

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application No. 384/2011

Reserved on: 17.5.2012

Date of order: 6.7.2012

CORM

Hon'ble Mr. B K Sinha, Administrative Member

S.P.Bhatia S/o Shri Kulwant Singh Bhatia,
R/o 24-F-Block, Sri Ganganagar,
Dist. Sri Ganganagar, at present working as
Postal Assistant in the office of Sub Post Master
(RS) Headquarter, Sriganganagar (Raj).Applicant

(BY Advocate Mr. H.S.Sidhu)

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1. Union of India through the Secretary, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.

2. Superintendent of Post Offices, Sriganganagar Division, District Sriganganagar.

3. Director, Postal Services, Rajasthan Western Region,
Jodhpur.

(By Advocates Mr. Vinit Mathur, ASG alongwith Mr. Ankur Mathur)

ORDER

The instant OA challenges the order of the Superintendent of Post Offices, Srigananagar, dated 15.01.2010, holding all charges against the applicant ‘fully proved’. [A-1] The same order finds the applicant guilty of contributory negligence and orders for recovery of Rs.2,00,000/- only in 50 equal instalments of Rs.4000/- from the salary of the applicant effective from the month of January, 2010.

Reliefs Sought

2. The applicant has sought the following reliefs against the impugned order:

- "(a) The impugned order dated 15.01.2010 (Annexure-A/1) and order dated 02.09.2010 (Annexure-A/2) passed by the respondents may kindly be quashed and set aside with all consequential benefits.*
- (b) Any other direction/relief/order which has Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.*
- (d) That the cost of this application may kindly be awarded to the applicant."*

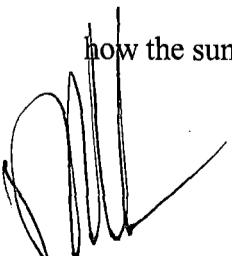
Facts of the case

3. Facts of the case in brief are that while the applicant was working as Assistant Post Master (Temporary) in the office of Postmaster, Head Office, Sriganganagar, (30.04.2007 to 29.01.2009), a registered letter was received by the Postmaster Head Quarter, Sriganganagar during the course of his duties. The PO opened the letter and after having gone through the contents of the documents therein endorsed the same to the applicant. The registered post contained two ATs, namely bearing No.47 dated 13.09.2008, and No.48 dated 13.09.2008. The first of these related to Account No Type MIS 5786 in respect of Rs.4,50,000/- and Account No. Type RD 174215 of Rs.1,77,000/- both to be sent to Sub-Office, Suratgarh City for opening of accounts. The applicant claims that as soon as he received the two aforesaid ATs he had dispatched them to Suratgarh City office through the Misc. Clerk after due scrutiny. The Sub-Postmaster Office, Suratgarh after having gone through the ATs opened accounts in respect thereof without having followed the procedures prescribed under Rule 54 (1) of the Procedure Rules of Saving Accounts and issued cheques to the account holders. It was discovered subsequently that the ATs were bogus leading to fraudulent transactions amounting to Rs.7,13,026/- in favour of the culprits. A charge sheet was served upon the applicant vide communication dated 03.07.2009 by the respondent No.2 under Rule 16 of the CCS (CCA) Rules charging him with not following Rule 54 (1) while going through the AT Nos.47 & 48 as was required to be done by him as a consequence of which the department incurred a loss of Rs.7,13,026/-. The second charge was that the applicant did not go through the type writing process of AT No.47 and AT No.48. The ATs should be issued in the Sanchay Post Software and where there is no such facility it should be prepared in departmental form and written manually by the carbon process. Had the applicant been vigilant enough this flaw could had

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been detected in first instance and the pecuniary loss could not have avoided. The applicant alleges that the respondent No.2 did not make the papers available as demanded. He addressed a letter to the Respondent No.2 demanding the documents [A/4]. Some of the documents were made available to the applicant in response to this letter vide communication dated 07.09.2009 [A/5]. The applicant alleges that the documents not supplied were vital to the outcome of the case: *"That likewise in para No.10 of the application dated 08.08.2009, the applicant sought the information whether the alleged amount was paid to the culprits by the bank or not, the documents regarding such transactions may be supplied to the applicant. It was demanded so that the applicant may know whether actually the alleged amount was paid to the culprits or not. The said information was also denied by the disciplinary authority by saying that it is not relevant to the charges leveled against the applicant."* [Para 4.9 of the OA].

4. The stand of the applicant is that he was not holding the post of Postmaster or the Sub-Postmaster as per Rule 3 of the POSB Rules at the time of the incident. He contends in his reply that though it was not his duty to scrutinize the documents as alleged in the charge sheet he gone through the ATs numbers 47 and 48 as a measure of abundant precaution and he found all the formalities as per Rule 54 (10) of the POSB Rules except the word "original" was not there which should not have been marked on the ATs as duplicate in print. It should have been signed by the proper authorities as mentioned in Rule 54 (1) of the Rules and oblong money order stamp should be there on the ATs. After verifying all these things, the applicant treated these ATs original and marked them to the concerned clerk to forward to the Suratgrah Sub-Branch for opening of accounts. Thus, applicant contends, no misconduct nor mens rea is imputable on his part. The applicant further alleges that the Disciplinary Authority, without applying his mind and without giving any good and sufficient reasons under Rule 11 of the CCS (CCA) Rules, 1965 imposed the penalty of recovering Rs.2,00,000/- from the salary to the applicant in 50 equal monthly installments of Rs.4000 per month vide its order 15.01.2010, completely ignoring the defence of the applicant. The applicant further submits that no reasons have been assigned as to how the sum of Rs.2,00,000/- was arrived at.



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5. The applicant filed an appeal pointing out the infirmities in the order [A-1] and requesting the same to be set aside [A/11]. The applicant had also pointed out in the memo of appeal that he had not violated any rules as alleged against him. He also alleged so far as the charge No.2 is concerned for that there was no material before the disciplinary authority. There is no procedure laid down in anywhere in the rules that the ATs should be in a specific writing by a specific instrument or software. The applicant also pointed out that the allegation made in charge No.2 was indefinite and vague. The Appellate Authority had failed to consider this vital facts and passed the impugned order 02.09.2010 [A/2] rejecting the appeal of the applicant.

6. During the course of the arguments, the learned counsel for the applicant strongly hammered the fact that non-supply of material documents had rendered the entire proceedings vitiated. He relied upon a decided case of **Mohd. Quaramuddin (dead) by Lrs. Vs. State of A.P., (1994) 5 SCC 118**, to press home his point. The applicant has further emphasized that he had complied with the instructions under Rule 54 (1) of the POSB. The only thing which he is overlooked was that the word "original" missing from the ATs. The applicant emphasized that his duty was merely clerical and the real duty of care and caution lay upon the Postmaster of Suratgarh Branch Post Office.

Case Laws Cited

- (i) **Mohd. Quaramuddin (dead) by Lrs. Vs. State of A.P., (1994) 5 SCC 118.**
- (ii) **Roop Singh Negi vs. Punjab National Bank & Ors, (2009) 2 SCC 570.**
- (iii) **Dr. Om Prakash Sharma vs. The State of Rajasthan, WLR 1992 (S) Raj 378.**
- (iv) **Union of India & Ors. Vs. J. Ahmed, AIR 1979 SCC 1022.**
- (v) **G. Vallikumari vs. Andhra Education Society & Ors. (2010) 2 SCC 497.**
- (vi) **Ravi Yashwant Bhoir vs. District Collector, Raigad & Ors, (2012) 4 SCC 407.**
- (vii) **R.K. Vashisht vs. Union of India & Ors., 1993 SCC (L&S) 153.**
- (viii) **Suman Kumar Singh vs. Union of India & Ors., (1995) 30 ATC 22.**



