ANNEXURE

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

INDEX SHEET

CAUSE TITLE T.A No 107/92 in O.A. No. 719/88 OF

NAME OF THE PARTIES Mangal Prasad

Applicant

Versus

Union of India & ors

Respondent

Part A, B & C

Sl. No.	Description of documents	Page
1	Check list	A1 to A2
2	C.A.T. order sheets	A3 to A5
3	Judgement dt 22/10/92 pages (2)	A6 to A7
4	Copy of petition dt 31/5/88 / annexure / Power	A8 to A41
5	Counter affidavit	A42 to A64
6	Rejoinder	A65 to A66
7		
8		
9		
10		
11		
12		
13		

CERTIFICATE

Certified that no further action is required to taken and that the case is fit for consignment to the record room (decided)

Dated 04-8-14

File R/C weeded out / Destroyed

Counter Signed

Section Officer / In charge

Signature of the Dealing Assistant

S/7

Reduced in time scale

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No. 1194 of 1988

APPLICANT (s) Mangal Prasad.

RESPONDENT(s) Supdt. Post Barabanki + Another

Particulars to be examined	Endorsement as to result of Examination
1. Is the appeal competent ?	Yes
2. (a) Is the application in the prescribed form ?	Yes
(b) Is the application in paper book form ?	Yes
(c) Have six complete sets of the application been filed ?	4 sets filed
3 (a) Is the appeal in time ?	Yes
(b) If not, by how many days it is beyond time ?	—
(c) Has sufficient case for not making the application in time, been filed ?	—
4. Has the document of authorisation, Vakalatnama been filed ?	Yes
5. Is the application accompanied by B. D /Postal-Order for Rs. 50/-	Yes, BD 22/49 dt. 5.8.88 for Rs. 50/-
6. Has the certified copy/copies of the order (s) against which the application is made been filed ?	Yes
7 (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?	Yes
(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numberd accordingly ?	Yes

Particulars to be Examined	Endorsement as to result of Examination
(c) Are the documents referred to in (a) above neatly typed in double space ?	~~Yes~~ photo copies filed. A2
8. Has the index of documents been filed and paging done properly ?	Yes
9. Have the chronological details of representation made and the outcome of such representations been indicated in the application ?	Yes
10. Is the matter raised in the application pending before any Court of law or any other Bench of Tribunal ?	No
11. Are the application/duplicate copy/spare copies signed ?	Yes
12. Are extra copies of the application with Annexures filed ?	Yes
(a) identical with the origninal ?	Yes
(b) Defective ?	—
(c) Wanting in Annxures Nos...../Pages Nos.. ..... ?	—
13. Have file size envelopes bearing full addresses, of the respondents been filed ?	No
14 Are the given addresses, the registered addresses ?	Yes
15 Do the names of the parties stated in the copies tally with those indicated in the application ?	Yes
16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ?	N.A
17. Are the facts of the case mentioned in item No. 6 of the application ?	
(a) Concise ?	Yes
(b) Under distinct heads ?	Yes
(c) Numbered consectively ?	Yes
(d) Typed in double space on one side of the paper ?	Yes
18. Have the particulars for interim order prayed for indicated with reasons ?	No
19. Whether all the remedies have been exhaused.	Yes

If approved, the case may be listed on

Submitted by
Liaison
31/5/20

ORDER SHEET

A3

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

.....O.A.....No.....719.....of 198 0.

.....Vs.....

Sl.No. of order	Date of order	ORDERS WITH SIGNATURE	Office Notes as to action (ifany) taken on order
	07.7.90	For orders see the order of the court on application.	
	11.7.90	Adj. No one appears for respondents. Counter may be filed by 30.9.90. Do	
	30.9.90	Adj. Sri Ashok Mohiley appears for respondents. Counter may be filed by 13.12.90. Do	
	3.11.90	[illegible]	
	24.1.89	No sitting adj to 20.3.89	

A4

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

.....NO. OA 719/88 .....OF 198

.....VS.....

SL NO of order	Date of order	ORDERS WITH SIGNATURE	Office Notes as to action (if any) taken on order
	30/6/89	DR Rejoinder filed today. List this case for final hearing before court on 25/8/89 as prayed by the parties. DR(J)	
	25.8.89	No Sitting Adj to 7.11.89 before DR(J) for fixing a date for hearing. Sd/-	
	7.11.89	DR On the request of the Parties Counsel, let this case be put-up before Court for hearing on 16.1.90 DR	
	16.1.90	The case is adj to 12-4-90 before DR(J) fixing a date for hearing. Sd/- Reg.	

AS TA 109/92 T.C

23.4.92

D.R.

Register the case as T.A.

This case has been received after transfer to this Bench from CAT. Alld.

Issue notice to the ld. counsel for both the parties.

Case is listed for hearing before the Hon. Bench on 10/7/92

A6

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

T.A. No. 107/92
(O.A. No. 719/1988)

Mangal Prasad — Applicant

versus

Union of India & others — Respondents.

Hon. Mr. Justice U.C.Srivastava, V.C.
Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant who has now retired, was working as Postal Assistant in Barabanki Division. The applicant was allotted government quarter located at Telephone Exchange Compound, Barabanki. His son Shri Someshwar Prasad was residing with him. He got appointment in the office of Superintendent Posts, Barabanki as Hindi Typist. In the year 1982 the applicant was transferred as S.P.M. Jahangirabad Raj P.O but no house rent was granted inlieu of rent free quarter. The son of the applicant continued to occupy the said quarter and the applicant was not asked to vacate the quarter. He was under the impression that the was permitted to occupy the same. In September, 1983 the quarter was allotted to one Shri R.B.Dubey. It appears that the allotment order was passed under some dispute. The applicant continued

A7

to occupy the quarter and ultimately the quarter was allotted to Shri R.B.Dubey but the applicant and his family continued to occupy the said quarter as he had been verbally assured by the Superintendent. The orders were passed to recover the penal rent from the applicant. Inthe meantime an enquiry was held against the applicant and he was punished for reduction in the time scale by 4 stages for 9 months. The panel rent also continued to be recovered from the applicant. Thus the applicant was awarded double punishment.

2. The respondents have stated that as the applicant was transferred to other place,he should have vacated the quarter. He did not vacate the quarter and obviously he was charged the panel rent. Once the penal rent was charged,there was no question of punishment for the same reason. Accordingly, so far as punishment for reducing the applicant to 4 stages is concerned, is quashed, however the order of recovery is maintained.

3. Application is disposed of as above. No order as to costs.

A.M. V.C.

Shakeel/- Lucknow: Dated: 22.10.92.

A8

Application u/s 19 of the Administrative Tribunal Act, 1985

Filed on 22-9-1988

Reg. No. 719 of 1988

Signature of the L.R.(s)

In the Central Administrative Tribunal, Allahabad

Between

Mangal Prasad ..... Applicant

Versus

(1) Sub. Post Barabanki
(2) D.P.S. Lucknow ..... Respondents

INDEX

Sl. No.	Annexure Series	Particulars Of Documents	Page No.
1	--	Application	2 to 6
2	A-1	Memo of Charges dt. 21-4-84	7 to 8
3	A-2	Inquiry Report dt. 16-4-87	9 to 19
4	A-3	Punishment Order Dt. 8-6-87	20 to 22
5	A-4	Appeal filed 28-7-87	23 to 30
6	A-5	Appellate Order dt. 20-11-87	31 to 33

(R.K. Pandi)
Advocate
154, Purushottam Nagar
Allahabad-16

Mangal Pd

A9

Filed today
Date of Admission
Noted for 6/7/88
Rwtewari
31/5/88

Details of Application

1- Particulars of the Applicant :—

(i) Name of the Applicant — [illegible] PRASAD

(ii) Father's Name — Shri Debi Prasad

(iii) Designation & Office in which employed — J.E. Jahangirabad Raj P.O. Distt. Barabanki

(iv) Office Address — - ditto -

(v) Address for service of all notices — Vill. Landwa, P.O. Jahangirabad Raj Dist. Barabanki

Central Administrative Tribunal Allahabad Bench Allahabad
Date 31.5.88
Date of Receipt by Post
Registrar

2- Particulars of the Respondents :—

(i) Name &/Or Designation — (1) Supdt, Posts Barabanki

(ii) Official Address — (2) DPS Lucknow

(iii) Address for service of all notices

3- Particulars of the order against which application is made :—

(i) Order No. — D-3/2/Allot./83-84 — RDI/App-78/87/13

(ii) Date — ~~17.8.83~~ 8-6-87 Ad Pr 26620 — 28-11-87 Ad Pr. 31533

(iii) Passed by — Supdt. Posts Barabanki — DPS Lucknow

(iv) Subject in brief — Recovery of Penal Rent @ 40% of Pay & Reduction in Time Scale by 4 steps for 9 months.

4- Jarisdiction of the Tribunal

The applicant declares that the subject matter of the order against which he wants redressal is within the Jurisdiction of the Tribunal.

5- Limitation

The applicant further declares that the application is within the limitation prescribed in section 21 of the Administrative Tribunal Act, 1985.

6- Facts of the case

The facts of the case are given below :-

Rwtewari

Mayal Pal

A10

(i) The applicant is a postal assistant in Barabanki postal Division. In 1972 he held the post of Sub Postmaster Barabanki Bazar Post Office. He was allotted a Govt. Quarter Type No. II No. 2 1/3 located in Telephone Exchange Compound, Barabanki. The applicant's son Shri Someshwar Prasad who was a student had been residing with the applicant (his father). In 1979 Shri Someshwar Prasad got employment in the Office of Supdt Posts Barabanki as a Hindi Typist and even then he (Shri Someshwar Prasad) continued to live with his father in the said Quarter.

In July 1982 the applicant was transferred to S.P.M. Sahargimbad Raj P.O. The applicant was also not granted any House Rent Allowance in lieu of Rent free Quarter (which was obligatory as per service condition of a S.P.M.). The allotment order of Quarter No. 2 1/3 in favour of the applicant was also not cancelled as such the applicant's family including Shri Someshwar Prasad continued to occupy it during the period from July 1982 to September 1983; during this period the applicant was neither asked to vacate the quarter nor did he do so under the clear impression that he had been permitted verbally by the then Supdt. Posts Barabanki to rest in the quarter and further because he was not being granted H.R.A. in lieu of rent free quarter he felt he was fully justified to retain the quarter.

However, in September 1983 the learned Supdt. (Resp. No.1) allotted the said quarter to one Shri R.D.Dubey vide his Memo. No.D-3/2/Allot/83-84 dt. 17-8-83. The then Supdt. Shri I.P.Sagar had also promissed the applicant's son Shri Someshwar Prasad who was working as stypist in his office to allot the said quarter to him but he could not do it because of the fact that there arose a dispute between Shri Sardar Ahmed Khan & Shri Sagar

Mangal Pal

Reviews.

A11

and ultimately the quarter was allotted to Shri R.P.Dubey vide Memo. dated 17-6-83 cited above. But the applicant continued to keep his family in the said Quarter as he had been verbally assured by the Supdt. (Resp. No.1).

(ii) In January the new Allottee Shri R.P.Dubey was also transferred ~~tem~~ out of Barabanki even then the Quarter in question was not allotted in favour of Applicant's son Shri Someshwar Pd. The learned Supdt. in the mean time directed the Postmaster Barabanki to recover penal rent @ 40 % of pay of the applicant from him. These orders were issued by the learned Supdt. vide his Memo. No.B-5/2/Allot. dated 6-11-83. The standard rent of the quarter is only Rs.41-70 and as per rule only double the standard Rent viz. Rs.83-40 was recoverable as penal rent from the applicant.

