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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

...
OA.No.1041 of 1990

Dated New Delhi, this 11th day of November, 1994

Hon'ble Shri J. P. Sharma, Member(J)

Hon'ble Shri B. K. Singh, Member(A)

Shri Om Prakash
C/o C-21(B) residence of
Shri Sant Lal, Advocate
New Multan Nagar
DELHI-110056

... Applicant

By Advocate: Shri Sant Lal

VERSUS

Union of India, through

1. Secretary,
Ministry of Communications
Department of Posts
Dak Bhawan
NEW DELHI-110001

2. The Chief Post Master
Delhi GPO
DELHI-110006

... Respondents

By Advocate: Shri M. K. Gupta

JUDGEMENT

Shri B. K. Singh, M(A)

This OA.No.1041/90 has been filed by the applicant, Shri Om Prakash, against the orders: (i) No.F-10/12/87-88 dated 9/13-8-88 issued by Deputy Chief Postmaster, Delhi GPO, (ii) No.F-10/Appeal-5/88-89 dated 28.2.89 issued by Chief Postmaster, Delhi GPO, (iii) No.1/220/89-Vig-III dated 30.11.89 issued by Member (P) Department of Posts, and (iii) Para 108 of P&T Manual Vol.III.

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2. The admitted facts of the case are that the applicant joined Postal Service as E.D. Messenger and subsequently appointed as a Packer in Delhi GPO with effect from 14.4.94. He was promoted in the next higher scale (TMA) with effect from 6.7.79. The Deputy Chief Postmaster, Delhi GPO initiated disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 vide his Memo No. F-10/12/87-88 dated 22-5-87 alleging violation of Rule 3 (i), (ii) & (iii) of CCS (Conduct) Rules, 1965 and Rule 653(1) P&T Man. Vol. II. The applicant denied the charges. Consequently, the Disciplinary Authority appointed Shri S. N. Jain, Asst. Superintendent of Post Offices (ASPOs) of the Office of the Senior Superintendent of Post Offices (SSPOs), Delhi, North Division, Delhi, as Inquiry Officer (I.O.) vide its memo dated 19.6.87. The I.O. completed the inquiry and submitted his report to the Chief Postmaster, Delhi GPO holding the charges (i) & (iii) proved and charge No. (ii) as not proved. The Disciplinary Authority agreed with the findings of the I.O. and awarded the penalty of reduction in pay by three stages from Rs. 920/- per month to Rs. 875/- per month in the scale of Rs. 800-15-1010-EB-20-1150 with effect from 1.8.88 for three years vide

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Order No.9/13-8-88. The Disciplinary Authority also awarded additional penalty of recovery of Rs.9000 from the pay of the applicant starting from the pay of August, 1988 at the rate of Rs.250 per month for a period of three years. This is Annexure A-1 of the paper book.

3. The applicant preferred an appeal against the punishment order dated 9/13-8-88 to the Chief Postmaster, Delhi GPO on 3.12.88 vide Annexure A-6 of the paper book. The Appellate Authority vide order No.F-10/Appeal-5/88-89 dated 26.2.89 rejected the appeal vide Annexure A-3 of the paper book. The applicant also submitted revision petition to the Member(P), Postal Service Board, New Delhi on 26.4.89 against the impugned punishment and appellate orders. This was also rejected. This is Annexure A-7 of the paper book. Aggrieved by the punishment and rejection of appeal and revision petition, the applicant has filed this OA under Section 19 of the Administrative Tribunal Act, 1985 on 23.5.90.

4. The reliefs sought by the applicant are as follows:

- "(i) To set-aside the impugned orders dated 9/13-8-88, 28.2.89 and 30.11.89;
- (ii) To declare the 2nd part of para 108 of P&T Manual Vo.III with the sentence commencing from

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"In addition to the penalty of recovery technically there is no bar to imposing any other statutory penalty if the circumstances of the case justify it as illegal and violative of Rules 11 & 15 of CCS(CCA) Rules 1965 and Articles 14 & 20(2) of the Constitution."

