

ANNEXURE - I

List of Papers in Original Application No. 438/92

Sl.No. of Papers	Date Of Papers Or Date of filing.	Description Of Papers.
		<u>Part - I</u>
	26.8-96.	O Original Judgement
	1-5-92	O.A & Material Papers.
	19-6-93.	Counter
	20-10-95	Reply Counter

~~PART - I~~, PART- II and PART --- III  
Destroyed.

A  
7/4/99.

CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

RECORD SECTION INDEX SHEET

O.A.No. 438 /1992

a) Applicant(s) I. Ramudu  
Versus

b) Respondent(s) The Director of Postal Services, AP Hyderabad & ann.

Sl.No. Description of Documents. No.

Part I

Order Sheet

Original Application

Material Papers

Order dt.

Counter Affidavit. 19.7.96.

Reply Affidavit. 20.10.95

Order dated. 26.8.96.

Part II

Duplicate Order Sheet.

" Application.

" Material Papers

" Order dt.

" Counter Affidavit.

" Reply Affidavit.

" Order dated.

Part III

Vakalat

Notice Papers.

Memo of Appearance.

29/11/96

OA.438/92

(1)

26-8-96

-8-96

Judgement ~~is~~ delivered. The OA  
is dismissed. Orders vide separate  
sheets.

  
HHRE  
M(A)

  
HMGCJ  
VC

18/10

GA 438/20

10-30

(1) Exams

(2) running down - ~~down~~  
Ref

(3) etc.

3

OA 438492

Date	Office note	Orders
------	-------------	--------

2/8/94

call m. 25/8/94.

HASH.  
M(A).

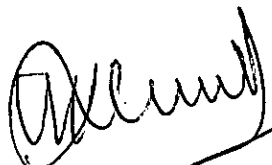
HANH  
M(3)

BOL  
L

7-12-94

At the request of counsel  
for applicant Post it  
on 19/12/94

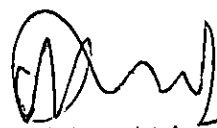
✓  
HARM  
M(A)

  
HANH  
M(3)

6-95

At the request of  
the counsel for the  
applicant adjourned  
to 14/3/95.

  
HARM  
M(A)

  
HANH  
M(3)

20/3/95

Post on 27.3.95.

HARM  
M(A)

HANH  
M(3)

BOL  
L

6/4/95

call m 27/4/95

HASH.  
M(A)

HANH  
M(3)

BOL  
L

OA 488/92 (2)

5-6-95

Limit et on 7-6-95

HABH  
M(A)

HVNRT  
ve

By order

DR(5)

Limit et on 11/95

HABH (30) HVNRT  
M(A) ve

Limit et on 18/95

HABH (30) HVNRT  
M(A) ve

18/95

Limit et on 19/95

HABH (30) HVNRT  
M(A) ve

4.2

Limit et on 28.11.95

HABH  
M(A)

HVNRT  
ve

By order

DR(5)

27.11.95

10/95

Limit et on 11/95

HABH (30) HVNRT  
M(A) ve

12/95

Limit et on 18/95

HABH (30) HVNRT  
M(A) ve

6/8/96 Limit et on 7/96

HABH (30) HVNRT  
M(A) ve

(u)

OA 438/93

Date	Office Note	Orders
		<u>21.2.94</u>  Call on 2/3/94.  HTCSR m(3). HABG m(A).  Hoc A  Post on 18.4.94.  HTCR M(J) HABG m(A)  Hoc A  Post it on 2.6.94  HTCSR M(J) HABG m(A)  Hoc  On the request of the applicant's counsel, adjourned to 27.6.94. No further adjournment will be given.  T. HTCSR M(J) HABG m(A)
15.3.94		
<u>25-4-94</u>		
<u>9.6.94</u>		

⑧

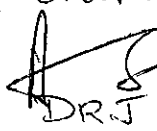
Date	Office Note	Orders
5-10-93		<p>At the request of Mr. S Ramakrishna Rao, for Applicant Adj. to 4-11-93</p> <p>H TCR m(LT)</p> <p>HABG m(A)</p> <p>B/o</p> <p>At the request of the applicant Cancel first the case on 13.12.93</p> <p>HABG m(A)</p> <p>B/o Q J</p> <p>HABG m(A)</p>
1-93		



④

OA 438/92

③

Date	Office Note	Orders
5 $\frac{2}{93}$		No one is present. Post 142 97A 162/93 on 16-4-93.  HVRJ VC  By order  DRJ  MA 162/93, expedite petition is ordered. List the OA for final hearing as ex Case.  HVRJ VC  POM on 2/9/93.  HABG m(A) By order on Register Post m. 15/10/93  HTCSR m(3).  HABG. m(A)
16-4-93		
21.7.93	Counter filed by Mr. NR Dehaas, Greys on 19/7/93.	
<u>30/8/93</u>		
27/9/93.		

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# Central Administrative Tribunal

HYDERABAD BENCH

O.A. No./T.A. No.

438 / 1992

J. Ramudu

Applicant (s)

Versus

Director of Postal Services, Hyderabad and another

Respondent (s)

Date	Office Note	Orders
28-5-92		counsel for both sides → present. list the case on 1-6-92
1-6-92		<p>None present for the applicant.</p> <p>Perused the records as we are satisfied that this is a fit matter for adjudication. <u>Admit</u> the OA. The respondents may file their reply to the OA within 8 weeks with a copy to the Advocate for the applicant. The applicant may file his rejoinder if any within 2 weeks thereafter. Keep the case before the Registrar for directions after the pleadings are complete.</p> <p>(HABG) M(A)</p> <p>(HCSR) M(O)</p>

23/7

24

(P.T.O.)

(7)

OA 438/92

Date	Office Note	Orders
6-8-92	<p>Service -</p> <p>R-1 NSNR</p> <p>R-2 Served</p> <p>Before the D.R. (J)</p> <p>for steps</p> <p>Postal Dept. hr. m 13/8/92</p>	<p>verify through RMS for Service of notice on R-1.</p> <p>Call on 3-9-92.</p> <p><del>8/8/92</del></p> <p>Dy. Registrar (J)</p>
3-9-92	<p>Before the D.R. (J)</p> <p>for steps</p> <p>R-1 Served on 11.6.92</p> <p>vide Postal dept. hr. dt. 2.9.92. (Received on 3-9-92)</p>	<p>Await reply from RMS for Service of notice on R-1. Call on 29-9-92.</p> <p>Dy. Registrar (J)</p>
11-8-92		<p>Even after granting 8 weeks time for filing counter, the counter is not filed. Hence post before Court for orders.</p> <p><del>8/3/92</del></p> <p>Dy. Registrar (J)</p> <p>Finally 16 weeks time is granted for filing counter at the request of counsel for the respondents.</p> <p>T. C. R.</p> <p>(H.T.C.R.)</p> <p>M (J)</p> <p>3</p>

CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH, HYDERABAD.

ORIGINAL APPLICATION NO. 438 OF 1992

Shri G. Ramadas Applicant(s)

Versus

Director of Postal Services, Hyderabad  
& another

Respondent(s)

This Application has been submitted to the Tribunal  
by Mr. S. Rama Krishna Rao Advocate  
under Section 19 of the Administrative Tribunal Act, 1985  
and same has been scrutinised with reference to the points  
mentioned in check list in the light of the provisions  
contained in the Administrative Tribunal (Procedure)  
Rules, 1987.

The Application has been in order and may be listed  
for admission on - 5/12

C. J.  
Scrutiny Officer.

A. S. S. S. S.  
Deputy Registrar (J)

Particulars to be examined	Endorsement as to result of examination
8. Has the index of documents been filed and has the paging been done properly?	y
9. Have the chronological details of representations made and the outcome of such representation been indicated in the application?	y
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal?	y
11. Are the application/duplicate copy/spare copies signed?	y
12. Are extra copies of the application with annexures filed.	y
(a) Identical with the original	y
(b) Defective	y
(c) Wanting in Annexures	y
No...../Page Nos.....?	y
d Distinctly Typed?	y
13. Have full size envelopes bearing full address of the Respondents been filed?	y
14. Are the given addresses, the registered addresses?	y
15. Do the names of the parties started in the copies, tally with those indicated in the application?	y
16. Are the translations certified to be true or supported by an affidavit affirming that they are true?	y
17. Are the facts for the case mentioned under item No. 6 of the application.	y
(a) Concise?	y
(b) Under Distinct heads?	y
(c) Numbered consecutively?	y
(d) Typed in double space on one side of the paper?	y
18. Have the particulars for interim order prayed for, stated with reasons?	y

may be the  
4/5

CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH

APPLICANT (S) J. Ramudu

RESPONDENT (S) Director, Hyderabad

Particulars to be examined

Endorsement as to result  
of examination

1. Is the application Competent ? y
2. (a) Is the application in the prescribed form ? y  
(b) Is the application in paper book form ? y  
(c) Have prescribed number complete sets of the application been filed ? /
3. Is the application in time ? y  
If not by how many days is it beyond time ?  
His sufficient cause for not making the application in time, stated ?
4. Has the document of authorisation / Vakalat name been filed ? y
5. Is the application accompanied by B.D./I.P.O. for Rs. 50/-? Number of B.D. / I.P.O. to be recorded. }
6. Has the copy/copies of the order (s) against which the application is made, been filed ? y
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed ? y  
(b) Have the documents referred to in (a) above duly attested and numbered accordingly ? }  
(c) Are the documents referred to in (a) above neatly typed in double space ? }

CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH.

INDEX SHEET.

O.A. NO 438 of 1992

CAUSE TITLE I. Ramudu

VERSUS

Director of Postal Services, Hyd. & anoth

Sl. No	Description of Documents.	Page No
1.	Original Application	1 to 14
2.	Metirial papers.	15 to 49
3.	Vakalat	1
4.	Objection sheet	—
5.	Speære Copies 2 (Two)	
6.	Covers. 2 A	

Written Arguments filed by Mr.  
S. Rama Krishna Rao on 12/12/95

*Plg. to set aside the Order of Compulsory Retirement the Applicant  
from service as LSG/PA.*

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD.

*Postal*

*Buchan*

O.A. No. 438 of 1992.

BETWEEN:

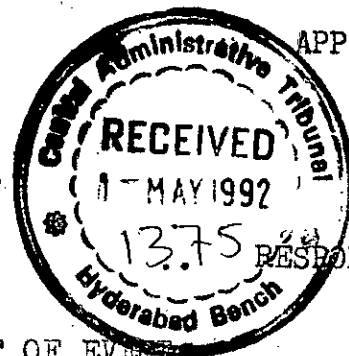
I. RAMUDU S/o I. Ramaiah,  
aged about 49 years, Occ: BSG/PA,  
Bhainsa, Adilabad District.

APPLICANT.

A N D

1. The Director of Postal Services,  
Hyderabad.

and another



RESPONDENTS.

CHRONOLOGICAL STATEMENT OF EVENTS

Sl. No.	Date	E V E N T S
1.	19-10-1985	The applicant was issued with charge memo vide No.F4-1/85-86 by the Supdt. of Post Offices, Adilabad Division, Adilabad imputing charges of certain irregularities.
2.	30-5-1989	The 1st Respondent had imposed punishment of Compulsory Retirement of the applicant vide Memo No.F4-1-/85-86.
3.	1-5-1990	Consequent on setting aside the punishment order and the appellate order by this Hon'ble Tribunal, the applicant was placed under suspension by the 1st Respondent with retrospective effect vide Memo No. F4-1/85-86, supplying copy of Inquiry Officer's report the applicant.
4.	13-11-1990	The 1st Respondent having obtained representation of the applicant on the inquiry report, vide his Memo No.F4-1/85-86 had imposed the same punishment of Compulsory Retirement of the applicant from service.
5.	4-1-1991	Aggrieved against the punishment of Compulsory Retirement for second time the applicant represented to Respondent No.1 to set aside the cruel punishment imposed on him.
6.	31-3-1992	The Appellate authority i.e., Respondent No.1 without considering the articulations made by the applicant, rejected the representation vide Proceedings No. ST/21-3/11/91.

Hence this application before the Hon'ble Tribunal.

Date: 1-5-1992.

Place: Hyderabad.

*[Signature]*  
COUNSEL FOR THE APPLICANT.

*Plg. to set aside the Order of Compulsory Retirement the Applicant from service as LSG/PA.*  
*SGSC*  
*Alotted to SGSC*  
*Addl CGSC*  
*7/5/92*



(9)

"F O R M - I"

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNALS  
ACT, 1985.

O.A. No. 438 of 1992.

BETWEEN:

I. Ramudu S/o I. Ramaiah,  
aged about 49 years, Occ: LSG/PA,  
Bhainsa, Adilabad District.

.. APPLICANT.


A N D


1. The Director of Postal Services,  
Andhra Pradesh Northern Region,  
Hyderabad.
2. The Superintendent of Post Offices,  
Adilabad Division, Adilabad.

.. RESPONDENTS.

I N D E X

Sl. No.	Descriptions of documents relied upon	Annexure No.	Page No.
1.	Application	-	1-14
2.	Memo No.F4-1/85-86, dated 13-11-1990 of the Superintendent of Post Offices, Adilabad Division, Adilabad imposing punishment of Compulsory Retirement of the applicant from service.	I	15-24
3.	Memo No.F4-1/85-86, dated 30-5-1989 of 1st Respondent imposing punishment of Compulsory Retirement of the applicant from service with effect from 31-5-1989.	II	25-35
4.	Appeal of the applicant dated 4-1-1991 made to the Director of Postal Services, Hyderabad requesting him to set aside the punishment imposed on the applicant.	III	36-44
5.	Proceedings No.ST/21-3/11/91, dated 31.3.92 of the Director of Postal Services, Hyderabad Region, Hyderabad rejecting the appeal.	IV	44

  
COUNSEL FOR THE APPLICANT.

  
SIGNATURE OF THE APPLICANT

Date: 1. 5. 1992

Place: Hyderabad.

FOR USE IN TRIBUNAL'S OFFICE:

Date of filing:

or

Date of receipt by post:

Registration No.

Signature  
for Registrar.

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL; HYDERABAD BENCH:  
AT HYDERABAD.

O.A. No. 438 of 1992.

BETWEEN:

I. Ramudu S/o I. Ramaiah,  
aged about 49 years, Occ: LSG/PA,  
Bhainsa, Adilabad District.

.. APPLICANT.

A N D

1. The Director of Postal Services,  
Andhra Pradesh Northern Region,  
Hyderabad.
2. The Superintendent of Post Offices,  
Adilabad Division, Adilabad.



.. RESPONDENTS.

DETAILS OF THE APPLICATION:

Address for service of summons  
and processes:

Sanka Ramakrishna Rao,  
Advocate; 1-10-29;  
Ashoknagar, Hyderabad-20.

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION  
IS MADE:

"This application is against the impugned  
Order No.ST/21-3/11/91, dated 31.3.1992 of  
Director of Postal Services, Hyderabad  
Region, Hyderabad".

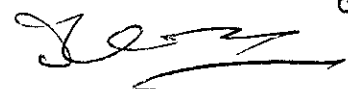
2. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter of  
the order against which he wants redressal is within the  
jurisdiction of the Tribunal u/s.14(1)(b)(ii) of the  
Administrative Tribunals Act, 1985.

3. LIMITATION:

The applicant further declares that the application  
is within the limitation period prescribed in Section 21(1)  
(a) of the Administrative Tribunals Act, 1985.

contd..2.



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4. FACTS OF THE CASE:

The applicant while he was working as Postal Assistant, Bhainsa in Adilabad Division, Adilabad, was given charge memo under Rule 14 of CCS (CCA) Rules, 1965 vide Memo No.F4-1/85-86, dated 19-10-1985 of Superintendent of Post Offices, Adilabad DN, Adilabad imputing charges against him for certain irregularities. An inquiry was held and the Inquiry Officer held that Article of charge No.I as not proved, charge No.II,III & V as proved and Article of charge No.IV as partially proved. Basing on the said inquiry report the Disciplinary Authority had issued punishment order of Compulsory Retirement vide Memo No.F4-1/85-86, dated 30-5-1989 (Annexure No. II on Page No. 25).

2. Aggrieved against the Compulsory Retirement, the applicant approached this Hon'ble Tribunal who had quashed the orders of Compulsory Retirement. Subsequently the applicant was placed under suspension by the 1st Respondent with retrospective effect. The applicant was supplied with a copy of Inquiry Officer's report vide Memo No.F4-1/85-86, dated 1-5-90 directing the applicant to submit his representation. Having obtained the representation from the applicant the Disciplinary Authority had imposed the same punishment of Compulsory Retirement vide his Memo No.F4-1/85-86, dated 13-11-1990 (Annexure No. I on Page No. 15).

3. Aggrieved against the punishment of Compulsory Retirement for a second time the applicant represented to the Director of Postal Services, Andhra Pradesh Northern Region, Hyderabad on 4-1-1991 (Annexure No. III on Page No. 36) requesting him to set aside the cruel punishment imposed on him, <sup>for which</sup> the Director of Postal Services, Hyderabad Region, Hyderabad had rejected the appeal of the applicant.

Hence this application before the Hon'ble Tribunal praying to set aside the order of punishment imposed by the 1st Respondent

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5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

The applicant was issued <sup>with a</sup> Memo of Charges under Rule 14 of CCS (CCA) Rules, 1965 vide Memo No.F4-1/85-86, dated 19-10-1985 ~~of~~

Superintendent of Post Offices, Adilabad Division, Adilabad and an inquiry was held. The Inquiry Officer held that charges No.I as not proved and No.II, III & V were proved and charge No.IV was partially proved. As the copy of the inquiry report was not supplied before imposing punishment of Compulsory Retirement, the applicant approached this Hon'ble Tribunal on whose orders he was supplied with a copy of Inquiry Officer's report to which the applicant submitted his representation. Having obtained his representation the Disciplinary Authority had issued the same punishment vide the Impugned Order cited above.

2. It is submitted that the charges framed against the applicant were as detailed briefly as follows:-

- a) That the applicant over stayed on his deputation at Madharam Township S.O. and unauthorisedly took charge as sub Postmaster.
- b) That he unauthorisedly absented himself.
- c) He allowed half with-drawals in 64 RD accounts before completion of 12 months existence.
- d) That he made short payments in respect of 14 RD with-drawals; and
- e) That he wrongly effected 2 RD With-drawals.

3. It is submitted that the charge sheet is not maintainable for the reasons that it violated Rule 4(1) & 4(2) of P & T Manual Vol.III. Both in Annexure-I and Annexure-II of the

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charges, the Disciplinary Authority has expressed definite opinion about the commission of the offence and such a chargesheet is liable to be quashed. It was held in Surendra Chandra Das Vs. State of W.B. 1982 Lab IC 574, which was made clear by the Hon'ble Court that "if the charge is a predrawn conclusion on the commission of offence the punishment is liable to be quashed, the chargesheet is defective for not citing the relevant rules which are violated". In support of charge No.II conduct rule 3(1)(iii) is cited whereas the allegation is about over stayal for which there are distinct rules and the conduct rule cited is not applicable. There is no allegation of any malpractice in respect of charge No.III and the rule applicable i.e. rule 3(1)(ii) of CCS (conduct) Rules, 1964 has not been cited. In respect of charge No.IV, the allegation is of short payment and the only rule applicable is rule 3(1)(i) but rule 3(1)(ii) and 3(1)(iii) also have been quoted. Charge No.V relates to wrong with-drawals and in the absence of allegation of any motive the only rule applicable is rule 3(1)(ii) of CCS (conduct) Rules, 1964 which was not quoted, which the Inquiry Officer himself has accepted that rules were wrongly quoted, and therefore such a chargesheet is not maintainable and bad in law.

4. Preliminary inquiry is a must under rule 3 of P & T Manual Vol.III and the procedure prescribed therein must be followed. The preliminary investigation should be done at the "APPROPRIATE LEVEL" vide Rule 2(a) ibid. In this case, this was not done and the chargesheet is in consequence of an incompetent and unauthorised investigation. In pursuance of rule 2(a) the department has prescribed levels of investigation and the lowest investigating authority is an Inspector of Post Offices. In this case the two additional prosecution witnesses S/S L.Shankar and Mohd. Abdulla, mail oversers clearly admitted during the inquiry that they enquired into

*[Signature]*

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the case and recorded statements for which they have no power. No statement was recorded in the applicant's presence. No statement was taken from the applicant.

5. It is saddening that the humiliating aspect of the investigation went unnoticed. At the time of the investigation the applicant had a standing of 20 years in clerical cadre in the department but the applicant's fate was to be decided by two mail <sup>e</sup>oversers who are below the clerical cadre. They were allowed to probe into the work done by the applicant who is superior to them. It is no consolation to say that the present punishment is based on a Rule 14 inquiry as the inquiry itself was based on a chargesheet issued in consequence of such an incompetent, unauthorised and humiliating investigation.

6. The following documents found relevant by the Inquiry Officer were not produced greatly hampering the applicant's defence.

- (1) Leave application of Sri P. Chandraiah.
- (2) The applicant's leave application.

Further, though several transactions entered in the Ledger were subjected to scrutiny during the inquiry, the original ledgers were not produced during the inquiry inspite of the applicant's request. Thus veracity of the documents relating to the transactions produced during the inquiry has not been established.

7. Following witnesses listed in the charge sheet whose evidence the Disciplinary Authority felt necessary to sustain the charges were not produced.

- (1) Vemula Rajamallu.
- (2) S. Tirupathi
- (3) E. Posham
- (4) Mohd. Moinuddin



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In the absence of the evidence of the listed witnesses, it was not judicious to hold the charges as proved.

8. Rule 2 of P & T Manual Vol. III prescribes that the procedure laid down in CCS (CCA) Rules, 1965 should be "rigidly" followed. But this was blatantly violated during the inquiry.

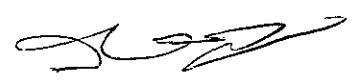
(i) As per the daily docket dated 20-4-1988 and 21-4-1988, the listed documents were produced by the Presenting Officer and filed on 20-4-1988 and 21-4-1988. By that time the case on behalf of the prosecution was over. This means that the listed documents were not produced during the examination of witnesses and that they were in the unauthorised custody of the Presenting Officer. This casts serious doubt about the genuineness, of the listed documents produced belatedly and so these documents can not be relied upon.

(ii) It is further submitted that vide D.O.No.134/7/85 A, ADVT I, dated 11-6-1976, there is no need for examination-in-Chief in r/o prosecution witnesses whose statements were recorded earlier and who admit the contents in the Rule 14 inquiry. But, when the witnesses disown the contents of their earlier statement, examination-in-Chief has to be conducted. Nobody can be cross-examined unless he has been examined-in-Chief, i.e., unless the applicant was given an opportunity to depose his version. Prosecution witnessess cannot be cross examined by the Presenting Officer unless they are declared as hostile by the Presenting Officer and permitted by the Inquiry Officer to be cross examined. These are the accepted procedures and any violation would strike at the root of principles of natural justice.

In this case, the following prosecution witnesses disowned the contents of the earlier statements.

(1) Sri G. Rajareddy.

(2) Sri T. Vijaya Kumar.



- (3) Sri I. Krishna.  
(4) Sri Lingaiah.  
(5) Sri D. Odelu.  
(6) Sri K. Lingaiah.

They were not examined by Presenting Officer. They were not declared hostile by him. Inquiry Officer's permission was not sought to cross examine them. Yet they were straight away cross examined. This serious irregularity alone nullifies the entire proceedings.



(iii) During the inquiry the Inquiry Officer acted in a manner as if it was his duty to prove the charge. His questioning Sri I. Krishna PW1, whether the investigating officer forced him to say that there was short payment, Sri T. Vijaya Kumar another PW1 whether anybody forced him to say that there was short payment does not betray disinterestedness in the case as the attempt was to stick to the original statement and not to ascertain facts as deposed.

(iv) The Disciplinary Authority went beyond his scope in his attempt to hold that charge No.1 is partially proved, (which charge incidentally the Inquiry Officer held as not proved). He says, if the Inquiry Officer felt that the appearance of Sri P. Chandraiah was essential he should have enforced it using his power. For one thing, any failure on the part of the Inquiry Officer should not be at the cost of the Govt. Servant, for another the Superintendent of Post Offices, Adilabad suppressing the fact that it was the Presenting Officer who is the representative of the Disciplinary Authority, who dropped the witness Sri P. Chandraiah vide proceedings dated 21-4-1988. It may be interesting to note that this witness was a S.P.M. working under the same SP who was not originally cited, but was summoned as an additional witness at the request of the Presenting Officer and also dropped at the request of the Presenting Officer and the Superintendent of




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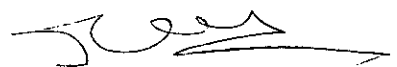
Post Offices, Adilabad now says that the Inquiry Officer should have enforced the appearance using his power.

9. Though the Disciplinary Authority chose to disagree with the finding of the Inquiry Officer on charge No.I he did not communicate the disagreement of reasons there for, while forwarding the inquiry report to the applicant as  ordered  by various Tribunals. This is a serious violation of principles of natural justice as the applicant was kept in dark about the reasons for punishing the applicant till the end and was denied the minimum requirement of providing an opportunity to refute the same.

10. The applicant may be permitted to briefly submit his submissions on the findings of the Inquiry Officer and Disciplinary Authority on the various charges.

