

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH



O.A. NO. 513 / 1989
T.A. NO.

DATE OF DECISION 14.9.1994

P.H. DAMOR

Petitioner

(Advocate Mr. B.P. Tanna)

Advocate for the Petitioner (s)

Versus

Union of India and others

Respondent

Mr. Akil Kureshi

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel

: Vice Chairman

The Hon'ble Mr. V. Radhakrishnan

: Member (A)

ORAL JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No.

P.H. DAMOR

.. Applicant

(Advocate Mr.B.P. Tanna)

Versus

1. The Union of India,
through
The Secretary,
Department of Posts,
Ministry of Communications,
Dak Bhavan, Parliament street,
New Delhi 110 001
2. The Secretary,
Department of Posts,
Ministry of Communications,
Dak Bhawan,
Parliament street,
New Delhi 110 001
3. The Chief Post-master General,
Gujarat Circle, Ashram Road,
Navrangpura, Ahmedabad 380 009
4. The Director of Postal Services,
Vadodara Region, Pratap Ganj,
Vadodara 390 002
5. The Sr. Supdt. of Post Offices,
Vadodara West Division,
Fateganj,
Vadodara 390 002

(Advocate : Mr.Akil Kureshi)

O.A. No.513/1989

Date : 14-9-1994

O R A L J U D G M E N T

Per : Hon'ble Mr.N.B.Patel

: Vice Chairman

The applicant was working as Postal Assistant and Treasurer in the Sub Post Office at Miyagam Karjan in February, 1993. It is stated that, on 7-2-1983, the Sub Post-master Shri R.K.Dhabhi called upon the applicant to produce the cash on hand with him for



physical verification. It is alleged that, the applicant avoided to produce the cash on hand, for physical verification, at that time, under some pretext. However, in the morning of 8-2-1983, at about 7 a.m., Shri R.K. Dabhi called ^{upon the applicant to} the cash on ^{produce} hand ^{with} to produce before him for physical verification and ^a short-fall of Rs.11,200/- was found in the cash on hand. The applicant immediately procured this amount from somebody and put it in the chest. Again, at about 10.30 a.m., on the same day, that is, on 8-2-83, the Sub Post-master counted the cash and, at that time, it was found that there was still there ^a short-fall of Rs.3000/- in the cash on hand. The applicant could not produce this amount of Rs.3000/- at that time, but, on 9-2-1983, he procured an amount of Rs.3000/- from somebody and produced that amount also. On the basis of these facts, the applicant was charge-sheeted under two heads. The first head related to the deficit of Rs.11,200/- in the cash on hand and the second head related to the deficit of Rs.3000/- in the cash on hand. These were the two heads of charge levelled against the applicant. Inquiry was conducted against the applicant and the Disciplinary Authority (Respondent No.5), by his order (Annexure - A/7) dated 8-11-1986, held the charges proved and awarded the punishment of dismissal from service. The applicant, took the matter in appeal before the Respondent No.4, Director of Postal Services, Vadodara and, by his order dated 5.5.1987 (Annexure - A/9), the Respondent No.4 has awarded punishment of reduction to the minimum stage of the pay-scale of the applicant for three years without

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future effect. The applicant challenges this appellate order before us, on the ground that the consequences which ought to have followed from the findings of the appellate authority was exoneration of the applicant from the charge altogether and, therefore, the order of punishment requires to be set aside.

2. On behalf of the respondents, the application is resisted and it was submitted that the order passed by the appellate authority requires to be sustained.

3. We may repeat here that, there were only two charges against the applicant, first of which related to the short-fall of Rs.11,200/- which was first noticed at the time of physical verification of the cash made on 8-2-'83, at about 7 a.m. The second charge related to the short-fall of Rs.3000/- which was noticed on a re-check of the cash on hand made at 10.30 a.m. on the same day. While narrating the particulars of the first charge, it was incidentally referred to that the applicant had retained on hand, cash in excess of Rs.12,000/- which is said to be the prescribed maximum limit of cash which could ordinarily be retained on hand. It may, however, be emphasised that there was no specific charge levelled against the applicant that he had retained on hand cash in excess of the prescribed limit of Rs.12,000/-. That fact was mentioned incidentally while narrating the facts



of the first charge relating to the deficit of cash to the extent of Rs.11,200/-. The Disciplinary Authority, i.e. Respondent No.5, held both the charges proved and awarded the punishment of dismissal^s from service. Mr.Mehta took us through the order passed by the appellate authority which is produced as Annexure A-9. It is very clear, even on a bare reading of this order, that the conclusion arrived at by the appellate authority in respect of both the charges was that they were not proved. The appellate authority has observed, "From the above, I am of the view that the standard of proof is not adequate. In fact the inquiry has not come up with any such proof that irrevocably fixes the lapses on the part of the official. The purpose of a Rule 14 case inquiry is to come up with such evidence supporting the charges that can withstand critical scrutiny. In this case, unfortunately, the inquiry does not furnish with that kind of evidence. Even the disciplinary authority, therefore, has to base his conclusions on other evidence like certain statements etc. Therefore, irrespective of the fact ~~that~~ whether the official committed a fraud or not, on the basis of available proofs, the disciplinary authority's punishment of dismissal from service is difficult for the Appellate Authority to accept"..... "The point on which the disciplinary authority gave the benefit of doubt to the ^{appellant} ~~appellate authority~~ on the question of shortage of Rs.11,200/- can be applied to the shortage of



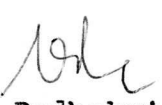
Rs. 3000/- also. This has been made possible only because the SPM and SDI(P) helped the official to hush up the truth by not documenting the case properly".


4. It is clear from the above excerpt and from the order passed by the appellate authority, that the appellate authority has held both the charges as not proved. Even then, the appellate authority has not set aside the Order of punishment on the ground that "there were serious irregularities in the manner the official has functioned." The appellate authority has stated that the official had not remitted the cash beyond ^{the} ~~maximum~~ ^{prescribed limit} ~~balance~~ and kept more than the authorised (amount) and as a Treasurer, he was trying to hide something. Proceeding further, the appellate authority has said that while it was difficult to see as to how the charges against the official have been taken as proved beyond doubt or, for that matter, the basis for the punishment order issued by the disciplinary authority. Strangely, after having thus, reached the conclusion that the charges were not proved, the appellate authority has stated that the official, i.e. the applicant, required a punishment for the serious lapses on his part. He has then modified the punishment of dismissal from service to that of reduction to the lowest stage in the pay-scale of the applicant for a period of three years without future effect. It is impossible to understand as to how the appellate authority could have passed ^{this} ~~the~~ order of punishment once having reached the conclusion that the charges against the applicant were not proved. There was no charge against the applicant of what is



referred to by the appellate authority as serious lapses on the part of the applicant, but, presumably, he was referring here to the alleged failure of the applicant to credit the amount in excess of the prescribed maximum limit with the treasury. Since there was no such charge against the applicant and there was no question of his defending himself against any such charge, we have no hesitation whatsoever in holding that the order of punishment passed against the applicant is totally unsustainable.

5. In the result, therefore, the application is allowed. The order passed by the disciplinary authority (Annexure A-7) and also the order passed by the appellate authority (Annexure A-9) are hereby set aside and quashed, and the applicant is exonerated of the charges against him. There will be no order as to costs.


(V. Radhakrishnan)
Member (A)


(N. B. Patel)
Vice Chairman

sr

S/C 6 543/88
27/11/88 (1)

In the Central Administrative Tribunal,
Ahmedabad Bench at Ahmedabad.

CA No. 513 / 89.
P. H. DHAR - - - Applicant.
Union VSA India and others. Respondents.
I N D E X.

Sl. No.	Subject matter.	Annexure	Pages.
1)	Original application of Applicant to the Hon. Tribunal		1 To 8
2)	Order No. 2-451/88-Vig/III dt. 24-10-88 rejecting petition in regard to period of suspension	A-1.	9 To 12
3)	Copy of Directorate New Delhi letter No. 2-451/88-Vig-III dt. 22-08-88 calling for documents of petition dt. 25-04-88 for punishment of reduction of to lower stage.	A-2.	13
4)	Inquiry Report Dt. 31-03-86/01-07-86 received on 25-07-86 on which disciplinary authority dismissed applicant.	A-3.	14 To 24
5)	Detailed report submitted in reply to inquiry report by Applicant for consideration.	A-4.	25 To 31
6)	Report of Presenting Officer on oral inquiry	A-5.	32 To 34
7)	Defence brief of Quasi-Judiciary Enquiry in reply to brief of the Presenting Officer in oral enquiry	A-6.	35 To 48
8)	Dismissal order of disciplinary authority under Memo. No. F-6/Miyagam -Karjan/82-83 Dt. 07-11-86.	A-7.	49 To 53
9)	Appeal of applicant to Appellate authority against order of dismissal	A-8.	54 To 63
10)	Order of appellate authority No. STA-3/56/86 dt. 05-05-87 reinstating applicant and awarded modified punishment of reduction to lower stage	A-9.	64 To 67
11)	Petition Dt. 25-04-88 addressed to Member (P) Postal Services Board against punishment or reduction of to Lower stage.	A-10.	68 To 69
12)	Copy of outward Register showing disposal of petition dt. 25-04-88 against punishment or reduction of Lower stage.	A-11.	70
13)	Copy of petition dt. 25-04-88 against order of period of suspension.	A-12.	71 To 75

Dated at 0
27-11-88
Ahmedabad.

(Signature of Applicant).

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(BPT)

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524

(2)

In the Central Administrative Tribunal
Additional Bench at Ahmedabad.

Original Application No. 513 of 1989.

(Vadodara District)

BETWEEN

P.H.DAMOR

.....Applicant.

AND

- 1) The Union of India, through the Secretary
Department of Posts, Ministry of Communications,
Dak Bhavan, Parliament Street, NEW DELHI 110 001.
- 2) The Secretary, Department of Posts,
Ministry of Communications, Dak Bahwan,
Parliament Street, New Delhi 110 001.
- 3) The Chief Post-master General,
Gujarat Circle, Ashram Road,
Navrangpura, Ahmedabad 380 009.
- 4) The Director of Postal Services,
Vadodara Region, Pratap Ganj,
Vadodara 390 002.
- 5) The Sr. Supdt. of Post-offices,
Vadodara West Division,
Fateganj,
VADODARA 390 002.

Details of Application.

1) Particulars of the Applicant.

- i) Name of the Applicant : Pareshbhai Damor.
- ii) Name of Father : Havsingbhai Damor.
- iii) Age of Applicant : Twentyeight.
- iv) Designation and office in which employed : Postal Assistant, Sayajiganj Post-office, Vadodara 390 005.
- v) Office Address : --As above --
- vi) Address for service of all notices. : --As above --

2) Particulars of the Respondents.

i) Name of The Respondent :

- 1) Union of India, thro' Secretary Posts Deptt.
Dak Bhawan, Parliament Street, New Delhi 11000
- 2) The Secretary, Department of Posts,
Dak Bhawan, Parliament ~~of~~ Street,
New Delhi 110 001.
- 3) The Chief Post-Master General,
Gujarat Circle, Ashram Road, Navrangpura,
Ahmedabad 380 009.
- 4) The Director of Postal Services,
Vadodara Region, Pratapganj Vadodara 390 002.
- 5) The Sr. Supdt. of Post-offices,
Vadodara West Division, Fateganj, Vadodara.
390 002.

- ii) Name of the Father : - - - -
- iii) Age : - - - -
- iv) Designation and particulars of respondent : - As above -
- v) Address for service for all notices. : - As above -

3) Particulars of the Orders against which application is made :

The application is made against the following orders.

- 1) (A) Order No. (a) 2-451/88-VIG-III.
- 2) Date : 24-10-1988.
- 3) Passed by : Member (Personal) Postal Services, Board.
- 4) Subject in brief : Rejection of petition for treating as duty period, from 08-11-86 to 14-05-1987 received by the applicant on 30-11-88
(A copy of said order is appended as A-1).

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(B) 1) Order No. (b) 2/451/88-VIG-III Appended as

2) Date : 22-08-1988 A-2

3) Not passed by member (Personal) Postal Services Board.

4) Subject in brief : The applicant had submitted petition against punishment or ~~xxxxx~~ reduction to lower grade stage and which was submitted by the Director Postal Services, Vadodara under letter No. STA/4-3-88 dt. 25-07-88 and Member (P) further addressed Director Postal Services, Vadodara on 22-08-88 to furnish documents. No final orders having been made by the Member (P), Postal Services Board. The applicant submits this application. A copy of said order is appended as A-2.

4) Jurisdiction of the Tribunal.

The Applicant declares that the subject matter of the order against which he wants redressal, is within the jurisdiction of this Hon. Tribunal.

5) Limitation.

The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act 1985. The order of rejection of petition in regard to treating the period of absence due to the orders of dismissal issued by the Disciplinary Authority and modified by the Appellate Authority to that of reduction in stage and re-instatement was received by the applicant on 30-11-1988 and this application is therefore, within the period of limitation. As regards non receipt of final order of Member (P), Postal Services Board, the petition to that authority was submitted by the Appellate authority on 25-7-1988 and the appellate authority called for documents on 22-08-1988 and further disposal is not known. The applicant in the circumstances awaited the final order till this date but without any result. Though reminders were being made to the appellate authority to expedite the decision and personal contacts were also being made to expedite. The applicant was very much upset due to serious sickness of old parents which required priority to attend and therefore, could not pursue vigorously by sending regular reminders.

6) Facts of the Case.

Facts of the case are given below as under :

- i) That due applicant while functioning as Postal Assistant at Miyagam Karjan, Post-office was appointed as a Treasurer, which post was

carrying special allowance of Rs. 40/- P.M. This appointment was done by selection made by the Sr. Supdt. of Post-offices, Vadodara, West Division, Vadodara 390002, though applicant was very junior for post. While functioning as a Treasurer, it was alleged to have failed to observe provisions of several rules of the Department and therefore, it was alleged that there was shortage of Govt. cash to the tune of Rs. 14,200/- which was not true but conspired by ~~Supdt~~ Sub Postmaster Karjan.

- 2) That the applicant was then placed under suspension from 10-03-1983 to ~~07-11-1986~~ ⁰¹⁻¹⁻¹⁹⁸⁶
 - 3) That the Disciplinary proceedings were launched against the applicant for imposing major penalties under rule 14 of C.C.S. (C.C.A.) Rules 1965. Thus quasi-judiciary inquiry was made by appointing the Inquiring officer and giving the opportunity to defend the case, Through a defence Assistant.
 - 4) That the Disciplinary authority without taking into consideration the evidence brought on record on the principles of Natural Justices, in the quasi-judiciary inquiry awarded the punishment of dismissal from service with effect from 07-11-1986.
- (2) The Applicant had defended the oral inquiry with the help of well qualified Defence Assistant who was able to bring out the facts resulting in failure of prosecution to prove the charges against the applicant which were placed without any grounds. A defence brief in detail was also submitted which has to be taken into consideration. However, the Disciplinary authority could not remain impartial but gave weight on the Inquiry Report which were falsely and irrelevantly concluded the charges as proved without material evidence to prove the charges and it was case of " NO-EVIDENCE". The Disciplinary authority, however arbitrarily and unjusticably concluded its own findings which could not stand in the eyes of law. The copy of Inquiry Report, Defence brief and punishment order are appended as A-3, A-4 and A-5 respectively.
- (3) The applicant having been aggrieved with the orders of dismissal from Govt. service submitted an appeal to the appellate authority, the Director Postal Services, Vadodara. The copy of the said appeal submitted to appellate authority is appended as A-6.
- (4) The appellate authority had considered the appeal and having merits to consider the orders of dismissal were modified to that of reduction in stage. A copy of Appellate order is appended as A-7. The orders of the appellate authority were not based on the principles of Natural Justice but were based on assumption and modified the punishment on other grounds for which no opportunity was afforded to the applicant to explain in the matter. The appellate authority concluded on assumption that cash was kept in excess of the authorised maximum balance to be retained in the Post-office. This part of duty in

in regard to retention of cash in office is solely the personal responsibility of the Sub Postmaster, as a Head of the Post office and the applicant as a Treasurer, has to act for all the issues of cash transactions as per orders of Sub Post Master. The appellate authority has erred in concluding that the applicant was lacking in integrity. The prosecution had failed to establish any of the charges, levelled against the applicant in the quasi-judiciary inquiry. The appellate authority has erred to arrive at the presumption that the Sub Postmaster and the Inspector had failed to follow the correct procedure and therefore, the alleged charge could not be proved. In fact, it was not so but a conspiracy was hatched by the Sub Postmaster with the help of others to bring the applicant into trouble due to personal vengeance and prejudice, nursed against the applicant belonging to scheduled tribe. The Sub Postmaster was a very influenced person and was banking upon to do anything on the name of his relative who was member of Legislative Assembly in those days and therefore, he could maneuver to obtain signatures of persons on dictated deposition in preliminary enquiry which ultimately failed to be true in the quasi-judiciary inquiry. The balance of cash and stamps was verified by the Inspecting officer and on verification found to be correct as per remarks recorded in the accounts book on the spot. The root cause of erecting this episode was that the Sub Postmaster did not like the selection of the applicant as Treasurer, which had special allowance. And the Sub Postmaster wanted to grub that amount entirely as was being done earlier in the days of other Postal Assistants working as Treasurer who remained under his thumb due to overall influence of the Sub Postmaster in and out in the town which was his native place.

- (5) The applicant having been aggrieved with the injustice imparted by the Appellate authority in regard to deterrent punishment though modified on the grounds on which no opportunity was given to explain to the applicant and further imparting of injustice in regard to period of suspension and period of absence from duty from the date of dismissal to the date of reinstatement submitted a review appeal on 25-04-1988 in two different petitions to the Member (Personal) Postal Services Board, New Delhi for imparting justice. The copies of said petitions dt. 25-04-1988 are appended herewith as Annexure A-8 and A-9 respectively.
- (6) The Member (Personal) Postal Services Board has rejected the petition on the subject of period of suspension stating that the integrity of the applicant is not beyond doubt as held by Appellate authority. The said authority concluded that the applicant was not exonerated but was let off with a modified penalty. The conclusion of that authority is not based on facts which are explained heretofore and defence brief and appeal to D.P.S. The said authority has not disposed of the main petition which is against the orders of the Appellate authority which awarded modified punishment without proper findings and presuming something new without giving a speaking order in

disposing the appeal. The applicant has given the grounds for reconsideration in the petition Dt. 25-04-1988 which has not been finalised and the applicant has grounds to pray to this Hon. Tribunal in the matter.

(7) Details of the remedies exhausted :

The applicant declares that he has availed of all the remedies available to him under the relevant service rules. The appeal was made to the Appellate authority which was partly decided in his favour by modifying the order of dismissal to that of reduction in lower stage. This order was further processed for justice by way of Review Appeal/Petition to the Member (P) Postal Services Board New Delhi on 25-04-88, but no decision is conveyed. As regards issue of suspension period, petition is rejected.

(8) Matter not pending with any other Court.

The applicant further declares that the matter regarding which this application has been made, is not pending before any Court of Law or any other bench of the Tribunal.

(9) Relief sought.

In view of the facts mentioned in para 6 above, the applicant prays for following reliefs :

- i) That the charges are not proved as it was got up case by the Sub Postmaster for personal reasons and prejudice against the Scheduled tribe community and the Applicant having not made any breach of rules of the Department the impugment order may kindly be ordered to be quashed and set aside exonerating from the said allegations that since the entire case was a got-up one to harass the applicant being Schedule Tribe member.
- ii) That the period of suspension and period of absence from duty due to dismissal orders may kindly be ordered to be treated as on duty for all purposes of service and all consequent benefits thereon.
- iii) Any other reliefs/benefits as deemed proper by Hon Tribunal in regard to costs etc.

10) Interim order if prayed for.

The applicant does not seek any interim relief.

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(Page : 8)

11) The Applicant will appear in the Hon. Tribunal through his Advocate.

12) Particulars of Indian Postal order in respect of the application fee :

- 1) No. of I.P.Os. : D.D 228867
- 2) No. of issuing Post-office : Vadodara H.O 890001
- 3) Date of issue of Post-office, Postal order : 25-11-89
- 4) Post-office at which payable : Ahmedabad.

13) Details of Index.

An index in duplicate containing the details of documents to be relied upon is enclosed.

14) : VERIFICATION :

I, Pareshbhai Havsingbhai Damor, son of Havsingbhai Damor, age Twenty ^{eight} ~~six~~ working as Postal Assistant Sayaji Ganj Post-office and resident of Vadodara, do hereby verify that the contents from I to XIV are true to my personal knowledge and beliefs, and believed to be true on legal advice and that I have not suppressed any material facts.

Place :

Date :

(Signature of Applicant).

*Subdy by me
D. V. Nethy
J. S. Nethy*

Filed by Mr... B. P. Tanne
Learned Advocate for Petitioners
with second set & ... 5 ... spares
copies copy served/not served to
other side

C. S. Sane
Dt. 27/11/89 Dy. Registrar C.A.T (I)
A'bad Bench

H.S.V
TRIBUNAL
A 1
No.2-451/88-Vig.III
Government of India
Ministry of Communications
Department of Posts
Vigilance-III

AT 9
Oak Tar Bhavan, Sansad Marg,
New Delhi-110 001.

Dated: 24 OCT 1988

ORDER

Shri P.H.Demor, PA, Sayajiganj Vadodara PO has submitted a petition for treating the period of his absence from 8.11.86 to 14.5.87, i.e. from the date of dismissal to the date of reinstatement as duty and for allowing him full pay and allowances for the said period.

2. In brief, the petitioner was proceeded against as for a major penalty on the following imputations:-

Article I:

That the said Shri P.H.Demor, while functioning as temporary Postal Assistant and Treasurer, Miyagam Karjan SO is alleged to have failed to observe the provisions of Rule 658 of P&T Manual Vol. VI, Part-III, read with Rule No. 674 ibid, read with Rule No. 30 of FHB Volume II, read with Rule 6(d) of Chapter VI of Wireless Licencing Manual.

Article II :

That during the aforesaid periods and while functioning in the aforesaid office, the said Shri P.H.Demor, is alleged to have contravened the provisions of Rule No. 3(1) of the CCS(Conduct) Rules, 1964.

3. In brief, the petitioner was working as Treasurer, Miyagam Karjan SO and on 7-2-83 at about 1715 hrs. Shri R.K.Dabhi, SPM asked the petitioner to produce the cash and stamps for verification. The petitioner instead of producing the cash and stamps for verification, left the office at 1730 hrs. (saying that he was pre-occupied otherwise and that he will return to office shortly) after locking the safe with his key. The SPM waited till 1900 hrs. on 7.2.83 and when the petitioner did not return, the SPM applied his key and double locked the safe. The SPM along with Shri A.D.Jadnav, Signaller verified the cash and stamps of Shri Demor on 8.2.83 at 8.30 hrs.

..2/-

certified
M
74 SP
डाक-तार चिकित्सालय, वडोदरा.
Senior Medical Officer
P & T Directorate
Vadodara-390 001.

There was a shortage of Rs. 11,200/- which Shri Demor, the petitioner made good. But subsequently while counting again, a further shortage of Rs. 3000/- was also detected at 10.30 hrs. on 8.2.83. Investigations were made in this case by SDI(P) South. Shri Demor made good the remaining Rs. 3000/- also on 9.2.83 by withdrawing the said sum from the depositor of SB A/c No. 3908536. As Treasurer, he also did not maintain CG-85 and CG-112 Registers during the period mentioned in the appellate order. A reading of the records indicate that neither the SPM nor the SDI(P) had made any documentary evidence by way of entries in the cash register etc. which resulted in the appellate authority modifying the penalty of dismissal from service to that of reduction to the lowest stage from Rs. 1025 to Rs. 975/- in the time scale of pay of Rs. 975-25-1150-23-30-1650 for a period of three years without cumulative effect. Further, it is seen that the holder of SB A/c No. 3908536 who gave the amount of Rs. 3000/- to Shri Demor for making good the loss detected at 1030 hrs. on 8.2.83 turned hostile during the inquiries although initially he said that the petitioner returned the amount in two instalments of Rs. 2000/- on 9.2.83 and Rs. 1000/- on 10.2.83.

4. Summing up, it may be stated that it is a clear case where the SPM and the SDI(P) who investigated this case had not kept any documentary evidence to prove the charges. However, the appellate authority held that the official had a balance in excess of the prescribed limits which in itself is not correct and on this score he felt that the official lacks integrity and awarded the modified penalty.

5. The main contention of the petitioner in his present representation is that he was not awarded a penalty for the charges for which he was proceeded against and so in his opinion, he stands fully exonerated. Thus according to him, he is entitled for treating the period (from the date of dismissal to the date of reinstatement) as one of duty.

