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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.40736 of 2021

Jaya Chandra Mishra ... ***Petitioner***

Mr. Jaya Chandra Mishra, (In person)

-versus-

Union of India & others ... ***Opp. Parties***

Mr. P.K. Parhi, DSGI

along with Mr. S.K. Samantray, CGC

CORAM:
HON'BLE MR. JUSTICE KRISHNA S. DIXIT
HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Hearing: 24.06.2026
Date of Judgment: 06.07.2026

Chittaranjan Dash, J.

1. This Writ Petition is directed against the judgment and order dated 29.10.2021 passed by the learned Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 643 of 2019, whereby the learned Tribunal dismissed the Original Application filed by the Petitioner and declined to interfere with the orders passed by the Railway authorities in connection with the disciplinary proceedings initiated against him.

2. The fact matrix of the case, as recapitulated from the Writ Petition, is that the Petitioner joined the services of the South Eastern Railway as an Assistant Station Master in the year 1984. In the course of service, he earned promotion to the post of Station Master in the year 1987 and thereafter to the post of Deputy Station Superintendent in the year 1999. While discharging his duties in the said capacity, the

Petitioner met with an accident on 09.12.1999 and suffered amputation of his right leg below the knee. Following medical treatment and fitting of an artificial limb, he was medically decategorised and came to be accommodated in the post of OS-II. Ultimately, he was posted as Chief Office Superintendent in the Operating Department under the Divisional Railway Manager, Sambalpur, East Coast Railway.

While so continuing, the Petitioner was transferred from Sambalpur to Titlagarh by order dated 28.03.2008. Assailing the said transfer, he approached the Central Administrative Tribunal, Cuttack Bench, in O.A. No.197 of 2008. An interim order having been granted in his favour, the Petitioner continued at Sambalpur. The Original Application was eventually disposed of on 27.07.2009 with a direction to the competent authority to consider the claim of the Petitioner for retention at Sambalpur in the light of the DoP&T Office Memorandum dated 10.05.1990 concerning transfer of employees suffering from disabilities. Pursuant thereto, the competent authority considered the matter but declined the request of the Petitioner and maintained the order of transfer. The challenge carried further by the Petitioner before the higher authority also did not meet with success.

The Petitioner asserts that on 12.10.2009 he applied for casual leave for two and a half days for attending to his aged mother at his native place and thereafter sought grant of leave on average pay for a further period of twenty days on account of her deteriorating health condition. According to him, the said request was also communicated through telegram. However, upon his reporting back, he found that the leave sought for had not been sanctioned and that he had been treated as

unauthorisedly absent from duty. Thereafter, a memorandum dated 05.11.2009 proposing initiation of major penalty proceedings came to be issued alleging unauthorised absence from duty during the period from 12.10.2009 to 04.11.2009.

In the meantime, the Petitioner challenged the order passed in O.A. No.197 of 2008 as well as the proceedings arising therefrom before this Court in W.P.(C) No.3514 of 2010. According to the Petitioner, by virtue of the interim orders passed therein, he continued to remain at Sambalpur. Simultaneously, the disciplinary proceedings initiated pursuant to the charge memorandum dated 05.11.2009 progressed. An Inquiry Officer was appointed and, eventually, the enquiry culminated in findings adverse to the Petitioner. The disciplinary authority, by order dated 15.10.2012, imposed the penalty of removal from service. The appeal preferred by the Petitioner under the Railway Servants (Discipline and Appeal) Rules also came to be dismissed. Thereafter, in revision, the penalty was modified from removal from service to compulsory retirement.

Questioning the orders passed by the disciplinary, appellate and revisional authorities and seeking various consequential service benefits, the Petitioner approached the Central Administrative Tribunal, Cuttack Bench, by filing O.A. No.643 of 2019. The learned Tribunal, upon consideration of the rival pleadings and materials on record, dismissed the Original Application by judgment and order dated 29.10.2021. Aggrieved thereby, the Petitioner has instituted the present Writ Petition.