(i) Charge No.1: The Inquiry Officer held that the charge was not proved. Without giving the applicant an opportunity to explain, the Disciplinary Authority held the charge as partly proved. This finding is not based on evidence produced during inquiry. Sri P. Chandraiah was the S.P.M. and the applicant was the P.A. Sri P. Chandraiah did not depose that there  was no order from Divisional Office, that he did not make an order book entry directing the applicant to take charge or that the applicant usurped the charge. The order book of the office was not produced to prove that there was no order from the S.P.M., and if there was any entry, the authority of the Division Office is not quoted. As the applicant was entirely guided by the S.P.M's written orders and in the absence of the witnesses of Sri Chandraiah and production of the order book, there is not even an iota of evidence to hold the charges as proved.

(ii) Charge No.II: While holding this charge as proved the



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Inquiry Officer observed that the applicant posted the leave letter with back date. This allegation is not even included in the chargesheet. The charge only speaks of wanting date stamp impression on the cover in which he sent the leave application on MC. If the date of posting was doubted and non-stamping of the cover was to hushup the delay, Superintendent of Post Offices, Adilabad should have made enquiries first with the office of posting. However the applicant is not concerned with the wanting of date stamp impression on the envelop. The Inquiry Officer says the <sup>Post Master</sup> P.M. Mancherial would have drawn the salary by mistake, and paid to the applicant. This is a clear instance where the Inquiry Officer is stepping into the witness box. The Post-Master, Mancherial was not a witness and except for the subjective thinking of the Inquiry Officer there is absolutely no evidence to show that the salary was drawn by mistake. Here the fact is that the applicant had applied for leave on medical grounds which was not refused nor was he asked to explain for late submission of application and the leave salary was promptly paid which goes to show that the leave was sanctioned. Later on when some other charges were foisted on him, a charge of unauthorised absence was also, cooked up. It is also submitted that irrelevant rules i.e., rules unrelated to unauthorised absence have been quoted in support of the charge. This charge has not been proved through documentary or oral evidence and the inference drawn by the Inquiry Officer from a vaccum of evidence would remain empty.

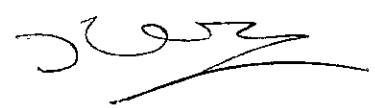
(iii) Charge No.III: It is stated that the applicant allowed half withdrawals from 64 R.D. accounts before completion of 12 months existence. No witness was produced to prove this allegation. The documents relating to this charge were produced on 21-4-1988 after completion of the prosecution case and so cannot be relied upon. These documents were not identified by the persons who have custody of them or by the applicant also

*[Signature]*

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and the genuineness of these documents has not been established. Certain Pass Books purported to have been handled by the applicant were produced but he was never questioned about the transactions. If the Inquiry Officer can draw conclusions from unidentified and unaccepted documents behind applicant's back, it cannot be judicious, rendering a quasi judicial inquiry redundant. Thus the charge is not legally proved.

(iv) Charge No.IV: As already stated, listed witnesses were not examined. Documents were produced on 20-4-1988 i.e., after completion of the prosecution case and so there is not a single legally valid documentary evidence in the case. Cause of action in the case is shrouded in mystery. There was no complaint from any source and in fairness, to eliminate attributes of malafied, the Superintendent of Post Offices, Adilabad is obliged to say the reasons for his "SUO MOTO" action in investigation. Generally in the Postal Department any short payment should be reported within a reasonable time. Many of the depositors who were produced as witnesses are literate enough to understand the correct amounts due to them and they have accepted the withdrawals and made no complaint of short payment to anybody in the department. Even common sense warrants that there should be a complaint within a reasonable time if not immediately. The treatment meted out to the applicant might have suited the S.P.O's in sacking him. But the procedure is fraught with danger. Months after the transactions, some one (including mail overseers) could go to the depositors and obtain statements alleging short payments even if they had not complained and in such vicious atmosphere no official can function. The only point to be considered is whether there was any complaint from the depositors and if not, what documentary evidence is there about the short payments. The applicant has already pointed out the level of investigation applied in the case. In all the cases payment was made in the



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presence of witnesses and none of them was produced during the inquiry to prove the charge. As such this charge is not proved.

(v) Charge No.V: This is only about wrong payments in two cases. Besides not having any documentary evidence produced legally as they were filed only on 20-4-1988 and 21-4-1988, it is submitted that one Mohd. Moinuddin prosecution witness was not produced during inquiry and for this alone this part of the charge is not proved. Regarding the other account the person who received payment clearly stated that the amount was correctly received by him and it was just a wrong payment occurred due to rush of work but the integrity of the applicant cannot be questioned on the basis of this single instance.

11. It is respectfully submitted that the Respondents have not given any consideration to the fact that the applicant belongs to Scheduled Tribes community coming from very backward area and obviously may lack the same standard of culture and the sophistication. The very sacred constitution prescribes that it is social obligation on the part of privileged brethren to lead this community to main stream of culture and mannerism and therefore, the few privileged and influential colleagues indulged in a type of behaviour bordering social ostracism with the applicant, had made the applicant a victim for the last one and half decades. The present case is also consequence to such discrimination against the applicant by foisting complaints against him and fabricating evidences against the applicant, which the 1st Respondent should have seen through the game played against the applicant who is presently suffering and facing enormous hardships which the punishment had caused to him, to his family and children, due to irregular investigation, irregular chargesheet, defective inquiry and the ultimate cruel punishment of Compulsory Retirement imposed on the applicant which warrants to be set aside by all cannons of justice.

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It is, therefore prayed that the punishment of Compulsory Retirement imposed on the applicant may be set aside as case of no evidence and the charges foisted on the applicant with ill motive to harrass the applicant. Therefore, the applicant is entitled for reinstatement with all the consequential benefits.

6. DETAILS OF THE REMEDIES EXHAUSTED:

The applicant declares that he has availed of all the remedies available to him under the relevant service rules.

Aggrieved against the order of Compulsory Retirement of the 1st Respondent vide Memo No.F4-1/85-86, dated 13-11-90, the applicant had represented to the Director of Postal Services, Hyderabad Region, Hyderabad on 4-1-1991 requesting him to set aside the punishment ordered by the 1st Respondent which was rejected vide Proceedings No.ST/21-3/11/91, dated 31.3.1992.

Hence this application before the Hon'ble Tribunal.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT:

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any court or any other authority or any other Bench of the Tribunal nor any such application writ petition or suit is pending before any of them.

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8. RELIEF(S) SOUGHT:

In view of the facts mentioned in para 4 above the applicant prays for the following relief(s).

It is respectfully prayed that the Hon'ble Tribunal may be pleased to set aside the punishment order of Compulsory Retirement imposed by the 1st Respondent and order the Respondent No.1 to reinstate the applicant into service with all the consequential benefits and pass such other and further order or orders as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

9. INTERIM ORDERS IF ANY PRAYED FOR:

Pending final decision on the application, the applicant seeks the following interim relief:

0 - N O N E -

10. NOT APPLICABLE:

11. PARTICULARS OF THE BANK DRAFT/POSTAL ORDER FILED IN RESPECT OF THE APPLICATION FEE:

P.O./D.D. No. 803 185271

Date: 30.4.1992

Fee: Rs.50/-

Name of the Office Issued: Mushkwarabad S.O.

Name of the Office Payable at: G.P.O., Hyderabad.

Rs. 50/-  
P.O./B.G./D.D./Removed

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*[Signature]*

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12. LIST OF ENCLOSURES:

Sl. No.	Details of the Documents:	Annexure No.
1.	Memo No.F4-1/85-86, dated 13-11-90 of the Superintendent of Post Offices, Adilabad Division, Adilabad imposing punishment of Compulsory Retirement of the applicant from service.	I
2.	Memo No.F4-1/85-86, dated 30-5-89 of 1st Res. imposing punishment of Compulsory Retirement of the applicant from service w.e.f. 31-5-89.	II
3.	Appeal of the applicant dated 4-1-91 made to the Director of Postal Services, Hyderabad Region, Hyderabad requesting him to set aside the punishment imposed on the applicant.	III
4.	Proceedings No.ST/21-3/11/91, dated 31.3.1992 of the Director of Postal Services, Hyderabad Region, Hyderabad rejecting the appeal.	IV

VERIFICATION

I, I. Ramudu S/o I. Ramaiah aged 49 years, working as LSG/PA (Compulsory Retired) in the office of Bhainsa, Adilabad District, Resident of Bhainsa, Adilabad Dist. (temporarily come down to Hyderabad), do hereby verify that contents of paras 1 to 4 and 6 to 12 are true to my personal knowledge and para 5 believed to be true on legal advice and that I have not suppressed any material fact.

Date: 1.5.92

Place: Hyderabad.

  
SIGNATURE OF THE APPLICANT.

  
COUNSEL FOR THE APPLICANT.

# Annexure - I

DEPARTMENT OF POSTS:INDIA  
OFFICE OF THE SUPDT. OF POST OFFICES: ADILABAD DN. 504001.

Memo.No.F4-1/85-86, dated at Adilabad the 13-11-1990.

## P R O C E E D I N G S

Read the followings:-

- 1) Memo.No.F4-1/85-86, dated.19.10.85 issued to Sri.I.Ramudu,P.A.(U/S) Bhainsa alongwith Annexure-I to IV.
- 2) Representation of Govt.servant dated. 29.10.85.
- 3) Memo.No.F4-1/85-86,dated.26.2.86 appointing Sri.V.Anjaiah, the then ASP Adilabad as P.O.
- 4) Memo No.F4-1/85-86, dated.26.2.86 appointing Sri.K.Shankaraiah,the then ASP Peddapalli as I.O.
- 5) Statement of defence of the Govt. servant dated.27.6.88.
- 6) Written brief of P.O. dated.29.7.88.
- 7) Inquiry report of I.O. dtd.25.8.88.
- 8) All other connected records and documents.

-O-

Sri.I.Ramudu, P.A.(U/S) Bhainsa S.O. was proceeded against under Rule-14 of CCS(CCA) Rules 1965 vide this office memo 1st cited above with a direction to submit his statement of defence, if any, with in 10 days of receipt of the memo. The memo was delivered to the Govt.servant on 24.10.85 and the Govt. servant submitted his statement of defence vide his representation dated.29.10.85 which was received in this office on 30.10.85.

2) The articles of charge framed against Sri.I.Ramudu, P.A.(U/S) Bhainsa are that:-

### ARTICLE - I.

That the said Sri.I.Ramudu while functioning as Postal Assistant at Bhainsa S.O. was deputed to work at Madaram Town ship S.O. for a period of 20 days from 23.2.1985 as an addition hand to attend to the clearance of pendency of postings of subsequent deposits in RD PRSS pass books. The said Sri.I. Ramudu P.A. stayed at Madaram Town ship for 23 days upto 17.3.85 instead of the specified period of 20 days. The said Shri.I Ramudu, P.A. has not only thus overstayed at Madaram Town Ship (S.O.) by 3 days but also further held the charge of SPM, Madaram Town ship (SO) unauthorisedly relieving Shri.P.Chandra. the regular SPM to proceed on casual leave from 18.3.1985, even in the absence of orders sanctioning such leave from the Divisional Office and thus acted in a manner which is unbecom on the part of Govt. servant contravening the provisions of Rule 3(1)(iii)of CCS(Conduct) Rules-1964.

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ARTICLE : II

That the said Shri.I.Ramudu while working as SPM at Madaram Town ship (SO) was relieved on 1.4.1985 in accordance with Divisional Office service message XP/1800/29.3.1985 to join back immediately as P.A. at Bhainsa S.O. But the said official did not join immediately at Bhainsa S.O. but was absent from duty without proper permission from 2.4.1985 to 21.4.1985. Thus he exhibited lack of discipline which is unbecoming of a Govt. Servant contravening the provisions of Rule 3(1)(iii) of CCS (Conduct) Rules - 1964.

ARTICLE : III

That the said Shri.I.Ramudu, while functioning as SPM Madaram Town Ship, S.O. during the period from 18.3.85 to 31.3.1985 allowed withdrawals in as many as 64 RD Accounts mentioned in the statement of imputations even though these accounts were not in operation for a period of atleast one year and or there were no credits for 12 monthly instalments in the said accounts as required by Rule 504(i) read with Rule-523/3 of P&T Manual Vol.VI Part-II. Thus he contravened the provisions of Rule-504(i) and (iii) of P&T Manual Vol.VI part-II read with Rule-523/3 ibid.

ARTICLE : IV

That the said Shri.I.Ramudu while functioning as SPM, Madaram Town Ship S.O. during the period from 18.3.1985 to 31.3.85 allowed withdrawals from the 5 year RD accounts in respect of 32 RD accounts mentioned in the statement of imputations standing open at Madaram Town ship S.O. but while effecting payment the said Shri.I.Ramudu failed to pay full amounts of withdrawals to the depositors as accounted for in the respective pass books and RD list of transactions. Thus the said Shri.I.Ramudu P.A. has failed to maintain absolute integrity and acted in a manner which is unbecoming of a Govt. Servant contravening the provisions of Rule 3(1)(ii) and (iii) of CCS(Conduct) Rules-1964.

ARTICLE : V.

That the said Shri.I.Ramudu while functioning as SPM Madaram Town ship S.O. during the aforesaid period irregularly allowed withdrawals in the following RD accounts without obtaining SB-7 applications from the depositors concerned and effected payments to the persons other than the depositors in contravention of Rule 504(iii) read with Rule-523(3) of P&T Man.Vol.VI part-II.

Sl. No.	RD A/c No.	Name of depositor.	Date of withdrawal.	Amount of withdrawal.	Name of the person to whom payment effected
1.	61798	Aritota Mallaiah, MVK-2	30.3.85	110-00	B.Rajamallu, MVK-2
2.	61799	-do-	30.3.85	245-00	-do-
3.	61858	Md.Moinuddin s/o Shri Raj Mohd.	30.3.85	25-00	Md.Moinuddin s/o Shri.Nizamuddin
4.	61859	-do-	30.3.85	110-00	-do-

Thus the said Shri.I.Ramudu failed to follow the provisions of Rule-504(iii) read with Rule-523/3 of Vol.VI Part-II.

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3) INQUIRY: Shri.K.Shankaraiah, the then ASP Peddapalli was appointed as Inquiring Authority vide this office memo of even no, dated.26.2.86 and Shri.V.Anjaiah the then ASP Adilabad was appointed as presenting officer vide this office memo of even no, dated.26.2.86. The inquiry was commenced on 16.4.86 at Peddapalli Divisional Office and further sittings were held on 17.6.86, 24.7.86, 11/12.11.86, 12.3.87, 20.4.87, 21.4.87, 16/17.9.87, 27/28.10.87, 22.12.87, 5.1.88, 9/10.2.88, 8.3.88, 19/20.4.88, 21.4.88, 27.6.88 and 11.7.88. Inquiry was completed on 11.7.87 after the I.O. questioned the Govt.Servant. The presenting officer submitted his written brief on 29.7.88. But the Govt.servant did not submit his written brief. The Inquiry Officer has submitted Inquiry report on 25.8.88. A copy of Inquiry report dated 25.8.88 was supplied to Govt. servant vide this office letter of even no, dated. 1.5.90 with instructions to submit his representation or submission if any, he wishes to make within 15 days of receipt of the letter. The letter was delivered to Govt. Servant on 4.5.90. On his request received in this office on 21.5.90 the Govt. servant was permitted extension of time to submit his representation upto 4.6.90 vide this office letter of even no, dated. 30.5.90 ~~vide this office~~ As the Govt. servant did not submit any representation, he was addressed vide this office letter of even no, dated. 27.7.90 to submit his representation within a week from the date of receipt of the letter. The letter was received by him on 6.8.90. The Govt. servant requested in his letter dtd.7.8.90 to grant 10 days time but he did not submit representation. The Govt. servant his representation dated. 3.9.90 again requested to give him 15 days time to submit his representation. The Govt. servant was asked in this office letter No.F4-1/85-86, dated. 24.9.90 to submit his representation on I.O. report before 30.9.90 and he was also informed that failure to submit his representation will be treated as he has not representation to make and final orders will be passed. The letter was received by Govt. servant on 27.9.90. The Govt.Servant again requested in his letter dated. 28.9.90 to grant him 15 days time and assured that no further time will be asked. He was permitted in this office letter dated. 3.10.90 to submit his representation on or before 15.10.90 and informed that no further time will be allowed. The Govt. servant has not submitted any representation till date.

4) FINDINGS OF INQUIRY OFFICER: Considering the evidence adduced during the Inquiry, the statement of defence and written brief of the P.O. findings in respect of each article of charge are as under:-

ARTICLE OF CHARGE NO:I. As per the directions of SPOs Adilabad in his letter no.L2-43/84-85 dated.28.2.85 (Exp-98) Shri.I.Ramudu was relieved at Bhainsa and joined at Madaram Town Ship S.O. on 23.2.85. This can be seen from the charge report (Exp.100). The letter (Exp.98) was addressed to SPM, Bhainsa endorsing a copy to the SPM Madaram Town Ship S.O. to utilise the P.A. for (20) days and complete the posting work, when the Govt. servant joined at Madaram T.S. SO as P.A. it was for the SPM to utilise him for 20 days and relieve him promptly after the stipulated period. Here this was not done by the SPM and he is responsible for non-compliance of the orders of the Divisional Office. As the Govt. servant was the P.A. he had to carry out the orders and to wait for his relief. In this case the Govt. servant was not relieved after completion of 20 days but the charge report (Exp.100) shows that he was handed over the charge of SPM by the SPM on 18.3.85 (F/N). No orders of the SPOs were cited in the charge report. He was relieved from the duties of SPM on 1.4.85(F/N) and the SPOs, Adilabad XP/1800/29 was cited. In this case the principal witness is Shri.P.Chandraiah, the then SPM

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Madaram Town Ship S.O. His name was not cited in the list of prosecution witnesses. Though the P.O. requested to include the name of Shri.P.Chandraiah as additional prosecution witness and was permitted, he was not examined but dropped at a later date. The fact that as to why he did not relieve the Govt. Servant after completion of 20 days and as to why he availed C.L. from 18.3.85 to 1.4.85 handing over charge to the Govt.servant is not known. As the period from 18.3.85 to 1.4.85 is not a short period the SPOs should have directed Shri.P.Chandraiah to join back and relieve the Govt. Servant to report back at Bhainsa. But no evidence to this effect was produced in the inquiry and the opportunity to cross examine Shri.P.Chandraiah the then SPM, Madaram Town Ship SO was not given. In the absence of the evidence of principal witness the charge can not be held as proved. Had the Govt. servant was relieved by the SPM on completion of 20 days and the Govt. servant stayed in the office beyond that period, he should have been held responsible. For the period from 18.3.85 to 1.4.85 the Govt. servant was on duty and discharged his legitimate duties and as such he is not responsible for overstaying. Further the Govt. servant's action to be on duty discharging his legitimate duties does not involve him in un-becoming of a Govt. servant. The plea of the P.O. that the charge reports, letter of SPOs Adilabad and telegram are sufficient documentary proof for charge can not be accepted.

ARTICLE OF CHARGE NO: II:

As seen from the charge report dated. 1.4.85 Exp-102 the official was relieved at Madaram Town Ship SO on the F/N of 1.4.85. On relief he was due to join back at Bhainsa as per the directions of the SPOs Adilabad in his XP/1800/29.3.85 Exp-104. But the official remained absent from duty and applied for leave on Medical certificate. The leave application, SR-1 and M.C. were received in the Divisional Office of Adilabad on 16.4.85. He requested for grant of leave from 2.4.85 as he fell sick. The Govt. servant argued that he was not un-authorisedly absent from duty but sent leave application. His contention is not correct. The Govt. servant can not claim the leave as a matter of right and mere production of M.C. does not itself confer upon him any right to leave as laid down in Rule-7 and Rule-19(5) of CCS (Leave) Rules-1972 respectively. As per the instructions contained in DG P&T letter No.34/1/75-SPB.II, dated.31.10.75 communicated in C.O.letter No.Staff/45-1/75, dated. 10.11.75, the Govt. servant should produce M.C.within 24 hours. If it is not possible he can post the M.C. within 24 hours and it is for the concerned official to establish in case of dispute that the certificate was actually posted to the leave sanctioning authority within 24 hours. It is for the Govt. servant to forward the M.C. to the sanctioning authority within 24 hours and orders of that authority awaited. In this case the Govt. servant did not send the leave application, SR-1 and M.C. in time i.e., within 24 hours after he fell sick. The Exp-105(Envelope) shows that it was received in Divisional Office on 16.4.85 and did not bear the date of posting and from address. The Govt. servant did not produce any evidence that he posted the envelop either on 2.4.85 or 3.4.85 i.e., immediately after he fell sick. From the above it is evident that the Govt. servant posted the letter with back date and that too without from address to conceal the un-authorised absence from duty. The Govt. servant's argument that he was paid salary for the month of April '85 and hence the question of un-authorised absence does not arise is not correct. Payment of salary is nothing to do with the absence. The Postmaster Mancherial might have drawn the salary by oversight. Thus the charge is held as proved.

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ARTICLE OF CHARGE NO:III:

From the pass books of 64 RD A/cs it is evident that all the 64 A/cs were not in operation for one year as on date of withdrawal and there were 12 monthly credits in 36 RD accounts, 11 monthly credits in 24 RD A/cs and 10 monthly credits in 4 RD A/cs. The Govt. servant accepted this but argued that all the 64 RD A/cs were not having deposits less than 12. The Govt. servant's argument that allowing withdrawals in the above RD A/cs was due to heavy work can not be accepted. By rush of work mistake may happen in one or two cases but not in 64 A/cs. The charge regarding allowing withdrawals in 64 RD A/cs against to the Rule-504(1) read with Rule-523/34 of P&T Man.Vol.VI Part-II is proved by the documentary evidence. The Rule of CCS (Conduct & service) Rules-1964 which attracted the action of Govt. servant in paying withdrawals against to the rules was not mentioned in the article of charge. The action of the official attracts the provision of Rule-3(1)(ii) of CCS (Conduct and service) Rules-1964 (Failed to maintain devotion to duty).

ARTICLE OF CHARGE NO:IV:

The under mentioned prosecution witnesses deposed before the I.O. that they were paid less amount while effecting payment of withdrawals in respect of their RD A/cs as detailed below.

Sl. No.	Name of the P.W.	Amount paid less:
	S/Shri.	
1.	Gone Mallalah, P.W-I	Rs. 45/-
2.	K.Satyanarayana Reddy, PW-6	Rs. 30/-
3.	Bhadrappu Rajamallu, PW-8	Rs. 180/-
4.	G.Rajalingu, PW-10	Rs. 50/-
5.	E.Ramulu, PW-12	Rs. 200/-
6.	K.Lingaiah, PW-13	Rs. 80/-
7.	K.Mallalah, PW-14	Rs. 75/-

The PWs 2, 3, 4, 5, 7 and 11 though alleged short payments at the time of preliminary enquiry turned hostile and admitted correct payment during the inquiry. Hence the part of charge is not proved. The argument of PO that the additional PWs who recorded the statement of the above witness have confirmed the genuineness of the statements and the short payment is proved can not be accepted as the oral evidence given bears much weight in the proceedings. Here the investigating officers are not material witness they did not witness the payment. No case can be decided on the basis of their evidence alone. The P.W. 2, 3, 4, 5, 7 and 11 are only material witnesses as they are the persons who received the amount and no other witnesses were there at the time of payment.

The Govt. servant stated in his defence that he did not get cash excess in his cash and stamp balance on those dates. Had any short payment was made, there should have been excess cash in his balance. Further he stated that there were no complaints from the depositors that they were paid short and there were not witnesses who witnessed the short payments. Hence the depositors PW-1, PW-6, PW-8, PW-10, PW-12, PW-13 and PW-14 are the material witnesses and the fact of short payment confirmed by their oral evidence. The contention of Govt. servant in his defence statement that there was no complaint from the depositors and as per the warrants of payments there was no short payment is not correct. In the wanted short payments there will not be any excess cash. From the warrants of payment Exp-2, 3, 8, 9, 13, 14, 18, 19, 35, 36, 61, 62, 67, 68, 73, 74, 83, 84, 96 and 97 it can be seen that there was no witnesses signature, though many of them were illiterate and

they were not identified by the group leaders. In some cases, the amount of withdrawal was not noted on them at the time of payment. (In respect of P.W-6). The action of the Govt. servant in not following the procedure in respect of PRSS A/cs itself speaks his intention. As <sup>many</sup> of the singareni Colliery workers are illiterate and moody their position was exploited by the Govt. servant. Though there was no specific complaint, the department is having every right to enquire into the alleged short payment came to its notice, whether there is a complaint or not. The Govt. servant is expected to maintain absolute integrity at all times in dealing Govt. transactions. In the cross examination, the AGS put several questions to side track them. The PW-I (answer to Q.6) P.W-6 (answer to Q.1 in recross examination) P.W-10 (answer to Q-1 by the IO) P.W-12 (answer to Q.3 in cross examination) Expt-39 (statement of Sri.K.Lingaiah (PW-13) Exp-44 statement of P-W.8 and Exp-70 (statement of P.W-14) The Govt. servant's plea that his statement was not recorded in preliminary enquiry but disciplinary action was initiated against him is also not correct. The disciplinary action was contemplated when the department found prima facie case against him and every reasonable opportunity was given in the present Rule-14 enquiry. The Govt. servant's plea that Sri.M.Laxmaiah, PW-16 was prejudiced against him and he was responsible for this charge sheet is not based on evidence. The Govt. Servant did not produce any evidence. The PWs 1,6,8,10,12,13 and 14 whose statements were recorded by the persons other than Sri.M.Laxmaiah deposed in the enquiry that they were short paid in the RD withdrawals. The Govt. servant's plea that there is no documentary evidence that there was short payment is not tenable. Here the material evidence is oral evidence and the PWs 1, 6, 8, 10, 12, 13 and 14 deposed that they were paid short and they were not prejudiced against him. In the departmental disciplinary proceedings the standard of proof required is preponderance of probability and not proof beyond reasonable doubt. Out of 14 PWs produced in connection with this charge 7 PWs confirmed the short payment and 6 PWs turned hostile. As such the charge is partially proved.