(iii) To grant the consequential relief of restoration of pay of the applicant, with due increments and refund of the amount already recovered with interest thereon;

(iv) To award heavy costs of this application, as it is a case of harassment to a low paid employee of group 'D' Cadre; and

(v) To grant such other relief as this Hon'ble Tribunal deems fit in the circumstances of this case."

5. A notice was issued to the respondents who filed their reply contesting the application and the reliefs prayed for.

6. We have heard Shri Sant Lal, ^{Counsel} learned for the applicant and Shri M. K. Gupta for the respondents and perused the record of the case.

7. The learned counsel for the applicant argued that the Disciplinary Authority had not supplied a copy of Inquiry Report of the I.O. before imposing the penalty of reduction in pay and additional penalty of recovery of Rs.9000. He relied on the ruling of the Hon'ble Full Bench of CAT in the case of Prem Nath K. Sharma Vs. UOI (1988(3) 5LJ 449 CAT Bombay) where it was held that it is

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obligatory to furnish copy of the enquiry report and afford opportunity before taking action against the delinquent employee to state his defence. He also relied on the judgements of the Ahmedabad Bench of the Central Administrative Tribunal in the case of T.A. Pawadai Vs. UOI & Ors (1988 (8)ATC 297 Ahmedabad) which also held that the non-furnishing of report of Inquiry Officer to the delinquent vitiates penalty order. The Madras Bench of the Tribunal also held a similar view in the case of V. Shanmugham Vs. UOI (1986 (2) ATR 228). He also cited the ruling of the Hon'ble Supreme Court in the case of UOI Vs. E. Bashyam (1988 (1) ATR-574) which also held that non-supply of the enquiry report vitiates the proceedings and is also violative of principles of natural justice. On these grounds alone, the impugned orders are liable to be quashed.

8. The other point mentioned by the learned counsel for the applicant was that the Presenting Officer (P.O.) cross-examined the witnesses (SW-1 to SW-4) produced by him on behalf of the Disciplinary Authority and that this violated

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the provisions of Rule 14(14) of CCS(CCA) Rules, 1965.

A copy of statement of Shri Duli Chand, SW-2 is an example (Annexure A-10) and he argued that the proceedings were vitiated on account of the cross-examination by the P.O. Further he argued that it ^{is a} case of no evidence and according to him, no convincing evidence is available to prove the main charge of failure to maintain absolute integrity and acting in a manner unbecoming of a Government servant which is said to ^{have} violated Rule 3 I(i) and (iii) of CCS(Conduct) Rules, 1964. According to the learned counsel for the applicant although the I.O. has held charges (i)&(iii) as proved but he has not dealt with the rules or evidence on the basis of which he reached the conclusion. The I.O. held charge no.(ii) as not proved and the Disciplinary Authority agreed with his findings. According to the learned counsel for the applicant charge ^a (iii) is not charge at all since it contains the factual position of imposition of two minor penalties of stoppage of one increment for two years and 2½ years without cumulative effect vide orders dated 13-7-81 and 24-7-84 respectively. These punishments were imposed without holding an enquiry

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and proving the charge by oral and documentary evidence. The imposition of minor penalties on earlier occasions cannot be made a ground for imposition of a major penalty on a subsequent occasion, and he argued that this amounts to double jeopardy and is against the constitutional guarantee under Article 20(2). According to him, imposition of major penalty of reduction in pay by three stages from Rs.920 p.m. to Rs.875 p.m. coupled with a minor penalty of recovery of Rs.9000 at the rate of Rs.250 p.m., is against Rule 11 of CCS (CCA) Rules, 1965 since this Rule envisages imposition of only one penalty specified in its various clauses in one and the same disciplinary case, and that Rule 15 of CCS (CCA) Rules, 1965 empowers the disciplinary authority to impose any of the penalties specified either in clauses (i) to (iv) under Sub Rule (3) or in clauses (v) to (ix) of Rule 11 under Sub Rule (4) having regard to its findings on all or any of the articles of charge and on the basis of evidence adduced during the enquiry. Thus, the action of the Disciplinary Authority in imposing two statutory penalties will amount to double jeopardy and is violative of Article 20(2) of the Constitution and also Rule 15 of the CCS (CCA) Rules, 1965. According to him, the Disciplinary

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Authority after imposing the major penalty of reduction in pay is not competent to impose the minor penalty of recovery for the same case.

