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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 436 OF 2001
cuttack, this the 12th day of March, 2003.

UDAY SANKAR DAS.

....

Applicant.

Vrs.

UNION OF INDIA & ORS.

....

Respondents.

FOR INSTRUCTIONS

1. whether it be referred to the reporters or not? Yes.
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

Manoranjan Mohanty
12/03/03
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 436 OF 2001
Cuttack, this the 12th day of March, 2003.

C O R A M:-

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL).

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UDAY SANKAR DAS,
Aged about 43 years,
S/o. Motilal Das,
at present resident of
at New Rausapatna,
Po: Buxibazar,
Dist Cuttack and working
as photocopier,
Office of the Central Administrative Tribunal,
Cuttack Bench, Cuttack.

APPLICANT.

By legal practitioner: M/s. P. V. Ramdas,
P. V. B. Rao, ~~Advocates~~
Advocates.

:Versus:

1. Union of India represented through
Registrar, Central Administrative
Tribunal, Cuttack Bench, 4th floor,
Rajaswa Bhawan, Cuttack.
2. The Registrar,
Central Administrative Tribunal,
Cuttack Bench, 4th floor,
Rajaswa Bhawan, Cuttack.
3. Deputy Registrar,
Central Administrative Tribunal,
Cuttack Bench, 4th floor, Rajaswa Bhawan,
Cuttack.
4. The Vice-Chairman,
Central Administrative Tribunal,
Cuttack Bench, Cuttack.
5. The Chairman,
Central Administrative Tribunal,
Principal Bench, New Delhi.

By legal practitioner : Mr. A.K. Bose,
Senior Standing Counsel (Central) . . .

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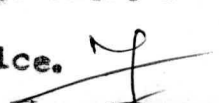
O R D E R

(ORAL)

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :

Shorn of unnecessary details, it would suffice to say that the Applicant, having been punished (in a disciplinary proceedings initiated against him under Rule-16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965) of reduction of his pay by two stages for a period of two years (w.e.f. 1.9.2000) by his disciplinary Authority (under Annexure-5 dated 30.08.2000) and the said punishment having been modified by the Appellate Authority (on consideration of the appeal Memo filed by the Applicant) to the extent that of "reduction of pay of the Applicant by one stage" instead of two stages for a period of two years (under Annexure-7 dated 16.11.2000) and the Revision preferred by the Applicant having been rejected and communicated to him (under Annexure-9 dated 22-02-2001) he has preferred this Original Application under section 19 of the Administrative Tribunals Act, 1985 challenging the said proceedings/punishment by branding the same as illegal, arbitrary, violative of the principles of natural justice and disproportionate to the gravity of the charges levelled against him.

2. Respondents have filed their reply counteracting the allegations urged by the Applicant and stating emphatically, that there was no violation of principles of natural justice.



3. Heard Mr. P. V. Ramdas, Learned Counsel appearing for the Applicant and Mr. A. K. Bose, Learned Senior Standing Counsel appearing for the Respondents and perused the materials placed on record of this case.

4. The sum and substance of the allegation levelled against the Applicant is that he travelled on L.T.C. on 18.6.2000; while not on leave and thereby he contravened Rule 7(2) of the CCS(LTC) Rules, 1988 and failed to maintain the absolute integrity and acted in a manner which is unbecoming of a Government servant attracting Rule (3) (1) (i) and (iii) of the CCS(CCA) Rules. To the said Memorandum of charges dated 04.08.2000 (under Annexure-1) the Applicant submitted his written statement of defence on 27.07.2000 (under Annexure-3) stating therein that he availed the L.T.C.; when he was granted the Spl. Casual Leave from 05.06.2000 to 09.06.2000; that, he returned to the head-quarters on 11.06.2000 and reported to duty on 12.06.2000; that, due to some unforeseen situation his wife and daughter could not come to Cuttack alongwith him and that they undertake their return journey on 18.06.2000. It was disclosed that as the wife of the Applicant had undergone a medical operation and developed some problem, it was not felt safe to travel alone and on receipt telephonic message on 17.06.2000 (SATURDAY), he had to undertake the journey to bring her and, ultimately, came back on 18.06.2000 alongwith other family members. It was the case of the Applicant that since 17.6.2000 was a holiday,

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there was no occasion on his part to take any permission to leave headquarters (from Cuttack to Kolkata).