ARTICLE OF CHARGE NO:V.

Shri.Akuthota Mallalah P.W-9 and Shri.Md.Moinuddin P.W-15 deposed before the I.O. that they were having two RD A/cs each bearing nos.61798, 61799 and 61858, 61859 respectively at Madaram Town Ship S.O. They deposed that neither they applied for withdrawal from their accounts nor received any amount from P.O. towards withdrawal. They further stated that the signatures on the withdrawal forms were not belonged to them. Shri.Bhodrapu Rajamallu P.W-8 deposed before the I.O. that he received Rs.175/- as against Rs.355/- (Total in two accounts) noted in the withdrawal forms. The account No. noted in the form were of Shri.Akuthota Mallalah and the mistake happened due to mistake committed while noting the account numbers by the pay sheet clerk. He further agreed for recovery of the same from his RD A/cs. Shri.Md.Moinuddin s/o Nizamuddin did not attend the inquiry despite repeated notices issued to him. From the documentary evidence i.e., the statement recorded during the preliminary enquiry, it is evident that he received the payment of Rs.130/- as against Rs.135/- noted in the SB-7 forms. The Govt. servant's plea made in his statement of defence accepted that the wrong payment was made due to misleading information furnished by the pay sheet clerk and handing over the pass books of Akuthota Mallalah and Md.Moinuddin s/o Raj Mohd. can not be accepted. Before paying the withdrawals the Govt. servant as a SPM should have checked the specimen signatures and confirmed the names of depositors. These two wrong payments were made on the

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same day i.e., 30.3.85. The Govt. servant has thus failed to follow the prescribed procedure as laid down in Rule-504 (iii) read with Rule-523(3) of P&T Man.Vol.VI Part-II. The wrong payment in contravention of above rules is thus proved by the documentary and oral evidence. The Rule of CCS (Conduct & service) Rules 1964 which attracted the failure of Govt. servant was not mentioned in the article of charge. The above action of the Govt. servant attracts the provision of Rule 3(1)(ii) of CCS(Conduct & Service) Rules-1964 (Failure to maintain devotion to duty).

IX CONCLUSION:-

As narrated above I held the article of charge No.I as not proved, article of charge No.II, III,V as proved and article of charge No.IV as partially proved. (A copy of IO's report dated.25.8.88 is enclosed).

5) FINDINGS OF THE DISC. AUTHORITY:-

I have carefully gone through the articles of charge issued in this office memo F4-1/85-86 dated.19.10.85 the report of Inquiry Officer dated.25.8.88 with connected records of enquiry and all other relevant records. The official Sri.I.Ramudu was compulsorily retired from service with effect from 31-5-1989 A/N in this office proceedings F4-1/85-86 dated. 30.5.89. A copy of the Inquiry report was supplied to the official on 1.5.90 with this office letter No.F4-1/85-86, dated. 1.5.90 as per the directions of central Administrative Tribunal Hyderabad bench in O.A.220 of 1990 dated.2.4.90 and the Govt. Servant was asked to make any representation if he wishes to make within 15 days from the date of receipt of the said letter. The letter with IO's report was received by him on 4.5.90. On his request received in this office on 21.5.90 the Govt. servant was permitted extension of time to submit his representation upto 4.6.90. As he did not submit any representation, he was addressed on 27.7.90 by Regd. post 416 dated. 27.7.90 to submit his representation within a week from the date of receipt of that letter. The same was received by him on 6.8.90. He requested in his letter dated. 7.8.90 to grant 10 days time but did not submit the statement. In his letter dated.3.9.90 he again asked to give him atleast 15 days time to submit his defence. In this office letter F4-1/85-86 dated. 24.9.90, the official was asked to submit his representation on the report of I.O. on or before 30.9.90 at the latest and he was also informed that failure to submit his representation will be treated as he has no representation to make and final orders will be passed. This letter was received by him on 27.9.90. The Govt.servant again requested in his letter dated. 28.9.90 to grant him time for 15 days and assured that no further time will be asked. He was permitted in this office letter 3.10.90 to submit his representation on or before 15.10.90 and informed that no further time will be allowed. He has not submitted any representation till date though he was given reasonable opportunity as desired by him.

Findings on each article of charge are given below:

Article of charge No.I.

I agree with the findings of the I.O. that this charge was not proved in as much as the part of the charge that the Govt. servant overstayed at Madaram Town ship for 3 days beyond the period of 20. days deputation which was ordered by the Supdt.of Post Offices. But I donot agree with his findings in as much as the remaining part of the charge that the said Govt.servant had taken charge of the office from Shri.P.Chandraiah the regular SPM on 18.3.85 without any orders from the Divisional Office granting leave to Shri.P.Chandraiah for the following reasons.

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I. The Govt. servant was well aware of the fact that the case mark of the orders either ordering deputation or granting leave to any official has to be noted in the charge reports of relinquishing and assuming of charge of any post. This is evident from the charge report dated. 21.2.85 of his relinquishing charge of as P.A. at Bhainsa (EXP.99) in which the case mark of SP Adilabad No.L2-43/04/85, dated. 20.2.85 was noted. The same case mark was also noted in the charge report dated.23.2.85 of his assuming charge of PA at Madaram Town ship on 23.2.85 (Exp.100). The code of telegraph message XP/1800/29, from SP Adilabad asking the Govt. servant to join at Bhainsa was also noted in the charge report when the Govt. servant handedover charge of the office as SPM to Shri.P.Chandraiah on 1.4.85 (Exp.102).

But it is seen that no case mark was noted in the charge report of his taking charge on 18.3.85 from Shri.P.Chandraiah the regular SPM.

From the above it can be concluded that the Govt. servant is in the know of the procedure to be followed while assuming and relinquishing charge of any post. But he did not note the case mark if any authority authorising him to take charge of SPM ship of Madaram T.S. on 18.3.85. The Govt. servant stated in his defence that he took charge from Shri.P.Chandriah under the orders of the latter. In such case nothing prevented the Govt. servant to ascertain under which orders Shri.P.Chandraiah transferred the charge of the office and to note the No. of such orders in the charge report. Had the Divisional Supdt. granted leave to Shri.P.Chandraiah, he would have definitely quoted the case mark in the order of the letter and in turn the Govt. servant could have noted the said case mark in the charge report of 18.3.85 (Exp. 101). The Govt. servant has put in a pretty long service of about 20 years on that day and he was well aware of preparation of charge reports. Thus it can be easily concluded that the Govt. servant had taken charge from Shri.P.Chandraiah with a malafide intention but nothing else.

Moreover the Govt. servant failed to report to the Divisional Office about his taking charge so in the absence of orders from Supdt. of Post Offices. This was admitted by the Govt. servant in reply to Q.No.1 by the I.O.

The argument of the Govt. servant that he was not permitted to examine Shri.P.Chandraiah the regular SPM, and had he got an opportunity to examine him if he was produced as addl. prosecution witness, he could prove that he took charge of SPM as per the orders of P.Chandraiah cannot be accepted. The charge here is that the Govt. servant unauthorisedly relieved the regular S.P.M. on 18-3-85 without orders from the Divisional office, so even if the Govt. servant could establish that he acted as per the orders of Shri.P.Chandraiah, it will not absolve him of the charge that he acted in a manner unbecoming of a Govt. servant when he acted so under the orders of SPM but not under the orders of the SPOs.

If at all the Govt. servant intended to prove that he relieved Shri.P.Chandraiah under his orders, there was no bar for the Govt. servant to produce the said person as a defence witness, instead of shifting the blame to the prosecution that Shri.P.Chandraiah was not produced for the purpose of examination by him.



The I.O. has accepted the version of the Govt. servant that the latter acted under the orders of Shri.P.Chandraiah and held that the Govt. servant had not behaved in a manner of unbecoming of a Govt. servant. This cannot be accepted.

Acting under the orders of a person who is not competent to order changes in the incumbancy of any post cannot be taken as acting faithfully. As such the argument of the Govt. servant that he acted under the orders of SPM can not be accepted.

Further the findings of the I.O. that the Govt. servant was not afforded opportunity to cross examine Shri.P.Chandraiah the then regular SPM Madaram Town ship to prove that the Govt. servant had taken charge of the office under his orders cannot be accepted because the Govt. servant acting under the orders of SPM had failed to act properly as expected of him.

Moreover nothing prevented the I.O. to summon Shri.P.Chandraiah and examine him using the powers vested in him as per the Rules. If the I.O. felt the evidence of Shri.P.Chandraiah was so vital to establish the innocence of the Govt. servant the I.O. could have summoned Shri.P.Chandraiah and examined him as required to find out as to why he handed over the charge to the Govt. servant. But here the charge is against the Govt. servant as to why he had taken charge without proper authority. For the prosecution the evidence of Shri.P.Chandraiah is immaterial as the Govt. servant himself accepted that he had taken charge of the office without the orders of Divisional Office.

Thus the charge that the Govt. servant had taken charge of the office in the absence of orders of Supdt. of Post Offices is amply proved.

Further I hold that the Govt. servant with a mala fide intention had taken charge of the SPM ship on 18.3.85 and committed the offences like allowing withdrawals irregularly in 64 RD accounts mentioned in Article III and failed to pay correct amount in 32 RD A/cs mentioned in article IV and allowed irregular withdrawals in 4 RD A/cs and effected payment to persons other than the correct depositors as mentioned in Article V of this charge sheet. Moreover the Govt. Servant committed the above offences during the period of his holding charge as SPM. During the inquiry it has been held by the I.O. that the articles of charge No. III and V are proved and the article of charge IV as partially proved.

Thus it is clearly established that the Govt. Servant with an intention to commit the said offences while holding the charge of the office independently had taken charge of the office even in the absence of any orders from the Divisional Office.

I, therefore, while holding the first part of the charge pertaining to overstaying of the permitted period of 20 days at Madaram Town ship as not proved, hold, that the remaining part of the charge pertaining to taking charge of the office in the absence of orders from the Divisional Office which is more serious in nature as proved.

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Article of charge No.II : I agree with the findings of I.O.  
Article of charge No.III: I agree with the findings of I.O.  
Article of charge No.IV : I agree with the findings of I.O.  
Article of charge No.V : I agree with the findings of I.O.

The Govt. servant has committed various irregularities such as taking over charge of a post office in the absence of proper authority to do so, allowing withdrawals in a number of RD accounts irregularly, not paying correct amounts in several RD accounts and paying amounts of RD accounts to wrong persons and absenting himself from duty without proper grant of leave or permission. The Govt. servant violated the provisions of rules, failed to maintain absolute integrity and acted in a manner which is un-becoming on the part of a Govt. servant. The charges proved are highly serious in nature and reflects misconduct of the Govt. servant. Such a Govt. servant is not at all fit to continue in the department in the interest of service to the public. The charges proved also say about his dishonesty in dealing with the public transactions and also as not trustworthy. This official deserves deterrent punishment commensurate with the seriousness of the charges proved.

ORDER

I, S.Ch.Krishnamurthy, Supdt.of Post Offices, Adilabad hereby order that Sri.I.Ramudu, P.A. (U/S), Bhainsa be compulsorily retired from service with immediate effect.

( S.CH.KRISHNAMURTHY )  
Supdt.of Post Offices  
Adilabad Dn.504001.

A copy of this memo is issued to:-

- AD: 1) Sri.I.Ramudu, P.A. (U/S), Bhainsa.  
( A copy of IO's report dated.25.8.88 is enclosed).  
2) The P.F. of the official.  
3) The Postmaster, Adilabad H.O.  
4) The CR file of the official.  
8) The Sub Postmaster, Bhainsa.  
6) The Register of Disc.cases.  
7/8) office/spare.

Supdt.of Post Offices  
Adilabad Dn.504001.

Annexure - II  
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A-1

DEPARTMENT OF POSTS, INDIA  
Office of the Supdt. of Post Offices, Adilabad Dn. 50400  
Memo.No.F4-1/85-86, dated at Adilabad the 30-5-1989.

PROCEEDINGS

Read the following:-

- 1) Memo.No.F4-1/88-86, dated. 19.10.85 issued to Sri.I.Ramudu, P.A.Bhainsa along with Annexures I to IV.
- 2) Representation of G.S. dated.29.10.85.
- 3) Memo.No.F4-1/85-86, dated. 26.2.1986 appointing Sri.V.Anjaiah, the then ASP Adilabad as P.O.
- 4) Memo.No.F4-1/85-86, dated.26-2-86 appointing Sri.K.Shankaraiah, ASP Peddapalli as I.C.
- 5) Statement of defence of the G.S. dated. 27.6.88.
- 6) Written brief of P.O. dated.29.7.88.
- 7) Inquiry report of I.C.dated.25.8.88.
- 8) All other connected records and documents.

1) Sri.I.Ramudu, P.A. Bhainsa S.O. was proceeded against under Rule-14 of CCS(CCA) Rules-1965 vide this office memo Ist cited above, with a direction to submit his statement of defence, if any, within 10 days of receipt of this memo. The memo was delivered to the Govt. servant on 24.10.85 and he submitted his defence vide his representation cited at (2) above.

Articles of charge framed against Sri.I.Ramudu are that:

ARTICLE - I

Sri.I.Ramudu while functioning as deputed to work at Madaram T.S. days from 23.2.1985 as an additional allowance of pendency of postings of RD Pass Books. The said Shri. Madaram Town Ship for 23 days upto specified period of 20 days. The said Shri. Ramudu stayed at only the Govt. Servant but also further held the P.A. S.O. (20) unauthorisedly regular SPM to proceed on

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The  
P.A. Bhainsa

That the said  
P.A. Bhainsa S.O. was  
for a period of 20  
S.O. for a period of 20  
hand to attend to the  
frequent deposits in  
P.A. S.O. at  
P.A. S.O. at  
P.A. S.O. at

2)

casual leave from 18.3.1985, even in the absence of orders sanctioning such leave from the Divisional Office and thus acted in a manner which is unbecoming on the part of a Govt. Servant contravening the provisions of Rule 3(1)(iii) of CCS (Conduct) Rules-1964.

## ARTICLE - II

That the said Shri. I. Ramudu, while working as SPM at Madaram Town Ship (SO) was relieved on 1.4.1985 in accordance with Divisional Office service message XP/1800/29.3.85 to join back immediately as P.A. at Bhainsa S.O. But the said official did not join immediately at Bhainsa S.O. but was absent from duty without proper permission from 2.4.85 to 21.4.85. Thus he exhibited lack of discipline which is unbecoming of Govt. Servant contravening the provisions of Rule 3(1)(iii) of CCS (Conduct) Rules-1964.

## ARTICLE - III

That the said Shri. I. Ramudu, while functioning as SPM Madaram Town Ship S.O. during the period from 18.3.1985 to 31.3.1985 allowed withdrawals in as many as 64 RD Accounts mentioned in the statement of imputations even though these accounts were not in operation for a period of 12 months at least one year and or there were no credits for 12 monthly instalments in the said accounts as required by Rule-504(i) read with Rule-523/3 of P&T Manual Vol. VI Part-II. Thus he contravened the provisions of Rule-504 (i) and (iii) of P&T Manual Vol. VI part-II read with Rule 523/3 ibid.

## ARTICLE - IV

That the said Shri. I. Ramudu, while functioning as SPM Madaram Town Ship S.O. during the period from 18.3.85 to 31.3.85 allowed withdrawals from the 5 years RD accounts in respect of 32 RD accounts mentioned in the statement of imputations standing open at Madaram Town Ship S.O. but while effecting payments the said Shri. I. Ramudu failed to pay full amounts of withdrawals to the depositors as accounted for in the respective Pass Books and RD list of transactions. Thus the said Shri. I. Ramudu, P.A. has failed to maintain absolute integrity and acted in a manner which is unbecoming of a Govt. Servant contravening the provisions of Rules-3(1) (ii) and (iii) of CCS (Conduct) Rules-1964.

## ARTICLE - V

That the said Shri. I. Ramudu while functioning as SPM Madaram Town Ship S.O. during the aforesaid period, irregularly allowed withdrawals in the following RD accounts without obtaining SD-7 applications from the depositors

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concerned and effected payments to the persons other than the depositors in contravention of Rule-504 (iii) read with Rule-523(3) of P&T Man.Vol.VI Part-II.

Sl. No.	RD A/c No.	Name of Depositor:	Date of withdrawal.	Amount of withdrawal.	Name of the person to whom payment effected.
1)	61798	Akritoa Mallaiah MVK-2	30-3-85	Rs. 110/-	B.Rajamallu MVK-2
2)	617999	-do-	30-3-85	Rs. 245/-	-do-
3)	61858	Md.Moinuddin S/O Shri.Raj-Mohammad.	30-3-85	Rs. 25/-	Md.Moinuddin S/O Shri.Nizamuddin.
4)	61859	-do-	30-3-85	Rs. 110/-	-do-

Thus the said Sri.I.Ramudu, failed to follow the provisions of Rule-504(iii) read with Rule-523/3 of Vol. VI Part-II.

3) INQUIRY:- Shri.K.Shankaraiah, ASP Peddapalli was appointed as Inquiring Authority vide this office memo. of even number, dated. 26.2.86 and Shri.V.Anjaiah the then ASP, Adilabad was appointed as Presenting Officer vide this office memo of even number, dated. 26.2.86. The Inquiry was commenced on 16.4.1986 at Peddapalli Divnl. Office and further sittings were held on 17.6.86, 24.7.86, 11/12.11.86, 12.3.87, 20.4.87, 21.4.87, 16/17.9.87, 27/28.10.87, 22.12.87, 5.1.88, 9/10.2.88, 8.3.88, 19/20.4.88, 21.4.88, 27.6.88 and 11.7.88. Inquiry was completed on 11.7.1987 after the I.O. questioned the Govt. Servant. The Presenting Officer submitted his written brief on 29.7.88. But the Govt. Servant did not submit his written brief. I.O. has submitted inquiry report on 25.8.88.

4) FINDINGS OF I.O:-

Considering the evidence adduced during the inquiry, the statement of defence and written brief of the P.O. my findings in r/o each article of charge are as under.

ARTICLE OF CHARGE NO: I:-

As per the directions of the SFOs Adilabad in his letter No.L2-43/84-85, dated. 20.2.85 (Exp-98) Shri.I.Ramudu was relieved at Bhainsa and joined at Madaram T.S. SO on 23.2.85. This can be seen from the charge report (Exp.100). The letter (Exp.98) was addressed to SPM, Bhainsa endorsing a copy to the SPM Madaram TS SO to utilise the PA for (20) days and complete the posting work. When the Govt. servant joined at Madaram TS SO as PA it was for the SPM

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to utilise him for 20 days and relieve him promptly after the stipulated period. Here this was not done by the SPM and he is responsible for non-compliance of the orders of the D.O. As the Govt. servant was the P.A. he had to carry out the orders and to await for his relief. In this case the govt. servant was not relieved after completion of 20 days but the charge report Exp.101 shows that he was handed over the charge of SPM by the SPM on 18.3.85 (F/N). No orders of the SPOs were cited in the charge report. He was relieved from the duties of SPM on 1.4.85 (F/N) and the SPOs, Adilabad XP/1800/29 was cited. In this case the principal witness is Shri.P.Chandraiah, the then SPM Madaram T.S.SO. His name was not cited in the list of prosecution witnesses. Though the P.O. requested to include the name of Shri.P.Chandraiah as additional prosecution witness and was permitted he was not examined but dropped at a later date. The fact that as to why he did not relieve the govt. servant after completion of 20 days and as to why he availed C.L. from 18.3.85 to 1.4.85 handing over charge to the govt. servant is not known. As the period from 18.3.85 to 1.4.85 is not a short period the SPOs should have directed Shri.P.Chandraiah to join back and relieve the govt. servant to report back at Bhainsa. But no evidence to this effect was produced in the inquiry and the opportunity to cross examine Shri.P.Chandraiah the then SPM, Madaram T.S. SO was not given. In the absence of the evidence of principal witness the charge cannot be held as proved. Had the govt. servant was relieved by the SPM on completion of 20 days and the govt. servant stayed in the office beyond that period, he should have been held responsible. For the period from 18.3.85 to 1.4.85 the govt. servant was on duty and discharged his legitimate duties and as such he is not responsible for overstaying. Further the govt. servant's action to be on duty discharging his legitimate duties does not involve him in un-becoming of a Govt. servant. The plea of the P.O. that the charge reports, letter of SPOs Adilabad and telegram are sufficient documentary proof for charge cannot be accepted.

Article of charge No.II:-

As seen from the charge report dated. 1.4.85 EXP.102 the official was relieved at Madharam TSO on the F/N of 1.4.85. On relief he was due to join back at Bhainsa as per the direction of the SPOs Adilabad in his XP/1800/29.3.85 EXP.104. But the official remained absent from duty and applied for leave on Medical Certificate. The leave application, SLM-1 and MC were received in the D.O. of Adilabad on 16.4.85. He requested for grant of leave from 2.4.85 as he fell sick. The Government servant argued that he was not un-authorisedly absent from duty but sent leave application. His contention is not correct. The Govt. servant cannot claim the leave as a

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matter of right and mere production of MC does not itself confer upon him any right to leave as laid down in Rule 7 and Rule 19(5) of CCS(Leave) Rules 1972 respectively. As per the instructions contained in PG P&T letter No. 34/1/75-SPB.II dated. 31.10.75 communicated in GO letter no. staff/45-1/75 dated. 10.11.75, the Govt. servant should produce MC within 24 hours. If it is not possible he can post the MC within 24 hours and it is for the concerned official to establish in case of dispute that the certificate was actually posted to the leave sanctioning authority within 24 hours. It is for the Govt. servant to forward the MC to the sanctioning authority within 24 hours and order of that authority awaited. In this case the Govt. servant did not send the leave application, SR-1 and MC in time i.e. within 24 hours after he fell sick. The E.A.P.105 (envelop) shows that it was received in divisional office on 16.4.85 and did not bear the date of posting and from address. The Govt. servant did not produce any evidence that he posted the envelop either on 2.4.85 or 3.4.85 i.e., immediately after he fell sick. From the above it is evident that the Govt. servant posted the letter with back date and that too with out from address to conceal the un-authorized absence from duty. The Govt. servants' argument that he was paid salary for the month of April '85 and hence the question of un-authorized absence does not arise is not correct. Payment of salary is nothing to do with the absence. The Postmaster Mancherial might have drawn the salary by oversight. Thus the charge is held as proved.

Article of charge No.III:- From the pass books of 64 RD A/cs it is evident that all the 64 A/cs were not in operation for one year as on date of withdrawal and there were 12 monthly credits in 36 RD A/cs, 11 monthly credits in 24 RD a/cs and 10 monthly credits in 4 RD a/cs. The Govt. servant accepted this but argued that all the 64 RD a/cs were not having deposits less than 12. The Govt. servants argument that allowing withdrawals in the above RD a/cs was due to heavy work cannot be accepted. By rush of work mistake may happen in one or two cases but not in 64 a/cs. The charge, regarding allowing withdrawals in 64 RD a/cs against to the Rule 504(i) read with Rule 523/3 of P&T Man.Vol.VI Part II is proved by the documentary evidence. The Rule of CCS (Conduct and Service) Rules-1964 which attracted the action of Govt. servant in paying withdrawals against to the rules was not mentioned in the article of charge. The action of the official attracts the provision of Rule 3(1)(ii) of CCS (conduct & service) Rules-1964. (failed to maintain devotion to duty).

Article of Charge No.IV:- The undermentioned prosecution witnesses deposed before the IO, that they were paid less amount while effecting payment of withdrawals in respect of their RD a/cs as detailed below.

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Sl.No.	Name of the P.w.	Amount paid less:
1.	S/Sri.Gone Mallaiah, P.w.1	Rs. 45/-
2.	K.Satyanarayana Reddy, P.w-6	Rs. 30/-
3.	Bhadrappu Rajamallu, P.w.8	Rs. 180/-
4.	G.Rajalingu, P.w.10	Rs. 50/-
5.	E.Ramulu, P.w.12	Rs. 200/-
6.	K.Lingaiah, P.w.13	Rs. 80/-
7.	K.Mallaiah, P.w.14	Rs. 75/-

The Pws 2, 3, 4, 5, 7 and 11 though alleged short payments at the time of preliminary enquiry turned hostile and admitted correct payment during the inquiry. Hence the part of charge is not proved. The argument of PO that the additional PWS who recorded the statements of the above witness have confirmed the genuineness of the statements and the short payment is proved cannot be accepted as the oral evidence given bears much weight in the proceedings. Here the investigating officers are not material witness they did not witness the payment. No case can be decided on the basis of their evidence alone. The Pw.2, 3, 4, 5, 7 and 11 are only material witnesses as they are the persons who received the amount and no other witnesses were there at the time of payment.

