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ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 26789 of 2021

In the matter of an application under Article 226 of the
Constitution of India

Bijay Kumar Patra Petitioner

-Versus-

State of Odisha and Ors. Opp. Parties

Advocates appeared through Hybrid Mode:

**For Petitioner : M/s. Amit Prasad Bose
Mr. H.B. Mangaraj,
Mr. R.K. Routray, Advocates**

**For Opp. Parties : Mr. S.K. Samal
Addl. Government Advocate**

P R E S E N T:

THE HONOURABLE MR. JUSTICE SANJAY KUMAR MISHRA

Date of Hearing and Judgment: 02.09.2022

Mr. S.K. Mishra, J. This Writ Petition has been preferred by the Petitioner being aggrieved by the impugned Order dated 03.08.2021, as at Annexure-5, vide which Appeal of the Petitioner was rejected by the Appellate Authority solely on the ground of limitation in terms of Rule-24 of the Odisha Civil Services (Classification, Control & Appeal) Rules, 1962, shortly, OCS (CCA) Rules, 1962.

2. The factual matrix leading to filing of the present Writ Petition is that, vide Office Order dated 25.05.2017, the Petitioner along with 102 nos. of employees, in order of merit/seniority, were absorbed in regular Group-D Posts in different designations in Nandankanan Zoological Park, Nandankanan.

While the Petitioner was continuing as such, he was placed under suspension, vide Office Order 21.07.2007, for alleged collection of money from Group-D employees for their regularization. Subsequently, the Petitioner was charge-sheeted for the said misconduct and an enquiry was conducted against him.

During pendency of Enquiry Proceeding, the Petitioner was reinstated in service and posted to Store Range vide Office Order dated 29.06.2018 and consequent of the Order, he was relieved from the Post of Watchman and joined in the new Post of Store Range, Nandankanan Zoological Bark, Nandankanan on 01.07.2018.

Finally, basing on the Enquiry Report submitted by the Enquiring Officer, the Deputy Director, Nandankanan

Zoological Park, Nandankanan, passed the final Order of punishment dated 16.01.2020, as at Annexure-1, vide which it was ordered that he is censured and the suspension period of the Petitioner shall be treated as leave due.

Due to out-break of Pandemic Covid-19, the Nandankanan Zoo was closed from 15.03.2020 to 03.10.2020. During the said period, against the said Order of punishment, as at Annexure-1, the Petitioner sent an application on 04.07.2020 to the Deputy Director, Nandankanan Zoological Park, Nandankanan, to absolve him from all the charges.

However, in response to the application of the Petitioner dated 04.07.2020, after a long gap of about 4 months, i.e. 11.11.2020, a communication was made to the Petitioner by the Dy. Director, Nandankanan Zoological Park, Nandankanan, intimating him that he may prefer an Appeal before the Director, Nandankanan Biological Park, Bhubaneswar to absolve him from all the charges.

After being so communicated, the Petitioner preferred an Appeal on 28.11.2020 before the Director, Nandankanan,

Biological Park, Bhubaneswar, vide Annexure-4. However, without applying mind so also without exercising power conferred under the Proviso in Rule-24 of the Odisha Civil Services (Classification, Control & Appeal) Rules, 1962, with regard to entertaining an Appeal beyond the period prescribed under the said Rule-24, the Appellate Authority mechanically rejected the Appeal of the Petitioner on 03.08.2021 on the ground that the said Appeal is time barred in terms of the Rule-24 of the Odisha Civil Services (Classification, Control & Appeal) Rules, 1962.

It is further case of the Petitioner that though he received the copy of the said rejection Order dated 03.08.2021 on 10.08.2021, as the said Order was illegible, subsequently on his request a legible copy was supplied to him on 21.08.2021. Being aggrieved by the said Order dated 03.08.2021 passed by Director, Nandankanan Biological Park, as at Annexure-5, legible copy of which was communicated to the Petitioner on 21.08.2021, by the Deputy Director, Nandankanan Zoological Park, having no other alternative remedy, present Writ Petition has been preferred by the Petitioner .

3. Though this Court, vide Order dated 16.09.2021, ordered to issue notice to the Opposite Parties and the learned Counsel for the State accepted notice on behalf of all the Opposite Parties and extra copies of the Writ Petition were served on the learned State Counsel to take instruction or file Counter, till date no Counter Affidavit has been filed.

4. Heard learned Counsel for the Petitioner, so also learned Counsel for the State. In view of limited point as to whether the Appellate Authority was justified to reject the Appeal of the Petitioner solely on the ground of delay, though Proviso in Rule-24 of the OCS (CCA) Rules, 1962 permits the Authority concerned to entertain an Appeal even after expiry of the period of three months, on consent of the learned Counsels for the Parties, the Writ Petition is taken up for final disposal at the stage of admission.

