



CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A Nos. 333 and 341 of 2007

Thursday, this the 5th day of November, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MR. K GEORGE JOSEPH, ADMINISTRATIVE MEMBER

O.A.333/2007

C.Selvam,
Senior Cashier Grade I,
O/o the Senior Divisional Cashier,
Southern Railway, Palghat.Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by
the General Manager, Southern Railway,
Headquarters Office, Park Town.P.O.
Chennai-3.
2. The Financial Adviser & Chief Accounts Officer,
Southern Railway,
Headquarters Office, Park Town.P.O.
Chennai-3.
3. The Financial Adviser & Chief Accounts Officer(General),
Southern Railway,
Headquarters Office, Park Town.P.O.
Chennai-3.
4. The Senior Divisional Finance Manager,
Southern Railway, Palghat division,
Palghat.
5. The Chief Chief Vigilance Officer,
Southern Railway,
Headquarters Office, Park Town.P.O.
Chennai-3.Respondents

(By Advocate Ms P.K.Nandini)

O.A.341/2007

C.K.Unny,
Senior Cashier Grade II,
O/o the Senior Divisional Cashier,
Southern Railway, Palghat.Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by
the General Manager, Southern Railway,
Headquarters Office, Park Town.P.O.
Chennai-3.
2. The Financial Adviser & Chief Accounts Officer,
Southern Railway,
Headquarters Office, Park Town.P.O.
Chennai-3.
3. The Financial Adviser & Chief Accounts Officer(General),
Southern Railway,
Headquarters Office, Park Town.P.O.
Chennai-3.
4. The Senior Divisional Finance Manager,
Southern Railway, Palghat division,
Palghat.
5. The Chief Chief Vigilance Officer,
Southern Railway,
Headquarters Office, Park Town.P.O.Respondents
Chennai-3.

(By Advocate Ms P.K.Nandini)

This application having been finally heard on 17.9.2009, the Tribunal on
delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Both these applications are related to each other and therefore, they have
been heard together and disposed of with this common order.

I. The chronological events in O.A.333/2007 (C.Selvam) are as under:

(i) Statement of Articles of charges:

"(i) Shri C Selvam, Sr. Cashier, Palghat Division while working as Sr. Cashier at SAO/W&S/O/PTJ during the year 1999 has unofficially collected the cash of Rs.2730/- and the partially paid salary voucher for the month of April 1999 pertaining to 501Shop/S&T Workshop/PTJ, bearing PMR No.1139, from his predecessor Shri Allimuthu, Cashier, PTJ and handed over the same to the successor Shri C.K.Unny, Cashier/PTJ without bringing the fact on record. By the above act, he has violated Rule 3 (i) (ii) and (iii) of the Railway (Services) Conduct Rules 1966."

(ii) Statement of imputations of misconduct

"Based on a source information that the salary amount of a Workshop employee was obtained by Shri S Natarajan, Sr. Record Sorter by committing forgery in the Workshop Salary bill pertaining to the S&T Workshop, PTJ for the month of April 1999, and subsequently the issue was settled by arranging payment to correct payee by Shri P Mohanraj, SO(A), SAO/W&S/O/O/PJT clarifications were sought from Shri P Mohanraj. He, in his statement dated 24.7.2002 and 25.7.2002 stated that one Shri C.M.Jayaprakash of S&T Workshop/PTJ had approached him in September, 1999 complaining non-payment of salary for the month of April 1999 and when the concerned paid voucher was verified it was noticed that the particular folio has been torn from the same. He added that Shri S Natarajan, Sr. Record Sorter of SAO/O/PTJ admitted the fact that he had taken the salary of Shri C.M.Jayaprakash, (T.No.2602/501 SHOP) and arranged cash for making the payment and the amount was paid to Shri C.M.Jayaprakash on 14.9.99 in his presence. On verification of records, it was observed that payment was made to Shri C.M.Jayaprakash on 14.9.1999 by obtaining acquittance from him in the photostat copy of the pay slip duly witnesses by Shri G Vijayakumar, Head Clerk, CWM/O/S&T/PTJ.

Shri T Selvarajan, Sr. SO(A)/PGT who was the then Sr. SO(A)/Books/PTJ in his statement dated 29.07.2002 stated that the missing page No.47 of the paid voucher was brought by Shri S Natarajan, Sr. Record Sorter of SAO/O/PTJ during Oct. 1999 and thus retrieved.

Sri C.M.Jayaprakash, the original payee as per the paid voucher in his statement dated 5.8.2002 stated that during 1999,

he had approached the cashier with reference to his non payment of salary for the month of April 1999 and on the next day i.e. (14.9.1999) he had received the cash from Cashier Shri Unny in the presence of SO(A), and Shri Vijayakumar, HC of CWM Office, PTJ duly making acquittance over Revenue Stamp in the photostat copy of the pay slip. He also perused page No.47 of the original paid voucher and confirmed that the payee's signature is not his signature and confirmed that he has not received any payment before 14.09.1999.

Shri C.K.Unny in his statement dated 2.9.2002 admitted that he had parted with the salary amount of Shri C.M.Jayaprakash for the month of April 1999 to Shri S Natarajan, who had taken the amount.

Shri S Natarajan, Rtd. Sr. Record Sorter in his statement dt. 28.10.2002 has stated (in ans. To Q.No.5&8) that he has received the salary amount of Shri C.M.Jayaprakash for the month of April 1999 from Shri C.K.Unny. Shri S Natarajan had also admitted in his answer to Q.No.17 of the same statement that he had forged the signature of the payee and the witnessing official and had taken the amount.

Verification revealed that Shri M Allimuthu was cashier attached to S&T Workshop under the control of SAO/W&S/PTJ for the period from 25.02.1999 to 27.05.1999 and succeeded by Shri C Selvam as could be seen from SAO/W&S/PTJ's letter No.dt. 5.9.02. The encashed amount of Rs.32,31,370/- pertaining to the cash portion of the salary bill bearing PMR No.1139 dt. 6.5.1999 (pay bill for S&T Workshop for April 1999) has been accounted in the PMR Cash Book on 6.05.1999 by Shri Allimuthu. As per the PMR Cash book the salary bill was found pending during closing on 17.5.1999 for an amount of Rs.3076/- and on 24.05.1999 the bill was not outstanding. This indicates that the bill has been shown as fully paid by the Cashier, Shri M Allimuthu who has done closing on 17.5.1999 and 24.5.1999.

Shri M Allimuthu in his statement dated 13.9.2002 admitted that he has handed over Rs.2730/- and the bill to his successor Shri C Selvam, Cashier which has been shown wrongly as fully paid in the PMR cash book.

Verification of the HO/TO details between Shri Allimuthu and Shri C Selvam and that between Shri C Selvam and Shri Unny as recorded in the PMR Cash Book reveal that the handing over the salary bill and the unpaid bill amount of Rs.2730/- pertaining to Shri C.M.Jayaprakash, against PMR No.1139/- do not figure therein.

Shri C Selvam stated in his statement dt. 5.9.2002 that an amount of Rs.2000/- (approximately) was handed over to him by his predecessor Shri M Allimuthu for handing over the same to Shri Natarajan and he in turn handed over the same to Shri C.K.Unny, his successor.