(iii) The applicant, however, vacated the quarter from 31-10-1984 but Shri Someshwar Prasad continued to occupy it and the learned Resp.No.1 continued to recover penal rent from the applicant. Notwithstanding these facts the applicant was served with a Memo. of charges dated 11-4-84 vide Annexure A-1 on pages 7 to 8. An enquiry Officer was appointed to Enquire into the Matter. He submitted his enquiry report on 16-4-87 vide Ann. A-2 on pages 9 to 19 holding the charge as proved and the learned Supdt. (Resp. No.1) agreeing with the Enquiring Officer awarded the applicant the punishment of reduction in the Pay Scale by 4 stages for 9 months. This was done vide Memo. No. B-3/2/Allot/83-84 dated 8-6-87 at Ann. A-3 on pages 20 to 22 issued by Resp. No.1. The applicant preferred an appeal against the said punishment order on 28-7-87 to the learned DPS Lucknow (Resp. No.2) vide copy at Ann. A-4 on Pages 23 to 30. The Resp. No.2 rejected the appeal vide his Memo. No.RDN/App-70/87/10

Mangal Dev

A12

dated 28-11-87 at pages 31 to 33 . Hence this application is submitted before this Hon'ble Tribunal.

(iv) The applicant has been awarded double punishment for one alleged offence. A penal rent @ 40 % of his Pay has been recovered from his Pay as also he has been reduced 4 steps in the Time Scale for 9 months. In the appeal too the applicant had pleaded against this excessive punishment but the learned Appellate authority has left this issue totally untouched in his Appellate order.

(v) The learned Resp. No.1 & 2 have both failed to consider and allow any latitude for the non availability of any residential quarter at Jehangirabad Raj P.O. as also the non-grant of H.R.A. in lieu of Rent Free Quarter admissible under Rules.

(vi) Shri Someshwar Prasad is an Independent Govt. Servant. He is also an employee directly under the control of Resp. No.1. As such it is never justified to hold the applicant responsible for his occupation of the quarter and also to realise the penal rent from the applicant instead of from Shri Someshwar Prasad for the period from 1-11-84 to 8-7-86 when the quarter had been in the exclusive possession of Shri Someshwar Prasad. It was perhaps simply because he was the applicant's son.

6. Reliefs Sought for :- The applicant prays for the grant of following Reliefs :-

(i) The impugned punishment orderdated8-6-87 Ann.A-5 & the Appellate Order dated 27-11-87 at Ann.A-3 may both be set aside and the penal rent realised from the applicant may be refunded to him.

(ii) He may be granted the cost of this suit along with any other Relief deemed fit by the Hon'ble Tribunal.

Mangal Pd

A13

8- Interim order, if prayed for— N I L

9- Details of the remedies exhausted

The applicant declares that he has availed of all the remedies available to him under relevant service rules— He preferred an appeal to the DPS Lucknow on 28-7-87 vide annexure A-4 on Page 23 which was rejected by him on 20-11-87 vide Ann. A-5 pp 31 & 32.

10- Matter not pending with any other court etc. :-

The applicant further declares that the matter regarding which this application has been made is not pending before any court of law, or any other authority or any other bench of the Tribunal.

11- Particulars of the Postal Order in respect of the application fee :-

(i) No. of I. P. O. 04/227497

(ii) Name of Issuing P. O. Allahabad H.P.O.

(iii) Date 4-5-88

(iv) P. O. at which payable Allahabad H. P. O.

12- Index- An Index of the documents to be relied upon is enclosed with each copy of this application

13- List of enclosures :-

(i) Vakalatnama

(ii) one I. P. O. for Rs. 50/-

(iii) Five documents to be relied upon

In Verification

I, Mangal Prasad S/O Shri Jobi Prasad aged 50 years R/O Vill. Mandwa P.O. J.B.Raj Garabandi and working as SPM J.B.Raj do hereby verify that the contents from 1 to 13 are true to my personal knowledge & belief and that I have not suppressed any material facts.

Place- Allahabad

Date 31/5/1988.

To

The Registrar, Central Adminstrative Tribunal,
Allahabad--211001

Mangal Pd.
Signature of applicant

R.K.Tewari
(R.K.Tewari)
Advocate
154, Purshottamnagar,
Allahabad-16

-7-

Annexure A1

A14

INDIAN POST AND TELEGRAPHS DEPARTMENT

Office of the Supdt. of Post Offices Barabanki Division Barabanki - 225001

Memo No D-3/2/Allot/83-84 Dated, at, Barabanki the 11-4-84

MEMORANDUM

The undersigned proposes to hold an enquiry against Sri Mangal Pd SPM J.B Raj BB under Rule 14 of the Central Civil Services(Classification controls and Appeal)Rules 1965. The substance of the imputations of misconduct or misbehaviour in r/o which the enquiry is proposed to be held is set out in the enclos statement of articles of charge (Annexure I). Statement of imputation of misconduct or misbehaviour in support of each articles of charge is enclosed(Annexure II). A list of documents by which, and a list of witnessess by whom the articles of charge are proposed to be sustained are also enclosed (Annexure III&IV).

2. Sri .....Mangal Pd..... is directed to submit a written statement of his defence within 10 days of the receipt of this memo and also to state whether he desires to be heared in person.

3. He is informed that an enquiry will be held only in r/o those articles of charge as are not admitted, He , should, therefore, specifically admit or deny each articles of the charge.

4. Sri ----Mangal Pd---- is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the enquiring authorities or otherwise fails or refuses to comply with the provisions of Rule 14 of the CCS (CCA) Rules 1965 or the orders/ directions issued in pursuance of the said Rules the enquiring authority may hold the enquiry against him exparate.

5. Attention of Sri ...Mangal Pd....is invited to Rule 20 of the Central Civil Services (Conduct) Rules 1964 under which no/Govt. servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in r/o of matters pertaining to his service under the Govt. If any representation is received on his behalf from another person in r/o any matter dealt within these proceedings , it will be presumed that Sri ...Mangal Pd..... is awar of such representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS(Conduct) Rules 1964.

6. Receipt of this memorendum may be acknowldge.

Defaulter 11-3-84

Supdt. Of Post Offices,
Barabanki Division,
Barabanki -225001

Copy to:

To,

..Mangal Prasad..
SPM. J.B Raj BBK

2. Enclosure Statement.

A15 (G)

Article No 1

Shri Mangal Pd SPM Barabanki Bazar was transferred as SPM J.B.Raj BBK vide this office memo No. B-2/ 55 dtd 22-5-82 and was relieved from Barabanki Bazar on 8-7-82 But he did not vacate the type B quarter of telephone exchange compound BBK alloted to him even after much persuation by this office. Thus the said Shri Mangal Pd failed to maintain absolute integrity and devotion to duty as muchas he acted in a manner unbecoming of a Govt. Servant and thereby he violated provisions of rule 3(1)(i) (ii) & (iii) of CCS (Conduct) rules 1964.

Supdt. of Post Offices
Barabanki Div.Barabanki 225001

Annexure II

Statement of imputations of misconduct and misbehavior against Shri Mangal Prasad SPM J.B.Raj BBK

--------xx--------

Shri Mangal Prasad While holding the SPM BBK Bazar was transferred and posted as SPM J.B.Raj BBK vide this office memo No B -2/55/ dtd 22-5-82 He was releeived from BBK Bazar and joined as SPM J.B.Raj.SO on 15-7-82 He was required to vacate the said quarter after expiry of two months of his date of relief i.e. on 8-9-82 therefore the said quarter was alloted to Shri R.B.Dubey APM BBK HO vide this office memo N - D-3/2/ Allot/ 83-84 dtd 17-8-83 Shri R.B.Dubey APM BBK HO vide his letter dtd 17-9-83 had intimated to this office that Shri Mangal Pd SPM J.B.Raj did not vacate the said quarter .The said Shri Mangal Pd was addressed vide this office letter of even no dtd 17-8-83 and 14-9-83 to vacate the quarter but he did not vacate the said so far.

Supdt. of Post Offices
Barabanki Div.Barabanki .225001

Annexure III

The documents relied upon

~~1- SPOs BBK Memo NO - D-3/2/Allot/83-84 dtd 17-8-83~~

1- 2- Letter of Shri R.B.Dubey APM BBK HO dtd 17-9-83

2- 3- SPOs BBK Memo NO- D-3/2/Allot/ 83-84 dtd 17-8-83

3- 4- SPOs BBK letter NO- D- 3/2/Allot/ 83-84 dtd 14-9-83

4- 5- P.M.BBK HO letter No- Corr / Miso 5/83-84 dtd 17-9-83

5- 6- Application of Shri Mangal Pd dtd 21-9-83

Supdt. of Posf Offices
Barabanki Div.Barabanki-225001

Annexure IV

List of witness

1- Shri R.B. Dubey APM BBK HO.

Supdt. of Post Offices
Barabanki Div.Barabanki-225001

TRUE COPY
(R. K. Tewari Adv.)

A16

Annexure A-2

ENQUIRY REPORT

The undersigned was appointed as Enquiry Officer to enquire into the charges framed against Shri Mangal Prasad the then SPM J.B. Raj PO (Barabanki) vide SPOs Barabanki Memo No.D-3/2/Allot/84-85 dated 14.2.85.

The said Shri Mangal Prasad was served with a charge sheet under Rule 14 of CCS(CCA)Rules 1965 vide SPOs Barabanki Memo No.D-3/2/Allot/83-84 dated 11.4.84 The charges alleged in the aforesaid charge sheet were as under:-

Acrticle I

Shri Mangal Prasad SPM Barabanki Bazar was transferred asSPM JB Raj ,Barabanki vide SPOs Barabanki Memo No.B-2/55 dated 22.5.82 and was relieved from Barabanki Bazar on 8.7.82, but he did not vacate the type B quarter of telephone exchange compound Barbanki allotted to him even after made much persuation by SPOs Office. Thus the said Shri Mangal Prasad failed to maintain absolute integrity and devotion to duty as much as he actedin a manner unbecoming of a Govt. servant and thereby he violated provisions of Rule 3(1) (i) ,(ii) and (iii) of CCS(Conduct)Rules, 1964.

The disciplinary authority after appointing the undersigned as E.O. and Shri Babu Lal the then SDI(P) Barabanki asP.O. in the case reported that the charge sheet under reference was receipted by the SPS.The copy of representation dated 30.4.84 sent by SPS in reply to the charge sheet was also sent. As per the said representation , the SPS while denying the charges also pointed out that charge sheet was issued without jurisdiction as for non maintenance of integrity. There should be dishonest motive or act of dishonest and for non devotion to duty there must be some act which may show that work was not done faithfully.

The SPS firstly providedShriDinesh Chandra Misra Acctt. Barabanki DO as his defence Asstt. but after preliminary hearing he changed his defence Asstt. and provided Shri Ram Nohore Lal Retd. Postmaster

Rwfa

Gorakhpur residing in Faizabad as his defence Asstt.

The preliminary hearing was held on 6.9.85. The charges on being readover were denied by the SPS. The listed documents were inspected on 14.10.85. On 30.1.86 the SPS indicated clear references of added documents and named the defence witnesses. on 17.4.87 the PO filed the listed documents admitting all except letter dated17.9.83 of Shri R.B. Dubey. The deposition only PW Shri R.B. Dubey was recorded in which he admitted his letter dated 17.9.83 filing it as Ex P-1. No proceedings were held on 14.7.86 considering application of defence Asstt. for his inability to provide his Defence Asstt. in course of enquiry held on that day. On 30.7.86 P.O. did not attend enquiry but after getting defence statement of SPS and sending its copy to PO defence witnesses were examined in absence of P.O. On 12.9.86 the PO again did not attend and proceedings could not go ahead. On 14.11.86, Examination/cross examination all DWs were completed in presence of SPS, his D.A and P.O and addl. documents were filed, except S. Book of Shri Someshwar Prasad which were seen by both side and agreed not to be retained in enquiry. The case on behalf of SPS was closed. The PO submitted his written brief with copy to SPS dated 16.11.86.The SPS submitted his written brief dated 26.12.86 through his D.A.

1. Documentary evidence filed

(i) On behalf of disciplinary authority :

(a) Ex-P-1: This is letter dated 17.9.83 of Shri Ram Balak Dubey written to P.M. Barabanki pointing out allotment of quarter, to him in which SPS was residing and asking for to togive him possession. Though the SPS didnot admit it but ShriR.B. Dubey writer and PO admitted it in his deposition filing it as EX-P-1.