5. Though no Counter has been filed by the State-Opposite Parties, the learned Counsel for the State submitted that the Authority concerned was justified to pass the Order impugned, as at Annexure-5, the period of limitation to prefer an Appeal being three months from the date on which the

Appellant receives a copy of Order appealed against .He further contend that the present Petitioner admittedly, preferred Appeal before the Dy. Director, Nandankanan Zoological Park on 04.07.2020, vide Annexure-2, though he is the Disciplinary Authority. The said mistake being pointed out by the concerned Authority, the Petitioner submitted a fresh Appeal to the Appellate Authority only on 28.11.2020, which is almost after around 7 months beyond the period of limitation prescribed under Rule-24 of the OCS (CCA) Rules, 1962.

6. The learned Counsel for the Petitioner submitted that because of the out-break Pandemic Covid-19, the Government of Odisha took a decision to close the Nandankanan Zoological Park, Bhubaneswar for about 7 months i.e. from 15.03.2020 to 03.10.2020. That apart, because of the restrictions imposed by the Government of Odisha as well as Government of India from time to time , the Petitioner could not prefer an Appeal in time and also by mistake preferred the Appeal before the Dy. Director, Nandankanan Zoological Park, and the said mistake was pointed out by the Authority only after a long gap of about 4

months on 11.11.2020, instead of forwarding the said Appeal to the concerned Appellate Authority for consideration, for which the Petitioner had to submit an Appeal afresh on 28.11.2020. Hence, the delay caused was neither intentional nor deliberate and the Authority concerned, in terms of the power vested under Proviso in Rule-24 of the OCS (CCA) Rules, 1962, should have entertained the Appeal of the Petitioner even beyond prescribed period of three months. However, the Appellate Authority failed to exercise the said power conferred on him in terms of the said Rules. Therefore, this Court should interfere with regard to the impugned order and set aside the same, it being illegal, arbitrary and unreasonable.

7. Rule-24 of the Odisha Civil Services (Classification, Control & Appeal) Rules, 1962 reads as follows:

“24. Period of limitation for Appeal – No appeals under these rules shall be entertained unless it is submitted within a period of three months from the date on which the appellant receives a copy of the order appealed against:

Provided that the Appellate Authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not submitting the appeal in time.”

8. Usually the word “may” is an enabling word. It gives discretion to the person, who is given the option to act in a particular manner mentioned in the Section. But, it is well recognized that the word “may” in the context can mean “shall”. If statutes authorize any specified person to do acts for the benefit of others, the authority conferred is coupled with an obligation to discharge a duty by the statutes themselves; and in such a case, the intention is to impose an obligation on the authority to discharge his duty, with the result that the word “may” in the context means “must” or “shall”. Whether the authorized person is given discretion or under a compulsion or obligation to do a particular act would inevitably depend on the context in which the word “may” has been used.

9. In the present case, despite there is a provision to entertain the Appeal, after expiry of the period of limitation, the Appellate Authority failed to exercise such power. Further, the impugned Order does not disclose any cogent reason justifying to refuse exercise such power in terms of the said Proviso under Rule-24 of the OCS (CCA) Rules, 1962.

10. Admittedly, there is no dispute, as to the averments made in the Writ Petition with regard to the various dates, so also the reasons of delay in preferring the Appeal, which was finally submitted before the Appellate Authority on 28.11.2020. Taking in to consideration the pleadings made in the Writ Petition as well as submissions made by the learned Counsels for the parties and in view the Covid-19 situation prevalent during the relevant period, so also the restrictions imposed by the State Government as well as Government of India and order passed by the Apex Court from time to time with regard to extension of period of limitation, this Court is of the view that the Authority concerned ought to have exercised his power vested under Rule 24 of the OCS (CCA) Rules, 1962 to condone the delay and consider the Appeal of the Petitioner in terms of the Proviso under the said Rules, 1962. However, as is evident from the impugned Order, as at Annexure-5, the Authority concerned, without applying mind and without taking into consideration the Covid-19 situations so also power vested on him to condone the delay, has mechanically rejected the Appeal of the Petitioner on the ground of limitation.

11. In view of the above observation, the impugned Order dated 03.08.2021 passed by the Director, Nandankanan Biological Park, Bhubaneswar, being illegal and unjustified, deserves interference. Accordingly, the said Order dated 03.08.2021, as at Annexure-5, is hereby set aside. The matter is remitted back to the Appellate Authority i.e. Opposite Party No.3, to re-consider the Appeal of the Petitioner, as at Annexure-4, afresh on merit and pass a reasoned and speaking order thereon within a period of six weeks from the date of communication/production of the certified copy of this order.

12. Accordingly, the Writ Petition stands disposed of. No order as to cost.

(S.K. MISHRA)
JUDGE