Case of the respondents

7. The learned counsel for the respondents has resisted the OA on all its material points. He has argued that the scope of intervention from the Tribunal is confined only to see whether there is some malafide involved; there has been transgression of rules/statutes and or violation of the Rules of Natural Justice. In the instant case, none is involved. The proceedings have been conducted as per the procedure prescribed in the CCS (CCA) Rules, 1965 from which there has been no deviation. The learned counsel for the respondents strongly resisted the suggestion that the non-supply of documents has vitiated the proceedings. There has been a gradual shift in the view of the courts after the judgment in the case of **R.K. Vashisht vs. Union of India & Ors., 1993 SCC (L&S) 153**. The earlier view was that non-supply of the documents would vitiate the proceedings ipso facto. This position has since been changed and the mere fact of non-supply of documents does not vitiate the proceedings ipso facto. The Courts/Tribunals have to weigh whether the documents were material to the facts of the case or whether the applicant is only creating grounds for his defence. The respondents further argued that a big fraud has been committed to the tune of Rs.7,13,026/- upon the deposit of the depositors. It is money of the innocent public who have invested into the Government scheme. It is further argued that it is not possible to delineate the precise amount down to the last paise. The charge against the applicant is that of contributory negligence. There are others involved and, therefore, the defrauded amount has been apportioned as per the degree of the negligence.

Facts-in-issue

8. Having gone through the pleadings of both the parties, the documents adduced by them, and having heard through their arguments, the facts-in-issue emerge in this case:

- (i) *What is the scope of interference by this Tribunal in recovery of the amount based upon departmental proceedings?*
- (ii) *Whether the admission of the applicant as to his making a vital omission is admissible before the Tribunal?*
- (iii) *Whether the non-supply of documents demanded shall serve to vitiate the proceedings?*
- (iv) *Whether the respondents have committed some act of violation of the rules/statutes/rules of natural justice?*
- (v) *What relief, if any, can be provided to the applicant?*

What is the scope of interference by this Tribunal in recovery of the amount based upon departmental proceedings?

9. The instant departmental proceeding has been conducted under the provisions of Section 3 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. A plain reading of Rule 3 provides :

"3. Application (1) these rules shall apply to every Government servant including every civilian Government servant in the Defence Services, but shall not apply to-

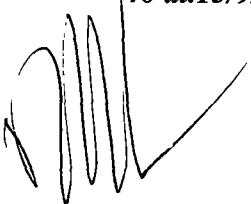
- (a) any Railway servant, as defined in Rule 102 of Volume-I of the Indian Railways Establishment Code,*
- (b) any member of the All India Services,*
- (c) any person in casual employment,*
- (d) any person subject to discharge from service on less than one month's notice,*
- (e) any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions.*

(2) Notwithstanding anything contained in sub-rule (1), the President may by order exclude any class of Government servants from the operation of all or any of these rules.

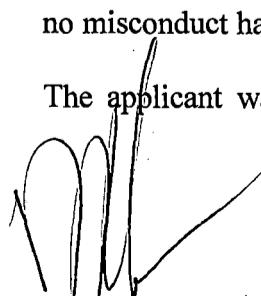
(3) Notwithstanding anything contained in sub-rule (1), or the Indian Railway Establishment Code, these rules shall apply to every Government servant temporarily transferred to a Service or post coming within Exception (a) or (e) in sub-rule (1), to whom, but for such transfer these rules would apply."

10. The charges were duly communicated to the applicant and a statement of misconduct of misbehaviour was also appended with the Memo dated 15.01.2012: *"While working as APM SBSO Sriganganagar H.O. during the period of Sept. & Oct. 2008, Shri S.P. Bhatia has received following ATS on 29.09.2008 purported to have been issued from Jhilmil HO, New Delhi:*

<u>AT No./Date</u>	<u>Account No./Type</u>	<u>Amount</u>	<u>A/c to be opened at</u>
47 dt.18/9/09	MIS 57836	450000/-	Suratgarh City
48 dt.13/9/08	RD 174215	177000/-	Suratgarh City



Rule 54(1) 7 note below the rule prescribes that Advice of transfer should bear the indication "original" at the top right hand corner by print or by means of rubber stamp. The above noted AT No.47 and 49 were not bearing this indication. Shri S.P. Bhatia has not carried out the prescribed check on these AT and considered botht he ATs genuine and sent them to Suratgarh City PO for opening of accounts. The ATs were bogus which led to fraud to the tune of Rs.713026/- Had Shri Bhatia checked the ATS minutely the short coming could had been noticed at HO point and the loss sustained to department could had been saved. ATs No.47 & 48 noted in charge NO.I were in computer proforma but were prepared in manual type writing process. Both the ATs were typed in fronts of different type and size which can be easily recognized. At present all the HOs are computerized and issuing ATs in Sachay Post software. Secondly if the Sanchay Post Software is not working then the ATs are prepared in departmental form and written manually by carbonic process. There is no third procedure for issue of AT. The AT no.47 & 48 were prepared in computer proforma by manual type writing process which could had been detected in first sight if Shri Bhatia had been vigilant a little and fraud took place by these ATs to the tune of Rs.713026/- at Suratgarh city NDTSO could had been saved. Therefore, She Bhatia is responsible for this loss to the Government. Therefore, it is alleged that by his above noted two major lapses Shr. S.P. Bhatia has exhibited gross negligence & thereby failed to maintain devotion to duty as enjoined upon him vide rule 3 (1) (ii) of CCS (Conduct) Rules 1964." The applicant was given opportunity to provide his defence within 10 days. Thereafter, the applicant demanded some documents and submitted his defence. I find from the order of the Disciplinary Authority, i.e. Superintendent of Post Offices, Srigananagar [A/3] that the proceedings have been conducted following the process provided under Rule 16 of the CCS (CCA) Rules, 1965. The applicant has not questioned the procedures except on the point that papers/documents were not provided as demanded. The other issues involved relate to the findings of the Departmental enquiry as for instance Rule 54 (1) being incorrectly invoked leading to contributory negligence. Apart from no misconduct has been committed by the applicant; nor has he involved in the fraud committed. The applicant was given opportunity to provide his defence within 10 days. The applicant



submits that the registered letter was received by the Post Master, HQ, Sriganganagar. The PO opened it and after going through the documents therein forwarded it to the applicant. The applicant has strongly contended that it was the duty of the Postmaster concerned to go through it minutely and there is mens rea involved in his part. Had the documents being supplied to him as demanded he would have been able to prove these facts beyond reasonable doubts.

11. The contention of the applicant relates primarily to his defence in the course of the departmental proceedings. On the aspect of the scope of the Tribunal to interfere of the disciplinary matter and on the aspect of reviewing the quantum of penalty awarded to the delinquent official, the Hon'ble Apex court had in the case of **Union of India vs. Parma Nanda, (1989) 2 SCC 177 / AIR 1989 SC 1185**, held as follows:-

"The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Enquiry Officer of competent Authority where they are not arbitrary or utterly perverse.

The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of Legislature, or Rules made under the Proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules, and in accordance with principles of natural justice, what punishment would meet the ends of justice is a matter of exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed, and is imposed on the proved misconduct, the Tribunal has no power to substitute its own direction for that of the authority".

12. Taking the same stand in the case of **State Bank of India vs. Ram Lal Bhaskar & Anr. 2012 (1) AISLJ 108**, a Full Bench of the three judges of the Hon'ble Apex Court has stated as follows:-

"High Court has reappraised the evidence and sat in appeal over the orders of the Department, which is not permitted in proceedings under Article 226 of the Constitution of India."

