

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No.407/2015

CORAM:

HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER(J)
HON'BLE MR. TARUN SHRIDHAR, MEMBER(A)

Sri Hemanta Kumar Dash, aged about 54 years, S/o Late Sibaram Dash, At-Rameswar Sahi Khalari, Po-Khalari, Via-Hulursingha, Dist-Anugul, now working as SPM Hulursingha S.O.

.....Applicant

VERSUS

1. Union of India represented through it's Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Director of Postal Services, Sambalpur Region, O/O Post Master General, Sambalpur, At/Po/Dist-Sambalpur-768001.
3. Superintendent of Post Offices, Dhenkanal Division, At/Po/Dist-Dhenkanal-759001.

.....Respondents.

For the applicant : Mr. N.R. Routray

For the respondents: Mr. G.R. Verma

Heard & reserved on : 17.12.2020

Order on : 28.01.2021

O R D E R

Per Hon'ble Mr. Swarup Kumar Mishra, Member (J):-

This O.A. has been filed by the applicant before this Tribunal seeking the following relief(s):-

“It is humbly prayed that the Hon'ble Tribunal may be graciously pleased to quash Annexure-A/1, A/3 & A/5 direct the respondents to give all consequential benefits.

And any other order(s) as the Hon'ble Tribunal deems just and proper in the interest of justice.

And for this act of kindness, the applicant as in duty bound shall remain ever pray.”

2. The factual matrix of the present O.A. are that the applicant was initially appointed as Postal Assistant on 11.12.1986 and after completion of 16 years

service, he was given 1st financial up-gradation under TBOP scheme w.e.f. 26.12.2002. While working as such, a charge sheet dated 17.04.2013 (Annexure-A/1) under rule 16 of CCS (CC&A) Rules, 1965 was issued by Respondent No.3 alleging that Sri H.K. Dash while working as SPM Hulursinga SO in account with Angul HO from 07.06.2012 till date did not take print out of 49 eMOs booked on 18.03.2013 till 22.03.2013 for payment to the beneficiaries at Badakera BO under Hulursinga SO. For which Sri Dash violated the provisions of Rule 13 of Standard operating and accounting procedure for eMO circulated vide Divisional Office letter dated 01.12.2008. The matter was further quarried and it was learnt that on 21.03.2013 Sri Saroj Kumar Mohapatra, SA Angul HO had attended Hulursinga SO send the pending DET dated 20.03.2013 and have run the eMO communication. The fact of pending of 49 eMOs was also brought to the notice of Sri Dash by Sri Mohapatra. Sri Dash denied taking print out of the eMOs on the plea that the PA of the office was on leave. On 22.03.2013 on receipt of complaint from personnel of JINDAL Sri Saroj Kumar Mohapatra, SA Angul HO who was at Dera SO was called back and was asked to take print out of the eMOS. On the arrival of Sri T.K. Debata, IP Angul Sri Mohapatra at Hulursinga took print out of 35 eMOs before which Sri Das has taken print out of 14 eMOs. By the above act the said Sri Dsh in his aforesaid capacity of SPM Hulursinga SO not only wilfully avoid to perform the assigned duty contravening the provisions of Rule-62 of Postal Manual Volume III but also failed to maintain of a government servant as enjoined in Rule 3(1) (ii) & 3(1) (iii) respectively of CCS (Conduct)Rules 1964.

3. Thereafter the applicant submitted his defence representation on 03.05.2013 stating therein that he is a diabetic and BP patient and working alone for two persons from 18.03.2013 and was over burdened with work of two hands and requisitioned for a suitable computer knowing P.A. on the same day new accounts of two hundred for each B.O. was fixed by the CPMG for which there was also

excess work load and pressure of work for which the applicant was seek and at the time of his regular check up the physician advised for 15 days rest immediately and unfit certificate was given. He submitted that Sri Mohapatra SA had come on 21.03.2013 at 15 hours and send DET for 20.03.2013 and he left the office without giving the fact of pending 49 eMOs to the applicant to be got printed immediately however it came to the notice of the applicant at the time of closing the office at 9.30 P.M. On the next day i.e, on 22.03.2013 in spite of the illness the applicant printed 17 pending eMOs and on arrival of SA Sri Saroj Mohapatra he printed rest of the eMOs to help the applicant during his illness and before arrival of any payee and was supplied on 23.03.2013 and also paid to the payees immediately and as such there is not violated any provisions as alleged.