The Govt. servant stated in his defence that he did not get cash excess in his cash and stamp balance on those dates. Had any short payment was made, there should have been excess cash in his balance. Further he stated that there were no complaints from the depositors that they were paid short and there were no witnesses who witnessed the short payments. Hence the depositors Pw.1, Pw-6, Pw-8, Pw-10, Pw-12, Pw-13 and Pw-14 are the material witnesses and the fact of short payment was confirmed by their oral evidence. The contention of Govt. Servant in his defence statement that there was no complaint from the depositors and as per the warrants of payments there was no short payment is not correct. In the wanted short payments there will not be any excess cash. From the warrants of payment EXP. 2, 3, 8, 9, 13, 14, 18, 19, 35, 36, 61, 62, 67, 68, 73, 74, 83, 84, 96 and 97 it can be seen that there was no witnesses signature, though many of them were illiterate and they were not identified by the group leaders. In some cases, the amount of withdrawal was not noted on them at the time of payment. (in respect of Pw.6) The action of the Govt. servant in not following the procedure in respect of PRSS A/cs, itself speaks his intention. As many of the singareni Colliery workers are illiterate and moody their position was exploited by the Govt. servant. Though there was no specific complaint the department is having every right to enquire into the alleged short payment came to its notice, whether there is a complaint or not. The Government Servant is expected to maintain absolute integrity at all times in dealing Government transactions. In the cross examination, the AGS put several questions to side track them. The Pw.1 (answer to Q.6), Pw.6 (answer to Q.1 in re cross examination) Pw.10 (answer to Q.1 by the IO) Pw.12 (answer to Q.3 in cross examination). EXP.39 (statement of Sri.K.Lin aiah & Pw.13) Exp.44 statement of Pw 8 and EXP.70

contd...4...

(statement of Pw.14). The Government Servants' plea that his statement was not recorded in preliminary enquiry but disciplinary action was initiated against him is also not correct. The disciplinary action was contemplated when the Department found prima facie case against him and every reasonable opportunity was given in the present Rule 14 enquiry. The Government servants' plea that Shri.M. Laxmaiah Pw 16 was prejudiced against him and he was responsible for this charge sheet is not based on evidence. The Government servant did not produce any evidence. The Pws 1, 6, 8, 10, 12, 13 and 14 whose statements were recorded by the persons other than Sri.M.Laxmaiah deposed in the enquiry that they were short paid in the RD withdrawals. The Govt. servants' plea that there is no documentary evidence that there was short payment is not tenable. Here the material evidence is oral evidence and the Pws.1, 6, 8, 10, 12, 13 and 14 deposed that they were paid short and they were not prejudiced against him. In the departmental disciplinary proceedings the standard of proof required is preponderance of probability and not proof beyond reasonable doubt. Out of 14 Pws produced in connection with this charge 7 Pws confirmed the short payment and 6 Pws turned hostile. As such the charge is partially proved.

Article of Charge No.V:- Shri.Akuthota Mallaiah Pw.9 and Shri.Md.Moinuddin Pw.15 deposed before the IO that they were having two RD a/cs each bearing nos. 61798, 61799 and 61858, 61859 respectively at Madharam TSO. They deposed that neither they applied for withdrawal from their accounts nor received any amount from PO towards withdrawal. They further stated that the signatures on the withdrawal forms were not belonged to them. Shri.Bhodrapu Rajamallu Pw.8 deposed before the IO that he received Rs.175/- as against Rs.355/- (Total in two accounts) noted in the withdrawal forms. The a/c no. noted in the form were of Shri.Akuthota Mallaiah and the mistake happened due to mistake committed while noting the a/c numbers by the pay sheet clerk. He further agreed for recovery of the same from his RD a/cs. Sri.Md.Moinuddin S/O Nizamuddin did not attend the inquiry despite repeated notices issued to him. From the documentary evidence i.e., the statement recorded during the preliminary enquiry, it is evident that he received the payment of Rs.130/- as against Rs.135/- noted in the SB-7 forms. The Govt. servants' plea made in his statement of defence accepted that the wrong payment was made due to misleading information furnished by the pay sheet clerk and handing over the PBs of Akuthota Mallaiah and MD.Moinuddin S/O Raj Mohmd cannot be accepted. Before paying the withdrawals, The Govt. servant as a SPM should have checked the specimen signatures and confirmed the names of depositors. These two wrong payments were made on the same day i.e., 30.3.85. The Govt. servant has thus failed to follow the prescribed procedure as laid down in Rule 504(iii)

contd....



read with Rule 523(3) of P&T Man. Vol. VI Part II. The wrong payment in contravention of above rules is thus proved by the documentary and oral evidence. The Rule of CCS (Conduct & Service) Rules 1964 which attracted the failure of Government servant was not mentioned in the article of charge. The above action of the Govt. servant attracts the provision of Rule 3(1)(ii) of CCS (Conduct & Service) Rules 1964. (failure to maintain devotion to duty).

IX Conclusion:- As narrated above I held the article of charge No. I as not proved, article of Charge No. II, III and V as proved and article of Charge No. IV as partially proved. (A copy of I.O's report dt 25.8.85 is enclosed)

FINDINGS OF THE DISC. AUTHORITY:

I have carefully gone through the report of the I.O. and connected record of Inquiry and give my findings as follow.

Article of Charge No. I:-

I agree with the findings of the I.O. that this charge was not proved in as much as the part of the charge that the Govt. servant overstayed at Madaram Town Ship for 3 days beyond the period of 20 days deputation which was ordered by the Supdt. of Post Offices. But I donat agree with his findings in as much as the remaining part of the charge that the said Govt. servant had taken charge of the office from Shri.P.Chandriah the regular SPM on 18.3.85 without any orders from the Divisional Office granting leave to Shri.P.Chandriah for the following reasons.

I. The Govt. servant was well aware of the fact that the case mark of the orders either ordering deputation or granting leave to any official has to be noted in the charge reports of relinquishing and assuming of charge of any post. This is evident from the charge report dated. 21.2.85 of his relinquishing charge as P.A. at Bhainsa (EXP.99) in which the case mark of SP Adilabad No.12-43/04/85, dated. 20.2.85 was noted. The same case mark was also noted in the charge report dated. 23.2.85 of his assuming charge of P.A at Madaram Town Ship on 23.2.85 (EXP-100). The code of telegraph message XP/1800/29 from SP Adilabad asking the Govt. Servant to join at Bhainsa was also noted in the charge report when the Govt. servant handedover charge of the office as SPM to Shri.P.Chandriah on 1.4.85 (EXP.102).

But it is seen that no case mark was noted in the charge report of his taking charge on 18.3.85 from Shri.P.Chandriah the regular S.P.M.

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From the above it can be ~~concluded~~ concluded that the Govt. servant is in the know of the procedure to be followed while assuming and relinquishing charge of any post. But he did not note the case mark if any authority authorising him to take charge of SPM Ship of Madaram T.S. on 18.3.85. The Govt. servant stated in his defence that he took charge from Shri.P.Chandriah under the orders of the latter. In such case nothing prevented the Govt. servant to ascertain under which orders Shri.P.Chandriah transferred the charge of the office and to note the No. of such orders in the charge report. Had the Divisional Supdt. granted leave to Shri.P.Chandriah, he would have definitely quoted the case mark in the order of the letter and in turn the Govt. servant could have noted the said case mark in the charge report of 18.3.1985 (Exp.101). The Govt. servant has put in a pretty long service of about 20 years on that day and he was well aware of preparation of charge reports. Thus it can be easily concluded that the Govt. servant had taken charge from Shri.P.Chandriah with a malafide intention but nothing else.

Moreover the Govt. servant failed to report to the Divisional Office about his taking charge. So in the absence of orders from Supdt. of Post Offices. This was admitted by the Govt. servant in reply to Q.No.1 by the I.O.

The argument of the Govt. servant that he was not permitted to examine Shri.P.Chandriah the regular SPM, and had he got an opportunity to examine him if he was produced as addl prosecution witness, he could prove that he took charge of SPM as per the orders of P.Chandriah cannot be accepted. The charge here is that the Govt. servant unauthorisedly relieved the regular SPM on 18.3.85. This implies that the Govt. servant should have not relieved Shri.P.Chandriah the regular SPM without orders from the Divisional Office, so even if the Govt. servant could establish that he acted as per the orders of Shri.P.Chandriah, it will not absolve him of the charge that he acted in a manner unbecoming of a Govt. servant when he acted so under the orders of SPM but not under the orders of the SPOs.

If at all the Govt. servant intended to prove that he relieved Shri.P.Chandriah under his orders, there was no bar for the Govt. servant to produce the said person as a defence witness, instead of shifting the blame to the prosecution that Shri.P.Chandriah was not produced for the purpose of examination by him.

The I.O. has accepted the version of the Govt. Servant that the latter acted under the orders of Shri. P.Chandriah and held that the Govt. servant had not behaved in a manner of unbecoming of a Govt. servant. This cannot be accepted.

contd....10...

Acting under the orders of a person who is not competent to order changes in the incumbancy of any post cannot be taken as acting faithfully. As such the argument of the Govt. Servant that he acted under the orders of SPM can not be accepted.

Further the findings of the I.O. that the Govt. Servant was not afforded opportunity to cross examine Shri.P.Chandriah the then regular SPM Madharam Town Ship to prove that the Govt. Servant had taken charge of the office under his orders cannot be accepted because the Govt. Servant acting under the orders of SPM had failed to act properly as expected of him.

Moreover nothing prevented the I.O. to summon Shri.P.Chandraiah and examine him using the powers vested in him as per the Rules. If the I.O. felt the evidence of Shri.P.Chandriah was so vital to establish the innocence of the Govt. Servant the I.O. could have summoned Shri.P.Chandriah and examined him as required to find out as to why he handed over the charge to the Govt. Servant. But here the charge is against the Govt. servant as to why he had taken charge without proper authority. For the prosecution the evidence of Shri.P.Chandriah is immaterial as the Govt. servant himself accepted that he had taken charge of the office without the orders of Divisional Office.

Thus the charge that the Govt. servant had taken charge of the office in the absence of orders of Supdt. of Post Offices is amply proved.

Further I hold that the Govt. servant with a mala fide intention had taken charge of the SPM ship on 18.3.1985 and committed the offences like allowing withdrawals irregularly in 64 RD accounts mentioned in Article III and failed to pay correct amount of 32 RD A/cs mentioned in Article IV and allowed irregular withdrawals in 4 RD a/cs and effected payment to persons other than the correct depositors as mentioned in Article V of this charge sheet. Moreover the Govt. servant committed the above offences during the period of his holding charge as SPM. During the Inquiry it has been held by the I.O. that the articles of charge No. III and V are proved and the article of charge IV as partially proved.

Thus it is clearly established that the Govt. servant with an intention to commit the said offences while holding the charge of the office independently had taken charge of the office even in the absence of any orders from the Divisional Office.

I, therefore, while holding the first part of the charge pertaining to overstaying of the permitted period of 20 days at Madaram Town Ship as not proved, hold, that the remaining part of the charge pertaining to taking charge of the office in the absence of orders from the Divisional Office which is more serious in nature, is proved.

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- 11 :-

- Article of charge II:- I agree with the findings of the I.O.
- Article of charge III:- I agree with the finding of the I.O.
- Article of charge IV:- I agree with the finding of the I.O.
- Article of charge V:- I agree with the findings of the I.O.


The Govt. servant has committed various irregularities such as taking over the charge of a Post Office in the absence of proper authority to do so, allowing withdrawals in a number of RD accounts irregularly, Not paying correct amounts in several RD accounts and paying amounts of RD accounts to wrong persons and absenting himself from duty without proper grant of leave or permission.

If such person is allowed to continue in the service, who had brought a very bad name to the department by such activities, and who proved himself as not honest and trustworthy, there is further danger of his involving himself in further such activities and not only mar the good name the department is enjoying so far, but will make the public loose their confidence in the department and the coworkers to follow his foot steps. As such this official deserves deterrant punishment commensurate with the seriousness of the misconduct committed by him.

But this official is putting in service of 24 years and his age is 46 years. Though the total service rendered is not altogether satisfactory, some reasonable consideration is necessary in view of his advanced age and length of service.

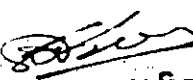
To achieve the two objects viz not to allow the Govt. servant to continue in the service any more and at the same time not to subject the Govt. servant to much hardship at this advanced age, I consider that there is need to take a lenient view inspite of the seriousness of the misconduct committed by the Govt. servant.

As such I, G. Devavaram, Supdt. of Post Offices Adilabad Division hereby order that Shri. I. Ramudu P. A. Bhainsa be compulsarily retired from service with effect from 31-5-1989 A/N.

  
( G. DEVAARAM, )  
Supdt. of Post Offices,  
Adilabad Dn. 504001.

✓ A copy of this memo is issued to:

- 1) Sri. I. Ramudu, P. A. Bhainsa S.O. (A copy of IO's report dated. 25.8.88 is enclosed)
- 2) The SPM Bhainsa for information and necessary action.
- 3) The P.F. of the Official.
- 4) The Postmaster, Adilabad HO.
- 5) The CR file of the official.
- 6) Register of Disc. cases.
- 7-8) Office/spare.

  
अधीक्षक पोस्ट, आदिलाबाद  
Supdt. of Post Offices  
Adilabad Division  
ADILABAD 504001

From:

I. RAMUDU,  
P.A.Bhainsa (Compulsority Retd)  
ADILABAD DIVISION.

To

The Director of Postal Services,  
Office of the Post Master General  
Hyderabad Region,  
H Y D E R A B A D.

Respected Sir,

Sub: Appeal against the order of  
compulsory retirement issued  
by the SPOs Adilabad vide his  
Memo No.F4-1/85-86 Dt:13-11-90.

\*\*\*\*

Aggrieved by the above orders I submit the following few lines for favour of kind consideration and favourable orders.

2. Brief facts of the case

The SPOs Adilabad issued a Memo of Charges to me under rule 14 of CCS (CCA) rules 1965 vide his Memo No.F4-1/85-86 dated 19-10-1985. An inquiry was held and the inquiry officer held that charge No.2,3,4 and 5 were proved. Without supplying the inquiry report to me the SPOs passed orders compulsorily retiring me from service. I approached the Hon'ble CAT Hyderabad on whose orders I was supplied with a copy of the IOs report and I submitted representation. There upon the SPOs issued the impugned order.

The charges against me in brief were (1) That I overstayed my deputation at Madharam Town Ship 80 and unauthorisily took charge as SPM, (2) from there, I unauthorisily absented (3) I allowed half withdrawals in 64 RD Accounts before completion of 12 months existance (4) I made short payments in R/O 14 RD withdrawals and (5) I effect two RD withdrawals to wrong persons.

3. Grounds for the appeal.

- (a) (1) The Charge Sheet is not maintainable for the reasons that it violates rule 4(1) and 4(ii) of P & T Manual Vol.III. Both in Annexure I and II the disciplinary authority has expressed definite opinion about the Commissioner of the offence and such a charge sheet is liable to be quashed.

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Received  
4-12-90  
as per  
6.6.91  
M. R. Rao

Vide case law Surendra Chandra Das Vs State of West Bengal 1982 Lab IC 574, it has been made clear by the Honourable Court that if the Charge is a predrawn conclusion on the Commission of offence, the punishment is liable to be quashed.

(2) The Charge Sheet is further defective for not citing the relevant rules which are violated. In support of charge No.2 conduct rule 3(1) (iii) is cited whereas the allegation is about overstaying for which there are distinct rules and the conduct rule cited is not applicable. There is no allegation of any malpractice in R/o Charge No.3 and the rule applicable i.e. rule 3(1) (ii) of CCS conduct rules has not been cited. In r/o.charge No.4, allegation is of Short payment and the only rule applicable is rule 3(1) (i) but rule 3(1) (ii) and 3(1) (iii) also have been quoted. Charge No.5 relates to wrong withdrawals and in the absence of allegation of any motive, the only rule applicable is rule 3(1) (ii) of CCS conduct rules which has not been quoted. The I.O.also has accepted that rules were wrongly quoted. Such a charge sheet is not maintainable.

(b) (1) Preliminary enquiry is a must under rule 3 of P & T Manual Vol.III and the procedure prescribed therein must be followed. The preliminary investigation should be done at the "APPROPRIATE LEVEL" vide rule 2(a) ibid. In my case this was not done and the charge sheet is in consequence of an incompetent and unauthorised investigation. In pursuance of rule 2(a) the dept has prescribed levels of investigation and the lowest investigating authority is an Inspector of Post Offices. In my case the two additional prosecution witnesses S/S L-Shankar and Mohd.Abdulla, Mail oversers clearly admitted during the enquiry that they enquired in to the case and recorded statements for which they have no power. No statement was recorded in my presence. No statement was taken from me.

(ii) It is saddening that the humiliating aspect of the investigation went unnoticed. At the time of the investigation I had a standing of 20 years in clerical cadre in the Department but my fate was to be decided

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by two mail oversers who are below the clerical cadre. They were allowed to probe in to the work done by me who is superior to them. It is no consolation to say that the present punishment is based on a rule 14 inquiry as the inquiry itself was based on a charge sheet issued in consequence of such an incompetent, unauthorised and humiliating investigation.

(c) The following documents found relevant by the I.O. were not produced greatly hampering my defence.

- (1) Leave application of Sri P.Chandraiah.
- (2) My leave application.

Further, though several transactions entered in the ledger were subjected to Scrutiny during the inquiry, the original ledgers were not produced during the enquiry inspite of my request. Thus veracity of the documents relating to the transactions produced during the inquiry has not been established.

(d) Following witnesses listed in the Charged Sheet whose evidence the disciplinary authority felt necessary to sustain the charges were not produced.

- (1) Vemula Rajamallu.
- (2) S.Tirupathi
- (3) E.Posham
- (4) Mohd.Moinuddin

In the absence of the evidence of the listed witnesses, it was not judicious to hold the charges as proved.

(e) Rule 2 of P and T Manual Vol.III prescribes that the procedure laid down in C.C.S. (C.C.A.) rules should be "rigidly" followed. But this was blatantly violated during the inquiry.

(1) As per the daily docket dated 20-4-1988 and 21-4-1988, the listed documents were produced by the P.O. and filed on 20-4-1988 and 21-4-1988. By that time the case on behalf of the prosecution was over. This means that the listed documents were not produced during the examination of witnesses and that they were in the unauthorised

custody of the P.O. This casts serious doubt about the genuineness, of the listed documents produced belatedly and so these documents can not be relied upon.

(ii) Vide D.O.No.134/7/85 A,ADVT I dated 11-6-1976, there is no need for examination in Chief in r/o prosecution witnesses whose statement were recorded earlier and who admit the contents in the rule 14 inquiry. But when the witnesses disown the contents of their earlier statement examination in Chief has to be conducted. Nobody can be cross examined unless he has been examined in Chief, i.e., unless he was given an opportunity to depose his version. Prosecution witnesses can not be cross examined by the P.O. unless they are declared as hostile by the P.O. and permitted by the I.O. to be cross examined. These are the accepted procedures and any violation would strike at the root of principles of natural justice.

In my case the following prosecution witnesses disowned the contents of the earlier statements.

- (1) Sri G.Rajareddy.
- (2) Sri T.Vijaya Kumar.
- (3) Sri I.Krishna.
- (4) Sri Lingaiah.
- (5) Sri D.Odelu.
- (6) Sri K.Lingaiah.

They were not examined by P.O. They were not declared hostile by him. I.O's permission was not sought to cross examine them. Yet they were straight away cross examined. This serious irregularity alone nullifies the entire proceedings.

(iii) During the inquiry the I.O. acted in a manner as if it was his duty to prove the charge. His questioning Sri I.Krishna PW1, whether the investigating officer forced him to say that there was short payment, of Sri T.Vijaya Kumar another PW1 whether any body forced him to say that there was short payment does not betray disinterestedness in the case as the attempt was to stick to the original statement and not to ascertain facts as deposed.



(4) The disciplinary authority went beyond his scope in his attempt to hold that Charge No.1 is partially proved. (Which charge incidentally the I.O.held as not proved). He says, if the I.O.felt that the appearance of Sri.P. Chandraiah was essential he should have enforced it using his power. For one thing, any failure on the part of the I.O.should not be at the cost of the Government servant,for another the S.P.O's suppressing the fact that it was the P.O. who is the representative of the Disciplinary Authority, who dropped the witness Sri P.Chandraiah vide proceedings dated 21-4-1988. It may be interesting to note that this witness was a S.P.M.working under the same SP who was not originally cited, but was summoned as an additional witness at the request of the P.O. and also dropped at the request of the P.O.and the S.P.O's now say that the I.O.should have enforced the apperance using his power.

(g) Though the disciplinary authority chose to disagree with the finding of the I.O.on charge No.1 he did not communicate the disagreement or reasons therefore while forwarding the inquiry report to mea as required under the orders of various Tribunals. This is a serious violation of principales of natural justice as I was kept in dark about the reasons for punishing me till the end and was denied the minimum requirement of providing an opportunity to refute the same.

(h) I may be permitted to briefly state my submissions on the findings of the I.O.and Disc.authority on the various charges.

(1) Charge No.1: The I.O.held that the charge was not proved. Without giving me an opportunity to explain, the Disciplinary authority held the charge as partly proved. This finding is not based on evidence produced during inquiry. Sri.P.Chandraiah was the S.P.M. and I was the P.A. Sri P.Chandraiah did not depose that there was no order from D.O., that he did not make an order book entry directing me to take charge or that I usurped the charge. The order book of the office was not produced to prove that there was no order from the S.P.M., and if there was any entry, the authority of the D.O. is not quoted.

As the P.A. I am entirely guided by the S.P.M's written orders and in the absence of the witnesses of Sri.Chandraiah and production of the order book there is not even an iota of evidence to hold the charge as proved.

(2) Charge No:2 : While holding this charge as proved the I.O. observes that I posted the letter with back date. This allegation is not even included in the charge sheet. The charge only speaks of wanting date stamp impression on the cover in which I sent the application. If the date of posting was doubted and non stamping of the cover was to hushup the delay, S.P.O's should have made enquiries first with the office of posting. Any way I am not concerned with the wanting date stamp impression. The I.O. says the P.M.Mancharial would have drawn the salary by mistake. This is a clear instance where the I.O. is stepping into the witness box. Postmaster Mancharial was not a witness and except for the subjective thinking of the I.O. there is absolutely no evidence to show that the salary was drawn by mistake. Here the fact is that I had applied for leave on medical ground which was not refused nor was I asked to explain late submission of application and the leave salary was promptly paid which goes to show that the leave was sanctioned. Later on when some other charges were foisted on me, a charge of unauthorised absence was also, cooked up. It is also submitted that irrelevant rules i.e., rules unrelated unauthorised absence have been quoted in support of the charge. This charge has not been proved through documentary or oral evidence and the inference drawn by the I.O. from a Vacuum of evidence would remain empty.

Charge No.3 : It is stated that I allowed half withdrawals from 64 R.D.accounts before completion of 12 months existence No witness was produced to prove this allegation. The documents relating to this charge were produced on 21-4-1988 after completion of the prosecution case and so cannot be relied upon.

These documents were not identified by the persons who have custody of them or by me also and the genuineness of these documents has not been established. Certain pass books purported to have been handled by me were produced but I was never questioned about the transactions. If the I.O. can draw conclusions from unidentified and unaccepted documents behind my back it cannot be judicious, rendering a quasi judicial enquiry redundant. Thus the charge is not legally proved.

Charge No.4: As already stated listed witnesses were not examined. Documents were produced on 20-4-1988 i.e., after completion of the prosecution case and so there is not a single legally valid documentary evidence in the case. Cause of action in the case is shrouded in mystery. There was no complaint from any source and in fairness, to eliminate attributes of malafide, the S.P.O's is obliged to say the reasons for his SUO MOTU action in investigation. Generally in our department any short payment should be reported within a reasonable time. Many of the depositors who were produced as witnesses are literate enough to understand the correct amounts due to the mand they have accepted the withdrawals and made no complaint of short payment to anybody in the Department. Even commonsense warrants that there should be a complaint within a reasonable time if not immediately. The treatment meted out to me might have suited the S.P.O's in sacking me. But the procedure is fraught with danger. Months after the transactions some one (including mail overseers) can go to the depositors and obtain statements alleging short payments even if they had no complaints and in such vicious atmosphere no official can function. The only point to be considered is whether there was any complaint from the depositors and if not, what documentary evidence is there about the short payments. I have already pointed out the level of investigation applied in the case. In all the cases payment was made in the presence of witnesses and more of them was produced during the inquiry to prove the charge. As such this charge is not proved.

Charge No.5: This is only about wrong payments in two cases. Besides not having any documentary evidence produced legally as they were filed only on 20-4-1988 and 21-4-1988, it is submitted that one Mohd.Moinuddin prosecution witness was not produced during inquiry and for this alone this part of the charge is not proved. Regarding the other account the person who received payment clearly stated that the amount was correctly received by him and it was just a wrong payment occurred due to rush of work but my integrity cannot be questioned on the basis of this single instance.

44\* Prayer: I respectfully submit that I belong to a tribal community coming from a very backward area and it is true that I do not have the same standard of culture and sophistication. It is also true that I may be wanting in behaviourism. More privileged brotheren have a social obligation to lead us to the main stream of culture and mannerism. But to my fate, a few of my privileged and influential colleagues indulged in a type of behaviour bordering social ostracism with me and I am a victim of this for the last one and a half decades. Fostering complaints against me and fabricating evidence have been their hobby. The present case is also a foisted one with fabricated evidence. Unfortunately the S.P.O's did not see through this game. I am a man of children and have 10 more years to go, in service. The present punishment has caused enormous hardship to me and my family which is unnumberable. I, most humbly pray to you, Sir, that, in view of the irregular investigation, irregular charge sheet, and defective inquiry, the cruel punishment imposed on me be set aside for which act of kindness, I will ever be grateful.

Thanking you Sir,

Yours faithfully,

( I. RAMUDU )

Copy to the Superintendent  
Post Offices, Adilabad Division.

