CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.279/08

.Tuesday this the .2nd day of June 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

Nandakumar D.R.,
Postman (Dismissed from service),
Thattathumala P.O.
Residing at Amma, Vellayani,
Nemom P.O., Trivandrum - 20. ...Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

Versus

1. The Senior Superintendent of Post Offices,
Trivandrum North Division,
Trivandrum - 695 033.

2. Union of India represented
by the Director of Postal Services,
O/o.the C.P.M.G., Kerala Circle,
Trivandrum - 695 033. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

This application having been heard on 26th March 2009 the Tribunal on 2nd June 2009 delivered the following :-

O R D E R

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

Challenge in this Original Application is against (i) the Annexure A-1 proceedings dated 10.8.2006 by which the Disciplinary Authority has dismissed the applicant from service with immediate effect and (ii) the Annexure A-3 order dated 21.5.2007 by which the Appellate Authority has reduced the punishment only to that of removal from service.

2. The charges against the applicant in a nutshell were the following :-

> While he was working as Postman of Beat No.10 of Vikas Bhavan PO, he treated (i) Thondankulangara MO No.1540 dated 5.10.2000 for Rs.1000/- (P.7) and (ii) MO No.4638 dated 23.9.2000 of Palakkad Collectorate for Rs.1000/- (P.6) both payable to the Secretary, PWD & Irrigation Employees Co-operative Society Ltd. No.638, Public Office Building, Trivandrum (PW-4) as paid on 9.10.2000 and 25.9.2000 respectively without obtaining the signature of the payee on the money order forms and without actually paying the value of the said money orders to him, violating Rule 127 (1) of Postal Manual Vol.IV Part III and thereby exhibited lack of integrity and devotion to duty and behaved in a manner quite unbecoming of a Government servant in contravention of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

3. As the applicant denied the above mentioned charges vide his letter dated 29.5.2002, an enquiry was held in terms of the CCS (CCA) Rules, 1965. The enquiry authority concluded that the first charge was not proved but the second charge was proved except the part of the charge that the value of the money order was paid only on 9.10.2000 alongwith three other money orders received at the Post Office on that date and entrusted to the applicant for payment to the said payee. The disciplinary authority disagreed with the findings of the enquiry authority and forwarded a disagreement note to the applicant on 18.3.2005 requiring him to submit his explanation. He made his detailed submission on 30.5.2005 objecting to the disagreement note and requesting the disciplinary authority to exonerate him from the charges. The Disciplinary Authority's findings were that the P.6 MO was not paid to the PW-4 on 25.9.2000 but it was paid only on 9.10.2000 as against the charge that the applicant did not pay the value of the said MO to PW-4 whereas the Inquiry Authority held that the said charge was not proved. As regards P.7 money order was concerned, the

Inquiry Authority held that it was correctly paid to PW-4. However, the Disciplinary Authority relied upon the statement of PW-4 that the P.6 MO was not paid to him on 9.10.2000 and held that the charge was proved. As a result, the disciplinary authority dismissed the applicant from service with immediate effect vide Annexure A-1 proceedings No.F1/3-3/2000/01 dated 10.8.2006. The applicant made the Annexure A-2 appeal dated 16.10.2006 but the appellate authority vide Annexure A-3 order dated 21.5.2007 modified the dismissal order only to that of removal from service. While doing so, the Appellate Authority stated in its order that *"an element of doubt creeps in regarding the consistency of the payee's signatures and depending on the same without an expert opinion seems a weak evidence."* The Appellate Authority has, therefore, agreed with Inquiry Authority which held that the 1st charge as "not proved". However, according to the Appellate Authority, the appellant had "no logical point to argue" on the 2nd charge and agreed with the conclusion arrived at by the Disciplinary Authority that the value of the relevant MO was paid only on 9.10.2000 and not on 25.9.2000.

4. The applicant challenged the Disciplinary Authority's order and the Appellate Authority's order on the following grounds :-

> (i). Though the enquiry was held exparte, the disciplinary authority while passing the Annexure A-1 order of penalty did not consider any contentions of the applicant on the ground that he did not participate in the enquiry and did not avail himself of his chance before the enquiry authority. However, merely because a delinquent employee did not participate in the enquiry proceedings, the lack of evidence pointed out by him before the disciplinary authority cannot be brushed aside.