9. It was further argued that para-106 of P&T Man.Vol.III lays down that in the case of proceedings relating to pecuniary losses caused to the Government by negligence or breach of orders by a Government servant, the penalty of recovery can be imposed only when it is established that the Government servant was responsible for a particular act or acts of negligence or breach of orders -and unless such negligence is established, the recovery cannot be made. He pointed out that the chargesheet does not indicate any pecuniary loss and there is no evidence produced to prove the loss suffered by P&T Department as a result of negligence. He further said that para 108 of P&T Man.Vol. III contains executive instructions and these instructions are in conflict with the CCS(CCA) Rules, 1965 and these do not have the force of statute and as such this should be ultra-vires of the statutory rules and Article 14&16 and 20(2) of the Constitution. He also challenged the retrospectivity of the punishment order with effect from

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1.6.88 and as such it was bad in law.

10. It was further argued that the I.O. and the Disciplinary Authority ignored the fact that the bags in question were lost/stolen on the way and the matter was promptly reported by the applicant to the Police. It was further argued by the learned counsel for the applicant that the list of documents at Annexure-3 attached to the chargesheet shows 17 documents while 32 documents are shown to have been taken on record as exhibits, and that no opportunity was provided to the applicant for inspection of these additional documents. Nine additional documents marked as exhibits SD-24 to SD-32 were produced by the P.O. after the close of the evidence without giving any opportunity to the applicant and it is violative of Rule 14(15) of CCS(CCA) Rule, 1965. It was further argued that the Appellate Authority rejected the appeal on extraneous grounds. It was further pointed out that the Disciplinary Authority did not give any cogent reasons for the punishment inflicted on the applicant. He also challenged the observations of the Appellate Authority regarding the imposition of two penalties in view of the grave negligence on the part of the applicant. He also contended that the

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Revisional Authority also did not apply its mind and in a mechanical fashion disposed of the revision petition.

11. The learned counsel for the respondents pointed out that the applicant while working as Travelling Mail Attendant in the office of the Respondent No. 2, was entrusted with the task of collecting postal bags from various Post Offices for delivery to Head Post Offices and R.M.S. Offices. His duty was ^{on} Mail Motor schedule K-62. On 7.2.86 he received three Account T.Bs. meant for Krishan Nagar H.O., Delhi-51 along with other Postal Bags from Patparganj P.O., Khichripur P.O. and Laxmi Nagar P.O. The applicant did not deliver the above mentioned three T.Bs. reportedly containing 11 Account Bags at Krishan Nagar H.O. which caused pecuniary loss of Rs.68,305/- to the Postal Department. The matter was also reported to the Police by the applicant but unfortunately the bags containing the Cash etc. were not traced.

12. As stated above, departmental disciplinary action was taken against the applicant under Rule 14 of the CCS(CCA) Rule, 1965 and after affording full opportunity as admissible under the rules, the punishment of reduction in pay by

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three stages and simultaneous recovery of Rs.9000 from the applicant at the rate of Rs.250 p.m. was ordered.

The learned counsel for the respondents stated that there was nothing illegal, arbitrary or discriminatory and that the principles of natural justice were fully observed and there is no violation of Article 14 and 16 of the Constitution. The new norm relating to the supply of enquiry report to the delinquent employee was enunciated of Hon'ble Supreme Court in the judgement/ in Md Ramjan Khan's case which was delivered on 20.11.90 and the Constitution Bench decided that it will have only prospective application. This case relates to the period prior to Nov, 1990 and as such there is no provision in the rule or in the P&T Manual to supply a copy of the enquiry report to the delinquent employee before inflicting the punishment on him. The furnishing a copy of the enquiry report as a part of the principles of natural justice was laid down only in the case of Md Ramjan Khan since by the 42nd Amendment of 1976, providing of second opportunity has been specifically excluded. There were no instructions issued by the DoPT in this connection and there were no instructions in the P&T Manual and as such