3. Mr. Jaya Chandra Mishra, appearing in person, assailed the impugned judgment of the learned Central Administrative Tribunal as being contrary to the facts on record and the settled principles governing disciplinary proceedings. It was contended that though the penalty of compulsory retirement has ultimately been imposed upon him, he has not been extended any terminal benefits, including pensionary dues, till date. It was further submitted that on the date of imposition of punishment, the Petitioner still had about seven years of service left and has, during the pendency of the present proceeding, attained the age of superannuation. Elaborating his challenge, the Petitioner submitted that the learned Tribunal failed to appreciate the procedural irregularities which vitiated the disciplinary proceeding. According to him, the enquiry was conducted ex parte without affording him an effective opportunity of participation and the disciplinary authority proceeded to impose punishment without duly considering his defence. It was further contended that the learned Tribunal failed to examine whether the punishment imposed was proportionate to the nature of the charge, particularly when the Petitioner had rendered more than twenty-eight years of service without any blemish prior to the initiation of the disciplinary proceeding.

The principal plank of the Petitioner's argument was that the very foundation of the charge was unsustainable in law. It was submitted that the Petitioner had duly applied for casual leave as well as leave on average pay on account of the deteriorating health condition of his aged mother and had duly intimated the competent authority in that regard. Merely because the leave was not sanctioned, the same would not ipso facto render his absence wilful. According to the

Petitioner, neither the Inquiry Officer nor the disciplinary authority recorded any finding that his absence from duty was deliberate or wilful. In the absence of such a finding, it was argued, unauthorised absence by itself could not constitute misconduct warranting a major penalty. Reliance was placed on the principle that unless the absence is found to be wilful and devoid of any reasonable explanation, the same cannot be treated as misconduct attracting the rigours of disciplinary action. It was further urged that even assuming the allegation of unauthorised absence for about twenty-two and a half days to be correct, the punishment imposed is shockingly disproportionate to the charge levelled against the Petitioner. Emphasis was laid on his long and otherwise unblemished service career, his physical disability suffered in the course of employment, and the absence of any previous misconduct. On the aforesaid premises, the Petitioner prayed for setting aside the judgment of the learned Tribunal as well as the consequential orders passed by the disciplinary authorities.

4. Per contra, Mr. P.K. Parhi, learned Deputy Solicitor General of India appearing for the Opp. Parties, supported the judgment of the learned Tribunal. He submitted that the conduct of the Petitioner throughout revealed a persistent attempt to avoid compliance with the transfer order issued in his favour and to thwart the administrative decisions of the Railway authorities. According to the Opp. Parties, from the time the Petitioner was transferred to Titlagarh, he resorted to multiple proceedings before different forums questioning the transfer order and, by virtue of interim orders obtained therein, continued at Sambalpur without joining at the transferred place of posting.

Learned DSGI further submitted that adequate and repeated opportunities were afforded to the Petitioner at every stage of the disciplinary proceeding. However, instead of participating in the enquiry and defending himself on merits, the Petitioner repeatedly questioned the competence of the authorities, challenged interlocutory decisions before different forums and ultimately abstained from the enquiry proceedings. It was contended that despite the best efforts of the disciplinary authority to secure his participation and accommodate his grievances, the Petitioner remained uncooperative, compelling the authorities to proceed ex parte in accordance with law. It was further argued that the disciplinary authority, the appellate authority, the revisional authority as well as the learned Tribunal have concurrently recorded findings against the Petitioner upon due consideration of the materials available on record. Such findings, being neither perverse nor unsupported by evidence, do not warrant interference in exercise of writ jurisdiction. Learned DSGI submitted that having regard to the nature of duties discharged by employees of the Railways, where discipline and devotion to duty are of paramount importance, unauthorised absence cannot be lightly viewed. It was, therefore, contended that the penalty imposed upon the Petitioner is commensurate with the misconduct proved against him and cannot be characterised as disproportionate. On the aforesaid premises, learned DSGI prayed for dismissal of the Writ Petition.

5. Heard the Parties at length and perused materials placed on record.

Whether the misconduct of unauthorised absence stood established in the absence of a finding that the Petitioner's absence was wilful?