He stated that he thought it is a private amount to be handed over to Shri Natarajan and hence he has not brought the

same into the records. He stated that he had met Shri S Natarajan 5 or 6 times during his tenure at PTJ, but agreed that he has not handed over the cash to him as requested by Shri Allimuthu. He also added that Shri S Natarajan did not receive the cash from him stating that it pertains to a Workshop employee. He also stated that he knows Shri Natarajan and Shri Allimuthu only in the official capacity and not personally. He also stated that Shri Natarajan was introduced to him by Shri Allimuthu only. As such if it was the private amount as claimed by Shri Selvam, Shri Allimuthu would have handed over the amount direct to Shri Natarajan instead of giving the amount to Shri Selvam. He also stated that fully paid vouchers cleared by Shri Allimuthu in the cash book were available in the cash Office/PTJ during his tenure. Shri Selvam also agreed that even till the time his handing over to Shri C.K.Unny, he has not handed over the amount to Shri Natarajan but has handed over the cash to Shri C.K.Unny.

This indicates that Shri Selvam has received the salary amount to be paid to Shri Jayaprakash from his predecessor and has been keeping it knowing that it has been shown as fully paid in the books (by Shri Allimuthu without making payment), without reporting the matter to the controlling Officer duly bringing the fact on records.

Thus the said Shri C Selvam, Sr. Cashier/PGT while working as cashier at PTJ has failed to maintain absolute integrity, failed to maintain devotion to duty and had acted in a manner unbecoming of a Railway servant, thereby contravening the provisions of Rule 3 1(i) (ii) and (iii) of the Railway Services (Conduct) Rules, 1966."

(iii) Findings of the Inquiry Officer

"6.2 Let me now analyses the cited documents and the oral depositions of the witnesses, keeping the view points of the PO and CO in mind. From Ext.S-9S, it is seen that Shri M.Allimuthu was the Cashier of the unit from 25.2.1999 to 27.5.1999, followed by Shri C Selvam from 27.5.1999 to 19.6.1999, as the successor. From the same document it can be seen that Shri C.K.Unni succeeded Shri C Selvam as Cashier from 19.6.1999 to 29.9.1999. Ext.S-9/S therefore reveals the different Cashiers of the unit for the periods in question.

6.3 This case, in fact, appears to have opened up from the date when Shri C.M.Jayaprakash, an employee of S&T Workshop/PTJ, had approached the concerned authorities for the non-payment of his salary for the month of April 1999. The various cited documents which were collected during the investigation besides revealing the chronology of events that preceded also provide necessary evidences to indicate the part played by the CO. They are:

- Ext.S-4/S reveals that Shri C.M.Jayaprakash has

received his salary for the month of April-1999 only on 14.09.1999, which, in turn, also reveals that his complaint was genuine.

(b) In Ext.S-8/S, answer to Q.17 and the admission by Shri S Natarajan recorded on the Xerox copy of page No.47 of the Paid Voucher of 501 Shop/PTJ, found as an enclosure of Ext.S-8/S, reveals that Shri S Natarajan had forged the signature of Shri C.M.Jayaprakash on the venue stamp to take the salary of Shri C.M.Jayaprakash for the month of April 1999.

(c) Through Ext.S-1/S, it is revealed that the salary of Shri C.M.Jayaprakash for the month of April-1999 was not appearing in the unpaid list of the Establishment Section, when it was verified by Shri P Mohan Raj, SO(A)/SAO/WS/O/PTJ on 10.09.1999 from which it was construed that the said salary bill was fully paid within the stipulated period. The answer to Q.7 Ext.S-1/S corroborates with the version given at item (b) above.

(d) From answer to Q.21 of Ext.S-7/S, it is revealed that the CO handed over the cash and the voucher to Shri Unni, who, in turn, handed over the same to Shri Natarajan and that Shri Natarajan came back to the Cash Office in the next day and handed over the said paid voucher stating that payment was made to Shri C.M.Jayaprakash. Further, answer to Q.9 of the same document reveals that "the voucher figured during closing on 24.05.1999 but did not figure in the Cash Book while closing on 24.05.1999."

(e) Ext.S-11/S reveals that on 17.05.1999, the weekly closing date, there is a mention regarding PMR No.1139, against SI.No.13 which indicates that there was outstanding amount pertaining to it. But on the next closing date 24.05.1999, there is no mention regarding PMR No.1139 which indicates that there was no outstanding amount pertaining to it on that date. This is a proof to conclude that the CO who was the Cashier on that date, officially, on records, had no outstanding payments pertaining to PMR No.1139 as on 24.05.1999.

(f) In his answer to Q.6 of Ext.S-13/S, Shri Allimuthu has stated that he had handed over Rs.2730/- with concerned bill to Shri Selvam his successor, the CO.

6.4. Apart from the above documentary evidences, the following oral depositions also provide adequate evidences to establish the charge against the CO.

(i) SW-1, besides identifying his signature and confirming the contents of Ext.S-1/S vide his answer to Q.9 of Enquiry Proceedings, vide his answer to Q.13, has stated that the document marked as Ext.S-3/S was found torn from Ext.S-2/S and that salary of Shri C.M.Jayaprakash for the month of April-1999 was not appearing in the unpaid list of the

Establishment Section.

(ii) Besides confirming his signature and the contents of Ext.S-6/S, SW-3, vide his answer to Q.61 has stated that the signature made on the stamp against Shri C.M.Jayaprakash in Ext.S-3/S was not his signature but agreed that the signature made on the stamp in Ext.S-4/S was his signature vide his answer to Q.52.

(iii) SW-5, besides confirming his signature and contents of Ext.S-13/S, has stated vide his answer to Q.70 that he had handed over Rs.2730/- to the CO and vide his answer to Q.77 has stated that he had told the CO to give the payment to Shri Natarajan who would arrange the payment. Again, vide his answer to Q.89, SW-5 has stated that he had handed over the amount only to the CO and had told him that the bill was available in the cash Office.

(iv) SW-6, in his answer to Q.93 has accepted that it was his signature found on the revenue stamp against the name of Shri C.M.Jayaprakash in Ext.S-3/S. He has also identified his signature and confirmed the contents of Ext.S-8/S.

(v) In his answer to Q.114, SW-7 has stated "It is unpaid amount only, but not reflected through outstanding list", with reference to the cash and voucher handed over to him by the CO.

6.5 The documentary evidences mentioned in para 6.3 and the oral evidences mentioned in para 6.4 are in agreement with each other. The oral deposition made by W-10, the investigator of this case, is also found corroborative with the above evidences mentioned by me. In the light of all the above, I am of the opinion that the CO, despite his knowledge that the PMR No.1139 was an officially closed voucher as fully paid, received the unpaid amount from his predecessor, kept it with him for the whole of his tenure from 27.05.1999 to 19.06.1999 and then passed it on to his successor. This is undoubtedly unofficial handling of cash pertaining to a bill which was shown as officially closed and hence the charge is established.