"8. Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an Appellate Authority over the findings of the Disciplinary Authority, and so long as the findings of the Disciplinary Authority are supported by some evidence, the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence..... Yet by the impugned judgment the High Court has re-appreciated the evidence and arrived at the conclusion that the



findings recorded by the Enquiry Officer are not substantiated by any material on record, and the allegations levelled against the respondent No.1 do not constitute any misconduct and that the respondent No.1 was not guilty of any misconduct.”

“9. We, therefore, set aside the impugned order of the High Court,.....”

13. Last though not the least the tests to be applied by this Tribunal have been provided by the Hon'ble Apex court in the case of **State of Andhra Pradesh & Ors. vsl S.Sree Rama Rao, AIR 1963 SC 1723: (1964) 3 SCR 25**, in which the Hon'ble Apex Court had held in sub paragraphs (a),(b),(c),(d) and (e) for the purpose of summarizing as follows:-

“The High Court is not constituted in a proceeding under Article 226 of the Constitution, a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine (a) whether the enquiry is held by an authority competent in that behalf, and (b) according to the procedure prescribed in that behalf, and (c) whether the rules of natural justice are not violated, (d) when there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted, and (e) which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence, and to arrive at an independent finding on the evidence.”

14. From the afore cited decisions of the Hon'ble Apex Court, it is clear that there is an obvious distinction between the appellate jurisdiction being exercised by the departmental/appellate authorities and the writ jurisdiction under Article 226 of the Constitution of India or under Section 14 of the Administrative Tribunals Act, 1985. While the appellate authority is empowered and should go into the final points of prosecution and defence, this role has not been obviously bestowed upon this Tribunal. It can go into evidence but only to the extent to examine three issues- that whether there is some malafide involved; whether there is some violation of statutes; and whether some rules of natural justice stand violated. In the case that the answer to any one of these queries is in the affirmative, there is ground for the Tribunal to intervene, otherwise not. The issues have to be examined within the parameters of the above. This makes the next fact in issue highly pertinent.



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Whether the admission of the applicant as to his making a vital omission is admissible before the Tribunal?

15. In so far as the instant issue is concerned, it is necessary to go through the provisions of Rule 54 (1) of the POSB : “***53(1) Procedure in Head Office:- (i) On receipt of the advice of transfer together with the application for transfer and other documents, the Postmaster should see that the advice of transfer is marked “Original”, it is complete in all respects and bears the impression of the oblong money order stamp of the transferring Head Office and also the signature of the official-in-charge of the Saving Bank Control Organization of the transferring Head Office with designation stamps. It should then be got date stamped on the date of its receipt.***” **Note:- It should be seen that the Advice of Transfer bears the indication “Original” at the top right hand corner either by print or by means of a rubber stamp and it is received by Insured Post. No account should be opened on transfer on the basis of an advice of transfer marked “Duplicate” in print and AT received by any source/mode other than insure. In such cases, AT should first be sent to Transferring HO for verification and account should be opened only after receipt of verification and further verification of local address of the depositor.**” It is quite evident from above that a good deal of emphasis has been placed upon the presence of the word “Original”. It has been admitted by the applicant that the word “Original” was missing and that the applicant failed to detect the same. The argument that the responsibility lies upon the Postmaster and not upon the applicant to detect the missing word does not hold good when viewed in the larger context of responsibilities and duties. In a judicial set up the magistrate is squarely responsible for the order he pronounces. He is fully accountable for what he writes and cannot take shelter behind the plea that his Bench Clerk has been negligent in putting up the files before him. This is not the case in other civilian including business organizations. Post Offices are also conducting banking functions and the Postmaster is to be equated with the Branch Manager. Here, there is duty cast upon the supporting staff to carry out proper scrutiny. If all duties are cast upon the Branch Manager then I am afraid there will be a galore of mistakes. This constitutes the element of contributory negligence.



