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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 27 OF 1990

Date of decision: 5.1.93

Shri Kamal Mukhi Applicant

Versus

Union of India and others Respondents

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For the applicant M/s R.N. Acharya,
and B. Pujari,
Advocates.

For the Respondents Mr. R.C. Rath, Standing
Counsel (Railway Admn.)

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CORAM:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN
A N D
THE HONOURABLE MR. M.Y. PRIOLKAR, 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? *Yes*
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 Petitioner prays to quash the Annexures 6, 7, 8 and 10 and direct the Opposite Parties to re-instate the Petitioner ^tin his _r service with all consequential benefits.

2. Shortly stated the case of the Petitioner is that while the petitioner was working as Welder, Grade II under South Eastern Railway posted at Bondamunda an allegation was levelled against him that he was found to be in possession of Copper Conductor Cable of 10' inside a gunny bag which was detected by the Railway Protection Force on 8th March, 1977. A Criminal Case was launched against the Petitioner in the court of the learned S.D.J.M. Panposh which formed subject matter of Trial Case No. 2107 of 1977. By the judgment dated 9th August, 1979, the Petitioner was convicted, under section 3(a) of the Railway Property Unlawful possession Act (R.P.U.P. Act) and was sentenced to undergo Rigorous Imprisonment for 15 days. The order of conviction was carried in appeal and the Learned Sessions Judge, Sundargarh vide his judgment dated 26th August, 1980 passed in connection with Criminal Appeal No. 75 of 1979 up-held the order of the conviction and sentence passed against the Petitioner

and the appeal stood dismissed. Confirmation of the conviction and sentence was agitated before the Hon'ble High Court of Orissa ^{invoking their revisional jurisdiction} which formed subject matter of Criminal Revision No.444 of 1980. The Criminal Revision stood dismissed with a modification to the extent that the period of imprisonment already undergone should be treated as sufficient. Jurisdiction of the Hon'ble Supreme Court was invoked by filing a Special Leave Petition forming subject matter of Special Leave Petition No.2513 of 1983. The Hon'ble Supreme Court by its order dated 5th August, 1983 dismissed the Special Leave Petition. Vide order dated 15th March, 1989, contained in annexure 7, the competent authority called upon the petitioner to show cause to the proposal to impose a penalty over the Petitioner to the extent of removal from service in view of the judgment passed by the learned S.D.J.M., Learned Sessions Judge, Sundargarh and the Hon'ble High Court of Orissa. Vide Annexure 8 dated 22nd March, 1989, namely after the Hon'ble Supreme Court had confirmed the order of conviction and sentence, the Petitioner was removed from Railway Service with immediate effect and vide Annexure 9, the Petitioner had preferred an appeal which did not yield any fruitful result as it is evident from Annexure 10 dated 7th November, 1989. Hence this application has been

filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that no illegality has been committed by ordering removal of the Petitioner from Railway Service as he was convicted and sentenced to Rigorous Imprisonment by the learned S.D.J.M., Panposh and this order of conviction and sentence was confirmed by all the higher courts including the highest court of the land. Invoking the provisions contained under rules 14(1) of the Railway servants Discipline and Appeal Rules, 1968, the Petitioner had been rightly removed from service which should not be unsettled rather it should be sustained.

4. We have heard Mr. R.N. Acharya learned counsel appearing for the Petitioner and Mr. R.C. Rath learned Additional Standing Counsel (Railway) for the Opposite Parties. Conviction of the Petitioner under section 3(a) of the Railway Property Unlawful Possession Act was not disputed before us and equally confirmation of the conviction by the higher courts including the Hon'ble Supreme Court was also rightly and fairly not disputed at the Bar. Therefore, the only question that arises for determination is whether without a regular enquiry a Government servant having been convicted in a Criminal charge could be dismissed or removed from service. Mr. Acharya learned counsel appearing for the petitioner strenuously urged before us that before suspending the Petitioner it was incumbent on the part of the competent authority to call for an explanation failing which principles of natural justice has been violated and therefore, penalty imposed on the petitioner should be

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quashed. We find no merit in this contention because the order of suspension passed at the earlier stage has merged with the order of removing the petitioner from service. Therefore, in our opinion, this is too late in the day, to be now contended, that in the absence of an explanation having been called for from the Petitioner the order of suspension is illegal. Conceding for the sake of argument that some illegality has been committed at that stage, it has no bearing ^{on} ~~but~~ the penalty imposed over the Petitioner because of the conviction in a criminal charge. Rule 14 of the Railway Servant (Discipline and Appeal) Rules, 1968 runs thus;

"14. Special Procedure in certain cases:-

Notwithstanding anything contained in Rules 9 to 13 :-

(i) Where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) where the President is satisfied that in the interest of the security of the State it is not expedient to hold an inquiry in the manner provided in these rules;

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the Commission shall be consulted where such consultation is necessary before any orders are made in any case under this rule".

5. In the present case, we are concerned with the provisions contained in Rule 14 clause (1) quoted above.

Where any penalty is imposed on a Railway Servant on the

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ground of misconduct which has led to his conviction in a criminal charge, The Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit. The disciplinary authority vide Annexure 7 dated 15th March, 1989, stated that the Petitioner has been convicted by the Criminal courts and by the High Court of Orissa for having been found to be in unlawful possession of 'RAILWAY SAMPATI'. It is proposed to impose a penalty of removal from service and therefore, the petitioner was called upon to make a representation on the penalty proposed to be inflicted on him within fifteen days from the date of receipt of this Memorandum. There is no evidence placed before us as to whether any show cause was filed after Annexure 7 was issued. But the fact remains that due notice was given to the Petitioner and he must have either filed a show cause or he would have failed to file the show cause. In either case, the impugned order of removal from service was passed after giving due notice to the Petitioner and after he was called upon to file show cause if any. Thereafter, the competent authority considering the circumstances of the case ordered removal of the Petitioner from service invoking the provisions contained under Rule 14(1) of the Railway Servants (Discipline and Appeal) Rules, 1968. The relevant rules having been adhered to by the competent authority and principles of natural justice having been followed, we find no illegality to have been committed by the concerned authority and therefore, we find no merit in this application which

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stands dismissed leaving the parties to bear their own costs.

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MEMBER (ADMINISTRATIVE)

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5/11/93.

VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty.