Reviewer

A18

11

(b) EX-P-2: This is memo no.D-3/2/Allot/83-84 dated 17.8.83 issued by SPOs Barabanki indicating there in transfer of SPS Memo Barabanki to J.B.Raj, cancelling the allotment in favour of SPS with immediate effect and making order to allot the said quarter to Shri R.B. Dubey PW. With direction toSPS tovacate the quarter and to give its possession to ShriR.B. Dubey PW within a week positively failing which actual rent would be recovered from him. It was also called upon him to explain reason of retaining the quarter after his transfer beyond permissible limit of two months and with further direction to Shri R.B. Dubey PW to take possession of quarter fromSPS and to intimate the date of possession. The copy was also endorsed to P.M. Barabanki. This Ex P-2 was admitted by SPS in course of inspection of document on 11.4.86 and it is filed through deposition of Shri R.B. Dubey.

(C) EX-P-3: This is letter no.D-3/2/Allot/83-84 dated 14.9.83 issued by SPOs Barabanki to Shri Mangal Prasad SPS asking him to vacate the quarter and hand over to ShriR.B. Dubey PW within 3 days positively failing which penal rent would be recovered from him without any intimation. This wasadmitted by SPS in course of inspection of documents on 11.4.86 and filed through deposition of Shri R.B. Dubey. P.W.

(d) EX-P-4: This isletter no.Corr/Misc/83-84 dated 17.9.83 from PM Barabanki to SPOs Barabanmi reporting that ShriR.B. Dubey PW informedof not getting possession of allotment of quarter from the SPS and he sent an application for takingaction toget the possession. The clarifcation also sought for to recover penal rent from SPS. This is filed throughdeposition of Shri R.B. Dubey PW and admitted by SPS too in course of inspection of documents dated 11.4.86.

(e) EX-P-5: This is letter dated 1.9.83 of SPS addressed to SPOs Barabanki in reply toSPOs Barabanki letter no.D-312/Allot/83-84 dated 14.9.83(EX-P-3) .

R.B. Dubey

12 A19

In this the SPS pointed out that he was working as SPS through Jahangirabad Raj w.e.f. 15.7.82 where there was no quarter provided to SPM and despite efforts he could not get any quarter available there. In — convenience tovacate the quarter was put forth due to children education. It was further pointed out that SPS was not getting HRA and promised to vacate the quarter on getting arrangement. He requested to allow to live in the quarter in such circumstance.

It is filed through the deposition of Shri R.B. Dubey PW as also admitted by the SPS in course of inspection dated 11.4.86.

(ii) On behalf of SPS:

(a) EX-D-1: This is a signed copy of application dated 1.11.84 of SPS addressed to Shri D.D Joshi Estate officer APMG Lucknow and copy endorsed to SPOs and P.M. Barabanki intimating that SPS had ~~provided~~ promised to vacate quarter in Nov and it was vacated on 31.10.84 after noon. This is filed through the deposition of Shri Satish Kumar Verma PA Barabanki DO, DW with an addition that on receipt of EX-D-1 in Supdt. of post Office Barbanki, P.M. Barabanki was asked to intimate if quarter was vacated by SPS and as remembered to him P.M. Barabanki reported that quarter was not vacated by SPS and intimated that Shri Someshwar D.A Barabanki was residing therein who was subsequently asked to vacate the quarter but he replied that it was vacated by his father and requested for allotment to him.

(6) EX-D(2:- This is an application dated 18.9.84 of Shri Someshwar Prasad PA Barabanki HO applied for allotment of quarter to him. It is admitted and filed through deposition of Shri Satish Kumar Verma D.W.

7. EX-D-3: This is application dated 22.6.83 of ShriR.B. Dubey PW applying for allotment of quarter to him. It is admitted and filed through the deposition ofShri Satish Kumar Verma P.W.

Rishwas

2. Oral evidence produced in course of enquiry.

(1) On behalf of disciplinary authority.

(a) Shri R.B. Dubey: P.W.: In his deposition dated 11.4.86 he admitted allotment of quarter to him against EX P-2 . He went to take possession of the quarter but could not get possession as family members of SPS were living therein. He also deposed that he wrote to PM Barabanki through EXP-1 for causing possession of quarte PM Barabanki verbally asked him to ascertain from SPOs Barabanki. He ~~thought~~ though made effort to contact SPS for taking possession but he could not be available to him . He contacted Shri Someshwar Prasad D.W the son of SPS in this regard but he directed him to contact his father.

On cross examination by SPS this witness deposed that notification to apply for allotment of quarters was issued as a result of transfer of S/S Shardar Ahmed DW and SPS outside Barabanki who were in occupation of Deptt. quarter and on the day of notification the quarter occupied by SPS was not vacated. The quarter was not vacant even at the time when he applied for allotment, was made to him. When he could not get possession of quarter, he also wrote to SPOs Barabanki but date of letter was not known to him . He admitted to be acquainted with Shri Someshwar Prasad PA Barabanki HO also knowing him as son of the SPS and he was residing in the quarter with his father (SPS) .Lateron he too was transferred to Hathanda and remained at Barabanki only upto March 84. He deposed in examination of the E.O. that he personally ensured on spot that quarter allotted to him was not vacant and family members of SPS were residing in it. Since he too was subsequently transferred outside , he did not make ~~over~~ efforts thereafter.

(ii) On behalf of SPS

(a) Shri Satish Chandra Verma D.W: In his deposition dated 1 4.11.86 , he deposed that he was working on the seat of building branch inDO Barabanki w,e.f. Sept. 84. He confirmed EX-D-1 to EX-D 3 in his depositio but added that even after receipt ofEX-D-1 it was ascertained from PM Barabanki that quarter was not vacated bySPS and his son Shri Someshwar Prasad a Postal Asstt. was residing therein who too was asked for to vacate it but he replied that quarter though was vacated by his father but he requested for its allotment 4o him but no allotment was made to him even after receipt of EX-D-2 . He again added that at the time of receipt of EX-D-2 no applications were called for allotment of quarter. As per his knowledge Shri Someshwar Prasad DW was recently ask d to refund HRA from 1982. On cross examination by PO this witness deposed that while sending EX-D-1 the SPS did not handover key of the quarter to his office nor indicated anything about key on his son's continuance in the said quarter. From EX-D-1 it could not be presumed if quarte -er was vacated. At the time of receipt ofEX-D 1 the allotment to SPS was not cancelled and as such it was not reallotted to anybody else was not arising at that time. On reexamination by SPS he deposed that nobody was directed by his office to take key of the quarter.

(b) Shri Sardar Ahmed Khan DW: In his deposition dated 30.7.86 and 14.11.86 , he deposed that he was occupant of quarter no. 28A since 1972 and SPS was also living in the same campus in a quarter since about 2 or 3 months before his occupation. At the time of occupation by SPS his son Shri Someshwar Prasad was a student and subsequently was appointed as Postal Asstt. and even then he was continuing living with the SPS. Further when SPS was transferrred from Barbanki in June and July 82 Shri Someshwar Prasad continued with his family in the said quarter.

15

A22

He admitted to be apprised of intimation given by SPS to Estate Officer for vacantion of quarter in Oct. 84 and recovery of 40% Penal rent from SPS against standard rent of the quarter as Rs. 41.70.

On cross examination by PO this witness deposed that the SPS vacated the quarter in Oct. 84 but his son Shri Someshwar Prasad was living therein even after that. He could know about vacation of quarter by SPS as his verbal intimation by the SPS. His son was living in the quarter in capacity of family members of SPS.

On re-examination by SPS, he deposed that when SPS vacated the quarter his son Shri Someshawar Prasad was posted employee and the SPS took away all his baggage from the quarter.

(C) Shri S.B. Singh D.W:- This witness in his deposition dated 30.7.86 in capacity of Acctt. Barabanki HO confirmed from service book of Shri Someshar Prasad DW thathis father is Shri Mangal Prasad SPS and Shri Someshwar Prasad was appointed as Postal Asstt. from 9.10.79. He worked as Hindi typist in D.O. Barbanki from 2.2.80 and is continuing as at Barabanki HO and TSOs from 9.4.84. He also confirmed that no rent since quarter is provided at J.B.Raj P.O.

(d) Shri Someshwar Prasad DW: He in his deposition dated 30.7.86 and 14.11.86 deposed that he was living with SPS in the quarter in capacity of his son since 1972 and after transferred ofSPS he and his wife continued living in the quarter. At that time he was typist in D.O. Barabanki. In this connection he verbally requested the that SPOs Barabanki for allotment to him who verbally told him to continue living therein. He applied for allotment but despite provision quarter was not allotted to him and it was allotted to Shri R.B. Dubey P.W. . His father intimated vacation of quarter toSPOs Barabanki in Oct. 84, but no body came for taking possession of the quarter. ShriR.B.Dubey

Rw

too was afterward transferred from Barabanki and quarter was not allotted to anyone, thereafter and he continued to live in it. Since quarter was not allotted to him he vacated it on 18.7.86 and Shri Bhagwati Saran Driver of SPOs Barabanki occupied the quarter. Recovery @ 40% was being made from SPS even he vacated the quarter but no recovery of rent was made from him.

On cross examination by PO this witness deposed that prior to vacation of quarter bySPS he was living in it as his son and afterward as postal Asstt. though he did not received any order to that effect fromSPOs Barabanki when SPS vacated the quarter it was not locked and he continuedliving in it. He informed in writing to SPOs that he was living in the quarter after vacation bySPS as ing for recovery admissible rent and would vacate it on its allotment to anybody else.. On reexamination by S S he deposed that he had also applied for allotment and therefore wrote letter but no reply was given by SPOs.

On examination byEO he deposed that he did not pay any rent for the period of hisoccupation as P.A. nor it was recovered from his pay thoough intimation was sent toSPOs. He did not persued by any reminder. He was linging in quarter alongwith his wife and son only.

3.Shri Mangal Prasad S.P.S. : On examination by EO he deposed that he was relieved from Barabanki on 8.7.82 and joined at J.B.Raj PO on 15.7.82 but he was retaining the quarter at Barabanki where his family members were living. He retained the quarter for his family upto 31.10.84 though he had knowledge of the rules for retaining quarter upto two monthsonlyafter transfer. He verbally told the SPOs Barabanki to allow him to retain the quarter and SPOs verbally allowed him tox retain the quarter being no accommodation at

J.B.Raj for family and S.Os verbally allowed him to retain it for the time being. Hiw written intimation to S.Os dated 21.9.83. was not replied and he vacated the quarter by ~~xxx~~ shifting his family on 31.10.84 ~~living~~ his son and his son's wife there.

4. Evaluation of evidences.

The oral and documentary evidences as discussed above read with written brief of P.O and written brief of SPS together with his defence statement dated 30.7.86 following points:

(1) SPS while occupation of Govt. quarter at Barabanki was transferred from Barabanki to J.BRaj an outside place dated 22.5.82 when he joined on 15.7.82.

(2) He retained the quarter at Barabanki for his family members upto 31.10.84 and further shifted his family leaving his employed sonand his family to live in the said quarter even beyond 31.10.84 upto 8.7.86.

(3) The allotment was cancelled infavour of of the SPS and made to ShriR.B.Dubey only on 17.8.83 (EX-P-2) and then the case was pressed for vacation bySPS who did not vacate it earlier at his own accord and further did not vacated it even after memo to cancell the allotment by alloting the quarter to other person and notice to him dated 14.9.83(ExP-3)

(4) The SPS pointed out that circumstances to non vacation only after notice to him dated14.9.83 an not prior to that. His plea of taking verbal permission to continue his family prior to that period is not corroborated by any documentary evidence as also no reference isgiven of such verbal permission in subsequent correspondence made by SPS in his letter dated 21.9.83 (EX-P-5). Therefaore it is not relied upon.

Referred

(5) Thestand of the SPS in his written brief read with his defence statement dated 30.7.86 to the extent that no house rent was given to him in lieu of rent xx free accommodation at J.B. Raj and there had been recovery of penal rent for period of unauthorised occupation from SPS, no action forrevising thealletment after transfer of SPS for about a year and further no action to revise the allotment after tranafer of subsequent allottee Shri R.B. Dubey is established. No evidence of any action of consealment ofSPS to save himself to give rent or to claim house rent allowance by virtue of his post could be produced in course of xxx enquiry to estblish the alleged failure to maintain absolute integrity. However, it wasputforth that the SPS retained the quarter even after his transfer due to his problems of non getting suitable accommodation for his family at new station and further his son and his son's family were not required to accompany him on account of employment at Barabanki who did not manage their own setup while living with the SPS, after getting employment. This goes to show that there had been action of the SPS to retain the quarter with that view only.