7.0 Findings

7.1 Taking into account all the oral and documentary evidences, the brief of the Presenting Officer and the written Defence Brief of the Charged Official, I hold that the charges framed against Shri C Selvam, Sr. Cashier, Sr.DCP/O/PGT vide SF 5 charge memorandum No.P.227/PGT/Admn/V/CS dated 10.08.2004 issued by Sr.DFM/PGT stands PROVED".

(iv) Relevant part of Disciplinary Authority's Order

"You are hereby informed that in accordance with the orders passed by the undersigned, your pay is reduced to the next lower stage from Rs.6375 to Rs.6200 in scale Rs.5500-9000 for

a period of 4 years without the effect of postponing the future increments from the date of receipt of this penalty advice.

2(a) Relevant aspects considered while disposing the case in accordance with the rules satisfying the requirements of the rules.

Prescribed rules have been complied with.

2(b) Reasons by which the disciplinary authority has arrived at the particular conclusion:"After carefully going through the Inquiry Officers report Presenting Officers report and Defence statement submitted by th charged employee, I have come to the conclusion that the charges framed against the charged employee re proved and correct.

The Enquiry Report clearly indicates that Sri C Selvam, Sr. Cashier/Sr.DCP/O/PGT has received an amount of Rs.2730/- (salary amount pertaining to Sri C.M.Jayaprakash, T.No.2602, M & T Shop No.501 S&T Workshop, PTJ) along with the paid voucher from Sri Alli Muthu, Cashier, CN/BNC & in turn, had handed over the cash and voucher to Sri C.K.Unny, Sr. Cashier, Sr. DCP/O/PGT. Both Sri C.K.Unny & Sri Alli Muthu have confirmed this fact in the Vigilance Investigation stage. The chronology of events supported by evidences on record indicate that the amount has been wrongly shown as fully paid by Shri Alli Muthu, Cashier, CN/BNC & subsequently passed on to Sri C Selvam, Sr. Cashier Sr.DCP/OPGT with voucher, who in turn had passed on the voucher and cash to Sri C.K.Unny, then Sr. Cashier, SAOW&S/PTJ without bringing the fact on record. This establishes the charge against Sri C Selvam, Sr. Cashier, Sr. DCP/O/PGT that he has unofficially collected the cash of Rs.2730/- and the partially paid salary voucher for the monthly of April 1999 pertaining to 501 shop S&T Workshop, PTJ, bearing PMR No.1139, from his predecessor, Sri Alli Muthu, Cashier CN/BNC, and handed over the same to his successor, Shri C.K.Unny, Sr. Cashier, Sr. DCP/O/PGT without bringing the fact on record.

In view of the above, I as the Disciplinary Authority, impose the penalty of reduction to the next lower stage of Rs.6200/- in the existing scale of Rs.5500-9000 for a period of 4 years (NR)".

The above penalty has been imposed by the undersigned and the Appellate Authority is FA&CAO/MAS. Appeal thereon, if any, is to be submitted to the Appellate Authority through proper channel within 45 days from the date of receipt of this advice. Appeal shall not contain any disrespectful or improper language and shall be complete in itself."

(v) Relevant part of Appellate Authority's order

"You have received an amount of Rs.2730/- being the salary of Sri C.M.Jayaprakash along with the paid voucher from Sri

Allimuthu, Cashier, CN/BNC and in turn you have handed over the cash and voucher to Sri C.K.Unny. It has been proved, that the amount was unpaid and in the voucher it has been wrongly shown as fully paid. The receipt of voucher and cash was made by you without recording the relevant fact on record. This action is in violation of procedures and lead to misappropriation of the amount received. Further you have not brought out any new fact in your appeal which can be considered for reconsideration of the penalty. The penalty advice clearly stipulates that the penalty is awarded for the offences explained above. The facts have been established based on the official records. I am of the opinion that the penalty awarded does not warrant any revision.

As there is no ground for revision of penalty based on fresh facts or evidences, I hereby confirm the penalty.

Appeal, if any, should be submitted to the Revisioning Authority who is FA & CAO within a period of 45 days from the date of receipt of this order."

(vi) Relevant part of the Revisionary Authority's order

"It is proved beyond doubt that the misconduct committed is not due to any procedural lapse but a wanton act of irregularity resulting in misappropriation of Government money, also affecting the livelihood of the fellow Railway servant by not making timely payment and withholding payment, which can be even considered as a grave misconduct deserving exemplary punishment.

It is therefore felt that a lenient penalty has only been awarded, even though the gravity of the misconduct is shown. There is no reason to consider the misconduct committed as a procedural lapse and therefore warranting a milder penalty.

I, as the Revisioning Authority, after having carefully gone through the case, find that there exists no valid ground warranting reduction of annulment of the penalty, already imposed."

II. The chronological events in O.A.341/2007(C.K.Unny):

(i) Statement of Articles of charges against Shri C K.Unny

"(i) Shri C.K.Unny, Sr. Cashier, PGT Division, while working as Sr. Cashier SAO/W&S/O/PTJ during the year 1999 has committed the following irregularities:

(a) He has collected the unpaid cash of Rs.2730/- and the partially paid salary voucher for the month of April 1999 pertaining to Shop No.501 of S&T Workshop/PTJ bearing PMR No.1139 from his predecessor Shri C.Selvam unofficially without proper documentation, when the voucher is shown is as fully paid in the Pay Master's cash

book.

(b) He has not paid the salary of Rs.2730/- pertaining to Shri C.M.Jayaprakash, T.No.2602/5001 Shop/S&T Workshop/PJT for the month of April 1999 directly in the presence of authorised witnessing official and instead had parted with the cash and voucher to Shri Natarajan, Sr. Recorder/SAO/W&S/PJT (without proper authorisation from the payee). For making payment and thereby enabling Shri Natarajan to misappropriate the above salary amount.

By the above act, he has violated Rule 31(i)(ii) and (iii) of the Railway Services (Conduct) Rules 1966."

(ii) State of Imputations of misconduct

"Based on a source information that the salary amount of a Workshop employee was obtained by Shri S Natarajan, Sr. Record Sorter by committing forgery in the Workshop Salary bill pertaining to the S&T Workshop, PTJ for the month of April 1999, and subsequently the issue was settled by arranging payment to correct payee by Shri P Mohanraj, SO(A), SAO/W&S/O/O/PJT clarifications were sought from Shri P Mohanraj. He, in his statement dated 24.7.2002 and 25.7.2002 stated that one Shri C.M.Jayaprakash of S&T Workshop/PTJ had approached him in September, 1999 complaining non-payment of salary for the month of April 1999 and when the concerned paid voucher was verified it was noticed that the particular folio has been torn from the same. He added that Shri S Natarajan, Sr. Record Sorter of SAO/O/PTJ admitted the fact that he had taken the salary of Shri C.M.Jayaprakash, (T.No.2602/501 SHOP) and arranged cash for making the payment and the amount was paid to Shri C.M.Jayaprakash on 14.9.99 in his presence. On verification of records, it was observed that payment was made to Shri C.M.Jayaprakash on 14.9.1999 by obtaining acquittance from him in the photostat copy of the pay slip duly witnesses by Shri G Vijayakumar, Head Clerk, CWM/O/S&T/PTJ in the presence of Shri Mohanraj.

