

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application No. 394/2011

Dated this the 17th day of May, 2012

CORAM

HON'BLE MR. B.K. SINHA, ADMINISTRATIVE MEMBER

Baldev Singh S/o Shri Kartar Singh, by caste Ramgaria Sikh, aged about 54 years, R/o Bakhtanwali, Tehsil & District Sri Ganganagar, at present working as Postal Assistant in the office of Post Master (Head Quarter), Sri Ganganagar (Raj.).

...Applicant

(By Advocate Mr. H.S. Sidhu)

Vs.

1. Union of India through the Secretary, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. Superintendent of Post Offices, Sri Ganganagar Division, District Sri Ganganagar.
3. Director, Postal Services, Rajasthan Western Region, Jodhpur.

...Respondents

(By Advocate Mr. Vinit Mathur & Mr. Ankur Mathur)

ORDER (Oral)

The instant OA challenges the order of the Superintendent of Post Office, Sriganaganagar, dated 15.01.2010, holding all charges against the applicant 'fully proved'. [A-1] The same order finds the

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applicant guilty of contributory negligence and orders for recovery of Rs.60,000/- only in 30 equal instalments of Rs.2000/- from the salary of the applicant effective from the month of January, 2010.

Relief 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 31.03.2011 (Annexure-A/2) passed by the respondents may kindly be quashed and set aside with all consequential benefits.*
- (b) The respondents may kindly be directed to refund the amount to the applicant which has already been recovered from the applicant in pursuance of the Annex.-A/1 and Annex.-A/2.*
- (c) 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 Correspondence Clerk (CC) in the office of Postmaster, Head Office, Sriganganagar, he received delivery slip containing four letters from the Head Registry Clerk, one Suresh Kumar Meena who dealt with letters received through registered post. The applicant contends that his specified duties included that he delivered the letter to the addressed authority without having opened the same. The applicant, accordingly, delivered the letters containing No.EU-




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6981107230IN addressed to the Postmaster, Sriganaganagar, unopened. The addressee, Postmaster Sriganaganagar, opened the envelop and sent it to the applicant with a note containing directive that that being delivered to the Assistant Master. The applicant complied with the orders. On 21.07.2009, the applicant was served with a charge sheet that the letter under consideration contained ATs No.61 and 62, dated 05.11.2008, purportedly issued from the Jhilmil Head Quarter, New Delhi along with the other documents for opening of these accounts by transfer it Suratgarh City. The applicant failed to bring to the notice of the Postmaster, Sriganaganagar that the document had been received by Speed Post service while it should have been received by registered post. The applicant was, thereby, charged that he was responsible for facilitating a fraud and loss to the Department amounting to Rs.4,26,640/- [A-4]. The applicant requested for supply of the documents to enable him to file a proper reply on 31.07.2009 [A-5], in response to which the applicant was provided with some of the documents. The applicant had demanded the documents establishing that the payment was made through a cheque or cash or other way and the procedure to make payment to the concerned [A-6]. The respondents declined to provide these documents on the ground that they were not relevant to the enquiry. The applicant submitted his reply on 08.09.2009 denying all charges [A-7]. The Disciplinary Authority penalized the applicant with recovery of Rs.60,000/- as mentioned above. The applicant filed an appeal against the



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aforementioned impugned order, which inter alia mentions the non-receipt of four material documents [A-8]. The Memo of Appeal refers to the reply of Suresh Kumar Meena, the Head Registry Clerk that he could not detect the office from which the registered letter No.A1720 had been received despite the fact that he had seen the records/list of registration branches from 08.11.2008 to 11.11.2008. The HRC Suresh Kumar Meena further admitted that a proper account of registered letters had never been maintained in the registration abstracts. He never tallied his account on 20.09.2008 and on 11.11.2008. The applicant asserted that in order to prove his innocence it was necessary to locate the Post Office from where the Speed Post had been booked, the list in which it had been included and the manner in which it had been delivered in the Registry Branch. Non-receipt of these documents jeopardized his adequate defence. The Memo of Appeal further draws attention to the statement of BK Nagpal, Postmaster Sriganganagar, that the one SP Bhatia APM (SBSO) maintained the Register for ATs and it was his duty to exercise vigilance in the matter. Yet, accounts were opened without pre-verification. The applicant asserts that it was immaterial to the outcome as to in what mode: *"this only a presumption that since the ATs under reference were received through Speed Post, it facilitated the fraud. The question arises had the ATs and other documents been received through any bogus registered article, could the fraud have been averted. The obvious reply would be "no". Likewise, if*



