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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.437 of 1989.

Date of decision: November 19,1991.

Harekrishna Pradhan ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ...M/s.P.Palit,
Biswajit Mohanty, A.Kanungo,
S.K.Mohanty, S.P.Patnaik,
D.P.Dhalsamant. N.Patra,
Mihir Mohapatra, Advocates.

For the respondents ... Mr.A.B.Misra,
Senior Advocate.
Mr.Tahali Dalai,
Addl. Standing Counsel (Central)

C O R A M:

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

A N D

THE HONOURABLE MR.J.C.ROY, MEMBER (ADMINISTRATIVE)

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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 ? NO.

3. Whether Their Lordships wish 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 order of punishment passed against him dismissing him from service.

2. Shortly stated, the case of the applicant is that initially he was appointed as a Mazdoor in the year 1968 in the organisation known as M.E.S. In course of time the applicant was promoted to the post of Motor Pump Attendant andwhile he was continuing as such, a charge-sheet was submitted against the applicant alleging that he had committed an offence under section 392/34 of the Indian

Penal Code which formed subject matter of G.R.Case No. 16 of 1976. The applicant was convicted under section 392 of the Indian Penal Code on his own admission, by learned Judicial Magistrate, First Class, Balasore and sentenced him to undergo Rigorous Imprisonment for 18 months. Consequently the disciplinary authority dismissed the applicant from service. Hence, this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that appropriate order hasbeen passed by the disciplinary authority which should not be unsettled- rather it should be sustained.

4. We have heard Mr.Biswajit Mohanty, learned counsel for the applicant and Mr.Tahali Dalai, learned Addl. Standing Counsel(Central) for the respondents at a considerable length. Mr.Mohanty placed before us the judgment of the trial court passed in G.R.Case No.16 of 1976. Though three accused persons had been charge-sheeted, the present applicant pleaded guilty and hence convicted but the other two co-accused persons were separately tried on a separate date who had claimed to be not guilty and after the prosecution case was closed the learned Magistrate came to a finding that the prosecution has signally failed to bring home the guilt against the said two accused persons beyond all reasonable doubt and therefore those two accused persons were acquitted. Ofcourse we cannot find fault with the disciplinary authority for having come to the conclusion that the applicant is liable to be dismissed. The disciplinary authority has exercised his discretion keeping in view that

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the applicant was convicted under section 392 of the Indian Penal Code and we are also of opinion that it was not the mandatory duty on the part of the disciplinary authority to hold an enquiry because the law authorises him to pass an order of dismissal dispensing with the enquiry. But Mr. Biswajit Mohanty drew our attention to the judgment of the Hon'ble Supreme Court reported in 1985(3) SCC 398(Union of India vrs. Tulsiram Patel) and he also drew our attention to the case of Chelapati reported in AIR 1975 SC 2216. At paragraph 127 of Tulsiram's case Their Lordships have been pleased to observe that the disciplinary authority should take into considertion the circumstances of the case before imposing the deterrent sentence and that was the very same view at paragraph 21 of Chelapati' case and therefore, it was urged by Mr.Mohanty that the two co accused persons having been acquitted honourably of the charge levelled against them the disciplinary authority should have taken a lenient view on the quantum of penalty because the present applicant remained satisfied by pleading guilty on the ill-advice of his lawyer. We cannot say whether the applicant was ill-advised by the lawyer but after going through the judgment passed by the learned Magistrate we find that there was no recovery from any of the accused persons and the prosecution based its evidence on singular witness i.e. a Raskhyak. Ofcourse we have no powers to discuss the evidence adduced in a criminal case but the fact remains that the accused has been convicted on his own admission and those co-accused persons who were tried as particeps criminis have since been acquitted. Keeping in view these circumstances and further keeping in

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view that the applicant has already undergone the imprisonment to the extent of 18 months we feel inclined to take a lenient view on the question of quantum of punishment.

5. Now, the question arises for consideration is as to whether we are competent to alter the quantum of punishment. True, it is in the case of Union of Indiavrs. Parama Nanda reported in AIR 1989 SC 1185 Their Lordships have observed that a High Court or a Tribunal should not interfere on the merits of the case if principles of natural justice have not been violated and if the impugned order of the disciplinary authority is not manifestly perverse. Their Lordships have further observed that neither the High Court nor the Tribunal have powers tointerfere on the quantum of penalty imposed in a disciplinary proceeding resulting from a regular inquiry. But at the same time Their Lordships have been pleasedto observe that the Tribunal has powers to consider the question of quantum of penalty resulting from a conviction in a criminal case. Therefore, we feel that there is substantial force in the contention of Mr.Biswajit Mohanty that this Bench has powers to consider the question as to whether the quantum of penalty imposed is appropriate or needs alteration. Keeping in view the facts and circumstances of the case stated above, regarding the period of imprisonment undergone by the applicant and the fact that the applicant has been out of service for a very long time, we feel that ends of justice would be met if the applicant is allowed to be reverted to a lower post i.e. the post of Mazdoor. In such circumstances of the case, we would alter the quantum

of penalty of dismissal imposed by the disciplinary authority and we direct that the applicant be reverted to the post of Mazdoor within 60 days from thedate of receipt of a copy of this judgment. Consequently Annexures-6 & 8 are hereby quashed. The applicant will not be entitled to any back wages.

6. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

.....19.11.91.....
MEMBER(ADMINISTRATIVE)

.....19.XI.91.....
VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
November 19,1991/Sarangi.