Shri T Selvarajan, Sr. SO(A)/PGT who was the then Sr. SO (A)/Books/PTJ in his statement dated 29.07.2002 stated that the missing page No.47 of the paid voucher was brought by Shri S Natarajan, Sr. Record Sorter of SAO/O/PTJ during Oct. 1999 and thus retrieved.

Sri C.M.Jayaprakash, the original payee as per the paid voucher in his statement dated 5.8.2002 stated that during 1999, he had approached the cashier with reference to his non payment of salary for the month of April 1999 and on the next day he had received the cash from Cashier Shri Unny in the presence of SO (A), and Shri Vijayakumar, HC of CWM Office, PTJ duly making acquittance over Revenue Stamp in the photostat copy of the pay slip. He also perused page No.47 of the original paid voucher and confirmed that the payee's signature is not his

signature and confirmed that he has not received any payment before 14.09.1999.

Shri S Natarajan, Rtd. Sr. Record Sorter in his statement dt. 28.10.2002 has stated (in ans. To Q.No.5&8) that he has received the salary amount of Shri C.M.Jayaprakash for the month of April 1999 from Shri C.K.Unny. Shri S Natarajan had also admitted in his answer to Q.No.17 of the same statement that he had forged the signature of the payee and the witnessing official and had taken the amount.

Verification revealed that Shri M Allimuthu was cashier attached to S&T Workshop under the control of SAO/W&S/PTJ for the period from 25.02.1999 to 27.05.1999 as could be seen from SAO/W&S/PTJ's letter No.dt. 5.9.2002. The encashed amount of Rs.32,31,370/- pertaining to the cash portion of the salary bill bearing PMR No.1139 dt. 6.5.1999 (pay bill for S&T Workshop for April 1999) has been accounted in the PMR Cash Book on 6.05.1999 by Shri Allimuthu. As per the PMR Cash book the salary bill was found pending during closing on 17.5.1999 for an amount of Rs.3076/- and on 24.05.1999 the bill was not outstanding. This indicates that the bill has been shown as fully paid by the Cashier, Shri M Allimuthu who has done closing on 17.5.1999 and 24.5.1999.

Shri M Allimuthu in his statement dated 13.9.2002 admitted that he has handed over Rs.2730/- and the bill to his successor Shri C Selvam, Cashier which has been shown wrongly as fully paid in the PMR cash book.

Shri C Selvam stated in his statement dt. 5.9.2002 that an amount of Rs.2000/- (approximately) was handing over to him by his predecessor Shri M Allimuthu for handing over the same to Shri Natarajan and he in turn handed over the same to Shri C.K.Unny, his successor. Verification of the HOTO details between Shri C Selvam and Shri C Selvam and Shri Unny as recorded in the PMR Cash Book reveal that the handing over the salary bill and the unpaid bill amount of Rs.2730/- pertaining to Shri C.M.Jayaprakash, against PMR No.1139/- does not figure therein.

Sri C.K.Unny in his statement dated 2.9.2002 admitted that he had received the salary amount of Sri C.M.Jayaprakash for the month of April 1999 from his predecessor. (Shri C Selvam) and he had given the voucher and cash to Sri S Natarajan and later came to know that the amount was retained by Sri S Natarajan by forging the signature of the payee and that of the witnessing official.

As per para 1972 of Indian Railway Code for Accounts Department and appendix 26 of Cash Office Manual, Pay, leave salary and other allowances drawn in a pay bill can be paid only on the personal claim of the Railway servant concerned and to his personal receipt and not otherwise, except under proper authorisation from the concerned payee. As per 411 of Cash Office Manual, the Cashiers should ensure that payments are effected on the day and at the place prescribed in the presence

of the witnessing official nominated.

As such instead of making payment to the correct payee in the presence of the authorised witnessing official as per the provision of the 411, Appendix 25 of Cash Office Manual and para 972 of Indian Railway Code for Accounts Department. Shri C.K.Unny has parted with the salary bill and the salary of Shri C.M.Jayaprakash (without proper authorisation from him) to another employee, Shri Natarajan, Sr. Record Sorter/PTJ who after receiving the bill and amount from Shri C.K.Unny has forged the signature of Shri C.M.Jayaprakash, T.No.2602, M&T Shop/S&T/Workshop/PTJ in page No.47 of the bill and misappropriated his salary.

From the above, it is clear that Shri C.K.Unny, while working as Cashier at SAO/W&S/O/PTJ during 1999, has Collected salary amount of Rs.2730/- for the month of April 1999 pertaining to Shri C.M.Jayaprakash and the connected voucher (bearing PMR No.1139 dt. 6.5.1999 (Pay Bill of 501 SHOP S&T Workshop for April 1999) from his predecessor Shri Selvam, without proper handing over and taking over and had parted with the same to an employee other than the authorised payee in violation of extant rules.

By the above acts, Shri C.K.Unny has failed to maintain absolute integrity, devotion to duty and has acted in a manner unbecoming of a Railway servant thereby contravening Rule 3 1 (i)(ii) and (iii) of the Railway (Services) Conduct Rules 1966."

(iii) Findings of the Inquiry Officer

"6.2 Citing various documents and oral depositions of the witnesses, the PO has argued that the salary amount of Rs.2730/- for April 1999 was not paid to the employees Shri C.M.Jayaprakash in May 1999 since the employee was absent, that even while the said salary remained as unpaid, the concerned voucher bearing PMR No.1139 was shown as fully paid while closing the account on 24.05.1999 by Cashier Shri Allimuthu who handed over the cash of Rs.2730/- and the partly paid voucher bearing PMR No.1139 unofficially to Cashier Shri Selvam who in turn handed over the same to the CO and that the CO knowing fully well that it was an unpaid salary amount parted with it along with the voucher to an unauthorised person Shri S Natarajan which act enabled Shri Natarajan to usurp the amount by forging the signature of the payee and that of the witnessing supervisor. The PO, based on the above argument, has claimed that the charges framed against the CO are established.

The CO, on the other hand, has argued that it is not a case created by him suo motto that there was no deliberate part from his die, that he could not object to receiving the cash and the voucher from Shri C Selvam, his predecessor and colleague since he considered it humane to cooperate with his co-staff, that if the cashiers insisted on witnessing by Depot-Incharge the payment could be delayed inviting labour unrest, that Shri S

Natarajan was the official representative of the administration as he was deputed for cash office duties and that as such there was no reason to doubt his integrity considering his past performance. On the above grounds, the CO claims his innocence and pleads to exonerate him from the charges.

6.3 Keeping the above two different arguments of the PO and the CO in view, let me now analyze and sieve the cited documents and the oral depositions for evidences.

