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**(1996) 10 OHC CK 0010**

**In the Orissa High Court**

**Case No :** Original Jurisdiction Case No. 3033 of 1992

Madan Mohan Rout

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 03-10-1996

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (1997) 1 OLR 113

**Hon'ble Judges :** S. Chatterji, J; Dipak Misra, J

**Bench :** Division Bench

**Advocate :** B.K. Patnaik and R.C. Mohanty, for the Appellant; A.B. Misra, Senior Standing Counsel (Central), for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Dipak Misra, J.—In this writ application under Articles 226 and 227 of the Constitution, the petitioner challenges the order of dismissal passed by the disciplinary authority in Annexure-9, which has been affirmed by the appellate authority under Annexure-10 and confirmed by the revisional authority, [Annexure-1 (a)].

After stating details of charge, findings, submissions it is held :

6. We have perused the enquiry report, which has been filed as Annexure-8. The Enquiry Officer analysing the evidence recorded a finding that the delinquent was not involved in the theft. For the purpose of the said conclusion he has taken into consideration the statements of the witnesses and their inherent contradictions. We have noticed that the disciplinary authority has recorded a different opinion as far as the theft part is concerned. To justify his difference he has relied on the deposition of the delinquent and the evidence of PWs 1 and 2 who have categorically stated that they had seen the delinquent removing scrap aluminium through a drain. The disciplinary authority had analysed all the materials on record and rejected the defence plea that the delinquent employee was only

trying to restore the Articles into the general store when he was intercepted. This aspect has been disbelieved by the disciplinary authority and for the said conclusion he has referred to the statements made by PWs 1 and 2. The appellate authority has, in his own way, dealt with the contention raised by the petitioner. The revisional authority has passed an order observing that the charges framed against the delinquent has been clearly proved and the punishment imposed is commensurate with the gravity of the offence.

7. It is settled in law that when a disciplinary authority differs with the finding of the Enquiry Officer, he has to indicate reasons. In the present order, we find, for such difference, reasons have been indicated. It is not an order where the authority concerned has differed because of humour or fancy. He has referred to the deposition of the petitioner, the circumstances in which the gunny bags were carried by him and the evidence of PWs 1 and 2 who have categorically stated that they had seen the delinquent removing the scrap aluminium and taking the same outside the barbed wire fencing through a drain. He has also noted the discrepancies in the statements of these two witnesses. He has also discussed the plea of the delinquent which has weighed with the Enquiry Officer but the disciplinary authority has held that the name is not plausible. The reasons are in the realm of the appreciation of evidence on record. We are not persuaded to find any fault with the aforesaid order. The appellate authority while affirming the order of punishment has indicated his reasons in paragraph 4 of his order. That order shows clear application of mind. He has also indicated that the plea of the accused was an after-thought. While affirming, the appellate authority has given the reasons which are acceptable. It must be kept in mind that the appellate authority as well as the revisional authority had gone through the orders passed by the disciplinary authority and their orders clearly indicate proper application of mind. With our limited jurisdiction to scrutinise the decision-making process, we are unable to persuade ourselves to accept the contentions raised on behalf of the petitioner.

7. a. Sri Patnaik has addressed us with regard to the quantum of punishment. He has submitted with lucidity to arouse our mercy and discretion. He has simultaneously reminded us our jurisdiction to do complete justice. We are conscious that this Court can do complete justice, but the case must so deserve. We cannot shut our eyes to the fact that the petitioner was working as a Security Guard. On the proven facts, plain as day, the petitioner was instrumental in removal of some aluminium. His explanation has been rejected. He was the person to guard but not to steal. He was the person to take care not to clandestinely throw away. He was the person who was required to maintain the sanctity of his post and not to sacrifice at the altar of his avarice.

Recently in the case of Surendra Kumar Barik v. Commandant, CISF, Rourkela Steel Plant and others : 82 (1995) CLT 499. one of us (Hon"ble Susanta Chatterji, J.) speaking for the Court expressed thus:

"On perusal of the materials, the Court asks itself to receive response of the

judicial conscience. The petitioner was appointed as a Security Guard and was promoted as a Lance Naik. He was found guilty of the charge leveled against him. Here is a case where the RAKSHAK became the VAKSHAK (BHAKSHAK). Due to this he has been dismissed from service. Is this punishment really shocking? After searching thoroughly and applying all reasons from head and all compassion from heart, the Court cannot reconcile with the position. May be as a common man the Court may think of pardoning the petitioner, but sitting in this office with responsibility, the Court does not find any irregularity, or illegality in the matter nor the petitioner deserves any sympathy by call of judicial conscience. On that score, the Court is not inclined to interfere in the matter."

Quoted from the placitum

8. Thus, we are of the considered view that the punishment imposed by the disciplinary authority is not disproportionate to the offence committed.

9. In the result, the writ application fails and is dismissed accordingly. However, there shall be no order as to costs.

S. Chatterji, J.

10. I agree.