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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS. 157, 158 & 159 OF 1992
Cuttack, this the 12th day of Oct., 2001

Narahari Jena and others ... Applicants

Vrs.

Union of India and others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes,*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No.*

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
12.10.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS. 157, 158 & 159 OF 1992
Cuttack, this the 12th day of Oct., 2001

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

OA 157/92

Sri Narahari Jena, son of Khetrabasi Jena, Postal Assistant, Bolangir Head Post Office, Bolangir, At/PO/Dist.Bolangir.

OA 158/92

Sri Premananda Sahu, son of late Balabhadra Sahu, Sub-Postmaster, Sainsala, Dist.Bolangir.

OA 159/92

Shri Rahas Bihari Bhoi, son of Sri Lakshmana Bhoi, Postal Assistant, Bolangir Head Post Office, At/PO/Dist.Bolangir

....

Applicants

Advocate for applicants - Mr.Pradipta
Mohanty

Vrs.

1. Union of India, represented by the Director General (Posts), Dak Bhawan, Ashok Road, New Delhi-110 001.
2. Superintendent of Post Offices, Bolangir Postal Division, At/PO/Dist.Bolangir.
3. Savings Bank Control Organisation, Orissa Branch through its Controller, the Chief Post Master General, Orissa Circle, Bhubaneswar, At/Po-Bhubaneswar, District-Puri

....Respondents

Advocates for respondents - Mr.Ashok
Mohanty, Sr.CG
SC

O R D E R

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SOMNATH SOM, VICE-CHAIRMAN

These three O.As. have been heard separately. But as the applicants are similarly situated and have come up with the same prayer and the incident giving rise to the action complained of by the applicants

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is one and as the applicants have filed identical petitions in these three cases and the respondents have filed similar counters, these three cases are being disposed of by a common order.

2. The three applicants in these cases have prayed for quashing the orders initiating minor penalty proceedings against them, the orders in which their request for supply of certain documents was rejected, and the orders in which their request to hold a detailed enquiry under sub-rules (3) to (23) of Rule 14 of CCS (CCA) Rules was disallowed and also the final orders of punishment. The nos. of these Annexures of these four orders are different in these three applications.

3. The case of the applicants is that one Radhashyam Mishra was holding the post of EDBPM, Bharsuja B.O. in which Savings Bank Account No. 5592924 stood in the name of one Parikhita Sahoo who was operating the account. The account was opened on 14.10.1988 and was operated till the last entry was made on 3.1.1990. Thereafter on allegation of misappropriations committed by EDBPM, Shri Mishra from that account, the documents were seized by the Central Bureau of Investigation. The applicants have stated that at the time of making deposit, the concerned depositor was filling in the pay-in-slip and was also withdrawing money by filling in the withdrawal form (SB 7) . On 30.12.1989 the account-holder deposited Rs.12000/- and Rs.10,000/- in two different pay-in-slips with the EDBPM Shri Mishra. While depositing Rs.10,000/- in the first pay-in-slip form he indicated in the space for balance amount as

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Rs.12000/- and subsequently while depositing^{Rs.12,000/-} on the same day, he indicated the balance to be Rs.24,000/-. He did not indicate the amount of interest credited, but on the basis of ledger maintained in the Head Office it is seen that the balance amount was correctly given by the depositor. On 1.1.1990 the depositor submitted application form for withdrawal of Rs.20,000/- from the S.B.Account and as the amount was more than Rs.500/- it was not within the power of EDBPM to allow such withdrawal. Thereafter on 3.1.1990 Duduka Sub-Post Office with which the Branch Office was in account sanctioned the withdrawal and the depositor was allowed to withdraw the said amount. In the withdrawal form the depositor mentioned the balance, after such withdrawal, as Rs.4000/-. It is stated that there were three transactions on 30.6.1989, 12.7.1989 and 15.7.1989 during which period Narahari Jena, applicant in OA No.157 of 1992 was Assistant Post Master in-charge of Savings Bank in Bolangir Head Post Office. It is stated that the deposits of Rs.10,000/- on 30.6.1989, Rs.10,000/- on 12.7.1989 and Rs.6000/- on 15.7.1989 were made by the depositor and these transactions were found to be genuine. There was also withdrawal of Rs.30,000/- during the functioning of Shri Jena. These deposits and withdrawals have been duly recorded in the Head Office Ledger Book and withdrawals have also been entered in the Ledger Card and these transactions have been found genuine. Shri Premananda Sahu, applicant in OA No.158 of 1992 was functioning as Assistant Post Master in-charge of Savings Bank Branch in Bolangir Head Post Office and Shri Rahas Bihari Bhoi, applicant in OA No.159 of 1992