5. On consideration of his reply, the disciplinary Authority imposed the order of punishment under Annexure-5 dated 30.08.2000 as aforesaid. In appeal, the Applicant had raised a point that in case the Appellate Authority is not satisfied about his statement, he may be allowed to face an enquiry under Rule 16(1) (A) after giving him all reasonable opportunities to defend his case. However, the Appellate Authority on consideration of the Appeal, passed the orders on (16.11.2000) holding that under Rule 16 of the CCS (CCA) Rules, there is no provision for making enquiry and, even if a delinquent is asked for the same, it is within the discretion of the disciplinary authority to take a view in one way or the other.

6. For an effective adjudication of the matter, Rule-6 of the CCS (CCA) Rules, 1965 is quoted herein below:-

***16. PROCEDURE FOR IMPOSING MINOR PENALTIES:-**

- (1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Govt. servant any of the penalties specified in clause (i) to (iv) of Rule-11 shall be made except after-
 - (a) informing the Govt. servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;
 - (b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

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- (c) taking the representation, if any, submitted by the Govt. servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;
- (d) record of finding on each imputation of misconduct or misbehaviour; and
- (e) consulting the commission where such consultation is necessary*.

7. The Hon'ble Supreme Court of India, while dealing with a matter of imposition of minor penalty under Rule-16 of CCS (CCA) Rules, 1965 in the case of O.K. BHARDWAJ VRS. UNION OF INDIA AND OTHERS (reported in 2002 SSC (L&S) 188) was pleased to observe as follows:-

* Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principles of natural justice and the said requirement cannot be dispensed with*.

(emphasis supplied).

SIR EDWARD COKE described requirements of natural justice as the duty to 'vacate, interrogate and adjudicate'. It has been said that;

Even God did not pass a sentence upon Adam, before he was called upon to make his defence (Cooper V. Wandsworth Board of Works) (1863 (14) ER 414).

The Hon'ble Supreme Court of India in the case of UNION OF INDIA AND OTHERS VRS. J. AHMED (reported in AIR 1979 SC 1022); while dealing with a similar situation with regard to *misconduct*; have held as under:-

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The inhibitions in the conduct Rules clearly provide that an act or omission contrary thereto so as to run counter to the expected code of conduct should certainly constitute misconduct. Some other act or omission may as well constitute misconduct. Lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would not themselves constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high.

(emphasis supplied)

8. Here in this instant case, the specific charge against the Applicant is that he did not take permission to leave headquarters and the Applicant specifically pointed out that since it was a holiday, on receipt of message, he travelled to Kalkota to bring his family. It was also his case that he neither neglected his duty nor defrauded the Govt. money; which he had taken for LTC. The Hon'ble Supreme Court in the case of BHAGAT RAM VRS. STATE OF HIMACHAL PRADESH AND OTHERS (reported in AIR 1983 SC 454) have observed as follows:-

"It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution".

Similarly in the case of B. C. CHATURVEDI VRS. UNION OF INDIA AND OTHERS (reported in AIR 1996 SC 484) it has been observed by the Apex Court as follows:-

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*Disciplinary Authority and, on appeal, the Appellate Authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof.

(emphasis supplied).

9. Lastly, it was also argued by the Learned Counsel for the Applicant that the order passed by the Revisional Authority is a non-speaking one and needs to be quashed on this score alone. It has also been brought to my notice by learned counsel for the Applicant that since this was the first incident in service career of the applicant, this punishment ought not to have been imposed on him ; more so there is no rule that a Govt. servant has to take permission if he leaves headquarters during holidays.

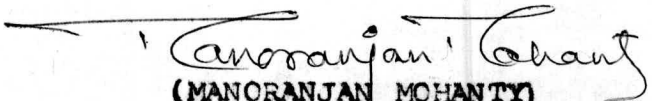
10. Considering all aspects of the matter, as aforesaid, I am of the opinion that the punishment imposed on the Applicant is/was disproportionate to the gravity of misconduct apart from being violative of principles of natural justice, in not conducting the enquiry ; when it was asked for by the Applicant. Therefore, the order of punishment, passed by the disciplinary Authority, Appellate Authority and Revisional Authority are hereby quashed. In order to

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shorten the litigation in the facts and circumstances of this case, instead of remitting back the matter to proceed against the Applicant for this minor lapses, the Applicant is hereby 'cautioned' for not committing such type of mistake in future. In the result, this original Application is allowed. No costs.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 12/03/03