(6) As deposed by SPS himself he was xxx apprise of the provisions of vacating the quarter on transferwithin the maximum period of two months, but he did not follow the said provisions. He further did not vacate the quarter when taken up by the SPOs Barabanki and even after informing the Estate Officer the date of vacation he vacated it seperating his own family and not fully vacating it giving clear vacant possession of the quarter to the Govt. resulting in his son and his son's family's continuance therein upto 8.7.86.

Findings

The charge stands proved to the extent that despite SPOs Barabanki order intimating him to vacate the quarter the SPS retained the quarter in question beyond permissible limit to retain it after transfer upto 31.10.84 for his family and thereafter upto 8.7.86 for his son and his

son's family.

(R.D. Lal) E.O.
A.S.P.Os (Vig.I)
O/O P.M.G.U.P. Circle.

Dated 16-4-87.

The following dodumenets forming part of inquiry case are also enclosed herewith.

1. Folder containing charge sheet, defence stt. appointment of EO, P.O. difence nominee and applications for addl. documents.

2. Folder containing minutes of enquiry proceedings.

3. Folder containing deposition of PWs and DWs together with stt. of SPS on examination by EO.

4. Folder containing exhibits EXP-1 to EX-P 5 and EX D-1 to EX D-3 .

5. Folders containing stt. of defence of SPS and written brief of PO and SPS.

6. Folder containing correspondence.

(R.D. Lal)
E.O. & APS(VIG) I
O/O P.M.G.U.P.

TRUE COPY
R. K. Tiwari Advo.

Annexure (A-3)

A27

DEPARTMENT OF POSTS
GOVERNMENT OF INDIA

OFFICE OF THE SUPDT. OF POST OFFICES, BARABANKI DIVISION

Memo No:- D-3/2/Allot /84-85 dtd. at BBK, the, 8.6.87

Shri Mangal Pradad SPM J.B.Raj Barabanki was served with a charge sheet u/r 14 of CCS(CCA) Rules 1965 vide this office memo No. D-3/2/Allot/83-84 dt. 11-4-84 regarding unauthorised occupation of Govt. quarter alloted to him. The article of charge levelled against him is produced below :-

ANNEXURE - I

" Shri Mangal Prasad SPM Barabanki Bazar was transferred as SPM J.B.Raj BBK vide this office memo No.B-2/55 dtd 22-5-82 and was relieved from Barabanki Bazar on 8-7-82 but he did not vacate the type B quarter of Telephone Exchange compound, BBK alloted to him aven after much persuation by this office. Thus the said Shri Mangal Pd failed to maintain absolute integrity and devotion to duty as much as he acted in a manner unbecoming of a Govt. Servant and thereby he violated provisions of rule 3(1)(i) (ii)&(iii) of CCS(Conduct) Rules 1964."

ANNEXURE -II

" Shri Mangal Prasad while holding the SPM BBK Bazar was transferred and posted as SPM J.B.Raj BBK vide this office memo No.B-2/55 dt. 22-5-82. He was relieved from BBK Bazar and joined as SPM J.B.Raj SO on 15-7-82. He was required to vacate the said quarter after expiry of two months of his date of relief i.e., on 8-9-82, therefore the said quarter was alloted to Shri R.B.Dubey APM BBK HO vide this office memo No.D-3/2/Allot/83-84 dtd. 17-8-83. Shri R.B.Dubey APM BBK HO vide his letter dtd. 17-9-83 had intimated to this office that Shri Mangal Pd SPM J.B.Raj did not vacate the said quarter. The said Shri Mangal Pd was addressed vide this office letter of even no dtd. 17-8-83 and 14-9-83 to vacate the quarter but he did not vacate the said so far."

The said Shri Mangal Prasad submitted his representation dtd. 30-4-84 to this office denying all the charges framed ~~on him~~ against.

Shri R.S.Gupta ASP(PMI) o/o PMG UP Circle was appointed as Enquiry Officer to enquire into the charges & Shri Babulal, the then SDI(North) BBK as Presenting Officer vide this office memo No. D-3/2/Allot/83-84 dtd. 10-7-84. Later on, in pursuance of PMG UP Lucknow No. Vig/M-6-70/83/7 dt. 29-1-85, Shri R.D.Lal ASP(Vig I) O/O PMG UP Lucknow was appointed as E.O. vide this office Memo No. even dtd. 14-2-85.

The Enquiry Officer, Shri R.D.Lal, ASP Vig.I, O/O PMG UP Lucknow submitted his enquiry report vide his No. Enqy-3/85 dt. 16-4-87. In his

(.....2)

enquiry report the E.O., Shri R.D.Lal has concluded that the charges stand proved to the extent that despite SPOs Barabanki order requiring him to vacate the quarter the charged official retained the quarter in question beyond permissible limit, to retain the same, after transfer upto 31.10.84 for his family and thereafter upto 8.7.86 for his son and his (son's) family.

The U/S went through the Enquiry Report, exhibits and other connected documents and is convinced that despite asking by the competent authority vide his No. D-3/2/Allot/83-84 dtd.17.8.83 (Ex-2) and D-3/2/Allot/83-84 dt. 14.9.83(Ex-3). Moreover the charged official, during the course of enquiry, has stated that he transferred the quarter in question to his son Shri Someshwar Pd on 31.10.84. Shri Someshwar Pd, Postal Assistant, in his deposition as D.W., has disclosed that he received the possession of the quarter in question from his father Shri Mangal Pd(the charged official) Exhibit D-1 also confirms the above fact. It is proved and undisputed that the transfer of the quarter Shri Someshwar Pd is a P.A. and son of the charged official. It is further proved that his son Shri Someshwar Pd P.A. continued to occupy the quarter upto 8.7.86 in unauthorised manner. Thus it is proved beyond doubt that the charged official unauthorizedly retained the quarter upto 8.7.86. This issue is brushed aside in this case as the memo of charges is dated 11.4.84. As such I confine my findings upto the date when charge sheet was issued to the official.

The charged officila in compliance with transfer order assumed charge as SPM J.B.Raj on 15.7.82 on relief from Barabanki Bazar P.O. on 8.7.82. Thus it is proved from the above that the charged official after assumption of charges retained the quarter in his occupation unauthorisedly ignoring the directions from competent authority to vacate the quarter.

The charged official ~~official~~, a ~~Govt.~~ Central Govt. employee did not, therefore, conduct in a manner as required of him vide provision of Rules 3(1)(i)(ii)(iii) viz, failure of maintenance of absolute integrity and devotion to duty, and exhibition of such a conduct unbecoming a Govt. servant.

Thus the charges are proved beyond shadow of doubt and I agree fully with the findings of the E.O.

The official is sufficiently senior and his date of retirement is 31.1.89. As such taking a very lenient view, I.A.A.Siddiqui, Supdt. of Post Offices, Barabanki Dn., Barabanki, therefore, order that the pay of the Official Shri Mangal Pd be reduced by 4 (four) steps from Rs.1560/- to 1400/- in the scale of Rs. 1400-40-1800-EB-50-2300 for a period of 9(Nine) months from 1.7.87. It is further ordered that Shri Mangal Pd will not earn increments of pay during the period of

(.....3)

A29

22

-3-

reduction and reduction will not have the effect of postponing his future increments of pay. A copy of Enquiry report dt.16.4.87 is enclosed h/w.

Supdt.of Post Office,
Barabanki Dn., Barabanki-
225001.

copy to:-
1- Shri Mangal Prasad, Ex. SPM Masauli, BBK.
2- Postmaster Barabanki.
3- C.R of the official.
4- M/S of the official.
5- The vigilance Statement file.
6- Punishment Register.
7- The D.A.P Lucknow.
8-10.o/c & spare.

...

TRUE COPY
(R. K. Tewari Advo.)

23

Annexure A-4

A30

To,

The Director Postal Services,
Lucknow Region, Lucknow.

Sub :- Appeal against the order of the Supdt. Post Offices, Barabanki imposing the penality of reduction of pay from 1560/- to 1400/- in the time scale of 1400 to 2300 vide order No. D-3/2/84-85 dated 8.6.87 received on 10.6.87 on Mangal Prasad sub-Postmaster Masauli. (Copy enclosed as Annexure 'A').

Sir,

The above named appellant begs to submit as under :-

1. Facts of the case in brief are that the appellant was allotted quarter No. 2A/3 Type II in Telephone Exchange compound, Barabanki in the year 1972. Shri Someshwar Prasad son of appellant who was then student was residing with the appellant. In the year 1975 he was selected for appointment in department and was working as typist in the office of Supdt. Post Offices, Barabanki.

2. That the appellant was transferred as Sub-Postmaster Jahangirabad Raj and he joined there in July 82. No residential quarter was provided there to the Sub-Postmaster. The appellant was also not granted house rent allowance in lieu of rent free quarter. The allotment order was also not cancelled and the appellant as well as Someshwar Prasad continued to live in the said quarter.

Re Sewere

A31

3. That during the period July 82 to Sept. 83 neither the applicant was called upon to vacate the quarter nor allotment in favour of the appellant was cancelled.

4. That after lapse of about a year the Supdt. Post Offices Barabanki allotted the quarter to one Shri R.B. Dubey A.P.O. Barabanki even though neither quarter was vacant nor allotment was cancelled vide No. D-3/2/allot/83-84 dated 17.8.83.

5. That the then Supdt. Post Offices Shri I.P. Sagar promissed to Shri Sureshwar Prasad to make allotment in his favour on the transfer of the appellant but due to party politics he did not issue allotment order for the reasons that the dispute arose between Shri Sardar Ahmed Khan and Shri I.P. Sagar and said Sardar Ahmed was and is very close to the appellant.

6. That Shri R.B. Dubey to whom the quarter was allotted was also transferred in Jan. 84 to Mathaunda sub office out side Barabanki and he was not in need of said quarter.

7. That inspite of the above facts the Supdt. Post Offices Barabanki did not allot the quarter to the son of the applicant. Instead an illegally issued order vide No. D-3/2/Allot dated 8.11.83 to A.P.O. Barabanki to recover rent at the rate of 40% of the pay knowing it fully well that the standard rent of ~~such~~ said quarter was fixed at

R.K. Sewer

 25 A32

rate of [illegible] 41.70 and only double of the standard rent could be recovered as penal rent. The Supdt. was apprised of provisions contained in Govt. of India order no.1a sub para II below [illegible] F.R. 45-A and D.G's. order vide no. 42-104/77-78 dated 6.2.78 laying down that in the case of buildings the standard rent of which has been fixed, the penal rent should be double of the standard rent but he did not considered and over riding the provisions of aforesaid rules continued to recover rent at the rate of 40% till 8.7.86 when the son of the appellant vacated the quarter.

8. That the appellant was also denied the house rent allowance in lieu of rent free quarter while he worked as Sub-Postmaster Jahangirabad Raj.

9. That the Supdt. Post Offices Barabanki also recovered the house rent allowance paid to the son of the applicant while he was residing in this quarter.

10. That the Supdt. of Post Offices initiated a disciplinary proceedings under rule 14 of C.C.S. (C.C.A.) rules 1965 vide memo no. D-3/2/Allot/84-85 dated and Shri N.D. Lal A.S.P. vigilance was appointed Enquiry Officer. Copy of the charge-sheet is attached as an exam 'B'.

11. That the appellant submitted his written statement of defence and brief showing that the

Rufun

A33

charge sheet was issued malafide with motive to harass the appellant and that charges are not based on any evidence. The copy of the same is attached as Annexures 'C' and 'D'.

12. That the Enquiry Officer submitted his report on 10.4.87 with following findings :-

"The charges stands proved to the extent that despite S.Post Order intimating him to vacate the quarter the S.P.S. retained the quarter in question beyond permissible limit to retain it after transfer to 30.10.84 for his family and thereafter upto 8.7.86 for his self and his sons' family." There was no finding that the appellant did not maintain integrity and devotion to duty or did an act which is unbecoming of the Govt. Servants.