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the ATs and other documents had been received through ordinary post, the status of the case would not have changed. Therefore, the allegation that I failed to point out as to why the ATs have been received through service speed post is untenable, irrelevant and unwarranted" [Para 10 of the Annexure-A/8].

4. The Appellate Authority totally rejected the plea that defence of the applicant was put to jeopardy by non-supply of papers; it appears from the records that all the documents have been made available to the applicant. The Appellate Authority further observed that it is known from before that possibly the Speed Post had been introduced by some unknown persons and therefore there was no question of the documents being there or being made available to the applicant. It was, however, clear that AT 61 and 62 had been received by the applicant. *"This Speed Post article purported to have been issued from Jhilmil PO, then how record can be available for the same"* [Para 1 of the Annexure-A/2]. During the course of the oral arguments, the learned Counsel for the applicant repeatedly emphasised that it is not true that all the material documents were not available and that their not being furnished vitiated the entire proceedings. The applicants further argue that the Charge Sheet has been issued for violation of Rule 53(7) of the Post Offices Savings Bank (POSB) Manual Volume I that there is provision for sending the AT and the attached papers by registered post whereas the imputation

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of charges do not mention these charges. The charges must arise from violation of some rules. The Speed Post Service had been started on 1.4.86 and since the POSB Rules were framed earlier they have no provisions relating to that. In absence of this the act of the applicant does not amount to misconduct within meanings of the term 'misconduct'; there may be negligence but not misconduct. There is no prohibition in the Rules that the AT cannot be sent by Speed Post. The applicants have further argued that the amount under defalcation has been apportioned on different employees on a pro-rata basis of Rs.2 lakhs each. There has been no attempt to apportion the amount on the basis of the degree of culpability of each individual involved. This amounts to a mechanical exercise and is fit to be set aside.

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.



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Case of the Respondents

5. The Ld. Counsel for the Respondents has strongly contested all the points raised by applicants by means of their Counter Affidavit and during the course of their oral submissions. The respondents principally submit that this Tribunal is, by no means, a superior forum of appeal over and above the prescribed authority. The jurisdiction of the Tribunal only extends to violation of the Rules of Natural Justice or some statute or procedural infirmities that render the order void ipso facto. The role of the Tribunal is not to act as superior appellate authority. The Departmental Proceedings have been conducted as per the procedures and the applicant cannot open the issue of the quantum of punishment or the evidence adduced. Making a reference to the Rule 53(7) it is to be read in entirety. The appeal was disposed of vide the order dated 31.03.2011 [A-2], rejecting the same, and it stands finally disposed. The Tribunal can only interfere when there is either proven malafide involved or when there is infringement of some statutory provisions or violation of the principles of natural justice. In this case, none have taken place. Non-submission of documents do not form adequate ground for setting aside the impugned order. The learned counsel for the respondents further submitted that there has been a change in the view taken by superior courts and the earlier case of **RK Vasistha vs Union of India**, which provided that not making documents available serves to vitiate the proceedings had

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been overtaken by subsequent rulings. He strongly pleaded for rejecting the OA.

Facts-in-issue

6. 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 non-supply of documents demanded shall serve to vitiate the proceedings?*
- (iii) *Whether the respondents have committed some act of violation of the rules/statutes/rules of natural justice?*
- (iv) *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 proceeding?

7. 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,***



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- (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 call of Government servants from the operation of all or any of these rules.

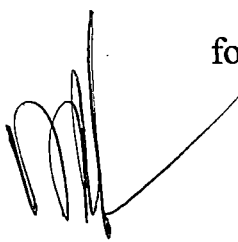
(3) Notwithstanding anything contained in sub-rule (1), or the Indian Railway Establishment Code, these rules shall apply to every Government servant temporarily transferred to a Service or post coming within Exception (a) or (e) in sub-rule (1), to whom, but for such transfer these rules would apply."