Government of India  
Department of Posts  
Office of the Postmaster General, Hyderabad Region, Hyderabad-1

No. ST/21-3/11/91 dated at Hyderabad-500 001 the- 3.92

Proceedings:

Read the following:

1. Memo. No. F4-1/85.86 dated 19.10.85 of SPOs, Adilabad issued to Sri I. Ramudu, P.A Bhainsa.
2. I.O report dtd 25.8.88 of Sri K. Shankaraiiah ASP, Peddapalli
3. Proceedings of SPOs, Adilabad No. F4-1/85-86 dtd 30.5.89 and 13.11.90.
4. Appeal dated 4.1.91 of Sri I. Ramudu Ex P.A Bhainsa.
5. Other connected records.

This is an appeal dated 4.1.91 submitted by Shri I. Ramudu Ex P.A Bhainsa against the punishment of compulsory retirement from service w.e.f 13.11.90 issued by the Supdt. of Post offices, Adilabad Division. The history of the case is as follows: Shri I. Ramudu while working as P.A, Bhainsa had been deputed to Madaram post office on 23.2.85 to attend to R.D PRSS Postings for 20 days. He held the charge of Sub Postmaster, Madaram T/S S.O unauthorisedly relieving the regular SPM even in the absence of orders, and worked as Sub Postmaster from 18.3.85 to 31.3.85. And on relief at Madaram T/S S.O on 1.4.85 he did not join at Bhainsa immediately but joined only on 22.4.85. During the time he worked as SPM Madaram he allowed half withdrawals in 64 RD accounts even though these accounts were not in operation for a period of one year and there had been no credits over 12 months. He allowed irregular withdrawals in 5 RD accounts. Charge sheet under Rule 14 of (CCS(CCA) Rules was issued to the Govt. servant on 19.10.85 and the Disciplinary authority holding the charges 2, 3 and 5 as proved and charge No. 4 as partially proved, issued the final proceedings on 30.5.1989 imposing the penalty of compulsory retirement from service w.e.f 31.5.89. Thereafter the official preferred an appeal to the Director of Postal Services on 10.7.89 against the orders

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of compulsory retirement. On 30.3.90 the official filed an application before C.A.T. Hyderabad stating that his appeal had not been disposed of by the appellate authority. While disposing of the application, the C.A.T. quashed the penalty of compulsory retirement from service on the ground that copy of I.O's report was not furnished to the Govt. servant before passing final orders and asked the Disciplinary authority to supply a copy of the I.O's report/the Govt. servant and give him reasonable opportunity. Accordingly a copy of I.O's report was supplied to the Govt. servant on 1.5.90 and he was asked to submit his representation if any within 15 days of receipt. But the appellant did not submit any representation and finally the Disc. authority imposed penalty of compulsory retirement from service on 13.11.90.

2. In his appeal the appellant states that (i) the charge sheet is not maintainable for the reasons that it violates Rule 4(i) and 4(ii) of P&T Man. Vol. III and the disciplinary authority has expressed definite opinion about the commission of the offence; (ii) the charge sheet is defective for not citing the relevant rules which are violated, and also rules have been wrongly quoted in respect of charge No. II. (iii). Preliminary investigation was not done in the case and the charge sheet is in consequence of unauthorised investigation. Further in his case the additional prosecution witnesses S/Shri L. Shankar and Mohd Abdulla Mail overseers admitted during the inquiry that they had enquired into the case for which they are not authorised. Further the appellant claims that no statement was recorded in his presence and no statement was taken from him. (iv). At the time of the investigation the appellant claims that he had a standing of 20 years in clerical cadre in the Department but his fate was decided by two Mail overseers who were below him in rank. (v). That documents asked for by him were not produced during the inquiry. Original ledgers were not produced. Further witnesses listed in the charge sheet by whom the charges were

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to be sustained were not produced. Procedure as laid down in CES(CCA) Rules was not followed. Listed documents were not produced during the examination of witnesses, but were produced later. The appellant further questions the method of cross examination and many prosecution witnesses disowned the contents of their own earlier statements were not examined by the P.O and they were not declared hostile by him. He says that the Inquiry Officer acted in a manner as if it was his duty to prove the charge. The appellant claims that the Disc. authority went beyond his scope in his attempt to hold that the charge no. 1 is partially proved, which charge the I.O held as not proved. And the Disc. authority did not give any reason for disagreeing with the finding of the Inquiry Officer. Finally the appellant has gone into the details of the inquiry, discussing each charge and the method in which the Inquiry Officer has conducted the Inquiry and it is in his opinion that the charges had not been proved.

3. In case of charge no.1 which the Disciplinary authority held as partially proved, as prosecution witness Sri P.Chandrabah did not depose that there was no order from D.O. In the case of charge no.2 the appellant says that though the I.O held that the charge as proved, he claims that he had applied for leave on medical ground which was not refused and nor he was asked to explain late submission of application and the leave salary was promptly paid which goes to show that the leave had been sanctioned.

In case of charge No.3 the appellant states that no witnesses was produced to prove this allegation, that he had allowed half withdrawals from 64 RD accounts before completion of 12 months existence. He also states that the documents relating to this charge were produced on 21.4.88 after completion of the prosecution of the case and so it cannot be relied upon.

In respect of charge No.4 he says listed witnesses were not examined, and documents were produced after completion of prosecution case. He says there was no complaint from any source and in fairness this eliminate attributes of mala fide.

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In case of charge No.5 the appellant says that this is only about wrong payments in 2 cases besides documentary evidence produced. He says the prosecution witness was not produced during the inquiry and he says in one case the wrong payment occurred due to rush of work and his integrity could not be questioned.

Finally the appellant submits that he belongs to a tribal community coming from a very backward area. He says "more privileged brothers have a social obligation to lead us to the main stream of culture? But he had been the victim of this type of behaviour bordering on social ostracism. A case has been foisted upon him and the evidence has been fabricated. He says that he is a man of children and 10 more years to go in service, the punishment has caused enormous hardship to him and his family. He prays that in view of the irregular investigation, irregular charge sheet and defective inquiry and the cruel punishment imposed on him, the punishment be set aside.

I have gone through the connected records in detail. As regards Appellant's claim that the charge sheet is not maintainable for the reasons that it violates Rule 4(1) and 4(11) of P&T Manual Vol.III and that the Disc.authority has expressed definite opinion about the commission of the offence, I find that the argument of the official has no basis. Proper enquiries have been conducted in full detail and I find that the disc.authority had at any time during the course of the enquiries exhibited any kind of bias.

In respect of the second claim that the charge sheet is defective for not citing the relevant rules which are violated and also rules have been wrongly quoted in respect of charge No.II, it is ~~not~~ seen that this charge relates to unauthorised absence from duty after relief on 1.4.1985 at Madaram TSO from 2.4.1985 to 21.4.1985. As the appellant behaved in a manner which is unbecoming of a Government servant, Rule 3(1)(iii) of CCS (Conduct) Rules, 1964 was cited which is relevant also.

The appellant claims that preliminary investigation was not done in the case and charge sheet was issued without an investigation and unauthorised investigations were done by the



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Mail overseer, which is irregular. In this case, preliminary investigation was conducted by a team of sub divisional Inspectors and Mail overseers assisted them in contacting the depositors and recording their statements. There was nothing wrong in this. The Mail overseers never recorded the statement of the appellant. It was the depositors whose statements were recorded by the mail overseers. Thus, his claim that the charge sheet was issued based on incompetent investigation is baseless and it was only an attempt to complicate the issue.

The appellant says that at the time of the enquiries into the case, he had put in 20 years of service in clerical cadre and his fate was decided by a mail overseer. This argument, as pointed out earlier, holds no water.

In his next argument, the appellant claims that his leave orders and that of Shri P.Chandraiah for the period from 2.4.1985 to 21.5.1985 and 18.3.85 to 31.3.1985 respectively have not been produced during the enquiry though he has asked for them. Since the leave of Shri P.Chandraiah and the appellant had not been granted to either of them, the question of supplying them did not arise. To his argument that documents were not produced during enquiry, the fact remains that the original SB-3 cards and ledger cards cited in the article of charge were produced during the inquiry on 12.2.1987 and the same were perused by the appellant and hence the contention of the appellant that the documents were not produced is mis-leading.

The appellant further questions the method of cross examination and many prosecution witnesses disowned their own earlier statements. They were not examined by the P.O and they were not declared hostile by him. He also questions the method of the I.O. in conducting the enquiry. None of his arguments have any basis nor do I find any lacuna in the enquiry carried out.

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It is conclusively proved during the inquiry that he had allowed half withdrawals from the 64 RD accounts before completion of 12 months existence.

It is evident that the offences committed by the appellant as detailed in the charge sheet, have been proven except for the charge No.1 which was partially proved, and for him now to state that he is not guilty is not at all acceptable. The nature of irregularities committed by the appellant is nothing to do with his caste. The charge sheet was based on the gravity of offence. In fact, I am of the impression that the appellant has been dealt with very leniently by the disciplinary authority. I do not find any reason to interfere with the orders issued by the disciplinary authority. Accordingly, I reject the appeal.

( RADHIKA DORAISWAMY )  
Director of Postal Services  
& the Postmaster General  
Hyderabad Region, Hyd-500001

To,  
Sri I. Ramudu, Ex PA B  
Bhainsa (through the SPOs, Adilabad)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. No. 438 of 1992

Between:

I. Ramudu

Applicant

and

The Director of Postal Services,  
Andhra Pradesh Northern Region,  
Hyderabad and another.

Respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF ALL THE RESPONDENTS:

I, V.S. Krishna Murthy, S/O Sri. V. Satyam, aged 54 years  
occupation: Government Service, do hereby affirm and state  
as follows:

1. I am the Asst. Director in the % the Postmaster-General,  
Hyderabad Region, as such I am fully acquainted with all facts  
of the case. I am filing this Counter Affidavit on behalf of  
all the respondents as I have been authorised to do so. The  
material averments in the O.A. are denied, save those that are  
specifically admitted hereunder:

The brief History leading to file this case is stated  
as under:

The applicant was deputed to Madaram Township Post Office  
as an additional hand to clear the pendency of posting of  
deposits into the R.D. Pay Roll savings pass books for a  
period of 20 days from 23.2.85. But he stayed there for 23 days  
unauthorisedly. He also unauthorisedly relieved the regular  
SPM, Sri. P. Chandraiah to proceed on casual leave even in the  
absence of orders from the Divisional Superintendent of Post Offices,  
Adilabad and worked as Sub-Postmaster from 18.3.85 to 31.3.85.  
On relief at Madaram Township on 1.4.85 he did not join duty  
at Bhainsa immediately and remained unauthorisedly absent from  
2.4.85 to 21.4.85.

  
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Deponent

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While he was unauthorisedly holding charge as Sub Postmaster Madaram Township, he misused his authority and allowed half withdrawals in 64 RD accounts, even though they were not in operation for a period of one year and there were no credit of 12 months. In respect of 32 RD accounts, he failed to pay full amounts of withdrawals and the depositors denied to have been received full amounts as mentioned in the voucher. In respect of four(4) RD accounts, he did not obtain withdrawals forms (SB.7) from the concerned depositors and payment was effected to the persons other than the depositors. Thus, moral turpitude of the applicant was involved in the cases and, therefore, a charge-sheet under Rule-14 of CCS(CCA) Rules, 1965 was issued to the applicant on 19.10.1985. Inquiry Officer/ Presenting Officer were also appointed to inquire into the articles of charge on 26.2.1986. The Inquiry Officer submitted his Inquiry Report on 25.8.88 holding the article of charge II, III and V as proved, charge No. I as not proved and charge No. IV as partially proved. Final proceedings were issued on 31.5.89 imposing the penalty of 'compulsory retirement' w.e.f. 31.5.89 A/N. Thereafter, the applicant preferred an appeal to the Directorate of Postal Services, Hyderabad Region on 10.7.89. The applicant has, in the meantime, filed O.A. No.220/90 on ~~30.3.90~~ before the C.A.T., Hyderabad bench even before the appeal dated 10.7.1989 was disposed off by the first Respondent. The Hon'ble Tribunal has, while disposing the O.A. No.220/90, on technical grounds, directed the second respondent to furnish a copy of Inquiry Officer's report to the applicant before finalisation of the disciplinary case. Accordingly, a copy of the report of the Inquiry Officer was sent to the applicant on 1.5.90 and his representation, if any was called for within 15 days. The applicant did not submit any representation. Therefore the applicant was ~~again~~ imposed with the penalty of compulsory retirement on 13.11.1990. He preferred an appeal against these orders on 4.1.1990. Even before disposal of this appeal, the applicant filed another O.A. No.179 of 1992 before the C.A.T., Hyderabad. The Hon'ble Tribunal, vide its <sup>order</sup> dated 3.3.1992 directed the first respondent to dispose of the appeal dated 4.1.1991

  
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Deponent

within a period of two months. Accordingly, the first respondent disposed the appeal vide Memo dated 31.3.1992 rejecting the appeal. The applicant has filed this O.A. against the said order dated 31.3.92 of the first respondent.

In reply to para 4 it is submitted that on denial of full amounts of half withdrawals by the depositors and on payment of withdrawals to the persons other than the depositors the moral turpitude of the applicant was seriously involved, and therefore, a chargesheet under Rule-14 was issued on 19.10.85 and on receiving the Inquiry Officer's report holding the articles of charge-II, III and V as proved and IV as partially proved, the applicant was compulsorily retired on 31.5.1989, but when it was directed by the Hon'ble Tribunal in O.A.No.220/90, a copy of the I.O.'s report was supplied to the applicant on 1.5.1990 with directions to submit representation, if any, within 15 days. But the applicant did not submit any representation. On examination of the case, the second respondent has imposed the penalty of compulsory retirement, vide his Memo dated 13.11.1990. The applicant preferred an appeal against the said order, dated 13.11.1990, on 4.1.1991 and even before its disposal, he again filed O.A. No.179/92 before the Hon'ble C.A.T., Hyderabad Bench. The Hon'ble Tribunal directed the first respondent on 3.3.1992 to dispose the appeal, dated 4.1.1991 within two (2) months and accordingly it was disposed on 31.3.1992 rejecting the appeal.

In reply to para 5 it is submitted that the question of supplying a copy of I.O.'s report to the applicant has been given effect w.e.f. 20.11.1990 in the case of Ramzankhan (vs) Union of India, even though a copy of the I.O.'s report was furnished in this case on 1.5.1990 and when no representation was received, the penalty of compulsory retirement was imposed on 13.11.1990.

The second respondent has <sup>no where</sup> ~~nowhere~~ expressed definite opinion about the guilt of the applicant ~~as~~ contended and, therefore, his argument that the Disc.Authority has expressed definite opinion, is not tenable.

  
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Further, the claim of the applicant that irrelevant rules are cited in the articles of charge is not tenable. He remained unauthorisedly absent in continuation of a motivative action of short payment of R.D. withdrawal amounts with a fear that he would have been facing deterrent action of suspension, etc. and his action certainly become unbecoming of a Govt. Servant. Hence, Rule 3(1) (iii) was cited. The action of the applicant in irregular payment of withdrawals in respect of 64 R.D. accounts even before completion of deposits of 12 months and period of one year, have attracted the provisions of Rule 504(1) read with Rule 523/3 of P&T Manual Vol.VI, Part II, hence these rules have been cited in the articles of charge No.II. The charge No.IV relates to short payment of amounts involving short payment of amounts of withdrawals and it amounts to unbecoming of a Govt. Servant also and hence Rule 3 (1) and (iii) have also been cited. The relevant rule <sup>violated</sup> ~~violated~~ by the applicant in wrong payment of withdrawals to persons other than depositors contravening provisions of Rule 504(iii) read with Rule 523(3) of P&T Manual Volume VI, Part-II and hence the said rule was quoted. The applicant has in other words admits the guilty, but queries the charge-sheet in application of rules.

The preliminary investigation was conducted by a squad consisting of Sub-divisional Inspectors (Postal) assisted by Mailoverseers in contacting the depositors and recording their statements. The Mailoverseers did not record any statement from the applicant as admitted by him.

The contention of the applicant that investigation was taken up by officials lower in rank than the applicant is not tenable in as much as the investigation was conducted by Sub-Divisional Inspectors (Postal), Mancherial East, Sirpur Kagaznaga and Adilabad, who are higher in rank than the applicant and charge-sheet was issued by the Divisional Supdt. Adilabad. The averment of the applicant that unauthorised and humiliating investigation was done by the Mailoverseers is baseless and this is an act of misleading the Hon'ble CAT.

The applicant has placed requisition on 12.11.1986 to supply leave orders of Shri.P.Chandraiah, Sub-Postmaster,

  
Attestor.

  
Deponent.


Madaram Township S.O. for the period from 2.4.85 to 21.4.85 and 18.3.85 to 31.3.85 but it was not granted at all to Shri.P. Chandraiah and, therefore, the question of supplying leave memos does not arise. Further, the original SB.3 card and ledger card cited in the articles of charge were perused by the applicant alongwith his Assisting Government Servant on 12.2.1987 during the inquiry. The applicant did not adduce any defence witnesses to prove that he has effected payment of withdrawals fully. Contrarily he went on finding faults with his general observations, as regards the articles of charge No.IV. Documentary evidence produced during the inquiry amply proved the article of charge No.V.

The applicant narrates his 'ST' community and facilities/ social obligations extended to it and found fault with investigation. In fact, he has committed grave irregularities which have marred the very reputation of the department in irreparable loss in the area.


The punishment of compulsory retirement commensurate the gravity of offence committed. In fact, the applicant deserves severe punishment, but taking his service and community, etc. into consideration the penalty of compulsory retirement was imposed.

For the reasons stated above, the applicant has not made out any case either on the facts or on law and there is no merit in the O.A. It is therefore prayed that this Honourable Court may be pleased to dismiss the O.A. with costs and pass such further and other order or orders as this Honourable Court may deem fit and proper in the circumstances of the case.

Solemnly and sincerely affirmed  
this...20th...day of June...1993  
and 20.6.93 signed his name in  
my presence.

  
Deponent  
Assistant Director of Postal Services  
O/o. The Postmaster-General,  
Hyderabad Region, Hyderabad-500 001

Before me

  
Attestor  
सहायक निदेशक डाक सेवा  
पोस्टमार्शल जनरल का कार्यालय,  
हयराबाद क्षेत्र, हैदराबाद-500 001  
Assistant Director of Postal Services  
O/o. The Postmaster-General  
Hyderabad Region, Hyderabad-500 001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

HYDERABAD BENCH

AT HYDERABAD

O.A. No. 438 of 1992

Between:

I, Ramudu

Applicant

and

The Director of Postal Services,  
Andhra Pradesh Northern Region,  
Hyderabad.

and others

Respondents



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2/21/97

Filed by:—  
N. R. Dewary  
S. K. Ch



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT: HYDERABAD

O.A.NO: 438 OF 1992

BETWEEN:

I. Ramudu S/o I. Ramaiah,  
aged about 49 years, Occ.LSG/Postal Asst.  
(Compulsorily Retired) Bhainsa,  
Adilabad Dist. ..

APPLICANT

A N D

1. Director of Postal Services,  
Hyderabad Region, Hyderabad.
2. Superintendent of Post Offices,  
Adilabad Division, Adilabad.

RESPONDENTS

WRITTEN ARGUMENTS FILED ON BEHALF OF APPLICANT

May it please your Lordships:

It is respectfully submitted that the charge sheet is not maintainable as it expressed and positive conclusion of the commission of the offense has been drawn. This is against the provisions of Rule 4(1) of P & T Vol.III. as observed by the Hon'ble Calcutta vide 1987 (3) ATC Calcutta, that a charge sheet of the type though assailed was felt to be acceptable only for the reason that the Govt. Servant admitted the charges. In the case of the applicant, he did not admit the charge and as per the case law cited the charge sheet is liable to be assailed.

2. It is submitted that the I.O. held charge No:1 as not proved. The Charge No.2 relates to overstayal which has to be regularized under FR 17 if necessary applying Rule 62 of P & T Manual Vol.III but the rule cited is 3(1) (iii) of CCS (Conduct) Rules, 1964. The I.O. held that the applicant might have posted the leave application late but this was not an original allegation and the applicant was denied opportunity to prove his innocence. In respect of charge No.3 there is no allegation of

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any malpractice and the only rule applicable was Rule 3(1)(ii) which was not quoted. In respect of charge No:4 also there was no relevant rules quoted. In respect of charge No:5, the I.O. himself admitted that relevant rules were not quoted.

3. It is further submitted that Department prescribed certain limits of investigation and the lowest investigating officer is the Inspector of Post Offices. In the applicant's case the enquiries about short payments were made by Mail Overseer who has no authority to do so and that too without any complaint. The entire action against the applicant was mala fide.

4. It is further submitted that the document i.e., the leave applications of the applicant and Sri P.Chandraiah were found relevant but not produced. Withholding of documents found relevant was assailed vide AIR 1971 Delhi 133; 1982 CWN 538. The applicant requested for production of the S.B. Ledger as all the transactions were to be entered therein and which happened to be basic record of S.B. Transactions, but the SB Ledger was not produced which is in violation of observation of the Hon'ble Supreme Court in 1961 SC 1623.

5. It is further submitted that four of the Prosecution Witnesses were not produced at all to deny the opportunity to the applicant to cross examine them.

6. It is further submitted that the list of documents as explained elsewhere not produced before commencement of the regular enquiry.

In all there are 5 charges against the applicant which are assailed as follows:

- (a) The I.O. held charge No.1 as not proved. Disciplinary authority did not record reason for disagreement and communicated the I.O.'s report but while finalizing the case, disagreed with the I.O. This is irregular vide case law 1993 (23) ATC 726 Ahmedabad.
- (b) Charge No:2: Leave application was submitted and received by the Superintendent of Post Offices, may be late, though posted correctly. Leave salary was also drawn by Postmaster, Mancherial. There are several instances when copies of the leave orders are not received by officials but communicated to the Postmaster to enable him to draw the salary. If no leave order is received the Postmaster would not have drawn the salary. The proof that the leave was sanctioned is that the leave salary was paid to the applicant. His absence was on Medical grounds and his medical certificate was not subjected to second verification. The leave sanctioning authority has no right to refuse medical leave unless the medical certificate produced by the applicant was proved to be bogus. Even according to Superintendent of Post Offices, Adilabad the Medical Certificate was received on 16.4.1985 and the applicant was charge sheeted on 19.10.1985. The Superintendent of Post Offices, has even not called for the explanation of the applicant for late submission of the Medical Certificate. He did not make any endorsement whether the applicant posted M.C. late and he did not include in the charge sheet the allegation that the applicant posted the M.C. late but the I.O. in his report says that the applicant posted the M.C. late. Since this item was not a part of the charge sheet, it is a new allegation and the I.O. forbidden to

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pass such a verdict without giving reasonable opportunity to the applicant to defend himself as per the explanation below Rule 14 (23) of CCS (CCA) Rules, 1965.

(c). It is further submitted that the only Rules applicable to officials of Postal and Telecommunication Departments regarding unauthorized absence are Rule 62 and 63 of P & T Manual Vol.III. As per Rule 62 unauthorized absence should be treated as dies-non and as per Rule 63 disciplinary action may be initiated for the unauthorized absence. The isolated instance of the applicant's absence from duty from 1.4.1985 to 20.4.1985, even unauthorized does not call for disciplinary action as per Rule 63 of P & T Manual Vol.III. Whether absence of 20 days, authorized or unauthorized, but in one spell cannot be the course of disciplinary action for an official with more than 20 years of service. The only punishment in such an isolated case can be treating the period as dies non. It was held by the Hon'ble CAT Jabalpur that any charge relating to unauthorized absence does not involve misconduct vide 1989 (11) ATC 340 Jabalpur. It was also held by the Hon'ble CAT Ernakulam that if absence is due to compelling reasons it cannot be treated as unauthorized absence (1989 (8) ATC 26 Ernakulam). In the applicant's case he had submitted periodical certificates from qualified Doctor and the Superintendent of Post Offices did not dispute the same nor had asked the applicant to appear before the Civil Surgeon which shows that the absence of the applicant was due to the compelling reasons of sickness and the Superintendent of Post Offices has no ground to issue a charge sheet to the applicant for such absence which was not challenged by him and for which the applicant was paid salary. The I.O. observes that the Postmaster, Mancherial would have drawn the salary of the applicant by mistake, but the Postmaster, Mancherial was not produced as witness to say that

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drawal was by mistake. On this point the I.O. clearly assumed the role of the witness by stating in his report the expected version of the Postmaster also, as to what he wanted the Postmaster, Mancherial to say, had he been produced as a witness. Such a report of I.O. is not quasi-judicial. This charge is groundless. The I.O.'s conclusion is based on surmises and conjunctures as observed by the High Court of Patna vide AIR 1967 Patna 133 and 1992 (1) SLJ CAT Madras.

(d). Charge No.3:

It is further submitted that no witness was produced to prove the charge. It was held by the Supreme Court that no material can be relied upon to abolish a contested fact which are not spoken to by persons who are competent to speak about them and subjected to cross examination by the Party against whom they are sought to be used. (1991 (15) ATC 352 Ernakulam, and 1993 (1) SLJ CAT 172 Ernakulam.) In the absence of witnesses the charge cannot be held as proved. The documents were produced on 21.4.1988 i.e., after the prosecution case was over. The applicant was handicapped that he could not cross examine the witnesses on these documents as they were not produced in time. Rule 5(iv) of P & T Manual Vol.III clearly states that one has right to have all the documents before the regular hearing is commenced and by producing the documents after all the witnesses are examined, the charge cannot be taken as proved.