6. The charge against the Petitioner emanates from his absence from duty during the period from 12.10.2009 to 04.11.2009. The record reveals that prior to proceeding on leave, the Petitioner had applied for casual leave and subsequently sought sanction of leave on account of the deteriorating health condition of his aged mother. It is also not in dispute that the leave sought for by the Petitioner was not sanctioned by the competent authority and that the said period was ultimately treated as unauthorised absence, forming the foundation of the disciplinary proceeding.

7. At the outset, it needs to be emphasised that non-sanction of leave and wilful absence from duty are not synonymous expressions. Merely because leave sought for by an employee is declined or remains unsanctioned, it does not inexorably follow that the employee's absence thereafter becomes deliberate, contumacious or wilful. The disciplinary authority is still required to examine the explanation furnished by the employee and arrive at a definite conclusion as to whether the absence was intentional and without any justifiable cause. The refusal of leave may establish the factum of unauthorised absence; however, it does not by itself establish the misconduct flowing from such absence. The distinction assumes significance in the facts of the present case. Throughout the disciplinary proceeding, the Petitioner's explanation remained consistent. According to him, he was constrained to remain away from duty owing to the serious illness of his mother, who required his personal attendance and medical care. Significantly,

neither the enquiry report nor the consequential orders record any finding that the explanation furnished by the Petitioner was false, fabricated or lacking in bona fides. The charge was essentially sustained on the premise that the leave sought for by him had not been sanctioned and that he nevertheless remained absent from duty.

8. The legal position governing the issue is no longer res integra. In ***Krushnakant B. Parmar vs. Union of India and Another*, (2012) 3 SCC 178**, the Hon'ble Supreme Court has held as follows:

> "16. The question whether `unauthorised absence from duty' amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.
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> 17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be wilful.
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> 18. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.
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> 19. In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct.
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> 20. In the present case the Inquiry Officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold the absence is wilful; the disciplinary authority as also the Appellate Authority, failed to appreciate the same and wrongly held the appellant guilty.
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> 21. The question relating to jurisdiction of the Court in judicial review in a Departmental proceeding fell for

consideration before this Court in M.B. Bijlani vs. Union of India and others reported in (2006) 5 SCC 88 wherein this Court held:

"It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

22. In the present case, the disciplinary authority failed to prove that the absence from duty was wilful, no such finding has been given by the Inquiry Officer or the Appellate Authority. Though the appellant had taken a specific defence that he was prevented from attending duty by Shri P. Venkateswarlu, DCIO, Palanpur who prevented him to sign the attendance register and also brought on record 11 defence exhibits in support of his defence that he was prevented to sign the attendance register, this includes his letter dated 3rd October, 1995 addressed to Shri K.P. Jain, JD, SIB, Ahmedabad, receipts from STD/PCO office of Telephone calls dated 29th September, 1995, etc. but such defence and evidence were ignored and on the basis of irrelevant fact and surmises the Inquiry Officer held the appellant guilty."

9. The Hon'ble Apex Court in the above decision has observed that where compelling circumstances render it difficult or impossible for an employee to report for duty, the absence cannot ipso facto be treated as misconduct. It was further held that in a disciplinary proceeding founded on unauthorised absence, the disciplinary authority is required to establish that the absence was wilful and, in the absence

of such a finding, the charge of misconduct cannot be sustained. Applying the aforesaid principle to the facts of the present case, we find that neither the Inquiry Officer nor the disciplinary authority recorded any finding that the Petitioner's absence was deliberate or wilful. What emerges from the record is merely a conclusion that the Petitioner remained absent despite non-sanction of leave. While such conduct may expose an employee to disciplinary scrutiny, the authorities were nonetheless required to undertake the further exercise of examining whether the circumstances pleaded by the Petitioner furnished a reasonable explanation for his absence and whether such absence was intentional and devoid of justification. That exercise is conspicuously absent in the present case.

10. That said, the aforesaid circumstances cannot substitute the foundational requirement of proving the misconduct alleged. The existence of disputes between the Parties or the Petitioner's litigious approach could not relieve the disciplinary authority of its obligation to determine whether the absence constituting the charge was wilful. The issue before the disciplinary authority was not whether the Petitioner had been difficult in his dealings with the administration, but whether the particular absence which formed the subject matter of the charge was deliberate and intentional. On that aspect, the findings are conspicuously silent.