Ext.S.8 indicates that the CO was on duty as Cashier at SAO/W&S/PTJ for the period from 19.06.1999 to 29.09.1999, preceded by Shri C Selvam from 27.05.1999 to 19.06.1999. This case, in fact, appears to have opened up from the date when Shri C.M.Jayaprakash, an employee of S&T-Workshop/PTJ, had approached the concerned authorities for the non-payment of his salary for the month of April 1999. The various cited documents which were collected during the investigation, besides revealing the chronology of events that preceded also provide necessary evidences to indicate the part played by the CI, They are:

- (a) Ext.S.4 reveals that Shri C.M.Jayaprakash has received his salary for the month of April-1999 only on 14.09.1999, which, in turn, also reveals that his complaint was genuine.
- (b) In Ext.S.7, answer to Q.17 and the admission by Shri S.Natarajan recorded on the Xerox copy of page No.47 of the Paid voucher of 501 Shop/PTJ, found as an enclosure of Ext.S.7, reveals that Shri S.Natarajan had forged the signature of Shri C.M.Jayaprakash on the revenue stamp to take the salary of Shri C.M.Jayaprakash for the month of April-1999.
- © Through Ext.S.1, it is revealed that the salary of Shri C.M.Jayaprakash for the month of April-1999 was not appearing in the unpaid list of the Establishment Section, when it was verified by Shri P Mohan Raj, SO(A)/SAO/WS/O/PTJ on 10.09/1999 from which it was construed, that the said salary bill was fully paid within the stipulated period. The answer to Q.7 Ext.S.1 corroborates with the version given at Item (b) above.
- (d) From answer to Q.21 of Ext.S.14, it is revealed that Shri Selvam handed over the cash and the voucher to the CO who, in turn, handed over the same to Shri Natarajan and that Shri Natarajan came back to the Cash Office in the next day and handed over the said paid voucher stating that payment was made to Shri C.M.Jayaprakash. Further, answer to Q.,9 of the same document reveals that "the voucher figured during closing on 24.05.1999 but did not figure in the Cash Book while closing on 24.05.999.
- (e) Ext.S.10 reveals that on 17.05.1999, the weekly

closing date, there is a mention regarding PMR No.1139, against SI.No.13 which indicates that there was outstanding amount pertaining to it. But on the next closing date 24.05.1999, there is no mention regarding PMR No.1139 which indicates that there was no outstanding amount pertaining to it on that date. This is a proof to conclude that the Cashier on that date, officially, on records, had no outstanding payments pertaining to PMR No.1139 as on 24.05.1999.

(f) In his answer to Q.6 of Ext.S.12, Shri Allimuthu has stated that he had handed over Rs.2730/- with concerned bill to Shri Selvam his successor.

6.4 Apart from the above documentary evidences, the following oral depositions also provide adequate evidences to establish the charges against the CO.

(i) SW-1, besides identifying his signature and confirming the contents of Ext.S-1 vide his answer to Q.9 of Enquiry Proceedings, vide his answer to Q.13, has stated that the document marked as Ext.S.3 was found torn from Ext.S.2 and that salary of Shri C.M.Jayaprakash for the month of April-1999 was not appearing in the unpaid list of the Establishment Section. While answering Q.18, SW-1 has stated that From 10.09.1999 onwards records were being searched to find out where the mistake had happened. By 14.09.1999 Shri Natarajan came and voluntarily accepted.

(ii) Besides confirming his signature and the contents of Ext.S.6 vide his answer to Q.69, SW-4, vide his answer to Q.72 has stated that the signature made on the stamp against Shri C.M.Jayaprakash in Ext.S.3 was not his signature. He agreed that the signature made on the stamp in Ext.S.4 was his signature vide his answer to Q.73.

(iii) SW-6, besides confirming his signature and contents of Ext.S.12, has stated vide his answer to Q.88 that he had handed over Rs.2730/- to Shri C.Selvam.

(iv) SW-8, in his answer to Q.105 has accepted that it was his signature found on the revenue stamp against the name of Shri C.M.Jayaprakash in Ext.S.3. He has also identified his signature and confirmed the contents of Ext.S.7.

(v) Vide his answer to Q.112, SW-9 has confirmed the contents of Ext.S.13.

6.5 The documentary evidences mentioned in para 6.3 and the oral evidences mentioned in para 6.4 are in agreement with each other. The oral deposition made by SW-12, the Investigator of this case, is also found corroborative with the above oral and documentary evidences. Further, when the recordings in the PMR cash book, Ext.S.11, during the HO/TO between Shri C Selvam and the CO are observed, it can be seen that no mention

is found there regarding the voucher bearing PMR No.1139 which indicates that the said voucher and the connected cash were not taken over officially by the CO."

(iv) Relevant part of Disciplinary Authority's order

"You are hereby informed that in accordance with the orders passed by the undersigned, your pay is reduced to the next lower stage from Rs.6500/- to Rs.6350/- in scale Rs.5000-8000 for a period of 4 years without the effect of postponing the future increments from the date of receipt of this penalty advice.

2(a) Relevant aspects considered while disposing the case in accordance with the rules satisfying the requirements of the rules.

Prescribed rules have been complied with.

2(b) Reasons by which the disciplinary authority has arrived at the particular conclusion:

"After carefully going through the Inquiry Officers report Presenting Officers report and Defence statement submitted by the charged employee, I have come to the conclusion that the charges framed against the charged employee are proved and correct.

The charge against Sri C.K.Unny, Sr. Cashier/Sr.DC/P/O/PGT is that he has collected the unpaid cash of Rs.2730/- and the partially paid salary voucher for the month of April 1999 pertaining to Shop No.501 S&T Workshop, PTJ bearing PMR No.1139 from his predecessor Sri C.Selvam, Sr., Cashier, Sr.DCP/O/PGT unofficially without proper documentation, when the voucher is shown as fully paid in the Pay Master's Cash Book.

He has not paid the salary of Rs.2730/- pertaining to Sri M Jayaprakash, T.No.2602, M&T Shop No.501 S&T Workshop, PTJ for the month of April 1999 Directly in the presence of authorised witnessing official, instead in the month of September, 1999 had received the acquittance for the month on the photocopy of the voucher which was shown as paid earlier, thereby adopting a wring practice for effecting payment to staff.

He had also parted with cash voucher to Shri Natarajan, Sr. Record Sorter/SAO/W&S/O/PTJ without proper authorisation from payee for making payment and thereby enabling Shri Natarajan to misappropriate the said amount of Rs.2730/-. The charges are very clear and supported by documentary evidences.

In view of the above, I as the Disciplinary Authority, impose the penalty of reduction to the next lower stage of Rs.6350/- in the exiting scale of Rs.5000-8000 for a period of 4 years (NR)".

The above penalty has been imposed by the undersigned and the Appellate Authority is FA&CAO/G/MAS. Appeal thereon, if any, is to be submitted to the Appellate Authority through proper

channel within 45 days from the date of receipt of this advice. Appeal shall not contain any disrespectful or improper language and shall be complete in itself."

(v) Relevant part of the Appellate Authority's order

"2. You have not paid the salary of Rs.2730/- from Sri C.M.Jayaprakash which lead to misappropriation of the money.

In consideration of the above offences, the Disciplinary Authority has reduced your pay from Rs.6500/- to Rs.6350/- in scale Rs.5000-8000 for a period of four years without the effect of postponement of future increment from the date of receipt of the penalty advice.