4. It is submitted that the Respondent No.3 who has allowed the PA to go on leave and did not provide any other hand and forced the applicant to work for two persons acted as a judge of his own cause and did not conduct enquiry as stipulated under the rules in spite of the prayer of applicant and imposed the punishment of stoppage of one increment for one year vide his order dated 03.07.2013 without considering the fact that applicant has burden the responsibility of two officials and has worked up to 9.30 PM in the night beyond the working hour and without supplying any document, any opportunity and without conducting any enquiry under rule-16 (1)(b) in spite of the prayer of applicant, imposed the punishment of stoppage of one increment for one year vide his order dated 03.07.2013.

5. It is further submitted that the applicant being aggrieved by the punishment imposed by Respondent No.3 preferred appeal to Respondent No.2 on 16.08.2013 (Annexure-A/4) and raised some other additional points in addition to the earlier points and prayed to exonerate him from the charges but it is most unfortunate that the Respondent No.2 without applying his mind and without giving due regard to the statutory rules held that the Respondent No.3 has found no justification to

conduct enquiry on rule 16(1)(b) and up held the punishment imposed by respondent No.3.

6. It is further submitted that the Respondent No.3 has not taken any step to provide any LRPA/Substitute of the PA for which the applicant was compelled to discharge the duty of two officials for which the applicant worked up to 9.30 PM to up to date the work and the 49 pending eMOs came to the notice of the applicant at 9.30 PM on 21.03.2013 and immediately thereafter the applicant has taken step to pay the amount and after the cash was received on 23.03.2013 the same was paid to the payees and there is no misappropriation or public complaint. For not supplying any document, not giving any opportunity and not conducting any enquiry in spite of the prayer of the applicant violates the provisions of the statutory rules and thus the action of Rspndent No.3 in passing the final order and the consequential order of Respondent No.2 is illegal, arbitrary and non application of mind being violative of the provisions of rule-16(1)(b) of CCS (CC&A) Rules, 1965.

7. The respondents have filed their counter, wherein it is mentioned that the applicant while working as SPM Hulursinga So from 07.06.2012 till date did not take print out of 49 eMOs booked at Nalco Nagar MDG on 18.03.2013 till 22.03.2013 for payment to the beneficiaries at Badakera BO under Hulursinga SO. By the above act the applicant violated the provisions of Rule 13 of standard operating and accounting procedure for eMOs circulated vide Divisional office letter dated 01.12.2008. The matter was further inquired into and it was found that on 21.03.2013 Sri Saroj Kumar Mohapatra, system administrator anugul Ho had attended Hulursinga SO and sent the pending Extraction Tool (DET) dated 20.03.2013 and had run the eMO communication. The fact of pending of 49 eMOs was also brought to the notice of the applicant by Sri Mohapatra. The

applicant denied taking print out of the same on the plea that the PA of the office was on leave.

8. It is submitted that on 22.03.2013 on receipt of complaint from personnel of Jindal Sri Saroj Kumar Mohapatra, system administrator Angul HO who was at Dra SO was called back and was asked to take print out the eMOs. On arrival of Sri Mohapatra at Hulursinga he took print out of 35 eMOs before which the applicant has taken printout of 14 eMOs. By the above acts, the applicant in his aforesaid capacity of SPM Hulursinga SO not only wilfully avoided to perform the assigned duty contravening the provisions of Rule-62 of Postal Manual Volume III, but also failed to maintain due devotion to duty and acted in a manner which is unbecoming on the part of a government servant as enjoined in Rule 3(1)(ii) & 3(1)(iii) respectively of CCS (Conduct) Rules 1964. Therefore, the applicant was proceeded against under Rule-16 of CCS (CCA) Rule, 1965. On receipt of the memo of charge the applicant submitted his defence on 03.05.2013 and after due examination of the defence the applicant was awarded with the punishment of stoppage of one increment for one year when next due. Being aggrieved the applicant submitted an appeal against the order of punishment of the Disciplinary Authority before the Director of Postal Services, Sambalpur Region, Sambalpur which was considered by the Appellate Authority and rejected on merit. Thereafter, the applicant filed this OA before this Tribunal.