13. That the Supdt. of Post offices Barabanki imposed the penality with following findings :-

"The charge official a Central Govt. employee did not therefore conduct in a manner required of him vide provisions of rule 3 (1) (i) (ii) and (iii) viz. failure of maintenance of absolute integrity and devotion to duty and exhibition of such conduct unbecoming of Govt. Servants. The appeal is therefore submitted on the following grounds :-

27

A34

GROUNDS OF APPEAL :-

1. Because the finding of the Supdt. Post Offices Barabanki is based on no evidence and is perverse and no reasonable person will arrive at such finding.

The submission of the appellant is that the charge against him was non maintenance of absolute integrity and devotion to duty. Integrity means honesty while devotion to duty means faithful discharge of duties assigned to the appellant. The Supdt. Post Offices did not mention any evidence when the appellant was found dishonest in discharge of his duty and when any lecunna was noticed in performance of his duty. Non vacation of the quarter for the reasons that allotment order was not cancelled, that residential quarter was not provided at Jahangirabad Raj where no allowance was also paid in lieu of rent free quarter and when the son of the appellant was residing there and he was also postal employee will neither amount dishonesty nor unfaithful discharge of duty. The Supdt. of Post Offices, Barabanki also did not call the appellant to vacate quarter after his transfer for more than a year and it was ~~[illegible]~~ explicitly taken that this quarter was allotted to the son of the appellant and the appellant was also allowed to occupy the quarter as no residential accomodation was provided at Jahangirabad Raj. It may also be submitted that after transfer of Shri R.S. Dubey in Jan. 84 the quarter

A35

was not allotted to any one else which empliedly means that occupation of the quarter was regularise by the Supdt. of Post Offices. On 31.10.84 the appellant shifted his family to Jahangirabad Raj and thereafter the son of the appellant was occupying the ~~xxxxx~~ quarter, he was never asked to vacate the quarter to enable the Supdt. to allot it to any one else. It empliedly means that the occupation of the quarter by Shri ~~xxxxx~~ Sumsher Prasad was not objected and considered to be regularised. Non vacation of the quarter in the above circumstances will neither means any dishonest act on the part of the appellant or unfaithfull discharge of his duties. The records of appellant will show that he has always been faithful to his duties and complied with the orders given to him in discharge of his duties. The non vacation may amount to disobedience of order of the Supdt. Post Offices but the circumstances submitted by the appellant will show that the quarter could not be vacated for the reasons that no accomodation was available at Jahangirabad Raj for keeping family and that in fact it was not allotted to any one for about one year and thereafter the official to whom it was allotted was also transferred. In theabove circumstances even non vacation will not amount to disobedience of order. Every omission will not amount to negligence or disobedience of order. The circumstances are to be ~~x~~ visualised to find out the circumstances in which disomission took place.

A36

The Supdt. Post Offices Barabanki failed to mention how non vacation of the quarter amounts to an act of dishonesty unfaithful discharge of the duty. No evidence of any act of dishonesty unfaithful discharge has been referred in the findings. The finding is based on conjectures and surmises, and is therefore perverse.

2. Because the departmental proceedings was initiated malafide with motive to cause harrassment to the appellant.

The submission of the appellant is that it is admitted fact that after transfer of the appellant the Supdt. of Post Offices did not asked the appellant to vacate quarter during the period July 82 to Sept. 83 and ~~[illegible]~~ impliedly means that occupation of the quarter by the appellant for keeping his family and living of the son who is postal employee was considered to be legal and not against rules. No action was taken against the appellant for non vacation of the quarter nor the quarter was allotted to any one else. It is only when Shri Sardar Ahmad Khan the then A.P.M. Barabanki raised agitation against the work and conduct of Shri I.P. Sagar, the then Supdt. and as said Shri Sardar Ahmad Khan was closed to the appellant, the quarter was allotted to Shri R.B. Dubey. Before allotment of quarter the Supdt. Barabanki, Shri I.P. Sagar never asked the appellant to vacate the quarter. Even he promised to the son of the appellant who was typist in

his office that he should continue to live in the quarter and same would be allotted to him. The future action of the Supdt. clearly proves his malafide intention and bias which disqualified him from functioning as disciplinary authority. The said Supdt. ordered recovery of rent at the rate of 40% in respect of building for which standard rent was fixed and this order was incontravention of fundamental rules 45-A Govt. of India instruction no. 16 sub-Para 1. Even this order was not modified when above provisions were brought to his knowledge and this proves his hostilety against the appellant. The Supreme court has held in case reported in A.I.R. S.C. 1965 at page 1303 that any authority who is hostile to a party cannot take action against him. The extract is attached as Annexure 'D'. Thus the disciplinary proceedings including punishment order are illegal and without jurisdiction.

3. Because the punishment imposed on the appellant is severe. It is submissionof the appellant that neither he was found dishonest in discharge of duty nor he was found guilty of non devotion to duty nor any such fact has been mentioned in the finding. When his honesty and devotion to duty was guad to him is not proved the punishment for simple reason that the appellant did not vacate the quarter will not justify the punishment imposed on the appellant. Thus the order is liable to be quashed.

The appellant therefore, prays that the impugned order vide Annexure '1' be quashed.

28-7-87

Yours faithfully,

TRUE COPY
(R. K. Tewari's Advo.)

Annexure A-5

A38

भारतीय डाक विभाग

कार्यालय निदेशक डाक सेवायें, लखनऊ क्षेत्रल, लखनऊ-226007

ज्ञापन सं0:-आरडीएल/अपील-70/87/13 दिनांक 28.11.87

यह मामला श्री मंगल प्रसाद, उपडाकपाल महोली (बाराबंकी) द्वारा अधीक्षक डाकघर, बाराबंकी मण्डल द्वारा उनके विरुद्ध केन्द्रीय सिविल सेवा (वर्गीकरण, नियन्त्रण एवं अपील) नियमावली-1965 के नियम-14 के अन्तर्गत कृत अनुशासनिक कार्यवाही में ज्ञापन संख्या डी-3/2/अलाटमेंट/84-85 दिनांक 8.6.87 द्वारा पारित दण्डादेश जो उक्त कर्मचारी का वेतन 1400-2300 के वेतन मान में नौ माह के लिये 1580/= रु0 प्रतिमाह से घटाकर 1400/= प्रतिमाह किये जानें का आदेश देता है, के विरुद्ध प्रस्तुत की गई याचिका दिनांक 20.7.87 से सम्बन्धित है।

2. (क) अपीलार्थी के विरुद्ध अधीक्षक डाकघर, बाराबंकी के ज्ञापन संख्या डी-3/2/अलाटमेंट/83-88 दिनांक 11.4.84 द्वारा निम्नलिखित आरोप लगाये गये थे -

"यह कि अपीलार्थी का स्थानान्तरण उपडाकपाल बाराबंकी बाजार के पद से, उपडाकपाल जहांगीराबाद राज के पद पर ज्ञापन संख्या बी-2/55 दिनांक 22.5.82 द्वारा किया गया और अपीलार्थी 8.7.82 को अपनें नये पद का भार ग्रहण करनें हेतु कार्यमुक्त हो गया परन्तु उसनें टेलीफोन एक्सचेंज परिसर में उसे आवाटित टाइप-II भवन खाली नहीं किया। इस प्रकार अपीलार्थी नें सत्यनिष्ठा एवं कर्तव्यपरायणता का परिचय न देकर एक राजसेवक के प्रतिकूल आचरण करके केन्द्रीय सिविल सेवा (आचरण) नियमावली 1964 के नियम-3 (1)(ii) (iii) एवं (iii) का उल्लंघन किया"।

(ख) उक्त आरोप-पत्र अपीलार्थी को दिनांक 17.4.84 को हस्तगत हुआ और दिनांक 30.4.84 को उसनें आरोप अस्वीकार करते हुए अपना बचाव प्रतिवेदन प्रस्तुत किया। फलत: ज्ञापन संख्या डी-3/2/अलाटमेंट/84-88 दिनांक 14.2.85 द्वारा अपीलार्थी के विरुद्ध लगाये गये आरोपों की जांच हेतु श्री आर0डी0लाल, सहायक अधीक्षक (सतर्कता) कार्यालय पोस्टमास्टर जनरल, लखनऊ को जांच अधिकारी नियुक्त किया गया।

(ग) अपीलार्थी के विरुद्ध लगाये गये आरोपों की जांच में प्रस्तुत किये गये साक्ष्यों का विश्लेषण करनें के उपरान्त जांच अधिकारी नें अपनी आख्या दिनांक 16.4.87 को अधीक्षक डाकघर, बाराबंकी को प्रस्तुत की जिसमें उन्होनें निम्नलिखित निष्कर्ष निकाला था -

"आरोपीपत कर्मचारी (अपीलार्थी) के विरुद्ध आरोप इस सीमा तक सिद्ध पाया गया कि उसनें अपनें स्थानान्तरण के पश्चात् भी निर्धारित सीमा से अधिक अवधि तक 31.10.84 तक अपनें परिवार के प्रयोगार्थ और उसके बाद 8.7.85 तक अपनें पुत्र तथा उसके परिवार के प्रयोगार्थ अपनें नाम से आवाटित क्वार्टर अधीक्षक डाकघर द्वारा निर्देशित किये जानें के बावजूद भी खाली नहीं किया"।

(घ) अनुशासनिक अधिकारी, अधीक्षक डाकघर, बाराबंकी नें जांच अधिकारी के निष्कर्षों से पूर्ण सहमति व्यक्त करते हुये ज्ञापन संख्या डी-3/2/अलाटमेंट/84-85 दिनांक 8.6.87 द्वारा अपीलार्थी के विरुद्ध उपरोक्त दण्डादेश पारित किया और उसी दण्डादेश के

क्रमश: पेज-2 पर

Rutan

के विरुद्ध वर्तमान याचिका प्रस्तुत की गई हैं।

3. मैंने अपील तथा सम्बन्धित सभी अभिलेख पत्रावली आदि देख लिया है। मैंने पाया कि दण्डादेश अपीलार्थी को 10.6.87 को हस्तगत हुआ जिसके विरुद्ध याचिका 20.7.87 की सीधी प्रतिलिपि इस कार्यालय में 27.7.87 को तथा अ अधीक्षक डाकघर बाराबंकी केकार्यालय में 11.8.87 को प्राप्त हुई। इस प्रकार दण्डादेश प्राप्त होनें के 40 दिन बाद 20/22.7.87 की याचिका कीं सीधी प्रतिलिपि इस कार्यालय को प्रेषित की गई जो 27.7.87 को 46 दिन के बाद प्राप्त हुई फिर भी मैंने इस पर विचार करनें का निर्णय लिया है। अपीलार्थी नें अपनी याचिका में प्रमुख: निम्नलिखित तर्क दिये है -

(क) यह कि अधीक्षक डाकघर, बाराबंकी द्वारा निकाले गयेनिष्कर्ष किसी साक्ष्य पर आधारित न होकर विपरीत हैं क्योंकि ऐसा कोई साक्ष्य नहीं बताया गया जो यह सिद्ध कर सके कि अपीलार्थी कभी अपनें कर्तव्यपालन में निष्ठावान नहीं रहा। आवंटित क्वार्टर को आवंटन आदेश निरस्त न किये जानें, जहांगीराबाद राज में क्वार्टर की व्यवस्था न होने के कारण खाली नहीं किया गया था जो किसी भी प्रकार सत्य-निष्ठा एवं कर्तव्यपरायणता की कमी नहीं कहा जा सकता। इन विशेष परिस्थितियों में अपीलार्थी का यह कृत्य आदेशों की अवज्ञा भी नहीं माना जा सकता।

