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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.59 OF 1993

Cuttack, this the 27th day of November, 1998
Prafulla Chandra Pattanaik Applicant

Vrs.

Union of India and another 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.*

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN *27.11.98*

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.59 OF 1993
Cuttack, this the 27th day of November, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Prafulla Chandra Pattanaik,
E.D.B.p.M., Jadupur (POD),
Via-Marshaghai, P.S-Marshaghai,
Dist.Cuttack

Applicant

By the Advocates - M/s A.Routray,
S.Mohanty, S.Misra
D.Lenka

Vrs.

1. Union of India, represented through
its Secretary,
Ministry of Communication,
Department of Posts, New Delhi.
2. Superintendent of Post Offices,
Cuttack North Division,
Cuttack

....Respondents

By the Advocate - Mr.Ashok Mishra,
Senior Panel Counsel.

ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for quashing the order dated 3.2.1992 at
Annexure-2 and another order of the same date at
Annexure-3 directing denovo enquiry into the allegations
against the petitioner and appointing Sub-Divisional
Inspector (P), Kendrapara, as the Inquiring Authority.
The second prayer is that even though the earlier
Inquiring Officer has submitted a report on 15.5.1991 no

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action has been taken and therefore, the petitioner should be exonerated from the charges levelled against him.

2. The case of the petitioner is that while he was working as E.D.B.P.M. at Jadupur Branch Post Office, charges were framed against him in letter dated 25.5.1989. One Shri K.C.Majhi, S.D.I.(P), Kendrapara was appointed as Inquiring Officer and Shri N.C.Das, S.D.I.(P), Salipur, was appointed as Presenting Officer. The enquiry was conducted on different dates from February 1991 to April 1991 and the enquiry was completed on 13.4.1991. In course of enquiry, prosecution examined six witnesses (S.W.1 to S.W.6). Defence examined one witness as D.W.1. At least ten documents were exhibited. The Inquiring Officer submitted his report on 15.5.1991 and the copy was made available to the petitioner on 10.7.91 for making his submission. Copy of the submission made by the petitioner is at Annexure-1 in which he stated that he is completely innocent and he should be taken back in service. The petitioner has stated that the Inquiring Officer found all the charges as not proved. While the matter stood as such, respondent no.2 in his order dated 3.2.1992 ordered for a *de novo* enquiry from the stage of examination of witnesses. One N.C.Bhera, S.D.I.(P), Kendrapara, was appointed as Inquiring Officer and Shri N.C.Das, S.D.I.(P), Salipur, as Presenting Officer. It is also submitted that the Inquiring Officer had fixed the date for examination of witnesses on 10.2.1993. The applicant has also stated that respondent no.2 put pressure on the Inquiring Officer to get the charges against the petitioner proved. In view of this, the applicant has come up in this petition with the

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aforesaid prayers. On the date of admission of the application on 17.2.1993 the denovo enquiry was stayed till 25.3.1993.

3. The respondents in their counter have pointed out that after the report of enquiry was received, the disciplinary authority after examining the enquiry report ordered denovo enquiry on two grounds. Firstly, the signature of SW 1 was not taken in the enquiry, and secondly, in the ordersheet of 20.3.1991 it has been noted that the examination of S.W.1 was incomplete. Because of these two defects, denovo enquiry has been ordered. It is further stated that the disciplinary authority is legally competent to order denovo enquiry. In view of this, the respondents have opposed the prayers of the petitioner.

4. We have heard Shri A.Routray, the learned counsel for the petitioner and Shri Ashok Mishra, the learned Senior Panel Counsel appearing for the respondents, and have also perused the records.

5. The learned lawyer for the petitioner has submitted that according to the counter of the respondents themselves denovo enquiry has been ordered only on two grounds. The first ground is that SW 1 has not signed the statement given by him. It is submitted by the learned counsel for the petitioner that he ^{the applicant} undertakes that / will not object to the Inquiring Officer and the Disciplinary Authority taking into consideration the evidence of SW 1 merely on the ground that SW 1 has not signed his statement before the Inquiring Officer. Therefore, this ground for ordering denovo enquiry is not tenable. As regards the second ground mentioned in the counter of the respondents and referred to by us earlier, it is submitted by the

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learned counsel for the petitioner that SW 1 has actually been cross-examined by the petitioner after his examination was over and merely because in the ordersheet it has been allegedly written that the examination of SW 1 is incomplete, the case should not have been remanded for *denovo* enquiry.

6. We have considered the submissions of the learned counsel for the petitioner. Under the Rules, the disciplinary authority is not bound to accept the findings of the Inquiring Officer. He is entitled to give his own finding different from the finding arrived at by the Inquiring Officer. But in that event, he has to communicate the reasons for his disagreement to the applicant and ask him to show cause. In the present case, according to the counter of the respondents, *denovo* enquiry has been ordered only on two grounds referred to earlier and in the light of the submissions made by the learned counsel for the petitioner, these grounds are no longer subsisting. We also note that in this case, chargesheet was issued on 25.5.1989, i.e., more than nine years ago. In view of this, we quash the order for holding *denovo* enquiry and direct respondent no.2 to take further action on the enquiry report submitted on 15.5.1991. We, however, make it clear that ~~under~~ the Disciplinary Authority is not bound to accept ^{the} findings of the Inquiring Officer and he is free to come to his own finding giving his reasons and through a speaking order to be communicated to the applicant.

7. With the above direction and observation, the Original Application is disposed of but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 27.11.98