9. It is submitted that the applicant was awarded with punishment of with holding of one increment of pay for a period of two and half years vide order dated 09.03.2011(Annexure-R/1) for commission of similar misconduct/irregularities while he was functioning as Sub Post Master, Banarpal Sub Post Office during 2011. But he did not mend himself afterwards at all, rather repeated the same irregularities carelessly without any thinking that general public will suffer a lot if the money sent by them through e-Money Order, which

is faster way of payment of money, will not reach to their relatives in time. Only one plea is sufficient for him to avoid the work and to shift the responsibility on others which happened in the instant case. He is the head of the office and required to keep himself updated with the latest development taking place in the Dept. and should have a kind heart to understand the difficulties faced by his subordinate staff in particular and noble customers in general. Even when, the Postal Assistant working under him feel ill and produced certificate of medical unfitness, he was permitted to go on leave for his treatment. This is a fact that the Divisional Administration has to look after the entire Division with the available resources. This speaks his incapacity to manage a situation in case of necessity. The department has already supplied data card/dongle as an alternative arrangement for all such computerized offices to handle e-enabled services installed in their respective offices. Like wise a date card has also been supplied to Hulursinga SO which was also in constant use since 08.12.2012. The applicant has admitted that at the time of closing of the office pending of 49 eMOs in his office came to his notice. This proves that the applicant had availability of internet connectivity with him by means of data card and he could have checked the pending eMOs printing at the beginning of the office on 21.03.2013. The applicant has further admitted that on 22.03.2013 he had printed 14 number of EMOs by using Dongle before arrival of system administrator. All these speak that the applicant was able to take printing of the eMOs in time but not done deliberately, knowingly and intentionally.

10. It is further submitted that the applicant declared that he is ill from 21.03.2013 and forwarded his unfit certificate to Divisional on 22.03.2013. But when another additional hand joined at his office being relieved from Angul HO, all his sufferings vanished and he did not wish to proceed on leave till 15.04.2013. Thus the applicant is habitual wrong doer and no truth is expected from him

although he has been working in the Department for last 26 years and the exchequer⁵ is taking care of him and his family all along as a central Govt. employee.

11. It is submitted that the appellate authority has gone through the case records properly and considered his appeal properly and do not find any cogent reason to intercede on behalf of the applicant and thereby rejected the appeal. This is further to mention here that the applicant is boisterous and does not discharge his duty properly. He never attends office in time for which he has been served DO letter thrice by O.P. No.3 vide letter dated 24.05.1990, 01.04.2003 and 12.06.2006 with a severe warning vide letter dated 29.05.1998 (Annexure-R/2 series). The applicant was awarded with a punishment of withholding of one increment for six months without cumulative effect vide SPOs, Dhenkanal memo No.CR/CD-64/2003 dated 28.01.2005, this fact has been mentioned in his service book. Further the applicant was charge sheeted under Rule-16 of CCS (CC&A) Rules 1965 with six article of charges and was awarded with punishment of reduction of pay by one stage for a period of three years without cumulative effect vide SPOs, Dhenkanal Memo. Dated 13.06.2005(Annexure-R/3). As such these punishment orders speak as to how he has maintained absolute integrity, sincerity, neutrality and due devotion to duty with best satisfaction to his authorities and how his service career is unblemished, stainless and spotless. The copy of service book where the orders of punishment are noted are submitted as Annexure-R/4. In view of the submissions set forth above, the OA is not maintainable in the eyes of law and liable to be dismissed being devoid of merit.

12. A Charge Memo has been served on the applicant vide order dated 17.04.2013 (Annexure-A/1) which reads as under:-

“Sri Hemanta Kumar Dash, SPM (Designation) Hulursinga SO (Office in which working) is hereby informed that it is proposed to action against him under Rule-16 of CCS (CC&A) Rules 1965. A

statement of imputation of misconduct or misbehaviour on the basis of which action is proposed to be taken as mentioned above is enclosed.

Sri Dash is hereby given an opportunity to make such representation as he may wish to make against the proposal.

