

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 881/2002
Cuttack, this the 12th day of December 2003

SRI BIJAYA CHANDRA SAMANTARA. ... APPLICANT.

- VERSUS -

UNION OF INDIA & OTHERS. ... RESPONDENTS.

FOR INSTRUCTIONS

1. whether it be referred to the reporters or not? *NO*
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *NO*

Colonel
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

Sor
(B. N. SOR)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.881 OF 2002
Cuttack, this the 12th day of December 2003

CORAM:

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

....

Shri Bijaya Chandra Samantara,
Aged about 49 years,
S/o. Dineshandhu Samantara,
Village-Bhatkumarada,
Post-Bhatkumarada,
Ps: Purusottampur,
Dist. Ganjam,
working as Accountant(DCR),
O/O. the S.R.M. 'BG' Division,
Berhampur,
Ganjam- 760 005.

..... Applicant.

By legal practitioner: M/s. A. K. Mishra,
J. Sengupta,
D. K. Panda,
P. R. J. Dash,
G. Sinha,
Advocates.

- Versus -

1. Union of India represented through its Director General of Posts, Government of India, Ministry of Communications, Department of Posts, Dak Tar Bhawan, New Delhi-110 001.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Postmaster General, Berhampur Region, Berhampur.
4. Director of Postal Services, Berhampur Region, Berhampur.
5. Superintendent, RMS BG Division, Berhampur, Ganjam-5.

.... Respondents.

By legal practitioner: Mr. Anup Kumar Bese,
Sr. Standing Counsel (Central)

O R D E R

MR. B.N. SOM, VICE-CHAIRMAN:

Heard Mr. Aswini Kumar Mishra, Learned Counsel appearing for the Applicant and Mr. Anup Kumar Bose, Learned Senior Standing Counsel appearing for the Respondents and perused the materials placed on record.

2. Applicant, Bijaya Chandra Samantara, has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking the following directions:

- *i) to quash the order of the Appellate authority i.e. Opposite Party No. 4 passed on 07.07.2000 in Annexure-7;
- ii) to quash the order dated 04.09.2002 in Annexure-8 in which charges have been framed against the Applicant;
- iii) to direct that the second proceedings as has been drawn up as per the order of the Appellate Authority is without competency and jurisdiction;
- iv) to quash the order of punishment under Annexures-3 and 4 being without jurisdiction;
- v) to direct the Opposite parties to pay the applicant all his service and financial benefits respectively;
- vi) to pass any other order/orders as deemed fit and proper".

3. We have given our anxious consideration to the prayers made by the Applicant, as noted above. On perusal of the records of this case, we find that the Appellate Authority vide his order dated 7-7-2000 (Annexure-7) had

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passed a reasoned order giving certain directions to the Disciplinary Authority, which are as follows:-

- * a) It was noted by the Appellate Authority on consideration of the appeal submitted by the Applicant that the Disciplinary Authority had forwarded an attested Xerox of the pages of service book 9 to 22 and a copy of the letter of Shri P.K.Nanda wherein the Applicant had admitted that the pages from 13 to 20 of the Service Book were written by him in his own handwriting;
- b) The Appellant should be given an opportunity to defend his case by placing his case personally to the Disciplinary Authority, after perusal of the Xerox pages of the Service Book and the representation dated 28.10.98 of the ASRM(HQ), Shri P.K.Nanda;
- c) to proceed in the matter de novo under Rule 16(1) (b) of the CCS(CCA) Rules;
- d) to offer opportunity to the Applicant to defend his case; and, this, the Commission
- e) this process should be completed within a period of three months".

4. with the passing of this order by the Appellate Authority, setting aside the punishment order

and remitting the case for de-novo trial/enquiry, the earlier disciplinary proceedings communicating imposition of punishment on the Appellant by the Disc. Authority, vide his order at Annexures-3 and 4 are deemed to be quashed. Learned Senior Standing Counsel appearing for the Respondents has also drawn our notice to para 126 of P&T Manual Vol.III which reads as under:-

"When on appeal, the Appellate Authority sets aside the punishment orders and remits the case for de-novo trial, the original proceedings containing the charge-sheet are to be deemed as quashed unless the stage from which the re-trial should be conducted is specified in the order. It would be open to the disciplinary authority to frame any other charge in addition to or in substitution of the original charge-sheet subject to the condition that it is based on facts of the case as initially disclosed for taking departmental action against the Government servant".