(ii). Though the enquiry authority had concluded that there was lack of evidence, the disciplinary authority disagreed with the said conclusion without any basis.

(iii). The enquiry authority report is based on extraneous documents in as much as the enquiry authority himself has introduced Exhibit P-15 which is the alleged specimen signature of PW4 and the said document was not a listed one. Further, the enquiry authority recalled witnesses without any basis for the purpose of identifying the new documents which was irregular.

(iv). This is a case of no evidence and, therefore, the finding that the applicant is guilty of the 2nd charge cannot be sustained.

(v). The appellate authority's observation that the 2nd charge has been proved is without any evidence and without considering the various points raised by the applicant in his favour in his appeal.

(vi). The appellate authority categorically stated in para 5 of its order as follows in respect of charge No.1.

> "5. On a perusal of the evidence, an element of doubt creeps in regarding the consistency of the payee's signature and depending on the same without an expert opinion seems a weak evidence. Though the Disciplinary Authority has depended more on the applicant's statements to reach his conclusions, in the light of the other loophole discussed, I feel the benefit of doubt should be given to the appellant. I agree with the findings of the Inquiring Authority in holding the charge as "not proved"."

The aforesaid reason would equally apply to charge No.2 also and consequently, the said charge is also liable to be treated as not proved.

(vii). The disciplinary authority's order as well as the appellate authority's order are illegal, arbitrary and vitiated by non application of mind.

(viii). Though the appellate authority has revised/reduced the disciplinary authority's order of dismissal from service as removal from service, there is no material difference between the two as the applicant is 40 years of age and there is no scope for any new employment.

(ix). The appellate authority's order is non speaking and without assessing the evidence independently. It is also violative of Sub Rule (B) (2) of Rule 27 of the CCS (CCA) Rules, 1965 (Consideration of appeal) and violative of the rules contained in DGP & T letter No.10/2/80/Disc.II dated 1st October 1980.

(x). The PW4 was the payee of both the money orders and the disciplinary authority himself held that there were differences in his signatures and stated in its order as under :-

> " The signature of the payee (PW4) in the money order paid voucher (Ext.P6) is different from those in Ext.P15 specimen signature. This finding is illegal as the expert opinion was not produced. There may be difference while looking through the naked eye as PW4 admitted that he signs differently in different documents. The preliminary investigation officer has also certified that the routine signature and specimen signature PW4 differs."

5. The respondents in their reply has submitted that Annexure A-1 and A-3 orders have been issued after following the prescribed inquiry proceedings against the applicant and they are legally sustainable in all respects. They have relied upon the law laid down by the Apex Court in **Union of India Vs. Parma Nanda**, AIR 1989 SC 1215 regarding the role of judiciary in departmental disciplinary proceedings and submitted that the quantum of punishment in a disciplinary case is within the domain of the competent disciplinary authorities and if the penalty was imposed on the basis of the proved misconduct, a court of law has no power to substitute it by another punishment at its discretion as the adequacy of penalty, unless it is malafide, is not a matter for courts to be concerned with. In the instant case, neither there was any procedural irregularity in the conduct of the inquiry nor there was any shocking disparity in the punishment imposed. According to the Inquiring Authority, though the 1st charge was not proved, it held that the 2nd charge was proved except for the part of that charge

that the value was paid only on 9.10.2000 along with other money orders. The Disciplinary Authority disagreed with the said findings of the Inquiring Authority and held the charge was proved beyond doubt. It observed that the signature of the payee in the paid money order voucher was entirely different from those of his specimen signatures and the payee himself has disowned the signature on the paid voucher. The Disciplinary Authority has issued the Annexure A-1 penalty order after properly evaluating the evidences, oral as well as documentary, adduced during inquiry and after discussing them in detail in the order. The respondents have also relied upon law laid down by the Apex Court regarding the standard of proof to be considered in departmental proceedings as held in **Union of India Vs. Sardar Bahadur** [(1972) 2 SCR 218] and **State of Assam Vs. Mohan Chandra Kalita** [AIR 1972 SCC 2535]. According to the Hon'ble Supreme Court, *"A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt."* They have, therefore, denied the contention of the applicant that there was no legal evidence to prove that the applicant had committed any misconduct. They submitted that the payee had deposed before the Inquiring Authority that he had not received payment on the specified date and he has also disowned the signature on the money order voucher which led to the possibility that the applicant had defrauded the amount by forging the signature of the payee. The disciplinary authority had rightly relied on the statement of the payee to arrive at his conclusion that both charges were proved. The Appellate Authority had pointed out the tendency of the payee to sign differently in different documents to arrive at the conclusion that charge No.1 was not proved and that there were