(ख) यह कि अपीलार्थी केविरुद्धविभागीय कार्यवाही दुर्भावनापूर्ण थी और उसके प्रताड़न केलिये की गईथी। यहतर्क दिया गया है कि अपीलार्थी के स्थानान्तरण के बाद लगभग एक वर्ष तक अधीक्षक डाकघर, बाराबंकी नें एक बार भी उक्त क्वार्टर खाली करनें का निर्देश नहीं दिया और न ही अपीलार्थी के विरुद्ध कोई कार्यवाहीकी अथवा उक्त क्वार्टर का किसी दूसरे को आवंटन ही किया जिससे यह समझा गया कि आवंटित क्वार्टर को अपीलार्थी के परिवार के प्रयोग में रहने परकोई आपत्ति नही हैं। सारी प्रक्रिया श्री सरदार अहमद खाँ जो अपीलार्थी के निकटस्थ थे द्वारा अधीक्षक डाकघर, के विरुद्ध होजाने पर प्रारम्भ की गई अतएवं दुर्भावनापूर्ण है। यह तर्क भी दिया गया कि अधीक्षक डाकघर, बाराबंकी नें अनुरोध किये जाने पर भी फण्डामेंटल रूल-45 तथा भारत सरकार के निर्देश 1x सब पैरा-11 के प्रावधानों के विरुद्ध उक्त क्वार्टर का पेनल किराया वेतन का 40% निर्धारित किया जो स्वयं में उनकी अपीलार्थी के प्रति दुर्भावना का प्रमाण है।

(ग) यह कि दिया गया दण्ड अतिकठोर है क्योंकि अपीलार्थी नें कभी निष्ठा एवं कर्तव्यपरायणता की कमी प्रदर्शित नहीं की थी और दण्ड केवल इस कारण से दिया गया है कि अपीलार्थी नें प्रश्नगत क्वार्टर खाली नहीं किया था।

3. पत्रावली में उपलब्ध अभिलेखों के आधार पर अपीलार्थी द्वारा दिये गये तर्कों की तथ्यपरक समीक्षा इस प्रकार है :-

क्रमश पेज-3 पर

33

A40

(क) यह सर्वविदित है कि सरकारी आबंटित आवासीय भवन कर्मचारी के स्थानान्तरण के दो माह पश्चात बिना सक्षम अधिकारी की अनुमति के अपने कब्जे में नहीं रखा जा सकता अतः अपीलार्थी का यह कर्तव्य था कि वह आबंटित भवन निर्धारित दो माह की अवधि के बाद खाली कर देता परन्तु उसनें 17.8.83 के ज्ञापन द्वारा उक्त क्वार्टर का आबंटन निरस्त करके श्री आर0बी0दुबे को आबंटित किये जाने तथा उसे एक सप्ताह में खाली करनें का निर्देश दिये जाने पर भी नहीं किया । अपीलार्थी का यह कृत्य न केवल सक्षम अधिकारी के आदेशो का स्पष्ट उल्लंघन है वरन् एक राजकीय कर्मचारी के रूप में उसकी कर्तव्यनिष्ठा के प्रतिकूल होनें के साथ ही साथ एक राजकीय कर्मचारी से अपेक्षित आचरण के प्रतिकूल भी है । अपीलार्थी का यह तर्क कि अधीक्षक डाकघर,बाराबंकी द्वारा निकाले गये निष्कर्ष साक्ष्यों पर आधारित नहीं हैं सत्य नहीं है क्योंकि मौखिक जांच में भी जांच अधिकारी नें दोनो पक्षो द्वारा प्रस्तुत साक्ष्यों की विवेचना के उपरान्त आरोप अपीलार्थी के विरुद्ध सिद्ध पाया था ।

(ख) यह तर्क कि अपीलार्थी के विरुद्ध की गई अनुशासनिक कार्यवाही द्वेषपूर्ण है,किन्ही विश्वसनीय तथ्यों पर आधारित नहीं होता । श्री सरदार अहमद खां के विरोध के फलस्वरूप अपीलार्थी के विरुद्ध कार्यवाही का तर्क असंगत एवं असम्बद्ध है । जहां तक क्वार्टर के पेनल किराये के रूप में वेतन के 40 प्रतिशत वसूल किये जाने का प्रश्न है,अपीलार्थी द्वारा संदर्भित एफ0आर0-45 ए के नीचे भारत सरकार के निर्देश संख्या -9 के सब पैरा में ही यह उल्लेख है कि पैनल किराये के रूप में स्टैण्डर्ड लाइसेंस फी के दूने या फुल्ड स्टैण्डर्ड लाइसेंस फी के दूने में से जो धनराशि अधिक हो वसूल की जा सकती है । अतएव यह तर्क भी आधार हीन प्रमाणित हो जाता है ।

(ग) जहां तक याचिकादाता को दिये गये दण्ड के औचित्य का प्रश्न है,वह उपरोक्त तथ्यों से सिद्ध हो चुका है कि याचिकादाता को बार-बार आदेशो की अवहेलना करना एक गम्भीर अपराध है इसलिये दिया गया दण्ड अनौचित्यपूर्ण नहीं था । उपरोक्त तथ्यों को ध्यान मे रखकर मै प्रदत्त दण्डादेश में किसी प्रकार हस्तक्षेप का औचित्य नहीं पाता हूँ ।

4. अतएव मैं,एतद्द्वारा,अपीलार्थी की अपील अस्वीकार करता हूँ तथा अधीक्षक डाकघर,बाराबंकी मण्डल के उपरोक्त ज्ञापन द्वारा दिये गये दण्डादेश को पुष्ट करता हूँ ।

TRUE COPY
(R. N. Tewari Advo.)

(भानु प्रताप सिंह)
निदेशक डाक सेवायें
लखनऊ क्षेत्र,लखनऊ-226007

प्रतिलिपि-

1. सम्बन्धित कर्मचारी को/द्वारा अधीक्षक डाकघर बाराबंकी ।
2-4. अधीक्षक डाकघर,बाराबंकी मण्डल,बाराबंकी ।
5-6. क्षेत्रीय कार्यालय की पत्रावली ।
7. अतिरिक्त प्रतिलिपि ।

1988
AFFIDAVIT
14
HIGH COURT
ALLAHABAD

A42

[illegible] taking
27/4/89

In the Central Administrative Tribunal, [illegible],
Allahabad.

...

[illegible]

[illegible]

[illegible] ... .. Petitioner.

Versus.

1. The Superintendent of Post Offices, [illegible]
2. The Director, Postal Services, [illegible]

.. Respondents.

Recd copy

Affidavit of R.K. Verma
aged about 50½ years, son of
Sri Mohan Das Verma,
Superintendent of Post
Offices, [illegible]
[illegible]

Deponent.

I, the deponent, [illegible]
[illegible] and state as under:

1. [illegible] That the deponent is working as
[illegible] Offices, [illegible] Division,
[illegible] to file the present
[illegible] contents of
[illegible]
[illegible]

R.K. Verma

A43

[illegible]

[illegible]

[illegible]

(c) [illegible]

4

1/ True copies of orders of [illegible] 82, 17/83, [illegible] 9/83, 14 5/85 and 15 5/85 are [illegible] Annexure CA I, 2, 3, 4 and 5 respectively to this Affidavit.

AGM

-2-

( ) [illegible]

( ) [illegible]

( ) [illegible] True copy of the order dt. 8.11.83 is being filed as Anx. & A. 6 to the Affidavit.

( ) [illegible]

( ) [illegible]

( ) [illegible]

A45

[illegible]

True copy of the order dt. 6.[illegible] and 28.11.87 are being filed as Annx. 7 and 8 respectively.

[illegible]

[illegible]

A46

[illegible] to [illegible] which the said matter.

It is [illegible] that [illegible] from the said matter [illegible] [illegible] dated [illegible] the petitioner [illegible] [illegible] offices, [illegible] that the [illegible] Post Officer [illegible] petitioner's [illegible] [illegible] in writing.

[illegible] [illegible] [illegible] [illegible] [illegible] irrelevant. [illegible] [illegible] [illegible] the case. A true copy of the letter No 43-104/77-MB dt. 6.2.78 to All Heads of Circles from P+T Board is being filed as Annexure 9 to this affidavit

[illegible] [illegible] [illegible] (iii) [illegible] [illegible] admitted that [illegible] [illegible] by the petitioner [illegible] [illegible] [illegible] i.e., [illegible] [illegible] was not entitled [illegible] [illegible] Disciplinary [illegible] failure of appeal [illegible] failure on the part

A47

[illegible] the petitioner [illegible] the question [illegible] of the [illegible] orders [illegible].

8. That the contents of para no. (ii) of the petition are not admitted. It is stated that [illegible] power [illegible] of the [illegible] is [illegible] for constitutional correction. [illegible], it [illegible] the [illegible] of [illegible] Disciplinary [illegible] proceedings initiated [illegible] decided [illegible] correct [illegible] as such [illegible] of petitioner.

9. That the contents of para no. (v) of the petition are not admitted. It is stated that the petitioner's case [illegible] fully considered [illegible] after [illegible] the facts and circumstances of the case [illegible] orders were passed and thus there is no illegality in the same.

10. That the contents of para no. (vi) of the petition are not admitted. It is stated that [illegible] earlier [illegible] the petitioner, [illegible] the matter, if [illegible].

11. That [illegible] the contents [illegible] which [illegible] relief [illegible] it is submitted that the petitioner is not entitled to [illegible] (i) and (ii) [illegible] the [illegible] circumstances disclosed in the preceding

[illegible] is [illegible] aside the [illegible] realised [illegible] petitioner.

12. [illegible] affidavit. It is submitted that it is pertinent to point out in this case that the petitioner [illegible] retained [illegible] during the period of his being [illegible] Post Office.

It is further submitted that at one place [illegible] dated [illegible] .1987, the petitioner himself stated that he vacated the quarter on 31.10.87 [illegible] the last [illegible] quarter [illegible] until [illegible] quarter. [illegible] position. In the [illegible] he stated that he left the quarter [illegible] his leaving [illegible] his native village [illegible] of the petitioner [illegible] quarter after [illegible] fastened [illegible] leaving [illegible] during [illegible] statement. The [illegible] of the [illegible] to this affidavit.

It is [illegible] that the petitioner [illegible] quarter in question [illegible] was required to give

alBrey

possess[illegible] [illegible] rter t[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible].

I, [illegible] [illegible], [illegible], [illegible] [illegible] that the contents of [illegible]
s., 1 to 4 ————————————
of this affidavit are true to my personal [illegible] [illegible] [illegible] s... 5 & 12 ————————
of this affidavit are [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] paras. [illegible] ————————
all this affidavit are [illegible] [illegible] [illegible] which I [illegible] believe to be true; that no part of this affidavit is false and that nothing material has been concealed [illegible].

So help me God.

[illegible]
Deponent.

I, [illegible], [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] do hereby [illegible] that the person [illegible] [illegible] [illegible] [illegible] [illegible] himself to be Sri. [illegible] [illegible] is the same [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

[illegible]
Clerk.

A50

.2.

[illegible] 24th [illegible] 11 AM. [illegible] [illegible]

I have satisfied myself by [illegible] the contents of this affidavit [illegible] correct [illegible].

Ram Pal Singh
[illegible] Examiner.

14/659
24/8/88

ANNEXURE - 'SCA 1'

A51

[illegible] MEMO NO. [illegible] Dated [illegible]

[illegible] Communication [illegible] dt. 27.11.79, [illegible] under PMG UP Circle [illegible] /VT/ [illegible] the following [illegible] completed their station tenure and [illegible] transferred and posted at the station [illegible]

[illegible]	[illegible]	Present Posting	Transferred	Remarks
[illegible]	[illegible]	SPM [illegible]	SPM [illegible]	--
[illegible]	[illegible]	[illegible]	APM [illegible] H.O.	--
[illegible]	[illegible]	[illegible] H.O.	SPM [illegible]	
[illegible]	[illegible]	[illegible] H.O.	SPM [illegible]	--
[illegible]	[illegible]	[illegible] H.O.	SPM [illegible]	
[illegible]	[illegible]	[illegible]	SPM Teh. [illegible]	
[illegible]	[illegible]	SPM Teh. [illegible]	APM [illegible] H.O.	--
[illegible]	[illegible]	Accountant [illegible] H.O.	[illegible] H.O. vice Sri [illegible] to be [illegible] 31.5.82	

[illegible]

[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	--
[illegible]	[illegible] (SPM)	--
[illegible] City	[illegible] (SPM)	--
[illegible] HO	[illegible] (SPM)	--
[illegible]	[illegible]	--
[illegible]	[illegible]	--
[illegible] HO	[illegible] on administrative [illegible]	
[illegible]	SPM [illegible] on request	
[illegible] SPM [illegible]	[illegible]	--
[illegible]	[illegible]	--
[illegible]	[illegible]	--

[illegible]

[illegible] on request [illegible]

T.C.

