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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No. 362 of 1990.

Date of decision : April 29, 1992.

Gour Chandro Gantayat ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s. Gourishankar Rath,
P.K.Mishra &
S.K.Mishra, Advocates.

For the respondents ... Mr.L.Mohapatra,
Standing Counsel (Railways)

...

C O R A M :

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

A N D

THE HONOURABLE MR.C.S.PANDEY, MEMBER (ADMINISTRATIVE)

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1. Whether reporters of local papers maybe allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *NO*
3. Whether Their Lordships wish to see fair copy of the judgment ? Yes.

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J U D G M E N T

K. P. ACHARYA, VICE-CHAIRMAN, In this application under section 19 of the Administrative Tribunals Act, 1985, the order of punishment passed by the Competent authority contained in Annexure-13 ordering compulsory retirement of the applicant is under challenge.

2. Shortly stated, the case of the applicant is that while he was functioning as a Booking Clerk in the Sambalpur Railway Station there was a raid in the Booking Office and in an earthen pot inside the Booking Office a sum of Rs. 70/- was found and hence the applicant was charged with having violated Rule 3 of the Railway Services (Conduct) Rules. An enquiry was conducted and the applicant was punished in the terms stated above. Hence, this application

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with the aforesaid prayer.

3. In their counter, the respondents maintained that the case being devoid of merit is liable to be dismissed.

4. There was no appearance from the side of the applicant and we have heard Mr.L.Mohapatra, learned Standing Counsel (Railways), and we have perused the relevant documents with the assistance of Mr.Mohapatra. Law in the subject is well settled in the case of Union of India ~~vs.~~ Parma Nanda, reported in AIR 1989 SC 1185, wherein it has been held that the Tribunal can hear cases of this nature either exercising powers of a High Court in its writ jurisdiction or as a Civil Court. From the records we find that no witness was examined on behalf of the prosecution to substantiate ~~this~~ ^{if} case. This fact was rightly and fairly not disputed by Mr.Mohapatra. But Mr.Mohapatra submitted that there is no ground to disbelieve the case of the prosecution that Rs.70/- was recovered from the Office in which the applicant was functioning at the relevant time. Therefore, the punishment should not be unsettled. We are unable to agree with Mr.Mohapatra not only for the reason that no witness for the prosecution has been examined to substantiate the case of recovery but even though the recovery is conceded for the sake of argument, conclusive and conscious possession in respect of Rs.10/- on the part of the applicant must be proved with satisfactory evidence. Such evidence having been lacking on the side of the prosecution we are unable to contribute to the view that the prosecution has been successful in bringing home the guilt against the applicant who is hereby exonerated of the charges and stands ⁱⁿ

acquitted. Necessarily, the order of punishment compulsorily retiring the applicant is hereby set aside and the applicant is deemed to have been continuing in service with effect from the date he was compulsorily re-tired entitling him to all financial benefits which should be given to him within 90 days from the date of receipt of a copy of this judgment.

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

..... MEMBER (ADMINISTRATIVE)

VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
April 29, 1992/Sarangi.