16. Of course in absence of other evidence it cannot be said that whether mens rea was involved. It has to be born in mind that this was a case of departmental proceedings, where the composition of charges are much different and the degree of proof much less. Unlike the criminal cases charges are not required to be proved beyond reasonable doubt. A mere imputation supported by negligence is also sufficient to infer guilt on part of the proceedee. Here, in the instant case, it stands admitted that there was a vital mistake in overlooking the word "Original", which was missing and had it been pointed out in that transaction the misappropriation would have been avoided. It is not correct to shift the blame on the Postmaster as he derives his satisfaction from that of his supporting staff.

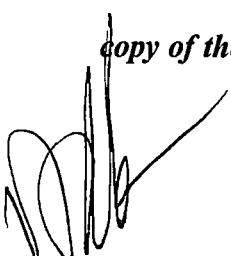
Whether the non-supply of documents demanded shall serve to vitiate the proceedings?

17. Here, the admitted position is that at a point of time Courts/Tribunal were of the firm opinion that non-supply of documents is a major lacunae that vitiate the entire proceedings. In the case of **Mohd. Quaramuddin** (supra), the OA had been disallowed on ground of limitation. However, the Court had clearly held :

"3. On merits the tribunal came to the conclusion that the principle of natural justice had been violated in that the delinquent was not supplied a copy of the Vigilance Commission report although it formed part of the record of the enquiry and material which the disciplinary authority had taken into consideration. The tribunal observed that where such a material which the disciplinary authority relies on is not disclosed to the delinquent it must that the audi alteram partem rule had been violated. In the present case the Memorandum No.821/Services-C/69-8 dated 30.03.1971 had not been adhered to. Had the tribunal not come to the conclusion that the suit was barred by limitation, it would have allowed the appeal preferred by the delinquent.

4. In the result, therefore, this appeal succeeds. The order of the tribunal dismissing the suit as barred by limitation is set aside. The finding of the tribunal that the dismissal order was vitiated on account of the violation of audi alteram partem rule makes it necessary to quash and set aside the dismissal order and grant consequential benefits to the appellants who are the legal representatives of the delinquent who died pendent lite."

18. In a related matter OA 394/2011, I have dealt with development of with the doctrine of non supply of documents. This was further confirmed in the case of **R.K. Vashisht** (supra), the Hon'ble Supreme Court has held: ***"In Union of India vs. Mohd. Ramzan Khan, this Court held that even after the amendment of Article 311 (2) of the Constitution, it is necessary to supply copy of the report of the Enquiry Officer to the delinquent. The Court further held that if the***



Enquiry Officer records findings against the delinquent office, and the delinquent officer is deprived of the material used against him, though the same is made available to the punishing authority in reaching the conclusion, the rules of natural justice would be contravened. In the instant case the appellant had made a request for the supply of enquiry report but the same was not supplied to him prior to the issue of order of dismissal, therefore, the order of dismissal is vitiated." However, the position has changed substantially. The view being taken now is that non-supply of a document to the employee facing disciplinary proceedings cannot be applied mechanically to make perverse the finding of the disciplinary proceedings in each and every case. The Disciplinary/Appellate Authority must apply his mind as to what documents are necessary and shall provide the same to the delinquent. Where the Disciplinary/Appellate Authority reaches the conclusion that the documents required are not necessary he shall record these findings by means of a speaking order covering each of the documents. In a decided case **Burdwan Central Cooperative Bank Ltd. & Anr. Vs. Asim Chatterjee & Ors., 2012 (1) SSC 635**, the Hon'ble Supreme Court has held:

"17. However, there is one aspect of the matter which cannot be ignored. IN B. Karunakar's case (supra), despite holding that non supply of a copy of the report of the Inquiry Officer to the employee facing a disciplinary proceeding, amounts to denial of natural justice, in the later part of the judgment it was observed that whether in fact, prejudice has been caused to the employee on account of non furnishing of a copy of the inquiry report has to be considered in the facts of each case. It was observed that where the furnishing of the inquiry report would not make any difference to the ultimate outcome of the matter, it would be a perversion of justice to allow the concerned employee to resume his duties and to get all consequential benefits. It was also observed that in the event the Inquiry Officer's report had not been furnished to the employee in the disciplinary proceedings, a copy of the same should be made available to him to enable him to explain as to what prejudice had been caused to him on account of non supply of the report. It was held that the order of punishment should not be set aside mechanically on the ground that the copy of the inquiry report had not been supplied to the employee. This is, in fact, a case where the order of punishment had been passed against the Respondent No.1 on allegations of financial irregularity. Such an allegation would require serious consideration as to whether the services of an employee against whom such allegations have been raised should be retained in the service of the Bank. Since a Bank acts in a fiduciary capacity in regard to people's investments, the very legitimacy of the banking system depends on the complete integrity of its employees. As indicated hereinbefore, there is a live-link between the Respondent No.1's performance as an employee of the Samity, which was affiliated to the Bank, and if the Bank was of the view that his services could not be retained on account of his previous misdemeanor, it is then that the second part of B. Karunakar's case (supra) becomes attracted and it becomes necessary for the court to examine whether any prejudice has been caused to the employee or not before punishment is awarded to him. It is not as if the Bank with an ulterior motive or a hidden agenda

dismissed the Respondent No.1 from service, in fact, he was selected and appointed in the Appellant-Bank on account of his merit and performance at the time of interview. It cannot be said that the Bank harboured any ill-feeling towards the Respondent No.1 which ultimately resulted in the order of dismissal passed on 8th May, 2010. We, therefore, repeat that since no prejudice has been caused to the Respondents No.1 by the non supply of the Inquiry Officer's report, the said Respondent had little scope to contend that the disciplinary proceedings had been vitiated on account of such non supply."

19. The question now arises that whether the non-supply of papers/documents can be permitted as a standard defence. Since the scope of intervention by High Courts/ Tribunals are limited, one suspects that the applicant can ask for a large number of papers and claim the violation of audi alteram partem as the ground for getting the order quashed. The legal position in this regard is clear that this position is not permitted. The demand for documents is limited by its relevance and nearness to the incident. Otherwise, it will become near impossible for any departmental proceedings to succeed. In the instant case, one finds that the Appellate Authority has already gone into this issue and has come to the finding that the documents demanded were not relevant. On close scrutiny one finds that the part of the order is dismissive in character and does not go into the relevance of each of the documents. This non-consideration attracts the provision of violation of audi alteram partem rule and serves to vitiate the findings.

Whether the respondents have committed some act of violation of the rules/statutes/rules of natural justice?

20. It has already been seen that Courts/Tribunal have been prohibited from acting as a superior appellate body, its limited role has also been stated beyond controversy that the Courts/Tribunals are custodians of rights of natural justice and are only to ensure that there is no malafide/violation of statutes involved. I find that there is nothing in the departmental proceedings otherwise to attract these provisions. The applicant has pleaded that the respondents have failed to establish the precise sum involved in the fraud. I am inclined to think that where there are several persons involved charge with misappropriation or aiding or abetting such misappropriation it may not always be pin point responsibility down to the last rupee. It has to be approximate. In any case, the delineation of amount is the domain of the Appellate Authority whom I have no intentions to substitute.



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What relief, if any, can be provided to the applicant?

21. On the basis of the material on record and discussions above, it is clear that the non supply of documents in the instant case is different from that in the OA No.394/2011. Here, there is clear finding based upon admission amounting to contributory negligence, which was not there in OA No.394/2011. The Tribunal cannot afford to lose sight of the fact that a large sum of public money has been misappropriated in broad day light in a brazen and abrasive manner. What are the authorities to do? Post Offices are business organizations and they must live by the Rule of business. The departmental proceedings have been thoroughly conducted and there are no procedural latches to be noted. Hence, the Tribunal has no alternative except to disallow the OA. The parties must bear their own costs.



(B K SINHA)
ADMINISTRATIVE MEMBER

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