11. In such view of the matter, we hold that the finding of misconduct recorded against the Petitioner, insofar as it proceeds on the basis of unauthorised absence without a corresponding finding of wilfulness, does not satisfy the test laid down by the Hon'ble Supreme

Court in ***Krushnakant B. Parmar*** (supra). The learned Tribunal, while affirming the action of the disciplinary authority, also failed to examine this crucial distinction between unauthorised absence and wilful absence, which goes to the very root of the matter.

Whether the penalty of compulsory retirement satisfies the doctrine of proportionality?

12. Even assuming that the charge against the Petitioner stood proved, and having regard to the elaborate submissions advanced by the Parties on the nature and nature of punishment imposed, as well as the fact that the learned Tribunal has affirmed the same, we consider it appropriate to examine whether the penalty ultimately inflicted upon the Petitioner withstands scrutiny on the touchstone of the doctrine of proportionality, which is now firmly entrenched in administrative and service jurisprudence.

13. It is well settled that in matters arising out of disciplinary proceedings, the scope of judicial review does not ordinarily extend to substituting the decision of the disciplinary authority with that of the Court. The disciplinary authority is generally regarded as the best judge of the requirements of discipline in service and the appropriate punishment to be imposed upon a delinquent employee. Nevertheless, where the punishment imposed is so disproportionate to the gravity of misconduct proved in the exercise of discretion, judicial intervention becomes permissible.

14. The doctrine of proportionality, which has now become an integral facet of judicial review in administrative law, traces its origin

to the principle of Wednesbury unreasonableness. While the traditional test examined whether a decision was so unreasonable that no reasonable authority could have arrived at it, the doctrine of proportionality permits a deeper scrutiny into whether the decision-maker has struck a proper balance between the misconduct proved and the consequences flowing therefrom. In ***Chairman, All Railway Recruitment Board vs. K. Shyam Kumar,*** **(2010) 6 SCC 614**, the Hon'ble Supreme Court, while tracing the development of the doctrine in English and Indian administrative law, observed that proportionality requires the reviewing Court to examine not merely whether the decision is reasonable, but also whether the balance struck by the authority is commensurate with the competing interests involved. The Court held as follows:

> 17. Ground of irrationality takes in Wednesbury unreasonableness propounded in Associated Provincial Picture Houses Limited v. Wednesbury Corporation (1947)2 All ER 680, Lord Greene MR alluded to the grounds of attack which could be made against the decision, citing unreasonableness as an `umbrella concept' which covers the major heads of review and pointed out that the court can interfere with a decision if it is so absurd that no reasonable decision maker would in law come to it. In GCHQ Case (supra) Lord Diplock fashioned the principle of unreasonableness and preferred to use the term irrationality as follows:
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> > "By `irrationality' I mean what can now be succinctly referred to as "Wednesbury's unreasonableness", ... It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."
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> 18. In R. v. Secretary of State for the Home Department ex parte Brind (1991) 1 All ER 720, the House of Lords re-examined the reasonableness of the exercise of the Home

Secretary's discretion to issue a notice banning the transmission of speech by representatives of the Irish Republican Army and its political party, Sinn Fein. Court ruled that the exercise of the Home Secretary's power did not amount to an unreasonable exercise of discretion despite the issue involving a denial of freedom of expression. House of Lords however, stressed that in all cases raising a human rights issue proportionality is the appropriate standard of review. The House of Lords in R (Daly) v. Secretary of State for the Home Department (2001) 2 AC 532 demonstrated how the traditional test of Wednesbury unreasonableness has moved towards the doctrine of necessity and proportionality. Lord Steyn noted that the criteria of proportionality are more precise and more sophisticated than traditional grounds of review and went on to outline three concrete differences between the two:-

> (1) Proportionality may require the reviewing Court to assess the balance which the decision maker has struck, not merely whether it is within the range of rational or reasonable decisions.
>
> (2) Proportionality test may go further than the traditional grounds of review in as much as it may require attention to be directed to the relative weight accorded to interests and considerations.
>
> (3) Even the heightened scrutiny test is not necessarily appropriate to the protection of human rights.