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as per instructions No.7 below Rule 15 of the CCS(CCA) Rules, 1965 (XVII edition of Swamy's compilation) the copy of enquiry report was furnished to the applicant along with final orders of the Disciplinary Authority. It was further pointed out by reading Annexure-10 that there was no cross-examination by P.O. Against word 'X' Nil is marked. The S.W. was only examined by P.O. which is permissible under sub Rule 3&4 of Rule 14 of the CCS(CCA) Rule, 1965. The S.W. was examined only in connection with the verification of the state documents. As regards the argument of the learned counsel for the applicant that it is a case of no evidence, the learned counsel for the respondents read out the enquiry report to show that it has been fully established by the prosecution witnesses as well as documentary evidence that the bags as mentioned in the brief history of the case were actually received and he signed in token thereof by the applicant/and he failed to deliver bags meant for Krishan Nagar H.O.. It has also been established during the course of the enquiry that the applicant did not lock the door of the Mail Van and all these are part of carelessness and dereliction of ^{which} duty/formed part of

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misconduct alleged against him. As regards the assertion that the charge No.(iii) is absolutely no charge, the learned counsel for the respondent argued that the applicant was punished only for article of charge No.1 which was found proved during the course of the enquiry and the applicant was never punished earlier for the article of charge No.1. The punishment so awarded in the present case was for article of charge No.1 and not at all for article of charge-I^{and}III/as such there is no constitutional bar. The Supreme Court of India said in case of Kalawat Vs H.P. State AIR 1953 SC 131,132: 1953 SCR 546: "If there is no punishment for the offence, Sub Clause(2) of Article 20 has no application." The Disciplinary Authority simply kept in view the ~~charge~~ misdemeanour while awarding punishment for article of charge-I^{and}III/as such question of double jeopardy does not arise. It was further added that previous minor penalties during the year 1981 and 1984 were awarded to the applicant after following the proper procedure under the CCS(CCA) Rules 1965. He also distinguished the facts of the case cited by the learned counsel for the applicant saying that these are not similar and as such

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these are not applicable to the present case. As regards the declaration of para-108 P&T Manual Vol.III as ultra-vires, it was emphatically argued that it is an offshoot of ¹⁸⁹⁸ IPO Act and the instructions issued by the Director General of Posts and Telegraphs and included in the P&T Manual have the force of statute and they are considered ^{along} with the statutory provisions of the CCS(CCA) Rules, 1965. They simply supplement the rules in regard to the employees working in the P&T Department. It has been held that where instructions supplement the statutory rules, they also have the force of a statute. This was held in the case of Bevin Kutty Vs Karnataka P&T (AIR 1990 SC 1233) by the Hon'ble Supreme Court. The statutory penalty was imposed for misconduct under the CCS(CCA) Rules, 1965 and recovery was ordered under Rule 108 of the P&T Man. Vol. III and there is no bar in making use of both CCS(CCA) Rules, 1965 and the P&T Man. in regard to the recovery for the pecuniary loss suffered by the department. In this connection, the learned counsel for the respondents argued that Annexure A-5 is an important document in support of the action of the Disciplinary Authority and as such the question of double jeopardy does not arise. There is nothing against clause-2

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of the Article 20 of the Constitution. The facts of the present case are not similar to the facts of the cases cited by the learned counsel for the applicant in OA and also during the course of arguments. Para 106 of P&T Man.Vol.III lays down that in the case of proceedings relating to recovery of pecuniary losses caused to the Government by negligence or breach of orders by a Government servant, the penalty of recovery can be imposed. Recovery was ordered after it was fully established during the course of the enquiry that the applicant had received three T.Bs. reportedly containing 11 account bags for further delivery to Krishan Nagar H.P.O. and he was duty bound under Rule 144(2) of Postal Man.VI Pt.III to deliver these account bags at Krishan Nagar H.P.O. It was also established during the course of enquiry that door of the Mail Motor was not locked by the applicant and the learned counsel for the respondents quoted rule in this regard to show that it was his imperative duty to do so. He read out the various rules, Annexure R-1 defines the acts, ^{omissions} conduct, and commissions which amount to misconduct. This has been extracted from the Swamy's CCS(Conduct) Rules.

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They are 17 in number and the last is, "Negligence or neglect of work or duty amounting to misconduct-Habitual negligence or neglect of work." The extracts from Rule 144(2) of Postal Manual Vol.VI Part.III, Rule 34 of P&T Manual Vol.V and Rule 36 of P&T Man. Vol.V have all been placed on record (annexed with the counter) showing duties and responsibilities of a Mail Attendant, definition of Account Bag and definition of Cash Bag respectively. The prosecution witness, Shri Guru Dutt has categorically confirmed in his statement dated 10.2.86 that he had kept Rs.15,030 in his Cash Bag, which was further kept in Account Bag and this statement was also confirmed as correct before the I.O. On 7.2.86, cash and stamps sent by various Sub Post Offices to Krishan Nagar H.P.O. through said Account Bags was Rs.68,305. Last two lines of page 10 of the Inquiry report dated 8.7.88 of the I.O. clearly show that Article of Charge No.1 i.e. loss of three T.B. (Account transit bags) containing cash^{and}/account bags were lost due to negligence and non-locking^{of the mail van door by the applicant.} The challenge to the vires of rules was vehemently rebutted by the learned counsel for the respondents by stating that the departmental

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rules have been framed on the basis of the IPO Act, 1898 enacted by the Parliament and as such these rules are neither against the provisions of Article 14, 16 and 20(2) of the Constitution, nor in conflict with the CCS(CCA) Rules.

Reporting to the Police does not absolve the delinquent employee from misconduct committed by him. Coming to the document, the learned counsel stated that 32 documents were part of 17 listed documents as in Annexure-3 and these were filed. The documents listed as 17 were two documents as marked (i) and (ii). Similarly at serial 17, there were 14 documents viz., mail list of 11 Post Offices and, therefore, not a single additional documents was produced as alleged by the learned counsel for the applicant. The learned counsel for the respondents relied on the judgement in the case of Mansoor Khan Vs UOI & Anr (1994(3) SLJ CAT 213. This particular case deals with procedural lapse, introducing of evidence at a later stage and natural justice. In this judgement reliance was placed on the case Bharat Ram Vs UOI, AIR 1967 Patna 347, and ^a catena of other judgements and finally it was held that ^{every} omission or lapse will not vitiate the enquiry and reliance was ^{also} placed on the

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judgement of the Hon'ble Supreme Court in the case of State Bank of India & Ors Vs Samrendra Kishore Endow & Anr (1994(1)SLR 516. It lays down:

"... the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding...under Article 226 of the Constitution."

Once the essence of the charge against the applicant has been rightly held as established, the findings of the Disciplinary Authority, the Appellate Authority or the Revisionary Authority do not call for any interference.

He also placed reliance on the judgement of CAT, Ernakulam Bench in the case of V.R. Pillai Vs SPOs and Ors decided on 8.3.94.(1994(2) SLD CAT 249).

13. In this judgement the reliance was placed on the observation of the Hon'ble Supreme Court in the case of Narayan Govind Gavate & Ors Vs State of Maharashtra & Ors. (AIR 1991 SC 183). In this case it has been held that:

"...It has been repeatedly laid down that the doctrine of onus of proof becomes unimportant when there is sufficient evidence before the Court to enable it to reach a particular conclusion. The principle of onus of proof becomes important in cases of either paucity of evidence or in cases where evidence given by two sides is so equibalanced that the Court is unable to hold where the truth lay."

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The Tribunal held that when the department produced the necessary evidence relying on prosecution witnesses and the documentary evidence and the exhibits, the I.O. rightly reached the conclusion on the basis of the evidence of the prosecution witnesses and the documents produced before him.

