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V
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 753 OF 1995
Cuttack, this the 26th day of November, 1999

Sri Suresh Chandra Dakua Applicant

Vrs.

Union of India and others 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

26.11.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Sri Suresh Chandra Dakua, aged about 37 years, son of Sri Trinath Dakua, At-Gundurisahi, PO-Kadua, Via-Jagannath Prasad, District-Ganjam, at present working as Postal Assistant, Balipadar Sub-Post Office, At/PO-Balipadar, District-Ganjam
Applicant

Advocates for applicant - M/s B.S.Tripathy
A.Deo
P.Panda
D.K.Sahoo
M.P.J.Ray
R.Rath
P.K.Misra
K.N.Misra

Vrs.

1. Union of India, represented by its Secretary, Department of Post, Dak Bhavan, New Delhi.
2. Chief Post Master General,Orissa Circle, At/PO-Bhubaneswar,District-Khurda.
3. Director, Postal Services, Berhampur Region, At/PO-Berhampur, District-Ganjam.
4. Superintendent of Post Offices, Aska Division, Aska, At/PO-Aska, District-GanjamRespondents

Advocate for respondents - Mr.B.Dash
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 11.11.1993 of the appellate authority reopening the disciplinary proceeding against him and the chargesheet dated 22.5.1995 at Annexure-5 issued in response to the order of the appellate authority. Facts of this case fall within a

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small compass and can be briefly stated.

2. The applicant is a Postal Assistant. In Memo dated 26.6.1992 at Annexure-1 major penalty proceeding under Rule 14 of CCS (CCA)Rules was initiated against him. The charge was that he was a candidate for the examination for promotion to the cadre of IPO/IRM. While answering Paper III in the said examination on 25.6.1991 he had resorted to unfair means by keeping in his possession Swamy's Pension Rules, Made Easy, which he was not authorised to keep and thereby he had acted in a manner which was unbecoming of a Government servant. An inquiring officer was appointed who submitted his report. Superintendent of Post Offices, aska Division (respondent no.4) who is the disciplinary authority, accepted the finding of the inquiring officer holding that the charge has not been proved and fully exonerated the applicant of the charge. This order of the disciplinary authority is at Annexure-2. Thereafter Director, Postal Services, Berhampur Region (respondent no.3) in his impugned order dated 11.11.1993 (Annexure-3) set aside the order of exoneration in exercise of power under Rule 29(1)(v) of the CCS (CCA) Rules, 1965 and ordered for reopening of the proceeding against the applicant from the stage of issue of chargesheet. The two reasons given in the order at Annexure-3 for reopening the proceeding are that Shri A.K.Das, Assistant Post Master General (Vigilance), office of Chief Post Master General, Bhubnaeswar, who actually detected the case in the examination hall was neither cited in the article of charge nor in the list of witnesses. Therefore, the article of charge contained an inherent lacuna. The second ground was that before finalisation of the case the Superintendent of Post Offices had not served a copy of the report of the inquiring officer on the delinquent officer. Against the

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order of the appellate authority the applicant preferred a representation to the Member, Postal Board, which is at Annexure-4 and which is still pending. During pendency of his representation another chargesheet dated 22.5.1995 at Annexure-5 has been issued against him and that is how he has come up in this petition with the prayers referred to earlier.

3. By way of interim relief, the applicant had prayed that the orders at Annexures 3 and 5 should be stayed during the pendency of this O.A. On the date of admission on 20.12.1995 orders at Annexures 3 and 5 have been stayed and the stay order has continued till date.