loopholes in the case but by the said observation of the Appellate Authority, it did not completely absolved the applicant from the allegations made against him. The observations of the Inquiring Authority and the Appellate Authority have been projected by the applicant as if he has not committed any misconduct and he should be allowed to go scot free. The argument put forth by the applicant to the effect that the above observations of the appellate authority are equally applicable to charge No.2 also is baseless. Both the Inquiring Authority and Disciplinary Authority had held that the second charge was proved and the Appellate Authority had upheld this view. The misconduct committed by the applicant has been proved in the inquiry as per the prescribed standard of proof required in such inquiries and he has been awarded the punishment of dismissal from service which was modified by the Appellate Authority as removal from service. This gesture of the Appellate Authority cannot be taken as a shield to claim immunity from both the charges levelled against him as the Appellate Authority had modified the order of removal from service to dismissal of service taking into consideration of the fact that the applicant has many eligible years of service ahead of him and the punishment of dismissal from service would make him ineligible for any future employment in government service. The Appellate Authority had analyzed the case in detail and had passed a reasoned order and there is no ground to interfere with this order. The averment that there is no material difference between dismissal and removal is not true to facts. The Apex Court in **Bardakanta Mishra Vs. Orrisa High Court** (AIR 1976 SC 1899) has taken note of the difference when it said *"the difference between dismissal and removal is that dismissal ordinarily disqualifies from any future employment and removal*

ordinarily does not". They have further submitted that in the Annexure A-1 proceedings, the Disciplinary Authority has observed in its order that the proper forum for the applicant to present his case was the inquiry held by the Inquiring Authority in which the applicant and his AGS were present only initially and when the inquiry reached the crucial stage of evidence onwards ie., in the sitting No.8 dated 16.7.2004, the applicant as well as the AGS deliberately remained absent and the explanation for his non participation that he was in a stage of mental aberration was not acceptable. After having decided to stay away from the inquiry during the evidence stage, the applicant cannot, at a later point of time, raise the flimsy argument that the appellate authority had not assessed the evidence independently. The applicant has accepted the appellate order with regard to charge No.1 with open hands and on the same analogy he has to accept the other part of the order also. They have also submitted that the Appellate Authority gave the benefit of doubt in the signature of the payee in the paid voucher of the charge No.1 and held that the charge was not proved. But the signature in the paid voucher of charge No.2 was vastly different from that of the actual signature of the payee given as specimen signatures and there was also no seal of the society in the paid voucher. After evaluating all other evidences taken during inquiry which was explained by the Disciplinary Authority in the proceedings, the Appellate Authority agreed with the conclusion of the Disciplinary Authority with regard to charge No.2. Therefore, the argument of the applicant that charge No.2 also should be held as not proved based on the findings of the Appellate Authority regarding charge No.1 has no basis and is not sustainable. According to them, the applicant was conveniently ignoring