19. Lord Steyn also felt most cases would be decided in the same way whatever approach is adopted, though conceded for human right cases proportionality is the appropriate test.

20. The question arose as to whether doctrine of proportionality applies only where fundamental human rights are in issue or whether it will come to provide all aspects of judicial review. Lord Steyn in R. (Alconbury Development Limited) v. Secretary of State for the Environment, Transport and the Regions (2001) 2 All ER 929 stated as follows:-

> "I consider that even without reference to the Human Rights Act, 1998 the time has come to recognize that this principle (proportionality) is part of English administrative law not only when Judges are dealing with Community acts but also when they are dealing with acts subject to domestic law. Trying to keep the

> Wednesbury principle and proportionality in separate compartments seems to me to be unnecessary and confusing".

15. More recently, in ***Punjab & Sind Bank vs. Raj Kumar*, 2026 LiveLaw (SC) 322**, the Hon'ble Supreme Court, upon an exhaustive consideration of the earlier authorities including ***Ranjit Thakur vs. Union of India*, (1987) 4 SCC 611**, ***Om Kumar vs. Union of India*, (2001) 2 SCC 386**, ***State of Gujarat vs. Anand Acharya*, (2007) 9 SCC 310 and *S.R. Tewari vs. Union of India*, (2013) 6 SCC 602,** reiterated that although Courts must exercise restraint while interfering with disciplinary punishments, intervention would be warranted where the punishment is strikingly disproportionate to the gravity of the misconduct proved. The Hon'ble Supreme Court observed:

> "9. What follows from the precedents noted above is that courts should exercise restraint while interdicting orders of punishment. Normally, no court in exercise of its power of judicial review should interfere with an order of punishment imposed on a delinquent as a measure of disciplinary action by the competent authority and substitute its own judgment for that of the former. This is premised on the reason that the disciplinary authority is the best judge of the situation, and the requirements of maintaining discipline within the work force. While it is not the law that the courts should invariably stay at a distance when legality and/or propriety of a particular punishment is questioned, judicial scrutiny of the disciplinary action by way of punishment could arise only if the circumstances are such that no reasonable person would impose the punishment which is questioned and/or such punishment has the effect of shocking the conscience of the court. To put in simpler words, interference could be warranted if it appeals to the court that the disciplinary authority has 'used a sledgehammer for cracking a nut'. A punishment, which is strikingly or shockingly disproportionate and is not commensurate with the gravity of misconduct, proved to have been committed in course of

inquiry or otherwise, would border on arbitrariness and offend Article 14 of the Constitution.

10. Where a court, upon due consideration, arrives at the conclusion that the punishment imposed is disproportionate, its intervention is circumscribed in nature. Judicial scrutiny and interference, if at all, has to be based on reasons in support of the court's ultimate satisfaction that the disciplinary authority has faltered in the exercise of his discretion. In such a situation, the court may adopt one of two courses: it may remit the matter to the competent authority for reconsideration of the punishment; or, in the rarest of cases, it may substitute the punishment while supporting such a course with cogent reasons"

16. Bearing the aforesaid principles in mind, the facts of the present case assume significance. The misconduct attributed to the Petitioner is unauthorised absence from duty for a period of approximately twenty-two and a half days. The record does not disclose any allegation of dishonesty, moral turpitude, financial irregularity, corruption, insubordination resulting in loss to the administration or any conduct prejudicial to public interest. The charge is confined solely to absence from duty during the aforesaid period.

17. Equally relevant is the fact that the Petitioner had served the Railway administration for nearly twenty-eight years prior to initiation of the disciplinary proceeding. During such long tenure, no material has been brought to our notice indicating any previous misconduct of comparable gravity. The record further reveals that the Petitioner was a person who had suffered permanent physical disability during service consequent upon an accident and was thereafter functioning with an artificial limb. The explanation furnished by him for remaining away from duty was that he had to attend to his seriously ailing mother, who required constant care and medical attention. As already noticed

hereinbefore, the bona fides of such explanation were never disbelieved by the disciplinary authority.