There appears to be no grounds for revision of penalty since you have not furnished any new facts or evidence warranting reconsideration of the penalty awarded. Based on the records and the evidence made available I hereby confirm the penalty."

(vi) Relevant part of the Revisionary Authority's order

"You had collected the unpaid cash of Rs.2730/- and the partially paid salary voucher for the month of April 1999, pertaining to Shop No.501 of S&T Workshop/PTJ bearing PMR No.1139 from your predecessor, Shri C.Selvam unofficially without proper documentation, and when the voucher was shown as fully paid in the Pay Master's Cash Book.

You have not paid the salary of Rs.2730/- pertaining to Shri C.M.Jayaprakash, T.No.2602/501 shop/S&T Workshop/PTJ for the month of April 1999 directly in the presence of authorised witnessing official and instead had parted with the cash and voucher to Shri Natarajan, Sr. Record Sorter/SAO/W&S/O/PTJ (without proper authorisation from the payee) for making payment and thereby enabling Shri Natarajan to misappropriate the above salary amount.

It is therefore proved that you have collected the unpaid cash of Rs.2730/- and the partially-paid salary voucher for the month of April 1999, pertaining to Shop No.501 of S&T Workshop/PTJ, bearing PMR No.1139 from your predecessor, unofficially without proper documentation, had parted with the cash and voucher to Shri S Natarajan for making payment and thereby enabling Shri Natarajan to misappropriate the above salary amount.

Based on the findings of the Enquiry Officer that you were guilty of the charges leveled against you, the Disciplinary Authority i.e. Sr.DFM/PGT has awarded the penalty of reduction to the next lower stage for a period of 4 years (Non-recurring) to you and the penalty has commenced from July, 2006.

It is proved beyond doubt that the misconduct committed is not due to any procedural lapse but a wanton act of irregularity

resulting in misappropriation of Government money, also affecting the livelihood of the fellow Railway servant by not making timely payment and withholding payment, which can be even considered as a grave misconduct deserving exemplary punishment.

It is therefore felt that a lenient penalty has only been awarded, even though the gravity of the misconduct is shown. There is no reason to consider the misconduct committed as a procedural lapse and therefore warranting a milder penalty.

I, as the Revisioning Authority, after having carefully gone through the case, find that there exists no valid ground warranting reduction or annulment of the penalty, already imposed."

2. Thus the charges against both the applicants are almost identical. Both have been imposed with the same punishment of reduction to the next lower stage for 4 years. In both cases, the appellate authority and the revisional authority have rejected the respective appeal and revision petition. The grounds taken by the learned counsel for the applicants, Shri T.C.Govindaswamy to challenge the impugned orders are also identical. The first ground is that there was no misconduct at all on the part of the applicants, even if the charge are to be accepted in full. The other ground is that there are no evidences against them on record to substantiate the charges levelled against the applicant. In the case of Shri C Selvam (the applicant in O.A.333/2007), the charge against him was that he had unofficially collected a cash of Rs.2730/- and the partially paid salary voucher for the month of April 1998 from his predecessor Shri Allimuthu and handed over the same to his successor Shri C.K.Unny (applicant in O.A.341/2007) without bringing the facts on record. In the case of Shri C.K.Unny, the charge was that he has collected unpaid cash of Rs.2730/- and the partially paid salary voucher for the month of April 1999 from his predecessor Shri C Selvam unofficially without proper documents. The learned counsel for the applicants, Shri Mohan Kumar has relied upon the the judgments of the Apex Court in **Moni Shankar v. Union of India and another** [2008(3) SLJ 325] and **D.P.Chadha v. Triyugi Narain Mishra and others** [AIR 2001 SC 457] (para 22)

in support of his aforesaid contention.

4. In **Moni Shankar's case (supra)** the Apex Court held as under:

"22. The Tribunal was entitled to consider the question as to whether the evidence led by the department was sufficient to arrive at a conclusion of guilt or otherwise of the delinquent officer. While re-appreciation of evidence is not within the domain of the Tribunal, an absurd situation emanating from the statement of a witness can certainly be taken note of."

5. In the case of **D.P.Chadha (supra)**, the Apex Court held as under:

"21. The term 'misconduct' has not been defined in the Act. However, it is an expression with a sufficiently wide meaning. In view of the prime position which the advocates occupy in the process of administration of justice and justice delivery system, the courts justifiably expect from the lawyers a high standard of professional and moral obligation in the discharge of their duties. Any act or omission on the part of a lawyer which interrupts or misdirects the sacred flow of justice or which renders a professional unworthy of right to exercise the privilege of the profession would amount to misconduct attracting the wrath of disciplinary jurisdiction. In the Bar Council of Iyer, J. said that the vital role of the lawyer depends upon his probity and professional lifestyle. The central function of the legal profession is to promote the administration of justice. As monopoly to legal profession has been statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of confidence of community in him as a vehicle of justice — social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of conduct cannot be crystallised into rigid rules but felt by the collective conscience of the practitioners as right. Law is no trade, briefs no merchandise. Foreseeing the role which the legal profession has to play in shaping the society and building the nation, Krishna Iyer, J. goes on to say

"For the practice of Law with expanding activist horizons, professional ethics cannot be contained in a Bar Council rule nor in traditional cant in the books but in new canons of conscience which will command the members of the calling of justice to obey rules of morality and utility, clear in the crystallized case-law and concrete when tested on the qualms of high norms simple enough in given situations, though involved when expressed in a single sentence."

22. A mere error of judgment or expression of a reasonable opinion or taking a stand on a doubtful or debatable issue of law is not a misconduct; the term takes its colour from the underlying intention. But at the same time misconduct is not necessarily something involving moral turpitude. It is a relative term to be construed by reference to

the subject matter and the context wherein the term is called upon to be employed. A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous stand more so when there are conflicting claims. While discharging duty to the court, a lawyer should never knowingly be a party to any deception, design or fraud. While placing the law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client so long as the issue is capable of that resolution by adopting a process of reasoning. However, a point of law well settled or admitting of no controversy must not be dragged into doubt solely with a view to confuse or mislead the Judge and thereby gaining an undue advantage to the client to which he may not be entitled. Such conduct of an advocate becomes worse when a view of the law canvassed by him is not only unsupportable in law but if accepted would damage the interest of the client and confer an illegitimate advantage on the opponent. In such a situation the wrong of the intention and impropriety of the conduct is more than apparent. Professional misconduct is grave when it consists of betraying the confidence of a client and is gravest when it is a deliberate attempt at misleading the court or an attempt at practising deception or fraud on the court. The client places his faith and fortune in the hands of the counsel for the purpose of that case; the court places its confidence in the counsel in case after case and day after day. A client dissatisfied with his counsel may change him but the same is not with the court. And so the bondage of trust between the court and the counsel admits of no breaking.