6. The contention of the petitioner is not tenable. The disciplinary cases against him failed mainly because the appellate authority held that the misdemeanour on the part of the petitioner had not been established by documentary evidence. The appellate authority, however, was of the view that the integrity of the official was not beyond doubt. In the circumstances, it can be seen that the official was not exonerated as claimed by him, but was let off with a modified penalty due to non-availability of supporting documents to prove the charges framed against him, and the period involved cannot be treated as duty. The petition deserves to be rejected.

attached

in
25-11-88
वरिष्ठ चिकित्सा अधिकारी
डा. तार चिकित्सालय
Senior Medical Officer
P & T Dispensary
Vadodara-390001

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7. In exercise of the powers conferred under Rule 29 of the CCS(CCA) Rules, 1965, I reject the petition.

11/02/65
(KAILASH PRAKASH)
MEMBER (PERSONNEL)
POSTAL SERVICES BOARD

Shri P.H.Damor,
Ex-PA,
- Fateganj Head Post Office,
Baroda-390 002.

Through DPS, Vadodara Region, Vadodara-390 002.

attested
11/8/65
वरिष्ठ चिकित्साधिकारी
डाक-तार चिकित्सालय, वडोदरा.
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

DEPARTMENT OF POSTS : INDIA

REGISTERED AD

Sr. Supdt. of Post Offices
Vadodara West Division
Vadodara - 390 002

To:

Shri P H Dabhor
P.A., Sayajiganj
Vadodara - 390 005.

No.F6/M.Karjan/1882-83/16 dtd at VDR-2 the 28/11/88

One copy of the Directorate order No.2-451/88-Vig.III
dated 24-10-88 is sent herewith. Kindly acknowledge
the receipt.

For Sr. Supdt. of Post Offices
Vadodara West Division
Vadodara- 390 002.

Received on
28.11.88

Approved by

Period of absence from 8.11.88

to 14.5.89

Attested

M. S.
25.11.88

वरिष्ठ चिकित्साधिकारी
डाक-तार चिकित्सालय, वडोदरा.
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

A 2
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A 2
2/451/88-Vig. III
Government of India
Ministry of Communications
Department of Posts.

Dak Tar Bhawan,
New Delhi-110 001.
Dated: 22 Aug. '88.

To The Director Postal Services,
Vadodara.

Sub: Petition dt. 25.4.88 from Shri P.H. Damar, PA;
Sayajiganj Vadodara P.O. against the punishment
reduction to the lower stage.

.....

Sir, The undersigned is directed to refer to your letter No.
STA/4-3/88 dt. 25.7.88 on the above noted subject and to request
you to send the following documents as these have not been
received with your letter.

1. Brief History of the case.
2. Defence Statement.
3. Punishment orders.
- 4.

This may be treated as urgent.

Yours faithfully,

(S.P. JAIN)
DESK OF FINER (VIG. III).

attached

12/11/88
वरिष्ठ चिकित्साधिकारी
डाक-तार चिकित्सालय, वडोदरा.
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

A3 A3 (14)

Inquiry Report

10/14/19/PHD

Bharuch

31-3-86.

I the undersigned P.L.Shirsath, ASP Bharuch was appointed as Inquiry Officer vide SSP Vadodara West Dn., Vadodara memo No.F6/Miyagam Karjan/82-83 dtd. 8-5-84 to enquire into the charges levelled against Shri P.H.Damor, PA Miyagam Karjan. Shri V.M.Karanjia was appointed as Presenting Officer to present the case on behalf of the disciplinary authority.

2. The charged official(C.O.) Shri P.H.Damor vide SSP Vadodara West Dn. Vadodara memo no.F/6/Miyagam-Karjan dtd. 31-10-83.was charged for

1) allegedly failure in observance of the provisions of rules 658 of P&T Manual Vol.VI Part-III read with rule 674 abid, read with rule no.30 of F.H.B.Vol-II read with 6(d) of chapter VI of wireless licencing manual while functioning as temporary postal assistant & Treasurer M.Karjan.

ii) contravening the provisions of rule no.11 of the CCS(Conduct)rules 1964 while functioning in the afore said office & during the afore-said period.

3. The preliminary hearing was kept on 13-11-84 at M.Karjan S.O., but could not be held as C.O.did not attend. It was told by the P.O.that C.O.produced the Medical Certificate.

4. The C.O.vide his letter dtd, 11-12-84 intimated me that he was suffering from jaundice and required a rest of two months. He nominated Shri M.Y.Bhalerao, APM Vadodara HO as his defence assistant to assist in this case. The D.O.did not informed me when the M/c period was over or whether it was continued even after that.

5. The Preliminary hearing took place on 2-5-85. The above,cited memo of SSP Vadodara West Dn.Vadodara was read over to the C.O. He denied both the charges. The C.O.was asked to inspect the document on 25-5-85, to submit a list of the witnesses and to give a notice within 10 days for discovery or production of any document which are in the possession of Govt.but not mentioned in the list this pleas for.

6. On 25-5-85, the inspection of documents was carried out by C.O. During inspection of documents, the C.O.objected that the BRL register was not covering period from 29-1-83 to 10-2-83, though the period of register was shown as 29-1-83 to 12-3-83. The register was also stated to be in piecemeal and not binded one.

7. The regular hearing was kept on 25-7-85, but the C.O.did not attend. He sent a telegram only saying that "he is not coming". No reasons compelling him to remain absent were not stated. Exparte proceeding could have been done, but looking to the natural justice, the regular hearing, fixed on 29-7-85. The PO. submitted his application for additional documents' inclusion in annexure III stating that the statements of Shri R.K.Dabhi, A.D.Jadhav, M.A.Malek could not be examined. No regular hearing took place. Since it was not for filling the gapes and just due to inherrent

Accepted
वरिष्ठ चिकित्सालय, वडोदरा
हाक-तार चिकित्सालय,
Senior Medical Officer
P & T Dispansary
Vadodara-390 001.

lacuma, the production of document by PO. was permitted.

The copies of these documents are demanded by D.A. The inspection of these documents was awarded on 29-7-85 but on 29-7-85 neither CO nor DA attended the inquiry.

8. The further inspection of these documents was carried out by the CO/DA on 16-9-85. These documents were numbered V to XIII. The copies of these documents were given to the C.O.

9. The CO on 16-9-85, submitted the list of documents to be produced. The list was consisting (i) Treasurer's cash book for the period from 7-2-83 to 12-2-83 (ii) Duty list of treasurer M. Karjan (iii) error book of treasurer & SPM from 7-2-83 to 12-2-83 (4) Longbook dtd. 9-2-83.

10. The defence documents viz. Treasurer's cash book (D-1), Duty list of treasurer (D-2) and Long book (D-3) were made available to the C.O. The document "Error book of treasurer and SPM" was not available and hence an access could not be given to C.O.

The CO wished to examine Shri C.B. Parmar SDI, as his defence witness. It was permitted.

11. Regular hearing took place on 27-9-85, 28-9-85, 24-10-85, 4-11-85, 16-12-85 & 17-12-85. The pleas in brief recorded as narrated below.

1) Shri R.K. Dabhi - He admitted his statements dtd. 17-2-83 and dtd. 12-3-83 given before ASP West and SSP West Dn. Vadodara resp. as correct (P.1 & P.2). He handed over the documents viz. SO account 1-4-82 to 11-3-83 (P-3) ACG-85 from 3-11-82 to 12-3-83 (P-4), ACG-112 29-1-83 to 12-3-83 (P-5), for excess cash he passed the remarks on 7-2-83 & 8-2-83 at the bottom of SO account for Feb. 83 as below:

7-2-83 : Cash excess due to non making remittance by the Treasurer.

8-2-83 : Cash excess due to forgotten remittance owing to cash recovery from P.H. Damor, Tr. who has made misappropriation of Govt. money.

He also admitted his statement dtd. 15-6-83 given before V.O. CO Ahmedabad as correct (P.6).

In cross examination he stated that Shri Damor was working as Treasurer w.e.f. 5-2-82 as per the orders of SSP Vadodara West. His tenure was to be elapsed w.e.f. 4-2-83 A/N, but he was continued as treasurer as there were no directives from SSP. Duty hours of the treasurer were 7 to 10.00 & 14.00 to 17.30. The SPM's duty hours were 5.00 to 5.30, 7 to 10.30, 14.00 to 17.30 & 21.45 to 22.15 cash was kept ready for remittance by Treasurer

...3/-

attached

25-7-88
वरिष्ठ चिकित्सालय, वडोदरा.
डा. तार चिकित्सालय,
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

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Treasurer and he was preparing treasury receipts and handedover to postman for remittance. He was not confirming cash to be remitted but on the say of Treasurer he was preparing receipts. Except this incidence there was no shortage of cash stamps with Shri P.H.Damor, during his treasurership on 7-2-83, he filled in particulars of cash stamps in SO daily account without actual counting, on 7-2-83 at evening he could not check the cash stamps as Shri Damor left office to see his friend in Police station as Damor told him that Damor's friend was caught by the Police to release him & come back and hence he permitted. On 7-2-83 Shri Damor was often and often going outside the P.O. and this was caused him something undue. At about 14.00 Hrs., one person named Shri Kishori from forest department came on 7-2-83 in P.O. & sitting before Shri Damor for 15 minutes. Shri Kishori did not obtain his permission. He also did not object as Damor told that he was his friend. On 7-2-83 he demanded treasures' cash book but Damor did not give it. On going of Shri Damor, he took it from the table of Shri Damor. No error book was maintained by him but order book was maintained by him. On Shri A.D. Jadhav was at his table at about 17.15 hours. He told him to help counting the cash stamps of Damor. He told Damor also. On 8-2-83 at about 7-00 hrs. in the morning Shri A.D. Jadhav had counted cash stamps. Shri Damor was also giving cash stamps duly counted by him to Shri Jadhav to count cash stamps. No inventory was made. No panchnamu was made on that day. Regarding shortage of cash stamps no entry was made in SPMs' order books. At first shortage of Rs. 11200/- was noticed, lastly it was 14200/- (including shortage of 3000/- in stamps). Mrs. Damor may be at about 8.45 to 9.00 AM in P.O. The amounts were given to Shri Damor by his friend directly and hence no ACG-67 were issued for amounts. When ornaments were put on the table of SPM, as per his remembrance, Shri Damor, Mrs. D Parmar, BPM Sokhda Radhu Shri Bandhara were present. Sokhda Radhu was away 15 Kms. from M. Karjan but the BPM resides in M. Karjan. In Simli there is only one phone in that village. It is connected locally and can be got on demand from M. Karjan Exchange. He told Shri C.B. Parmar (SDI) regarding misappropriation and to come soon. On referring the remarks dated 8-2-83, he stated that these remarks have been passed by Shri Parmar (SDI) on 9-2-83 on making good the remaining amount of Rs. 3000/-, in presence of his own, Shri Malek (SB Clerk). On 9-2-83 Shri C.B. Parmar (SDI) took SPM Shri Dabhi to his (SPMs') quarters and he asked whether Damor arranged Rs. 3000/- otherwise case was to be given to Police. Shri Damor was also with them at that time. After few time, the proprietor of Shalimar footwear came. He expressed his desire to help Damor, by paying Rs. 3000/- on 9.2.83 Shri C.B. Parmar (SDI) took his statement forcibly but he did not reported this to SSP due to threatening by Shri C.B. Parmar (SDI). On 9-2-83 Shri C.B. Parmar phoned from Vadodara East Dnl. office, that he contacted SSP East Shri Damor and informed not to intimate any matter to SSP West. After 1/2 hour the SSP East Shri Damor also told him (SPM) not to report the matter to SSP West. On 10-2-83 Shri P.H. Damor was relieved from the charge of Treasurer in anticipation of orders of SSP West. The shortage was not continued from back date but found on 7/2 & 8/2/83 only.

The word "misappropriation" was used by him as Shri P.H. Damor told that he had given the cash to his friend.

....4/-

corrected
in
28/11/83
वरिष्ठ चिकित्सालय, वडोदरा
डाक-तार चिकित्सालय, वडोदरा
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

It is not trace that some jugular was coming to his PO & doing money double. It is not true that he & Shri Damor decided to take out cash on night of 7-2-83 & to go to the temple at highway to make a double & to devide the profit 80% & 20% to him & to Damor respectively.

ii) Shri K.J.Chavda clerk M.Karjan(P.W.2). He confirmed the statement dated 22-9-83 given by him before ASP Shri Vohra as correct. He worked as Treasurer W.e.f.11-2-83(P.7)(in ACG.85) on refering P.4 (stamp register), he stated that the particulars of stamps of BRL, MS, Service were not furnished by Shri Damor for 31-1-83 to 7-2-83 and this was pointed out by him to SPM. Exhibit P.5 was shown to him. He stated that it was in loose papers of ACG.112. It was prepared by him from 11.2.83.

In cross examination by C.O., he stated that Exhibit 5(BRL stamp register) originally was in bound book. The said complete book was taken by Shri Sharma the I.P.C. West Dn. March, 83. BRL stamps were checked at the time of taking charge of treasurer, from that bound book.

iii) Shri M.A.Malek: Clerk M.Karjan(P.W.3). He admitted his statement dtd.15.2.83(P.8) as correct. He stated in it, that on 9-2-83, the SPM Shri Dabhi gave him a Pass book No. 3908536 & withdrawal form for Rs.3000/-. He stated the depositor Shri Abdulbhai Dhrolwala also told him that the amount is not be taken but to be given to Shri P.H.Damor treasurer. He had not taken the amount but h-e signed for that amount just to adjust his account P.9(SB Withdrawal) was also submitted by PO. He further stated that a deposit of Rs.1000/-in the said account was also took place on the same date i.e. on 9-2-83.

In cross examination-he stated that he was in M.Karjan PO. from 10-6-80 to 9-2-84. SB working hours were 7 to 10:30, 14 to 15:30. On Saturday they were 7 to 10.30 only. He filled in it & depositor signed. After signing if he paid it to the Depositor. In D.3, this amount of Rs.3000/-has been shown as taken from treasurer. but it was mere adjustment on the say of Shri ~~Dhar~~ Dhrolwala. He signed the treasure's cash book, for Rs.3000/-received the amount & gave it to Shri P.H.Damor on the spot in presence of Shri Dhrolwala. Shri Dabhi watched this transaction. He stated that P.8 was given by him at his own accord and not on the directives from ASP Shri Vohra. Shri Dabhi & Vohra did not call him for discussion before this statement. It was given at his SB Counter. Shri Dhrolwala was in hurry & hence he filled in form.

iv) Shri A.A.Dhrolwala- He had given the statement on 15-2-83 Ex.P.10 in his own handwriting

admission

म. 71/88
वरिष्ठ चिकित्सक, वडोदरा.
डाक-तार चिकित्सालय,
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

was called by Shri Dabhi, for balance of Damor, requested for Rs.3000/-. It is not true that he gave passbook & with form to SB Counter in presence of Shri Dabhi, Rs.1000 & 2000/- on 9-2-83 & 10-2-83 were credited by him through his friend and ~~was~~ not through Shri Dabhi. 3rd para is also not correct. He gave the statement just to oblige the SPM Shri Dabhi, on the relation of neighboured. On 15-6-83 one officer called him. Before this officer, about 4 to 5 days, Shri Dabhi called him & said that he has to say 'yes' before that officer. The officer might have told him to read the statement he might have read it & said yes. Nothing was asked by that officer. Ex.P.9 was shown to him. He admitted that both the signatures on it are of his own. The P.O. declared him as a hostile witness. No croll by the C.O.

v) Shri A.D.Jadhav, PA M.Karjan(PW.5). He admitted his statement dtd.15-2-83(P.11) as correct. It was stated by him that, on 7-2-83 when he went to the table of Shri Dabhi SPM at 17.00 hrs., SPM secretly told him that the balance of Shri Damor, Treasurer was suspicious and he would help him to count cash stamps. At 17.30 hours, SPM & he went to the Damor's table. He heard the discussion in between Damor & SPM to the effect that, the friend of Damor is involved in the prohibition case & Damor has to go to release him immediately & thereafter they may count cash & stamps. He left the office in evening on 7-2-83. On next day in the morning when he came in office, SPM asked him to count the cash stamps of Shri Damor. At about 10.30 hours, total amount of Rs.14,200/- was found short in balance. SPM did not instruct him, nor panchnama was made by him. At 10.30 as his duties were over, he left the office.

In cross examination he stated that he was working as signallar and his duty hours were 7 to 10.30 & 14 to 17.30. Shri Vohra and Dabhi did not contact him before statement. He gave P.11 at SB counter. No body was present at that time. He personally heard the discussion regarding catchholding of Damor's friend and leaving of Shri Damor for his rescue. On 8-2-83, he was in office at 7.00 hrs. Dabhi called him from entrance to count cash stamps of Shri Damor. Shri Dabhi & he counted cash stamps. He was counting, Dabhi was noting upto 10.30. They did the counting work. They found shortage of 14200/- No third person was sitting. Damor was present before them. He had not recounted, but Dabhi did & confirmed the shortage. This shortage was also known to Shri Damor & he agreed too.

vi) H.K.Patel-EDBPM Simli-(PW.6)-He admitted his statement dtd.9-8-83 as correct(P.12). It was stated by him in P.12 that on 8-2-83 Shri C.B.Parmar was at Simli for yearly inspection at about 11.00 hrs. At about 1.30 PM, one boy from Chiman Jethabhai Patel came & called Shri Parmar(SDI) to that Phone. Shri Parmar went with that boy. Shri Parmar told him that some Misappropriation took place & he had to go. He went by the bus starting at 14.00 hrs. from Simli to M.Karjan.

In cross examination, it was confirmed by him that Shri C.B.Parmar told him after talking on phone that some "Uchapat" is made at M.Karjan. and he (C.B. Parmar had to go to M.Karjan.

attested

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विक्रम चिकित्सालय,
डा. तार चिकित्सालय,
Senior Medical Officer,
P & T Dist.
Vadodara-390001.

vii) R.S.Parmar, Circle inspector, RTS, Mamaladar office(PW.7). He stated that the statement dated 16-2-83 is read out to him. It was(P.13) in his own handwriting and signed by him too. He did not admit it into. He stated that Damor was not his freind but a face known fellow as he was operating RD accounts.

The PO declare the witness as "hostile".
.....

He further stated that as a circle inspector, he had to conduct inquiries to record the statements. Before recording statement(P.13) Dabhi met him & said that there was a quarrel between him & Damor & Dabhi wanted to shift Shri Damor from treasures' table. since 81 he knows Dabhi. He was his cast brother. He was knowing Damor & ~~the~~ other persons of office. He declared his statement as faulse. He had no idea that his statement have gone against Damor. It is not true that Damor is his freind. How he stated his (Damors') name as "Parsangbhai" that he goes not know. On 8/2/83; 9/2/83 he was not at M.Karjan, he was at Vadodara.

In cross examination, he stated that, one postal officer was in Mamalatdar's office on 16-2-83 with Shri Dabhi at about 12.00 hrs. No permission of Mamalatdar was taken. He first declined to give statement, Dabhi treatened to transfer him if I would not have given statement as his brother was MLA, who is that MLA that he does not know. But he was MLA of M.Karjan assembly. Inquiry officer dectated whole statement.

viii) Shri I.A.Vohra-PW.8. He made the inquiry in this case on the verbal orders of SSP Vadodara West. He made confidential inquiry in officet outside with various officials including Shri Damor also & obtained the statements. He recorded P-10 Shalimar footwear & 13 he ~~at~~ did not recollect exact place.

In cross ~~has~~ he stated that while recording statements, he did not ask Damor to remain present. On referring D/1, he stated that there are remarks of varification of cash stamp balances on page No.36. They showed to be correct. He had made confidential inquiries regarding remarks and came to the conclusion that the remarks were incorrect. Shri R.S. Parmar was a Govt.servant and hence he did not geel necessary to take a permission of Mamalatdar. It was not necessary for him to make conspirasy against Shri Damor. It is not true that A.A.Dhrolwala helped him as a cast brother. He is not cast brother of him at all. He had not contacted the persons who gave money for the ornaments. He met the father of P.H.Damor, as he was in P.O. He did not remember what they talk. He denied that he demanded Rs.3000/-from his father to wind up the case.

12. In written defence he denied the charges.

13. Shri C.B.Parmar was defence witness produced by the C.O.Shri Parmar, SDI, Stated that, the remarks in D/1 page.36 were passed by him under his signature after physical verification of cash/stamp balance on 8-2-83.

.....7/-

all correct
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58-11-88
वरिष्ठ चिकित्साधिकारी
डाक-तार चिकित्सालय, वडोदरा.
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

In cross examination by PO he stated that he visited M.Karjan P.O. at 17.15 hours on 8-2-83. He started verification at 17.30 hours & completed at 19.30 hours. He has not verified vouchers as he had no concern for counting cash stamps. It is true that he was punished in this case for the false remarks on 8-2-83. During stay on 8-2-83 to 9-2-83 he made confidential ~~inquiries~~ inquiries in r/o shortage of cash with Mr. P.H. Damor. It was come to know that there was shortage of cash about 10 to 11 thousand rupees. When he counted there was no shortage. He ~~did~~ did not remember whether the shortage of Rs. 3000/- in stamp was shown by him before V.O.

14. The C.O. did not wish to be examined himself as a witness. The few questions were asked by me. while replying them he stated that the relations with Dabhi, SPM, were normal. He did not know what are the reasons for telling lie regarding shortage of Rs. 14200/- by Shri Dabhi & AD Jadhav & that the case was falsely made against him by Shri Dabhi. He stated that Shri Dabhi was demanding complete treasury allowance per month & he denied to pay it. He further stated that he paid treasury allowance for 2 months viz. April 1982 & May. 82 thereafter he stopped. He did not noticed regarding demand to the superior authorities as he had to serve under him. He denied that he left the office ~~hrs~~ before closing of working hours on 7-2-82. He admitted that Shri Dabhi and A.D. Jadhav counted cash on 8-2-83 in the morning. He stated that Malek was also speaking lie due to direction of Shri Dabhi (SPM). He also stated that SPM & Shri A.D. Jadhav on counting cash on 8-2-83 did not tell him regarding the shortage.

15. Assesment of Proof:

Shri R.K. Dabhi was SPM Miyagamkarjan P.O. and Shri P.H. Damor was Treasurer-M. Karjan P.O. on 7-2-83 and 8-2-83. Shri P.H. Damor had worked as Treasurer-M. Karjan P.O. from 5-2-82 to 8-2-83. Shri Dabhi had stated in his ~~statement~~ statement Ex.P.1 that on 7-2-83 at about 17-15 hours, he intended to see that account of cash if tallied by Shri P.H. Damor. Shri Damor told him that his (Damor's) friend was caught by Police in one ~~prohibition~~ prohibition case and he left the office. He waited for him upto 19-00 hrs. on that day but Shri Damor did not turn up on 7-2-83. ~~He (Dabhi)~~ He (Dabhi) observed that the attitude of Shri Damor was suspicious and he was going to the door of PO often and often. On 8-2-83 Shri Damor came on duty at 7-00 hrs. and SPM took the help of Shri A.D. Jadhav Signallar to count the cash and stamps. At about 8.30 hrs. they notice that shortage of Rs. 11,200/- in cash and stamps. He asked Damor about shortage. Damor explained that his one friend Shri Harisinh Kishori who works in Forest Deptt. and resides Q.S. his (Damor's) neighbour, came in PO on 7-2-83 in between 15.30 to 16.30 and Damor had given the said amount to Shri Kishori. He however did not disclose any reasons to SPM for payment of the said huge amount. He told him that such Govt. amount can not be given to any persons. During this the Wife of Damor also came in P.O. and SPM told her the consequences of Police case if amount is not made. Shri Damor told his wife to contact his one friend and to call him in PO. She called Shri Hasubhai Parmar who was a

attested
25-11-83
 वरिष्ठ चिकित्साधिकारी
 डाक-तार चिकित्सालय, वडोदरा.
 Senior Medical Officer
 P & T Dispensary
 Vadodara-390 001.

a Clerk in Mamalatdar Office. He (SPM) told the incident in detail. Shri Parmar at that moment gave 500/- Again he left office with Mrs. Damor together more money, at about 10.30, there was total shortage of Rs.14,200/- with the a/c of Shri Damor. At that time Shri Parmar brought more 1000/- and gave to Damor. This amount was kept in safe by Damor and watched personally by Shri Dabhi. Shri Damor brought 1500 more, thereafter Rs.2500/-. At 15.30 he brought Shri Parsottam Bandhara, BPM Sokhda Radhu. Shri Parmar brought one bag which was containing silver 6 to 7 ornaments. Shri Bandhara gave Rs.5700/- to Parmar and Parmar gave it to Damor who put the said amount in safe. Thus amount of Rs.11,200/-, was got arranged by them. Shri Parmar left the office saying that no more amount can be possible by them.

After about 12.00 hrs. Shri C.B. Parmar as informed by Shri C.B. Parmar regarding visit to Simli, Shri Dabhi contacted Shri Parmar on phone, gave details and requested him to come to P.O. M. Karjan. At about 16.00 hours Shri Parmar C.B., SDI(P) came. SPM told him that there was total shortage of Rs.14,200/- and out of it 11,200/- was made good. Still 3000/- were short. Shri C.B. Parmar told Damor to make arrangement but Damor did not leave office. Shri C.B. Parmar, SDI(P) left office M. Karjan at 20.00 hrs. The BPM Sokhda Radhu also left office at 20.00 hours alongwith, SDI(P) Shri Parmar C.B. On 9-2-83 Shri C.B. Parmar came in M. Karjan P.O. and asked whether the shortaged noticed yesterday was arranged. When this was discussed by him with Shri C.B. Parmar the proprietor Shalimar foot wear Shri Abdul Ahmed had come in quarter and showed his willingness to help Damor. He withdraw Rs.3000/- from his SB account no. 3908536 by say of signing SB warrant. Thus 9.30 to 10.00 this shortage was also made good. Shri C.B. Parmar passed the remarks on making good this amount i.e. on 9-2-83 regarding cash stamps dtd. 8-2-83 as correctly found by him. Regarding any kind of report etc. Shri C.B. Parmar told him not to report to anybody and he will see SSP Damor. Shri C.B. Parmar was displeased on the correct deposition of Dabhi and stated that he had not to submit papers to SSP onward but to keep all papers at his office. In the statement given before C.B. Parmar, Shri Dabhi stated shorted of Rs.3000/- only Shri C.B. Parmar left office after 13.30. He instructed to shift P.H. Damor from 'Treasurer' charge. As told by Shri C.B. Parmar earlier, Shri C.B. Parmar phoned him (Dabhi) at 16.30 hrs. from Vadodara SSP Office. He did not report to SSP as Shri C.B. Parmar instructed him on 7-2-83 as there was no adequate balance, SPM Shri Dabhi did not sign the Treasurer cash book on 8-2-83 and 9-2-83 he signed it as amount was made good. He did not maintain the error book for this incident. In P.2 he handed over documents to the SSP Vadodara West. He stated that due to shortage, he did not checked ACQ-85 and 112. He also stated that at 17.30 hours, the office was closed on 7-2-83 and hence he could not send any man to call him (Damor) at office.

He did not report the matter to Police as this was 1st incidence and he did not know the procedure.

attested
M
 11/8/83
 वरिष्ठ चिकित्सक, वडोदरा
 डाक-तार चिकित्सालय, वडोदरा
 Senior Medical Officer
 P & T Dispensary
 Vadodara-390 001.

In P.6 before Vigilance Officer of Circle Office, he confirmed that there was a shortage of Rs.14,200/- in cash stamp balance with Damor. Shri C.B.Parmar passed the remarks regarding corrections of cash stamps dated 8-2-83, only on 9-2-83 i.e. after making good of the whole amount. For non-taking the whole amount under U/P, he stated that Shri C.B. Parmar, SDI(P) did not guide him, and as instructed by him, he had not reported the matter to SSP.

In cross examination he confirmed the facts of shortage, intervention/threatening of Shri C.B. Parmar, SDI(P) contact on phone with C.B.Parmar, SDI at Simli BO. visit of Shri C.B.Parmar to his office.

Shri K.J.Chavda took the charge of Treasurer from Shri P.H.Damor on 11-2-83. Shri A.D.Jadav, Signallar, M.Karjan has deposed that on 7-2-83 he was at the table of SPM at 17.00 hours. SPM Dabhi told him to help him to count cash stamps of Shri Damor P.H., Treasurer. It was also narrated by him that he heard regarding the involvement of Shri Damor's friend in prohibition case and Damor to go to Police station for his rescue. It is also proved fact by the deposition of Shri Dabhi, A.D.Jadav and as answered by Shri Damor to my questions that there was counting of cash stamps right from 7.00hrs. of 8-2-83 to 10.00hrs. As deposed by Shri Dabhi SPM and A.D.Jadhav, the total shortage of cash stamps was of Rs.14,200/- Shri M.A.Malek, P.A M.Karjan and who is now in the Bharuch Division, confirmed the fact of withdrawal of Rs.3000/- by Shri Dhrolwala from SB A/c No. 3908536. He also confirmed that there was not actual payment but it was mere adjustment and to make good shortage. The incidents of payment of shortage took place gradually and total shortage of 14,200/- was made good by the various types of efforts on 8-2-83 and morning of 9-2-83. Shri Hasmukhbhai Kanjibhai Patel, BPM Simli had confirmed the facts that Shri C.B.Parmar was called on private phone of Simli village, and Shri C.B.Parmar, SDI(P) told him that at M.Karjan, there was a "Uchapat" This fact was also confirmed by Shri C.B.Parmar a defence witness.

On other hand Shri A.A.Dhrolwala disagreed with the P.10. He stated that he did not helped Shri P.H. Damor, but he relieved money himself for his own use. The P.O.had treated his witness as "hostile" one. Shri R.S.Parmar was also a prosecution witness. He stated that Damor was not of his friend but a face known fellow. This witness was also declared as "hostile" by the presenting officer.

Shri C.B.Parmar was brought by the charged official as his defence witness. He stated that the verification of cash stamps of M.Karjan P.O.was done by him on 8-2-83 and not on 9-2-83 and he found everything was O.K.on 8-2-83. Shri Damor in response to my questions told that he had normal official relations with Shri Dabhi, Jadav, Malek. He also told that Shri Dabhi, Jadhav telling lie. He could not state what were the reasons. He further stated that Shri Dabhi made a false case of shortage of 14200/- against him only because he did not pay the Treasury allowance to Shri Dabhi (SPM). He paid for two months from April-82 and May-82 and thereafter he did not pay treasury allowance and hence this case was got made up by SPM Dabhi.

attested

25-11-88

वरिष्ठ चिकित्साधिकारी

हाक-तार चिकित्सालय, वडोदरा

Senior Medical Officer

P & T Dispensary

Vadodara-390 001

The say of Damor that it was a false case made up by the SPM Shri Dabhi as, he could not pay a sum of treasury is not tenable. Shri A.A.Dhrolwala who is a foot merchant and well educate was declared as hostile witness by PO, Question remains as to how for his deposition made before me is genuine and to the facts. The deposition stating that he did the transaction of withdrawal of Rs.3000/-at counter seems to be false one. The merchant having shop just before the P.O.M.Karjan, & well known to the other staff also, falsely states that he was not in P.O. and did not any transaction. His deposition stating that he was not called by Dabhi etc. is also not tenable. He has already confirmed his statement before V.O. This fact cannot be ignored. Shri R.S.Parmar who was a state Govt. servant, has denied the facts that he was knowing Damor. It is a fact that Shri R.S.Parmar stated that Shri Dabhi made a conspiracy and he helped him just he is cast as brother and Dabhi threatened him to get him transferred from M.Karjan. It is also stated by him that Dabhi's brother is MLA. But he did not know the name of MLA through he is cast fellow. This statement of Shri R.S. Parmar who holds the post of circle inspector is not at all tenable. His pretence about "not knowing Damor" is obvious and hence his deposition made before me is not tenable. Shri Malek was SB Clerk. He is already transferred from Vadodara West Dn. to Bharuch Division at the time of inquiry. There is no reason for him to speak lie. He has watched the transaction made in between Damor (treasurer) and Dhrolwala as depositor of SB a/c, who on paper with drawn Rs.3000/- just to help Shri Damor to make good of the amount. Shri C.B.Parmar, SDI who was visiting nearby BO Simli. Shri H.K.Patel EDBPM & CB Parmar confirmed that there was a phone from M.Karjan to the house of Shri Chiman Jethabhi Patel and Shri C.B. Parmar rushed to M.Karjan on 8-2-83. Shri C.B. Parmar however did not do anything except to wind up the case. The plea of Shri Dabhi SPM is specific. Just to save Shri P.H.Damor, Shri C.B.Parmar gave a fullest opportunity to make good, the amount but no where it is mentioned. SPM Dabhi also did not make any remarks regarding shortage inspite of he & A.D.Jadhav counted it right from 7.00 hrs. to 10.00 hrs. on 9-2-83 in the presence of Damor & arrived at net deficiency of Rs.14200/-. I see no reason to speak lie by Shri A.D. Jadhav. The facts do not lead to believe at all, that there was a conspiracy against Shri Damor made by Dabhi. The reason that Shri P.H.Damor did not pay him Treasury allowance is vague and evasive and thought at the eleventh hours. Shri Damor P.H. had already completed the tenure of one year on 4-2-83 i.e. P.H. Damor was appointed as Treasurer from 5-2-82 to 4-2-83. Had there anything to be done by Shri Dabhi to remove Shri P.H.Damor, he could have done this after April 82 from which period he stopped the so called payment of treasury allowance. Thus the say of Damor regarding conspiracy is at all not tenable. The SPM or SDI did not made panchnama or record anything. The SPM Shri Dabhi allowed Shri Damor on 8-2-83 in evening. The say of Damor that he was to go for the rescue of his friend who was caught by police in a prohibition case and non returning on the very day to P.O. denotes that there was something wrong with cash.

This proves on next day i.e. on 9-2-83 when A.D. Jadhav (who took the charge of treasurer from that date) and Dabhi SPM located heavy shortage of 14200/-. This ultimately proves that Shri Damor avoided the detection of shortage on 8-2-83. It is but possible for SPM to get the cash made good as he was also one of the joint custodian of safe & equal responsible

accepted
M
25/1/83 & a/c

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A3/10 (24)

responsible for shortage. The non panchnama, non making entries in error book, do not disprove the happenings of the case. The amount is stated to have been mixed in the amount gradually & by making various efforts. It is not necessary that all the staff should watch the incident. The arrangement of PO. is such that, the counter clerks while sitting at counter have the back towards the SPM. It is not necessary to call for the other witness to narrate the things as to how much the silver was brought by Damor's wife and to what cost it is sold out. The ~~affairs~~ fact that amount in treasury was short and the various efforts were made to make good the amount and totally 14200/- was made good, cannot be disproved.

Looking to the above facts and preponderance of probabilities, the charge No. I is proved. However original BRL register was not produced by the department. The present produced was on only two pages. The irregular maintenance of BRL sale of stamps and register as required vide rule 3 b(d) of chapter VI is not proved. Thus the charge is said to have been proved partially.

Regarding charge II-

As discussed above, it is obvious that the C.O. Shri P.H. Damor has not maintained absolute integrity, devotion to duty and he acted in a way which was unbecoming of Govt. servant. Thus his acting in contravention of the rule 3(1) of CCS (Conduct) rules 1964 is proved.

Finding

Charge I Partially proved.

Charge II - ~~partially~~ Proved.

Shirsath
(P.L. SHIRSATH)
Inquiry Officer

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5-7-89
वरिष्ठ चिकित्साधिकारी
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A-4 (25)

FROM : P.H. DAMOR,
P.A. Fatehganj Head Post,
Vadodara - 390 002

To,
The Senior Supdt. of Post Offices,
Vadodara West Division,
Vadodara - 390 002

Sub.: - Disciplinary case under Rules 14 of
C.C.S. (C.C.A.) Rules - P.H. Damor.

Ref.: - Your letter No. F-6/Miy-K dt. 16-7-86.

Sir,

Above letter along with an Inquiry Report
No. 10/14/19/PHD dated 31-3-1986/1-7-86 has been received
by me on 25-7-86.

My humble representation on the Inquiry Report is
as under :-

The Inquiry Officer has not taken into consideration
my defence Brief which contained all the pleadings,
arguments and salient features expressing my exoneration
from the alleged charges which stand unproved on the basis
of Quasi-Judicially proceedings and on the principles of
NATURAL JUSTICE.

It is seen from the preparation of Inquiry Report
that it has taken three months to complete it and submit
it to the Disciplinary Authority. Therefore, it is but
natural that substantive and material evidence has remained
to be taken into consideration which has been disclosed by
the witnesses during the course of oral inquiry. It is the
Principle of Evaluating of evidence the promptness of its
framing in the Inquiry Report as early as possible to
memorise the conduct of the witnesses and therefore after
the recording of evidence is over, the Inquiry Authority
is required to seize with the task of assessing the effect
of inferences from such assessment as these state of
appreciating the evidence recorded during the course of
oral inquiry is of utmost importance as the Inquiring
Authority has to apply its mind not only to each piece of
evidence to adjudge its worth but also to co-relate them
and to draw inference from totality of the circumstances.
This element is wanting in the present Inquiry Report.

And thus, the process of evaluating evidence is not
completely a judicial one and there is place in it of
caprice and arbitrariness.

Though the Indian Evidence Act is not, in terms,
applicable, to the departmental inquiry, in the matter of
evaluation of evidence, its provision have, of necessity,

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to be noticed, And the evaluation of evidence in departmental inquiry, has, therefore, come to be covered by well settled norms as this Inquiry is a QUASI JUDICIAL INQUIRY.

The Inquiry Officer has contended that the burden of proof lied on the accused official but this contention is far from truth. As is held by the court in case of Radhakanta Vs. State 1962 and in case of S.R.Biswas V/s State 1964 that the Inquiry Officers must understand that the charge has to be proved against the delinquent and it is not for the delinquent to absolve himself from the CHARGE and again that the burden was on the prosecution to bring home the Charge against the delinquent but this burden appears to have been thrown on the delinquent to exonerate himself. This is exactly the situation in the present case where the Inquiry Officer wants to place this burden of establishing his innocence on the public servant in a QUASI JUDICIAL INQUIRY wherein the prosecution has failed to establish the CHARGES as per the principles of Natural Justice, as has been explained fully in the Defence Brief submitted by the Accused Official and which is based on substantial material evidence of documents as well as from the depositions of the witnesses recorded during the course of ORAL INQUIRY. Thus, since the burden of proof in departmental proceeding -s of Quasi-Judicial nature lies on the prosecution, the Inquiry Authority cannot return a finding of guilt on the basis of statements of preliminary Inquiry when prosecution has not been able to discharge that burden in accordance with the standard of proof required in quasi-judicial Inquiry ordered under Rule 14 of C.C.S. (C.C.A.) Rules, 1965. The cogent is that unless the Articles of Charge are proved, the delinquent official remains innocent in the eyes of LAW. And the principle is that in punishing the guilty, scrupulous care must be taken to see that the innocent is not punished. This judgement of Supreme Court relates to Union of India V/s. H.C. Goel of 1964.

The Inquiry Officer has raised presumptions to fill up the gaps in evidence to arrive at the wrong conclusion of proving guilt. But except where the Inquiry Authority can LAWFULLY presume any fact, it cannot draw presumptions for the sake of filling-up gaps in evidence. This is exactly the case in which the Learned Inquiry Officer has raised presumptions without Law and without any substantial evidence and therefore, the findings on such surmises

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25/11/88
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would be unjustified and fructuous as observed by Supreme Court in case of Shri Niranjansinh Saxena in 1961. And observed that speculations are wholly out of place in dealing with the disciplinary cases of QUASI JUDICIOUS nature. Because, the reason is that such departmental inquiry is not an empty formality and such proceedings are required to give the delinquent a chance to meet the charge and to prove its innocence on the principles of Natural Justice as per law of Evidence.

The Inquiry Officer, unfortunately picked up at random some versions which are not true as per depositions of the witnesses taken together. And has made presumptions on the basis of guilt. The Inquiry Officer has taken into considerations the contents of statements of Preliminary Inquiry which have not come true in the Oral-Inquiry of the Inquiry Officer. The vigilance Officer has not been examined though some evidence is relied upon by the Inquiry Officer as referred to on page NINE of Inquiry Report. Prosecution witness No.6 is Shri H.K.Patel who has not been examined by Vigilance Officer. Thus either Inquiry Officer has not applied its mind while making the inference which appears irrelevant and otherwise no cognisance is allowed for a statement on which accused official is not afforded opportunity of cross-examination. And all such statements in Inquiry are ~~an~~ nullity.

The Inquiry Officer has discussed the issue of preponderance and relied upon it which ~~is~~ is quite surprising. The judicially inquiry requires material evidence oral or documentary which is most essential in deciding the case. The material witnesses in the oral inquiry of quasi-Judicious nature are the persons who are knowledgeable about the facts. In the present case S/Shri R.S.Parmar (P.w.7), A.A.Dhrolwala (P.W.4) and C.B. Parmar (DW-1), are the witnesses and from the evidence produce during the oral inquiry none has been able to spot out that the charge was established but the evidence produced establish innocence. Even to the extent that on 8-2-1983 when the responsible supervising officer verified cash and stamps the same was found to be correct and such remark has been recorded after verification of cash and stamps and these remarks are passed on the relevant records in presence of the S.P.M. Shri R.K.Dabhi which are not challenged on the spot or objected to record such genuine remarks on Govt. Records. Thus, there is no reason to disbelieve these facts by the Inquiry Officer.

attached

58-71-88

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The responsible Govt. officials are bound to know the rules and these rules are required to be carefully read by all officers of the Post-Offices, as no breach of the rules can be excused on the plea of ignorance. The S.P.M. is in the present case is a very Senior person working in the higher cadre. It is surprising that the Inquiry Officer pleads such breach of rules. If any wrong had happened in that office. The rule is specific that an inventory of cash and stamps actually found must be drawn-up and got signed by two independent witnesses and action should be taken as prescribed in the rules on the subject. Does the Inquiry Officer a Judiciary Head can ignore this fundamental requirement to prove the charge ? The rule is specific, that any untoward incidence of serious nature happens, the Head of Office must record the incidence in the error-book/order book and take further action. These recording is meant for evidence to establish any such incident happened in the office. If there is no such evidence, can Inquiry Officer, of its own accord raise presumption to fill-up gap against law of evidence and principles of Natural Justice ? The rule is specific that any irregularity of shortage of Govt. cash in a Post office has to be reported to the competent higher authority for immediate necessary action. Can the Post Master violate this rule, if there was shortage ? Can Inquiry Officer which acts as a Judiciary person can draw presumption otherwise when there is no evidence to establish charge in the guise of preponderance ? In fact, there are specific judgements relating to the issue of pre-ponderance in the judiciary branch. The standard of proof has to be applied after the basic facts are proved. Thus, preponderance of probability, and not proof beyond reasonable doubt only applies when this standard of proof depends after the basic facts are proved. In the present case there is not a DINT of evidence to prove the CHARGE and therefore contention of Inquiry Officer applying the theory of preponderance falls flat. In the oral inquiry there is no evidence to establish at any stage that there was any alleged shortage of cash/stamps. The Defence Brief has narrated the circumstances in which the accused official has to face the Inquiry and the circumstances in which the Sub-Post Master attempted to take into clutches the accused official but miserably failed as its guilty conscience did not permit to prepare false record in support of the conspiracy. Such as preparation of inventory

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of alleged fraud, recording of alleged fraud in error-book/Order-book, reporting of alleged fraud to higher authority etc. etc. which inter-alia proved beyond reasonable doubt that there was no case of alleged fraud and resultantly it is a case of no evidence.

The entire episode can only be defined as a hearsay evidence. The sub-post Master has not reported the alleged incidence to the higher authorities nor the S.P.M. prevented the accused official to leave the office on 7-2-1983 because apparantly there was no ~~case~~ case of alleged shortage of cash and stamps otherwise no wise-man as a Head of Office can undertake any risk and responsibility to act in this manner. The A.S.P. of Divisional Office without any authority from the Divisional Head for specific inquiry visited casually as stated by that authority and made inquiries. This inquiry is quite perfunctory and without due norms to be observed for the Inquiry. If it was such a serious case, the accused official which remain in Head-Quarter could have been contacted and statement recorded which has been deliberately neglected. Similarly, other statements by the said officer as well as Vigilance Officer were recorded without affording opportunity to the Accused Official which was in violation of Article 311 of the Constitution of India. The Inquiry Officer presumes that some witnesses had no reason to speak against the accused official. This presumption of the Inquiry Officer is also incorrect. And such general principles that those witnesses have no reason to say against the accused official has no application since the Inquiry Officer has not gone deep in the issue of ulterior-motive and intention specifically by the S.P.M. in the present case, there is prima-facie a wrong contention made by the Inquiry Officer and express the opinion the Defence point has not been considered and presumed at one stage that it was after-thought whereas the accused official has never stated otherwise.

The Inquiry Officer while assessing the value of witnesses has erred in ignoring the material evidence of witness of S/Shri R.S.Parmar, Mr.Dhrolwala and C.B. Parmar who have given the evidence before the Inquiry Officer. According to the Rule of Law the assessing value of these witnesses which are independent of S.P.M. and Inquiry Authority was required to give more weight

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to these witnesses which have given coherent and consistent evidence when facts were required to be given in a judiciary inquiry before the Inquiry Officer. Thus, apparently, the Inquiry Officer has discarded these witnesses with a bias mind and violating the principles of Natural-Justice. The other witnesses are departmental ones and have not given any material evidence to establish that the accused official was guilty. In fact, these witnesses were not the eye-witnesses but induced to be witnesses - being present in the office and they did not stand to real test of cross-examination and the veracity was not sound. The cash and stamps were got verified through Clerk and there was no accuracy of figures of cash/stamps as it was stated by the witness that alleged cash-stamps were alleged to be found short in two spells which must not be possible and therefore it was nothing but a got-up thing by the S.P.M. with the vested interest by the subordinates and S.P.M.

The details of Defence Brief which has not been mentioned in the Inquiry Report and which has not been discussed while assessing the alleged charges by the Inquiry Officer, the inquiry report is not based on the records of Inquiry as it has violated settled principles that no material evidence submitted by the accused official can be ignored at any stage. It appears that the report of the Inquiry is influenced by the persuade views of the Inquiry Officer as the said officer has not considered all materials brought on record. In this connection, the Judgement of C.P. Govil of year 1965 is applicable. The Supreme Court has also in its judgement of Girdharilal of 1970 has put much emphasis on correct assessment of evidence on an objective analysis based on cast-iron logic and thus conclusions reached by the Inquiry Officer must flow logically, out of the evidence on record and there should not be any room for irrelevant considerations, conjectures, surmises, suspicion etc.. The Inquiry Officer is a quasi-judicial body as confirmed by the Supreme Court in the case of Union of India V/s M.L.Kapoor of 1974. M.P. Industries Limited of 1966 and Bhagat Raja of 1967.

With the above lines, the undersigned begs to pray that due consideration may kindly be accorded to the Defence Brief, the depositions recorded in the quasi-Judicially -inquiry and impart natural justice in the case as the allegations made in charge No.I has not been

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established as assessed by the Inquiry Officer. the Inquiry Officer has in respect of Charge No.1 has stated that original B.R.L. Regd. was not produced by the Deptt. and the present produced was on only two pages and the irregular maintainance of BRL sell of stamp and Register as required vide Rule 6 (d) of Chapter No.VI is not proved. Thus the charge is said to have been proved partially. The Inquiry Officer has thus wrongly assessed in saying that charge No.1 is proved. This apparently brings home that the Inquiry Officer has not applied its mind in the assessment of evidence and findings of the Inquiry and thus the said conclusion is ultra-vires of Rule of Law and the undersigned may be exonerated from the charge. As regards Charge No.II it is to add here that its inclusion was redundant. In this connection attention is invited to the Decision of Govt. of India which inter-alia directs that when there is breach of Departmental rules only those rules are to be cited in the Memo of charges and no additional charge. Under conduct rules may be made applicable. In the present case, when the FIRST CHARGE is not established the CHARGE NO.II automatically stands delated.

The undersigned shall, as duty bound pray for ever for the justice given.

Yours faithfully,

VADODARA

Dt. 1-8-1986.

P. H. D. MOR
(P.H.D.MOR)

attested

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25/11/86

वरिष्ठ चिकित्साधिकारी
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A-5 (32)

Presenting officers brief in connection with Disc. Proceedings against Shri P.H. Damor P.A. Miyagam Karjan under rule 14 of C.C.S. (CCA) Rules 1965.

1. My brief in the above case is submitted as under:-

Vide article charge 1 and 11, Shri P.H. Damor, while functioning as Temporary Postal Assistant and Treasurer, Miyagam Karjan S.O. on 7-2-83, he utilised Rs. 14200/- from cash balance of treasury for private purpose and made good Rs. 11,200/- on 8-2-83. He also failed to fill in register of stamps (ACG-85) for NS, BRL & Service stamps from 31-1-83 to 7-2-83 and Register of B.R.L. stamps (ACG-112) from 29-1-83 to 10-2-83. It is imputed that he failed to observe the provisions of Rules 658 of P&T ManVol -VI Part-III read with rule No:674 ibid read with Rule No. 674 30 of F.H.B. Vol-II read with Rule No. 6(d) of chapter VI of wireless ~~ling~~ licensing Manual and also failed maintain absolute integrity, failed to maintain devotion to duty and acted in a way which is ~~to~~ unbecoming of a Govt. Servant, and thus contravened the provision of Rule 3(1) of the CCS (conduct) Rules- 1964.

Shri R.K. Dabhi, SPM Miyagam Karjan in his statement (P-1) stated that he had asked Shri P.H. Damor to present his cash and stamps for verification at 17-15 hours on 7-2-83. Instead of giving cash and stamps for verification, Shri Damor left the office saying that brother of his friend was arrested by the Police in a prohibition case & he wanted to help that fellow and he would return within a short period but did not returned on 7-2-83. Shri Labhi who was not allowed to count cash and stamps by Shri P.H. Damor on 7-2-83, with the assistance of Shri A.D. Jaccav, Signaller carried out verification of cash and stamps on 8-2-83 morning and found Rs. 14,200/- short. Shri Damor made good Rs. 11,200/- on 8-2-83 but could not made good the amount of Rs. 3000/- on 8-2-83. This amount of loss of Rs. 3,000/- was borrowed by Shri Damor from the depositor of S.B. account No. 3908536, Shri A.A. Dhrolwala on loan directly by withdrawing the cash from the said S.B. account at 0930 hrs on 9-2-83. No remittance was made by Shri Damor to the Bank on 7-2-83 and 8-2-83, though the cash figures noted in the S.O. account were excess over the prescribed maximum cash balance of Rs. 12,000/- as Shri Damor had mis-appropriated Rs. 14,200/- on 7-2-83 and the total finally made good on 9-2-83. Shri Dabhi also stated in his statement (P-2) that Shri Damor while working as Treasurer Miyagam Karjan failed to fill in register of stamps, (ACG-85) for N.S. B.R.L. and service stamps from 31-1-83 to 7-2-83 and Register of BRL stamps (ACG-112) from 29-1-83 to 10-2-83. Shri R.K. Dabhi (PW-1) has admitted his both statements (P-1 and P-2) as correct during examination and cross examination on 27-9-85. Shri Labhi has also stated before V.O. (P-6) that Rs. 14,200/- were short in the cash and stamp balance of Shri P.H. Damor Treasurer on 8-2-83 morning. Shri Dabhi (PW-1) has admitted his statement (P-6) as correct during examination and cross examination on 27-9-85. Shri Labhi has admitted during examination and cross examination on 27-9-85. ~~Shri Dabhi has admitted during examination and cross examination on 27-9-85. Shri Labhi has admitted during examination and cross examination on 27-9-85.~~ that remittances to Bank were not made on 7-2-83 and 8-2-83 due to mis-appropriation of Govt money by Shri Damor and necessary remarks for this were made by him at the bottom of S.O. account for Feb'83 (P-3). There is no any reason to disbelieve depositions of Shri Labhi who is a responsible officer have immediately

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Vadodara-390 001.

informed the incident to Shri C.B. Parmar (P-12) Sub Divisional Inspector on phone. The say of Shri Damor regarding made up this case by Dabhi is totally incorrect as can be seen from the reply given to the I.O. on 17-12-85. vide answer 7 & 8. If Shri Dabhi had demanded complete treasury allowance and Shri Damor has paid complete allowance for two months in April-82 and May-82 to Shri Dabhi, Shri Damor may not like to continue on such responsible post without getting any monetary benefit and that too without objecting any such so called demand upto completed are year.

Shri A.D. Jadav (PW-5) P.A. Miyagam-Karjan, now SPM Kayavarha in his statement (P-11) stated that on 7-2-83 when he went near the table of SPM at 17-00 hrs. Shri Dabhi told him to help in counting the cash and stamp balance of Shri Damor Treasurer and as such he went between the table of SPM and Treasurer at 17-30 when he heard Shri Damor saying that his friend is involved in prohibition case and he want to help immediately. Shri Damor left office saying that he will provide verification of cash and stamp balance later on. Shri Jadav assisted in counting of cash and stamps of Shri Damor Treasurer on 8-2-83 morning and compared with account and found Rs. 14,200/- short at 10.30 hrs on 8-2-83. Shri A.D. Jadav (PW-5) has admitted statement, (P-11) as correct during examination and cross examination on 24-10-85. Shri Damor was present at the time of counting cash/stamps and shortage of Rs. 14,200/- was also known to Shri Damor Treasurer and he (Damor) agreed to also. During further cross examination on 24-10-85, Shri Jadav deposed that SPM had asked Shri Damor that there was a shortage of Rs. 14200/- and what about this shortage. Shri Damor confessed the shortage.

Shri M.A. Malek (PW-3) P.A. Miyagam Karjan now P.A. Nabipur in his statement (P-8) stated that Shri A.A. Dharolwala depositor of S.B. A/c No. 3908533 has presented application for withdrawal (P-9) for Rs. 3000/- at 09.30 hours on 9-2-83. Shri Dharolwala had told that this amount of Rs. 3000/- were not to be taken by him but it was to be given to Shri Damor Treasurer. Shri Malek has therefore not taken Rs. 3000/- from Shri Damor but only passed receipt in Treasurer cash book for more adjustment. Shri M.A. Malek (PW-3) has admitted statement (P-8) as correct during examination and cross examination on 28-9-85. Also Shri Malek deposed during cross examination on 28-9-85 that the statement (P-8) was given by him on his accord.

Shri A.A. Dharolwala (PW-4) in his statement (P-10) stated that Shri Dabhi SPM had informed him on 9-2-83 that Rs. 3000/- were short in cash balance of Shri Damor and the same were required early so he had given application for withdrawal (P-9) for Rs. 3000/- at 09-30 hours on 9-2-83 at SB counter. Rs. 3000/- were not given to him but only entry of Rs. 3000/- was made in Pass book. This statement was confirmed before V.O. on 15-6-83. Shri A.A. Dharolwala is a educated B.Com pass businessman of Miyagam Karjan, who blindly may not write statement in his handwriting with signature and indication that particulars of statement were written willfully and without any kind of pressure. Shri Dharolwala was neither subordinate nor related in anyway with Shri I.A. Vora, ASP (West) Vadodara and Shri S. Gauriar, V.O. Circle Office, Ahmedabad and as such deposition of Shri Dharolwala of dated 28-9-85 as a hostile

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डाक-तार चिकित्सालय, 'वडोदरा'
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

witness is either after thought or due to inspiration of accused officer.

Shri K.J. Chavda (Pwz) P.A. Miyagam Karjan in his statement (P-7) stated that he had taken over charge of Treasurer Miyagam-Karjan from Shri P.H. Dador on 11-2-83 A/N. Shri Chavda (Pw-2) deposed on 27-9-85 that the particulars of BRL, NIS, service stamps were not furnished by Shri P.H. Dador for the period from 31-1-83 to 7-2-83 in the said P-4. The Ecx-P-5 was prepared in loose papers of ACG-112 in which particulars for the period from 29-1-83 to 10-2-83 were not shown in the register. It was written by him w.e.f. 11-2-83.

Shri H.K. Patel (PW-6) in his statement (P-12) stated that Shri C.B. Parmar, SDI Vacoara was coming at Simro on 8-2-83. There was telephone from SPM M-Karjan at about 1-30 P.M. and Shri Parmar after attending telephone intimated that some misappropriation has taken place at M-Karjan and Shri C.B. Parmar left for M-Karjan at 14-00 hrs. Shri H.K. Patel (PW-6) has admitted his statement (P-12) as correct during examination & cross examination on 24-10-85.

Shri C.B. Parmar (DW-1) SDI Vacoara deposed during cross examination on dated 16-12-85 that he was punished for passing false remarks dated 8-2-83 on page No.36 of D-1. Also he deposed that Shri Dabhi SPM had torn incomplete statement given before him as Shri Dabhi did not want to narrate about the shortage of Rs. 10/11 thousand which was came to know during his (Parmar) confidential enquiry with the staff.

From the statements/depositions as narrated above of Shri R.K. Dabhi, A.D. Jadav, M.A. Malek, H.K. Patel and C.B. Parmar, it is proved beyond doubt that Shri P.H. Dador had utilised Rs. 14,200/- from cash balance of treasury for private purpose on 7-2-83 and made good Rs. 11200/- on 8-2-83 and Rs. 3,000/- on 9-2-83. It is also proved from the statements/depositions of S/Shri R.K. Dabhi and K.J. Chavda that Shri P.H. Dador was failed to fill in register of stamps (ACG-85) for N.S. B.F.L. & Service stamps from 31-1-83 to 7-2-83 and Register of BRL Stamps (ACG-1) from 29-1-83 to 10-2-83. Thus Shri P.H. Dador failed to observe the provisions of Rules 658 of P.M. Man. Vol.VI Part-III read with Rule No.30 of F.H.B. Vol.II read with Rule No.6(d) of chapter VI of wireless licensing Manual, and also failed to maintain absolute integrity, failed to maintain devotion to duty and acted in a way which is unbecoming of a Govt. Servant and thus contravened the provision of Rule 3(1) of the C.C.S. (Conduct) Rules 1964.

attested

वरिष्ठ चिकित्साधिकारी -
हाक-तार चिकित्सालय, वडोदरा
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

(V. M. Karandhiya.)
P.O. and ASP (Inv)
O/O Director Postal Services,
Vacoara Region, VALOLARA: 2.

No: PO/PHL/84-85. LTD AT VALOLARA THE 7-1-86.

Copy to W/Rs to :

1. Shri P.L. Shirsath. I.O. and ASP Bhary
Division, BHARUCH one copy has been submitted
to the C.O. as desired.

2. Shri P.H. Dador C/o Shri Nanubhai

REGL .A.L.

REGL .A.I.

2-A A-6 AC (35)

DEFENCE BRIEF UNDER RULE 14 OF C.C.S. (C.C.A)
RULES 1965

The written brief of the Disciplinary proceedings initiated by the Senior Superintendent of Post Offices, Vadodare West Division Vadodara-390002, against Shri P.H.Damor Temporary Postal Assistant, under its Memo No P.6/Miyagam.K dated 31-10-1983 is submitted for judicious consideration on the facts of the case.

The Brief of the Learned Presenting Officer was received on . In its brief of findings, as seen from the last para, the Presenting Officer has only relied upon the statements of S/Shri R.K.Dabhi (PW-1), M.A.Malek (PW-3); A.D.Jadhav (PW-5); H.B.Patel and C.B.Parmar (DW-1) and totally ignored the statements recorded in the INQUIRY from S/Shri R.S.Parmar (PW-5) A.A.Dhrolwala (PW-4); and I.A.Vohra (PW-6); which have elicited facts of the case before the Inquiry Officer, disproving the allegations against the accused official and thus findings of the presenting officer are not warranted by the evidence collected on records in the present ENQUIRY.

The Learned Presenting Officer has stated that "It is proved beyond doubt that Shri P.H.Damor had utilised Rupees (14200/-) Fourteen thousand Two hundred from CASH-BALANCE of the TREASURY for Private purpose on 7-2-1983 and made good Rs.11,200/- Eleven thousand two hundred on 8.2.1983 and Rs.3000/- three thousand on 9-2-1983". Really, it is surprising that the Learned Presenting Officer is coming to some other conclusion without any basis of evidences and the "CHARGE" which is not mentioned in the "MEMO OF CHARGES". The Presenting-Officer is dealing with the offence of section 409 of Indian Penal Code without grounds and which is really beyond its pervue of assigned work. The Presenting Officer has totally failed to bring out MATERIAL-EVIDENCE to establish the allegations of BREACH OF DEPARTMENTAL RULES as alleged in ARTICLE-I of ANNEXURE-I which inter-alia do not stand to any evidence brought on records in ENQUIRY and which has not been discussed at all at any stage by the Learned Presenting Officer, and thus in absence of pleadings and arguments of the case, there is little truth to believe against the Accused Official under the PRINCIPLES OF - "NATURAL JUSTICE" in a QUASI-JUDICIAL INQUIRY held as ordered by the Disciplinary Authority.

58-11-88

वरिष्ठ चिकित्साधिकारी
-तार चिकित्सालय, वृन्दावन
Senior Medical Officer
P & T Dispensary
Vadodara-390

The Sub Post Master is the Head of the office in L.S.G. rank and is expected to know the RULES of the Department and to adhere them while functioning as a Head of office. Shri R.K.Dabhi () is a sufficient senior man in the cadre of L.S.G. in the Division having more than 25 years of services. Where as the Accused-Official is putting short spell of period of service as Temporary Postal Assistant having no locus-standi in the substantive cadre of Postal Assistant in the Department. Besides, the accused official belongs to Scheduled Tribe class and socially and culturally back ward. Therefore, the accused official is suffering from inferiority complex and in general, is hated by the other co-workers in the office Shri R.K.Dabhi (PW-1) had created such atmosphere against the accused official as was explained time to time but for which there was no remedy on hand of the accused official. Shri R.K.Dabhi (PW-1) is an influential person in the area, being a local man having notice place at village Kandari which is within the radius of five kilometers of station of duty. With the above back ground of the situation the accused official adduces the points of his DEFENCE as under.

- (1) That the unusual events which happened in the office including a shortage of small amount of cash or petty irregularities are to be recorded in the "ERROR-BOOK" or the "ORDER-BOOK" of the S.P.M. to regularise them and further noting the remarks for action taken in the margin. The Sub-Post Master (L.S.G.) has no reason to act accordingly due to the fact that there was no such incidence of shortage of cash as alleged in the Disciplinary Proceedings and noting wrong has been reported by Shri R.K.Dabhi (PW-1) S.P.M. (L.S.G) Miyagam-Karjan, against accused official.
- (2) That the specific Rules in Volume V of the Chapter of investigation prescribes that the S.P.M. in case of shortage of hung cash, has to report telegraphically to the Divisional Head for investigation. This was not done because there was no occasion of such shortage in Govt-Cash at Miyagam-Karjan Post-Office as alleged.

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 25/7/88
 वरिष्ठ चिकित्सालय, वडोदरा
 डाक-तार चिकित्सालय,
 Senior Medical Officer
 P & T Dispensary
 Vadodara-390 001.

- (3) That as per Rules in P&T Volume II, the Sub-Post-Master has to verify, everyday, cash and stamps at the close of the day, as per the S.O.Account prepared, maintained and signed by him. Daily Account is to be copied out from the S.O.Account and has to sign by the Sub Postmaster in-charge and the joint custodian. This has been done because there was no shortage of cash-balance as per S.O.Account prepared by the S.P.M. and copied out in S.O. Daily Account which was duly signed and despatched to Head Office Patganj, as a document.
- (4) That the S.P.M., at the close of the day, after physical verification of balances of cash and stamps of sub-office, as per S.O.Account, has to apply double lock immediately. This has been done because there was nothing wrong at the office at the close of the day and there was no shortage in cash balance of the office.
- (5) That the S.P.M. R.K.Dabhi (PW.1) has not given in writing to the accused official to explain his alleged conduct as there was nothing like that as alleged.
- (6) That the S.P.M. has not got credited any amount alleged to have been received towards alleged shortage as unclassified-Receipt as under was no such case.
- (7) That the cash and stamps were correct as on 7.2.83 & 8.2.83 as verified by the S.P.M. and the Inspecting Officer and attested under their signature accordingly on relevant documents.
- (8) That the Remittance to the Local TREASURY/BANK was to be made under the directives of the S.P.M. whose duties are co-inciding with the accused official when remittance has to be made after proper assessment of liabilities by the S.P.M. personally and the accused official has never retained cash in excess of his own accord but as per directives given by the S.P.M. as the responsibilities of ascertaining liabilities of office and retention of cash is that of S.P.M. Personally.
- (9) The records of Register of BRL and Stamps were maintained in loose forms as correct records which were submitted to the SPM for initials after verification were not reperved but misplaced by him & asked to copy when left to be done so due to pressure of work.

attested

25/1/84
वरिष्ठ चिकित्साधिकारी
डाक-तार चिकित्सालय,
Senior Medical Officer
P & T Dispensary
Vadodra

The events of recording the statements in the preliminary inquiry are the incidents arising from a visit of Shri Vohra ASP to Miyagan Karjan by without having any written direct who contacted first the S.P.M. Shri R.K.Dabhi who was waiting for the opportunity to black mail Shri Damor for personal interest Shri Dabhi is a man of status & influence as explained in the previous para, who was dominating and exercising his influence on local persons as well as on the staff. This is evident from the fact that he evaded his personal duty to verify cash and stamps on 8-2-1983 and got verified from unauthorised person Shri Jadhav and as it would have been a case of pre-planning to outangle Shri Damor acted in contravention of departmental rules to get success in his conspiracy. It is not believable that the senior official does not know the procedure to be followed in case of deficiency in Govt. cash or stamp balance. The S.P.M. was duty bound to count personally the cash and stamp actually found and on finding any shortage of cash and stamp, the inventory of cash and stamp actually found was required to be drawn-up and got signed by two independent witnesses and action should be taken as prescribed in the Rule on the subject as per P and T. Manuals. This is not intentionally done as he wanted to take into clutches the accused official. who was not acting as Shri Dabhi desired in respect of monetary gain to Shri Dabhi and thus wanted to involve Shri Damor by exercising his malafide tactics, out of office records by not recording or acting as per provisions of Departmental Rules as IPSO-FAC To thus was no shortage in cash or stamp balance The S.P.M. was required to take telegraphic action for alleged loss of huge amount to the Divisional Head as required under the provision of Rules of the Dept. but this was not done as there was IPSO FACTO no case of . In absence of any such action required to be taken by the S.P.M. the only conclusion to be arrived at is that there was no shortage of cash or stamps as alleged but it was the plot played by the S.P.M. to bring the accused official & under its thumb and into "hot water" for the reasons given hereto-before. Shri R.K.Dabhi even could not resist to exercise his influence on other persons outside the field of operative staff to persuade them successfully to depose as Shri R.K.Dabhi liked against Shri Damor while making enquiry. This is evident from the preliminary statements recorded by the Departmental Officers which are none the less detected once and without giving any opportunity to question them on the spot by the accused official who was either on duty or in

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Senior Medical Officer
P & T Dispara
Vadodara-390 001.

the same station. The True situation has come out going the facts in the oral inquiry under Rule 14 of C.C.S. (C.C.A.) Rules 1965. The presenting Officer has not discussed these vital facts in his findings given in the BRIEF. There are contradictions in the depositions of operative staff also while in oral inquiry in the Examination - in-chief as well as in the cross-Examination - The net result is that these statements while assessing the veracity and weightage have no evaluating concept to accept them against the accused official.

The Annexure-II article No.1 states that Shri Vohra A.S.P. Vadodera West Dn. paid a surprise visit to Miyagam Karjan on 12.2.83 and he observed that on 7.2.1983 at about 17-15 hours S.P.M. asked the Treasurer Shri Damor to present his cash and stamps for verification. This is a hearsay evidence as he was not physically present on 7.2.83 at 17-15 hours. This supports the contention of the Accused Official that Shri R.K.Dabhai orally narrated to Shri Vohra what he wanted and prope plot through the staff and others as to ford Shri Damor was off duty at 17.30 hours and in ordinary course he was expected to leave office with the knowledge of S.P.M. The cash and stamps have been verified as it is clear that S.O. Account was prepared, initialled by both and Daily Account prepared from S.O.Account which also signed by the S.P.M. and joint custodian. This can not be done under any circumstances without verification of cash and stamp to the statifaction of the Head of the office. Head there been any suspicion against Shri Damor, nothing prevented the S.P.M. to give written orders to Shri Damor to unit beyond office hours to get again checked cash and stamps. This is not the case. The S.P.M. pleads that there was no one to convey message to Shri Damor to attend office. The Telegraph Branch accepts for despatch and receives for Delivery telegrams and Telegraph Branch has to arrange for also telegrams received. Shri Dabhi in the exigency of services, if necessary, could have certainly, issue urgent service telegram to Shri Damor to attend office and got delivered this urgent service telegram through messenger of Telegraph Branch. In fact, there was no such occassion as explained above. Besides Miyagam-Karjan is a small Town and a man of influence like Shri Dabhi could not have any difficulty to contact through any sources and get arranged the attendance of Shri Damor at Post office, if there was any supicion on Shri Damor and if balance was not verified which is not the case.

attached

Senior Medical Officer
P & T Division
Vadodera-39001

Shri Damor in ordinary course attended the office for his duties Shri Dabhi as pre-planned asked Shri Jadhav signaller to carry out the verification of cash and stamps- No Memo or inventory has been drawn-up and cash was not verified in presence of two independent witnesses which are easily available in office between 8.30 hours and 10.30 hours. or even any time as P.O. is situated like that the S.P.M. mf alleges shortage of Rs.11,200/- and again shortage of Rs.3000/- this can not be believed as cash and stamps were correct till the safe was double locked by the S.P.M. Shri Vohra does not say in the Article NO.I of Annexure II that Shri Jadhav was asked to verify cash on 7-2-1983. But S.P.M. says that he had asked Shri Jadhav on 7.2.83 to verify the cash through he categorically states that he had no suspicion on Shri Damor. If it was the case, what was the intention to ask Shri Jadhav to verify cash on 7.2.1983 and if he had pre-arranged to get verify again through Shri Jadhav why he did not prevent Shri Damor under written mf orders of S.P.M. Shri Jadhav states that story of double of S.P.M. regarding alleged shortage of cash with Shri Damor and it is true that Shri Jadhav had left office at 17.30 hours simultaneously with leaving of Shri Damor at 17-30 hrs. Shri Dabhi does not state that he had kept a witness about talking of Shri Damor to leave office for any work. In the earlier statement Shri Jadhav before A.S.P. had stated that he had gone after 17-30 hours before the S.P.M. He had counted cash and stamps till 10-30 hours on 8.2.1983 and no PANCHNAMA was done since Shri Jadhav left office at 17.30 hrs on 7-2-1983 as per statement before inquiry officer, the story of shortage of cash and leaving of Shri Damor for some work on 7.2.1983, without verification of cash is untrue, unbelievable, and without material evidence but a story put by Shri Dabhi through mouth of Shri Jadhav to involve Shri Damor and there is no veracity in deposition. The Say of Shri Dabhi that he did not tell Shri Jadhav about the double of shortage of cash of Shri Damor on 7.2.1983. Whereas statements of both officials are contradictory and are not believable as can be seen. On perusal of statements of both the officials. Thus Shri Jadhav does not stand in the veracity of value of the evidence and similar is the case of Shri Dabhi as there is no material evidence tendered during the ORAL-INQUIRY before the Inquiry-Officer as stated there to before Shri Dabhi has manoeuvred with the staff to say against Shri Damor to help Shri Dabhi to bring

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डाक-तार चिकित्सालय,
Senior Medical Officer
P & T Dispensary
Vadodara-390 001

Shri Dabhi as where is no material evidence tendered during the ORAL-INQUIRY before the Inquiry Officer as stated there to before Shri Dabhi has manœuvred with the staff to say against Shri Dabhi to help Shri Dabhi to bring into effect his plan of taking Shri Dabhi into clutches, since there is a great disparity between the imputations made and evidence brought out through the witnesses. It is clear from the contradictions in the earlier statements during preliminary inquiry and depositions there after, that the departmental witnesses are tutored ones and they are not able to explain the things lucidly, clearly and with proper co-herance. The reason is that they have remained under the influence of Shri Dabhi as explained earlier and therefore such evidence is not acceptable in the Quasi-Judicial enquiry.

The presenting Officer has declared S/Shri R.S.Parmar and A.A.Throlwala as hostile witnesses. The Rule of LACO LAW dictates that a witness can not be declared hostile simply because his evidence is against the party calling him. The Presenting Officer has not cross-examined them so that their testimony may not escape the test of cross examination at all. The depositions of these persons who are independent, are to be relied as material evidence as in accordance with the principles of evaluation of evidence and fully taken cognizance of such material evidence in a Quasi-Judicial enquiry. The deposition of Shri R.S.Parmar categorically states before Inquiry Officer that Shri Dabhi Post-Master met him and stated that there was some quarrel in between Shri Dabhi and Shri Dabhi. As such Shri Dabhi wanted to shift Shri Dabhi from Treasurer's Table Shri Dabhi is of his caste-man and he was knowing him and had intimacy with him. He had given the false statement dated 16.2.1983. He has stated that it is not true that Shri Dabhi is his friend and that he has differed his statement to save Shri P.H.Dabhi And on 8.2.83 and 9.2.83 he was not at Head-Quarters and had gone to Vadodara. He had not given the statement on 16.2.83 of his own accord but Shri Dabhi threatened to get him transferred if he did not give the statement as his brother was M.L.A. of Miyagam-Kerjan Assembly. The investigation Officer dictated him and he wrote the same statement. The investigation officer on 16.2.83 told him that there was nothing objectionable if had given that statement and the postal inquiry officer did not meet his Manlatdar after recording his statement and no other postal officer visited him and told or confirmed his statement. The statement was over

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Senior Medical Officer
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within five minutes Shri Dabhi S.P.M. was standing near his table and the investigating officer had a ready draft and dictated to him. Shri Dabhi S.P.M. identified that officer as postal officer but no name was given.

Shri A.A.Dhrerwala Pw.4, in the statement before inquiry officer states in unambiguous terms that he had given the statement dated 15.2.83 on the say of Shri R.K.Dabhi S.P.M. Miyagam K and was given as per the dictation of the officer and the facts of the statement are not correct in toto. It is note fact that he had been called by Shri Dabhi for the balance of Shri Damor and Shri Dabhi had not requested for Rs.3000/- to be paid to Shri Damor. It is not true that he had given the pass-book alongwith S.B.Application for Rs.3000/- at counter in presence of Shri Dabhi. It is also not true that he was not paid Rs.3000/- and kept pass-book with Shri Dabhi. The amount of Rs.1000/- and Rs.2000/- were credited on 9.2.83 and 10.2.83 through his friend and not through Mr.Dabhi. The amount of Rs.1000/- was given by him to his friend to credit in his S.B. account at noon-hours. And third para of the statement was not also correct. The statement was given by him only to oblige Shri Dabhi and obliged as they are neighbours. On 15.5.83 One officer called him Before this officer called him about four five days before that date Shri Dabhi had called him and informed that he had to say "Yes" in this regard that is inrespect of his statement. As nothing was asked by that Officer, he night have told correct before that officer. The material evidence shaws that Shri Dabhi was at the bottom of the incident.

Shri H.K.Patel who is E.D.B.P.M. has stated that the is not an eye-witness and has stated before E.O. that the statement was dictated to him and he does not know more and there is no material evidence in the statement recorded earlier was a dictated one as is cash of others.

The statement of Shri K.J.Chavda does not give any material or direct evidence against the accused official. He has confirmed that there was procedure of maintaining loose forms of Regd of D.R.L. stamps and the accused official in the same fastion under (the instructions of S.P.M. had mainted loose forms as Register placed before S.P.M. was not checked as admitted in the statement of Shri Dabhi and that this was remaining on ~~xxx~~ several occassions due to shortage of staff specially his assistant and this is the concret wherein Register of stamps p before S.P.M. was misplaced. The copying out the

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28-7-88

Senior Medical Officer
P & T D
Vadodara-390 004

डाक-तार विकित्सालय

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Out the same in the Regular Register is omission but this loose forms were kept with the Register.

Shree Malek admits that he has signed for Rs.3000/- in the Treasurer's Cash-Book on 9.2.1983 for receiving the cash for payment for withdrawal of Shri Darolwala. This is in natural course. The official states that Shri Dabhi S.P.M. had watched this transaction and thus the official escapes through fear his responsibility. The Transaction is entered in the Treasurer's cash book and authorised by the S.P.M. for payment and accordingly paid Shri Malek after obtaining due acquittance in the Treasurer's Cash-Book. The depositor admits to have receive the amount at the counter & not allowed to be kept with Shri Damor and there is no complaint. The S.P.M. no where disclosed the made of transaction this way as he would be guilty, if he had allowed such procedure which is not the case as the depositor admits receipt directly through S.B.Counter-Clerk. Besides the cash and stamps were correct on 8.2.83 as verified by the inspecting Officer and there was no reason to have this cash with Shri Damor. The net result is that the tutored witnessed carry the impression as made on him by the S.P.M. to support his plan to entangle Shri Damor.

The Inquiry made by Shri Vohra is a period after 8/2/83 and 9/2/83 and therefore his observations made on 12/2/83 are not in any wrong a material evidence or a circumstantial evidence that a heresay evidence and not supported by any documents. He is not able to produce the authority of the competent authority to make inquiries and it is inferred that he has visited office at the instance of Shri Dabhi or of his own accord for his personal benefit as best known to him. The cash and stamps were found to be correct on that date and he has noticed that there were remarks dated 8.2.83 on the relevant records & that cash and stamps were correct at Miyagam Karjan on 8.2.1983. This is evident from the Documentary evidence of the Daily Account dated 8/2/83 prepared and submitted duly signed by S.P.M. and Joint custodian for Pateganj XMS H.O. after having copied from S.O./c.dt.8.2.83. The A.S.P. has therefore, prejudged the issues which are in his mind and line of inquiry accordingly with biasness, prejudice and in a revengeful attitude nursing contempt against schedule caste/schedule Tribe officials Shri Dabhi was waiting for such opportunity which he snatched; and joined hands with

note entered

28-7-88

वरिष्ठ चिकित्सक
डा. तार चिकित्सक
Senior Medical Officer
P & T D
Vadodara-39001

A 6/9

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Shri Vohra to get recorded such statements to bring Shri Damor into trouble and succeeded. The officer, was duty bound in the interest of NATURAL JUSTICE to allow the presence of Shri Damor while recording statements against him from the persons at the instance of Shri Dabhi and thus the entire process of inquiry taken by him futile and unworthy of any consideration as piece of evidence and for preparing a statement of imputation of misconduct against Shri Damor. Shri Vohra as per statement given before Inquiry-Officer, it is clear that the Records of accounting of stamps including B.R.L. etc were available and seen by him and arrived at the correct verification of office balance. It appears Shri Dabhi to hide his lithergy of not checking the records placed before him and misplacing them, has brought the issue of Non-Maintenance of Register of BRL for a few days which had to be preserved in loose forms and which subsequently kept attached with the said Register when ~~xxxxxx~~ traced for copying out copy work when the fine permits as per the instructions of the S.P.M. From the mode of Inquiry made by Shri Vohra it appears that there was a case of dire contempt against S.I./S.C. community at large and this made the occasion to Shri Dabhi to take full advantage when the opportunity came before him without demand and to take revenge against Shri Damor who had disagreed to extend monetary benefit of his allowance of work of Treasury which work he had picked up satisfactorily through a junior temporary office with less than 10 years of service.

From the above stated facts it is cleared that there was no shortage of cash either on 7.2.83 or 8.2.83 and the records of stamps were duly written without breach of departmental rules. On the contrary, the prosecution has filed to bring out material evidence to prove the CHARGE of "Shortage of Cash" Non-maintenance of Register of stamps" and "Lack of devotion to Duty" against Shri P.H.Damor. Had there been any shortage of cash inventory should have been prepared in presence of two independent witnesses and got signed this inventory which would show details of cash and stamps in hand and thereby establishing the shortage. No action has been taken to record any such incident in the Error-Book or the Order-Book and no such Report either by post or telegraphically was made to the Divisional Head. The natural inference, therefore, is that Shri Dabhi planned to bring Shri Damor into trouble and virtually he had succeeded to make papers against Shri Damor when Shri Vohra A.S.P visited Miyagan Karjan Post-Office of his own accord.

cc: Mr. A. S. P. Vohra
28-7-83
वरिष्ठ चिकित्सकी
न-तार चिकित्सालय
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

A 6/10

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The facts of the MATERIAL EVIDENCE goes to conclude that on 7.2.1983 at the closing hours and on 8.2.1983 at the closing hours the CASH and STAMPS were found to be correct. The S.O. Account had been prepared accordingly on 7.2.1983 and 8.2.1983 duly initialled by the S.P.M. and joint-custodian and copied out in the S.O. Daily Account dated 7.2.1983 and 8.2.83 duly signed by them and despatch to H.O. without any contrary report of alleged shortage of cash-stamps. The alleged amount of shortage is not charged to unclassified-payment or U.R. If at all shortage was noticed and made good from Shri P.H.Damor. Alleged shortage of Rs.3000/- Three thousand on 7.2.83 and 8.2.83 and is also not charged to U.P. and as U.R. when alleged to have been recovered from Shri P.H.Damor. The crystal fact is that there was no shortage of cash and stamps at any time in the Post Office of Miyagam-Karjan.

The Inspecting Officer had verified cash and stamps at the close of 8.2.1983 and under his dated signature has authenticated that on physical verification cash and stamps are found to be correct as per S.O. Account dated 8.2.1983. This fact has been admitted by Shri C.B.Parmar (DW.1) before the Inquiry Officer on 16.12.1985. And there is no contrary say of Shri C.B.Parmar (DW.1) on this particular point.

It will be pertinent, to note that Shri R.K.Dabhi S.P.M. () has made several unauthentic allegations even against the Divisional Head and the Sub-Division Inspector (Postal) Shri C.B.Parmar (DW.1) without grounds. This tends to believe that Shri R.K.Dabhi () has made use of castism to nurish contempt in between the staff and can go to the extent of alleging against Superior authorities to involve them when his plan has been exposed and could not succeed in his ulterior motive as seen from the preceeding paras. Thus, there appears a tug of war between serveral communities and there appears an attempt made to alleged each other resulting into a bious inquiry and ultimately in the Inquiry no issues of the CHARGE-SHEET could stand to establish against Shri P.H.Damor.

The CHARGE of breach of Rule 3(1) of the C.C.S. (conduct) Rules 1964, is redundant in light of the fact that where the other rules of the Department are alleged to have been made breach of separate charge of lack of devotion to duty etc; is unnecessary.

The Prosecution must stand units own legs and prove its own case by proper evidence. It is the accepted rule that the guilt of the accused official, has to be adjudged from the

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SS-78
वरिष्ठ चिकित्साधिकारी
क-तार चिकित्सालय, वडोदरा.
Senior Medical Officer
P & T Dispensary
Vadodara-390 031.

Material evidence brought out on the records of Inquiry made by the Inquiry Officer and benefit of doubt goes to the accused official where evidence show in complete does not give the dint of the guilt and facts which prosecution side itself does not controvert in the Inquiry are to be accorded in favour of the accused official.

According to the Rule of Law, in a proceduring Inquiry the principles of Natural Justice, are to be adhered to and these fundamenful rules are very important in arriving at the conclusion from the material evidence on record.

The principle is that in Departmental proceedings, the onus of proof lies on the employer to establish the guilt of the employee and it is not for the delinquent to absolve himself of the charge. And therefore, in the present case, the prosecution has not been able to bring some the charges against the accused official, it is, to be taken that the accused official is to be given the exoneration in light of the salient features of the case disoussed in the preceeding paras. Since the basic facts are given and accordingly no charges are proved and the case is of no evidence since more suspicion of presenting officer can not a take the place of evidence or proof.

The conclusion must be based on the evidence adduced during the Inquiry and allegations sufficiently proved without break in chain of the evidence.

From the evaluation of oral evidence collected by the Investigating Officer, the presumption made by the presenting Officer, can not constitute basis of guilt unless the articles of charge are proved by positive evidence and finding can not be returned on the basis of presumptions only. From the witnesses examined it can be seen that the intention of the S.P.M. R.K.Dabhi () was to involve Shri P.H.Damor and Shri Dabhi () acted at his whim to take Shri Damor into clutches without success as his ulterior motive and intention did not stand to the taste of verasity. And thus, the findings of the Inquiry are required to be free from personal bious and consideration of all the circumstances which led to prove the innocence from the evidence produced during the Inquiry. The value of hearsay evidence is nulity and is worthless. Similarly the evatuation of the Departmental Officials does not serve the purpose in assessing the guilt as in the context and circumstances of case explained they do not stant to the taste

collected
Senior Medical Officer
P & T Dispansary
Vadodara-390 001.

of being worthy of reliance due to the fact that they are under the influence of Shri R.K.Dabhi () and have become the instrument to depose as per wish of the S.P.M. R.K.Dabhi () None of them have been in eye witness to the incidence as can be seen from the contradictory statements recorded and kept on records.

The independent witness and the witness of Shri C.B.Parmar (DW.1) have drawn up the correct picture of the entire episode and from this valuable evidence which is a direct evidence and bring out the fact it can be said that there is no missing link in the said evidence and the inferential links are accurately based on legal presumptions and in the said chain of circumstances there is no possibility to an alternative interpretations of holding any charge of guilt but a clear reasonable fact of innocence of accused official proved beyond doubt and any doubt if any, the benefit of doubt must go to the accused official. In the result of applying the principles of Natural justice, the accused official has acted in good faith and without negligence in performance his duties and it brings out the fact that no law ful order has been recorded by the Head of office within the scope of duties of the Head of Office as laid down in the Departmental manuals, accused official, has proved his innocence in the judicial inquiry. It may be added here that the absolute necessity for recording reasons for the findings in the Quasi-judiciary Inquiry by the presenting officer is absent and there is no elaboration of such reason on the conclusions made by that authority and such BRIEF of presenting officer, will neither be of use to arrive at proper conclusion regarding the guilt but elaborate discussion in the preceding paras will amply prove the innocence of the accused official.

The accused official is hailing from S.T.Community and has served the Department with Honesty and with sincerity. Though he has less than ten years of service and is only having a temporary footing in the Department has been a victim of personal interest of the S.P.M. as has been disclosed before the Inquiry Officer and in the civil service a smallest man which is a vital part of the machinery of the govt needs protection so that the honest, straight forward servant may not suffer and enjoy a sense of security which alone can make him independent and truly efficient. From the preceding paras, it can be established that this is the proper case where the man of depressed class is made victim and made to suffer and made to face Disciplinary proceedings.

accused

25/11/88

डाक-तार चिकित्सालय, वडोदरा

Senior Medical Officer
P & T Dispensary
Vadodara-390001

The accused official has not violated Rule 658 of Vol VI part III as also has not violated 674 ibid read with Rule 30 of FHB Vol II read with rule 6(d) of chapter of wireless licensing Manuals. The said accused official has acted as per the provisions of the Rules and no contrary report is made by The S.P.M. against him. The Treasurer's cash books and the stamp registers. were maintained as explained earlier. And the balance of the cash and stamps at the close of the day as per Treasurer's cash book and S.O.Account were verified and found to be correct by the Head of office on 7.2.83 and 8.2.83. The remittance to the Treasury/Bank has to be made as per instructions of the S.P.M. and Treasurer is not responsible for retention of excess cash as per the assessment of liabilities and orders of the S.P.M. The Registers of stamps were filled in in loose forms as per the instructions of the S.P.M. in light of this fact and as established from the preceeding paras the charge of failure to devotion to duty and acting in a way which is unbecoming of a Govt servant and contravening the provision of Rule 3(1) of C.C.S.(Conduct) Rules 1964. automatically stand unproved.

The accused official was placed under suspension from 10.3.83 vide S.S.P.Os Vadodara West No F6/M.Karjan/82-83 dated 10-3-83 and re-instated on 1.2.1986. Thus, the accused official has suffered unnecessarily for a long period, more that he had to put on in a meagre suspension allowance which was not even for a single time. The period of suspension over Twenty seven months, is long spell of period to suffer the lot without genuine grounds as could be seen from the preceding paras.

The accused official, therefore, submits as under :-

(1) That the delinquent official may kindly be exonerated from the CHARGES which remained unproved in the Quasi-Judiciary Inquiry.

(2) That the period of suspension may kindly be treated as period of duty.

(3) That the BENEFIT OF DOUBT may be given, in case, the discussed issues are not considered fully satisfactory.

Yours faithfully

(P.H.DAMOR S.P.S.)

(M.Y.BHALERAO)
DEFENCE COUNSELOR

attested

Dr. H. S. Bhalerao
डा. ह. स. भालेराव
Senior Medical Officer
P & T Dispansary
Vadodara-390 001.

Memo No.F6/Miyagam Karjan/82-83

Office of the
Sr.Supt.of Post Office
Vadodara West Division
Vadodara -390 002

Dated : 7/11/1986

Under this office memo of even number dated 31-10-1983 Shri PH Damor was informed of the proposal to hold an inquiry against him under rule 14 of CCS(Conduct) Rules 1965. The official was charged for:

- i) allegedly failure in observance of the provisions of rules 658 of P&T Manual Vol.VI Part III read with rule 674 abid, read with rule No.30 of F.H.B.Vol.II read with 6(d) of chapter VI of wireless licencing manual while functioning as temporary Postal Assistant and Treasurer Miyagam Karjan.
- ii) Contravening the provisions of rule No.3(1) of the CCS(Conduct) Rules 1964 while functioning in the aforesaid office and during the aforesaid period.

The official submitted his representation in response to the same memo and the disciplinary authority under even number dated 8-5-84 appointed Shri P L Shirsath, now ASP Bharuch to inquire into the charges levelled against Shri P H Damor. Shri V M Karanjia, I.I. DPS Office was appointed to present the case on behalf of the disciplinary authority.

The inquiry authority held the inquiry under rule 14 and submitted the inquiry report under his No.10/14/19/PHD dated 11-7-86.

Copy of this report was furnished to the official Shri P H Damor under even number dated 16-7-86 and he was asked to put in his say in the matter. In response to this memo the official put in his say which was received in this office on 4-8-1986.

11/11/86
accepted
वरिष्ठ चिकित्साधिकारी
डा. तारु किशोरी, वडोदरा
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

I have carefully gone through the inquiry report and say of the official over the same, all relevant documents, and briefs, and facts of the case. My findings are as under:

- i) It is the fact that in respect of shortage of Rs.14,200/- with the treasurer Shri P H Damor, SPM Shri R K Dabhi has failed to take any action as per the departmental rules.
- ii) The Sub Divisional Inspector has miserably failed either to take correct action in respect of the shortage of cash noticed by him or to get the necessary action taken through the sub postmaster M.Karjan.
- iii) In respect of shortage of Rs.14,200/- in the treasury there is no independent proof to show that there was a shortage in the cash collections of M.Karjan on 8-2-83 nor in course of inquiry any independent evidence is produced to establish the source from which this shortage either came up or was made ~~of~~ good.
- iv) It is the fact that the departmental officials S/Shri R K Dabhi, M A Malek & A D Jadhav have stated in categorical terms that there was a shortage in the collections dated 8-2-83 and making good the same to the extent of Rs.11,200/-
- v) Even the departmental rules prescribe that such shortage should be brought to the notice of the independent persons and in view of lacunas at serial i, ii & iii above I am inclined to give benefit of doubt to the official as far as shortage in Treasury of Rs.11,208/- dated 8-2-83 is concerned.

checked
11/88
 वरिष्ठ चिकित्साधिकारी
 डाक-तार चिकित्सालय, वडोदरा
 Senior Medical Officer
 P & T Dispensary
 Vadodara-390 001.

vi)

Now I will turn over to the shortage of Rs.3000/- in cash balances of M.Karjan on 8/9-2-83.

a)

It is the fact that the SPM Shri R K Dabhi and ~~Shri~~ SDI Shri C B Parmar have miserably failed to follow departmental procedure in respect of this shortage though it was in existence on that day.

b)

One Shri AM Dhorlwala an independent witness unconcerned with Postal affairs has stated in categorical terms before the ASP West Dn. Vadodara on 15-2-83 that in deference to the request from Shri RK Dabhi SPM he gave a SB warrant of Rs.3000/- to make good shortage of Rs.3000/- in treasury and that by signing the receipt for the amount on 9-2-83 at about 9.30 hours he did not materially receive the amount. He had further stated the source through which this amount was repaid to him viz. credits of Rs.1000/- and Rs.2000/- on 9-2-83 and 10-2-83 respectively. This statement made on the spur of the movement and without any time for after thought evidently merits more credence. This statement is again confirmed by him on 15-6-83 before V.O., C.O. Ahmedabad i.e. after a lapse of 4 months which was an adequate period for him even to reconsider the issues if he so desired. I do not feel any necessity for examining the Vigilance Officer C.O. Ahmedabad as a witness in the rule 14 inquiry in this case in as much as he had not done any independent original inquiry work but only got confirmed what had been stated before the then inquiry officer ASP West Dn. Vadodara on 15-2-83 and especially when the original inquiry officer was available as witness in the rule 14 inquiry of this case there was no necessity to call V.O.

attested

10/2/83
 वरिष्ठ चिकित्सक अधिकारी
 डाक-तार चिकित्सालय, वडोदरा
 Senior Medical Officer
 P & T Dispensary
 Vadodara-390 001.

No doubt this Dhrolwala has proved hostile during the course of rule 14 inquiry but especially when the facts stated by him at the time of initial inquiry are found proved by documentary evidence i.e. Ex D-3, P-8 & P-9 in which there are entires of deposits of Rs.1000/- & 2000/- on 9-2-83 and 10-2-83 at serial Nos.19 & 28 respectively in the entries of the days long book, The entry of withdrawal of Rs.3000/- from the same SBA/c. at Sr.No.1 ~~W~~ dated 9-2-83 is prior to the entry of deposit of Rs.1000/- on 9-2-83 in respect of the said SB Account, I therefore take his original statement dated 15-2-83 recorded by ASP (West) as true and correct and set aside his ~~ey~~ say during the rule 14 inquiry as unbelievable.

Further the then SB clerk Shri M A Malek has stated in categorical terms that the said withdrawal of Rs.3000/- was not materially paid to the depositor nor he himself received the amount for payment to Shri Dhrolwala but it was just a paper transaction to make good the shortage in treasury on that day. I do not find any reason in the entire episode for Shri Malek to tell a lie to implicate the official in such an ~~episode~~ and I take his statement as true and correct. I therefore take statement of Shri Dhrolwala dated 15-2-83 as true and correct beyond doubt and do conclude that there was a shortage in the cash balance of Miyagam Karjan in the morning of 9-2-83 when Shri Damor worked as treasurer and that it was made good through the SB withdrawal transaction of Rs.3000/- of Shri Dhrolwala as above. I do therefore take both the charges detailed in article No.I & II of Annexure I of the memo dated 31-10-83 as fully proved against him except the charge under rule 6(d) of Chapter VI of wireless Licensing Manual. As regards charge under rule 6(d) of Chapter VI of wireless Manual exonerate the official.

corrected

28/11/83
वरिष्ठ चिकित्साधिकारी
डा. तार चिकित्सालय, वडोदरा.
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

The quantum of penalty to be inflicted is a matter ~~for~~ my consideration now.

I have already come to the conclusion that both the charges to the extent discussed above are true as proved against the official. Integrity of the official is not beyond doubt and he is hardly a fit element to be continued in the department. The requirement of the case ~~therefore~~ therefore will not be met unless the maximum penalty is inflicted in this case. Hence the following orders.

I Shri P S Bapat Sr. Supdt. of Post Offices Vadodara West Division, Vadodara - 390 002 by the virtue of powers vested in me vide CCS (CCA) Rules 1965 do hereby order that the said Shri P H Damor then P. A. Miyagam Karjan and now P.A. Fateganj HO should be dismissed from service with immediate effect.

(P S BAPAT)
Sr. Supdt. of Post Offices
Vadodara West Division
Vadodara - 390 002

Copy to:

- 1) REGD AD. Shri P H Damor, P.A. Fateganj HO
- 2-3) The Sr. Postmaster Fateganj H.O.
- 4) ~~The Director General Services, Vadodara Region~~
~~Vadodara - 390 002~~
- 5) C.R. file of the official (through Sr.P.M.)
- 6) P.F. of the official (through Sr.P.M.)
- 7) Punishment Register.
- 9-10) Spare.

Under
receipt through
the PM Flight.

received

वरिष्ठ चिकित्सा अधिकारी
डाक-तार निधिकलान वडोदरा.
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

From:

P.H.Damor,
Ex. Postal Asstt.,
Fateganj Head Post-office,
Baroda.

Dated at Baroda the 2-12-86.

To:-

The Director of Postal Services,
Vadodara ~~Area~~, Postal Region,
Vadodara, 390 002.

(...through proper channel).

Sub: Appeal under Rule 23 of C.C.S. (C.C.A.)
Rules 1965.

Ref: No previous case-mark.

Respected Sir,

The appeal of the appellant, above named, most respectfully begs to submit this appeal to the Appellate Authority, under provision of Rules 23 and 24 of C.C.S. (C.C.A.) Rules 1965.

The appellant was Postal Asstt. in Vadodara (West) Division, under the jurisdiction of Sr. Supdt. of Postal Offices, Vadodara West Dn., Vadodara as Postal Asstt. The appellant has been served with the order of dismissal from services with immediate effect as per office Memo. No. ~~475~~/Miyagam Karjan/82-83 dated 7-11-86. Copy of the said order is appended as Annexure-A. The appellant having been aggrieved with the said orders of dismissal, hereby submits this appeal under the statutory rules of appeal and within the period of limitation of Appeal as prescribed in rule 25 Ibid and in form and contents of appeal as prescribed in rule 26 Ibid. The brief history of the case is as under :-

- 1) That the Appellant was alleged to have failed in performance of provision of rules 658 of P&T. Man. VI., Part III read with rules 674 of Ibid, read with rules 30 of F.H.B., Vol. II, read with 6 (D) of Chapter VI of Wireless Licensing Manual, while functioning as Temporary Postal Asstt. at Miyagam Karjan, and further alleged to have been contravened the provision of rules 3 (1) C.C.S. (Conduct) Rules 1964.
- 2) The appellant was placed under suspension from 10-3-83 vide Sr. Supdt. of P.Os., Vadodara (West), No. ~~1-1-86~~ even dated 10-3-83 and was reinstituted on ~~1-1-86~~. The disciplinary proceedings were instituted under rule 14 of the C.C.S. (C.C.A.) Rules 1964.
- 3) The Appellant had submitted a Defence Brief discussing all the aspects elaborately with a request to

accepted
M. S. 11/86
वरिष्ठ चिकित्साधिकारी
हाक-तार चिकित्सालय, वडोदरा.
Senior Medical Officer
P & T Dispansary
Vadodara-390 001.

(2).

A 8/1

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...to

exonerate the Appellant from the said charges as the said charges were not proved in the quasi-judiciary inquiry. The Appellant had also submitted further representation on the Inquiry report submitted by the Inquiry Officer clarifying further all the aspects of the inquiry report which were discussed ultra-vires all the principle of the nature justice, and the disciplinary authority was further requested to take into consideration all the matter discussed by the Appellant to exonerate from the allegations made and which were not ~~established~~ ~~xxxxxx~~ as per rules of law ~~xx~~ ~~xxx~~ and as required to be established in a quasi-judiciary inquiry.

begs

The Appellant ~~begs~~ to submit that the disciplinary authority has erred in judging the Appellant guilty of the charged as discussed in the punishment order. The disciplinary authority has not considered the brief and the reply of the Appellant to the charges objectively and has taken into consideration the the proceedings which ~~xx~~ ~~o~~ can be relied upon even though emphasises Minor penalty. The final order of the disciplinary authority is not based on conjecture and surmises. The disciplinary authority in its punishment order has technically given the findings as under :-

- i) That it is a fact that in respect of shortage of Re. 14200 with the Treasurer, Shri P.H. Camor, , Sub Postmaster Shri R.K. Dabhi has failed to take any action as per the departmental rules.
- ii) That the Sub Divisional Inspector has miserably failed either to take correct action in respect of shortage of Cash, notice by him or to get the necessary action taken from the SPM Miyagam Karjan .
- iii) That in respect of shortage of Re. 14200/- in the Treasury, there is no independent proof to show that there was shortage in the cash collection of Miyagam Karjan on 8-2-83, nor ~~xxx~~ in course of ~~xx~~ inquiry any independent evidence is produced to establish the solution from which this shortage was accrued or was made good.
- iv) That it is the fact that the Departmental official with which departmental rules and procedure

accepted

वरिष्ठ चिकित्साधिकारी
डाक-तार चिकित्सालय, वडोदरा.
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P & T Dispensary
Vadodara-390 004.

(3)

A 8/2

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to whom the such shortage had to be brought to the notice has not been done.

The benefit of doubt to the official has as shortage in Treasury of Rs. 11208/- dated 8-2-83 was concerned.

The Appellant begs to submit that the disciplinary authority has turn over to the new issue to alleged shortage of Rs. 3000/- in Cash balance of Miyagam Karjan on 8/9-2-83 which has never a issue of charged separately in the proceedings initiated in the Memo. of charges dated 31-10-83 wherein the shortage is alleged for total amount of Rs. 14200/-. In fact the account of cash arrived at was conspiracy on the part of the Sub Post Master to take appellant into clutches and as discussed in the defence brief, as well as subsequent representation, it is clearly established that there is points of any shortage in the cash balance of Miyagam Karjan either on 8-2-83 or 9-2-83. The Inspecting Officer has verified the balance of the S.O. and recorded the verification to be correct ^{under} the dated signature in the relevant records. This establishes the fact that there was no occasion of shortage of cash at any time in the said office at any time or date, as is also established from the authentic records of D/As submitted to Head Post-office and which are copied out from the S.O.D/A. There is no report against the Appellant for the said shortage of Rs. 3000/-, now any ~~xxxx~~ error book, or order book remarks recorded by the Sub Post-master to that effect or prepared any inventory for the alleged loss as required by the departmental rules. The issue on all these facts has been globally discussed in the defence brief as well as representation submitted on the Inquiry report of the Inquiry officer.

The appellant begs to submit that it is not open to the disciplinary authority to take view ~~xxxxxxx~~ ~~xx~~ contrary to the quasi-judiciary opinion required to be based on principle of nature justice and there can not be a reappraisal of the said defence without anything more and if the disciplinary authority overrules its own reasoning, the finding on such basis, such order of ~~xxxxxxxxxxxx~~ dismissal by the disciplinary authority on that basis would be vulnerable.

(4)

attached
28-11-83
वरिष्ठ चिकित्साधिकारी
डाक-तार चिकित्सालय, वड़ोदरा.
Senior Medical Officer
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Vadodara-390 001.

(4)

A 8/3

59

The disciplinary authority has erred in relying upon the say of the departmental witnesses Shri Malek x against the clear documentary evidence showing that amount of Rs. 3000/- was given to him by the Treasurer and was given acquittance x by Shri Malek in the Treasurer's Cash book for the said amount which is duly given by him to the depositor who in unequivocal terms admits that the said amount was received by him at the counter on the date of transaction. The inquiry anywhere, elicits that Appellant had xxxxxx demanded Rs. 3000/- from Shri Dholwalle whereas the said witness categorically stated that the appellant had never asked for such amount but it was Shri Dabhi Sub Postmaster who conspired the entire episode and tutored the said witness to say so to oblige the sub postmaster who was a local person dominating from the local residents as well as from staff personally as also indirectly through his brother who was M.L.A. Thus the true facts came to light in the quasi judiciary inquiry where the x witness can not tell lies as has got done in the unauthorised preliminary inquiries. The disciplinary authority even then against the fact came to light in the quasi judiciary inquiry tries to rely upon the earlier statement of the witnesses which are only meant for the purpose effective cross-examination only and this can be used at any subsequent stage as those statements are not be taken into consideration by the disciplinary authority also. This is a settled rule of law as has been held in Civil judgement of the Courts as per provisions of evidence Act of India. The disciplinary authority has erred to take into consideration the irrelevant operation of the statements of the preliminary inquiries which are taken into consideration before the quasi judiciary inquiry and the facts have been recorded according to the rule of law and, therefore, the irrelevant matter can not be a issue for consideration where the statements prior to the offence such in the quasi judiciary inquiry in the departmental proceedings becomes the material evidence for consideration. The witness could be granted as Histiled because it gives the evidence which is not helpful to the prosecution and the disciplinary authority must consider this matter objectively in the xxxxxx cross examination of the alleged histiled witness. Nothing has come out to enforce against the Appellant and the only facts have been deposed before the quasi judiciary inquiry. As per explicit

attested

Dr. P. T. Dispersary
Senior Medical Officer
P & T Dispersary
Vadodara-390 001.

(5).

A 8/4

58

... Act, and therefore, exercise of the decision by the disciplinary authority to rule out the witnesses is illegal since any decision of the disciplinary authority must be based on the evidence adduced during the quasi-judiciary inquiry and no punishment can be awarded on mere suspicion. The disciplinary authority it is incumbent on the disciplinary to apply its mind to the whole matter before writing its conclusion which are authentic as per law. The witnesses have categorically stated that ~~xxxxxx~~ preliminary statements were according to the wish and will of the local sub post master and those statements were dictated accordingly and merely signed to please the sub postmaster who was interested in conspiracy against his subordinate which was not attempt to the fact that in a small town one can not spoil relations with the influential person like sub postmaster of Govt. Institution. The Vigilance officer has not asked any question and the statements were got signed as dictated taking the witnesses in confidence that there was nothing irregular or committing to them. The sub postmaster was able to do so against the appellant. The Vigilance officer has not brought into witness and the appellant did not get the opportunity to cross examination to bring out the fact that came out in the quasi judiciary inquiry. ~~xxxxxx~~ ~~xxxxxx~~

The appellant begs to state that Treasurer's Cash book clearly establishes that the withdrawal of Rs. 3000/- was entered in the Treasurer's Cash book and account was tallied indicating in words and figures by Shri. Malek SB clerk and handed over by him at the counter to the depositor and the depositor before the inquiry officer admits this stating situation in which previous statement dated 15-2-93 was recorded. The appellant further begs to state that ^{if} there was any shortage in cash, the said amount after preparing inventory before the independent witnesses was recorded to be charged to UP and the signature of the appellant obtained there on. If such short amount was made good thereafter, it was incumbent on the part of the sub postmaster to order the receipt of the said amount as Unclassified receipt and amount accordingly. In the absence of any such evidence, and as established from official records that the Cash balance was correct is verified by Inspecting Officer also, the conclusion arrived by ~~xxxxxx~~ ~~xxxxxx~~

attested
M. S. P.
वरिष्ठ चिकित्सकी
डाक-तार चिकित्सालय, वडोदरा.
Senior Medical Officer
P & T Dispensary
Vadodara-390 001

(6)...

A 8/5

59

...by the disciplinary is nothing but business and is a outcome of not applying its mind to the facts which have been existing as per documents and thus however a strong suspicion is at which can not be substitute for a conclusion proof and no penalty can be imposed.

The disciplinary authority is not held charged proved in respect of non observance of provision of rules 658 read with rule 674 of Vol. VI Part IV, read with rule 30 of F.H.B. Vol. II in respect of amount of Rs. 14200/- as discussed in sub para I of above findings. This amount includes Rs. 3000/- as per say of the disciplinary authority. In fact there can not be subsequent shortage with the cash and stamps are required to be verified accurately and without errors. The plea of subsequent shortage of Rs. 3000/- is nothing but a got up thing by the Sub Postmaster to involve the Appellant as any shortage in verification by the authority can be run in different spells as alleged. The alleged shortage was not noticed by ~~xxxx~~ anybody when all the cash and stamps were got verified by one Shri Jaday and the sub postmaster who verified personally and in the presence of any witnesses. There is no remarks recorded in respect of subsequent alleged shortage of Rs. 3000/-. The principle which has applied in respect of alleged shortage of Rs. 11200/- is considered by the disciplinary authority, the same applies if at all there was any shortage for Rs. 3000/- as alleged. The sub postmaster has created a story of Rs. 3000/- and conspired to say so and dictated the statements of the witnesses which have inspired from temporary evidence. The appellant had no reason to arrange for Rs. 3000/- as there was no shortage of any cash at any stage on any day as has been discussed elaborately in the defence brief and subsequent representation which corroborate that the recorded evidence before the inquiry of a quasi judiciary nature.

The appellant begs to state that the punishment order is not a speaking order. The disciplinary authority ~~xx~~ has not ~~xxxxxxxxxx~~ discussed and recorded the reasons for disagreement with the Inquiry report which has concluded the charges as proved. The Appellant begs to pray that the brief of the Presenting Officer, Shri V.M. Karangia, and the brief of the Inquiry Officer may kindly go through which will establish that the ~~xxxx~~ principle of natural justice have been violated in

attached
b
5/1/88
वरिष्ठ चिकित्सकी, वाडोदरा
डाक-तार चिकित्सालय, वाडोदरा
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

(7)

A 8/6

60

..in..

departmental inquiry under Rule 14 of C.C.S. (C.C.A.) Rules 1965 which is a quasi judiciary inquiry. The Appellant craves to go through the Defence brief of the Appellant minutely as also the clarification given in the further representation in respect of the Report of the Inquiry officer and it will be clear that the entire episode is a out-come of conspiracy hatched by the Sub Postmaster Miyagam Karjan against the appellant who is anailing from ST community and is socially economically and educationally backward in the existing democracy of India.

The punishment order of the disciplinary authority may kindly be perused which in its preamble reads that a inquiry was held against the Appellant under C.C.S. (Conduct) Rules. This amply proves howfar the said authority has applied its mind in deriving at the judgement of a quasi-judiciary inquiry. The disciplinary authority has nowhere stated as to whether he has gone through the Memo. of Charges, alongwith its Annexures and has not mentioned details of any other important relevant documents. Similarly the points which is aduced by the delequent are not mentioned and no findings are given on all such points aduced by the delequent. The prosecution has not been able to impitch the vericity of the witnesses which department wants to term as Hostiled. The law of evidence is clear on the subject and it is emphasised under the rule of law that the evidence in a quasi judiciary inquiry given by the witnesses has to be considered in quasi judiciary inquiry unless it has been established otherwise in the cross-examination. The witness in this quasi judiciary inquiry has stand to the true test of the examination as per the law of evidence and has nothing against against inferer otherwise against them. The depositions recorded in the preliminary inquiry have no locus-standy when a judiciary inquiry has been carried out by the Inquiry officer and statements recorded. The disciplinary authority has failed to apply its mind to the records of the quasi judiciary inquiry before holding the Appellant guilty and this prejudiciary mind has not allowed the disciplinary authority to act justicely and fairly but has acted capriciously.

alleged

25/11/88
वरिष्ठ चिकित्साधिकारी
हाक-तार चिकित्सालय, वडोदरा
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

The order of the disciplinary authority which is a quasi judiciary authority, it is incumbent upon it to write the reasoned order so that Appellate authority may know as to what prevailed with the punishment.

...the punishment..

authority while punishing the Appellant and thus it is not speaking order which is without grounds. The present punishing order has been based on the unproved material and thus even if partly admissible and partly inadmissible which can not be separated from on conjecture and , the conclusion

The reason is that in such a situation it becomes impossible to see what extend the mind of the disciplinary authority effected by the irrelevant material. The principle, therefore, is that whether any chage is composite and found to be defective in part, the order of the disciplinary order could be sustained because one will be entering the realm of conjecture of supposes when the punishment could have been imposed on the base of such unproved material. This is a settled law of Court in one of the Judgement of Supreme Court. The same situation is existing in the present case wherein the disciplinary authority takes into consideration the suspension which are not supported by the facts whereas documentry evidence have proved that the amount of Rs. 3000/- was received and handed over to the depositor as also admitted in clear terms by the depositor and there is no complaint on the score. Further the office records did establish that the cash was found correct on verification by a Inspecting Officer, as also the head of the office had signed all the relevant records in token of having satisfied that the cash balances are correct. There is, therefore, no ground to suspect the Appellant that the cash was short by Rs. 3000/- on any day on any time. The disciplinary authority through prejudicially and through biasness has doubted the integrity of the Appellant which the Appellant challenges at this stage even. There is no element of truth with evidence in quasi judiciary inquiry that the charges are proved. The disciplinary authority can only issue any final order against the interest of Appellant on the basis of admissible material and the disciplinary authority, if emphasises of any discretion which are only the dictates of natural justice, fairness and rules of law and thus the disciplinary authority has to follow the judiciary approach in the matter.

The Appellant begs to state that the disciplinary authority has erred in the very search of 4 reason for holding guilty when putting the authority itself on the alert to minimise the chances of inconvenience infiltration of person biased and unfairness in holding

corrected
M
58/18/8
वरिष्ठ चिकित्सालय, वडोदरा
डाक-तार चिकित्सालय, वडोदरा
Senior Medical Officer
P & T Dispensary
Vadodara-390 001

~~cc to xxxxxx~~

A/S

In the conclusion and the disciplinary authority has ordered to aduce reason in holding the appellant guilty without due record for far and legitimate conclusion which would disregard the irrelevant consideration. The present punishment order does not ensure the ultimate mental process leading from dispute to its genuine solution.

The appellant with due regard to the all the issues heretofore made in the proceeding paras begs to sum up as under :-

- 1) That appellant has not violated any departmental Rules as alleged in Article of Charges and has not made any breach of C.C.S. (Conduct) Rules 1964 but has been victimised in hands of elements which nurtured attempts against backward community particularly ST.
- 2) The appellant begs to pray that all the papers of the case will reflect this facts which go to the extend that allegations have been made against a Head of the Division who also belonged to ST class .
- 3) That the Office cash balance was neither short by Rs. 14200/- or Rs. 3000/- as alleged as the office records do reflect that the case was found correct on verification by the Inspecting Officer as also the S.O. Account and Daily Account.
- 4) That there is no relevancy with the transaction of Rs. 3000/- made by Shri Dhrolwala on 9-2-83 and the deposition in the preliminary inquiry was recorded as per the desire of the Sub Postmaster who is at the bottom of the entire epizode.
- 5) The appellant has been made jobless and at present is starving as the bread earner of 9 members souls including old parents without any fault on their part except that they belonged to backward community and is victimised in the way in which the inquiry devalped till the quasi judiciary inquiry proved beyond doubt that the Appellant was not guilty of allegation made against him.

The appellant begs to emphasises the need the disposal of this Appella on priority base as far as possible and not later than 4 weeks.

attested
me
 वरिष्ठ चिकित्सालय, वडोदरा.
 Senior Medical Officer
 P & T Dispensary
 Vadodara-390 001. 6)

A 8/9

63

..10).

The Appellant respectfully prays :

1) That the impugned order of dismissal order may kindly be ordered by setting aside immediately and orders of reinstatement may kindly be got issued.

2) That the period of absence from duty may kindly be ordered to be treated as on duty for all purpose.

and,

3) That any other compensation as deemed proper may kindly be issued,
and for this act of kindness, the Appellant and his family members, as duty Bound shall ever pray.

Thanking you,

Yours faithfully,

P.H.Damor
(P.H.Damor).
2.12.1986

Copy submitted to :

1) Sr. Supdt. of ~~XXXXXXXXXXXX~~

Post offices Vadodara (West) Dn., Fateganj,
Baroda 390 002.

With a request that office copy has been submitted to the Appellate authority by registered post. It is requested that the Appeal may kindly be submitted with necessary information/records as per rules, Govt. of Indian's instructions under rule 26 of C.C.S. (C.C.P.) Rules 1965.

attested

W. H. S. S.
विक्रम चिकित्सालय, वडोदरा.
डाक-तार चिकित्सालय, वडोदरा.
Senior Medical Officer
P & T Dispansary
Vadodara-390 001.

A-9 A9 (64)

DEPARTMENT OF POSTS : INDIA

OFFICE OF DIRECTOR POSTAL SERVICES: VADODARA REGION: VADODARA-
MEMO NO. STA/3-56/86 DATED AT VADODARA THE 5.5.1987 .

This is an appeal dated 2.12.86 from Shri P.H. Damor, Ex-Postal Assistant, Fateganj HO against the penalty of "Dismissal from Service" inflicted by Sr. Supdt. of Post Offices, Vadodara West Division, Vadodara, vide his memo No. F6/Miyagam Karjan/82-83 dated 7.11.86, as a result of the disciplinary proceedings under Rule 14 of the CCS(CCA) Rules 1965, instituted against the official vide SSPOs Vadodara West Division memo of even number dated 31.10.83.

Following articles of charge were framed against the official in Annexure-I:-

ARTICLE-I

That the said Shri P.H. Damor, while functioning as temporary Postal Assistant and Treasurer, Miyagam Karjan SO is alleged to have failed to observe the provisions of Rules 658 of P&T Manual Vol. VI, Part-III, read with Rule No. 674 ibid, read with Rule No. 30 of FHB Volume II, read with Rule 6(d) of Chapter VI of Wireless Licensing Manual.

ARTICLE-II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri P.H. Damor, is alleged to have contravened the provisions of Rule No. 3(1) of the CCS (Conduct) Rules, 1964.

It is seen that the two separate articles of charge framed against the official are inter-dependent. As a matter of rule, the article of charge should be definite and specific. Even the period of incumbency of the official is not given in Article-I of the charge. Similarly, a perusal of the charge sheet reveals that in Annexure-III, the documents by which articles of charge are to be sustained, no statement has been cited.

Now we come to the case proper.

On 7.2.83, at about 17.15 hours Shri R.K. Dabhi, SPM, Miyagam Karjan asked Shri P.H. Damor, treasurer, to produce cash and stamps for verification. But Shri Damor left the office at 17.30 hours informing the SPM that he was preoccupied otherwise, and that he will return to office shortly. He left the office after locking the safe with his key. Shri R.K. Dabhi, SPM, waited for Shri Damor till 19.00 hours on 7.2.83 and when he did not return, the SPM applied his key and double locked the safe. On 8.2.83 Shri Damor attended the office at 0700 hours. The SPM with the assistance of Shri A.D. Jadhav, Signaller then verified the cash and stamps of Shri Damor on 8.2.83 at 8.30 hours. There was a shortage of Rs. 11,200/- which Shri Damor made good. But while counting the cash once again, a

further shortage of Rs.3000/- was also detected at 10.30 hours on 8.2.83. Thus, the total shortage was Rs.14,200/- out of which the appellant made good Rs.11,200/- on 8.2.83. The SPM informed of the shortage at about 12.00 hours to SDI(P) South, Shri C.B. Parmar. The SDI came to the SO at 16.00 hours. He found a shortage of Rs.3000/- with Shri Damor, since Rs.11,200/- had already been made good by the official; Shri P.H.Damor, could not make good Rs.3000/- on 8.2.83, and the SPM and the SDI(P) waited for recovery of Rs.3000/- till 9.2.83 morning. The amount of Rs.3000/- was borrowed by Shri Damor from Shri A.A. Dhrolwala, the depositor of SB Account No. 3908536 directly by withdrawing the amount from the account at 9.30 hours on 9.2.83. No remittance was made by Shri Damor, Treasurer, on 7.2.83 and 8.2.83 although cash balance was more than the authorised maximum of Rs.12,000/-. There was a total shortage of Rs.14,200/- in cash with Shri Damor out of which Rs.11,200/- was made good by him on 8.2.83 and the remaining Rs.3000/- on 9.2.83.

The official worked as treasurer, Miyagam Karjan from 2.5.82 to 10.2.83 and he did not fill up the following registers for the period drawn against each:-

1. Register of Stamps(ACG-85) From 31.3.83
for NS BRL and Service Stamps to 7.2.83
2. Register of BRL Stamps From, 29.1.83
(ACG-112) to 10.2.83

Thus Shri P.H. Damor, failed to observe the provisions of Rules 658 of P&T Manual Vol.VI Part-III read with Rule 674 ibid, read with rule 30 of FHB Vol.II, read with Rule 6(d) of Chapter VI of the Wireless Licensing Manual.

The enquiry report revealed that the shortage of Rs.11,200/- and Rs.3000/- noticed on 8.2.83 was neither noted by the SPM nor by the SDI(P) in the SO account nor charged to unclassified payments, as prescribed in rules. On the other hand, the SDI(P) gave a remark on 8.2.83 that cash and stamps were found correct. Thus there is no documentary evidence as regards the shortage; it is sustained on the version of Shri R.K.Dabhi and his PAs i.e. S/Shri M.A. Malek and A.D. Jadhav. It seems that the SPM and the SDI(P) by not properly documenting the loss have tried to hush up the facts of the case. As regards making good of Rs.3000/- on 9.2.83 by withdrawing Rs.3000/- from the SB A/c. No.3908536 the depositor Shri A.A.Dhrolwala turned hostile during the inquiry. This statement was different from what the depositor had given before the I.O. during the preliminary enquiry. The original BRL registers could not be produced hence the charge relating to non-maintenance of stock registers of stamps is also not proved. The inquiry officer has concluded that the charge I is partially proved and charge II is proved.

The main point here is that as regards of the shortage of Rs.14,200/- found with Shri Damor there is no independent proof to show that there was a shortage on 8.2.83. We have to go back to the

Attested
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S. S.
वरिष्ठ चिकित्साधिकारी
डॉक-तार चिकित्सालय, वडोदरा
Senior Medical Officer
P & T Dispensary
Vadodara-390 021

statements of the other departmental officials. Keeping this in view the disciplinary authority has given the benefit of doubt to the official. As regards the shortage of Rs.3000/- on 8/9.2.83 it is clear that the SPM and SDI(P) failed to follow the correct departmental procedure. The depositor of SB account No.3908536 Shri A.A. Dhrolwala turned hostile. But the disciplinary authority has relied upon the written statement of Shri A.A. Dhrolwala, dated 15.2.83 given during the preliminary enquiry. Shri Dhrolwala though he had signed the warrant of payment of Rs.3000/- did not materially receive the money. He also confirmed repayment of the said amount in two instalments of Rs.2000/- on 9.2.83 and Rs.1000/- on 10.2.83. This was also stated by him before the V.O. Ahmedabad on 15.6.83. But, during the Rule 14 enquiry, the said depositor turned hostile. The disciplinary authority has gone by the statement given by him during the preliminary inquiry. Thus the disciplinary authority quoted that there was a shortage of Rs.3000/- on 9.2.83 morning and thereby he held that both the charges detailed in Article-I and Article-II against Shri Damor stands proved except the charge of violation of Rule 6(d) of Wireless Licensing Manual for which he exonerated the official. Since he held that both the charges are proved, he awarded the punishment of dismissal from service.

In the above narration the lacunas in the case stand highlighted. In fact the appellant has based his appeal on the very same points. He has said that as per the records and verification of the inspecting authority, there was no occasion for any shortage, nor there was any note in the error book or order book of the SPM. He has said that the depositor's statement during the preliminary inquiry cannot be taken into account.

The punishment awarded by the disciplinary authority is solely dependent on the point of shortage of Rs.3000/- which is in turn based on the written statement of Shri A.A. Dhrolwala dated 15.2.83 which was recorded during the preliminary inquiry. This statement dated 15.2.83 does not appear in Annexure-II (Statement of Imputations) as well as in Annexure-III (list of documents). Thus the case of withdrawal of Rs.3000/- to make good the shortage has been sustained on the evidence of Shri M.A. Malek, SBPA who received the cash from the treasurer and handed over it to the depositor.

From the above, I am of the view that the standard of proof is not adequate. In fact the inquiry has not come up with any such proof that irrevocably fixes the lapses on the part of the official. The purpose of a Rule 14 case inquiry is to come up with such evidence supporting the charges that can withstand critical scrutiny. In this case unfortunately the inquiry does not furnish with that kind of evidence. Even the disciplinary authority, therefore has to base his conclusions on other evidence like certain statements etc. Therefore, irrespective of the fact that whether the official committed a fraud or not, on the basis of available pproofs the disciplinary authority's punishment of dismissal from service is difficult for the Appellate Authority to accept. The point on which the disciplinary authority gave the benefit of doubt to the appellant on the question of shortage of Rs.11,200/- can be applied to the shortage of Rs.3000/- also. This has been made possible only because the SPM and SDI(P) helped the official to hush up the truth by not documenting the case properly.

certified

M. N. S.

वरिष्ठ चिकित्सक
हाक-तार चिकित्सालय, वडोदरा
Senior Medical Officer
P & T Dispensary
Vadodara-390 001

To the question whether the integrity of the official was above board or not? I hold that he lacks integrity. For there are serious irregularities in the manner the official has functioned. He has not remitted the cash and kept ~~maximum~~ balance i.e. more than the authorised and as a treasurer he was trying to hide somethings.

Therefore, while it is difficult to see as to how the charges against the official have been taken as proved beyond doubt or, for that matter, the basis for the punishment order issued by the disciplinary authority I am of the view that the official requires a deterrent punishment for the serious lapses on his part. On this assumption, I am therefore, pleased to modify the punishment of "dismissal from service" issued by the disciplinary authority to Shri P.H. Damor, Ex-PA Fateganj HO to that of reduction to the lowest stage i.e. from Rs.1025/- to Rs.975/- in the time-scale of pay of Rs.975-25-1150-EB 30-1660 for period of three years with effect from 7.11.86 afternoon, and Shri P.H.Damor, will not earn increments of pay during the period of reduction, and that on the expiry of this period, the reduction will not have the effect of postponing his future increments of pay.

(P.K.Gopinath)

Director Postal Services
Vadodara Region:Vadodara-390002.

Copy to:-

- (1-3) The Sr.Suptd. of Post Offices, Vadodara(West) Division, Vadodara-390002 with reference to his letter No.F6/M.Karjan/82-83 dated 16.1.87. The disc.case file, service book and CR file are returned herewith. Please acknowledge receipt.

Appellate order should be delivered to the appellant under clear receipt which may please be forwarded to this office for record.

- (4) The official concerned through SSPOs Vadodara West Division, Vadodara. (P.H. Damor)
- (5) The Sr. Postmaster Fateganj H.O.Vadodara-2.
- (6) The D.A.(P)Nagpur through Sr.Postmaster, Fateganj H.O. Vadodara-390002.
- (7) Office Copy.

REGISTERED
CONFIDENTIAL

certified

3/11/88
वरिष्ठ चिकित्सकी
हाक-तार चिकित्सालय, वडोदरा.
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

P. H. Damor,
P.A. Sayajigunj,
Vadodara - 390 005.

Dated : 25-4-88

68

A-10

A-10

To,
The Member (Post)
Department of Posts,
Office of the Director General.
Department of Posts, New Delhi - 110 001.

(Submitted through proper channel)

Sub :- Appeal petition against punishment
of Reduction to the lower stage.

Ref.:- No previous reference.

Respected Sir,

I, the petitioner, named above, most humbly approach
your Honour to pray mercy to consider this appeal petition-
sympathetically.

The late submission of this appeal is only on account
that I was not knowing that appeal can lie on such orders. Since
my Senior Colleagues advised me to make an appeal to your Honour
begging pardon of late submission. Under the ignorance of Rules,
which will be considered and therefore with rays of hopes in the
eyes, I submit this appeal for its being consideration.

The history of my case runs in nutshell as under ;

- 1) I was dismissed from the service at the end of
disciplinary proceedings vide Memo No. F-6/Miyagam-
Karjan/32-85 dtd. 7-11-86 from the Sr.Supt. of Post
Offices, West Dn. Vadodara - 390 002 (copy of this
order is enclosed herewith) with effect from 7-11-86
afternoon.
- 2) I preferred an appeal to the D.P.S. Vadodara Region,
Vadodara-390 002 on 2-12-86 (copy is enclosed) and
as a result of it, the punishment of dismissal was set
aside and modified to reduction to lower stage i.e.
from Rs. 1025/- to Rs. 975/- in T/S of pay Rs. 975-25-1150
EB-30-1660 for a period of 3 years with effect from
7-11-86, vide appellate order No. STA/3-56/86 dtd.5-5-87.
Consequently I was reinstated in service w.e.f. 15-5-87
forenoon. The appellate Authority on consideration
grounds of my appeal dated 2-12-86 and reduced the punish-
ment stating that disciplinary authority relied upon the
writing statement of Shri A.A. Dholwala dated 15-2-83
given during the preliminary inquiry.

The appellate authority has taken a view that the
standard of proof is not adequate and inquiry has not come
with any charge proof that irrevocably fixes the ~~xxx~~

poses on the part of official.

Noted Reference
NO 64
25-4-88
Sayajigunj P.O.
attested
M. al
25-4-88
वरिष्ठ चिकित्सालय, वडोदरा
डाक-तार चिकित्सालय, वडोदरा
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

The appellate authority in the appeal orders questioned itself whether the integrity of the official was above board or not and itself held that the petitioner lacks in integrity and blames that there are serious irregularity in the manner the official has functioned that appellate authority blames that petitioner has not remitted cash and kept maximum balance. The responsibility of deciding the amount to be remitted to Bank is with the Sub-Post Master who has to ascertain cash Position as a whole for the office and direct the Treasurer to act as per his instruction. The S.P.M. himself prepaid and signs the receipt paper for remittance & sing. Treasure Book and receipt for remittance. The transaction of remittance of Money or withdrawal of money is the personal responsibilities of the S.P.M. who and checks treasurer cash book every occasion. Treasurer has to means to hide anything as he has to render assistants to the S.P.M. as a treasurer and remaining as Joint Custodian with S.P.M.

The appellate authority has not given any opportunity to the petitioner on the charge of integrity and is violation of principle of natural justice. The finding are not arrived as the rules of natural justice. The appellate authority holds the view that petitioner required deterrent punishment for alleged serious lapses which are not proved in the inquiry. The revised punishment avoided by appellate authority on assumption is contrary to rules of justice. The finding of the appellate authority are not warranted by the evidence on records.

The petitioner therefore prays as under,

- 1) that the order of appellate authority may kindly be ordered to be set aside.
- 2) that period of absence from duty may kindly be treated as period on duty for all purposes and any other relief which may be deemed proper by your honour.


Looking forward to a favorable order of mercy and for such an act of extra kindness we all will remain ever grateful.

attested

वरिष्ठ चिकित्साधिकारी
डाक-तार चिकित्सालय, वडोदरा.
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

I beg to remain, sir,

Yours faithfully,


(P. H. DAMODAR)
(P.A. Sayajigunj P.O.)

A-11

नं० ६१० की संख्या और तारीख अवश्य इसका निपटारा
(चो कि पोस्टमास्टर द्वारा लिखी जाए)
No. and date of M.O. or its disposal to be noted by postmaster

क्र.सं.	प्रमाण पत्र	Office of Posting	कर्मचारी का नाम	Amount for reference	नोट्स
53	The Supdt of PSD			Return of unserviceable J.D. bags 18 bags	
54	The S.D.H. Centre			Balance Sheet of S.D.H. Centre	
55	S.S.P.O.			Statement of Polyester cotton cloth & the eligible P.T. enthal	
56	do			Issue of Sanction (Performance)	
57	do			Notification of 13 officials sent up	
58	S.M. A. G. G. G.			Error issued for completion of 18 days	
59	The S.S.P.O.'s W.			The expiration of S.D. P.T. Dams	
60	do			Supply of 25 feet long rubber plastic tube for use of S.S.P.O.'s	
61	The Mechanix Automons			Purchase of Narmada 150 Prince Scales with Computer Narmada Auto Ltd. Narmada, Employee S. V. Patel	

AA 12

A 12 (71)
P. H. Damor,
P.A. Sayajiganj,
Vadodara- 390 005.

Dated:- 25-4-1988.

To
The Member (Post),
Department of Posts,
Office of the Director General,
Department of Posts, New Delhi-110001.

(Submitted through proper channel).

Sub:- Appeal petition against order No. STA/3-51/86
dated 29-8-87 issued by D.P.S. Vadodara
Region, Vadodara- 390002.

Ref:- No previous reference.

Respected Sir,

I, the petitioner,--named above, most humbly approach
your Honour to pray mercy to consider this appeal petition
- sympathetically.

The late submission of this appeal is only on
account that I was not knowing that appeal can lie on
such orders. Since my Senior Colleagues advised me to
make an appeal to Your Honour begging ~~xxx~~ pardon of late
submission. Under the ignorance of Rules, which will be
considered and therefore with rays of hopes in the eyes
, I submit this appeal for its benign consideration.

The history of my case runs in nutshell as under:-

- 1) I was dismissed from the service at the end of
disciplinary proceedings vide memo. No. F-6/Miyagam-Karjan/
/82-83 dtd. 7-11-86 from the Sr. Suptd. of Post Offices,
West Dn. Vadodara-390002, with effect from 7-11-86 after-
noon.
- 2) I preferred an appeal to the D.P.S. Vadodara
Region, Vadodara-390002 on 2-12-86 and as a result of it,
the punishment of dismissal was set aside and modified
to reduction to lower stage i.e. from Rs. 1025/- to Rs.
975/- in T/S of Pay Rs. 975-25-1150-EB-30-1660 for a
period of 3 years with effect from 7-11-86, vide appellate
order No. STA/3-56/86 dtd. 5-5-87. Consequently I was
reinstated in service with effect from 15-5-87 forenoon.
- 3) I was informed by the D.P.S. Vadodara Region,
Vadodara-2, that I was proposed to determine the pay and
allowances to be paid to me for the period of my absence
from duty 8-11-86 to 14-5-87 in terms of FR-54 and was
proposed that the said period of absence be treated as
leave due and admissible.

(Contd.page-2-)

3440194 P.O.
undtd NO 64
25/4/88

attested

3871 88
वरिष्ठ चिकित्सालय, वडोदरा
डाक-तार चिकित्सालय, वडोदरा
Senior Medical Officer
P & T Dispansary
Vadodara-390 001

4). I was given an opportunity to give my representation, on this proposal.

5). I submitted my request on this under hand to hand receipt.

6). It was ordered by the D.P.S. Vadodara Region, Vadodara -390002, under his No. STA/3-51/86 dtd. 29-8-87 that the period may be treated as leave due and admissible on the date of dismissal; namely 7-11-86 and he may allowed to draw the leave salary in lieu of the pay and allowances, for the said period.

My humble urge in this appeal is that :-

(1) I was continued under suspension from 10-2-83 to 1-1-86- prolonged and continued suspension for 35 months unnecessarily and finally it was revoked with effect from 2-1-86 taking me back on duty.

(2) Such prolonged suspension was incorrect and was to be revoked immediately when all evidence was already in the hands of Department.

(3) Department may have resorted my transfer on revocation immediately as the suspension is safe guard against tempering with the evidence.

(4) Finally my suspension period of 35 months is also treated as non duty period for all purposes and allowance permissible during the period restricted to subsistence allowance drawn by me for which I also submitted my appeal separately to the appellate authority, for consideration.

(5) That it could be seen from the appellate orders that no charges are proved as discussed by the appellate authority in the order. (Copy enclosed) and therefore the punishment is set aside and modified it to reduction to leave stage; for the irregularities in the manner I have functioned.

(6) Thus the modified punishment stands on the irregularities involved and not for the charges originally framed against me.

(7) And therefore categorically it goes to show that I was fully exonerated from all the charges originally framed against me.

(8) Thus Sir, you will agree with the principal of natural justice that to treat the period say about 6 months 2 days as leave due and admissible is nothing but to keep the employees out from civil rights to get full pay for the period of absence on account of incorrect imposition of penalty of dismissed by the disciplinary authority.

(Contd.page-3)

attested

म. २८/११/८७
वरिष्ठ चिकित्सालय, वडोदरा
डाक-तार चिकित्सालय, वडोदरा
Senior Medical Officer
P & T Dispensary
Vadodara-390 001

(9) I specially beseech that, I was made jobless and was starving as the bread earner of 9 members of my family including old parents without any fault on their part and the treatment of the said period of my absence as leave due and admissal (50 days E.L from 8-11-86 to 27-12-86 and rest of the period from 28-12-86 to 14-5-87 as leave without pay) could not redress my grievance but it has added fuel in fire, snatching away bread from the mouth of my children and family.

(10) I, therefore, finally request your kind honour and pray mercy to give relief to my family and me in these hard days of dearth and issue orders to the concerned authority to treat the period of my absence from 8-11-86 to 14-5-87 (from the date of dismissed to the date of re-instatement) as duty to draw the full pay and allowances for the said period.

Looking forward to a favourable orders of mercy and for such an act of Extra kindness we all, will remain ever grateful.

I beg to remain,

Sir, *Prasad*
Yours faithfully, *25/11/88*

(P. H. Damor.)
P.A. Sayajiganj, Vadodara-5

attested
m
25/11/88
वरिष्ठ चिकित्साधिकारी
डाक-तार चिकित्सालय, वडोदरा.
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

47
A-12/3
A-12 (74)
P. H. Damor,
P.A. Sayajiganj,
Vadodara-390005.

Dated:- 25 -4-1988.

To
The Director of Postal Services,
Vadodara Region, Vadodara- 390002.

(Through Proper channel.)

Sub:- Appeal against Order No. F-6/Miyagam-karjan/
82-83 dtd. 4-12-87.

Ref:- No previous reference.

Respected Sir,

63
28/4/88
I, the undersigned, P.H.Damor, P.A. Sayajiganj, most humbly beg to submit this representation against the order of S.S.P.Os. Vadodara West Division, Vadodara-390002 under his No. F-6/Miyagam-karjan/82-83 dtd. 4-12-87 treating the suspension period 10-3-83 to 7-11-86 as non-duty period for all purposes and allowances permissible during the period should be restricted to subsistence allowance drawn by the official.

sayajiganj PO I beg your pardon in submitting this appeal as late as I was quite ignorant of the rules. That appeal can lia on such orders. This appeal is to get justice and at the instance of advise of my senior colleagues, who encourage me to submit for the redressal of my grievance and hence I beg to consider this appeal at your pious hands.

My humble submission is as under:-

4-12-87
4-1-87
4-2-87
4-3-87
(1) That I was under suspension from 10-3-83 to 1-1-86 for 35 months which was apperantly unjustified as suspension is a safe guard against tempering with the evidence, it may not be necessary to order suspension/continue suspension in a case where all evidence is already in the hands of department.

attested
28/4/88
वरिष्ठ चिकित्साधिकारी
हाक-तार चिकित्सालय, वडोदरा
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.
(2) That is a common knowledge that public interest should be the guiding factor in deciding whether or not to place under suspension. According to the guide lines, the factors which influence such a decision were, whether his continuance in office will prejudice the investigation or trial or was likely to undermine office discipline or whether it was in order, Public Interest. This was not looked upon in my case, but till 2-11-86.

(3) That my suspension was continued for 35 months i.e. upto 1-1-86 which is ~~necessary~~ in correct one.

(4) That such long period of suspension treated as

(Contd.page-2-)

is treated as leave due it will adversely affected on subsistence allowance already drawn, life and happiness too.

(5) that my punishment of dismissal from service with effect from 7-11-86 was set aside and modified to that of reduction to lower stage by the appellate authority and was re-instated by the appellate authority with effect from 14-5-87.

(6) That contention held by the disciplinary authority that official was not fully exonerated is incorrect as it could be seen from the appellate decision under No. STA/3-56/86 dtd. 5-5-87 that charges are not proved as standard of proof is not adequate. The punishment of reduction to lower stage is given only for the other irregularities involved in the case and so there is full exoneration of the charges.

(7) That when punishment of dismissal is set aside on account of non proving the charges goes to show that suspension period to be treated as spent on duty and full pay and allowances to be paid for the period of suspension i.e. 10-3-83 to 1-1-86.

(8) That suspension revoked with effect from 2-1-86 goes to show that it was unjustified for such a long period of 35 months and therefore it is requested to treat the period of suspension as duty.

I specially beseech with folded hands and pray mercy before your honour to pass ~~the~~ an appropriate order to treat my suspension as spent on duty and to draw full pay and allowances for the period 10-2-83 to 1-1-86 to give relief to me and my family members and my old parents, in these hard days of dearth allowances as the above mentioned order of S.S.P.Os. Vadodara West Division, Vadodara affected life and happiness treating the suspension as non-duty for all purposes.

For such an extra kindness, we all (my old parents-family and I) will remain, ever grateful to your honour.

I beg to remain, Sir,

Yours faithfully,

(P. H. Damor.)
P.A. Sayajiganj, Vadodara-5.

attested
m 11/88
वरिष्ठ चिकित्साधिकारी
डाक-तार चिकित्सालय, वडोदरा.
Senior Medical Officer
P & T Dispensary
Vadodara-390 001.

76

BEFORE THE CENTRAL ADMINISTRATIVE
TRIBUNAL AT AHMEDABAD.

O.A.NO. 513/89.

P.H.Damor. .. Applicant.

VS

Union of India
and others. .. Opponents.

REPLY ON BEHALF OF
THE OPPONENTS.

I, Shri P. S. Bapat Sr Supdt of
P.S. Vadodra West in Vadodra
do hereby verify and state in reply to the
application as under.

1. I have read the application and perused the record and competent to file this reply. I do not admit such of the averments made in the application except which are specifically admitted by me and I deny the same.
2. Referring to para-3, the applicant has challenged the order passed by the Member(Personnel) Postal Service Board dated 24-10-1988. It is submitted that the application is filed beyond period of limitation.
3. Referring to para-4, it is submitted that against the impugned order, appeal lies to the Government and therefore this Hon'ble Tribunal

Copy sent to
Applicant by
Post
27.3.89

has no jurisdiction to entertain this application at this stage in view of provisions contained in section 20 of the Act.

4. Referring to para-5, it is denied that the application is filed within period of limitation. It is submitted that the present application is premature and not maintainable. The applicant has not filed any application for condonation of delay. It is submitted that therefore the present application is not maintainable and deserves to be rejected. In absence of application of condonation of delay, the Hon'ble Tribunal can not take cognizance of the same.

5. Referring to para-6, it is submitted that the applicant was involved in temporary misappropriation of Government money to the tune of Rs.14,200/-. The case was dealt with departmentally and he was dismissed from service with effect from 8-11-1986. On presentation of appeal, the appellate authority viz. DPS Vadodra reinstated him in service inflicting the penalty of reduction to the minimum of his pay for a period of 3 years without earning increment of pay during the period of reduction but on restoration it will not have cumulative effect. The applicant was dismissed from service on 8-11-1986 and was reinstated in service as per order of appellate authority from 15-5-1987. The period of absence from duty for the aforesaid period i.e. 8-11-1986 to 14-5-1987

was ordered by the DPS Baroda to be treated as leave due and admissible. Against the said decision, the applicant approached the Member(P) Department of Posts, New Delhi. The said authority confirmed the order passed by the DPS Baroda. It is mentioned that the applicant did not approach Member (P) against the penalty of reduction to the minimum issued by the DPS Baroda.

Referring to para 6-1, it is submitted that it was alleged against the applicant that there was shortage of Government cash to the tune of Rs.14,200/-. According to the applicant, there was no shortage and it was conspiracy by SPM Karjan. It is submitted that the said contention is not correct.

Referring to para 6-2 & 3, it is true that the applicant was under suspension. Departmental proceedings were initiated against the applicant under Rule 14 of the Rules. All the necessary formalities were carried out and principles of natural justice were followed.

Referring to para 6-4, it is submitted that disciplinary authority after giving due consideration to the case, had awarded the penalty of dismissal on the applicant with effect from 7-11-1986. A/N.

Referring to para 6-2 to 4, it is submitted that the applicant defended his case with the help of defence counsel. So after giving due weightage to the evidence produced during the course of the inquiry, the disciplinary authority came to the conclusion and imposed the punishment. Against that the applicant had preferred an appeal to the appellate authority and the said authority set aside dismissal order and imposed the punishment to that of reduction of minimum of his time scale for a period of 3 years. It appears that the applicant had not challenged the order of appellate authority imposing the punishment and therefore the said order became final and conclusive.

Referring to para 6-5, it is submitted that petition dated 25-4-1988 are not seen at Annx. 8 and 9. The applicant has enclosed 2 petitions dated 25-4-1989 to the application, one is Annx.A/12 dated 25-4-1988 requesting to regularise the period from 8-11-1986 to 14-5-1987, but it does not contain any request about setting aside punishment inflicted by the authority. The second petition dated 25-4-1988 is at Annexure A/10, wherein he requested to set aside the order of the appellate authority modifying the penalty of dismissal to reduction and again to treat the period of absence as duty. It is submitted that the petitioner had not challenged the order of appellate authority regarding punishment. But he appears to have approached to the higher authority for regularisation of the intervening period.

Referring to para 6-6 it is submitted that the appellate authority had come to the conclusion that the applicant had committed misconduct and took a liberal view regarding the punishment. It is denied that the applicant had filed an appeal challenging even the reduced penalty order passed by the appellate authority. It is submitted that this is an after-thought. It is submitted that appeal against the period of suspension was decided by the appellate authority. The applicant has not approached to the Government against the impugned order passed by Member (P).

It is submitted that after considering the material on record, the authorities have taken decision. Same is legal and valid and just and proper and no interference is called for at the hands of the Hon'ble Tribunal. It is submitted that there was legal material on record. The Hon'ble Tribunal does not seat in appeal over the decision taken by the department after appreciating material on record.

6. In view of the aforesaid facts and circumstances of the case, the applicant is not entitled to any relief as prayed for. There is no merit in the application and the same may please be rejected.

DATE: 23-3-90


(P. S. BAPAT)

VERIFICATION

I, *Shri P. S. Bapat* *Sd/-*
Vadodra west

do hereby verify and state that what is
stated hereinabove is true to my knowledge,
information and belief and I believe the same
to be true.

DATE:

(P. S. BAPAT)
Secy Supdt of
offices - Vadodra west
Dn -

Reply/Rejoinder/written submissions
filed by Mr. *J. D. Jmes*
learned advocate for petitioner/
Respondent with second set.
Copy served/not served & other side

Chen
Dt 27/3/90 By Registrar C.A.T.
A'bad Belga

11-6-90
78
Before the Central Administrative Tribunal,
Additional Bench, at Ahmedabad.

O. A. No. 513/89
(Vadodara District).

Between

P. H. Damer Applicant.

Vs.

Respondent.

Union of India and others. Defendant.

Rejoinder of Applicant in reply to affidavit in reply
dated 23-3-90 received by applicant on 26-6-90.

The applicant begs to submit this rejoinder in reply
to affidavit in reply given by the respondent.

(BP Turner)
The respondent has not specifically cited any authority
on the Paras of application and therefore at the very outset
there is no Specific reply to the Paras of the application
except to deny in general as usual. The applicant begs to give
parawise reply on affidavit in reply as ad-seriatam as under.

Para 1 of Affidavit in reply.

What is stated in application is correct and I reiterate
the same as true.

Para 2 of Affidavit in reply:-

COM
JAL
82
17-6-90
The applicant has been filed an application against the
appeal for which no orders have been passed by the member
(personal) Postal Services Board, New Delhi which related
to a petition against punishment of reduction to lower grade
which remains undisposed. The issue of period of suspension
not treated as duty becomes a subsidiary grievance for
ventilation. The application is not time-barred.

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Para-3 of Affidavit in Reply :-

This Honourable Tribunal has jurisdiction in this case as the applicant has availed the sources of regular appeal and therefore it is not necessary to make appeal to the Government. The period of suspension for duty was decided by S.S.P.Os. Vadodara West. An appeal was made to the appellate authority D.P.S. Vadodara and review appeal to Postal Service Board, which is rejected in respect of period of suspension to be treated as on duty.

Para 4 of Affidavit in reply.:-

The applicant reiterates that what is stated in Para 5 is true and period of limitation has not exceeded. The reminder and personal contacts were made without fruit and applicant was upset due to serious sickness of the old parents. The Honourable Tribunal may take into consideration. The petition in respect of punishment ordered by appellate authority and rejection of petition in regard to suspension period not treated as duty were submitted on the same date to Postal Service Board, New Delhi.

Para-5 of Affidavit in Reply.:-

The applicant reiterates that what is given in Para 6 is true.

(1) It is not a fact that applicant was involved in temporary misappropriation of Government money but applicant was involved alleging to be so by the S.P.M. The cash, stamps were verified and found correct by ~~Inspector of Post Office~~ and inspecting Officer and recorded in writing. The Departmental inquiries were made and disciplinary authority without ~~providing~~ proving the charges dismissed from service with effect from 8-11-86, but on appeal was re-instated in Service inflicting penalty of reduction to the minimum of pay for 3 years which was illegal as the appellate authority made that punishment only on suspicion that integrity was doubtful even though in the quasi-judicial inquiry even though

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there was no evidence against applicant. The entire episode was false and created to harass the applicant, who belongs to Schedule Tribe and S.P.M. was a man of influence who wanted to grab amount of special pay of Rs. 40/- per month granted to the applicant as treasurer.

(2) What is stated in Para-6-1, is true, It is not true that there was shortage of any type but conspiracy was made by S.P.M.

(3) What is stated in Para-6- 2 is true. The Disciplinary action was taken under Rule 14 but charges were not proved and punishment was illegal.

(4) What is stated in Para-6- 4 is true and punishment awarded was arbitrary, illegal and without reason.

(5) What is stated in Para-6- 2 to 6-4 is true. The charges were not proved the defence brief was not taken into consideration and prosecution witness which gave the facts were not taken into consideration and punishment imposed was arbitrary, illegal and against principles of natural justice and therefore appellant succeeded in appeal and was re-instated Punishment of appellate authority on presumption of doubtful integrity was also illegal as no opportunity was given on the findings of appellate authority that integrity of applicant was doubtful which was never charged in the charge-sheet on the applicant in the quasi-judicial inquiry. The applicant has made an appeal to the Member Posts for this punishment which is not disposed of by that authority. The appeal in respect of suspension period was rejected keeping the appeal against the punishment of D.P.S.Vadodara as pending till this day..

(6) What is stated in Para 6-5 is true. The annexures 8 and 9 are given with the application. The applicant had submitted two applications relating to appeal on punishment of D.P.S. Vadodara and the other in respect of suspension period to be treated on duty and both were submitted through proper channel and there is an evidence that the said authority (proper channel) has submitted both the applications

for ~~xxxxxx~~

for further disposal. There is also evidence applicant had submitted an appeal against punishment by D.P.S. Vadodara. This is annexure-10. Thus the matter remains pending and only appeal relating to period of suspension to be treated on duty disposed and rejected.

(7) The applicant reiterates what is stated in Para 6. The conclusion of appellate authority is not based on NO misconduct was committed by the applicant. The Judicial Inquiry under Rule 14 of C.C.S. (C.C.A.) Rules does not exonerate completely. The applicant from charges. The applicant has submitted appeal challenging the order passed by the appellate authority in regard to reduction in pay. It is denied that it was an after-thought. The Government records show that appeal for punishment of reduction in pay was submitted through proper channel. It is not necessary to approach to the government against the rejection of order passed by Member (P) on the subject of suspension. The applicant should be treated as duty because appeal made against order of punishment of reduction in pay awarded by appellate authority. The issue of period of suspension to be treated on duty is subsidiary one for which appeal was rejected by D.P.S.

(8) The applicant strongly feels that this is a case against Schedule Tribe member created by the influenced person of higher community like Sub-Postmaster Karjan who was related to member of Assembly and belongs to the same place and wanted to grab amount of Special pay granted to the applicant for the work of Treasurer and was being encouraged by the Head of Division to take such responsibility as a member of Schedule Tribe even though junior in service. There are recorded remarks of Inspecting Officer that cash and stamps were verified with the satisfactory result.

In reply to Para 6 of Affidavit in Reply :-

The applicant, therefore prays that as per Government

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India's Policy to protect such persons of SC/ST Community from falling victims of ~~such~~ such higher community persons exercising influence of members of Parliament/ Assembly to squi² money which are legitimately ^{due to} ~~to~~ the SC/ST persons who work hard and who have suffered for ² decades together at the hands of such ~~sahab.~~ JEINS.

Verification.

I, Pareshbhai Hausingbhai Damor, son of Hausingbhai Damor, age twenty eight, working as Postal Assistant, Sayajiganj Post Office and resident of Vadodara, do hereby verify that the contents of the Paras given here in before are true to my knowledge and beliefs and believed to be true on legal advice and that I have not suppressed any material facts.

Place:- Ahmedabad.

Dated:- 5-7-1990.

Dr. M. K. Tanna
5/7/90
(P. H. DAMOR.)

Pareshbhai Damor
by me.
Dr. M. K. Tanna
(Dr. M. K. Tanna)
A. K.

Reply/Rejoinder/written submissions
filed by Mr. P. P. Tanna
learned advocate for petitioner/
Respondent with second set
Copy served/not served to other side

on 17/7/90

[Signature]
Dy. Registrar
A'bad Bench

Sl. 235/90

85

Before the Central Administrative Tribunal,

Ahmedabad.

MA/174/90

O.A. NO. 513 of 1989

Applicant : P.H. Damor

Vs

Opponent : Union of India and others.

:: Draft Amendment ::

The below should be amended in para : 9.

Para : 9 : In view of the facts mentioned in para : 6 above, the applicant prays for the following reliefs.

(i).. That the order dated 24.10.1988 (Annexure : A) should be quashed and set aside, exonerating the applicant from the said allegations since the entire case is a got-up one, concocted and to harass the applicant, since he is a scheduled tribe member.

(ii).. Allow the petition which is pending before the Member (~~Personnel~~) (Personnel) Postal Services Board which is dated 25.4.88 at Annexure : A-10. The Board

(801)

Gry
H.D. Damor
A.S.
6.6.90

through S.P. Jain, Desk Officer (Vig. III) asked for certain documents vide letter dated 22.8.88 (Annexure : AII) and not decided my petition dated 25.4.88, which is filed against the punishment of reduction of the lower stage.

(iii) Any other relief/benefits as deemed proper by the Honourable Tribunal also in regard to the costs etc. may be awarded in favour of the applicants

Ahmedabad

Date : 6.6.90

I. P. H. Datta, aged Adult. Working Postal Assistant. Baroda Post Office, verify that what is stated hereinabove

is true and correct to the best of my knowledge and belief, and I believe the same to be true on legal advice and that I have not suppressed any material fact.

Date : 6.6.90

*Subscribed by
Mr. D. V. M. M. M.
As B.P. M. M. M.
A. M. M.*

Filed by Mr. B. P. Tanna
Learned Advocate Petitioners
with sec. 8. 2.
copies copy served/not served
other side

Do. 7/6/90

Dy. Registrar C.A.T. U.
A'bad Bench

Before the Central Administrative Tribunal
At Ahmedabad.

M.A.No. 76 of 1991

IN

O.A.No.513 of 1989

Applicant ; P.H.Damor

v/s

Opponents ; Union of India and others.

The above mentioned Original Application No.513 of 1989 was on board on 11-2-1991. On that day I was not feeling well and, therefore, I have filed a sick note at Hon'ble High Court. I have also sent my colleague to Hon'ble Central Administrative Tribunal to inform the same to Hon'ble Tribunal. But when the matter was called out my colleague was not there and he reached at the Tribunal after few minutes. He also waited till the completion of the Board. As soon as the Board for orders was over he mentioned the same before the Hon'ble Tribunal and the Hon'ble Tribunal informed him that it has already passed the order dismissing the matter for default.

Therefore, I request your Honour to restore the matter in the interest of justice as treating the above facts as sufficient cause for restoration of Original Application No.513 of 1989.

MMJ- 58/91
27/2/91

82

Copy to
Hon'ble
27-2-91

CBP (amr)

/2/

The applicant, therefore, prays as
under;

- (1) to restore Original Application
No.513 of 1989;
- (2) to pass any such other and
necessary
further orders/in the interest
of justice.

AND for this act of kindness and justice,
the applicant shall, as in duty bound, for
ever pray.

place: Ahmedabad

(Bhaskar P Tanna)

Date : /2/1991

Advocate for the applicant

Filed by Mr... B. P. Tanna
Learned Advocate for Petitioners
with second set & spaces
copies copy served/not served to
other side

Dt. 27/1/91 Dy Registrar C.A.T.(I)
A'bad Bench

Before the Central Administrative Tribunal

At Ahmedabad.

M.A.No. ⁵⁸ of 1991

ST

IN

O.A.No.513 of 1989

Applicant : P.H.Damor

v/s

Opponents : Union of India and others.

The above mentioned Original Application No.513 of 1989 was on board on 11-2-191. On that day I was not feeling well and, therefore, I have filed a sick note at Hon'ble High Court. I have also sent my colleague to Hon'ble Central Administrative Tribunal to inform the same to Hon'ble Tribunal. But when the matter was called out my colleague was not there and he reached at the Tribunal after few minutes. He also waited till the completion of the Board. As soon as the Board for orders was over he mentioned the same before the Hon'ble Tribunal and the Hon'ble Tribunal informed him that it has already passed the order dismissing the matter for default.

Therefore, I request your Honour to re-consider the matter in the interest of justice as treating the above facts as sufficient cause for restoration of Original Application No.513 of 1989.

/2/

The applicant, therefore, prays as
under;

- (1) to restore Original Application
No. 513 of 1989;
- (2) to pass any such other and
necessary
further orders/in the interest
of justice.

AND for this act of kindness and justice,
the applicant shall, as in duty bound, for
ever pray.

Place: Ahmedabad

(Bhaskar P Tanna)

Advocate for the applicant

Date : /2/1991

Verification

I - Parashrami M. Damor, Aged Adult; minor
as Postal Asst. Sayaji Garji P.O. Baroda do hereby
verify that what is stated herein above
is true and correct to the best of my
knowledge and belief, and believed to be
true on legal advice and that I have
not suppressed any material or facts.

Ahmedabad.

21.12.90

X - ~~Signature~~

(P. H. Damor)

Clearance
by
D. H. Tanna
(B. P. Tanna)
Adm

Central Administrative Tribunal
Ahmedabad Bench

O.A.No. 513/89

Shri Pareshbhai Damor
Postal Assistant,
Sayajiganj Post-office,
Vadodara- 390 005.

... Applicant

Mr. B.P.Tanna

... Advocate

Vs.

Union of India through
Secretary, Posts Deptt.
Dak Bhawan, Parliament Street,
New Delhi-110001.

The Secretary, Department of Posts,
Dak Bhawan, Parliament Street,
New Delhi-110 001.

The Chief Post-Master General,
Gujarat Circle, Ashram Road,
Navrangpura,
Ahmedabad- 380 009.

The Director of Postal Services,
Vadodara Region,
Pratapganj, Vadodara- 390 002.

The Sr. Supdt. of Post-Offices,
Vadodara West Division,
Fateganj,
Vadodara- 390 002.

... Respondents

Mr. P.M. Raval

... Advocate

Coram: Hon'ble Mr. M.M. Singh, Administrative Member.

Hon'ble Mr. R.C. Bhatt, Judicial Member.

11/02/1991

The applicant and counsel not present. The application was filed on 27.11.89. Thereafter it was listed and appropriate order passed on 20th April, 1990 and 8.8.1990. M.A.No. 174/90 filed, this application was also taken up on 12.7.90 and appropriate order passed. The application has remained pending for long and today neither the applicant nor his counsel present. We reject the application for default.

Sd/-

(R.C. Bhatt)
Judicial Member

Sd/-

(M.M. Singh)
Administrative Member

pared by : Btshel
22/02/91

TRUE COPY 24/2/91

Section Officer (3)

Adm. Assistant (3)

Adm. Assistant (3)

True Copy
M.M. Singh
R.C. Bhatt

MMB- 82/91
12/3/91

70

Before the Central Administrative Tribunal

At Ahmedabad

M.A.No. 77 of 1990

in

O.A.No.513 of 1989

Applicant : P.H.Damor

v/s

Opponent : Union of India and others

This Misc. Application has been filed for amendment in the order passed by the Tribunal on 12-6-90 which is annexed herewith and marked as Annexure A-1 to this application. Petitioner had placed draft amendment praying for amendment as below :

Annex.A-1

"Para : 9: In view of the facts mentioned in para : 6 above, the applicant prays for the following reliefs:

(i) That the order dated 24-10-88 (Annexure : A) should be quashed and set aside, exonerating the applicant from the said allegations since the entire case is a got-up one, concocted and to harass the applicant, since he is a scheduled tribe member.

Cong. Sec.
P.H. Damor
AC
12-3-91

LFO
(BB Panwar)

/2/

(ii) Allow the petition which is against the order dt. 5-5-87 [A/4] pending before the Member(Personnel) Postal Services Board which is dated 25-4-88 at Annexure : A-10. The Board through S.P.Jain, Desk Officer (Vig.III) asked for certain documents vide letter dated 22-8-88 (Annexure : AII) and not decided my petition dated 25-4-88, which is filed against the punishment of reduction of the lower stage.

(iii) Any other relief/benefits as deemed proper by the Honourable Tribunal also in regard to the costs etc. may be awarded in favour of the applicant."

The above prayers were asked for by way of amendment. The Hon'ble Tribunal on 12-07-90 granted prayer(i) and said that for prayer (ii) the petitioner can file separate petition. It is the say of the applicant that prayer (ii) is the substantial prayer, which is against the punishment of reduction in rank and against which the appeal has not been decided for more than six months. Therefore, prayer (ii) should be granted instead of prayer (i) and petitioner may be permitted

91

/3/

to amend the petition by adding Para 9 (ii).
Petitioner is not pressing at present for
prayer mentioned in para 9(i) which is about
the salary of suspension period.

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

Ahmedabad

Date: 8/8/90

MUO

Verification

I. Parashbhai Havsingbhai Damos, ~~Some~~ Age Adult
Working as Postman Assit. Soyaji Ganji P.O. Baroda
do hereby verify that what is stated hereinabove

is true and correct to the best of my knowledge
and beliefs, and believed to be true on legal advice.
and that I have not suppressed any material
facts.

Ahmedabad

Date: 8/8/90

MUO

Submitted by
me.

Deputy
(D. D. D. D. D.)
(B. P. D. D. D.)
A. D. D. D.

Filed by Mr. B. P. D. D. D.
Learned Advocate for Petitioners
with second set & ... spares
copies copy served/set served to
other side

Dt. 12/3/91, Dy. Registrar C.A.T.(I)
A'bad Bench

I may also submit that Mr.B.P.Tanna had filed M.A.No.16 of 1991 for restoration of O.A.No.513 of 1989, but it was rejected as the facts mentioned therein was pertaining

The above mentioned O.A.No.513 of 1989 was on Board on 11/2/91. On that day I have instructions to appear in the matter on behalf of Mr.B.P.Tanna. As I had some urgent work at High Court of Gujarat I was late when the matter was called out and, therefore, Hon'ble Tribunal has dismissed the O.A.No.513 of 1989 for default. I reached the Tribunal when the Board was not over. There was no other intention for not remaining present when the matter was called out and, therefore, I request the Hon'ble Tribunal to restore the matter in the interest of justice considering the above circumstances as genuine circumstances.

Before the Central Administrative Tribunal
at Ahmedabad.
M.A.No. 246 of 1991
In
O.A.No.513 of 1989.
Applicant : P.H.Damor
versus
Opponents : Union of India and others

151/91
1/5/91
92

to myself and, therefore, I have filed this

M.A.

The applicant, therefore, prays as

under:

(A) Your Lordships may be pleased to restore

Original Application No. 513 of 1989;

(B) Your Lordships may be pleased to pass

any such other and further orders

necessary in the interest of justice.

AND for this act of kindness and justice,

the applicant shall, as in duty bound, for

ever pray.

Place: Ahmedabad

(D.V. Mehta)

Advocate for the applicant

Date : 14/91

Filed by Mr. D.V. Mehta
Learned Advocate for Petitioners
With second set of papers
admitted to
court on 8/9/91

8/9/91
D.V. Mehta

93

O. A. NO. 513/89

CORAM ; Hon'ble Mr M M Singh
Administrative Member, and
Hon'ble Mr R C Bhatt
Judicial Member

ORDER : 11.2.1991

The applicant and Counsel not present.

The application was filed on 27th November
1989. Thereafter, it was listed and appropriate
orders passed on 20.4.1990 and 8.8.1990.

^{MA}
~~Amendment~~ No. 174/90 filed. This application
was also taken up on 12.7.1990 and
appropriate order passed. The application
has remained pending for a long time and today
neither the applicant nor his counsel present.
Therefore, we reject the application for
default.

R.C. Bhatt
Judicial Member

M M Singh
Administrative Member

True Copy
DV memo
Dr

(94)

M.A. 76/91 in O.A. 513/89 (M.A. St. No. 58/91)
filed on 27.2.1991.

Order : 27.3.1991

This M.A. has been filed for restoration of
O.A. 513/89 which was rejected for default by
the order dated 11.2.1991.

This application is filed by Mr Bhaskar P
Tanna, learned Advocate for the applicant.
However, it is verified by Counsel Mr Mehta.
All that stated in the application refers to
him. In that event, the application for
restoration should have been filed by Mr Mehta.
The application is not tenable and is rejected.

M M Singh
Administrative Member

S Santhanakrishnan
Judicial Member

True copy
Dr. Srinivas
Adv.

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Before the Central Administrative Tribunal

Ahmedabad Bench

Misc. Application No. 225 of 1992

In

Original Application No. 513 of 1989

D-110 4068/92
22/12/92

BETWEEN

P.H. Damor .. Applicant

and

Union of India
and others. .. Opponent

The Original Application No. 513 of 1989, which was filed against the dismissal of the applicant, was dismissed for default on 11-2-91, copy of the Ann.A/1 said order is annexed as Annexure A/1 to this Application. Thereafter, the advocate for the applicant filed restoration Application being M.A. No. 76 of 1991 on 27-2-91. The learned Tribunal rejected the same on the ground that instead of Mr. Tanna, advocate Mr. Mehta should have filed the restoration Application. Copy of this rejection Ann.A/2 order dated 27-3-91 is annexed as Annexure A/2 to this Application. Thereafter, the applicant filed another Application being M.A. No. 246 of 1992. The Hon'ble Tribunal was of the opinion that instead of filing second Application for restoration,

Reced

R.K. Parmar

Clerk to Abil Kureshi
18/12/92 AD

(2 to)

Mr. D.V. Menzies
Adv.

20/12/92 2/12/92

21/12

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/2/

application should be made for restoration of earlier restoration Application being M.A.No.76 of 1991.

2. It is submitted that the averments which were made in M.A.No.76 of 1991 were pertaining to advocate Mr.Mehta and the same were verified by advocate Mr.Mehta and, therefore, M.A.No.76 of 1991 is required to be restored and allowed.

3. It is submitted that there is no delay in filing restoration Application as all the earlier applications were filed in time and even if there is delay, that may be condoned.

4. The averments made in the M.A. pertains to the advocate. Therefore, affidavit for the same may be dispensed with.

5. Therefore, the applicant prays that :

(a) The Hon'ble Tribunal would be pleased to restore M.A.No.76 of 1991 and allow it.

(b) The Hon'ble Tribunal would be pleased to pass any such other and further orders, necessary in the interest of justice.

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

Place: Ahmedabad

Date : 18/12/92

D.V. Mehta

(D.V.Mehta)
Advocate

Filed by Mr. D.V. Mehta
Learned Advocate for Petitioners
with second set & 102
copies copy served/not served to
other side
18/12/92
By Registrar C.A.10
A'bad Bench
19/12

O. A. NO. 513/89

CORAM : Hon'ble Mr M M Singh
Administrative Member, and
Hon'ble Mr R C Bhatt
Judicial Member

ORDER : 11.2.1991

The applicant and Counsel not present.
The application was filed on 27th November
1989. Thereafter, it was listed and appropriate
orders passed on 20.4.1990 and 8.8.1990.
^{MA}
~~MA~~ No. 174/90 filed. This application
was also taken up on 12.7.1990 and
appropriate order passed. The application
has remained pending for a long time and today
neither the applicant nor his counsel present.
Therefore, we reject the application for
default.

R.C. Bhatt
Judicial Member

M M Singh
Administrative Member

True copy
for Gurnahya
for

Am. A/2 42
98

M.A. 76/91 in O.A. 513/89 (M.A. St. No. 58/91)
filed on 27.2.1991.

Order : 27.3.1991

This M.A. has been filed for restoration of
O.A. 513/89 which was rejected for default by
the order dated 11.2.1991.

This application is filed by Mr Bhaskar P
Tanna, learned Advocate for the applicant.
However, it is verified by Counsel Mr Mehta.
All that stated in the application refers to
him. In that event, the application for
restoration should have been filed by Mr Mehta.
The application is not tenable and is rejected.

M M Singh
Administrative Member

S Santhanakrishnan
Judicial Member

True copy
for S. V. Menon
JL

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

Additional Bench at Ahmedabad

Received copy
Atul Kumar
Ad.
4-10-93

O.A. NO. 513/89

(Vadodara District)

P H Damor

.. Applicant

vs.

Union of India & Ors.

.. Respondents

WRITTEN SUBMISSIONS

The Petitioner has filed this petition against his two grievances - (1) reduction in rank. He was reduced to the lowest stage of pay by way of punishment, and (2) his suspension period from 10th March 1983 to 1st January 1986 was treated 'without pay'.

After putting the petitioner under suspension on 10th March 1983 and after departmental enquiry, the petitioner was dismissed from service on 7th November 1986 by the Order of Senior Superintendent of Post Offices (Annexure A-7).

Thereafter, the petitioner preferred two appeals before the Appellate Authority.

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(i) The First Appeal for the punishment of dismissal from service and (ii) to the same authority, i.e. Director of Postal Services for treating the period of suspension "on duty".

By Order dated 5th May 1987, the Appellate Authority has decided that the charges are not proved by the Disciplinary Authority and, therefore, the dismissal can-not be awarded and the punishment for reduction of pay to the lowest scale for three years was awarded (Annexure A-9, Page-64).

(Regarding Suspension Period)

By Order dated 13th January 1989, the Appellate Authority has ordered in one line that the appeal is time-barred and also reasons given by the Appellant in the appeal are not convincing and hence the appeal is rejected. This is a non-speaking order by the Appellate Authority, against which the petitioner preferred further appeal to the Member (Personnel), Department of Posts, New Delhi and on 24th October 1988, the Member (Personnel), Postal Services Board has passed an order and rejected his appeal for treating the period of suspension "on duty". Looking to the order, it is clear that no convincing reasons have been given by the Member. Only from the assumption that the applicant may be guilty, this appeal was rejected.

The Petitioner preferred another appeal on 25th April 1988 to the Member (Personnel), Postal Services Board against the punishment of reduction in rank and pay-scale (Annexure A10 Page 68). This is not decided till today. In the meanwhile, the petitioner has already received communication from Member (Personnel) enquiring to the Director of Postal Services, Baroda, that certain documents are required to decide the petition of the applicant and, therefore, send the prescribed documents immediately to the Member (Personnel), Ministry of Communications. This letter dated 22nd August 1988 was also served to the petitioner which is enclosed herewith as Annexure A2, at Page 13 of the Petition. It is clear that the Members (Personnel) are in possession of the appeal, but they have not decided the same.

I request your honour to go through the order dated 5th May 1987 passed by the Appellate Authority (Annexure A9, Page 64). In this, it is categorically made clear that the charges against the petitioner are not proved ~~by~~ beyond doubt. During the enquiry, they are not proved.

..4..

Only relying upon a statement of a witness made in preliminary enquiry, the Disciplinary Authority has come to the conclusion that the petitioner must be guilty. This is the case of "no evidence", and in such case, the delinquent cannot be punished. This is the well-settled principle of the Law decided by the Court.

When the Appellate Authority has come to the conclusion that the charges are not proved against the petitioner, there is no documentary evidence to prove the guilt of the petitioner only because a customer has made a statement in the preliminary enquiry that he has borrowed Rs. 3000/- on the same day, it cannot be presumed against the petitioner that he must have taken this money to overcome his temporary misappropriations and in fact, the depositor during the regular departmental enquiry has denied the statement and in particular, when there is no shortage of money on Treasurer Cash Book on any of the days, then how can the petitioner be punished

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and how his suspension period can be treated as suspension, otherwise it will be a double punishment on the same charges.

The petitioner remained on suspension from 10th March 1983 to 1st January 1986. Above three years he has remained in suspension. Also he was put in the lowest pay scale for continuous three years. This is a double punishment and therefore it requires to be quashed and set aside. The petitioner relies upon the Order of the Appellate Authority dated 5th May 1987 and the Order of Second Appellate Authority dated 24th October 1988. The earlier order is regarding punishment of reduction in rank and the second one is treated suspension period. Both these are against the petitioner. But after reading the same, the Hon'ble Court will definitely come to the conclusion that the Petitioner cannot be punished relying upon these orders.