the fact that the payee had categorically stated before the Inquiring Authority that he had not received the amount of the MOs on the specified date and he had not signed the vouchers. This aspect was rightly noted by the Disciplinary Authority in arriving at the conclusion that both charges stands proved. The observation made by the Inquiring Authority and the Appellate Authority regarding the pattern of signature of the payee cannot be used as a defense to completely absolve the applicant from the misconduct he has committed. The Disciplinary Authority has rightly applied the principle of preponderance of probability which is the standard of proof required in departmental proceedings. As regards the preliminary enquiry report that the payee of the money order was in the habit of signing differently in different documents, the respondents submitted that the comparison of signature of payee in one money order was not made with that of another signature in another money order but the comparison was made with the specimen signature in evidence and the pattern of signature in general. They have also refuted the contention of the applicant that in case of any dispute in the signature, it is not mandatory that the issue is to be referred to the GEQD in all cases. The contention of the Inquiring Authority as well as the applicant in the OA that expert opinion from GEQD must have been obtained for proving the charge is not in consonance with the legal position on the point as comparison of the signatures is also one of the recognised modes to resolve a dispute, though it may not be a final version. Not only that, the applicant had also not made any such demand for such verification during the course of the inquiry. Therefore, the reason that expert opinion was not called for, cannot be held against the respondents. As regards the contention of the applicant that the specimen

signature is not listed with Annexure III or called for by the prosecution as a new document and hence admitting the said document was irregular, the respondents contended that the said act has not vitiated the inquiry. According to them those issues should have been raised in the inquiry and they cannot be raised before this Tribunal. They have also denied the allegations of the applicant that the Inquiring Authority had played the role of a prosecutor and he had tried to adduce evidence against him. The Inquiring Authority explained that the specimen signature collected during the inquiry is part of the statement and as such the Disciplinary Authority also agreed with the explanation of the Inquiring Authority and in the statement given by the payee of the money order he has stated that he had given his specimen signature also and thus it forms the part of the evidence in the inquiry.

6. We have heard Shri.Vishnu S Chempazhanthiyil for the applicant and Smt.Jisha on behalf of Shri.T.P.M.Ibrahim Khan,SCGSC for the respondents. We have also perused the records of the disciplinary proceedings. We are conscious of the settled position of law that in departmental proceedings the disciplinary authority is the sole judge of facts as held in **Apparel Export Promotion Council Vs. A.K.Chopra** [1999 (1) SCC 759] and the scope of interference in the findings of the facts is very limited as held by the Apex Court in (1) **Central Bank of India Ltd. Vs. Prakash Chand Jain** [(1969) 1 SCR 735] and (2) **Kuldip Singh Vs. Commissioner of Police & others** [1999 (2) SCC 10]. However, the question to be considered in this case is whether the charge levelled against the applicant was proved or not. The crux of the charge against

him was misappropriation of public money entrusted to him in his capacity as Postman. No doubt, once the allegation of misappropriation is proved, there is no question of showing any uncalled for sympathy to such delinquents. Then, the allegations have to be proved in the departmental enquiry in accordance with the prescribed procedure in CCS (CCA) Rules, 1965.

7. From the articles of charges levelled against the applicant, it is seen that the allegations against him was that he had treated Money Order dated 5.10.00 (P-7) as paid to the payee on 9.10.00 without obtaining his signature on the money order form and without actually paying the value to him. Similarly, he treated Money Order dated 23.9.00 (P-6) as paid on 25.9.00 without obtaining the signature of the payee on the money order form and without actually paying the value of the MO to him. In other words, both M.Os were never paid to the payee and never obtained his signatures on the money order forms. Most part of the enquiry was held ex-parte as the applicant or his AGS was not present during the proceedings. As regards the Exhibit P-7 Money Order form which was the subject matter of 1st charge is concerned, the Inquiry Authority stated that although other money orders P-8, P-9 and P-10 were entrusted to the applicant along with P-7 on 9.10.00, all the four Money Orders forms including the P-7 money order form bear seal of the Society and signatures of the payee but the signature on P-7 is not identical with those on other MOs. The PW 4 who was the payee in respect of both the M.Os has also stated that he has never received the value of Ex.P-7 MO No.1540 dated 5.10.00 for Rs.1000/- and what he received on 9.10.00 was