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was working as Ledger Assistant-IV under his control and supervision. During their functioning, the deposits of Rs.10,000/- and Rs.12,000/- in two different pay-in-slips on the same day on 30.12.1989 were made and withdrawal of Rs.20,000/- on 3.1.1990 was also made and these have been properly done and necessary entries have also been made in the Ledger Card and in the accounts maintained in the Head Office by Shri Bhoi and Shri Sahu. The applicants have mentioned in detail the procedure which is to be followed as per rules and instructions of the Department for deposit and withdrawal and for opening new Account and have stated that all these instructions were scrupulously followed in Bolangir Head Office and there was no lapse on their part with regard to the transactions in respect of that account upto 3.1.1990. After 3.1.1990 the EDBPM did not send any document regarding withdrawal and deposit to Duduka S.O. and Bolangir Head Office where the applicants were working also did not get any of these documents. Sometimes in March 1990 the documents were seized by C.B.I. from Bharsuja B.O., Duduka S.O. and Bolangir H.O. and investigation is under progress. Thereafter departmental proceedings under Rule 16 of CCS (CCA) Rule were initiated against the three applicants. The imputations of misconduct against Shri Narahari Jena and Premananda Sahu applicants in OA No.157 and 158 of 1992 were more or less the same. It was alleged that during the period Narahari Jena was working as Assistant Post Master, Savings Bank Branch from July 1989 to October 1989, he failed to supervise the work of Ledger Assistant-IV, i.e., the applicant in OA No.159 of 1992. It is stated that a sum of Rs.30,000/- was withdrawn from Bharsuja Branch

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Office's S.B.Account No.5592924 and this was recorded in the Ledger Card in Bolangir H.O. by the concerned Ledger Assistant. It is alleged that although the Pass Book was not added with interest for the year 1988-89, Shri Jena failed to call for the Pass Book for adding interest by getting it entered in the Special Error Book as required under Rule 74(3) of the Post Office Savings Bank Manual Vol.I. The above withdrawal was also not referred to the concerned Sub-Divisional Inspector (Postal) for verification as required under Rule 85. Similarly, for deposits made in the S.B.Account on 30.6.1989, 12.7.1989 and 15.7.1989 the Pass Book was not called for posting of interest. It is alleged that because of the above lapses of Shri Jena, the Department suffered loss to the tune of Rs.2,87,614.35. As regards Premananda Sahu, the applicant in OA No.158 of 1992, it is alleged that he was Assistant Post Master in S.B.Branch of Bolangir H.O. during the period from 4.12.1989 to 9.12.1989, 23.12.1989 to 29.12.1989 and from 1.1.1990 to 10.1.1990. It is stated that in respect of certain transactions against S.B.Account No.5592924, which were recorded in the Ledger Card and were checked by the applicant in OA No.158 of 1992, Shri Sahu did not call for the Pass Book for posting of interest by entering the same in the Special Error Book in violation of Rule 74(3). The second imputation is that he failed to send the extract of withdrawal of Rs.20,000/- to the Sub-Divisional Inspector (Postal) for verification and he also failed to ensure preparation of list of accounts not posted with interest. It is alleged that for his above lapses the Department suffered loss of Rs.2,87,614.35.