5. we have carefully gone through the prayers made in the Original Application by the Applicant and the Appellate Order passed by the Appellate Authority on 7.7.2000 (Annexure-7). The operative part of the Appellate Authority order is based on the following premises:-

"However, before the appeal could be forwarded for decision a theft allegedly took place in the Office of SRM, BG Division and the relevant documents such as the portion of Service Book allegedly written by the appellant was stolen out from the Almirah of the SRM, BG Division. Further the inquiry report submitted by Shri P.K.Nanda, the then ASRM(HQ), O/O SRM BG Division, Berhampur was also stolen from the Almirah of the present ASRM(HQ). An F.I.R.

in this regard has been filed with the B.N. Pur Police station on 27.4.2000. further alongwith the appeal the disciplinary authority has forwarded an Attested Xerox Copy of the pages of Service Book 9 to 22 and a copy of the letter of Shri P.K.Nanda wherein the appellant, Shri Samantara had admitted that the pages from 13 to 20 of the Service Book were written by Shri Samantara in his own handwriting. In view of the lost pages from the Service Book on which the appellant was chargesheeted and a Xerox copy of these pages being submitted for decision of the appeal, it is felt that the appellant should be given an opportunity to defend his case by personal hearing after perusal of the Xerox pages and the report dated 28.10.1998 of the ASRM(HQ) Shri P.K.Nanda".

6. Keeping the above background in view, the Appellate Authority has directed the Disciplinary Authority to provide another opportunity to the Appellant to defend his case* and such an opportunity, as directed, should be given under Rule 16(1)(b) of CCS(CCA) Rules. He had also ordered that the Disciplinary Authority may proceed afresh ~~de novo~~. In view of the above observations/directions in the appellate order has created different meaning to different people. The Applicant apprehends that it may result in imposing on him any of the major penalties instead of a minor penalty communicated to him earlier. To the Disciplinary Authority, this order envisages that he has to start the disciplinary proceedings ~~de novo~~, as the punishment order has been set aside and the disciplinary proceedings have been quashed. The latter view is also supported by the learned Senior Standing Counsel. The learned counsel for the Applicant has also canvassed before us almost identical

view point as that expressed by the Senior Standing Counsel.

7. The reason that weighed in the mind of the appellate authority to pass his order dated 7.7.2000 was that along with the appeal submitted by the applicant the disciplinary authority had forwarded attested xerox copies of the Service Book (Pages 09 to 22) and a copy of letter of ASRM, Sh. P.K.Nanda, wherein it was stated that the applicant, Shri Samantara had admitted that the pages from 13 to 20 of the Service Book had been written by him, he felt that the appellant should be given an opportunity to defend his case by allowing him personal hearing after his perusal of the documents referred to earlier. He, therefore, ordered that the disciplinary authority should proceed de novo under Rule-16(1)(b) of C.C.S.(CCA) Rules. It is, however, not clear from the order of the appellate authority whether the aforesaid documents were made available to the applicant during the inquiry which was held earlier, and if, not, then the disciplinary authority is directed to conduct an inquiry under Rule-16(1)(b) only to the extent of allowing the applicant of perusal of those documents and submission of written statement. In other words, the disciplinary authority is not required to carryout denovo inquiry of whole of the matter but to conduct the inquiry for the purpose of allowing examination of the documents by the applicant and giving him an opportunity to submit his appeal before the appellate authority afresh.

8. With the observations and direction made above, this Original Application is disposed of, leaving the parties to bear their own costs.

Malhotra
(M.R. MOHANTY)
MEMBER (JUDICIAL)

Malhotra
(B.N. SOM)
VICE-CHAIRMAN

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