the Ex P-6 MO of the same value of Rs.1000/-. Thus, the PW 4 admitted that he got the value of Ex.P-6 MO on 9.10.00 which he was supposed to get on 25.9.00. One of the points considered by the Enquiry Officer was whether the applicant had obtained the signature of the payee on the MO forms or not. The PW-4 who was the payee of both the MOs disowned the signatures on those MO forms. However, those signatures were not subjected to the consideration of the 'Government Examiner of Questioned Documents' even though the applicant during the preliminary hearing, report of which has been admitted as P-16 during the regular enquiry, had demanded for such a cause of action. The Inquiry Authority has, therefore, held that 1st charge was not proved. In other words, the Inquiry Officer did not find any substance in the allegation that the applicant treated the MO No.1540 dated 5.10.2000 for Rs.1000/- as paid to the payee (PW-4) without actually paying it and without obtaining the signature of the payee. Even though the Disciplinary Authority has disagreed with the aforesaid findings of the Inquiry Authority and held that the said charge was proved, as the Appellate Authority has rejected the conclusion of the Disciplinary Authority and upheld the finding of the Inquiry Authority that the said charge was not proved, the allegation against the applicant in this regard has to be treated as closed. Now coming to the 2nd charge, according to which the applicant treated MO No.4363 dated 23.9.2000 as paid on 25.9.2000 but he did not obtain the signature of the payee on the money order form and did not actually pay the value of the money order to him, the findings of the Enquiry Officer was that the first part of the charge was proved and the second part was not proved. In other words, the applicant has not paid the value of the said MO to the payee at all, even

though the case of the Disciplinary Authority itself was that the applicant has paid the value of the said MO to the payee not on 25.9.2000 but only on 9.10.2000. In fact, when the prosecution itself was saying that the applicant has paid the MO to payee on 9.10.2000, it is not understood as to how Enquiry Officer came to a conclusion that the applicant has not paid the said money order at all to the payee. The Disciplinary Authority has also held in its order that the P-6 MO was paid by the applicant to the payee on 9.10.2000 instead of 25.9.2000.

8. The main reason for the Disciplinary Authority to disagree with the findings of the Enquiry Officer was that the signature appearing on Ex.P-7 MO was in different ink than the signatures on the other three M.Os received by the payee on the same date. Moreover, the Inquiry Authority has also found marked difference in the signature of the payee in the disputed MO but it came to the conclusion that it was not necessary that the expert should examine the signatures as the opinion of the expert will serve only as a corroborative evidence. Thereafter, the Disciplinary Authority came to the conclusion that the charges in the Articles I and II have been proved as against the findings of the Inquiry Authority. However, the Appellate Authority held that because of the the consistency, the payee's signature was doubtful and the same cannot be depended upon without an expert opinion. The Appellate Authority has also not appreciated the Disciplinary Authority's complete dependence on the statement of PW-4 who is obviously an interested party. In other words, when the applicant has stated that he paid the value of the MO to the payee and the payee denies it, the dispute has to be resolved by means of

independent witnesses. The Inquiry Authority has also admitted that the Records of the Society were not produced in support of the statements and deposition of Shri.G.Muraleedharan Nair, (PW4). There are also no such evidences on record. Therefore, we consider that the findings of the Disciplinary Authority was not on the basis of any reliable evidence.

9. Another aspect of the case is that there were only 12 documents by which the charges were proposed to be sustained. The Inquiry Authority introduced at least 4 more additional documents during the enquiry. They include the preliminary inquiry report dated 18.7.2001, the statement given by PW-4 dated 17.7.2001 during the preliminary enquiry and his specimen signatures. Thereafter, the Inquiry Authority held in his report that the signature on Ex P-6 M O "is visibly different from that of the signature of the secretary without any expert opinion." In our considered view the Inquiry Authority has exceeded his jurisdiction as held by the Apex Court in **Narinder Mohan Arya Vs. United India Insurance Co. Ltd.** [(2006) 4 SCC 713] wherein the points to be observed by the Inquiry Officer has been enumerated. It reads as under:-

> "26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the enquiry officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following : (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (3) Exercise of discretionary power involves two elements – (i) objective, and (ii) subjective

and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. (4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charges is wholly illegal. (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances."

10. The Disciplinary Authority vide his letter No.F1/3-3/2000-01 dated 18.3.2005 disagreed with the findings of the Inquiry Authority in respect of Charge No.1 which was held to be not proved which shows his closed mind. The Disciplinary Authority straight away came to the conclusion as under :-

" From the oral, documentary and the material evidences it is clear that the CGS has substituted the Ext.P-6 as having paid on 9.10.2000 and misappropriated the value of the MO No.1540 dated 5.10.2000 Ext.P-7 without actually paying the amount to the real payee on 9.10.2000. Hence I came to the conclusion, both the Article of charge stand proved beyond doubt."