6. The respondents on the other hand has submitted in the case of Shri C.Selvam (O.A.333/2007) that the applicant failed in detecting the anomalous situation as "unpaid cash" and salary voucher shown as "fully paid" could not co-exist. He took over charge from Sri M.Allimuthu who had done the closing of PMR Register on 24.5.1999. The said voucher bearing PMR No.1139 did not figure therein indicating that the salary bill was fully paid. He received the unpaid salary of Sri Jayaprakash unofficially without bringing the fact on record at the time of taking over charge on 27.5.1999. He had signed the handing over/taking over details on 24.5.1999 in token of his acceptance of the same. Had he applied his mind and remained vigilant in the discharge of his official duties this

anomaly would have come to light. Shri C.K.Allimuthu, predecessor of the applicant in his answer to question 70 A.9/12, has stated that he had handed over the amount of Rs.2730/- to the applicant and in his answer to Question No.71 he has stated that the said amount was the unpaid payment of a workshop employee. The charge against the applicant was that he failed to detect the anomalous situation of "unpaid salary" co-existing with a "fully paid salary bill". He did not do anything to rectify the anomaly or to bring the fact on record while taking over charge or at least during his handing over charge to his successor resulting in a situation wherein the hard-earned money of a fellow railway servant was swindled. The above anomaly could have been easily detected by a man of ordinary prudence, leave alone a trained Senior Cashier with years of experience. The submission made by his successor Sri C.K.Unny to Question NO.116 Annexure A-9/19 that there was no signature of the payee over the stamp and amount handed over to him by Sri C.Selvam and the amount payable in the bill tallied confirming the above anomalous situation wherein the salary voucher was taken as fully paid while there was unpaid amount in the bill. Moreover, the amount also did not appear in the list of unpaid wages sent to Accounts Office after prescribed time limit of 21 days. Moreover, without application of mind, he handed over the "unpaid salary of Rs.2730" and the salary voucher taken as fully paid to his successor Sri C.K.Unny without bringing the same on record which ultimately resulted in Sri N Natarajan, Record Sorter to commit a fraud and to misappropriate the salary of Sri C.M.Jayaprakash, a fellow railway servant, causing hardship to him. The act of not bringing the fact on record by the applicant led to a situation wherein Sri S Natarajan, Sr., Record Sorter, forged the signature of the payee Sri C.M.Jayaprakash and that of the payment witness and misappropriated the salary. Sri S Natarajan had also torn the relevant page No.47 of the salary bill (PMR No.1139) to destroy the evidence. They have also submitted that the Annexure A-1, A-2 and A-3 penalty

Advice, Appellate Order and Revisional Order respectively were issued based on evidences on record and with due application of mind, taking into consideration of the Inquiry Officer's report, the Presenting Officer's brief and defence statement submitted by the applicant and therefore they are not arbitrary, unconstitutional and discriminatory.

7. In the reply statement filed in the case of Shri C.K.Unny, (O.A.341/2007), the respondents have submitted that Annexures A1, A2, A3 were issued with application of mind and based on evidences on record, keeping in view the principles of natural justice. They have denied contention of the applicant that there was no element of misconduct on his part. Rather, at the time of taking over charge from his Predecessor on 19.6.99, the applicant had received the amount of Rs.2730/-, knowing fully well that it is the unpaid salary of Sri.C.M.Jayaprakash whereas the relevant salary bill bearing PMR No.1139 did not figure in the closing of PMR Register on 19.6.99 as an outstanding bill indicating that the salary voucher was fully paid. Had he applied his mind and remained vigilant in discharging his official duties the anomaly would have come to his notice. It appears that he had not taken any action to do proper documentation nor did he bring the anomaly to the notice of his Controlling Officer. He parted with the unpaid Cash of Rs.2730/- and salary bill to one Sri.S.Natarjan, who forged the signature of the payee and the payment witnessing official. When Sri.C.M.Jayaprakash represented on 10.9.99 to the Accounts Office that he had not received his salary for April 99, the matter was investigated and it was found out that the Page No. 47 in which the above employee's name figured was torn off. Moreover the amount did not figure in the list of unpaid wages as well. This was corroborated vide Answer to Q.Nos. 12 & 13 of Annexure A9/3 on 14.9.99. Sri.Natarajan voluntarily accepted that he had accepted the unpaid cash of Rs.2730/- and salary bill of shop No. 501 from

the applicant and forged the signatures of the payee and the payment witness. Thus the failure of Sri.C.K.Unni to apply his mind and the lack of devotion to duty in bringing the fact to record and to the notice of Controlling Officer resulted in the misappropriation of salary of a Railway servant. They have also denied the contention of the applicant that he was not guilty of any misconduct. Rather, the applicant has violated the procedure for payment by receiving the acquittance of the payee on 14.9.99 on the photocopy of the page No.47 in which the payee's name figured in the presence of an official who is not authorized to witness payments. They have further denied the contention of the applicant that the findings of the Inquiry Officer were perverse, biased and pre-concluded as baseless and devoid of any facts. According to them, the charges were proved based on evidence on record and corroborated by written statements of witnesses. The Disciplinary Authority, Appellate and the Revision Authority imposed/confirmed the penalty with due application of mind, based on the findings of the Inquiry Officer as well as on careful consideration of the Applicant's written defence and following the prescribed procedure as laid as down. The instructions laid down in the Sub Rule 21 of Rule 9 of Railway Servants' Discipline & Appeal Rules 1968 have been strictly adhered to in the case. They have further denied the contention of the applicant that the penalty imposed vide Annexure A1 was arbitrary, discriminatory and unconstitutional as the Disciplinary Authority's order is well reasoned and speaking one duly applying her mind after giving careful consideration of the representation made by the Applicant in his defence and adhering to the stipulations laid down under Rule 10 of Disciplinary & Appeal Rules 1968. They have also denied the allegation of the applicant that the entire proceedings were initiated, continued and finalized under the direct dictation and supervision of the vigilance organization headed by the Vth respondent as the Disciplinary Authority is not working under its administrative control and it is quite independent and competent to take

decisions as deemed fit. They have further submitted that lack of application of mind and lack of devotion to duty by the applicant and the casual manner in which he discharged his official duties are evident when he failed to bring to record the irregularity committed during taking over charge from his Predecessor. He handed over the unpaid salary and the salary bill to an unauthorized person which resulted in fraudulent misappropriation and consequent delay in disbursing a fellow railway servant's salary causing hardship to him. He has adopted a wrong procedure for payment when the amount was retrieved later.

8. They have also relied upon the following judgments in support of their contentions:

- (i) **The Judicature at Bombay v. Shashikant S. Patil**, [(2000) 1 SCC 416],
- (ii) **Oriental Insurance Co. Ltd. v. S Balakrishnan** [AIR 2001 SC 2400],
- (iii) **Government of Tamil Nadu and another v. A Rajapandian** [AIR 1995 SC 561],
- (iv) **State Bank of Patiala and other v. S.K.Sharma** [AIR 1996 SC 1669], and
- (v) **State of U.P. and others v. Nand Kishore Shukla** [AIR 1996 SC 1561];

9. In **Shashikant S Patil's case (supra)**, the Apex Court has held as under:

"16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/ disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the

departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

17. In *State of A.P. v. S. Sree Rama Rao* this Court has stated so and further observed thus:

"The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Whether there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and 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."