(e). Charge No.4:

It is further submitted that the documents were produced on 20.4.1988 after examination of all prosecution witnesses, enabling the applicant to cross examine them about their genuineness. For the reasons submitted above this charge cannot be held as proved. Added to this even the listed witnesses were not produced. The charge relates to alleged short payments

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and atleast some of the depositors were literate. It is only a matter of common sense that in case of short payments there should be complaints within the reasonable time. There was no complaint and this suo motto action of the Superintendent of Post Offices to proceed against the applicant in the absence of complaints is malafide and an authority with malafide intention cannot act as disciplinary authority. The Superintendent of Post Offices, was not only bent upon punishing the applicant but also to humiliate the applicant by asking a Mail Overseer who is the subordinate of the applicant to make enquiry against the applicant. Since the action of the Superintendent of Post Offices is malafide his findings that the charge is proved should prick legal conscience.

(f). Charge No.5:

This is regarding some wrong payments and no motive is attributed to the applicant. It was held by the Hon'ble CAT Ahmedabad (vide 1989 (9) ATC 509 Ahmedabad and 1976(1) SLR 133 Delhi) that in the absence of allegations of personal gain or corrupt practices the irregularity is beyond the disciplinary jurisdiction of the department. It was held by the Hon'ble Supreme Court that misconduct means misconduct arising from ill motive vide (1979) 2 SCC 286, 1979 SCC (L & S) 157, AIR 1979 SC 1022, 1989 (9) ATC 369 Calcutta. In busy office if some wrong payment takes place inadvertently, it is not a misconduct at all and if there is no misconduct charge sheet can not be issued and in the applicant's case this charge is void ab-initio.

7. It is further submitted that the applicant submitted an appeal to the Director of Postal Services, Hyderabad, highlighting all the omissions and commissions of disciplinary authority. As observed by the Hon'ble CAT Ahmedabad in case reported 1992 (19) ATC 374 the appellate authority has to discuss all the

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points raised in the appeal and pass a speaking order, but the appellate authority utterly failed to do so driving the applicant to this Hon'ble Tribunal. For an instance, the applicant submitted that the charge sheet was defective for the disciplinary authority expressed a definite opinion about the commission of the offense. The appellate authority is silent on this point but says that there is no basis to say that the disciplinary authority exhibited bias at any time. What was expected of the appellate authority was to admit or deny whether the disciplinary authority expressed a definite opinion. Ambivalence cannot substitute a definite finding expected of the appellate authority.

8. It was submitted by the applicant that the relevant rules about unauthorized absence were not quoted. As far as P & T officials are concerned, the only relevant rules regarding unauthorized absence is rule 62 and 63 of P & T Manual Vol.III and the Govt. of India have given strict instructions that one should not resort to conduct Rule 3 when the act is in violation of other rules, (Dept. of Personnel O.M.No.11013/18/76-Estt.(A) dated 7.2.1977. The Director of Postal Services was silent on this point also but says that the applicant acted in a manner of unbecoming of a Govt. servant by unauthorisedly absenting from duty and so conduct rules were cited. It was contended by the applicant that the investigation was done by the subordinate of the applicant violating the departmental rules. The Director of Postal Services says that a team of Inspectors and Mail Overseers made the enquiry but the fact is that no Inspector appeared as witness regarding the payments but the M.Os. appeared and given statement that they inquired into the short payment. When making investigation against a Sub-Postmaster even by team, the Mail Overseer should not be included in the team.

CONTD..

9. It is further submitted that it was submitted by the applicant to the Director of Postal Services that the fate of a clerical cadre official with more than 20 years service was by a Mail Overseer. The Director of Postal Services simply says that the plea does not hold water. The Director of Postal Services, has no reason to adhere to this finding.

10. It was further submitted that the leave orders of the applicant and Mr. Chandriah were not produced during the enquiry. The DPS says that the leave was not granted. The leave pertains to 1985 and if the leave is not granted so far, there is something seriously wrong with the administration. It may also be submitted that Sri Chandraiah was not proceeded against for availing leave, handing over charge to the applicant.

11. It was submitted that the documents cited in the charge sheet were not produced. The DPS says that SB 3 and Ledger cards were produced. These were not the documents which the prosecution failed to produce and there is no valid explanation for not production of the same.

12. It was submitted that the conduct of enquiry was irregular, mainly because of irregular cross examination of witnesses. The DPS says that my contention has no basis but does not say why.

13. For the remaining part of my detailed appeal, the DPS simply says that it is conclusively proved that the applicant allowed half withdrawals. If this contention is acceptable, I should have been exonerated of all other charges. The perfunctory disposal of the appeal by the appellate authority has driven the applicant to file the O.A. before the Hon'ble Tribunal.



PAGE: 10 :

IN THE CENTRAL ADMINISTRATIVE  
TRIBUNAL: HYDERABAD BENCH:  
AT: HYDERABAD.

O.A. NO: 438 OF 1992

BETWEEN:

I. Ramudu ..

APPLICANT

AND

DIRECTOR OF POSTAL  
SERVICES, HYDERABAD  
REGION, HYDERABAD AND  
ANOTHER. RESPONDENTS.

WRITTEN ARGUMENTS FILED ON BEHALF OF  
THE APPLICANT.

FILED ON: 20.10.1995.

*Recd copy  
12/11/95  
for N.R. Dammij  
Sru*

FILED BY:

SANKA RAMA KRISHNA RAO,  
ADVOCATE, 1-1-230/9, ANDHRA BANK  
LANE, CHIKKADPALLY, HYDERABAD.20.

COUNSEL FOR THE APPLICANT.

73A


PAGE: 9 :

14. It is submitted that the punishment is totally disproportionate to the allegations made against the applicant. It may be true that some negligence could justifiably or unjustifiably be attributed to the applicant, but there is no ground to suspect the applicant's integrity or honesty. In similar circumstances the Hon'ble CAT Chandigarh vide 1988 (8) ATC 882 held that the punishment of compulsory retirement was disproportionate and modified the same to a minor penalty.

It is therefore respectfully prayed that the Hon'ble Tribunal may be pleased to direct the Respondents to grant all the reliefs prayed for in the O.A. with all the consequential benefits and be pleased to pass such other and further order or orders as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Hyderabad.

20.10.1995.

  
COUNSEL FOR THE APPLICANT

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH

~~R.A./M.A./C.A.NO.~~

ORIGINAL APPLICATION NO. 438/92 OF 199

TRANSFER APPLICATION NO.

OLD PETN.NO.

CERTIFICATE


Certified that no further action is required to be taken and the case is fit for consignment to the Record Room(Decided)

Dated: 17/9/96.

Counter Signed:

Section Officer, Court Officer.

pvm.

  
Signature of the Dealing  
Assistant.

(710)

CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : HYDERABAD.

C.A. No. 438/92

T.A. NO.

DATE OF DECISION 26-8-96

I. Ramudu

(PETITIONER (S))

S. Ramakrishna Rao

ADVOCATE FOR THE PETITIONER(S)

VERSUS

Director of Postal Services  
Andhra Pradesh Northern Region  
Hyderabad and another

RESPONDENT (S).

N.R. Devaraj

ADVOCATE FOR THE RESPON-  
DENT (S).

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI, VICE-CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

1. Whether Reporters of local papers may be allowed to see the Judgement ? yes
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgement ? no
4. Whether the Judgement is to be circulated to the other Benches ?

*huk*

Judgement delivered by Hon'ble Justice Mr. MG. Chaudhari, VC

78.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH  
AT HYDERABAD

OA.438/92

dt.26-8-96

Between

I. Ramudu

: Applicant

and

1. Director of Postal Services  
Andhra Pradesh Northern Region  
Hyderabad

2. Supdt. of Post Offices  
Adilabad Division  
Adilabad

: Respondents

Counsel for the applicant

: S. Ramakrishna Rao  
Advocate

Counsel for the respondents

: N.R. Devaraj  
SC for Railways

CORAM

HON. MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

HON. MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

## Judgement

Oral order (per Hon. Mr. Justice M.G. Chaudhari, VC ) ~~per Hon. Mr. Justice M.G. Chaudhari, VC~~

Counsel for the applicant absent. Mr. N.R. Devaraj  
Senior CGSC present.

1. We have heard the submissions of Mr. N.R. Devaraj. The applicant is aggrieved by the order of compulsory retirement imposed upon him by the Respondent-1 vide memo dated 13-11-90. Appeal against the said order was also rejected by the Appellate authority. Briefly stated, a disciplinary proceeding was held against the applicant under Rule 14 of CCS(CCA) Rules, 1965. The applicant participated at the inquiry. There were five articles of charge framed against the applicant, inter-alia relating to overstay, taking charge of the office in the absence of the order from the Divisional office, allowing withdrawals in as many as 64 RD Accounts illegally as these accounts were not in operation and thereby committing breach of the rules, failing to pay full amounts to the withdrawals as accounted in respective pass books and RD Books of transactions and allowing irregular withdrawals of certain RD accounts while functioning as SPM, Madaram Township S.O. and thus contravening provisions of Rule 3(1)(ii) and (iii) of CCS(Conduct) Rules, 1964 as also acting in contravention of Rule 504 (i)(iii) of P&T Vol.VI, Vol.II read with Rule 523(3) and further contravening provisions of Rule 3(1)(ii)(iii) of CCS(Conduct) Rules, 1964 and 504 (iii) read with Rule 523(iii) Vol.VI, Part II of the P&T Manual. The Inquiry Officer held that Articles of charge relating to overstay of 20 days was not proved but the remaining charges were proved. The disciplinary authority although agreed with the conclusion that allegation of overstay under Article 1 was not proved but disagreed with other conclusions pertaining to taking charge of

...2.

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(77)

office in the absence of orders from the office which he regarded more serious in nature and held it proved. He agreed with the findings of the inquiry officer on other articles of charge holding that the applicant had committed various irregularities and had contravened the provisions of the Rules and thus held that he was not considered fit to be retained in the Department in the interest of public service. He also held that it was revealed that the applicant had acted dishonestly in dealing with the public transactions and found him to be untrustworthy as officer deserving deterrent punishment commensurate with the seriousness of the charges proved. Consequently, he passed the order of compulsory retirement dated 30-5-1989.

2. The applicant preferred an appeal to the Director of Postal Services on 10-7-1989. He, however, filed OA.220/90 on 30-3-1990 challenging the proceedings. By its order the Tribunal directed R-2 to furnish a copy of the Inquiry report to the applicant before finalisation of the disciplinary case. Accordingly, a copy of the report was sent to the applicant but he did not submit any reply. It was thereafter that by further order dated 13-11-1990, the Disciplinary authority, once again passed the order of compulsory retirement by giving detailed reasons in support of its conclusion. Against that order the applicant preferred an appeal to the Appellate authority. While the appeal was pending, the applicant again rushed to the Tribunal by filing OA.179/92. The Tribunal directed, the appeal to be disposed of within a period of two months by order passed in that OA. Thereafter the Appellate authority passed the order on 31-3-1992 rejecting the appeal.

...3.

*hell*

78

3. We have gone through the appellate order and we find that the Appellate authority has dealt with the points raised by the applicant in the memorandum of appeal.

4. It is well settled that the Tribunal cannot reappreciate the evidence nor can go into the question of proportionality of the punishment. The limited scope in which the Tribunal can interfere is where an illegality in the proceedings is pointed out or the order suffers from malafides. In the instant case, the applicant, firstly, contends that the chargesheet, itself was illegally issued as there was pre-drawn conclusion of the commission of offences indicated in the charge memo and therefore, it was defective. This ground does not impress us, as it had to be raised in the earlier OA and it cannot be raised at this stage. Secondly, we have gone through the Articles of charge and we do not find that any conclusion of guilt as such has been drawn. The applicant is clearly confusing between an allegation on the basis of which a charge is framed and a conclusion drawn at the enquiry. Thirdly, there was a regular inquiry held in which the applicant had participated. The manner in which the charge sheet is framed has no relevance in the findings based on the evidence.

5. The second ground which has some semblance of permissible ground to be raised is that some of the listed documents were not produced during the examination of the witnesses and the inquiry officer had cross-examined certain witnesses whose statements were recorded during the preliminary inquiry but these witnesses had resiled from them. Suffice it to say that the number of listed documents is not a pointer to the material evidence or its sufficiency and since the available material was taken into account and the charge has been held

hull



(79)

proved, it is not open to the applicant to make this grievance. Moreover, when the witnesses resiled from earlier statements they could be cross-examined ~~legally~~ legally and the applicant had every opportunity to reexamine them in his own turn. The procedure adopted by the inquiry officer cannot be said to introduce any illegality in the proceedings of the inquiry. These aspects have been examined by the Disciplinary authority as well as the Appellate authority.

6. The rest of the grounds raised relate to the merits and involve reappraisal of the evidence which is not permissible to be done by the Tribunal. It is contended that the Disciplinary authority had partly disagreed with the finding of the inquiry officer in respect of article No.1 of the charge. However, we find that in support the Disciplinary authority has given cogent reasons and his findings having been confirmed by the Appellate authority and no advantage, therefore, can be drawn by the applicant from that circumstance.

7. It is also clear from the order of the Appellate authority that there was no irregularity in carrying out investigation on the basis of which the charge sheet was issued in as much as it was conducted by an officer who was higher in rank to the applicant and also because the charge sheet was issued by the Divisional Superintendent. ~~\_\_\_\_\_~~

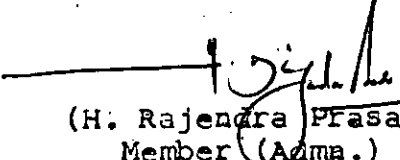
8. ~~Apart from the aforesaid grounds~~ we found no other point raised which would require consideration by us without reappreciation of the evidence which cannot be done.

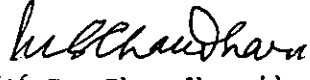
9. Misconduct proved against the applicant is of a very serious nature. The authorities have already taken a lenient view and imposed the lesser penalty of compulsory retirement.

It cannot be stated that the punishment is perverse so as to call for our interference.

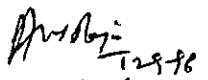
10. In the light of the above discussion we held that there is no merit in the application and the OA is liable to be dismissed.

11. The OA is dismissed. No order as to costs.

  
(H. Rajendra Prasad)  
Member (Adm.)

  
(M.G. Chaudhari)  
Vice Chairman

Dated : August 26, 96  
Dictated in Open Court

  
Deputy Registrar (Dce)

sk

81

-6-

O.A.438/98

To

1. The Director of Postal Services,  
A.P.Northern Region, Hyderabad.
2. The Supdt.of Post Offices,  
Adilabad Division, Adilabad.
3. One copy to Mr. S.Ramakrishna Rao, Advocate, CAT.Hyd.
4. One copy to Mr. ~~Mr. Rajaram~~ N.R.Devraj, SC for Rlys,  
CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

pvm.

07/10/96

I COURT

TYPED BY

CHECKED BY

COMPALED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI  
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

Dated: 26-8-1996

~~ORDER~~ / JUDGMENT

M.A/R.A./C.A. No.

in

O.A.No.

638/92

T.A.No.

(w.p.)

Admitted and Interim Directions  
Issued.

Allowed.

Disposed of with directions

Dismissed

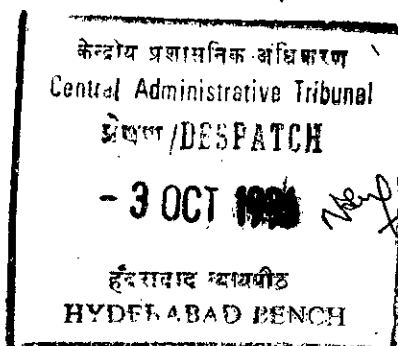
Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm



## Judgement

Oral order (per Hon. Mr. Justice M.G. Chaudhari, VC )--

Counsel for the applicant absent. Mr. N.R. Devaraj  
Senior CGSC present.

1. We have heard the submissions of Mr. N.R. Devaraj. The applicant is aggrieved by the order of compulsory retirement imposed upon him by the Respondent-1 vide memo dated 13-11-90. Appeal against the said order was also rejected by the Appellate authority. Briefly stated, a disciplinary proceeding was held against the applicant under Rule 14 of CCS(CCA) Rules, 1965. The applicant participated at the inquiry. There were five articles of charge framed against the applicant, inter-alia relating to overstay, taking charge of the office in the absence of the order from the Divisional office, allowing withdrawals in as many as 64 RD Accounts illegally as these accounts were not in operation and thereby committing breach of the rules, failing to pay full amounts to the withdrawals as accounted in respective pass books and RD Books of transactions and allowing irregular withdrawals of certain RD accounts while functioning as SPM, Madaram Township S.O. and thus contravening provisions of Rule 3(1)(ii) and (iii) of CCS(Conduct) Rules, 1964 as also acting in contravention of Rule 504 (i)(iii) of P&T Vol.VI, Vol.II read with Rule 523(3) and further contravening provisions of Rule 3(1)(i)(iii) of CCS(Conduct) Rules, 1964 and 504 (iii) read with Rule 523(iii) Vol.VI, Part II of the P&T Manual. The Inquiry Officer held that Articles of charge relating to overstay of 20 days was not proved but the remaining charges were proved. The disciplinary authority although agreed with the conclusion that allegation of overstay under Article 1 was not proved but disagreed with other conclusions pertaining to taking charge of



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH  
AT HYDERABAD

OA.438/92

dt.26-8-96

Between

I. Ramudu

: Applicant

and

1. Director of Postal Services  
Andhra Pradesh Northern Region  
Hyderabad

2. Supdt. of Post Offices  
Adilabad Division  
Adilabad

: Respondents

Counsel for the applicant

: S. Ramakrishna Rao  
Advocate

Counsel for the respondents

: N.R. Devaraj  
SC for Railways

CORAM

HON. MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN *hll*

HON. MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

3. We have gone through the appellate order and we find that the Appellate authority has dealt with the points raised by the applicant in the memorandum of appeal.

4. It is well settled that the Tribunal cannot reappreciate the evidence nor can go into the question of proportionality of the punishment. The limited scope in which the Tribunal can interfere is where an illegality in the proceedings is pointed out or the order suffers from malafides. In the instant case, the applicant, firstly, contends that the chargesheet, itself was illegally issued as there was pre-drawn conclusion of the commission of offences indicated in the charge memo and therefore, it was defective. This ground does not impress us, as it had to be raised in the earlier OA and it cannot be raised at this stage. Secondly, we have gone through the Articles of charge and we do not find that any conclusion of guilt as such has been drawn. The applicant is clearly confusing between an allegation on the basis of which a charge is framed and a conclusion drawn at the enquiry. Thirdly, there was a regular inquiry held in which the applicant had participated. The manner in which the charge sheet is framed has no relevance in the findings based on the evidence.

5. The second ground which has some semblance of permissible ground to be raised is that some of the listed documents were not produced during the examination of the witnesses and the inquiry officer had cross-examined certain witnesses whose statements were recorded during the preliminary inquiry but these witnesses had resiled from them. Suffice it to say that the number of listed documents is not a pointer to the material evidence or its sufficiency and since the available material was taken into account and the charge has been held

*hell*

ANNEXURE - I

List of Papers in Original Application No. 438/92

Sl.No. of Papers	Date Of Papers Or Date of filing.	Description Of Papers.
		<u>Part - I</u>
	26.8-96.	O Original Judgement
	1-5-92	O.A & Material Papers.
	19-6-93.	Counter
	20-10-95	Reply Counter

~~PART - I~~, PART- II and PART --- III  
Destroyed.

A  
7/4/99.



CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

RECORD SECTION INDEX SHEET

O.A.No. 438 / 1992

a) Applicant(s) I. Ramudu  
Versus

b) Respondent(s) The Director of Postal Services, AP Hyderabad & ann.

Sl.No. Description of Documents. No.

Part I

Order Sheet

Original Application

Material Papers

Order dt.

Counter Affidavit. 19.7.96.

Reply Affidavit. 20.10.95

Order dated. 26.8.96.

Part II

Duplicate Order Sheet.

" Application.

" Material Papers

" Order dt.

" Counter Affidavit.

" Reply Affidavit.

" Order dated.

Part III

Vakalat

Notice Papers.

Memo of Appearance.

29/11/96

OA.438/92

(1)

26-8-96

-8-96

Judgement ~~is~~ delivered. The OA  
is dismissed. Orders vide separate  
sheets.

  
HHRE  
M(A)

  
HMGCJ  
VC

18/10

GA 438/20

10-30

(1) Exams

(2) running down - ~~down~~  
Ref

(3) etc.

3

OA 438492

Date	Office note	Orders
------	-------------	--------

2/8/94

call m. 25/8/94.

HASH.  
M(A).


HAUH  
M(3)

BOL  
L

7-12-94

At the request of counsel  
for applicant Post it  
on 19/12/94

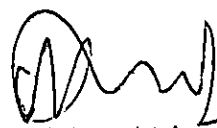
✓  
HARM  
M(A)

  
HARM  
M(3)

6-95

At the request of  
the counsel for the  
applicant adjourned  
to 14/3/95.

  
HARM  
M(A)

  
HARM  
M(3)

20/3/95

Post on 27.3.95.

HARM  
M(A)

HAUH  
M(3)

BOL  
L

6/4/95

call m 27/4/95

HASH.  
M(A)

HAUH  
M(3)

BOL  
L

OA 488/92 (2)

5-6-95

Limit et on 7-6-95

HABH  
M(A)

HVNRT  
ve

By order

DR(5)

Limit et on 11/95

HABH (30) HVNRT  
M(A) ve

Limit et on 18/95

HABH (30) HVNRT  
M(A) ve

18/95

Limit et on 19/10/95

HABH (30) HVNRT  
M(A) ve

Limit et on 28.11.95

HABH  
M(A)

HVNRT  
ve

By order

DR(5)

Limit et on 11/7/96

HABH (30) HVNRT  
M(A) ve

Limit et on 18/12/96

HABH (30) HVNRT  
M(A) ve

6/8/96 Limit et on 7/8/96

HABH (30) HVNRT  
M(A) ve

(4)

OA 438/93

Date	Office Note	Orders
		<u>21.2.94</u>
		Call on 2/3/94.
		HTCSR m(3). HABG m(A).
		Hoc A
15.3.94		Post on 18.4.94.
		HTCR M(J) HABG m(A)
		Hoc A
<u>25-4-94</u>		Post it on 2.6.94
		HTCSR M(J) HABG m(A)
		Hoc A
<u>9.6.94</u>		On the request of the applicant's counsel, adjourned to 27.6.94. No further adjournment will be given.
		T. HTCSR M(J) HABG m(A)

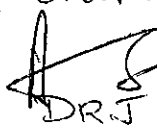
5

Date	Office Note	Orders
15-10-93		At the request of Mr. S Ramakrishna Rao, for Appointment Adj. to 4-11-93  HTCR m(LT)      HABG m(A)  B/o At the request of the applicant Cancel first time Case No 13.12.93  HABG      D/o      HRESA m(A)      Q      m(A) 7
1-93		

④

OA 438/92

③

Date	Office Note	Orders
5 $\frac{2}{93}$		No one is present. Post 142 97A 162/93 on 16-4-93.  HVRJ VC  By order.  DRJ  MA 162/93, expedite petition is ordered. List the OA for final hearing as ex Case.  HVRJ VC  POM on 2/9/93.  HABG m(A) By order. on Register. Post m. 15/10/93  HTCSR m(3).  HABG. m(A)
16-4-93		
21.7.93	Counter filed by Mr. NR Dehaas, Greys on 19/7/93.	
<u>30/8/93</u>		
27/9/93.		



20

# Central Administrative Tribunal

HYDERABAD BENCH

O.A. No./T.A. No.

438 / 1992

J. Ramudu

Applicant (s)

Versus

Director of Postal Services, Hyderabad and another

Respondent (s)

Date	Office Note	Orders
28-5-92		counsel for both sides → present. list the case on 1-6-92
1-6-92		<p>(HCSR) M/S)</p> <p>None present for the applicant.</p> <p>Perused the records as we are satisfied that this is a fit matter for adjudication. <u>Admit</u> the OA. The respondents may file their reply to the OA within 8 weeks with a copy to the Advocate for the applicant. The applicant may file his rejoinder if any within 2 weeks thereafter. Keep the case before the Registrar for directions after the pleadings are complete.</p> <p><i>[Signature]</i> (HABG) M(A)</p> <p><i>[Signature]</i> (HCSR) M(O)</p> <p>---2</p>

23/7

24

(P.T.O.)

(7)

OA 438/92

Date	Office Note	Orders
6-8-92	<p>Service -</p> <p>R-1 NSNR</p> <p>R-2 Served</p> <p>Before the D.R. (J)</p> <p>for steps</p> <p>Postal Dept. hr. m 13/8/92</p>	<p>verify through RMS for Service of notice on R-1.</p> <p>Call on 3-9-92.</p> <p><del>8/8/92</del></p> <p>Dy. Registrar (J)</p>
3-9-92	<p>Before the D.R. (J)</p> <p>for steps</p> <p>R-1 Served on 11.6.92</p> <p>vide Postal dept. hr. dt. 2.9.92. (Received on 3-9-92)</p>	<p>Await reply from RMS for Service of notice on R-1. Call on 29-9-92.</p> <p>Dy. Registrar (J)</p>
11-8-92		<p>Even after granting 8 weeks time for filing counter, the counter is not filed. Hence post before Court for orders.</p> <p><del>8/3/92</del></p> <p>Dy. Registrar (J)</p> <p>Finally 16 weeks time is granted for filing counter at the request of counsel for the respondents.</p> <p>T. C. R.</p> <p>(H.T.C.R.)</p> <p>M (J)</p> <p>3</p>

CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH, HYDERABAD.

