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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 570 OF 1998

Cuttack, this the 12th day of July, 2004.

Mayadhar Bhoi.

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Applicant.

-Vrs.-


Union of India & Ors.

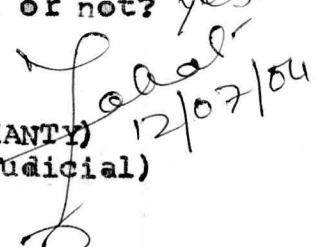
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Respondents.

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? *yes.*


(B.N. SOM)
Vice-Chairman


(M. R. MOHANTY) 12/07/04
Member (Judicial)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 570 OF 1998
cuttack, this the 12th day of July, 2004.

C O R A M:-

THE HONOURABLE MR. B.N. SOM, VICE- CHAIRMAN
AND
THE HON 'BLE MR. M. R. MOHANTY, MEMBER (JUDICIAL).

Mayadhar Bhoi, Village/Post: Muding,
District-Kalahandi.

Applicant.

By legal Practitioner: Mr. D. P. Dhalsamant, Advocate.

- Versus -

1. Union of India
represented through
Chief Post Master General,
Orissa Circle,
Bhubaneswar-751 001.
2. Director of Postal Services,
Berhampur Region, Berhampur (GM)-760001.
3. Superintendent of Post Offices,
Kalahandi Division, Bhawanipatna-768 001. ... Respondents.

By legal practitioner : Mr. U. B. Mohapatra, ASC.

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

Applicant Mayadhar Bhoi was engaged as Extra Departmental Branch Postmaster of Muding Branch Post Office (in account with Madanpur-Rampur Sub Post Office) during the period from 11-7-1977 to 06.08.1993. On allegation of mis-appropriation etc, he was placed 'off duty' on contemplation of a disciplinary proceedings under Rule-8 of the EDAs (Conduct and Service) Rules, 1964.

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He received the charge on 06.02.1996 and submitted his written statement of defence on 07.02.1996 denying the charges. The enquiry was initiated and the Applicant having furnished his reply to the report of the I.O. the Disciplinary Authority finalised the case by imposing punishment (of debarring the Applicant from appearing any departmental examination and promotion for three years) vide order dated 27.03.1997. Thereafter, the Respondent No.2 i.e. the Director of Postal Services reviewed the case and remitted back the matter to the Respondent No.3 (i.e. Superintendent of Post Offices) vide his order dated 26.09.1997 for a de-novo enquiry. As a result, the matter was again enquired into and the Inquiring Officer submitted its report on 16.02.1998. After maintaining the formalities as required under law/rules, the Respondent No.3 passed final orders on 30.3.1998 removing the Applicant from service with immediate effect under Annexure-4. Hence this Original Application under section 19 of the Administrative Tribunals Act, 1985 has been filed by the Applicant by challenging the Authority of the Respondent No.2 (to remit the matter for fresh enquiry) and the order of punishment as passed under Annexure-4 on various grounds with the prayer to quash the said order under Annexure-4 with the further prayer for grant of all service and financial benefits.

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2. Respondents have filed their counter opposing the case of the Applicant.

3. We have heard learned Counsel for the both sides and perused the materials placed on record. Learned Counsel for the Applicant in course of hearing has raised a point that the Appellate Authority (to whom no appeal was preferred by the Applicant) could not have "reviewed" the matter nor was, in the circumstances, competent to remit the matter to the Disciplinary Authority, virtually, for a de-novo proceeding.

4. In the present case, the punishment order was passed on 27.3.1997 imposing certain punishment and, as it appears, the Applicant remained satisfied with the said punishment; for which he did not prefer any appeal. The Appellate Authority having "revisional powers" under Rule 16 of the P&T EDAs (Conduct and Service) Rules, 1964 called for the records of the Disciplinary proceedings and passed a Revisional order by asking for reopening of the case and directed the Disciplinary Authority to conduct an enquiry, de-novo, because as per the findings of the Appellate/Revisional Authority, the Disciplinary Authority did not allow the enquiry to have its logical end etc. The findings of the Appellate/Revisional Authority at Annexure-dated 26.9.1997 reads as under:-

"When the enquiry was in progress, the official stated to have admitted his lapses before the Disciplinary Authority. When the enquiry is in progress, the Disciplinary Authority cannot decide the case suo-moto without conclusion of the enquiry process and finalise the case. xx xx. In the instant case, the Disciplinary Authority

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Authority has observed that "gone through the records connected with the case. The charges levelled against SPS Sri Mayadhar Bhoi is so serious in nature for which dismissal and removal is justified punishment". In spite of this observation, the Disciplinary Authority before conclusion of the oral enquiry ordered and finalised the case imposing punishment of debaring the SPS from appearing in any Departmental examination and promotion for three years".

5. Although in normal situation, the Appellate/ Revisional Authority could have entered into an enquiry as it appears in the peculiar circumstances of the case, it remitted back the matter for completing the enquiry (at Disciplinary proceedings level) which was abandoned half way. Thus, the remand order passed by the Appellate/ Revisional Authority in exercise of the Revisional Power cannot be stated to be a wrong one; especially at this distant point of time; because the Applicant on remand of the matter participated in the said (denovo) enquiry and only after imposition of higher punishment (of removal) has raised the point of jurisdiction for which he is estopped now.

6. It appears the Authority, who exercised the Revisional powers wrongly mentioned that he was exercising "Review" Powers. Merely because, he used the word 'Review', it cannot be said that the said Authority was bereft of the powers. In fact the said Authority having revisional powers (being the immediate superior authority to the Disciplinary Authority) exercised the same in good faith and the Applicant having accepted the same/participated in the said (denovo) enquiry cannot raise such objection;

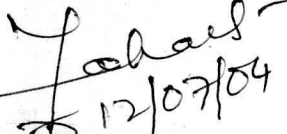
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merely because the final result was not palatable to him.

7. In the result, therefore, this O.A. is dismissed being devoid of any merit. No costs.


(B.N. SOM)
VICE-CHAIRMAN


12/07/04
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)