

Eberlein Vs. United States

Eberlein Vs. United States

SooperKanoon Citation : sooperkanoon.com/93394

Court : US Supreme Court

Decided On : Nov-07-1921

Appeal No. : 257 U.S. 82

Appellant : Eberlein

Respondent : United States

Judgement :

Eberlein v. United States - 257 U.S. 82 (1921)

U.S. Supreme Court Eberlein v. United States, 257 U.S. 82 (1921)

Eberlein v. United States

No. 12

Argued October 5, 1921

Decided November 7, 1921

257 U.S. 82

APPEAL FROM THE COURT OF CLAMS

SYLLABUS

E, having been removed by the Secretary of the Treasury from a place in the customs service after due hearing upon charges, was later reinstated by the same authority, pursuant to an order of the President based on further investigation and findings that the charges were not just.

HELD

(1) That the removal was an act of discretion not subject to revision by the court. P. [257 U. S. 84](#) .

Page 257 U. S. 83

(2) That the power of appointment and removal in the case was constitutionally lodged in the Secretary of the Treasury; the President's order could not and was not intended to operate as a reinstatement, but merely restored E's eligibility to appointment. P. [257 U. S. 84](#) .

(3) E had no claim to the salary between the dates of his removal and his reinstatement by the Secretary.

53 Ct.Clms. 466 affirmed.

Appeal from a judgment of the Court of Claims in an action to recover salary accruing between the dates of appellant's removal from an office and his reinstatement. *See also ante*, [257 U. S. 71](#) , [257 U. S. 77](#) .

MR. JUSTICE DAY delivered the opinion of the Court.

In this case, the plaintiff, who was a United States storekeeper in the customs service at the port of New York, brought suit in the Court of Claims to recover from the United States the sum of \$4,164.44, that being the salary of the office from the date of his removal therefrom to the date of his reinstatement. The Court of Claims decided against him. 53 Ct.Clms. 466. On May 9, 1910, he was suspended without pay pending an investigation of written charges preferred against him. He had a hearing upon his answer to the charges, and on May 26, 1910, was

removed from office. The charges involved the acceptance of bribes in the matter of underweighing cargoes of sugar, and thereby defrauding the government. In May, 1912, the Attorney General reinvestigated claimant's record, and reported that, in his judgment, the charges were

Page 257 U. S. 84

not sustained, and the surveyor of the port made a similar report. On December 3, 1912, the President of the United States, by an executive order of that date, in pursuance of further investigation, directed the reinstatement of the plaintiff. On December 6, 1912, he was reinstated.

There can be no question, from the findings in this case, that the plaintiff had the benefit of a hearing according to the regulations then in force. The Court of Claims, in its opinion, stated that the subsequent investigation established his innocence of the charges made against him. But the things required by law and regulations were done, and the discretion of the authorized officers was exercised as required by law. It is settled that, in such cases, the action of executive officers is not subject to revision in the courts. *Keim v. United States*, [117 U. S. 290](#) .

The order of the President could not have the effect of reinstating the plaintiff to the office from which he was removed. The power of appointment and removal was in the Secretary of the Treasury. It was within the power of Congress to confer this authority on the Secretary. *Burnap v. United States*, [252 U. S. 512](#) .

The President's order, while reciting the wrong which had been done to the plaintiff, could have no more effect than to reinstate him to eligibility for reappointment in the government service. Indeed, such was found to be the import of the order itself, and fairly so. It provides that Eberlein may be reinstated in any appropriate classified position in the customs service in New York, without regard to the length of time he has been separated from the service. That was the purpose of the order, although it goes on to say, doubtless in fairness to Eberlein, that he was separated from the service on May 26, 1910, and charged with having accepted money from importers for underweighing merchandise, that, upon

rehearing the surveyor of customs of New York was of the opinion that

Page 257 U. S. 85

the charges had not been sustained, and that the Attorney General recommended that the plaintiff be restored to the office from which he had been dismissed. It is apparent that the President's order was intended to have no more effect than to restore him to eligibility for appointment. Such was the view of the Court of Claims, and we find no error in its judgment.

Affirmed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com