

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 486 of 2000
Cuttack, this the 28th day of May, 2004.

Jaya Krushna Singhdeo.

...

Applicant.

-versus-

Union of India & Others.

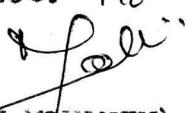
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Respondents.

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? No


B.N. SOM
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)


28/05/04

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O. A. NO. 486 OF 2000

Present: THE HON'BLE MR. B. N. SOM, VICE-CHAIRMAN
THE HON'BLE MR. M. R. MOHANTY, MEMBER (J)

Jaya Krushna Singhdeo, ...	Applicant.
-VRS.-	
Union of India & ors. ...	Respondents.

For the Applicant: Mr. P. V. Ramdas, Counsel.

For the Respondents: Mr. A. K. Bose, Counsel.

Date of decision: 28th May/2004.

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

Applicant, Jaya Krushna Singhdeo (while working as Postmaster of Damaipali Branch Post Office in account with Jogimunda Sub-Post Office in the District of Bolangir of Orissa) having been removed from service (in a disciplinary proceedings that was initiated against him on the allegation of misappropriation of Govt. money etc.) unsuccessfully carried the matter in an appeal and, having been unsuccessful in his appeal he has preferred this Original Application under section 19 of the Administrative Tribunals Act, 1985 with prayer to quash the order of his removal and for a direction (to the Respondents) to reinstate him with all consequential service benefits. Respondents have filed their counter in this case opposing the prayers of the Applicant.

2. We have heard learned Counsel for both sides and perused the materials placed on record. The main thrust of challenge of the impugned order (in this Original Application filed by the Applicant) is that the Applicant having faced the order of removal (under Annexure-4 dated 27.11.1998) preferred appeal on 25.2.99 and, though considered favourably, the Appellate Authority remitted the matter back to the Disciplinary Authority for *de novo* proceedings from the stage after receipt of representation dated 10.11.1998 of the Applicant which he ought not to have done. In support of this, learned counsel for the Applicant has also relied on the decision of the Hon'ble Apex Court of India rendered in the case of K.R. DEB vrs. COLLECTOR OF CENTRAL EXCISE (reported in AIR 1971 SC 1447) in which it was held that if there is some defect in the inquiry conducted by the inquiry Officer, the Disciplinary Authority can direct the inquiry Officer to conduct further inquiries in respect of that matter but it cannot direct a fresh inquiry to be conducted by some other officer. He also pressed into service the decision of the Central Administrative Tribunal rendered in the case of S.P. BANSAL vrs. UNION OF INDIA AND OTHERS (reported in ATR 1987 (1)CAT 215) in which it was held that rule is not meant to support *de novo* inquiry again and again till the desired report is available.

3. Respondents' Counsel while distinguishing (on facts) the decisions relied upon by the Counsel for the Applicant, submitted that the Appellate Authority was within his power to remit the matter back to the Disciplinary

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Authority for re-consideration of the points raised by the Applicant in his representation against the report of the Inquiring Officer. It was further submitted by him that the said step was taken by the Appellate Authority on the request of the Applicant; as it was submitted by him that the points raised in his representation dated 10.11.1998 had not been considered by the Disciplinary Authority, while passing the order of removal and that, therefore, there was no wrong in the order of the Appellate Authority requiring intervention in the matter.

4. To set-at-rest the present dispute, we would like to quote the provisions of Rule-15 of the EDA (Conduct and Service) Rules which deals with regard to the manner of consideration of appeal by the Appellate Authority and they are as under:-

"The Appellate authority shall consider-

- (a) whether the procedure prescribed in these rules has been complied with;
- (b) whether the findings are justified; and
- (c) whether the penalty imposed is excessive, adequate or inadequate and pass orders-
 - (i) setting aside, reducing, confirming or enhancing the penalty;
 - (ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

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Provided that no order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representation which may wish to make against such enhanced penalty".

5. On reading of the order of the Appellate Authority under Annexure-A/5 dated 07.07.1999, it is seen that the Appellate Authority remitted the matter back to the Disciplinary Authority for consideration of the points raised by the Applicant in his representation dated 10.11.1998 that was directed against the enquiry report of the I.O. and after giving the applicant an opportunity, which was as per the powers conferred on him under the Rules quoted above. Therefore, the cases relied upon by the Applicant have no application to the facts of the present case/issues. The stage to which the matter was remitted back cannot be stated to be a stage of de novo enquiry/proceedings.

6. That apart, the Applicant having accepted the action of the Appellate Authority waited for the final orders of the Disciplinary Authority and preferred a fresh appeal. The said appeal having been dismissed, he has filed the present Original Application and therefore, he is now estopped under law, to raise the point he canvassed in the present case.

7. In the above said premises, we find no merit in

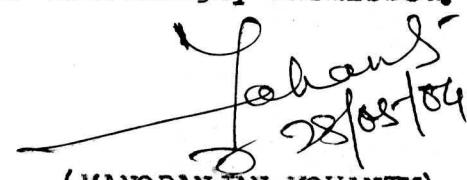
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this Original Application which is accordingly dismissed.

No costs.


(B.N. SOM)

VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

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