8. 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 [A-1]. The applicant was given opportunity to provide his show cause 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 Office, Sriganaganagar [A-4] 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 53 (7) being incorrectly invoked; no



misconduct has been committed by the applicant; that the applicant was not at all involved in the fraud committed. He had received a speed post addressed to the Postmaster. Being a respondent clerk it was his duty to deliver the letter to concerned authority and he sent to the Postmaster, who opened the letter and returned the same to be sent to the concerned person. The defence of the applicant is that he did not open the letter as has been admitted by the Postmaster during the course of the departmental proceedings. There are two clerks in the Post office - one dealing with the registry and the other with the speed post letters. The concerned letter was delivered by the clerk dealing with the registered letter [A-3]. The applicant has strongly contended that it was the duty of the Postmaster concerned to go through it minutely and there is mensrea involved in his part. Had the documents being supplied to him as demanded he would have been able to prove these facts beyond reasonable doubt.

9. 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:-



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"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".

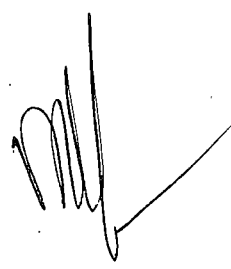
10. Taking the same stands in the case of **State Bank of India vs. Ram Lal Bhaskar & Anr.** 2012 (1) AISLJ 108, a Full Bench of the three judges of the Hon'ble Apex Court has stated as follows:-

"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 leveled 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,....."

11. Lastly but not the least the tests to be applied by this Tribunal were very proper hanging by the Hon'ble Apex court in the case of



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State of Andhra Pradesh & Ors. vs 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."

12. 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.

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

13. It is to be noticed that right from the beginning of the Departmental proceedings, the applicant had demanded a set of papers to prepare his defence. A memorandum of charges was served upon the applicant vide the memo dated 21.07.2009. The applicant was principally charged with: ***"While working as correspondence clerk to Postmaster Srigananagar H.O. on 11.11.2008 Sh. Baldev Singh received speed post article no.EU 698110723 IN from Registry delivery clerk Sh. Suresh Kumar Meena duly entered in delivery slip addressed to Postmaster Srigananagar H.O. He opened the speed post article containing AT No.61 & 62 dated 05.11.2008 purportedly issued from Jhilmil H.O., New Delhi alongwith other documents for opening of these accounts by transfer at Suratgarh City P.P. Sh. Baldev Singh failed to note as why the ATs have been received through service speed post. The same should had been come through service registered letter. He failed to bring this fact in notice of the Postmaster. Had Sh. Baldev Singh brought the fact in the notice of the Postmaster the fraud Rs.426640/- which took place***

at Suratgarh City by these bogus ATs could had been detected at that time and the loss sustained by the department could had been saved. Thus Sh. Baldev Singh is responsible for facilitating the fraud and loss to the department." [A-4]. Upon the receipt of the charge sheet, the applicant called for 11 documents vide his communication dated 31.07.2009 including the departmental instructions prohibiting dispatch of documents and papers specially pass book by speed post, instructions prohibiting use of bar code on speed post, the distribution mentioned in the memo, photocopy of the speed post list in which the entry had made, distributed envelopes, internet record of speed post distribution, copy of statements in respect of HRC and APM delivery, copies of statement given by the Postmaster, nominal role of the related date and how the payments were made through the AT [A-5]. The applicant also called for a fresh copy of the memo of imputation as the earlier one had been lost by him. In his memo of appeal, the applicant mentions four documents, which he had called for namely copy of speed post list in which the speed post article was received, envelope which was delivered, record relating to in which PO the speed post was booked & in which office the series of sticker being used, and demanded that by which office the payment of accounts on the basis of bogus ATs was made and how, copy of SB-3, SB 103, SB-7 etc. [A-8]. However, these documents/papers were only partially furnished. The applicant was informed that the speed post article EU 698110723 IN was not

