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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 160 of 1987

Date of decision 29th March, 1989.

1. Diwari Prasad, S/o Meihu Prasad
aged about 44 years, Driver
V.R.C. for Handicapped C.T.I.Campus,
Vidya Nagar, Hyderabad-500007
Andhra Pradesh.

...APPLICANT

-Versus-

1. Union of India represented by
Secretary, Department of Internal Security
New Delhi

2. Chief Administrator,
Dandakaranya Project
Project Headquarters, KORAPUT-764020 (ORISSA)

.... RESPONDENTS

For the Applicant. Mr.A.K.Mohapatra, Advocate

For the Respondents. Mr.A.B.Misra, Senior Standing
Counsel(Central) and
Mr.Tahali Dalei, Additional
Standing Counsel(Central)

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN
AND
THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be
allowed to see the judgement ? Yes

2. To be referred to the Reporters or not ? Yes

3. Whether Their Lordships wish to see the fair
copy of the Judgement ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the order of punishment passed by the competent authority ordering stoppage of one increment of the applicant.

2. Shortly stated, the case of the applicant is that he was a tractor driver under the Dandakaranya Development Authority and it was alleged against him that on 21.2.1984 he was found to have been disposing of 10 litres of diesel for which a disciplinary proceeding was initiated against him and after enquiry was conducted the disciplinary authority ordered stoppage of one increment and further ordered that the period of suspension should be treated as on leave. The appellate authority confirmed the findings of the enquiring officer and the disciplinary authority and also the quantum of punishment imposed by the disciplinary authority but further ordered that the period of suspension should be treated as such. Hence this application with the aforesaid prayer.

3. In their counter, the respondents maintained that the applicant was guilty of misusing the government property and therefore, in no circumstance, the order of punishment should be unsettled & rather it should be sustained.

4. We have heard Mr. A.K. Mohapatra, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) at some length. We have perused the averments made in the application and the averments made

in the counter and we have also gone through the charges and the enquiry report. Nowhere in the charge it is mentioned that the applicant was disposing of the diesel belonging to the Government. The only thing mentioned in the charge was that he was seen disposing of 10 litres of diesel. Such diesel may have belonged to the applicant for which by no stretch of imagination it could be held that he was misusing the Government property and hence he has misconducted himself. From the enquiry report it is found that the enquiring officer has not at all given any finding that the Government property was being disposed of by the applicant. The findings of the enquiring officer runs thus.

" In my opinion as enquiry officer it is a clear case of irregular maintenance of log book and also the driver was not in need of diesel on 7-2-84 which could compel him to take 10 litres of diesel on loan from a private party. "

This finding of the enquiring officer is not the subject matter of charge, though later finding of the enquiring officer regarding taking of 10 litres of diesel from the private party on loan could be the defence of the delinquent officer i.e. the applicant. Be that as it may, we do not find from the enquiry report any finding given by the enquiring officer in regard to the charge itself. Thus, the enquiry report suffers from serious infirmity and so also the order passed by the disciplinary authority. In such circumstances, we are of opinion that the order of punishment and the quantum of punishment imposed by the disciplinary authority and the appellate authority is against law and therefore, it is

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hereby set aside and the applicant is exonerated from the charge and is acquitted. The period of suspension should be treated as on duty.

5. Thus, this application stands allowed leaving the parties to bear their own costs.

Agreed
29.3.89
Member (Judicial)

B.R. PATEL, VICE-CHAIRMAN,



Agreed
29.3.89
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
March 29, 1989/Sarangi.