A52

18.	Shri	Mahadeo PO.	P/A J.B. Raj	P/A T.F. Pur	on request & cons
19.	"	Ram Sanchi	P/A BMK HO	P/A Subeha	-do-
20.	"	B.N.Shukla	SPM Kursi	SPM Bhilsar	—
21.	"	Ram Sanajh	[illegible]	[illegible]	-
22.	"	R. B. Srivastava	SPM Tikaitnagar	SPM Allabad	—
23.	"	Ram Sanajh	P/A BBK HO	P/A Tikaitnagar	—
24.	"	M.P. Misra	P/A BBK HO	SPM Masauli (BBK)	—

Notes:- (i) In LSG Cadre Officials at serial No. 3,4,5 & 6 should be relieved first on locally to complete the chain.

Notes:- (ii) Regarding Time Scale Officials at Serial No. 3,5, 9 & 11 should be relieved first on locally to compl to the chain.

Charge report should be submitted to all concerned.

-sd-
(I.P.Sagar)
Supdt. of Post Offices,
Barabanki Dn. Barabanki-225 001.

Ram Raj

14/8/89
24/8/89

ANNEXURE .. ACA 2'

A53

INDIAN POSTS & TELEGRAPHS DEPARTMENT

OFFICE OF THE SUPDT. OF POST OFFICES BKK DIV BARABANKI-225001.

Memo No:- B-3/2./Allot/83-84. Dated at BKK the. 17/8/84.

EXP-2.

Shri Mangal Pd. has been transferred and posted as SPM J.A. Maj. His allotment of quarter is cancelled with immediate effect and the same is now allotted to shri R.B. Dubey APM BKK HO.

He should take possession of the said quarter from shri Mangal Pd. within a week from the date of receipt of this letter.

He will be responsible for the payment of usual rent water charges and other taxes etc. He should also understand that he cannot sublet the quarter or any portion thereof to any one else.

Supdt. of Post Offices,
Barabanki Dn Barabanki-225001.

Copy to:

1- Shri R.B.Dubey, APM BKK H.O. He will please take possession of quarter from shri Mangal Pd. and intimate the date of possession.

2. Shri Mangal Pd. SPM J.A. Maj (B.A) He will please vacate the possession of the quarter and hand it over to shri R.B.Dubey; make within a week positively otherwise a penal rent will be recovered from his pay. He should also explain as to why he retained the quarter after his transfer beyond permissible limit of two months.

3. The PM BKK HO.

4/c. W/C and s.case.

Ram Pal Singh
14/659
24/8/85

ANNEXURE 'A 3'

(92)

Corr.

भारतीय डाक-तार विभाग INDIAN POST & TELEGRAPH DEPARTMENT

Office of the

To

Shri Mangal Prasad
SPM T.B Raj BBK

A54

No. D-3/2/allot/83-84 dtd at BBK the 14/03

Sub: Non vacation of Quarter

Please vacate the quarter of telephone exchange campus and handover it to Shri R.B. Dubey within three day positively ~~Otherwise~~ failing which penal rent will be recovered from your pay without any intimation.

11.4.86

for Sr. Adv
T.C.
14/659C
24/8/88

ANNEXURE - SCA 4

1/C

A55

भारतीय डाक-तार विभाग/INDIAN P. & T. DEPARTMENT

सेवा में,

श्री [illegible]

[illegible] [illegible]

[illegible] 25001 [illegible]

सं० [illegible]/[illegible]/84-85 [illegible]

दि० 16 5 85

विषय - [illegible] [illegible] [illegible] का [illegible]

[illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible] दि० 2.11.84 के [illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible]

[illegible] एवं [illegible] [illegible]

[illegible] है कि [illegible] [illegible]

[illegible] को [illegible] [illegible]

~~[illegible] [illegible] [illegible] [illegible]~~

~~[illegible] [illegible] [illegible]~~ ।

[illegible] [illegible] ।

[illegible] 25001

[illegible] P. & T. [illegible]—23-2-83—20,00,000 Pads.

Annexure - ~~BE~~ A 5

A56

भारतीय डाक-तार विभाग/INDIAN P. & T. DEPARTMENT

कार्यालय, [illegible]

[illegible]

G.P.O. BARABANKI-225001

सेवा में

श्री [illegible] प्रसाद [illegible]

उपमंडलीय [illegible]

बाराबंकी

पत्रांक डी/3-2/[illegible]/84-85 दिनांक [illegible]

दि० 18.5.85

विषय — पोस्टल स्टाफ [illegible] का अनधिकृत [illegible]

इस कार्यालय के [illegible] दि० 2[illegible] के अनुसार [illegible] टेलीफोन एक्सचेंज [illegible] आवास को [illegible] है [illegible] अनधिकृत [illegible] है।

अतः पत्र [illegible] जाती है कि आप [illegible] का [illegible]

[illegible]

T.C.

(3)

A57

ANNEXURE - 'C.A 6'

[illegible] DEPARTMENT

[illegible]

The P[illegible]

No. [illegible] dt. [illegible] 8.11.82

Sub: Recovery of [illegible] pay of [illegible] Bangal Board.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

R.I. [illegible]

14/659
24/8/88

Annexure CA 7

A58

DEPARTMENT OF POSTS
GOVERNMENT OF INDIA

OFFICE OF THE SUPDT. OF POST OFFICES, BARABANKI DIVISION

Memo No:- D-3/2/Allot /84-85 dtd. at BBK, the, 6.87

Shri Mangal Pradad SPM J.B.Raj Barabanki was served with a charge sheet u/r 14 of CCS(CCA) Rules 1965 vide this office memo No. D-3/2/Allot/83-84 dt. 11-4-84 regarding unauthorised occupation of Govt. quarter alloted to him. The article of charge levelled against him is produced below :-

ANNEXURE - X

" Shri Mangal Prasad SPM Barabanki Bazar was transferred as SPM J.B.Raj BBK vide this office memo No.B-2/55 dtd 22-5-82 and was relieved from Barabanki Bazar on 8-7-82 but he did not vacate the type B quarter of Telephone Exchange compound, BBK alloted to him even after much persuation by this office. Thus the said Shri Mangal Pd failed to maintain absolute integrity and devotion to duty as much as he acted in a manner unbecoming of a Govt. Servant and thereby he violated provisions of rule 3(1)(i) (ii)(iii) of CCS(Conduct) Rules 1964."

ANNEXURE -II

" Shri Mangal Prasad whilholding the SPM BBK Bazar was transferred and posted as SPM J.B.Raj BBK vide this office memo No.B-2/55dt. 22-5-82. He was relieved from BBK Bazar and joined as SPM J.B.Raj SO on 15-7-82. He was requited to vacate the said quarter after expiry of two months of his date of relief i.e., on 8-9-82, therefore the said quarter was alloted to Shri R.B.Dubey APM BBK HO vide this office memo No.D-3/2/Allot/83-84 dtd. 17-8-83. Shri R.B.Dubey APM BBK HO vide his letter dtd. 17-9-83 had intimated to this office that Shri Mangal Pd SPM J.B.Raj did not vacate the said quarter. The said Shri Mangal Pd was addressed vide this office letter of even no dtd. 17-8-83 and 14-9-83 to vacate the quarter but he did not vacate the said so far."

The said Shri Mangal Prasad submitted his representation dtd.30-4-84 to this office denying all the charges framed against him.

Shri R.Gupta ASP(PMI) o/o PMG UP Circle was appointed as Enquiry Officer to enquire into the charges & Shri Rahbal, the then SDI(North) BBK as Presenting Officer vide this office memo No. D-3/2/Allot/83-84 dtd. 10-7-84. Later on, in pursuance of PMG UP Lucknow No. Vig/M-3-70/83/7 dt.29-1-85, Shri R.D.Lal ASP(Vig I) O/O PMG UP Lucknow was appointed as E.O. vide this office Memo No. even dtd. 14-2-85.

The Enquiry Officer, Shri R.D.Lal, ASP Vig.I, O/O PMG UP Lucknow submitted his enquiry report vide his No. Enqy-1/85 dt. 9-4-87. In his

Jai Ram Shri
14/8/59
24/8/88

A59

A60

reduction and reduction will not have the effect of postponing his future increments of pay. A copy of Enquiry report dt.16.4.87 is enclosed h/w.

Supdt. of Post Offices,
Barabanki Dn., Barabanki-
225001.

copy to.-
1- Shri Mangal Prasad, Ex. SPM Masauli, BBK.
2- Postmaster Barabanki.
3- C.R of the official.
4- M/S of the official.
5- The vigilance Statement file.
6- Puni hment Register.
7- The D.A.P Lucknow.
8- O.o/c & spare.

14/559
20/8/88

CA
ANNEXURE-18

A61

भारत सरकार
[illegible] विभाग
[illegible], लखनऊ-226007

[illegible]-78/87/13 दिनांक 28.11.87

[illegible] प्रताप, उपडाकपाल[illegible] (बाराबंकी) [illegible] अधीक्षक डाकघर, बाराबंकी द्वारा उनके विरुद्ध केन्द्रीय सिविल सेवा (वर्गीकरण, नियंत्रण एवं अपील) नियमावली-1965 के नियम-14 के अन्तर्गत की अनुशासनिक कार्यवाही में ज्ञापन संख्या [illegible]/2/अनाटैंट/84-85 दिनांक 8.6.87 द्वारा पारित दण्डादेश [illegible] कर्मचारी को वेतन 1400-2300 के वेतन मान में भी माह [illegible] 1560/- का प्रतिमाह से घटाकर 1400/- प्रतिमाह किये जाने का आदेश देता है, के विरुद्ध प्रस्तुत की गई याचिका दिनांक 30.7.87 से सम्बन्धित है।

2. (क) अपीलार्थी के विरुद्ध अधीक्षक डाकघर, बाराबंकी के ज्ञापन संख्या बी-3/2/अनाटैंट/83-84 दिनांक 11.4.84 द्वारा निम्नलिखित आरोप लगाये गये थे -

"यह कि अपीलार्थी का स्थानान्तरण उपडाकपाल बाराबंकी [illegible] के पद से, उपडाकपाल [illegible] राज के पद पर ज्ञापन संख्या बी-2/55 दिनांक 22.5.82 द्वारा किया गया और अपीलार्थी 2.7.82 को अपने नये पद का भार ग्रहण करने हेतु कार्यमुक्त हो गया परन्तु उसने टेलीफोन एक्सचेंज परिसर में उसे आवंटित टाइप-II [illegible] खाली नहीं किया। इस प्रकार अपीलार्थी ने कर्तव्यनिष्ठा एवं [illegible] का परिचय न देकर एक राजसेवक के प्रतिकूल आचरण करके केन्द्रीय सिविल सेवा (आचरण) नियमावली 1964 के नियम-3 (1)(i) (ii) एवं (iii) का उल्लंघन किया है।

(ख) उक्त आरोप-पत्र अपीलार्थी को दिनांक 17.4.84 को [illegible] हुआ और दिनांक 30.4.84 को उसने आरोप अस्वीकार करते हुए अपना बयान प्रतिवेदन प्रस्तुत किया। फलतः ज्ञापन संख्या बी-3/2/अनाटैंट/84-85 दिनांक 14.2.85 द्वारा अपीलार्थी के विरुद्ध लगाये गये आरोपों की जांच हेतु श्री आर०डी०लाल, सहायक अधीक्षक (सतर्कता) कार्यालय पोस्टमास्टर जनरल, लखनऊ को जांच अधिकारी नियुक्त किया गया।

(ग) अपीलार्थी के विरुद्ध लगाये गये आरोपों की जांच में प्रस्तुत किये गये साक्ष्यों का विश्लेषण करने के उपरान्त जांच अधिकारी ने अपनी आख्या दिनांक 16.4.87 को अधीक्षक डाकघर, बाराबंकी को प्रस्तुत की जिसमें उन्होंने निम्नलिखित निष्कर्ष निकाला था -