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The imputation of misconduct against R.B.Bhoi, the applicant in OA No.159 of 1992 is that while he was working as Ledger Assistant in Bolangir H.O. from 30.12.1989 to 1.1.1990 and again from 3.1.1990 to 16.1.1990, he entered deposits of Rs.10,000/- and Rs.12,000/- on 31.12.1989 in the above S.B. Account of Bharsuja H.O. in the H.O.Accounts under his initial. But though the Pass Book was not received for posting of interest for the year 1988-89 he did not call for the Pass Book by making entries in the Special Error Book as is required under Rule 74(3). The second imputation is that he failed to ensure verification of withdrawal of Rs.20,000/- by sending the extract to the concerned Sub-Divisional Inspector (Postal) as required under Rule 85 of the P.O. S.B.Manual, Vol.I and failed to ensure preparation of the list of accounts not posted as on 30.6.1989 and to send it to the concerned Sub-Divisional Inspector (Postal). It is alleged that because of infringement of the above rules, the Department suffered loss of Rs.2,87,614.35. In the statements of imputation of misconduct the applicants were given ten days time to submit their explanation. The three applicants immediately wrote on 8.1.1992 and 15.1.1992 for supply of documents and for giving further ten days time from the date of supply of documents to submit their explanation. They were informed in letters dated 17.1.1992 and 20.1.1992 that there is no mandatory provision under Rule 16 of the CCS (CAA) Rules to supply documents. However, the applicants were permitted to peruse the documents available in the office of Superintendent of Post Offices, Bolangir Division on any working day. The applicant in OA No.157 of 1992 wrote on 24.1.1992

that he is prepared to pay the cost of xeroxing of documents. He also stated that all the documents asked for by him may not be available in the office of Superintendent of Post Offices, Bolangir. He also prayed that a detailed enquiry should be held under Rule 16(1)(b) of CCS (CCA) Rules so that he will get a chance to defend himself and prove his innocence. Thereafter, the Superintendent of Post Offices, Bolangir, wrote to the three applicants in his letter dated 1.2.1992 indicating that some of the documents asked for are not relevant so far as the imputation of misconduct is concerned. He also permitted the applicants to peruse ~~xxxxxx~~ some of the documents and in respect of some of the documents it was mentioned that as the charge is non-maintenance of these documents the question of perusing the documents does not arise. The three applicants thereafter wrote to the Superintendent of Post Offices, Bolangir Division again asking for supply of documents and also for a detailed enquiry including personal hearing as envisaged under Rule 14 of CCS (CCA) Rules. In response, the Superintendent of Post Offices, Bolangir, intimated in his letter dated 24.2.1992 stating that the disciplinary authority is of the opinion that such enquiry is not necessary and therefore the request for holding detailed enquiry even in minor penalty proceedings is rejected. After this, there is still further correspondence between the applicants and the Superintendent of Post Offices asking for documents and for holding detailed enquiry. Apparently, no explanation was submitted by the applicants and the impugned orders of punishment were passed directing recovery of Rs.3000/- from each of the applicants in thirty equal instalments. Against the above

background of facts, the applicants have approached this Tribunal in these O.As. for quashing the statements of imputations, the orders rejecting their request for supply of documents, the orders rejecting the request of the applicants for holding detailed enquiry, and the punishment orders.

4. Respondents have filed identical counters in the three cases. It has been mentioned that against the orders of the disciplinary authority, the applicants have not filed departmental appeals and have not exhausted the departmental remedy x available to them and therefore, the O.As. are not maintainable. It is further stated that the transactions of deposits and withdrawals in S.B.Account NO.5592924 at Bharsuja B.O. were entered in the Head Office Ledger and other books of accounts, ~~xxxxxx~~ but interest was not worked out against this account. For this purpose, the applicants were required to call for the Pass Book by entering the same in the Special Error Book. But the applicant in OA No.159 of 1992, who was the Ledger Assistant, failed to do so and the applicants in OA Nos.157 and 158 of 1992, who were supervising officers, did not ensure doing this. The withdrawal of Rs.30,000/- was also not referred to Sub-Divisional Inspector (Postal) for checking. The respondents have stated that Rules 74(3), 75(1), 75(2) and 85 of the Post Office Savings Bank Vol.I, copies of which have been enclosed to the counters, constitute anti-fraud measures. As the applicants failed to take action in accordance with these rules, the EDBPM, Bharsuja B.O. misappropriated ~~xx~~ Rs.2,87,614.35 from different Post Office accounts. It is further stated that the role of the applicant in OA No.159 of 1992 is clerical and that of the applicants