If Sri Dash fails to submit his representation within 10 days of receipt of this memorandum, it will be presumed that he has no representation to make and order will be liable to be passed against Sri Dash Ex-parte.

The receipt of the memorandum should be acknowledged by Sri Dash.”

“STATEMENT OF IMPUTATION OF MISCONDUCT/MISBEHAVIOUR ON THE BASIS OF WHICH ACTION IS PROPOSED TO BE TAKEN AGAINST SDRI HEMANTA KUMAR DASH SUB POSTMASTER HULURSINGA SO

Sri Hemanta Kumar Dash while working as SPM Hulursinga SO in account with Angul HO from 07.06.2012 till date did not take print out of 49 eMOs booked at Nalco Nagar MDG on dated 18.03.2013 till 22.03.2013 for payment to the beneficiaries at Badakera BO under Hulursinga SO. By the above act Sri Dash violated the provisions of Rule 13 of Standard operating and accounting procedure for eMO circulated vide Divisional office letter No.G-175, dated 01.12.2008. For his intentional not printing of EMO invited public complaint. On 22.03.2013 one personnel of Jindal power plant with 45 beneficiaries attended Angul HO and inquired about non-payment of the eMOs. The Postmaster Angul HO informed them that the eMOs were to be printed at Hulursinga SO. The personnel Jindal power plant then contacted Divisional office on the matter and asked the reason for non-payment of the eMOs. The matter was further quarried and it was learned that on 21.03.2013 Sri Saroj Kumar Mohapatra, SA Angul HO had attended Hulursinga SO send the pending DET dated 20.03.2013 and have run the eMO communication. The fact of pending of 49 eMOs was also brought to the notice of Sri Dash by Sri Mohapatra. Sri Dash denied taking print out of the eMOs on the plea that the PA of the office was on leave.

On 22.03.2013 on receipt of complaint from personnel of JINDAL Sri Saroj Kumar Mohapatra, SA Angul HO who was at Dera SO was called back and was asked to take print out the eMOs. Sri T.K. Debata, IP Angul West was directed to rush to Hulursinga SO and to see that the eMOs were printed and paid to the payees. On his arrival of Sri Mohapatra at Hulursinga he took print out of 35 eMOs before which Sri Das has taken printout of 14 eMOs. By the above acts, the said Sri Dash in his aforesaid capacity of SPM Hulursinga SO not only wilfully avoided to perform the assigned duty contravening the provisions of Rule-62 of Postal Manual Volume III but also failed to maintain due devotion to duty and acted in a manner which is unbecoming on the part of a government servant as enjoined in Rule 3 91)(ii) & 3(1)(iii) respectively of CCS (Conduct) Rules 1964.”

13. Thereafter the applicant filed show cause reply vide letter dated 03.05.2013

(Annexure-A/2) which reads as under:-

“That I am a Diabetes and BP Patient require periodical check up. After medical unfit of R. Jyotish P.A., this office from 18.03.2013, I

was working alone being overburdened with work of two hands and requisition for a suitable computer knowing PA was placed on the same day as target of new accounts @200 each BO was fixed by instruction of Chief Postmaster General, Odisha Circle Bhubaneswar vide his letter No.SB-02/Misc./12-13 dated at Angul the 01.03.2013. Being overburdened with pressure of work of two hand singlehandedly during my periodical check on 21.03.2013, my physician advised me for 15 days rest immediately and the unfit certificate dated 21.03.2013 sent along with forwarding letter No.14 dated 22.03.2013 of SPM Hulurisingha SO.

So the charge of intentional not printing of eMOs is unfounded and baseless. Further no written public complaint has been made to the best of my knowledge and belief in spite of one personnel of Jindal Power Plant with 45 beneficiaries attended Angul HO on 22.03.2013. So the information of the Postmaster, Angul HO without obtaining any written complaint from them is totally malafide and absurd one.

So by the above act beyond my control during my illness and overburdened with work of a double handed office single-handedly I have not at all violated the provisions of Rule 13 of Standard operating and accounting procedure for eMo circulated vide Divisional Office Letter No.G-175 dated 01.12.2008.