4. The respondents in their counter have stated that the applicant appeared at the departmental examination for promotion from Postal Assistant to the cadre of Inspectors at Berhampur Centre during the period from 24.6.1991 to 26.6.1991. Senior Superintendent of Post Offices was the Centre Superintendent for conducting the examination. On 25.6.1991 Shri A.K.Das, APMG (Vigilance) from the office of Chief Post Master General, Orissa, Bhubaneswar, visited the examination hall and found one Swamy's book containing some informations relating to Pension Rules in possession of the applicant. He directed to seize the answer papers of the applicant as he had adopted unfair means in violation of the examination rules and instructions. Thereafter the Senior Superintendent of Post Offices, Berhampur Division, prepared draft chargesheet and forwarded the same to the Superintendent of Post Offices, Aska Division, under whom the applicant was then working, to take disciplinary action against

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him. In order dated 23.8.1993 the applicant was exonerated of the charge. The Director, Postal Services, the appellate authority, in exercise of his power under Rule 29 of CCS (CCA) Rules remitted the matter to the disciplinary authority with a direction to reopen the case from the stage of issue of chargesheet as he found that the enquiry suffered from inherent lacuna. Accordingly, chargesheet under Annexure-5 has been issued. It is stated that the applicant has preferred an appeal to the Member(Personnel), Postal Board, which is still pending. The respondents have stated that the Director, Postal Services, being the appellate authority, has exercised his power under Rule 29(1)(v) of the CCS(CCA) Rules and no illegality has been committed by directing the disciplinary authority to initiate a denovo proceeding. It is also stated that a bare reading of Rule 29 would show that the power of revision/remand is not fettered by any of the conditions as submitted by the applicant. On the above grounds, the respondents have opposed the prayers of the applicant.

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5. We have heard Shri B.S.Tripathy, the learned counsel for the petitioner and Shri B.Dash, the learned Additional Standing Counsel for the respondents and have also perused the records.

6. Before proceeding further, one submission made by the learned counsel for the petitioner in his written note of submission has to be taken note of first. In this case the second chargesheet has been issued to the applicant in order dated 22.5.1995 at Annexure-5. This has been stayed in order dated

20.12.1995. From the pleadings of the parties in this case it does not appear that the second proceeding has been concluded and some punishment has been imposed on the applicant. Yet the learned counsel for the petitioner in paragraph 8 of his written note of submission has mentioned that in the meanwhile the period for which the punishment was imposed has already been over and in the meanwhile subsequent examinations have been held from which the applicant has been debarred. In view of the fact that there is no pleading of the applicant regarding conclusion of the second proceeding and imposition of punishment, no notice is being taken of this submission.

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7. The law is well settled that if there is some lacuna in the enquiry, then it is open for the appellate authority to remand the matter to the disciplinary authority for further enquiry in the matter. But the appellate authority is not invested with the power to order a denovo proceeding ignoring the findings of the inquiring officer in the earlier proceeding which may not be to his liking. In this connection, the observation made by the Hon'ble Supreme Court in the case of K.R. Deb v. The Collector of Central Excise, ATR 1971 SCL 447 can be usefully referred to.

"13. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9."

In the instant case the appellate authority has remitted the matter to the disciplinary authority for fresh enquiry from the stage of issue of chargesheet. Accordingly, a fresh chargesheet at Annexure-5 has been issued to the applicant. In this chargesheet the fact that Assistant Post Master General detected the applicant allegedly adopting unfair means has been noted and the Assistant Post Master General has also been cited as a witness. In the earlier chargesheet the fact of Assistant Post Master General detecting the alleged adoption of unfair means by the applicant had not been noted nor the Assistant Post Master General cited as a witness. From this it is clear that a fresh chargesheet has been issued to the applicant and in pursuance of the order of the appellate authority at Annexure-3 a denovo enquiry has been initiated. This, in view of the law as laid down by the Hon'ble Supreme Court, is not permissible. It was open for the appellate authority to differ from the findings of the inquiring officer and the disciplinary authority for reasons to be recorded in writing and after giving notice to the delinquent officer he should have passed such orders as he deemed fit. But just because he was not prepared to accept the findings of the inquiring officer and the disciplinary authority it was not open for him to order denovo proceeding ignoring the findings in the earlier proceedings. In view of the above the action taken by the appellate authority cannot be sustained. We therefore set aside the order at Annexure-3 and the chargesheet at Annexure-5.

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8. In the result, the Original Application
is allowed but without any order as to costs.

(G. NARASIMHAM)

MEMBER (JUDICIAL)

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26/11/99
VICE-CHAIRMAN

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