in the other two O.As. is supervisory. It is further stated that C.B.I. have seized the documents and records for instituting the criminal proceedings against the main offender Shri Radhashyam Mishra. For the ~~xx~~ lapses of the applicants, departmental proceedings, which can be ~~xx~~ initiated simultaneously, were started against them. The respondents have further stated that at the time of seizure of the documents by the C.B.I., xerox copies of the relevant documents had been kept by the departmental authorities to initiate disciplinary proceedings against the applicants. As regards supply of documents, the respondents have pointed out that the applicants were asked to attend the office of the Superintendent of Post Offices, Bolangir Division on any working day to peruse the documents. But the applicants did not appear ~~xx~~ on any working day to peruse the documents. The applicants had ~~xxxxxxxx~~ requisitioned many documents and out of that only relevant documents were permitted to be perused and there has been no denial of reasonable opportunity. It is further stated that the applicants have no doubt asked for a detailed enquiry under Rule 16(1)(b) but it is for the disciplinary authority to decide whether in the facts and circumstances of the case such detailed enquiry is necessary and as the disciplinary authority had passed written order stating that he does not consider a detailed enquiry necessary in the case, the action taken has been strictly in accordance with the rules. It is further stated that the transactions were admittedly recorded in the H.O. Ledger and other Books of Accounts, and the entries have also been signed by the applicants. On a mere perusal of these entries it could have been apparent to the applicants that the interest column has been left blank and they should

have called for the concerned Pass Book by entering the same in the Special Error Book. Similarly, for field verification of the withdrawal of Rs.30,000/- from that account, intimation should have been sent to the Inspector, but this has not been done. It is further stated that the disciplinary authority has considered the facts and circumstances of the case and passed a reasoned order imposing the punishment and in the context of the above, the respondents have opposed the prayer of the applicants.

5. The applicants have not filed any rejoinder.

6. We have perused the pleadings.

7. From the above recital of pleadings of the parties, it is clear that the admitted case between the parties is that the relevant transactions in the S.B.Account No.5592924 at Bharsuja B.O. had been duly incorporated in the H.O.Ledger. The lapses alleged against the applicants in the disciplinary proceedings are that the large withdrawals were not sent to the Sub-Divisional Inspector (Postal) for verification and the other lapse is with regard to not calling for the Pass Book for posting of interest by entering the Account No. in the Special Error Book. These are stated to be violative of the departmental rules and instructions. Before considering the liability of the applicants with regard to these lapses, it must be noted that it is not open for the Tribunal in a disciplinary proceeding to reappraise evidence and come to a finding different from the finding arrived at by the

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disciplinary authority as the Tribunal does not act as an appellate authority in such case. The Tribunal can only interfere if there has been denial of reasonable opportunity or if the principles of natural justice have been violated and if findings are based on no evidence or are patently perverse. The submissions made by the learned counsel for the petitioners are to be considered in the context of the above well settled position of law.

