CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 198 of 1990.

Date of decision : May 28, 1993.

Prasanna Moharana ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... Mr. Antaryami Rath, Advocate.

For the respondents ... Mr. P. N. Mohapatra, Addl. Standing Counsel (Central)

CORAM:

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

A N D

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

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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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JUDGMENT

K.P.ACHARYA,V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the order of punishment imposed on the applicant resulting from a disciplinary proceeding is under challenge.

2. It was alleged against the applicant that while he was performing the duties of L.D.Clerk in the Office of the Collector, Central Excises & Customs, Bhubaneswar on 25.9.1987 certain overtime duty was allowed to the applicant to despatch certain letters from the Office of the Collector. It was further alleged that the applicant did not despatch those letters which were in the form of instructions to be issued to the Field Officers. Hence, it is alleged that the applicant has misconducted himself.

In this explanation the applicant submitted that he had made all entries in the relevant despatch register and had sealed the covers and delivered the same to the Group D employees who were assisting him for being posted in the Post Box.

Not being satisfied with his explanation the disciplinary authority held a regular enquiry and the enquiring Officer held that the charges had been brought home against the delinquent officer and accordingly submitted his finding to the disciplinary authority who in his turn concurred with the findings of the enquiring officer and ordered stoppage of one increment without cumulative effect for four years. In appeal, the appellate authority while maintaining the finding of the

disciplinary authority that the charges were brought home against the applicant, reduced the penalty directing that there would be stoppage of one increment without cumulative effect for a period of two years. The revisional authority found no merit in the revision petition and dismissed the same. Hence, this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that the case being full of overwhelming evidence against the charged officer and principles of natural justice having been followed in its strictest terms and the casebeing devoid of merit is liable to be dismissed.

4. We have heard Mr. Antaryami Rath, learned counsel for the applicant and Mr. P. N. Mohapatra, learned Additional Standing Counsel (Central) for the respondents at a considerable length. In order to bring home the charge against the applicant the prosecution is to prove that the applicant had misconducted himself by not despatching the letters. One circumstance on which the prosecution proposes to rely on is that the letters in question were found from another Section. To this the applicant has put up a defence that those letters were extra copies and some how it was found in another section. This defence of the charged officer stands corroborated by Shri P. K. Rao, one of the witnesses examined forthe prosecution who was inthe section. We are surprised that the enquiry Officer disposedof this matter very cryptically holding that Shri P. K. Rao has made such a

statement in examination in chief in order to help the charged officer. Furthermore, he states,

> " At the time of examination in chief I have marked him trying not to reveal the correct things. "

In our opinion, this is a fantastic reasoning given by the Enquiring Officer. By this the Enquiring Officer means to say that he whoever comes to speak the truth and his evidence does not support the prosecution case, is therefore to be presumed that he has said the truth inorder to help the charged officer. This is beyond our comprehension. In case, the enquiring Officer was of opinion that Shri P.K.Rao was trying to help the charged officer, Shri Rao should havebeendeclared hostile and cross-examined with reference to his earlier statement. Theenquiring Officer who is an Assistant Collector of the Central Exaises and Customs could not havebeen possibly deprived of this knowledge of law. Assuming this in favour of the Asst. Collector we cannot comprehend as to how an Officer in the Grade of Asst. Collector could jump into such a conclusion and take the position of a psychiatrist and state the same in the enquiry report as quoted above. We are unable to know as to how the Assistant Collector could readintothe mind of the witness and did not think for a moment that this observationmade by him would act in favour of the witnesss, Shri P.K.Rao. Before coming to such an erratic conclusion, the enquiry officer should have followed the procedural law and should have declared the witness hostile and without cross-examining him

and without bringing forth the same evidence on record that he was trying to support the charged officer, it is most unjustified tojump into such a conclusion . Therefore, we disapprove this part ofthe observation of the enquiry Officer. Fromthe enquiry report and from the order passed by the disciplinary authority we find that the applicant had made entries inthe despatch register. According to the case purforward by the charged officer, he had delivered the letters tothe Group 'D' employees. In our opinion, it was incumbent on the prosecution to negative this defence taken up by the charged officer. Non-examinationofthe Group 'D' employees creates a grave suspicion in our mind that the prosecution was withdrawing withholding the witnesses who could have unforded the real story. Law is wellsettled that once theprosecution withdraws withholds a material witnesses adverse inference should be drawn against the prosecution. Taking into consideration the cumulative effect of the entire evidence laid before the enquiry Officer and that the of the disciplinary authority at the worst speaking against the charged officer a grave suspicion may arise against the applicant. However much suspicion may be grave it cannot take the place of proof even in a domestic enquiry. Our view gains support from the judgment of the Hon'ble Supreme Court reported in AIR 1964 SC 364(Unionof India vrs. H.C.Goel) . At paragraph 27 of the judgment Their Lordships were pleased to observe as follows:

" Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed totake the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as tod isciplinary enquiries held under the statutory rules. "

We are of the firm view that the principles laid down by Their Lordships inthe case of H.C.Goel(supra) quoted above applies in full force to thefacts and circumstances of the present case. Therefore, we would unhesitatingly quash the order of punishment and direct exonerationof the applicant from the charges.

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

28/5/93.

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MEMBER(ADMN.)

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VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
May 28,1993/Sarangi.

SEAL OF THE CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH