

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH:: HYDERABAD**

OA/021/00220/2015

Date of CAV: 16.03.2021

Date of Pronouncement: 26.03.2021



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

S.Sitharama Iyer, S/o. Sooryanarayana Iyer,
Aged about 63 years,
Occ: Retired Supervisor, Circle Pairing Unit,
O/o. Postmaster General, Hyderabad Region,
R/o. H. No. 24-2/9, VD Nagar,
Malkajgiri, Hyderabad – 500 047.

...Applicant

(By Advocate: Sri M. Venkanna)

Vs.

1. Union of India, Rep. by its Secretary to the Ministry of Communications and IT,
Department of Posts – India,
Director General of Posts – India,
Dak Sadan, Sansad Marg,
New Delhi – 110 001.
2. The Chief Postmaster General,
AP Circle, Dak Sadan, Hyderabad – 500001.
3. The Postmaster General,
Hyderabad Region,
Hyderabad.
4. The Director of Postal Services,
O/o. The Postmaster General,
Hyderabad Region, Hyderabad – 500001.

....Respondents

(By Advocate : Mrs. L. Pranathi Reddy, Addl. CGSC)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

2. The applicant filed the OA challenging the order dt. 24.07.2014 imposing penalty of withholding of 20% of the monthly pension for a period of 2 years and for refund of the amount withheld by way of cut in pension.



3. Brief facts of the case are that the applicant while working as incharge SBCO in the respondents organisation was issued a Rule 14 charge sheet under CCS (CCA) Rules 1965 and the applicant replied denying any misconduct. After due inquiry, the charges were held to be proved and based on the same, the penalty of withholding 20% of monthly pension for a period of 2 years was imposed vide order dt. 24th July 2014. Aggrieved, the OA is filed.

4. The contentions of the applicant are that the alleged supervisory lapses cannot be construed as grave misconduct and that the said lapses do not have a direct bearing over the frauds committed by another employee. There is no allegation that the applicant is responsible for the loss to the department and the applicant is not involved directly in the fraud. The inquiry report is one sided. The respondents have introduced a new procedure in clearing cheques, which is not known to rules. The respondents merely wanted to recover the loss sustained from officials, who are not even remotely connected with the fraud.

5. In the reply statement, respondents state that the applicant while working as incharge SBCO for the period September 2003 to June 2007 was identified as subsidiary offender in the fraud committed by another

employee to the extent of Rs.1.20 crores. Disciplinary proceedings were initiated as per rules and the penalty of 20% pension cut for a period of 2 years was imposed on 24.7.2014. There were minus balances in three SB Accounts and no objections were raised by the applicant as incharge SBCO on any occasion, thereby violating provisions of Rule 13 (I) (i) & 2 (a) & (b) of the P&T Manual of SB Control, Pairing and Internal Check Organisation. UPSC discussed the issue and rendered its advice. The applicant failed to discharge his duties, which has given scope for the fraud to be committed. As per Rule 67 of Postal Manual Vol. III, supervisory lapses have to be viewed seriously. The aspect of new procedure introduced for clearing of the cheques is not related to the issue in question.



6. Heard both the counsel and perused the pleadings on record.
7. I. The dispute is about imposition of penalty of 20% cut in the monthly pension of the applicant for a period of 2 years vide respondents memo dated 24.7.2014, pursuant to the Charge Memo. No.PMG (H)/ST/R-14/SSI/SBCO/11 dated 10.09.2011, with the following charges:

ARTICLE-I

That Sri S.S. Iyer, PA.ICO, O/o. PMG, Hyderabad Region while working as Incharge SBCO, Sangareddy HO during the period from 03.09.2003 to June 2007 has failed to notice the minus balances in SB account No.31027, 31115 and 30994 of MIG Colony SO as required by Rule 11 of P & T Manual of S.B. Control, Manual of SB Control, Pairing and Internal Check Organization (Second Edition). He did not supervise the work of PA as required by the Rule-2 (a) & (b) of P&T Manual of SB Control, Pairing and Internal Check Organization (Second Edition).

It is, therefore, alleged that Sri SS Iyer has contravened the provisions of Rule-2 (a) & (b), 11 & 13(I)(i) of P&T Manual of SB Control, Pairing and Internal Check Organization (Second Edition) and thereby failed to maintain devotion to duty as required by Rule 3(1)(ii) of CCS (Conduct) Rules, 1964.



ARTICLE-II

That during the aforesaid period and while functioning in the aforesaid office, the said Sri S.S. Iyer did not ensure to raise objections and call for pass books for verification when the balance noted on the application side of SB-7 differs with that of the balance in the HO ledger in respect of the following SB accounts of MIG Colony SO contravening the provisions of 11(ii) & 13(1)(i) of P&T Manual of SB Control, Pairing and Internal Check Organization (Second Edition). He did not supervise the work of PA as required by the Rule (2)(a) & (b) of P & T Manual of SB Control, Pairing and Internal Check Organization (Second Edition)

A/C. No.	Date of transaction	Balance as per Voucher	Balance as per Ledger Card
30432	29.01.2007	48267.00	56635.90
30432	31.01.2007	3847.30	10795.90
31160	13.04.2007	7000.00	8442.00
30495	15.05.2007	64295.05	66114.05
30495	16.05.2007	34295.00	36114.05
30421	13.04.2007	6707.30	16285.75
30567	02.09.2006	44293.70	37293.20
31513	10.02.2007	8800.00	8400.00
31399	24.04.2007	7570.00	9463.00
30490	06.09.2006	5733.55	5263.05
30731	22.03.2006	10263.70	11277.70
30843	20.02.2006	23800.80	31809.80
30955	31.03.2006	14475.80	2815.80
31318	16.11.2005	4426.00	4441.00
30752	02.11.2005	787.30	8079.85
31166	11.06.2007	23066.00	28069.90

30940	01.06.2007	15684.00	15781.00
31393	11.06.2007	-	17825.00
31099	25.04.2006	6242.00	6313.00
31099	29.06.2006	113.00	313.00



It is therefore, alleged that Sri S.S.Iyer, has contravened the provisions of Rule 2(a) & (b), 11 & 13(1)(i) of P&T Manual of SB Control, Pairing and Internal Check Organization (Second Edition) and thereby, failed to maintain devotion to duty as required by Rule 3(1)(ii) of CCS (Conduct) Rules 1964.”

The applicant claims that he has not indulged in grave misconduct to be imposed the penalty in question and more particularly he has not committed the fraud. The fraud was committed by some other employee and for the same, applicant is penalised as a subsidiary offender. On the other hand, respondents hold that the applicant failed to raise objections in regard to minus balances in the three SB accounts and the same has facilitated the fraud to be committed to the extent of Rs 1.20 crores.

II. To resolve the dispute, it would be appropriate to understand the meaning of the word ‘minus balance’ and the role of the savings bank control organisation. A minus balance arises when the debit balance is more than the credit balance in a savings bank account. In other words, a minus balance arises when a savings bank account holder is allowed to draw more than the balance available in his account. It would mean overdrawing the account, which is not permitted as per Post Office Savings Accounts rules. To check the transactions transacted in the different types of savings accounts operated by the Sub Post Offices and Branch Post Offices coming under the jurisdiction of the Head Post Office, the Savings Bank Control Organisation (SBCO) was created. The main objective of this Organisation

is to ensure that the savings transactions are conducted as per rules so that the scope to commit fraud is more or less eliminated. The SBCO acts like a watch dog i.r.o. Savings Bank operations. The applicant was heading the SBCO unit in Sangareddy Head Post Office under whose account jurisdiction, the MIG Colony Sub Post Office was operating. The MIG Colony Sub Post Office savings accounts were showing minus balances, which were not objected to by the SBCO unit of the Sangareddy Head post Office, headed by the applicant. In particular, the respondents have given the details of the three SB accounts where minus balances have not been objected to. Consequently, the Sub Post Master of MIG Colony Sub Post Office was emboldened to commit a huge fraud to the extent of Rs.1.20 crores. Had the applicant raised the objection in regard to the minus balance, the fraud could have been prevented. The basic role of the SBCO incharge is to check the Savings accounts to ensure that the transactions are effected as per rules in the savings accounts. The applicant is paid for doing the said duty. When he fails to discharge the said duty, he would necessarily have to hold himself responsible for the fraud committed in the savings bank transactions by violating basic rules. Therefore, the contention of the applicant that he is no way responsible for the committing of the fraud, is not acceptable.

III. We need to remember that the money involved is public money and the post office is a custodian of the said money. The public are depositing their hard earned money with the post offices in view of the trust they have in the institution called the post office. Therefore, the employees who are entrusted with the duty of safeguarding the public money need to



discharge the duties as assigned to them. The applicant has failed to abide by the provisions of the P & T Manual of SB Control namely, Rules 13 (I) (i) & 2 (a) & (b), Pairing and Internal Check Organisation. The Rules framed have to be followed and any violation of the rules should be strongly discouraged as observed by the Hon'ble Apex Court in a series of judgments as under:



*The Hon'ble Supreme Court observation in **T.Kannan and ors vs S.K. Nayyar** (1991) 1 SCC 544 held that "Action in respect of matters covered by rules should be regulated by rules". Again in **Seighal's case** (1992) (1) supp 1 SCC 304 the Hon'ble Supreme Court has stated that "Wanton or deliberate deviation in implementation of rules should be curbed and snubbed." In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held "the court cannot dehors rules"*

IV. The applicant, by not following the instructions in the P& T Manual as cited supra, has conducted in a manner which is contrary to the directions of the Hon'ble Supreme Court cited supra. Though the instructions in the P& T Manual have not been framed under Article 309 of the Constitutions, the said instructions are very clear that if they are violated, the officials concerned are liable to be proceeded against, vide respondents letter No.7-7/2000-PO dated 8/14.09.2000, issued by the PO Division, Dept of Posts. The relevant portion is extracted hereunder:

4. *xxxxx In so far as the Manuals are concerned, these are instructions with regard to the procedure to be followed by our staff and is enforceable by the Director General to regular functions within the Department. These are executive instructions where a departmental action can be taken for violation of these instructions....."*

Thus, violation of the instructions in the P&T Manual would invite appropriate action, which gives the instructions contained in the P & T

Manual a statutory flavour. Moreover, when a practice is followed over the years in the absence of any rule, the practice would become a rule, as observed by the Hon'ble Supreme Court in a cornucopia of judgments as under:



(a) **Bimlesh Tanwar v. State of Haryana**, (2003) 5 SCC 604, wherein the Apex Court has observed as under:-

52. In this case also, although there does not exist any statutory rule but the practice of determining inter se seniority on the basis of the merit list has been evolved on interpretation of the rules. A select list is prepared keeping in view the respective merit of the candidates.

(b) **State of W.B. v. Manas Kumar Chakraborty**, (2003) 2 SCC 604 wherein the Apex Court has observed as under:- :

As to whether a person not holding the substantive rank of DGP could be posted as DG&IGP, the question appears to have been admitted, either as a matter of rule or practice, that in the Karnataka cadre an officer not holding the substantive post was ineligible to the post as DG&IGP.

© **K.C. Gupta v. Lt. Governor of Delhi**, 1994 Supp (3) SCC 408, wherein the Apex Court has observed as under:-,

The TGTs (Middle) who were in the lower grade/scale of pay till 27-5-1970 became unreasonably ambitious to be reckoned as equals to the TGTs in higher grade from the date of their initial appointment which within no stretch of any rule or practice can be said to be justified.

(d) **U.P. Public Service Commission, U.P. v. Alpana**, (1994) 2 SCC 723 wherein the Apex Court has observed as under:-

No rule or practice is shown to have existed which permitted entertainment of her application.

(e) State of UP vs Santosh Kumar Mishra SLP (C) No. 20558 decided on 3rd August 2010

wherein, while considering the question of promotion to the post of Assistant Engineer in the Public Works Department, the Apex Court had occasion to consider the construction of the service rules in consonance with the long-standing practice in the concerned department and it was held that such long standing practice was to be preferred.



(Following the earlier judgment in **N. Suresh Nathan & Anr. vs. UOI & Ors.** [(1992) Supp. (1) SCC 584])

(f) Shailendra Dania & Ors. vs. S.P. Dubey & Ors. [(2007) 5 SCC 535],

the Apex Court had also the occasion to consider the possibility of two views being taken while interpreting a particular set of service rules. In such a situation, the Apex Court held that the rules should be interpreted in consonance with the practice followed by the department for a long time. In fact, while arriving at such a conclusion, this Court had also the occasion to consider the earlier case of *N. Suresh Nathan (supra)*.

The respondents organisation has adopted the practice of proceeding against the employees over the last century and more, for not following the instructions in the P&T Manual. Therefore, the practice of proceeding against the employees for violating the instructions has attained the status of the rules. Thus, the instructions in the P&T Manual have attained the status of rules and any violation of rules is not permitted as observed by the Hon'ble Apex Court in the verdicts cited supra.

V. The applicant argued that he has not committed grave misconduct and at the most, it could be construed as supervisory lapses and not misconduct. In other words, the negligence on part of the applicant in not checking the minus balances is not as grave as to invite the penalty in question, according to the applicant. Negligence is of two types, one,



wherein the negligence would not lead to any serious consequences, like for example, an employee entrusted with the duty of cleaning the furniture in the office fails to discharge his duty, it would not lead to disastrous or irreparable consequences. The furniture can be got cleaned without much difficulty by someone else later too. However, in case of an aircraft, if the grounds staff are negligent in checking the air pressure of the tyres, it would lead to disastrous consequences of a crash while take off or landing, leading to loss of life and irreparable damage in the process. Such negligence has to be necessarily treated as grave misconduct. If such negligence is ignored, then there would not be any element of safety in undertaking air journey. Similarly, in respect of the Post offices, which deals with the lakhs of crores of deposits of the public money, there should not be any negligence in dealing with the public money, as otherwise it will lead to disastrous consequences of loss of public money and irreparable damage to the image of the Postal institution. In the instant case, the applicant was expected to check the minus balances in the savings bank accounts, which he has neglected to do and as a result, a major fraud to the extent of Rs.1.20 crores was committed. Had the applicant discharged his duty diligently, the fraud would have been nipped in the bud. The negligence of the applicant has led to the disastrous consequence of a fraud of Rs 1.20 being committed, which in turn caused irreparable damage to the image of the institution. Besides, it is not the applicant, who alone has been identified, but many others as well. The primary responsibility to check the minus balances lies with the SBCO and if the applicant who heads it fails to perform the primary function, then he has to face the consequences thereof.

VI. Reverting to the aspect of misconduct, we observe that conduct, which is blameworthy in the context of CCS (Conduct) Rules, 1964, would be misconduct. The applicant has conducted himself in a way not in consonance with the due and faithful discharge of his duty and therefore, it has to be treated as misconduct. Generally, acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct but the rider is that if the mistake has serious repercussions, then it would amount to misconduct, even if the act were to be single act of omission as in the instant case on hand. The other employee could commit the fraud of Rs.1.20 crores for the long period of 4 years when the applicant was incharge of the SBCO. Applicant has failed over the years in objecting to the minus balances that arose in the MIG Colony Post Office where the fraud took place. Hence, the very objective of having the Savings Organisation has thus been defeated. The applicant may have raised objections in respect of other accounts, but he has to raise in respect of all accounts where there is a deviation from the rules. The applicant failed to do so in respect of the 3 accounts indicated in the charge sheet and therefore, he cannot escape his culpability, though indirect, in the fraud of Rs.1.20 crores that took place. We have made the above remarks based on the observations of the Hon'ble Supreme Court in **Union of India and others vs J. Ahmed (1979) 2 SCC 286**, wherein it has been held as under:-

10. It would be appropriate at this stage to ascertain what generally constitutes misconduct, especially in the context of disciplinary proceedings entailing penalty.

11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful



discharge of his duty in service, it is misconduct (see *Pierce v. Foster*). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspapers)*]. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur, and Satubha K. Vaghela v. Moosa Raza*. The High Court has noted the definition of misconduct in *Stroud's Judicial Dictionary* which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct."



In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in *Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik* in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In *S. Govinda Menon v. Union of India* the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in *P.H. Kalyani v. Air France, Calcutta* wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would *ipso facto* constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high." (Emphasis supplied)

Thus, the supervisory lapses of the applicant are grave enough to be treated as misconduct in the context of extent of fraud and failure to make rudimentary checks, as prescribed under the rules over the years.

VII. The UPSC, on being consulted, has gone through the charges in detail and have observed, vide its Advice in F. No. 3/442/2013-S.I. dt., 29.05.2014, as under:



“4.4 The Commission observe that the CO in his statement dated 01.02.2008, has accepted that he worked as In-charge SBCO Sangareddy, HO during the period from 03.09.2003 to 06-2007. Exhibits - Ex.S-5, Ex.S-6, Ex.S-7, Ex.S-8, Ex.S-9, Ex.S-10, Ex.S-11, Ex.S-14, Ex.S-15, Ex.S-16, Ex.S-17, Ex.S-19, Ex.S-20, Ex.S-21, Ex.S-22, Ex.S-28, Ex.S-29, Ex.S-30, Ex.S-31, Ex.S-32, Ex.S-33, prove that the balance noted on the application side of SB-7 differs with that of the balance in the HO ledger in respect of the SB Account Nos. 30432, 31160, 30495, 30567, 31513, 30731, 30843, 30940, 31393 and 31099. The CO failed to ensure raising of objection about the minus balances in the said accounts. In terms of Rule 2(a) & (b) of P&T Manual of S.B. Control, Pairing and Internal Check Organization (Second Edition), the duties of the In-charge of the SB Control Organization, inter-alia, include supervision over the staff of the Control Organization, to ensure that the staff perform the duties properly as prescribed in these rules and orders issued from time to time, etc. Further under Rule 11, the In-charge is required to carry out General Check of Vouchers and Documents and checking of Vouchers with reference to the entries in the ledger cords. Under Rule 13(I)(i), the irregularity, if any, is required to be entered in the Objection register and to ensure that objections raised by the Control Organization as got settled. The contention of the CO that as per Rule, the PA concerned has to carry out the checking of vouchers and raise objections, if any lapses are noticed, is also tenable since Rule 2(b)(i)(a) of P&T Manual of S.B. Control, Pairing and Internal Check Organization, inter – alia states that the In-charge has to ensure that the staff perform the duties properly and prescribed in these rules and orders issued from time to time. If the PA entrusted with the work of checking of vouchers did not raise objections even though there were minus balances in the SB Accounts and there is difference in balance, the CO cannot keep quiet. Had the PA SBCO raised the objections, the fraud would have come to light early and further fraud would have been averted. The CO being In-charge of the SBCO branch did not ensure raising objection by the PA and thereby failed to discharge his legitimate duties.

4.5 The Commission observe that as per the Annexure –III of the Charge Memo., complete documents were provided to the CO in respect of 10 SB Account Nos.30432, 31160, 30495, 30567, 31513, 30731, 30843, 30940, 31393 and 31099 only. Complies of the Ledger card have been provided to the CO in respect of SB Account Nos.30421, 31399, 30490, 30955, 31318 & 30752, but not the copies of the related Withdrawal Slips. No document has been attached with the Charge Memo in respect of SB Account No. 31166. In the absence of withdrawal slips/ related documents, it could not be verified whether there was difference in the balances noted in the withdrawal slips and the HO ledger in respect of the seven SB Account Nos. mentioned above. Thus, the Article of Charge II is partly proved.

5. *In the light of the observations and findings as discussed above, and after taking into account all other aspects relevant to the case, the Commission note that the charges established against the CO constitute grave misconduct on his part and consider that the ends of justice would be met in this case if the “penalty of withholding of twenty percent (20%) of the monthly pension otherwise admissible in the CO, Shri S.S. Iyer, for a period of two years” is imposed on him. The gratuity admissible to him should be released, if not required otherwise. They advise accordingly.”*



Therefore, it cannot be said that the UPSC has mechanically gave the advice. In fact, it held that the second charge is ‘partly proved’ and not ‘proved’ as held by the I.O. The UPSC report is elaborate and has covered the entire gamut of the case, as is evident from the above paras.

VIII. The applicant has stated that the I.O report is one sided and he has not explained as to why it is so. The relevant portions of the I.O report are extracted here under:

ANALYSIS OF EVIDENCE:

ARTICLE-I:

Xxxx

FINDINGS:

I have carefully gone through the oral as well as documentary evidence produced during the inquiry. The PW-1 in reply to Question No.2 during examination-in-chief deposed that having worked as in-charge of frauds branch and ASP of Sangareddy Division he identify all the documents and they are related to fraud case of MIG Colony NDTSO and the same was admitted by the CO in his brief. Hence the contention of the CO that no document was identified through the prosecution witness (PW 1) is not sustainable. The charge against the CO is that he has failed to notice the minus balances in SB Account Nos. 31027, 31115 and 30994 and held responsible for not raising objection and did not supervise the work of PA. Ex.S-2, Ex.S-12, Ex.S-27 proves that there is minus balance in the SB Account No. 31027, 31115 and 30994, and failed to ensure raising of objection about the minus balances in the said accounts. The charged official though he refused the objection register maintained by SBCO Sangareddy HO, requested by him as additional documents during the inquiry on 13.08.2012 vide daily order sheet No.3 did not make use to disprove the charge. In view of the above I held the charge as proved.

ARTICLE-II:

XXXX



"I have carefully gone through the oral as well as documentary evidence produced during the inquiry. The PW-1 in reply to Question No.2 during examination-in-chief deposed that having worked as in-charge of frauds branch and ASP of Sangareddy Division he identify all the documents and they are related to fraud case of MIG Colony NDTSO and the same was admitted by the CO in his brief. Hence the contention of the CO that no document was identified through the prosecution witness (PW-1) is not sustainable. The charge against the CO is that he has failed to ensure to notice the differences in balances in 20 transactions in 17 SB Accounts of MIG Colony and call for pass books for verification when the balance noted on the application side of SB-7/SB-103 differs with that of the balance in the HO ledger and being responsible for not raising objection and did not supervise the work of PA. Ex.S-3, Ex.S-4, Ex.S-5, Ex.S-6, Ex.S-7, Ex.S-8, Ex.S-9, Ex.S-10, Ex.S-11, Ex.S-13, Ex.S-14, Ex.S-15, Ex.S-16, Ex.S-17, Ex.S-18, Ex.S-19, Ex.S-20, Ex.S-21, Ex.S-22, Ex.S-23, Ex.S-24, Ex.S-25, Ex.S-26, Ex.S-28, Ex.S-29, Ex.S-30, Ex.S-31, Ex.S-32, Ex.S-33, Ex.S-34 and Ex.S-35 proves that there is minus balance in the SB accounts Nos. mentioned in the Article – II, and failed to ensure raising of objection about the minus balances in the said accounts. The charged official though he perused the objection register maintained by SBCO, Sangareddy HO, requested by him as additional documents during the inquiry on 13.08.2012 vide daily order sheet No.3 did not make use to disprove the charge. In view of the above I held the charge as proved."

The applicant, though perused the objection register after seeking it as an additional document, which is the key to the minus balances, has not used it to defend his stance, which explains the role of the applicant in not being able to do his duty, as is expected of him as incharge SBCO. The applicant cannot expect the Tribunal to re-appreciate the evidence tendered during the inquiry as the Tribunal is not permitted to do so, as observed by the Hon'ble Supreme Court in ***the State Of Bihar vs Phulpuri Kumari*** on 6 December, 2019 in Civil Appeal No. 8782 of 2019 (Arising out of SLP (C) No.21197 of 2019).

IX. The other contention of the applicant that it was the duty of the Postal Assistant to undertake the prescribed checks lacks reason since it is the applicant, who, as the supervisor of the PA, has to ensure that the latter does his work as per rules. Otherwise, there was no need to have a supervisor. The hierarchy is a chain of command created to check and correct the mistakes, which take place at different levels of the respondents organisation. The fundamental principle of the span and accountability of the command as emphasized in Organisational Management cannot be thus glossed over as is sought to be projected by the applicant. The supervisory lapse of the applicant has led to a grave consequence of a major fraud to be committed over a period of more than 3 years. It is like the thief robbing a house when the police man posted is dosing of. The police man cannot escape his responsibility, so too the applicant since his role is exactly like that of the policeman in respect of checking the savings accounts maintained in post offices under his jurisdiction as head of the SBCO, which is the pivotal unit to prevent frauds in savings accounts by providing timely alerts to the operative units in respect of deviations in the operation of savings accounts. The negligence of the applicant has led to grave consequences and therefore, he cannot disown responsibility as a subsidiary offender.

X. Applicant relied on the decisions in OA Nos.344/2003 & batch, dt. 22.11.2004 of the Hon'ble Jabalpur Bench (Circuit at Gwalior) & in OA No. 1091/2013, dt. 22.11.2017 of this Tribunal. The order of this Tribunal in OA 1091/2013 was upheld by the Hon'ble High Court of Judicature of Hyderabad in WP No.21668 of 2018. It was observed by the



Hon'ble High Court that the other punishment of reduction of pay of 2 stages imposed on the applicant therein has not been interfered with by the Tribunal. The Tribunal in OA 1091/2013 has observed at para 27 as under:



“27. In this view of the matter, the applicant cannot be totally absolved of the charge of negligence in the performance of his duties. Hence, the punishment of reduction of his pay by two stages for a period of one year does not warrant interference.”

Thus, this Tribunal, in the Judgment cited supra and relied upon heavily by the applicant, did not absolve the applicant for the negligence in performing the duties. Only part of the penalty of recovery was set aside and not the other one. The Hon'ble High Court has upheld the quashing of recovery from the applicant in the cited OA but did not interfere with the other limb of the penalty, meaning thereby, the employee who fails to do his duty shall have to pay for the consequences and he cannot be allowed to go scot-free. In the case on hand, there is only a single penalty of reduction of monthly pension by 20% for a period of 2 years and there is no recovery ordered. Hence, as per the order of the Hon'ble High Court, the applicant in the instant OA has to face the consequences for the supervisory lapses. Further, the judgments of the Hon'ble Supreme Court relied upon supra have not been discussed in the judgments relied upon by the applicant.

XI. The other contentions of the applicant have been gone through and found them to be irrelevant like for instance the new procedure introduced by the respondents in clearing the cheques. The instant case is about not raising objections in regard to the minus balances that arose in the MIG Colony Post Office where fraud took place. There is no correlation

between the new procedure of clearing of the cheques and objections to be raised in regard to minus balances by the SBCO organization. The contention thus, appears to be just a deflection from the core issue.



XII. Hence, in view of the rules and the law on the subject, as expounded above, we are unable to intervene on behalf of the applicant and hence, dismiss the OA for lack of merit with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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