8. The first ground urged is about non-supply of documents. We note that the applicants in all these cases wrote to the disciplinary authority asking for supply of documents. The disciplinary authority at the first instance indicated to the applicants that there is no provision for supply of documents and they can peruse the documents in the office on any working day. Thereafter the applicants wrote that they apprehend that only some of the documents will be shown to them as most of the documents have been seized by the C.B.I. This contention is not correct because the respondents have indicated in their counters, which have not been denied by the applicants, that the respondents had kept xerox copies of the relevant documents for initiating disciplinary proceedings against the applicants. The respondents have stated that the applicants asked for a large number of documents and the request was examined and the applicants were replied to in letter dated 1.2.1992 indicating which of the documents are available and can be perused and which documents are not relevant for the purpose of disciplinary proceedings against the applicants. It was also mentioned that the applicants have asked for certain documents in respect of which the imputation

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is that these documents have not been maintained and therefore, the question of perusing these documents does not arise. One example of this is the Special Error Book. In none of the letters addressed by the applicants to the disciplinary authority it has been mentioned as to how these documents are relevant for the purpose of disciplinary proceedings. In the present petitions also there is no averment with regard to any of these documents. We have perused the letter dated 1.2.1992 of the disciplinary authority and prima facie it appears that many of the documents asked for by the applicants were not relevant for the purpose of the disciplinary proceedings. For example, the applicants have asked for copies of pay-in-slips of different dates in which money was deposited in the relevant Account. These documents are obviously irrelevant because the admitted position between the parties is that these transactions of deposit and withdrawal did take place and these have also been duly recorded in the Head Office Ledger and the Ledger Card. This has been mentioned in the statements of imputations served on the three applicants and has also been mentioned by the respondents in their counters. In view of this, it must be held that denial of the request for supply/perusal of these documents has not resulted in denial of any reasonable opportunity. The respondents have stated that the applicants did not turn up to peruse the documents which were available and which they were asked to peruse. This also shows that even the opportunity given to the applicants for perusal of some of the documents was not availed of by them. This contention, is therefore, held to be without any merit and is rejected.

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9. The second ground urged by the applicants is that even though they had asked for holding detailed enquiry under Rule 16(1)(b) of the CCS (CCA) Rules, the disciplinary authority passed orders on 24.2.1992 holding that such enquiry is not necessary in his opinion and accordingly the request for holding detailed enquiry was rejected. It has been submitted by the learned counsel for the petitioners that by not holding detailed enquiry, as asked for by the applicants, there has been denial of reasonable opportunity. Before considering this contention, it must be noted that in none of their letters enclosed by the applicants with their OAs, they have enclosed the explanation, if any, submitted by them in reply to the statement of imputations. From the impugned orders of punishment, it appears that the applicant in OA No.157 of 1992 submitted representation on 6.3.1992 stating that it was difficult on his part to submit any defence as all the documents have not been supplied to him. The applicant in OA No.158 of 1992 perused some of the documents and took copies. He submitted an explanation on 4.3.1992 in which he again raised the point about holding of enquiry under Rule 16(1)(b), non-supply of documents, etc. The applicant in OA No.159 of 1992 took the same stand about supply of documents and for holding of detailed enquiry and ultimately submitted representation on 6.3.1992 stating that the disciplinary authority ~~is~~ prejudiced against him and it is difficult on his part to submit any defence. From the above ^{does} it/appear that the applicants did not submit any explanation denying the statement of imputations. In any case, such

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representation, if any, has not been enclosed to the OAs by them. The disciplinary authority in the impugned orders has, on the other hand, mentioned in detail about the correspondence the applicants made with him and their replies. It is to be determined, in the context of the above, if denial of holding detailed enquiry by the disciplinary authority has resulted in denial of reasonable opportunity. The Rules are clear that in minor penalty proceeding initiated under Rule 16 of CCS (CCA) Rules detailed enquiry, as envisaged under Rule 14 relating to major penalty proceedings, is not required to be undertaken. But Rule 16(1)(b) provides that the delinquent official while submitting his explanation may ask for a detailed enquiry as envisaged under sub-rules(3) to (23) of Rule 14 and if the disciplinary authority is of the opinion that in the facts and circumstances of the case such enquiry is required to be done, then such enquiry can be held even in a minor penalty proceeding. In the instant case, the request for detailed enquiry has been made by all the three applicants, but in their letters they have not indicated the grounds on which such enquiry is required to be held. The disciplinary authority in his letter dated 24.2.1992 has indicated that in his opinion detailed enquiry as envisaged under Rule 16(1)(b) is not called for in these cases. In support of the above satisfaction, the respondents have mentioned in the counters that the recording of the relevant transactions in the Head Office accounts is admitted. The only imputation of lapse on the part of the applicants is not calling for the Pass Book for posting of interest by mentioning the Account number in the Special

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Error Book and in not sending the withdrawal of Rs.30,000/- from the relevant S.B.Account on 20.7.1989 when the petitioner in OA No.157/92 was the Assistant Post Master in charge of S.B.Branch in Bolangir H.O. and withdrawal of Rs.20,000/- on 3.1.1990 when the petitioner in OA No.158 of 1992 was the Assistant Post Master in charge of S.B.Branch in Bolangir H.O., to the Sub-Divisional Inspector (Postal) for verification. It is alleged that by not doing this the applicants have violated the codal provisions copies of which have been enclosed by the respondents to their counters. As in these cases the alleged lapses are supposed to be proved on production of documents and not by statements of witnesses, by refusal to hold detailed enquiry it cannot be said that there has been denial of reasonable opportunity. The applicants in their O.As. have not also urged any ground in support of the contention of the learned counsel for the petitioners that denial of holding detailed enquiry has resulted in denial of reasonable opportunity. In this context, it has to be noted that from the pleadings of the parties it appears that none of the applicants submitted any explanation denying the imputation of misconduct and these alleged lapses are entirely based on documentary evidence. In consideration of this, it must be held that by not holding a detailed enquiry under Rule 16(1)(b) there has not been any denial of reasonable opportunity.

10. The next point which arises for consideration is with regard to the statement of imputation. The respondents have enclosed along with the counter the copies of the relevant rules. Rule 85 of the Post Office S.B. Manual, Vol.I, which is at Annexure-R/3, lays down that as and when

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any withdrawal of Rs.2500/- and above in any savings account standing at Branch Office or single handed Sub-Office is posted in the ledger card, the Ledger Assistant of the HO will prepare a half margin verification memo in the form prescribed in Appendix III and place it ~~xxxxx~~ for signature of the Postmaster. It is further provided that the Postmaster while checking the Ledger Card will see that for every withdrawal of Rs.2500/- and above in the account of Branch Office or ^{verification} single handed Sub-Office, a half margin/memo has been prepared by the Ledger Assistant and put up and the same should be despatched on the very same day to the concerned Sub-Divisional Inspector of Post Offices or Public Relation Inspector who will verify the withdrawal by contacting the depositor as quickly as possible and send his reply to the Postmaster after filling up and signing the reply half margin of the verification memo which should be returned to the Head Office within ten days if the place of residence of the depositor lies in the jurisdiction of a Public Relation Inspector and within thirty days in all other cases. Services of the Overseer, Mails can be utilised by the Sub-Divisional Inspector of Post Offices for the above purpose. From the above it is clear that ~~xx~~ the verification procedure has to be adopted in respect of all withdrawals of Rs.2500/- and above from any S.B.Account standing in a Branch Office or single handed Sub-Office. At the time of posting the withdrawal in the Ledger Card the verification memo has to be prepared by the Ledger Assistant and this has to be sent to the ~~xxxxx~~ field officer in the manner indicated above. This is clearly an anti-fraud measure. The applicants in their O.As.

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as also in their correspondence with the disciplinary authority enclosed to the O.As. have not taken the stand that such a verification memo was prepared in respect of the withdrawal of Rs.30,000/- on 20.7.1989 with which the applicant in OA No.157/92 is concerned and withdrawal of Rs.20,000/- on 3.1.1990 which is the subject-matter of imputation of misconduct in respect of the applicant in OA No. 158/92. The applicant in OA No.159/92 is also concerned with the second item of withdrawal of Rs.20,000/-. From the impugned orders of punishment passed by the disciplinary authority, we find that he has given cogent reasoning in support of his conclusion that no such verification memo was prepared in respect of these two withdrawals and sent to the concerned field officer. Therefore, his conclusion in holding the applicants guilty in respect of this lapse cannot be said to be based on no evidence or against the weight of evidence.

