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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.198 of 1989.

Date of decision: September 17, 1991.

Priyabrata Patnaik. ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ...

M/s. J. Das,
B. S. Tripathy,
B. K. Sahoo, S. Mallik,
K. P. Misra, P. K. Deo,
S. K. Purohit. Advocates.

For the respondents 2 & 3 ... Mr. K. C. Mohanty,
Government Advocate (State)

C O R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No.
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

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J U D G M E N T

K. P. ACHARYA, V. C. In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the adverse entries as at Annexure-6 thereby ordering expunction of the same from his confidential character roll, for the year 1982-83.

2. Shortly stated, the case of the applicant, Shri Priyabrata Patnaik is that he is a member of the Indian Administrative Service and belongs to the Orissa cadre. While the applicant was posted as Collector and District Magistrate, Dhenkanal, an adverse entry was recorded by the superior authority of Shri Patnaik and it was communicated to Shri Patnaik by the Special Secretary to the Government of Orissa in General Administration Department conveying the following remarks.

" But you were a bit aggressive when it comes to extracting work from non-government agencies for development purposes. You drank too much. This interfered with your work."

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The applicant filed a representation before the State Government for expunction of these adverse entries and vide Annexure-3 dated 11.5.1984 which is a letter sent to the applicant, Shri Patnaik, by the Special Secretary to Government of Orissa in General Administration (S.E.) Department stated that Government have been pleased to expunge the following adverse remarks which runs thus :

" A bit aggressive when it comes to extracting work from Non-Government Agencies for development purposes."

Thereafter, the applicant submitted a memorial to the Hon'ble President of India for expunction of the remaining remarks namely, 'You drank too much. This interfered with your work'. The Special Secretary to the Government of Orissa in General Administration (S.E.) Department vide Annexure-6 dated 31.1.1986 conveyed the orders of the Hon'ble President to the present applicant in which it was stated that Government received orders from the Hon'ble President regarding expunction of the adverse remarks and on a perusal of the said letter it can be said that the Special Secretary meant to say that the remarks that 'This is interfering with his work' stood expunged. Now, according to the applicant, the only adverse remark ' You drank too much' stands against the applicant, Hence, the prayer is for ordering expunction of this adverse remark.

3. In their counter, the respondents 2 & 3 maintained that not only the case is grossly barred by limitation but the drinking habit of the applicant was in violation of Rule 20(B) of the All India Services (CCA) Rules, 1969, and the competent authority recorded such an adverse entry because applicant due to such drinking the work of the was affected for which

he was not able to concentrate on his work on many occasions. Therefore, it is maintained by the respondents 2 & 3 that the remarks that he drinks too much should be sustained because the applicant himself has admitted in his representation that he drinks.

4. I have heard Mr. Jayant Das, learned counsel for the applicant and Mr. K. C. Mohanty, learned Government Advocate (State) for respondents 2 & 3 at a considerable length. Mr. Das contended that conceding for the sake of argument that the applicant is in the habit of drinking, that should not be the basis to make an adverse entry against him because it does not reflect on the discharge of his duties especially when that part of the adverse entry has been expunged by the Government of India. On the other hand, it was submitted by Mr. K. C. Mohanty, learned Government Advocate (State) that the case should be in limine dismissed on the ground of limitation. Learned Government Advocate (State) submitted that the representation of the applicant having been disposed of by the Hon'ble President on 6.1.1986 which was communicated on 31.1.1986, and the application having been filed on 11.5.1989, the case is barred by limitation and hence section 21 of the Administrative Tribunals Act, 1985 creates a bar for the applicant to advance his grievance. Had this been a case coming within Section 21(1)(a) of the Administrative Tribunal Act, 1985, then there was no power for the Tribunal to condone the delay but here is a case where the application comes within the period of limitation prescribed under section 21^(b) of the Administrative Tribunals Act. The admitted facts are as

follows:

A representation was filed by the applicant before the State Government for expunction of the remarks which was dated 10.12.1983 and orders of the State Government expunging a part of the adverse remarks was communicated to the applicant on 11.5.1984. This aspect has no relevance for considering the question of limitation. Since all the remarks were not expunged the applicant filed a memorial to the Hon'ble President on 29.12.1984 and this was disposed of on 6.1.1986 which was communicated to the applicant on 31.1.1986. At this stage it may be stated that there is a dispute relating to the receipt of the communication dated 31.1.1986 and it was submitted by Mr. Jayant Das, learned counsel for the applicant that after the applicant sent a letter to the Deputy Secretary to Government intimating that he has not received any copy of the order of the Hon'ble President, then only the applicant was communicated vide Annexure-5 dated 21.4.1989 to which a copy of the D.O. No. 1053 /SE. dt. 31.1.1986 was enclosed. Of course in the said D.O. letter No. 2753 dt. 21.4.1989 it has been mentioned that the order of the Hon'ble President was communicated in D.O. letter No. 1053/SE dated 31.1.1986. But one does not lack in experience that communications are misplaced, lost. The Collector of a District is a very busy Officer and possibility of misplacement of this communication cannot be overruled especially when communication regarding the non-receipt of the letter is being made by ^a the member of the Indian Administrative Service who should not be normally

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disbelieved. In such circumstances, after giving my anxious consideration to the vehement arguments advanced by learned Government Advocate (State) that the applicant is making incorrect statements to overcome the period of limitation, I may say at the cost of repetition that I do not feel inclined to disbelieve the statement of a member of the Indian Administrative Service, supported by an affidavit, and therefore in my opinion the case is not barred by limitation. Conceding for the sake of argument that the period of limitation runs against the applicant with effect from 31.1.1986, without least hesitation in my mind I would condone the delay because of the fact that the applicant was the District Magistrate and Collector of the districts of Dhenkanal and Cuttack and I can take judicial notice of the fact that all Collectors are extremely busy over various types of duties assigned to them so much so they do not find breathing space especially the Collector, Cuttack. As such, delay, if any, is hereby condoned and the objections of learned Government Advocate stand overruled.

5. Now, coming to the merits of the case at the outset I may say that nowhere in Annexure-6 dated 31.1.1986 the Special Secretary to Government in the General Administration (S.E.) Department, Smt. C. Narayanaswamy, has stated that the remarks have been expunged though on reading of the said letter one can safely conclude that the remarks have been expunged and this fact is admitted as averred in paragraph 3 of the counter. The fact that there was an adverse entry to the effect that the applicant was aggressive when it comes to extracting work from non-Government agencies for development purposes and the drinks taken by the applicant

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was interfering with his work having stood expunged, the only adverse entry naturally remains, 'Drinks too much'. To put it in other words, it may be stated that in the confidential character roll it has been recorded, 'You drank too much'. It is sought to be expunged.

6. After giving my anxious consideration to the arguments advanced at the Bar I am of opinion that drinking wine, liquor etc. has not been barred by any statutory rules of the Central Government or the State Government—rather State Governments are issuing licence for sale of liquor etc. The possibility of one consuming liquor for health purposes, cannot be overruled and Mr. Patnaik may not be an exception to this. In my opinion, if drinking of liquor or whisky does not affect the discharge of one's official duties, the concerned officer cannot be blamed or discredited. It is to be noted that in the present case the fact of taking liquor or alcohol by the applicant, interfered with his work having been expunged by the Hon'ble President it can safely be presumed that the drinks taken by the applicant was in no way reflecting or interfering with the official work rendered by the applicant. In such circumstances, the drinks taken by the applicant cannot be a discredit for the applicant. This fact recorded in his C.C.R. is unwarranted and uncalled for. A person who drinks cannot be looked down upon provided he is not a drunkard. It is not the case of the respondents that the applicant is a drunkard. Therefore, the remarks 'You drank too much' cannot be sustained.

7. In view of the aforesaid discussions I find there is substantial force in the contention of Mr. Jayant Das, learned counsel for the applicant that the remaining remarks namely

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' He drank too much' needs to be expunged and accordingly it is hereby ordered that such entry in the confidential character roll be treated as expunged.

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

[Signature]
.....17/9/91.....
Vice-Chairman

Central Administrative Tribunal.
Cuttack Bench, Cuttack
September 17, 1991/Sarangi.