11. The Apex Court in its judgment in **Punjab National Bank and others Vs Kunj Behari Misra** [(1998) 7 SCC 84] has considered the issues and held as under :-

" The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the

disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

12. In his representation dated 30.5.2005, the applicant submitted the following points among others for the consideration of the Disciplinary Authority :-

(a) Ext P6 MO and Ext. P7 MO were paid to the correct payee. PW4, the payee, is an officer who signs in different ways which was established in ext. P16. The specimen signature allegedly given by the PW4 is not like that of his original signature. PW3 is of the opinion that PW4 signs differently in different documents. What is his original signature and what is fabricated signature cannot be proved in this case. More over the signature of a person will not be identical at all times. There may be variations while looking into that by naked eye. There is no evidence as regards variation in the signature of I P-6 and P-7 MO paid vouchers other than the oral versions of PW4. Hence a conclusion cannot be arrived at based on the oral evidence from PW4 alone.

(b) So many MOs were being received at the Society ie; payee's office of which PW4 is the head. The register of Money Orders received at the society or copy of the register should have been produced as this is the only record which can be considered as proof of receipt/non-receipt of the MO at the society. But it was not produced even though it was required. Refusal to give photocopy of the register of Money Orders, by PW4, exposes his crooked mind.

(c) Taking evidence from the statements obtained during preliminary enquiry without confirmation by the deponent during formal inquiry is not regular.

(d) The Inquiring Authority permitted the Presenting Officer to produce three new documents as additional documents with the reasoning from the IA that evidence from additional documents is vitally important and relevant and there is inherent lacuna in the evidence which has been produced originally. The CGS would say that all these newly produced

additional documents were before the Disciplinary Authority while framing the charge sheet, that if they were relevant, they should have been included in Annexure III itself while framing the charges by the Disciplinary Authority that allowing new documents to rectify the omission on the part of the prosecution is not permissible and that there was no genuine purpose for the production of preliminary enquiry report except to fill the gap in the evidence which is also not permissible by rules. For these reasons the permission granted by the IA for production of the documents was an one-sided action vitiating the proceedings.

(e) It is also alleged that admitting the production of the preliminary enquiry report for the stated special reason that the CGS was not attending the inquiry had no backing of relevancy.

(f) While requesting for additional document, the Presenting Officer did not request the production of specimen signature as a new document. Hence the new document is introduced by the IA himself which is irregular.

13. The Disciplinary Authority did not address any of these points and its response was as follows:-

"The proper forum to present his stand was the inquiry itself held by the IA where the CGS had availed the service of an AGS too but when the evidence taking was about to start from sitting no.8 dated 16.7.2004 both the CGS and AGS chose to remain absent and the explanation for the said non participation as stated in the representation is that he "was in a stage of mental aberration during that period." and this claim is not supported by any evidence. Hence I am not in a position to accept this explanation."

14. The Disciplinary authority had to consider the representation of the delinquent as held by the Apex Court in Punjab National Bank v/s Kunj Behari Mishra (supra) wherein it has been held as under:-

"18. .....It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on

> the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed."

15. It is also seen that the Appellate Authority has not been consistent in his consideration of the appeal. When the said authority has observed that an element of doubt has crept in regarding the consistency of the payee's signature and it cannot be depended upon without expert opinion, it should apply to both the charges as they were identical and crucial issue in both of them was whether the applicant has paid the value of the M.Os and the PW-4 has received them.

16. We, therefore, allow the OA and direct the respondents to reinstate the applicant with retrospective effect from the date of his removal with all consequential benefits and to issue necessary order with in two months from the date of receipt of copy of this order. There shall be no orders as to costs.

(Dated this the 2nd June 2009)

K.NOORJEHAN
ADMINISTRATIVE MEMBER

GEORGE PARACKEN
JUDICIAL MEMBER

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