"आरोपित कर्मचारी (अपीलार्थी) के विरुद्ध आरोप सं० [illegible] तक सिद्ध पाया गया कि उसने अपने स्थानान्तरण के पश्चात् भी निर्धारित सीमा के अधिक अवधि तक 31.12.84 तक अपने परिवार के पुरोगामी और उसके बाद 8.7.85 तक अपने पुत्र तथा उसके परिवार के पुरोगामी अपने साथ के आवंटित क्वार्टर अधीक्षक डाकघर द्वारा निर्धारित किये जाने के बावजूद भी खाली नहीं किया"।

(घ) [illegible] अधिकारी, अधीक्षक डाकघर, बाराबंकी [illegible] अधिकारी के निष्कर्षों से पूर्ण सहमति व्यक्त करते हुए ज्ञापन संख्या बी-3/2/अनाटैंट/[illegible] दिनांक 8.6.87 द्वारा अपीलार्थी [illegible] निर्धारित किया और उसे उपरोक्त के [illegible]

A62

[illegible] प्रस्तुत [illegible] हैं।

[illegible] के [illegible] की [illegible] के आधार पर [illegible] आवेदक अभ्यर्थी को [illegible] को [illegible] किया गया जिसे [illegible] 20.7.87 को [illegible] प्रतिलिपि [illegible] कार्यालय में 27.7.87 को तथा [illegible] आधार पर [illegible] कार्यालय में 11.8.87 को प्राप्त हुआ। [illegible] प्राप्त होने के 90 दिन बाद 20/22.7.87 को [illegible] की प्रतिलिपि [illegible] कार्यालय को प्रेषित की गई जो 27.7.87 को 46 दिन के बाद प्राप्त हुई। फिर भी मैंने [illegible] पर विचार करने का निर्णय लिया है। अभ्यर्थी ने अपनी याचिका में मुख्यतः निम्नलिखित [illegible] किये हैं -

"(1) यह कि अधीक्षक डाकघर, [illegible] द्वारा निकाले गये निष्कर्ष किसी साक्ष्य पर आधारित न होकर विपरीत हैं क्योंकि ऐसा कोई साक्ष्य नहीं आया गया जो यह सिद्ध करे कि अभ्यर्थी की अपने कर्तव्यपालन में निष्ठावान नहीं रहा। आवंटित क्वार्टर को आवंटन आदेश निरस्त न किये जाने, [illegible] तक में क्वार्टर की व्यवस्था न होने के कारण खाली नहीं किया गया था। ऐसे किसी भी प्रकार सत्यनिष्ठा एवं कर्तव्यपरायणता की कमी नहीं कहा जा सकता। इन विशेष परिस्थितियों में अभ्यर्थी का यह कृत्य आदेशों की अवज्ञा भी नहीं माना जा सकता।

"(2) यह कि अभ्यर्थी ने [illegible] कार्यवाही पूर्णतया पूर्व की और उसके प्रमाण रिकॉर्ड में नहीं थे। यह कहा गया है कि अभ्यर्थी के स्थानान्तरण के बाद लगभग एक वर्ष तक अधीक्षक डाकघर, [illegible] ने कभी भी उक्त क्वार्टर खाली करने का निर्देश नहीं दिया और न ही अभ्यर्थी के विरुद्ध कोई कार्यवाही की अथवा उक्त क्वार्टर का किराया जुर्माने के आरोपित भी किया। किसी यह कहा गया कि आवंटित क्वार्टर को अभ्यर्थी के परिवार के सदस्यों में से कोई परेशानी आपत्ति नहीं है। सारी प्रक्रिया को सरकार अहमद खाँ को अभ्यर्थी के निष्कासन के द्वारा अधीक्षक डाकघर, के फिर होने पर प्रारम्भ की गई अतः दुर्भावनापूर्ण है। यह कहा भी गया कि अधीक्षक डाकघर, [illegible] में [illegible] किये जाने पर भी फण्डामेंटल रूल-45 तथा भारत सरकार के निर्देश [illegible] परा-11 के प्रावधानों के विरुद्ध उक्त क्वार्टर का मनमाना किराया जैसा कि 40% निर्धारित किया गया है स्वयं में अभ्यर्थी के प्रति दुर्भावना का प्रमाण है।

"(3) यह कि विभागीय जांच अधिकारी ने अभ्यर्थी में सत्यनिष्ठा एवं कर्तव्यपरायणता की कमी प्रतीत नहीं की थी और कुछ ऐसे कारण से विचार किया है कि अभ्यर्थी में प्रदत्त क्वार्टर खाली नहीं किया गया।

(2) [illegible] में [illegible] आधार पर अभ्यर्थी [illegible] किये गये तर्कों की तथ्यपरक समीक्षा का प्रकार है :-

क्रमशः पेज-[illegible]

A63

[illegible] कि सरकारी आवंटित आवासीय भवन [illegible] के बाद पश्चात बिना सक्षम अधिकारी की अनुमति के अपने कब्जे में नहीं रखा था तथा अतः अपीलार्थी का यह कथन कि वह आवंटित भवन निर्धारित की गई की अवधि के बाद खाली कर देता परन्तु उसने 17.8.83 के शपथ पत्र द्वारा उक्त क्वार्टर का हाउस टैक्स निरस्त करने की आरजू करने को आवंटित किये जाने तथा उसके पश्चात में खाली करने का निर्देश दिये जाने पर भी नहीं किया। अपीलार्थी का यह कृत्य न केवल सक्षम अधिकारी के आदेशों का स्पष्ट उल्लंघन है परन्तु एक राजकीय कर्मचारी के रूप में उसकी अकर्मण्यता के प्रतिकूल होने के साथ ही साथ एक राजकीय कर्मचारी से अपेक्षित आचरण के प्रतिकूल भी है। अपीलार्थी का यह तर्क कि अधीक्षक डाकघर, बाराबंकी द्वारा निकाले गये निष्कर्ष साक्ष्यों पर आधारित नहीं हैं सत्य नहीं है क्योंकि कोष्ठक कोष्ठ में की जांच अधिकारी ने दोनों पक्षों द्वारा प्रस्तुत साक्ष्यों की विवेचना के उपरान्त आरोप अपीलार्थी के विरुद्ध सिद्ध पाया था।

मुझे यह तर्क कि अपीलार्थी के विरुद्ध की गई अनुशासनिक कार्यवाही त्रुटिपूर्ण है, किन्हीं विश्वसनीय तथ्यों पर आधारित नहीं होता। श्री सरदार अहमद खां के विरोध के फलस्वरूप अपीलार्थी के विरुद्ध कार्यवाही का गई उसका एवं औचित्य है। क्वार्टर के पेनल किराये के रूप में वेतन के 40 प्रतिशत वसूल किये जाने का प्रश्न है, अपीलार्थी द्वारा संदर्भित एफ०आर०-45 के नीचे दर्शित सरकार के निर्देश संख्या -9 के उप पैरा में भी यह उल्लेख है कि पेनल किराये के रूप में स्टेण्डर्ड लाइसेंस फीस के दूने या फुल स्टेण्डर्ड लाइसेंस फीस के दूने में से जो धनराशि अधिक हो वसूल की जा सकती है। अतः यह तर्क भी आधार हीन प्रमाणित हो जाता है।

मुझे जहां तक याचिकादाता को दिये गये दण्ड के औचित्य का प्रश्न है, यह उपरोक्त तथ्यों से सिद्ध हो चुका है कि याचिकादाता की बार-बार आदेशों की अवहेलना करना एक गम्भीर अपराध है इसलिये दिया गया दण्ड अनौचित्यपूर्ण नहीं था। उपरोक्त तथ्यों को ध्यान में रखकर मैं प्रदत्त दण्डादेश में किसी प्रकार हस्तक्षेप का औचित्य नहीं पाता हूँ।

10. अतएव मैं, एतद्द्वारा, अपीलार्थी की अपील अस्वीकार करता हूँ तथा अधीक्षक डाकघर, बाराबंकी मण्डल के उपरोक्त शासन द्वारा दिये गये दण्डादेश की पुष्टि करता हूँ।

(भानु प्रताप सिंह)
निदेशक डाक सेवायें
लखनऊ क्षेत्र, लखनऊ-226007

प्रतिलिपि:-
1. सम्बन्धित कर्मचारी को/द्वारा अधीक्षक डाकघर बाराबंकी।
2. अधीक्षक डाकघर, बाराबंकी मण्डल, बाराबंकी।
3. वित्त सलाहकार की पत्रावली।
4. [illegible] प्रतिलिपि।

14/659
24/8/88

Annexure - [illegible] A64

Copy of letter No.43-104/77-[illegible] dated 6-2-1978 to all Heads of Circles.

...

Sub:- Rate of penal rent for un-authorised occupation of Govt. accommodation.

...

Ref :- PMG Kerala letter No. [illegible]/ -1/[illegible]/house dt. [illegible]-12-77.

With reference to your above letter [illegible] I [illegible] to say that penal rent for un-authorised occupation of Govt. accommodation, the standard rent of which has not been fixed, [illegible] provisionally as follows:-

i. Penal rent for [illegible] of quarters with permission after permissible period [illegible] 2[illegible] of [illegible]

ii. Penal rent [illegible] period [illegible] of [illegible] rent.

....

Prem [illegible]

14/6/89
24/12/88

A 65

Before The Central Administrative Tribunal, Allahabad-1

O.A. Regn. No. 719 of 1989

Mangal Prasad versus Union Of India & Others

REJOINDER

Applicant's comment on the Reply Affidavit filed by Respondents is as follows :-

(1) Para 4(c) When the applicant failed to comply with the orders of the learned Supdt. contained in his No.D3/2/Allottment dated 8-11-83 (at Ann. CA-6 of Reply Affidavit) to vacate the Quarter it was not warranted by any Rule to start Disciplinary proceedings under Rule 14 of CCS (CCA) Rules. The Supdt.'s Powers are limited in this connection and he can not go beyond them. D.G. P&T New-Delhi has framed Clear Rules Vide his No. 42/48/64-NB dated 6-8-65 in this connection. Such Rules are called "Rules for Retention of P&T Quarters after resignation, Transfer, Retirement Etc." They appear as Govt. Of India Orders No.9 below FR 45A on Pages 168 to 170 of Swamy's compilation of F.R. (1986 Edition). According to these Rules in Para (2) on Page 170 "Where after an allottment has been cancelled.....Such officer will be liable to pay Damages. The Damages shall be equal to double the Standard Rent FR 45B". Even if the Supdt. is not satisfied with this action he could get the Quarter evicted by resorting to the provisions of "Govt. Premises Eviction Act". To award punishments for Misconduct as laid down in CCS(CCA) Rules in such matters is beyond the Jurisdiction of the learned Supdt. It has also been confirmed by the Ahmedabad Bench of this Hon'ble Tribunal in cases No.160/86 "Abdulmokit Mushtakikhan v U.O.I. & Others" reported in A.T.R. 1987(1) CAT 567 and in No.421/86(T) "Nawal Singh v U.O.I.& Others" reported in ATR 1988(1) CAT 264 wherein the Hon'ble Members have observed in Para 6 of the first case "If it is not a misconduct, it can not be converted into misconduct by an unnecessary

A66

order being made to do someting which the rule itself requires the person to do. If it is to be regarded as misconduct the Rule itself prescribes the punishment viz. forcible eviction & collection of rents at Penal rate."

In para 4 of the second case it has been observed "The opinion of the Rly. Board and the Instructions issued by it will not make an act a misconduct which is not so otherwise..... When the Govt. Servant fails to vacate rent free accommodation, on transfer, he is liable to pay the rent including the Penal rent provided under the rules & he will be subject to eviction proceedings under 'Govt. Premises Eviction Act' and hence Disciplinary proceedings are not competent."

Since the Disciplinary proceedings are not competent in such cases, the whole Disciplinary Proceeding together with the Punishment Order & the Appellate order become non sustainable & the applicant deserves to get the reliefs sought for.

(2) In view of what has been said in the para 1 above all other paras of the Counter Affidavit require no comment.

In Verification

I, Mangal Prasad, the applicant of this case do hereby verify that the contents of 1 & 2 above are true to the best of my knowledge and belief. Nothing Material has been concealed.

dated : 23-6-1989

Mangal Pd
Rejoinderist.

(R.K.Tewari)
Advocate for the Applicant
154, Purushottamnagar, Allahabad-16

Durga Pd