Further the internet connection to Hulurisingha SO was in failure condition since 08.10.2012 which has been reported to SDO Telephones Sadar, Angul copy endorsed to IP, Angul West and SPOs Dhenkanal vide SPM, Hulurisingha Letter No.37 dated 13.10.2012 and letter No.40 dated 02.11.2012. Thereafter during discussion with SDO. Telephones concerned, he said that no request has been made by your senior authorities in this regard to him. On intervention with Divisional Office about it, they replied that internet related works are not at my risk as one Dungle for internet connection was supplied to SA Angul HO Sri Saroj Kumar Mohapatra for this purpose.

Sri Mohapatra, SA Angul HO comes to this office in intervals of one or two days as per his sweet will for internet work like sending DET, running of various communications. As above, Sri Mohapatra, SA, Angul came on 21.03.2013 at about 1500 IST and sent DET for 20.03.2013 and as per his statement perhaps he run eMO communication while I was being alone and busy with other works of this office. He left office immediately without giving the fact of pending 49 eMOs to me to be got printed immediately.

However, at the time of ending of the day in the computer at about 0930 pm I came to see the 49 eMOs pending for printing.

On the next day on 22.03.2013, in spite of my illness certified by my physician for 15 days rest from 21.03.2013, I have printed the 17 pending eMOs on 22.03.2013 and on arrival of SA Saroj Mohapatra, he printed the rest eMOs to help me during my sickness before arrival of the personnel of JINDL Power Plant who demanded for eMOs with cash for payment by them.

I replied the impossibility and contacted IP Angul West T.K. Debata who said that he was at Athmallik at that time and advised me for requisition of cash on that day & I assured for must payment of tomorrow. So it is quite unfounded and baseless about the arrival of IP Angul West TK Debata on 22.03.2013 at Hulurisinga, so as he was at Athmallik as stated above.

I requisitioned Rs.2 lakhs on the same day in the daily account dated 22.03.2013 showing liabilities of eMOs worth Rs.2 lakhs to be paid at Bhadakera BO.

On 23.03.2013 I received Rs.2 lakhs from Head Postman Hrudananda Sahoo alone at about 11 AM and arranged remittance of this amount to Badakera BO through the same Head Postman accompanying with GDS Packer S.K. Mishra and advised them to instruct the BPM for same day payment.

Actually, I have not at all denied for taking print out of eMOs which is may noble duty and for which I am being paid also I have not at all taken the plea that the PA was on leave rather printed eMOs painfully during my sickness.

On 23.03.2013 the IP, Angul West T.K. Debata came with SA Saroj Kumar Mohapatra at about 1800 hours to this office and after relizing the circumstance of non-availability of the internet and the Dungle used by SA as stated about was made over to me at 06.30 PM duly entered in the Stock Book Register for easy access of the internet.

Under the above circumstance I Sri Hemant Kumar Dash SPM Hulurisinga have not at all avoided to perform my noble duty as above in contravention of provision of Rule-62 of Postal Manual Volume III and thus maintained due devotion to duty and acted in a manner which is becoming on the part of a government servant as enjoined Rule 3 (1) (ii) & 3(1) (iii) respectively of CCS (Conduct) Rules 1964.

Therefore I pray to either drop this proposal or detailed inquiry under Rule 16(b) may kindly be made so that I can prove my innocence for which I will be highly obliged to you forever.”

14. The Disciplinary Authority has filed order dated 03.07.2013 (Annexure-A/3)

which reads as follows:-

“After receiving the memo o f charges on dated 25.04.2013 Sri Dash submitted his defence representation dated 03.05.2013 to this office which was received on 06.05.2013.

I have gone through the records of the case and defence representation dated 03.05.2013 of Sri Dash. In his representation Sri Dash had submitted that he is a diabetes & BP patient and after proceeding on medical leave by Sri Jyotish PA of the office from 18.03.2013 he was working alone being overburdened with work & have requisitioned for a suitable computer knowing PA on the same day as target was given for opening of 200 accounts to each BO Being over burdened with pressure of work of two hand singlehandedly and during periodical check on dated 21.03.2013 his physician advised him for 15 days rest immediately and he submitted his medical unfit certificate dated 21.03.2013 on dated 22.03.2013.