18. The above position has been reiterated by this Court in subsequent decisions. One of them is *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749: (1995 AIR SCW 4374: AIR 1996 SC 484: 1996 Lab IC 462).

10. In *Oriental Insurance Co. Ltd.*'s case (supra), the Apex Court has held as under:

"Applying the principles indicated by this Court in ECIL case to the facts of the present case, we cannot conceive any prejudice which is said to have been caused go the delinquent, and therefore non-supply of the enquiry report could not have been held to have vitiated the entire proceedings. In the aforesaid premises, we set aside the impugned order passed by the learned single Judge of the High Court as well as the judgment of the Division Bench of the High Court, and hold that the writ petition filed by the respondent stands dismissed. In view of the nature of charges against the delinquent, we were considering of directing to lodge a First Information Report for criminal investigation, but we are told that the University has already taken that steps, and therefore, we refrain from issuing any further direction in the matter."

11. In *A Rajapandian*'s case (supra), the Apex Court has held as under:

"We have no hesitation in holding at the outset that the Administrative Tribunal fell into patent error in reappreciating and going into the sufficiency of evidence. It has been authoritatively settled by string of authorities of this Court that the Administrative Tribunal cannot sit as a court of appeal over a decision based on the findings of the inquiring authority in

disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supports the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority.

xxxxxx xxxxxxxx xxxxxxxx

8. We have quoted above three paragraphs from the impugned order of the Administrative Tribunal to show that the Tribunal reappreciated the evidence recorded before the inquiring authority. The Administrative Tribunal reached different conclusions from the inquiring authority on its own evaluation of the evidence. The Tribunal fell into patent error and acted wholly beyond its jurisdiction. It is not necessary for us to go into the merits of appreciation of evidence by the two authorities because we are of the view that the Administrative Tribunal had no jurisdiction to sit as an appellate authority over the findings of the inquiring authority."

12. In S.K.Sharma's case (supra), the Apex Court has held as under:

"In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate - take a case where the person is dismissed from service without hearing him altogether [as in Ridge v. Baldwin]. It would be a case falling under the first category and the order of dismissal would be invalid or void, if one chooses to use that expression [Calvin v. Carr]. But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report [Managing Director, E.C.I.L. v. B.Karunkar] or without affording him a due opportunity of cross-examining a witness [K.L.Tripathi] it would be a case falling in the latter category - violation of a facet of the said rule of natural justice - in which case, the validity of the order has to be tested on the touch-stone of prejudice, i.e., whether, all in all, the person concerned did nor did not have a fair hearing. It would not be correct - in the light of The above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B.Karunkar should govern all cases where the complaint is not that there was no hearing [no notice, no opportunity and no hearing] but one of not affording a proper hearing [i.e., adequate or a full hearing] or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touch-stone of prejudice as aforesaid."

13. In **Nand Kishore Shukla's case (supra)**, the Apex Court has held as under:

"7. It is settled law that the court is not a court of appeal to go into the question of imposition of the punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a Government servant based upon the proved misconduct against the Government servant. Its proportionality also cannot be gone into by the Court. The only question is:

whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the Court would be loath to interfere with that part of the order. The order of removal does not cast stigma on the respondent to disable him to seek any appointment elsewhere.

Under these circumstances, we think that the High Court was wholly wrong in setting aside the order."

14. We have heard Shri Mohan Kumar for the applicant and Ms P.K.Nandini for the respondents. Now the first question for consideration before us is whether charges levelled against the applicants would amount to misconduct at all. In **State of Punjab and Ors. vs. Ram Singh Ex. Constable 1992 (4) SCC 54**, the Apex Court held as under:

"Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999, thus:

'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.'

Misconduct in office has been defined as:

"Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the officer holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

In P. Ramanatha Aiyar's Law Lexicon, 3rd edition, at page 3027, the term 'misconduct' has been defined as under:

"The term 'misconduct' implies, a wrongful intention, and not a mere error of judgment.

Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word 'misconduct' is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct."

15. In **Union of India & Ors. vs. J. Ahmed** (1979 (2) SCC 286), the Supreme Court held as under:

"11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pierce v. Foster*, 17 Q.B. 536, 542). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspapers*, 1959 1 WLR 698)]. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur*, (61 Bom LR 1596), and *Satubha K. Vaghela v. Moosa Raza* (10 Guj LR 23). The High Court has noted the definition of misconduct in *Stroud's Judicial Dictionary* which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct."

16. In **Zunjarao Bhikaji Nagarkar vs. Union of India & Ors.**, [1999 (7) SCC 409], the supreme Court very categorically held as under:

"Initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty."

17. The charge against both the applicants are almost identical. The

allegation is that they have unofficially collected cash of Rs.2730/- and partially paid salary voucher for the month of April 1999 from their respective predecessors. The statement of imputation of misconduct reveals that Shri M Allimuthu was the cashier from 25.2.1999 to 27.5.1999. He closed the PMR cash book on 17.5.1999 and 24.5.1999. On 17.5.1999 the salary bill for Rs.3077/- was shown as pending but 24.5.1999, bill was not shown as outstanding. The respondents themselves have submitted that Shri Allimuthu has shown the bill as fully paid. Later, Shri Allimuthu has admitted that he had shown in the PMR Cash Book that the bill was fully paid. Shri Selvam has received the Cash Book from his predecessor Shri Allimuthu without any outstanding bills for payment. Shri Allimuthu handed over Rs.2730/- to Shri Selvam and Shri Selvam received it to be given to Shri C.M.Jai Prakash. During his tenure of 23 days as Cashier, Shri Selvam could not hand over the amount to Shri Jai Prakash. He, therefore, handed over the amount to his successor Shri C.K.Unny with the same instructions as those received by him from Shri Allimuthu. There is no allegation that Shri Selvam has misappropriated any money. Probably, Shri Selvam should not have accepted the amount of Rs.2730/- from Shri Allimuthu. Since Shri Allimuthu has not shown any bill unpaid, it could not have been alleged that Shri Selvam has received the partially paid salary voucher. Shri C.K.Unny instead of directly paying the amount to Shri Jai Prakash, entrusted it to Shri Natarajan, Sr. Receiver. It was Shri Natarajan who misappropriated the said amount and forged the signature of Shri Jai Prakash and attesting witness. Only when Shri Jai Prakash approached the counter complaining that his non-payment of the salary from the month of April 1999, the real facts come to light.

18. In our view, there was no misconduct on the part of neither Shri C Selvam nor Shri C.K.Unny. It was in good faith that they received Rs.2730/- for their

respective successors. At best the action of these officials can be termed as negligence or error of judgment. Even the respondents do not have a case that they had any ill motive.

19. We, therefore, allow these O.As quash and set aside the penalty advice, appellate order and orders in revision in respect of both the applicants. Accordingly, the respondents are directed to restore the pay of the applicants from the respective dates of the imposition of the penalties. They shall also issue necessary orders in this regard within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

Dated, the 5th November, 2009.

K GEORGE JOSEPH
ADMINISTRATIVE MEMBER

GEORGE PARACKEN
JUDICIAL MEMBER

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