

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 251 of 2001

Cuttack, this the 18th day of October, 2004.

BRAJA MOHAN JENA.

....

APPLICANT.

VRS.

UNION OF INDIA & ORS.

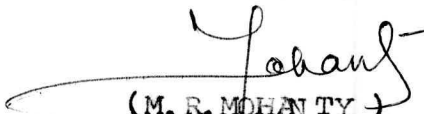
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RESPONDENTS.

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)
Member (Judicial)

18/10/04

7

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 251 of 2001
Cuttack, this the 18th day of October, 2004.

CORAM:

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

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BRAJA MOHAN JENA, 28 years,
S/o. Late Raghunath Jena,
At/Po: Bancho, Via: Fakirpur,
Dist. Keonjhar. Applicant.

By legal practitioner: M/s. P. K. Padhi, M. P. J. Ray, Adv.

-Vrs.-

1. Union of India represented by its
Chief Postmaster General (Orissa Circle),
At/Po: Bhubaneswar, Dist. Khurda-751 001.
2. Director of Postal Services,
Sambalpur Region, At/Po/Dist. Sambalpur.
3. Superintendent of Post Offices,
Keonjhar Division, At/Po/Dist. Keonjhar.
4. Shri Kunja Bihari Rath, Supdt. of Post Offices,
Cuttack North Division, At: P. K. Parija Marg,
Post: Cuttack GPO, Dist. Cuttack-753 001.

... Respondents.

By legal practitioner: Mr. Anup Kumar Bose, Sr. St. Counsel.

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

Applicant, an EDBPM/GDSBPM of Bancho Branch Post Office, under Fakirpur Sub-Post Office of Keonjhar Postal Division, having been imposed with a punishment of removal from service under Annexure-7 dated 31.1.2000 (in a departmental proceedings initiated against him on 13.4.1998, on the ground of misappropriation of MONEY ORDER amounting to Rs.1,000/- by forging signature of the payee) carried the matter in appeal on 1.5.2000. The Appellate Authority, after considering the entire facts of the matter (under Annexure-8 dated 13th November, 2000) reached the following conclusions:-

"xx xx. It is ordered that the penalty of removal imposed on the Appellant, Shri Brajamohan Jena, Ex-EDBPM is hereby set-aside with the direction that inquiry should be conducted afresh from the stage of preliminary enquiry by another I.O. to be nominated by the Disciplinary Authority".

Being aggrieved by the second part of the order "that inquiry should be conducted afresh, from the stage of preliminary enquiry, by another I.O. to be



nominated by the Disciplinary Authority), the Applicant (by filing this Original Application under section 19 of the Administrative Tribunals Act, 1985) has challenged the entire proceedings with a prayer to (a) quash the relevant second part of the order of the Appellate Authority that was passed under Annexure-8 and (b) for a direction to reinstate the Applicant with full consequential service and financial benefits retrospectively.

2. Respondents, by filing a counter, have brought to the notice of this Tribunal about the irregularities/illegalities committed by the Applicant during his incumbency as EDBPM/GDSBPM and have disclosed that the Appellate Authority having power to pass orders as deemed fit and proper as per rules, there was nothing wrong in imposing the order impugned herein and that this Tribunal should not interfere in the matter.

3. Heard learned counsel for the rival parties and perused the materials placed on record. Since the order of punishment imposed by the Disciplinary Authority has already been set aside by the Appellate Authority on the grounds

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mentioned therein, the question remains to be determined as to whether the second part of the impugned order of the Appellate Authority(for conducting fresh enquiry by another Inquiring Officer) is sustainable in the eyes of rules/ laws in view of the various submissions made by the parties. In this connection, we would like to refer to Rule-15 of the EDA(Conduct & Service) Rules; wherein details have been enumerated with regard to the manner of disposal of the appeal; which runs as under:-

"15. CONSIDERATION OF APPEAL:

The Appellate Authority shall consider:-

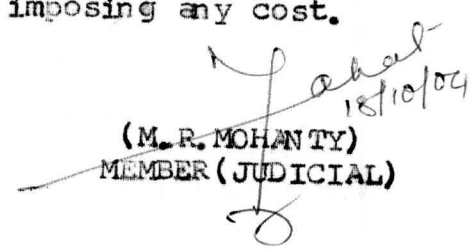
- (a) whether the procedure prescribed in these rules has been complied with;
- (b) whether the findings are justified; and
- (c) whether the penalty imposed is excessive, adequate or inadequate and pass orders-
 - (i) setting aside, reducing confirming or enhancing the penalty;
 - (ii) remitting the 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;

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

(emphasis supplied)

4. On reading of the above Rules and hearing the various submissions of the parties; it is crystal clear that the Appellate Authority has got power not only to remit the matter to the Disciplinary Authority/the authority who passed the penalty order, but also has got powers to pass "such direction" (obviously to the Disciplinary Authority) as it may deem fit in the circumstances of the case. In the present case, while setting aside the penalty/punishment order, the Appellate Authority has directed 'to hold fresh enquiry through another enquiry officer' for the reasons recorded by him and, in our view, the said part of the direction of the Appellate Authority is within the competency of his powers conferred under the rules governing the field and, therefore, we are refraining ourselves from interfering with the impugned Appellate order and, as a consequence, we hereby dismiss this Original Application without imposing any cost.


(B.N. SOM)
VICE-CHAIRMAN


(M. R. MOHANTY)
MEMBER (JUDICIAL)