ORIGINAL APPLICATION NO. 438 OF 1992

Shri G. Ramadas. Applicant(s)

Versus

Director of Postal Services, Hyderabad  
& another

Respondent(s)

This Application has been submitted to the Tribunal  
by Mr. S. Rama Krishna Rao Advocate  
under Section 19 of the Administrative Tribunal Act, 1985  
and same has been scrutinised with reference to the points  
mentioned in check list in the light of the provisions  
contained in the Administrative Tribunal (Procedure)  
Rules, 1987.

The Application has been in order and may be liste  
for admission on - 5/2

4/2  
Scrutiny Officer.

82/10/92  
Deputy Registrar (J)

Particulars to be examined	Endorsement as to result of examination
8. Has the index of documents been filed and has the paging been done properly?	y
9. Have the chronological details of representations made and the outcome of such representation been indicated in the application?	y
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal?	y
11. Are the application/duplicate copy/spare copies signed?	y
12. Are extra copies of the application with annexures filed.	y
(a) Identical with the original	y
(b) Defective	y
(c) Wanting in Annexures	y
No...../Page Nos.....?	y
d Distinctly Typed?	y
13. Have full size envelopes bearing full address of the Respondents been filed?	y
14. Are the given addresses, the registered addresses?	y
15. Do the names of the parties started in the copies, tally with those indicated in the application?	y
16. Are the translations certified to be true or supported by an affidavit affirming that they are true?	y
17. Are the facts for the case mentioned under item No. 6 of the application.	y
(a) Concise?	y
(b) Under Distinct heads?	y
(c) Numbered consecutively?	y
(d) Typed in double space on one side of the paper?	y
18. Have the particulars for interim order prayed for, stated with reasons?	y

may be the  
4/5

CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH

APPLICANT (S) J. Ramudu

RESPONDENT (S) Director, Hyderabad

Particulars to be examined

Endorsement as to result  
of examination

1. Is the application Competent ? y
2. (a) Is the application in the prescribed form ? y  
(b) Is the application in paper book form ? y  
(c) Have prescribed number complete sets of the application been filed ? /
3. Is the application in time ? y  
If not by how many days is it beyond time ?  
His sufficient cause for not making the application in time, stated ?
4. Has the document of authorisation / Vakalat name been filed ? y
5. Is the application accompanied by B.D./I.P.O. for Rs. 50/-? Number of B.D. / I.P.O. to be recorded. }
6. Has the copy/copies of the order (s) against which the application is made, been filed ? y
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed ? y  
(b) Have the documents referred to in (a) above duly attested and numbered accordingly ? }  
(c) Are the documents referred to in (a) above neatly typed in double space ? }

CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH.

INDEX SHEET.

O.A. NO 438 of 1992

CAUSE TITLE I. Ramudu

VERSUS

Director of Postal Services, Hyd. & anoth

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4.	Objection sheet	—
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6.	Covers. 2 A	

Written Arguments filed by Mr.  
S. Rama Krishna Rao on 12/12/95

*Plg. to set aside the Order of Compulsory Retirement the Applicant  
from service as LSG/PA.*

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD.

*Postal*

*Buchan*

O.A. No. 438 of 1992.

BETWEEN:

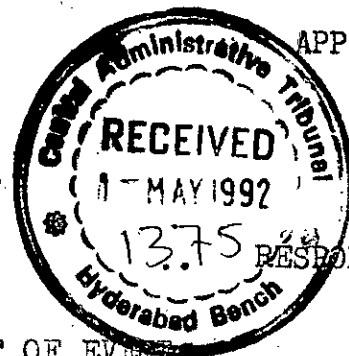
I. RAMUDU S/o I. Ramaiah,  
aged about 49 years, Occ: BSG/PA,  
Bhainsa, Adilabad District.

APPLICANT.

A N D

1. The Director of Postal Services,  
Hyderabad.

and another



RESPONDENTS.

CHRONOLOGICAL STATEMENT OF EVENTS

Sl. No.	Date	E V E N T S
1.	19-10-1985	The applicant was issued with charge memo vide No.F4-1/85-86 by the Supdt. of Post Offices, Adilabad Division, Adilabad imputing charges of certain irregularities.
2.	30-5-1989	The 1st Respondent had imposed punishment of Compulsory Retirement of the applicant vide Memo No.F4-1-/85-86.
3.	1-5-1990	Consequent on setting aside the punishment order and the appellate order by this Hon'ble Tribunal, the applicant was placed under suspension by the 1st Respondent with retrospective effect vide Memo No. F4-1/85-86, supplying copy of Inquiry Officer's report the applicant.
4.	13-11-1990	The 1st Respondent having obtained representation of the applicant on the inquiry report, vide his Memo No.F4-1/85-86 had imposed the same punishment of Compulsory Retirement of the applicant from service.
5.	4-1-1991	Aggrieved against the punishment of Compulsory Retirement for second time the applicant represented to Respondent No.1 to set aside the cruel punishment imposed on him.
6.	31-3-1992	The Appellate authority i.e., Respondent No.1 without considering the articulations made by the applicant, rejected the representation vide Proceedings No. ST/21-3/11/91.

Hence this application before the Hon'ble Tribunal.

Date: 1-5-1992.

Place: Hyderabad.

*[Signature]*  
COUNSEL FOR THE APPLICANT.

*Plg. to set aside the Order of Compulsory Retirement the Applicant from service as LSG/PA.*  
*SGSC*  
*Alotted to SGSC*  
*Addl CGSC*  
*7/5/92*

(9)

"F O R M - I"

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNALS  
ACT, 1985.

O.A. No. 438 of 1992.

BETWEEN:

I. Ramudu S/o I. Ramaiah,  
aged about 49 years, Occ: LSG/PA,  
Bhainsa, Adilabad District.

.. APPLICANT.


A N D


1. The Director of Postal Services,  
Andhra Pradesh Northern Region,  
Hyderabad.
2. The Superintendent of Post Offices,  
Adilabad Division, Adilabad.

.. RESPONDENTS.

I N D E X

Sl. No.	Descriptions of documents relied upon	Annexure No.	Page No.
1.	Application	-	1-14
2.	Memo No.F4-1/85-86, dated 13-11-1990 of the Superintendent of Post Offices, Adilabad Division, Adilabad imposing punishment of Compulsory Retirement of the applicant from service.	I	15-24
3.	Memo No.F4-1/85-86, dated 30-5-1989 of 1st Respondent imposing punishment of Compulsory Retirement of the applicant from service with effect from 31-5-1989.	II	25-35
4.	Appeal of the applicant dated 4-1-1991 made to the Director of Postal Services, Hyderabad requesting him to set aside the punishment imposed on the applicant.	III	36-44
5.	Proceedings No.ST/21-3/11/91, dated 31.3.92 of the Director of Postal Services, Hyderabad Region, Hyderabad rejecting the appeal.	IV	44

  
COUNSEL FOR THE APPLICANT.

  
SIGNATURE OF THE APPLICANT

Date: 1. 5. 1992

Place: Hyderabad.

FOR USE IN TRIBUNAL'S OFFICE:

Date of filing:

or

Date of receipt by post:

Registration No.

Signature  
for Registrar.



(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL; HYDERABAD BENCH:  
AT HYDERABAD.

O.A. No. 438 of 1992.

BETWEEN:

I. Ramudu S/o I. Ramaiah,  
aged about 49 years, Occ: LSG/PA,  
Bhainsa, Adilabad District.

.. APPLICANT.

A N D

1. The Director of Postal Services,  
Andhra Pradesh Northern Region,  
Hyderabad.
2. The Superintendent of Post Offices,  
Adilabad Division, Adilabad.



.. RESPONDENTS.

DETAILS OF THE APPLICATION:

Address for service of summons  
and processes:

Sanka Ramakrishna Rao,  
Advocate; 1-10-29;  
Ashoknagar, Hyderabad-20.

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION  
IS MADE:

"This application is against the impugned  
Order No.ST/21-3/11/91, dated 31.3.1992 of  
Director of Postal Services, Hyderabad  
Region, Hyderabad".

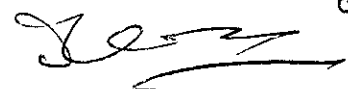
2. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter of  
the order against which he wants redressal is within the  
jurisdiction of the Tribunal u/s.14(1)(b)(ii) of the  
Administrative Tribunals Act, 1985.

3. LIMITATION:

The applicant further declares that the application  
is within the limitation period prescribed in Section 21(1)  
(a) of the Administrative Tribunals Act, 1985.

contd..2.



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4. FACTS OF THE CASE:

The applicant while he was working as Postal Assistant, Bhainsa in Adilabad Division, Adilabad, was given charge memo under Rule 14 of CCS (CCA) Rules, 1965 vide Memo No.F4-1/85-86, dated 19-10-1985 of Superintendent of Post Offices, Adilabad DN, Adilabad imputing charges against him for certain irregularities. An inquiry was held and the Inquiry Officer held that Article of charge No.I as not proved, charge No.II,III & V as proved and Article of charge No.IV as partially proved. Basing on the said inquiry report the Disciplinary Authority had issued punishment order of Compulsory Retirement vide Memo No.F4-1/85-86, dated 30-5-1989 (Annexure No. II on Page No. 25).

2. Aggrieved against the Compulsory Retirement, the applicant approached this Hon'ble Tribunal who had quashed the orders of Compulsory Retirement. Subsequently the applicant was placed under suspension by the 1st Respondent with retrospective effect. The applicant was supplied with a copy of Inquiry Officer's report vide Memo No.F4-1/85-86, dated 1-5-90 directing the applicant to submit his representation. Having obtained the representation from the applicant the Disciplinary Authority had imposed the same punishment of Compulsory Retirement vide his Memo No.F4-1/85-86, dated 13-11-1990 (Annexure No. I on Page No. 15).

3. Aggrieved against the punishment of Compulsory Retirement for a second time the applicant represented to the Director of Postal Services, Andhra Pradesh Northern Region, Hyderabad on 4-1-1991 (Annexure No. III on Page No. 36) requesting him to set aside the cruel punishment imposed on him, <sup>for which</sup> the Director of Postal Services, Hyderabad Region, Hyderabad had rejected the appeal of the applicant.

Hence this application before the Hon'ble Tribunal praying to set aside the order of punishment imposed by the 1st Respondent

contd.:

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5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

The applicant was issued <sup>with a</sup> Memo of Charges under Rule 14 of CCS (CCA) Rules, 1965 vide Memo No.F4-1/85-86, dated 19-10-1985 ~~of~~

Superintendent of Post Offices, Adilabad Division, Adilabad and an inquiry was held. The Inquiry Officer held that charges No.I as not proved and No.II, III & V were proved and charge No.IV was partially proved. As the copy of the inquiry report was not supplied before imposing punishment of Compulsory Retirement, the applicant approached this Hon'ble Tribunal on whose orders he was supplied with a copy of Inquiry Officer's report to which the applicant submitted his representation. Having obtained his representation the Disciplinary Authority had issued the same punishment vide the Impugned Order cited above.

2. It is submitted that the charges framed against the applicant were as detailed briefly as follows:-

- a) That the applicant over stayed on his deputation at Madharam Township S.O. and unauthorisedly took charge as sub Postmaster.
- b) That he unauthorisedly absented himself.
- c) He allowed half with-drawals in 64 RD accounts before completion of 12 months existence.
- d) That he made short payments in respect of 14 RD with-drawals; and
- e) That he wrongly effected 2 RD With-drawals.

3. It is submitted that the charge sheet is not maintainable for the reasons that it violated Rule 4(1) & 4(2) of P & T Manual Vol.III. Both in Annexure-I and Annexure-II of the

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charges, the Disciplinary Authority has expressed definite opinion about the commission of the offence and such a chargesheet is liable to be quashed. It was held in Surendra Chandra Das Vs. State of W.B. 1982 Lab IC 574, which was made clear by the Hon'ble Court that "if the charge is a predrawn conclusion on the commission of offence the punishment is liable to be quashed, the chargesheet is defective for not citing the relevant rules which are violated". In support of charge No.II conduct rule 3(1)(iii) is cited whereas the allegation is about over stayal for which there are distinct rules and the conduct rule cited is not applicable. There is no allegation of any malpractice in respect of charge No.III and the rule applicable i.e. rule 3(1)(ii) of CCS (conduct) Rules, 1964 has not been cited. In respect of charge No.IV, the allegation is of short payment and the only rule applicable is rule 3(1)(i) but rule 3(1)(ii) and 3(1)(iii) also have been quoted. Charge No.V relates to wrong with-drawals and in the absence of allegation of any motive the only rule applicable is rule 3(1)(ii) of CCS (conduct) Rules, 1964 which was not quoted, which the Inquiry Officer himself has accepted that rules were wrongly quoted, and therefore such a chargesheet is not maintainable and bad in law.

4. Preliminary inquiry is a must under rule 3 of P & T Manual Vol.III and the procedure prescribed therein must be followed. The preliminary investigation should be done at the "APPROPRIATE LEVEL" vide Rule 2(a) ibid. In this case, this was not done and the chargesheet is in consequence of an incompetent and unauthorised investigation. In pursuance of rule 2(a) the department has prescribed levels of investigation and the lowest investigating authority is an Inspector of Post Offices. In this case the two additional prosecution witnesses S/S L.Shankar and Mohd. Abdulla, mail oversers clearly admitted during the inquiry that they enquired into

*[Signature]*

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the case and recorded statements for which they have no power. No statement was recorded in the applicant's presence. No statement was taken from the applicant.

5. It is saddening that the humiliating aspect of the investigation went unnoticed. At the time of the investigation the applicant had a standing of 20 years in clerical cadre in the department but the applicant's fate was to be decided by two mail <sup>e</sup>oversers who are below the clerical cadre. They were allowed to probe into the work done by the applicant who is superior to them. It is no consolation to say that the present punishment is based on a Rule 14 inquiry as the inquiry itself was based on a chargesheet issued in consequence of such an incompetent, unauthorised and humiliating investigation.

6. The following documents found relevant by the Inquiry Officer were not produced greatly hampering the applicant's defence.

- (1) Leave application of Sri P. Chandraiah.
- (2) The applicant's leave application.

Further, though several transactions entered in the Ledger were subjected to scrutiny during the inquiry, the original ledgers were not produced during the inquiry inspite of the applicant's request. Thus veracity of the documents relating to the transactions produced during the inquiry has not been established.

7. Following witnesses listed in the charge sheet whose evidence the Disciplinary Authority felt necessary to sustain the charges were not produced.

- (1) Vemula Rajamallu.
- (2) S. Tirupathi
- (3) E. Posham
- (4) Mohd. Moinuddin



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In the absence of the evidence of the listed witnesses, it was not judicious to hold the charges as proved.

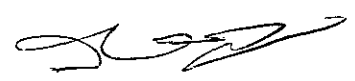
8. Rule 2 of P & T Manual Vol. III prescribes that the procedure laid down in CCS (CCA) Rules, 1965 should be "rigidly" followed. But this was blatantly violated during the inquiry.

(i) As per the daily docket dated 20-4-1988 and 21-4-1988, the listed documents were produced by the Presenting Officer and filed on 20-4-1988 and 21-4-1988. By that time the case on behalf of the prosecution was over. This means that the listed documents were not produced during the examination of witnesses and that they were in the unauthorised custody of the Presenting Officer. This casts serious doubt about the genuineness, of the listed documents produced belatedly and so these documents can not be relied upon.

(ii) It is further submitted that vide D.O.No.134/7/85 A, ADVT I, dated 11-6-1976, there is no need for examination-in-Chief in r/o prosecution witnesses whose statements were recorded earlier and who admit the contents in the Rule 14 inquiry. But, when the witnesses disown the contents of their earlier statement, examination-in-Chief has to be conducted. Nobody can be cross-examined unless he has been examined-in-Chief, i.e., unless the applicant was given an opportunity to depose his version. Prosecution witnessess cannot be cross examined by the Presenting Officer unless they are declared as hostile by the Presenting Officer and permitted by the Inquiry Officer to be cross examined. These are the accepted procedures and any violation would strike at the root of principles of natural justice.

In this case, the following prosecution witnesses disowned the contents of the earlier statements.

- (1) Sri G. Rajareddy.
- (2) Sri T. Vijaya Kumar.



- (3) Sri I. Krishna.  
(4) Sri Lingaiah.  
(5) Sri D. Odelu.  
(6) Sri K. Lingaiah.



They were not examined by Presenting Officer. They were not declared hostile by him. Inquiry Officer's permission was not sought to cross examine them. Yet they were straight away cross examined. This serious irregularity alone nullifies the entire proceedings.

(iii) During the inquiry the Inquiry Officer acted in a manner as if it was his duty to prove the charge. His questioning Sri I. Krishna PW1, whether the investigating officer forced him to say that there was short payment, Sri T. Vijaya Kumar another PW1 whether anybody forced him to say that there was short payment does not betray disinterestedness in the case as the attempt was to stick to the original statement and not to ascertain facts as deposed.


(iv) The Disciplinary Authority went beyond his scope in his attempt to hold that charge No.1 is partially proved, (which charge incidentally the Inquiry Officer held as not proved). He says, if the Inquiry Officer felt that the appearance of Sri P. Chandraiah was essential he should have enforced it using his power. For one thing, any failure on the part of the Inquiry Officer should not be at the cost of the Govt. Servant, for another the Superintendent of Post Offices, Adilabad suppressing the fact that it was the Presenting Officer who is the representative of the Disciplinary Authority, who dropped the witness Sri P. Chandraiah vide proceedings dated 21-4-1988. It may be interesting to note that this witness was a S.P.M. working under the same SP who was not originally cited, but was summoned as an additional witness at the request of the Presenting Officer and also dropped at the request of the Presenting Officer and the Superintendent of

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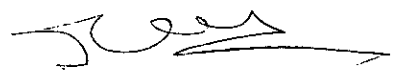
Post Offices, Adilabad now says that the Inquiry Officer should have enforced the appearance using his power.

9. Though the Disciplinary Authority chose to disagree with the finding of the Inquiry Officer on charge No.I he did not communicate the disagreement of reasons there for, while forwarding the inquiry report to the applicant as  ordered  by various Tribunals. This is a serious violation of principles of natural justice as the applicant was kept in dark about the reasons for punishing the applicant till the end and was denied the minimum requirement of providing an opportunity to refute the same.

10. The applicant may be permitted to briefly submit his submissions on the findings of the Inquiry Officer and Disciplinary Authority on the various charges.

(i) Charge No.1: The Inquiry Officer held that the charge was not proved. Without giving the applicant an opportunity to explain, the Disciplinary Authority held the charge as partly proved. This finding is not based on evidence produced during inquiry. Sri P. Chandraiah was the S.P.M. and the applicant was the P.A. Sri P. Chandraiah did not depose that there  was no order from Divisional Office, that he did not make an order book entry directing the applicant to take charge or that the applicant usurped the charge. The order book of the office was not produced to prove that there was no order from the S.P.M., and if there was any entry, the authority of the Division Office is not quoted. As the applicant was entirely guided by the S.P.M's written orders and in the absence of the witnesses of Sri Chandraiah and production of the order book, there is not even an iota of evidence to hold the charges as proved.

(ii) Charge No.II: While holding this charge as proved the





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Inquiry Officer observed that the applicant posted the leave letter with back date. This allegation is not even included in the chargesheet. The charge only speaks of wanting date stamp impression on the cover in which he sent the leave application on MC. If the date of posting was doubted and non-stamping of the cover was to hushup the delay, Superintendent of Post Offices, Adilabad should have made enquiries first with the office of posting. However the applicant is not concerned with the wanting of date stamp impression on the envelop. The Inquiry Officer says the <sup>Post Master</sup> P.M. Mancherial would have drawn the salary by mistake, and paid to the applicant. This is a clear instance where the Inquiry Officer is stepping into the witness box. The Post-Master, Mancherial was not a witness and except for the subjective thinking of the Inquiry Officer there is absolutely no evidence to show that the salary was drawn by mistake. Here the fact is that the applicant had applied for leave on medical grounds which was not refused nor was he asked to explain for late submission of application and the leave salary was promptly paid which goes to show that the leave was sanctioned. Later on when some other charges were foisted on him, a charge of unauthorised absence was also, cooked up. It is also submitted that irrelevant rules i.e., rules unrelated to unauthorised absence have been quoted in support of the charge. This charge has not been proved through documentary or oral evidence and the inference drawn by the Inquiry Officer from a vaccum of evidence would remain empty.

(iii) Charge No.III: It is stated that the applicant allowed half withdrawals from 64 R.D. accounts before completion of 12 months existence. No witness was produced to prove this allegation. The documents relating to this charge were produced on 21-4-1988 after completion of the prosecution case and so cannot be relied upon. These documents were not identified by the persons who have custody of them or by the applicant also

*[Signature]*

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and the genuineness of these documents has not been established. Certain Pass Books purported to have been handled by the applicant were produced but he was never questioned about the transactions. If the Inquiry Officer can draw conclusions from unidentified and unaccepted documents behind applicant's back, it cannot be judicious, rendering a quasi judicial inquiry redundant. Thus the charge is not legally proved.

(iv) Charge No.IV: As already stated, listed witnesses were not examined. Documents were produced on 20-4-1988 i.e., after completion of the prosecution case and so there is not a single legally valid documentary evidence in the case. Cause of action in the case is shrouded in mystery. There was no complaint from any source and in fairness, to eliminate attributes of malafied, the Superintendent of Post Offices, Adilabad is obliged to say the reasons for his "SUO MOTO" action in investigation. Generally in the Postal Department any short payment should be reported within a reasonable time. Many of the depositors who were produced as witnesses are literate enough to understand the correct amounts due to them and they have accepted the withdrawals and made no complaint of short payment to anybody in the department. Even common sense warrants that there should be a complaint within a reasonable time if not immediately. The treatment meted out to the applicant might have suited the S.P.O's in sacking him. But the procedure is fraught with danger. Months after the transactions, some one (including mail overseers) could go to the depositors and obtain statements alleging short payments even if they had not complained and in such vicious atmosphere no official can function. The only point to be considered is whether there was any complaint from the depositors and if not, what documentary evidence is there about the short payments. The applicant has already pointed out the level of investigation applied in the case. In all the cases payment was made in the



(21)

presence of witnesses and none of them was produced during the inquiry to prove the charge. As such this charge is not proved.

(v) Charge No.V: This is only about wrong payments in two cases. Besides not having any documentary evidence produced legally as they were filed only on 20-4-1988 and 21-4-1988, it is submitted that one Mohd. Moinuddin prosecution witness was not produced during inquiry and for this alone this part of the charge is not proved. Regarding the other account the person who received payment clearly stated that the amount was correctly received by him and it was just a wrong payment occurred due to rush of work but the integrity of the applicant cannot be questioned on the basis of this single instance.

11. It is respectfully submitted that the Respondents have not given any consideration to the fact that the applicant belongs to Scheduled Tribes community coming from very backward area and obviously may lack the same standard of culture and the sophistication. The very sacred constitution prescribes that it is social obligation on the part of privileged brethren to lead this community to main stream of culture and mannerism and therefore, the few privileged and influential colleagues indulged in a type of behaviour bordering social ostracism with the applicant, had made the applicant a victim for the last one and half decades. The present case is also consequence to such discrimination against the applicant by foisting complaints against him and fabricating evidences against the applicant, which the 1st Respondent should have seen through the game played against the applicant who is presently suffering and facing enormous hardships which the punishment had caused to him, to his family and children, due to irregular investigation, irregular chargesheet, defective inquiry and the ultimate cruel punishment of Compulsory Retirement imposed on the applicant which warrants to be set aside by all cannons of justice.

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It is, therefore prayed that the punishment of Compulsory Retirement imposed on the applicant may be set aside as case of no evidence and the charges foisted on the applicant with ill motive to harrass the applicant. Therefore, the applicant is entitled for reinstatement with all the consequential benefits.

6. DETAILS OF THE REMEDIES EXHAUSTED:

The applicant declares that he has availed of all the remedies available to him under the relevant service rules.

Aggrieved against the order of Compulsory Retirement of the 1st Respondent vide Memo No.F4-1/85-86, dated 13-11-90, the applicant had represented to the Director of Postal Services, Hyderabad Region, Hyderabad on 4-1-1991 requesting him to set aside the punishment ordered by the 1st Respondent which was rejected vide Proceedings No.ST/21-3/11/91, dated 31.3.1992.

Hence this application before the Hon'ble Tribunal.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT:

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any court or any other authority or any other Bench of the Tribunal nor any such application writ petition or suit is pending before any of them.

contd..13.

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8. RELIEF(S) SOUGHT:

In view of the facts mentioned in para 4 above the applicant prays for the following relief(s).

It is respectfully prayed that the Hon'ble Tribunal may be pleased to set aside the punishment order of Compulsory Retirement imposed by the 1st Respondent and order the Respondent No.1 to reinstate the applicant into service with all the consequential benefits and pass such other and further order or orders as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

9. INTERIM ORDERS IF ANY PRAYED FOR:

Pending final decision on the application, the applicant seeks the following interim relief:

0 - N O N E -

10. NOT APPLICABLE:

11. PARTICULARS OF THE BANK DRAFT/POSTAL ORDER FILED IN RESPECT OF THE APPLICATION FEE:

P.O./D.D. No. 803 185271

Date: 30.4.1992

Fee: Rs.50/-

Name of the Office Issued: Mushkwarabad S.O.

