(b) III

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.68 of 1988.

Date of decision : February 22,1990.

Malati Ray ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s.Deepak Misra,
R.N.Naik,
Anil Deo,R.N.Hota,Advocates.

For the respondents ... Mr.Tahali Dalai,
Additional Standing Counsel(Central)

C O R A M:

THE HON'BLE MR.P.S.HABEEB MOHD., MEMBER(ADMN.)

A N D

THE HON'BLE MR.N.SENGUPTA, MEMBER(JUDICIAL)

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

2. To be referred to the Reporters or not ?

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

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P.S.HABEEB MOHD., MEMBER(A)

J U D G M E N T

Malati Roy, working as Staff Nurse, Sabani Seva Sadan, Malkangiri, District-Koraput under Dandakaranya Development Authority has challenged the orders in the Disciplinary proceedings as per Annexure-1 (Memorandum of charges), Annexure-4 which is the order of the Disciplinary authority purporting to quash the enquiry report of the Inquiry Officer dated 8.5.1980, Annexure-5 which is the report by the Second Inquiry Officer appointed by the Disciplinary

Authority, Annexure-6(orders passed by the Disciplinary Authority reducing her pay by 2 stages in the scale of pay of Rs.425-640/-),Annexure-7(the orders of the Appellate Authority confirming the orders of punishment) and Annexure-8 No.2/213/81V/46 dated 16th February,1987 which are the orders of the Chief Administrator rejecting the review petition before the Reviewing Authority and has prayed for quashing of the same. There is also a prayer for passing of appropriate orders directing the Respondents to fix her pay correctly.

2. She has stated that the inquiry has not been held in accordance with the Rules and that she had given her date of birth correctly. The respondents on the other hand have taken the following stand in their reply.

> " Initially Shri M.S.Rajyana was appointed as Inquiry Officer and he submitted a report on 17-4-80 but the findings of the Inquiry Officer was based on hear-say and due opportunity was not given to the applicant the Disciplinary Authority vide order dated 7.5.1980 vide Annexure-R/5) quashed the inquiry report and ordered a fresh inquiry. "

3. We have perused the documents and heard the counsels on both sides. The scope for the Tribunal to interfere with the findings in the Disciplinary proceedings held under the Disciplinary Rules of various services is limited. The law on the subject has been laid down by the Supreme Court in the case of Union of Indiav. ParamaNanda reported in AIR 1989 SC1185. Their Lordships held;

> " We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty

on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the end of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with . The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter. "

4. Normally there would have been scope for us to examine whether the inquiry report by the 1st Inquiry Officer had been quashed properly and whether the second inquiry was in order. But it is clearly seen that the second inquiry was ordered because first inquiry had not been conducted in accordance with the law. The word ' quashed' has been used in Annexure-4, but it was really a case where the first inquiry Officer had not followed, the law nor given an opportunity to the applicant and hearsay evidence has been used. Therefore it is a case of non-acceptance of the inquiry report by the inquiry Officer who had not followed the proper rules and procedures. In such circumstances, the non-acceptance of the first inquiry report and the order of the fresh inquiry by the new inquiring officer was well within the law.

5. The argument of Mr. Misra, learned counsel for the applicant is that since a notice of charge under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 was issued giving a copy of the enquiry report was imperative in view of the decision in the case of Premnath K. Sharma v. Union of India reported in 1988 (3) SLJ 449 (CAT). In elaborating his contention Mr. Misra

has urged that as would be evident from Annexure-1, the proceedin -g started under Rule 14 i.e. for imposition of major penalties. What penalty was ultimately imposed would not be a guiding factor to say whether or not a copy of the enquiry report should havebeen supplied to the applicant prior to the disciplinary authority imposing the ultimate penalty which might not have been any of the major ones. Because otherwise it would amount to putting the repealed part of Article 311 back. Mr.Misra has contended that the representation that the charged officer was to make was not against any proposed penalties because by the 42nd Amendment, the right tomake such a representation was taken away, but what remained was the affor- ding of a reasonable opportunity to make a submission not only about the punishment but also about the findings of the enquiry officer. In this regard, Mr.Misra has drawn our attention to some of the observations in Premnath K.Sharma's case. That was no doubt a case under the Railway Servants (Discipline and Appeal) Rules, but rule 9 of those rules are similar to rule 14 of the C.C.S.(C.C.A.)Rules, 1965. Therefore, the observations made in that case would be relevant for the present case as well. He has referred to paragraph 17 of the reported case;

> " .. It does not and cannot, nor it is intended to take away the right of reasonable opportunity of being heard in respect of the charges itself which is guaranteed by clause (2) of Article 311. In other words, reasonable opportunity envisaged to be afforded by Article 311(2) would be satisfied only when allthe material on the basis of which the Disciplinary Authority is required to come to a conclusion in regard to the guilt or otherwise of the charged officer is made available to the charged officer and he is afforded an opportunity to make his representation. . . "

Mr.Misra lays much stress on that part of the observation which speaks of conclusion in regard to the guilt or otherwise

of the charged officer and he says that the meaning of this expression would be that the applicant at that stage could show to the disciplinary authority that she was really not guilty of the charge. It is contended by Mr.Misra that if that opportunity was denied to the applicant, the subsequent proceedings must be deemed to have been vitiated. The argument of Mr.Misra at the first blush may appear to be attractive, but it does not have much substance. The entire judgment in Premnath K. Sharma's case revolved round the question as to what was meant by the expression' reasonable opportunity of being heard' as used in Article 311 of the Constitution of India. The observations are to be read in the context of the facts of a particular case and they cannot be read shorn of the context of facts in which they were made.

Article 311 of the Constitution bears on the question of dismissal, removal and reduction in rank of persons employed in civil service either of a State or of the Union, that article really has nothing to do with other penalties, therefore, where the penalty imposed is other than those three, none of the provisions of the Article 311 can be called in aid. From rule 11 of the C.C.S.(C.C.A.)Rules,1965 it would be found that major penalties include reduction to lower stage in the time scale of pay for a specified period, with further directions as to whether a Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, reductionwill or will not have the effect of postponing the future increments of his/her pay. The four other major

penalties are reduction to lower time scale, compulsory retirement, removal from service and dismissal from service. Therefore, mere issue of a notice for imposition of major penalty would not tantamount to a notice for imposing penalties of reduction in rank, removal or dismissal from service. Therefore, the argument of Mr.Misra does not appear to have any substance.

6. What has been ordered is not reduction in rank. The failure on the part of the disciplinary authority to furnish a copy of the report of the Enquiring Officer to the charged Officer before the imposition of the penalty will vitiate the enquiry on the ground of denial of reasonable opportunity of being heard only in a case where one of the three penalties referred to in clause(2) of Article 311 of the Constitution of India is imposed, and not in a case where any other penalty as enumerated under the C.C.S.(C.C.A.)Rules,1965 is imposed.

7. In the instant case the penalty that has been imposed upon the applicant is only reduction to a lower stage in the time scale of pay for a specific period. There is no reduction in rank.

8. Since it is not the case of reduction in the rank but reduction to lower stage in the pay scale, the furnishing of the inquiry report was not called for before imposing punishment. The appellate authority's order is a clearly reasoned out order. There is no scope for interference with the order of the Reviewing authority also.

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9. In the circumstances, we find no reasons to interfere with the orders of the disciplinary authority at any level or the appellate authority or the Reviewing authority. The grounds advanced on behalf of the applicant fail and there is no merit whatsoever in the application.

10. The application is accordingly dismissed but with no order as to costs.

22.2.90.
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Member(Judicial)

22/2/1990
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Member(Administrative)

CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH SEAL OF THE