18. We are not oblivious to the submission advanced on behalf of the Opp. Parties that the Petitioner's overall conduct during the relevant period was far from satisfactory. The materials on record indicate that, following his transfer, the Petitioner engaged the administration in multiple rounds of litigation concerning his transfer and other service matters and repeatedly questioned or challenged the actions and competence of the authorities at different stages. While an employee aggrieved by an administrative action is undoubtedly entitled to avail of remedies recognised by law, persistent diversion of attention to collateral disputes and repeated challenges to every administrative step seldom advance the substantive grievance and often impede an expeditious resolution of the core dispute. The record does suggest that the Petitioner's approach contributed, at least in part, to the prolongation of the controversy, and such conduct cannot receive the imprimatur of this Court. Nevertheless, even after viewing the Petitioner's conduct in the least favourable light and taking the same at its highest against him, the question that still falls for consideration is whether the extreme penalty of compulsory retirement can reasonably be regarded as commensurate with the nature and gravity of the charge ultimately proved.

19. In our considered view, the answer must be in the negative. The punishment imposed bears little proportion to the misconduct alleged. The authorities appear to have treated the Petitioner's absence as an infraction warranting the severest possible civil consequences short of

dismissal or removal. Such an approach overlooks not only the surrounding circumstances under which the absence occurred but also the Petitioner's long tenure of service, his physical condition and the absence of any finding that his conduct was actuated by deliberate defiance of authority. The resultant punishment, therefore, travels beyond the realm of disciplinary correction and enters the domain of disproportionality.

20. Applying the principles enunciated by the Hon'ble Supreme Court in ***K. Shyam Kumar*** (supra), ***Raj Kumar*** (supra) and the authorities noticed therein, we are satisfied that the penalty imposed upon the Petitioner is one which no reasonable disciplinary authority, properly directing itself to the relevant facts and circumstances, would have considered commensurate with the gravity of the misconduct alleged. The punishment, therefore, cannot withstand judicial scrutiny.

21. Ordinarily, upon finding fault with the punishment imposed in a disciplinary proceeding, the matter would be remitted to the competent authority for reconsideration of the quantum of punishment. However, the power of remand is not an invariable rule and must yield where its exercise would serve no useful purpose.

22. The present case arises out of disciplinary proceedings initiated more than sixteen years ago. The Petitioner has already crossed the age of superannuation and has remained embroiled in litigation for a considerable part of his service career and thereafter. At this distant point of time, relegating the Parties to another round of proceedings before the disciplinary authority would neither advance the cause of justice nor serve the interests of administrative efficiency. We are also

mindful of the fact that the Petitioner cannot be completely absolved of blame. The record demonstrates that he repeatedly engaged the administration in successive rounds of litigation and often allowed ancillary disputes to overshadow the principal controversy. Such conduct undoubtedly contributed to the prolongation of the dispute and cannot be ignored while moulding the relief.

23. Nevertheless, for the reasons already recorded, we are satisfied that the punishment of compulsory retirement imposed upon the Petitioner is disproportionate to the misconduct alleged and cannot be sustained in law. Consequently, the judgment and order dated 29.10.2021 passed by the learned Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.643 of 2019, as well as the consequential orders affirming the penalty of compulsory retirement, are hereby set aside.

24. Having regard to the peculiar facts and circumstances of the case, particularly the long lapse of time, the Petitioner's attainment of the age of superannuation and his own contribution to the prolongation of the litigation, we do not consider it appropriate to direct full back wages. Instead, the Petitioner shall be entitled to 50% of the back wages for the period commencing from the date of compulsory retirement till the date on which he would have ordinarily attained the age of superannuation.

25. The Opp. Parties are further directed to treat the Petitioner as having continued in service till his normal age of superannuation for the limited purpose of computation of retiral and pensionary benefits. The requisite pension, gratuity and all other admissible terminal dues shall

be recalculated accordingly and released in favour of the Petitioner within a period of sixty days from the date of communication of this judgment.

26. The Writ Petition is, accordingly, allowed with the aforesaid directions.

(Chittaranjan Dash)
Judge

(Krishna S. Dixit)
Judge

Bijay/Sarbani