11. The second aspect of the lapse is with regard to not calling for the Pass Book of ^{S.B.} ~~xxx~~/Account No.5592924 by entering the same in the Special Error Book on the ground that no interest had been posted in that account. The disciplinary authority has found that in the Ledger Card while entering these transactions the interest column was not filled in and therefore, it was clear that interest had not been worked out in respect of the Pass Book. The applicants in OA Nos.157 and 158 of 1992 have not stated that they did call for the Pass Book by entering ~~xx~~ the Account number in the Special Error Book. The applicant in O.A.No.159/92, who was the Ledger Assistant and whose primary duty was to prepare the verification memo and make entry in the Special Error Book,

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has not taken the stand that these documents were prepared by him. The disciplinary authority has come to the finding on the basis of record, which we find reasonable, that prior to 17.1.1990 after the detection of fraud, these records were not being maintained in Bolangir Head Post Office at all. Thus, the lapse of the applicants with regard to not calling for the Pass Book of the concerned Account by entering the same in the Special Error Book has been held to be proved by the disciplinary authority and this finding also cannot be stated to be based on no evidence. In view of this, we hold that the finding of the disciplinary authority with regard to the lapses of the applicants is legally sustainable.

12. As regards imposition of penalty, as earlier noted, an amount of Rs.3000/- has been ordered to be recovered from salary of each of the applicants in thirty equal instalments. We note that in the statement of imputation it has been alleged that because of the failure of the applicants to take anti-fraud measures as per the codal provisions, ~~KMS~~ ~~EDBPM~~ Radhashyam Mishra, EDBPM of Bharsuja B.O. committed misappropriation to the tune of Rs.2,87,000/- and odd. From the orders of the disciplinary authority, it is not at all clear how he has arrived at the amount of Rs.3000/- in the case of each of the applicants which is stated to be the amount lost to the Department because of the failure of the applicants to take the above anti-fraud measure. The applicants have pointed out and to our mind, rightly in their OA that the relevant transactions referred to in the statement of imputation have been properly recorded in the Head Office

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Accounts and in the orders of the disciplinary authority it has not been mentioned anywhere that any fraud has been committed in respect of these transactions. This is also not an item in the charge. From this, it is clear that in respect of these transactions of deposit and withdrawal referred to in the statement of imputation alleged against these three applicants, there has not been any fraud. The fraud has been committed, as has been mentioned by the respondents in their counters, by the EDBPM, Bharsuja B.O. in respect of several accounts standing in the Branch Office. In consideration of this, we do not find a reasonable nexus between the lapses proved against the applicants and the loss of Rs.3000/- for which each of the applicants has been held responsible. Departmental instructions specifically provide that when punishment of recovery of loss from the salary of a delinquent officer is to be ordered, then it would be necessary to determine as closely as possible the quantum of loss which is attributable to the lapse of the delinquent official and thereafter pass order of recovery. In the instant cases, from the orders of the disciplinary authority we find no reasonable nexus between the lapses proved against the applicants and the quantum of recovery ordered against each of them. This is moreso because of the admitted position that in respect of the transactions mentioned in the statement of imputations no fraud has been committed. In view of the above, while we uphold the orders of the disciplinary authority with regard to his findings on the statement of imputation, we quash the punishment of recovery imposed on these three applicants and remand the matters back to the

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disciplinary authority to take further action in this regard. Such action should be taken within a period of 90 (ninety) days from the date of receipt of copy of this order.

13. In the result, therefore, the Original Applications are partly allowed in terms of the observation and direction above. No costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
12.10.2001.

CAT/CB/ 04.12.2001/AN/PS