14. After hearing the contentions of the learned counsels for the parties, we find that the applicant has violated the code of conduct as set out in the CCS(CCA) Rules, 1965. The rules normally indicate the conduct accepted by a member of the service. It would follow that conduct which is blame-worthy by the Government servant in the context of CCS (Conduct) Rules, would be misconduct. If a Government servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is certainly a misconduct. If disregard of an essential condition as mentioned in the P&T Manual as shown in the body of this judgement, it amounts to misconduct and a breach of service and therefore the applicant is guilty of misconduct and the I.O. has proved the misconduct alleged on his part. Misconduct means, misconduct arising out of ill-motivated acts of negligence, errors of judgement.

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In the instant case, the applicant was entrusted with T.B. bags which contained cash and stamps which he was required to carry and deliver to Krishna Nagar HPO after collecting the same from the various Sub Post Offices and because of his negligence and carelessness these bags were lost. It is also on record that the door of the Van was not locked by him, it may be deliberate so that theft may take place of these bags when the van was moving slowly. It was also true that he had the knowledge of the Account Bags containing cash bags also. Account bags contains stamps as well as cash. The Disciplinary Authority did not order recovery of the full amount of Rs.68,305/- but he only ordered for recovery of Rs.9000 at the rate of 250 p.m. The punishment of reduction of pay scale and recovery are justified and there is no double jeopardy involved in it. In service jurisprudence negligence or carelessness resulting in loss of property whose custodian the applicant was as per P&T Manual, has to be accounted for and has to be recovered from him since it was because of the carelessness and negligence of the applicant when these T.B. bags were lost and he was responsible for carrying the bags and

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delivering it to the Head Office after collecting the same from the various Sub Post Offices. As a Mail Attendant this was his responsibility. While carrying these Account/Cash Bags the door of the van should have been locked so that there is no chance of anyone pilfering bags. There is no error of law because the Disciplinary / Appellate/Revisional Authorities have all given cogent reasons for their decision in inflicting the punishment and rejecting the appeal/revision. The principles of natural justice relate to the procedural safeguards. The principles of natural justice require ^{irstly,} that the charge should be clear and concise and not vague. The charge levelled against the applicant are absolutely clear and unambiguous. Secondly, the delinquent should be given full opportunity to state his ^{defence.} The list of witnesses and the list of documents were given to the applicant before the enquiry proceeded and he was allowed to inspect these documents, No additional documents were produced and therefore, the question of the applicant being prejudiced, does not arise. A copy of the enquiry report was not required to be given under the rules in vogue. The Ramjan Khan's case will have

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prospective effect only from 20.11.90 as held by the Hon'ble Supreme Court. It cannot be applied to the case of the applicant. There is no flaw in the procedures followed during the course of the enquiry and there is no reliance on any irrelevant or extraneous considerations either by the I.O./Disciplinary Authority/Appellate Authority/Revisional Authority. All the evidence available on record fully corroborate the negligence, dereliction of duty on the part of the applicant as a result of which there was heavy pecuniary loss caused to the department.

15. We do not find any violation of principles of natural justice so far as safeguard provided to a government servant in the CCS(CCA) Rules, 1965 are concerned and as such the irresistible conclusion that follows, is that the applicant is guilty of the charges levelled against him and these are not based on probabilities but based on fully established facts. The third requirement of principles of natural justice that the Disciplinary and Appellate authorities should pass speaking orders, have been fully complied with. The I.O., Disciplinary/Appellate/Revisional Authorities have performed their duty in their opinion

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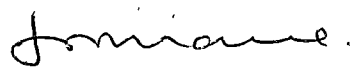
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on the basis of the material facts that the applicant is guilty and their opinion is not based on any irrelevant or extraneous considerations and the orders of the Disciplinary Authority and the procedure followed by the I.O. are not inconsistent with CCS(CCA) Rules, 1965 or instructions contained in the P&T Manual which have the force of statute since these are made under IPO Act of 1896.

16. In the conspectus of all the facts and circumstances of the case, the application fails and is dismissed as such, leaving the parties to bear their own costs.


(B. K. Singh)
Member(A)


(J. P. Sharma)
Member(J)

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