received duly entered in any registered/speed post list; the envelope was not preserved by HO; in no PO the speed post article EU 698110723 IN was booked. The applicant was informed that there was no information in which office this series had been used and there was no relevancy of these documents with charge, the reason being that the charge delivered a speed post article containing ATs. Opening of accounts etc was a later stage which has no relevance to the receipt of ATs in speed post article instead of registered letter. The argument of the applicant is that the non supply of requisite documents had handicapped his case effectively. The applicant refers to the statement of one Suresh Kumar Meena wherein he claimed to have seen the registered list from 05.09.2008 to 29.09.2008 of Registration Branch, but could not find out when and from which office the envelope had been received. The witness further admitted that there had never been a proper account of registered letters in the registration abstract. This issue has been discussed in the order of the Appellate Authority dated 15.01.2010, wherein it is specifically mentioned: *"he was replied that there is no relevancy of these documents with charge. The reason was that the charge against official was framed in which he has delivered a speed post article containing ATs. Opening of accounts etc. was a later stage which has no relevancy with the receipt of ATS in speed post article instead of registered letter."* [A-1].

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14. From the above discussions, non supply of documents is the principal defence adopted by the applicant whereby disregard of the principle of *audi alteram partem* could be established. In this regard it is also necessary to see the evaluation of this principle through the pronouncements of different superior Courts. In the case of **Mohd. Quaramuddin** (supra), the OA had been disallowed by CAT on ground of limitation. However, the Apex 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.”

15. In the case of **Roop Singh Negi** (supra), the ratio involved in is different. The applicant had been stealing bank draft books and he confessed this to the Police. It was held that this confession was not sufficient and other evidence had to be brought on record. This case is not relevant to the issue under discussion. In a Single Bench



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decision, **Dr. Om Prakash Sharma** (supra), it was held that non supply of documents on which reliance had been placed serve to vitiate the entire departmental enquiry. 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 officer, 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."* In the case of **Suman Kumar Singh** (supra), the CAT at its Patna Bench took a view that the decision in the Mohd. Ramzan Khan (supra) is a watershed and any decision prior to this judgment cannot be quashed on the ground of non supply of documents.

16. The rest of the cases cited are not relevant to the issue.\

17. However, it is clarified that non supply of a document to the employee facing disciplinary proceedings cannot be applied mechanically to make perverse the finding of the disciplinary



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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 different 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."

18. 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, once 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 kind of subterfuge 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

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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?

19. 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 delineate the responsibility for the defalcation in precise rupee terms. 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 substitutes.

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

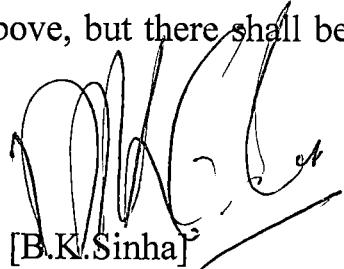
20. From the above discussions, it does transpire that the applicant has been able to make out a case for non consideration of the request for documents desired. Apart from this, the proceedings do not suffer

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from any procedural latches/lacunae. The Tribunal cannot ignore the fact that there has been misappropriation of Government money to the extent of Rs.4,26,640/-. Post Offices also have banking functions. The credibility of Post Offices stand to be eroded by such incidents, which has also to be considered by the Tribunal. While justice should certainly prevail, it is nobody's case that such conditions are created where it is not possible to make any of the guilty persons accountable. Therefore, a harmonious view is being taken and the following orders are passed:

- (i) The impugned order of the Appellate Authority dated 31.03.2011 [A-2] is quashed for the non supply of documents.
- (ii) The proceeding is remanded to the Appellate Authority to consider which of the documents would be necessary for proceedings and record his findings in respect thereof. The respondents are free to undertake fresh departmental proceedings in the case that they so require.
- (iii) There shall be no refund of the amount realized till the Appellate Authority arrive at his decision. However, no further realisation will be made.
- (v) There shall be no order as to costs.

21. The OA is allowed as stated above, but there shall be no order as to costs.



[B.K. Sinha]
Administrative Member

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(H. S. Sidhu)

Adv.

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