE

High Court of Orissa, Cuttack
The 19th June, 2025//Aswini/MRS