The plea taken by Sri Dash that he is diabetes and BP patient is not related to the charge made against him. The fact is that he is unable to work in all modules of computers even after his years of experience in computerized offices. Further he is taking no interest to learn anything rather shifting responsibility to other staff what has been reported by the IP Angul West in his report dated 06.04.2013. The target for opening of 200 accounts to each Bo has no relation to the charge and the plea taken by Sri Dash is baseless. Sri Dash has

not mentioned the number of new accounts opened on the particular date. Hulursinga is a double handed office and he is supposed to work in leave vacancy of the PA as there is acute shortage of hand in the division. As regard production of medical unfit certificate on dated 21.03.2013 forwarded by him on dated 22.03.2013. It is to say that had he been ill and had produced his medical unfit certificate on dated 21.03.2013 he could have submitted the same to Divisional office on dated 21.03.2013 instead of 22.03.2013. Production & submission of medical unfit certificate on a later date Sri Dash is only intentional and afterthought. If Sri Dash was actually ill how he continued to work without proceeding on leave.

The charge made against Sri Dash was on the basis of his written statement dated 23.03.2013 wherein he has admitted that on dated 21.03.2013 while doing the shift end of the eMO module he had seen 49 eMOs were pending for printing. He has also admitted that on 22.03.2013 Jindal employees had come to his office for payment of eMOs and he had contacted the IP and the SA on the matter. The IP Angul West has advised him to take print out of the eMOs and to contact Sri Mohapatra, SA on the matter. He had admitted that he himself had taken print out of 17 eMOs when Sri Mohapatra attended his office coming back from Dera SO and took print out of the rest of the eMOs. But the submission of Sri Dash that the charge is unfounded and baseless as there was no written complaint against him and the charge made against him basing on the absurd and malafide information received from postmaster Angul HO is totally incorrect.

When Sri Dash could print 17 eMOs on 22.03.2013 availing the net facility through dongle before arrival of Sri S.K. Mohapatra, SA he could have done the same on 21.03.2013 or on 22.03.2013 itself to avoid public complaint. As regards handing over the dongle by Sri Mohapatra, training on dongle operation, payment of eMOs, requisition of cash, non availability of internet facility are of no use, unrelated to the charge framed against Sri Dash. Sri Dash has submitted many unnecessary things that has no relation to the charge framed against him as the matter ends with printing of eMOs. The post printing issues have no relation to the charge.

I find Sri Dash is totally responsible for the imputation brought against him. The loss of customers trust and faith on the department is only due to his irresponsible acts and is directly attributable to him and the irregularity committed being serious in nature, he deserves deterrent punishment. I Sri Trinath Sahoo, Supdt. Of Post Offices, Dhenkanal Division, Dhenkanal do hereby award him a hope that he will mend himself in future.”

15. The appellate authority has passed dated 03.12.2013 (Annexure-A/5) which is reproduced below:-

“I have gone through appeal, disciplinary file and documents related to the case and applied my mind dispassionately and find that the appellant was charged for non printing of 49 eMOs booked at Nalco Nagar MDG on 18.03.2013 till 22.03.2013 for payments to the beneficiaries. The appellant’s plea that he was not working as SPM Hulursinga on 01.12.08 and had not received the copy of the

Divisional office letter No.G.175 dated 01.12.08. It is a fact that he was not working at Hulursinga SO when the above said circular was issued but working in Baranpal SO of the Division. The circular has been issued to all offices for guidance and information. Being an employee it is his foremost duty to keep himself updated with the latest development taking place in the Dept. The Divisional Administration has to look after the entire division with the available resources. It is always not possible to man the sanctioned hand due to shortage of staff. The appellant being a pretty senior official should have understood the constraint and be capable enough to run a B class office single handedly smoothly. Even on his request the Divisional office had taken action to depute a PA from Angul HO to Hulursinga SO which has been admitted by the applicant in his appeal. Thus his contention of dishonouring his letter dated 18.03.2013 by the Divisional Office is a wild allegation only and put the appellant in poor light and prove his incapability to manage a situation in case of necessity. As internet connectivity of the office was disconnected since 08.12.2012 a data card was provided to run the e enabled services. The office was running smoothly till 18.03.2013 but when the PA of the office proceeded on leave with unfit MC the appellant could not run the service. This exposes the incapability of the appellant to work in computerised office in the absence of a computer knowing PA. Target of opening of 200 new account per BO and sickness are not related to the charge. For argument sake the appellant has not mentioned the number of new account he had opened in the period to assess the quantum of work done by him. When the system Administrator attended his office on 21.03.2013 at 1500 hrs to sent DET of 20.03.2013 it was his duty to check whether any e MO was pending for printing in his office. The system Administrator's job is to shoot the trouble and give him technical guidance in need. By dragging the SA the appellant is trying to shift the responsibility. The appellant in his appeal has stated that at about 21.30 hours while day ending on 21.03.13 he saw 49 e Mos pending. This proves that the appellant had availability to internet connectivity with him by means of datacard and he could have checked the pending e MOs printing at the beginning of the office on 21.03.13. As per the appellant, on 22.03.12 he had printed 17 pending e MOs before arrival of the System Administrator. This also negate the contention of non availability of the internet connectivity as alleged by the appellant. Printing 17 e MOs by him also speaks that he was able to take printing of the e MOs in time but not done deliberately.

The appellant has repeated many things which he has already mentioned in his defence representation to the Disciplinary Authority and he has considered those. Many points raised in the appeal are also not related to the charge which deserve no consideration. The appellant's allegation against the IP Angul West Sub Division that he has not visited Hulursinga SO on 06.04.2013 and has given false report on his attitude is not at all correct and objectionable. The IP Angul West has not reported that he has visited Hulursinga SO on 06.04.13 but he has submitted his report on 06.04.13 on his visit to Hulursinga SO on 22.03.13 in connection with case. In his written statement dated 23.03.13 before the IP Angul West Sub Division the

appellant has admitted that five Jindal employees had come to the office on 22.03.13 for eMO payment as such it is not required to submit any copy of the complaint for his comment as the fact was known to him. It is also seen that the appellant has been penalised number of times for lack of devotion and dereliction to duty as such his contention of unblemished dedicated service is not at all correct. Regarding inquiry under Rule 16(1)(b) the Disciplinary Authority found no justification of it.

Keeping the above discussion in view I, M.A. Patel, Director Postal Services, Sambalpur Region, Sambalpur do not find any cogent reason to intercede on behalf of the appellant and reject the appeal of Shri HK Dash.”

16. We have heard the learned counsels, gone through the pleadings, citations referred to and materials on record. The citations relied upon by the learned counsel for the applicant is not applicable to the facts and circumstances of this case.

17. As per the settled law on the scope of judicial review of the disciplinary proceedings, the Tribunal can interfere in the disciplinary proceedings if there is violation of natural justice or statutory rules or if the findings are based on no evidence. In this regard Hon’ble Supreme Court in the case of B. C. Chaturvedi vs. Union of India & Anr.. reported in 1996 AIR 484 has held as under:

“Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary

authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

18. In the case of Union of India Vs. P. Gunasekhran 2015 (2) SCC page 610, Hon'ble Supreme Court has held as under:

“.....In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a) The enquiry is held by a competent authority;*
- b) The enquiry is held according to the procedure prescribed in that behalf;*
- c) There is violation of the principles of natural justice in conducting the proceedings;*
- d) The authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e) The authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f) The conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g) The disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h) The disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i) The finding of fact is based on no evidence.”*

19. The respondents have submitted that the applicant has been found guilty in previous two occasions in the departmental proceedings and the said fact has also

been entered in his service book. No rejoinder has been filed by the applicant to challenge the averment made in the counter in this regard. The stand taken by the respondent that the applicant is conversant in using dongle for the purpose of performing his official duty is not disputed by filing any rejoinder in this regard. The applicant has not filed any material to show that he be heard during the enquiry. Therefore we do not find any illegality in the action of the respondents in conducting the inquiry. In the light of the aforesaid judgments of Supreme Court, it is clear that the judicial review of departmental inquiry is based on certain principles and the scope of interference is limited. The orders of Disciplinary Authority and Appellate Authorities are in accordance with law. In view of misconduct on the part of applicant, it cannot be said that punishment is either disproportionate or shocks the conscience of this Tribunal so as to warrant any interference.

20. Accordingly the OA is dismissed being devoid of merit but in the circumstances without any order to cost.

(TARUN SHRIDHAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

K.B.