Name of the Office Payable at: G.P.O., Hyderabad.

Rs. 50/-  
P.O./B.G./D.D./Removed

contd..14.

*[Signature]*

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12. LIST OF ENCLOSURES:

Sl. No.	Details of the Documents:	Annexure No.
1.	Memo No.F4-1/85-86, dated 13-11-90 of the Superintendent of Post Offices, Adilabad Division, Adilabad imposing punishment of Compulsory Retirement of the applicant from service.	I
2.	Memo No.F4-1/85-86, dated 30-5-89 of 1st Res. imposing punishment of Compulsory Retirement of the applicant from service w.e.f. 31-5-89.	II
3.	Appeal of the applicant dated 4-1-91 made to the Director of Postal Services, Hyderabad Region, Hyderabad requesting him to set aside the punishment imposed on the applicant.	III
4.	Proceedings No.ST/21-3/11/91, dated 31.3.1992 of the Director of Postal Services, Hyderabad Region, Hyderabad rejecting the appeal.	IV

VERIFICATION

I, I. Ramudu S/o I. Ramaiah aged 49 years, working as LSG/PA (Compulsory Retired) in the office of Bhainsa, Adilabad District, Resident of Bhainsa, Adilabad Dist. (temporarily come down to Hyderabad), do hereby verify that contents of paras 1 to 4 and 6 to 12 are true to my personal knowledge and para 5 believed to be true on legal advice and that I have not suppressed any material fact.

Date: 1.5.92

Place: Hyderabad.

  
SIGNATURE OF THE APPLICANT.

  
COUNSEL FOR THE APPLICANT.

# Annexure - I

DEPARTMENT OF POSTS:INDIA  
OFFICE OF THE SUPDT. OF POST OFFICES: ADILABAD DN. 504001.

Memo.No.F4-1/85-86, dated at Adilabad the 13-11-1990.

## P R O C E E D I N G S

Read the followings:-

- 1) Memo.No.F4-1/85-86, dated.19.10.85 issued to Sri.I.Ramudu,P.A.(U/S) Bhainsa alongwith Annexure-I to IV.
- 2) Representation of Govt.servant dated. 29.10.85.
- 3) Memo.No.F4-1/85-86,dated.26.2.86 appointing Sri.V.Anjaiah, the then ASP Adilabad as P.O.
- 4) Memo No.F4-1/85-86, dated.26.2.86 appointing Sri.K.Shankaraiah,the then ASP Peddapalli as I.O.
- 5) Statement of defence of the Govt. servant dated.27.6.88.
- 6) Written brief of P.O. dated.29.7.88.
- 7) Inquiry report of I.O. dtd.25.8.88.
- 8) All other connected records and documents.

-0-

Sri.I.Ramudu, P.A.(U/S) Bhainsa S.O. was proceeded against under Rule-14 of CCS(CCA) Rules 1965 vide this office memo 1st cited above with a direction to submit his statement of defence, if any, with in 10 days of receipt of the memo. The memo was delivered to the Govt.servant on 24.10.85 and the Govt. servant submitted his statement of defence vide his representation dated.29.10.85 which was received in this office on 30.10.85.

2) The articles of charge framed against Sri.I.Ramudu, P.A.(U/S) Bhainsa are that:-

### ARTICLE - I.

That the said Sri.I.Ramudu while functioning as Postal Assistant at Bhainsa S.O. was deputed to work at Madaram Town ship S.O. for a period of 20 days from 23.2.1985 as an addition hand to attend to the clearance of pendency of postings of subsequent deposits in RD PRSS pass books. The said Sri.I. Ramudu P.A. stayed at Madaram Town ship for 23 days upto 17.3.85 instead of the specified period of 20 days. The said Shri.I Ramudu, P.A. has not only thus overstayed at Madaram Town Ship (S.O.) by 3 days but also further held the charge of SPM, Madaram Town ship (SO) unauthorisedly relieving Shri.P.Chandra. the regular SPM to proceed on casual leave from 18.3.1985, even in the absence of orders sanctioning such leave from the Divisional Office and thus acted in a manner which is unbecom on the part of Govt. servant contravening the provisions of Rule 3(1)(iii)of CCS(Conduct) Rules-1964.

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ARTICLE : II

That the said Shri.I.Ramudu while working as SPM at Madaram Town ship (SO) was relieved on 1.4.1985 in accordance with Divisional Office service message XP/1800/29.3.1985 to join back immediately as P.A. at Bhainsa S.O. But the said official did not join immediately at Bhainsa S.O. but was absent from duty without proper permission from 2.4.1985 to 21.4.1985. Thus he exhibited lack of discipline which is unbecoming of a Govt. Servant contravening the provisions of Rule 3(1)(iii) of CCS (Conduct) Rules - 1964.

ARTICLE : III

That the said Shri.I.Ramudu, while functioning as SPM Madaram Town Ship, S.O. during the period from 18.3.85 to 31.3.1985 allowed withdrawals in as many as 64 RD Accounts mentioned in the statement of imputations even though these accounts were not in operation for a period of atleast one year and or there were no credits for 12 monthly instalments in the said accounts as required by Rule 504(i) read with Rule-523/3 of P&T Manual Vol.VI Part-II. Thus he contravened the provisions of Rule-504(i) and (iii) of P&T Manual Vol.VI part-II read with Rule-523/3 ibid.

ARTICLE : IV

That the said Shri.I.Ramudu while functioning as SPM, Madaram Town Ship S.O. during the period from 18.3.1985 to 31.3.85 allowed withdrawals from the 5 year RD accounts in respect of 32 RD accounts mentioned in the statement of imputations standing open at Madaram Town ship S.O. but while effecting payment the said Shri.I.Ramudu failed to pay full amounts of withdrawals to the depositors as accounted for in the respective pass books and RD list of transactions. Thus the said Shri.I.Ramudu P.A. has failed to maintain absolute integrity and acted in a manner which is unbecoming of a Govt. Servant contravening the provisions of Rule 3(1)(ii) and (iii) of CCS(Conduct) Rules-1964.

ARTICLE : V.

That the said Shri.I.Ramudu while functioning as SPM Madaram Town ship S.O. during the aforesaid period irregularly allowed withdrawals in the following RD accounts without obtaining SB-7 applications from the depositors concerned and effected payments to the persons other than the depositors in contravention of Rule 504(iii) read with Rule-523(3) of P&T Man.Vol.VI part-II.

Sl. No.	RD A/c No.	Name of depositor.	Date of withdrawal.	Amount of with-drawal.	Name of the person to whom payment effected
1.	61798	Aritota Mallaiah, MVK-2	30.3.85	110-00	B.Rajamallu, MVK-2
2.	61799	-do-	30.3.85	245-00	-do-
3.	61858	Md.Moinuddin s/o Shri Raj Mohd.	30.3.85	25-00	Md.Moinuddin s/o Shri.Nizamuddin
4.	61859	-do-	30.3.85	110-00	-do-

Thus the said Shri.I.Ramudu failed to follow the provisions of Rule-504(iii) read with Rule-523/3 of Vol.VI Part-II.

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(28) (17)

3) INQUIRY: Shri.K.Shankaraiah, the then ASP Peddapalli was appointed as Inquiring Authority vide this office memo of even no, dated.26.2.86 and Shri.V.Anjaiah the then ASP Adilabad was appointed as presenting officer vide this office memo of even no, dated.26.2.86. The inquiry was commenced on 16.4.86 at Peddapalli Divisional Office and further sittings were held on 17.6.86, 24.7.86, 11/12.11.86, 12.3.87, 20.4.87, 21.4.87, 16/17.9.87, 27/28.10.87, 22.12.87, 5.1.88, 9/10.2.88, 8.3.88, 19/20.4.88, 21.4.88, 27.6.88 and 11.7.88. Inquiry was completed on 11.7.87 after the I.O. questioned the Govt.Servant. The presenting officer submitted his written brief on 29.7.88. But the Govt.servant did not submit his written brief. The Inquiry Officer has submitted Inquiry report on 25.8.88. A copy of Inquiry report dated 25.8.88 was supplied to Govt. servant vide this office letter of even no, dated. 1.5.90 with instructions to submit his representation or submission if any, he wishes to make within 15 days of receipt of the letter. The letter was delivered to Govt. Servant on 4.5.90. On his request received in this office on 21.5.90 the Govt. servant was permitted extension of time to submit his representation upto 4.6.90 vide this office letter of even no, dated. 30.5.90 ~~vide this office~~ As the Govt. servant did not submit any representation, he was addressed vide this office letter of even no, dated. 27.7.90 to submit his representation within a week from the date of receipt of the letter. The letter was received by him on 6.8.90. The Govt. servant requested in his letter dtd.7.8.90 to grant 10 days time but he did not submit representation. The Govt. servant's representation dated. 3.9.90 again requested to give him 15 days time to submit his representation. The Govt. servant was asked in this office letter No.F4-1/85-86, dated. 24.9.90 to submit his representation on I.O. report before 30.9.90 and he was also informed that failure to submit his representation will be treated as he has not representation to make and final orders will be passed. The letter was received by Govt. servant on 27.9.90. The Govt.Servant again requested in his letter dated. 28.9.90 to grant him 15 days time and assured that no further time will be asked. He was permitted in this office letter dated. 3.10.90 to submit his representation on or before 15.10.90 and informed that no further time will be allowed. The Govt. servant has not submitted any representation till date.

4) FINDINGS OF INQUIRY OFFICER: Considering the evidence adduced during the Inquiry, the statement of defence and written brief of the P.O. findings in respect of each article of charge are as under:-

ARTICLE OF CHARGE NO:I. As per the directions of SPOs Adilabad in his letter no.L2-43/84-85 dated.28.2.85 (Exp-98) Shri.I.Ramudu was relieved at Bhainsa and joined at Madaram Town Ship S.O. on 23.2.85. This can be seen from the charge report (Exp.100). The letter (Exp.98) was addressed to SPM, Bhainsa endorsing a copy to the SPM Madaram Town Ship S.O. to utilise the P.A. for (20) days and complete the posting work, when the Govt. servant joined at Madaram T.S. SO as P.A. it was for the SPM to utilise him for 20 days and relieve him promptly after the stipulated period. Here this was not done by the SPM and he is responsible for non-compliance of the orders of the Divisional Office. As the Govt. servant was the P.A. he had to carry out the orders and to wait for his relief. In this case the Govt. servant was not relieved after completion of 20 days but the charge report (Exp.100) shows that he was handed over the charge of SPM by the SPM on 18.3.85 (F/N). No orders of the SPOs were cited in the charge report. He was relieved from the duties of SPM on 1.4.85(F/N) and the SPOs, Adilabad XP/1800/29 was cited. In this case the principal witness is Shri.P.Chandraiah, the then SPM

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Madaram Town Ship S.O. His name was not cited in the list of prosecution witnesses. Though the P.O. requested to include the name of Shri.P.Chandraiah as additional prosecution witness and was permitted, he was not examined but dropped at a later date. The fact that as to why he did not relieve the Govt. Servant after completion of 20 days and as to why he availed C.L. from 18.3.85 to 1.4.85 handing over charge to the Govt.servant is not known. As the period from 18.3.85 to 1.4.85 is not a short period the SPOs should have directed Shri.P.Chandraiah to join back and relieve the Govt. Servant to report back at Bhainsa. But no evidence to this effect was produced in the inquiry and the opportunity to cross examine Shri.P.Chandraiah the then SPM, Madaram Town Ship SO was not given. In the absence of the evidence of principal witness the charge can not be held as proved. Had the Govt. servant was relieved by the SPM on completion of 20 days and the Govt. servant stayed in the office beyond that period, he should have been held responsible. For the period from 18.3.85 to 1.4.85 the Govt. servant was on duty and discharged his legitimate duties and as such he is not responsible for overstaying. Further the Govt. servant's action to be on duty discharging his legitimate duties does not involve him in un-becoming of a Govt. servant. The plea of the P.O. that the charge reports, letter of SPOs Adilabad and telegram are sufficient documentary proof for charge can not be accepted.

ARTICLE OF CHARGE NO: II:

As seen from the charge report dated. 1.4.85 Exp-102 the official was relieved at Madaram Town Ship SO on the F/N of 1.4.85. On relief he was due to join back at Bhainsa as per the directions of the SPOs Adilabad in his XP/1800/29.3.85 Exp-104. But the official remained absent from duty and applied for leave on Medical certificate. The leave application, SR-1 and M.C. were received in the Divisional Office of Adilabad on 16.4.85. He requested for grant of leave from 2.4.85 as he fell sick. The Govt. servant argued that he was not un-authorisedly absent from duty but sent leave application. His contention is not correct. The Govt. servant can not claim the leave as a matter of right and mere production of M.C. does not itself confer upon him any right to leave as laid down in Rule-7 and Rule-19(5) of CCS (Leave) Rules-1972 respectively. As per the instructions contained in DG P&T letter No.34/1/75-SPB.II, dated.31.10.75 communicated in C.O.letter No.Staff/45-1/75, dated. 10.11.75, the Govt. servant should produce M.C.within 24 hours. If it is not possible he can post the M.C. within 24 hours and it is for the concerned official to establish in case of dispute that the certificate was actually posted to the leave sanctioning authority within 24 hours. It is for the Govt. servant to forward the M.C. to the sanctioning authority within 24 hours and orders of that authority awaited. In this case the Govt. servant did not send the leave application, SR-1 and M.C. in time i.e., within 24 hours after he fell sick. The Exp-105(Envelope) shows that it was received in Divisional Office on 16.4.85 and did not bear the date of posting and from address. The Govt. servant did not produce any evidence that he posted the envelop either on 2.4.85 or 3.4.85 i.e., immediately after he fell sick. From the above it is evident that the Govt. servant posted the letter with back date and that too without from address to conceal the un-authorised absence from duty. The Govt. servant's argument that he was paid salary for the month of April '85 and hence the question of un-authorised absence does not arise is not correct. Payment of salary is nothing to do with the absence. The Postmaster Mancherial might have drawn the salary by oversight. Thus the charge is held as proved.

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ARTICLE OF CHARGE NO:III:

From the pass books of 64 RD A/cs it is evident that all the 64 A/cs were not in operation for one year as on date of withdrawal and there were 12 monthly credits in 36 RD accounts, 11 monthly credits in 24 RD A/cs and 10 monthly credits in 4 RD A/cs. The Govt. servant accepted this but argued that all the 64 RD A/cs were not having deposits less than 12. The Govt. servant's argument that allowing withdrawals in the above RD A/cs was due to heavy work can not be accepted. By rush of work mistake may happen in one or two cases but not in 64 A/cs. The charge regarding allowing withdrawals in 64 RD A/cs against to the Rule-504(1) read with Rule-523/34 of P&T Man.Vol.VI Part-II is proved by the documentary evidence. The Rule of CCS (Conduct & service) Rules-1964 which attracted the action of Govt. servant in paying withdrawals against to the rules was not mentioned in the article of charge. The action of the official attracts the provision of Rule-3(1)(ii) of CCS (Conduct and service) Rules-1964 (Failed to maintain devotion to duty).

ARTICLE OF CHARGE NO:IV:

The under mentioned prosecution witnesses deposed before the I.O. that they were paid less amount while effecting payment of withdrawals in respect of their RD A/cs as detailed below.

Sl. No.	Name of the P.W.	Amount paid less:
	S/Shri.	
1.	Gone Mallalah, P.W-I	Rs. 45/-
2.	K.Satyanarayana Reddy, PW-6	Rs. 30/-
3.	Bhadrappu Rajamallu, PW-8	Rs. 180/-
4.	G.Rajalingu, PW-10	Rs. 50/-
5.	E.Ramulu, PW-12	Rs. 200/-
6.	K.Lingaiah, PW-13	Rs. 80/-
7.	K.Mallalah, PW-14	Rs. 75/-

The PWs 2, 3, 4, 5, 7 and 11 though alleged short payments at the time of preliminary enquiry turned hostile and admitted correct payment during the inquiry. Hence the part of charge is not proved. The argument of PO that the additional PWs who recorded the statement of the above witness have confirmed the genuineness of the statements and the short payment is proved can not be accepted as the oral evidence given bears much weight in the proceedings. Here the investigating officers are not material witness they did not witness the payment. No case can be decided on the basis of their evidence alone. The P.W. 2, 3, 4, 5, 7 and 11 are only material witnesses as they are the persons who received the amount and no other witnesses were there at the time of payment.

The Govt. servant stated in his defence that he did not get cash excess in his cash and stamp balance on those dates. Had any short payment was made, there should have been excess cash in his balance. Further he stated that there were no complaints from the depositors that they were paid short and there were not witnesses who witnessed the short payments. Hence the depositors PW-1, PW-6, PW-8, PW-10, PW-12, PW-13 and PW-14 are the material witnesses and the fact of short payment confirmed by their oral evidence. The contention of Govt. servant in his defence statement that there was no complaint from the depositors and as per the warrants of payments there was no short payment is not correct. In the wanted short payments there will not be any excess cash. From the warrants of payment Exp-2, 3, 8, 9, 13, 14, 18, 19, 35, 36, 61, 62, 67, 68, 73, 74, 83, 84, 96 and 97 it can be seen that there was no witnesses signature, though many of them were illiterate and

they were not identified by the group leaders. In some cases, the amount of withdrawal was not noted on them at the time of payment. (In respect of P.W-6). The action of the Govt. servant in not following the procedure in respect of PRSS A/cs itself speaks his intention. As <sup>many</sup> of the singareni Colliery workers are illiterate and moody their position was exploited by the Govt. servant. Though there was no specific complaint, the department is having every right to enquire into the alleged short payment came to its notice, whether there is a complaint or not. The Govt. servant is expected to maintain absolute integrity at all times in dealing Govt. transactions. In the cross examination, the AGS put several questions to side track them. The PW-I (answer to Q.6) P.W-6 (answer to Q.1 in recross examination) P.W-10 (answer to Q-1 by the IO) P.W-12 (answer to Q.3 in cross examination) Expt-39 (statement of Sri.K.Lingaiah (PW-13) Exp-44 statement of P-W.8 and Exp-70 (statement of P.W-14) The Govt. servant's plea that his statement was not recorded in preliminary enquiry but disciplinary action was initiated against him is also not correct. The disciplinary action was contemplated when the department found prima facie case against him and every reasonable opportunity was given in the present Rule-14 enquiry. The Govt. servant's plea that Sri.M.Laxmaiah, PW-16 was prejudiced against him and he was responsible for this charge sheet is not based on evidence. The Govt. Servant did not produce any evidence. The PWs 1,6,8,10,12,13 and 14 whose statements were recorded by the persons other than Sri.M.Laxmaiah deposed in the enquiry that they were short paid in the RD withdrawals. The Govt. servant's plea that there is no documentary evidence that there was short payment is not tenable. Here the material evidence is oral evidence and the PWs 1, 6, 8, 10, 12, 13 and 14 deposed that they were paid short and they were not prejudiced against him. In the departmental disciplinary proceedings the standard of proof required is preponderance of probability and not proof beyond reasonable doubt. Out of 14 PWs produced in connection with this charge 7 PWs confirmed the short payment and 6 PWs turned hostile. As such the charge is partially proved.

ARTICLE OF CHARGE NO:V.

Shri.Akuthota Mallalah P.W-9 and Shri.Md.Moinuddin P.W-15 deposed before the I.O. that they were having two RD A/cs each bearing nos.61798, 61799 and 61858, 61859 respectively at Madaram Town Ship S.O. They deposed that neither they applied for withdrawal from their accounts nor received any amount from P.O. towards withdrawal. They further stated that the signatures on the withdrawal forms were not belonged to them. Shri.Bhodrapu Rajamallu P.W-8 deposed before the I.O. that he received Rs.175/- as against Rs.355/- (Total in two accounts) noted in the withdrawal forms. The account No. noted in the form were of Shri.Akuthota Mallalah and the mistake happened due to mistake committed while noting the account numbers by the pay sheet clerk. He further agreed for recovery of the same from his RD A/cs. Shri.Md.Moinuddin s/o Nizamuddin did not attend the inquiry despite repeated notices issued to him. From the documentary evidence i.e., the statement recorded during the preliminary enquiry, it is evident that he received the payment of Rs.130/- as against Rs.135/- noted in the SB-7 forms. The Govt. servant's plea made in his statement of defence accepted that the wrong payment was made due to misleading information furnished by the pay sheet clerk and handing over the pass books of Akuthota Mallalah and Md.Moinuddin s/o Raj Mohd. can not be accepted. Before paying the withdrawals the Govt. servant as a SPM should have checked the specimen signatures and confirmed the names of depositors. These two wrong payments were made on the

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same day i.e., 30.3.85. The Govt. servant has thus failed to follow the prescribed procedure as laid down in Rule-504 (iii) read with Rule-523(3) of P&T Man.Vol.VI Part-II. The wrong payment in contravention of above rules is thus proved by the documentary and oral evidence. The Rule of CCS (Conduct & service) Rules 1964 which attracted the failure of Govt. servant was not mentioned in the article of charge. The above action of the Govt. servant attracts the provision of Rule 3(1)(ii) of CCS(Conduct & Service) Rules-1964 (Failure to maintain devotion to duty).

IX CONCLUSION:-

As narrated above I held the article of charge No.I as not proved, article of charge No.II, III,V as proved and article of charge No.IV as partially proved. (A copy of IO's report dated.25.8.88 is enclosed).

5) FINDINGS OF THE DISC. AUTHORITY:-

I have carefully gone through the articles of charge issued in this office memo F4-1/85-86 dated.19.10.85 the report of Inquiry Officer dated.25.8.88 with connected records of enquiry and all other relevant records. The official Sri.I.Ramudu was compulsorily retired from service with effect from 31-5-1989 A/N in this office proceedings F4-1/85-86 dated. 30.5.89. A copy of the Inquiry report was supplied to the official on 1.5.90 with this office letter No.F4-1/85-86, dated. 1.5.90 as per the directions of central Administrative Tribunal Hyderabad bench in O.A.220 of 1990 dated.2.4.90 and the Govt. Servant was asked to make any representation if he wishes to make within 15 days from the date of receipt of the said letter. The letter with IO's report was received by him on 4.5.90. On his request received in this office on 21.5.90 the Govt. servant was permitted extension of time to submit his representation upto 4.6.90. As he did not submit any representation, he was addressed on 27.7.90 by Regd. post 416 dated. 27.7.90 to submit his representation within a week from the date of receipt of that letter. The same was received by him on 6.8.90. He requested in his letter dated. 7.8.90 to grant 10 days time but did not submit the statement. In his letter dated.3.9.90 he again asked to give him atleast 15 days time to submit his defence. In this office letter F4-1/85-86 dated. 24.9.90, the official was asked to submit his representation on the report of I.O. on or before 30.9.90 at the latest and he was also informed that failure to submit his representation will be treated as he has no representation to make and final orders will be passed. This letter was received by him on 27.9.90. The Govt.servant again requested in his letter dated. 28.9.90 to grant him time for 15 days and assured that no further time will be asked. He was permitted in this office letter 3.10.90 to submit his representation on or before 15.10.90 and informed that no further time will be allowed. He has not submitted any representation till date though he was given reasonable opportunity as desired by him.

Findings on each article of charge are given below:

Article of charge No.I.

I agree with the findings of the I.O. that this charge was not proved in as much as the part of the charge that the Govt. servant overstayed at Madaram Town ship for 3 days beyond the period of 20. days deputation which was ordered by the Supdt.of Post Offices. But I donot agree with his findings in as much as the remaining part of the charge that the said Govt.servant had taken charge of the office from Shri.P.Chandraiah the regular SPM on 18.3.85 without any orders from the Divisional Office granting leave to Shri.P.Chandraiah for the following reasons.

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I. The Govt. servant was well aware of the fact that the case mark of the orders either ordering deputation or granting leave to any official has to be noted in the charge reports of relinquishing and assuming of charge of any post. This is evident from the charge report dated. 21.2.85 of his relinquishing charge of as P.A. at Bhainsa (EXP.99) in which the case mark of SP Adilabad No.L2-43/04/85, dated. 20.2.85 was noted. The same case mark was also noted in the charge report dated.23.2.85 of his assuming charge of PA at Madaram Town ship on 23.2.85 (Exp.100). The code of telegraph message XP/1800/29, from SP Adilabad asking the Govt. servant to join at Bhainsa was also noted in the charge report when the Govt. servant handedover charge of the office as SPM to Shri.P.Chandraiah on 1.4.85 (Exp.102).

But it is seen that no case mark was noted in the charge report of his taking charge on 18.3.85 from Shri.P.Chandraiah the regular SPM.

From the above it can be concluded that the Govt. servant is in the know of the procedure to be followed while assuming and relinquishing charge of any post. But he did not note the case mark if any authority authorising him to take charge of SPM ship of Madaram T.S. on 18.3.85. The Govt. servant stated in his defence that he took charge from Shri.P.Chandraiah under the orders of the latter. In such case nothing prevented the Govt. servant to ascertain under which orders Shri.P.Chandraiah transferred the charge of the office and to note the No. of such orders in the charge report. Had the Divisional Supdt. granted leave to Shri.P.Chandraiah, he would have definitely quoted the case mark in the order of the letter and in turn the Govt. servant could have noted the said case mark in the charge report of 18.3.85 (Exp. 101). The Govt. servant has put in a pretty long service of about 20 years on that day and he was well aware of preparation of charge reports. Thus it can be easily concluded that the Govt. servant had taken charge from Shri.P.Chandraiah with a malafide intention but nothing else.

Moreover the Govt. servant failed to report to the Divisional Office about his taking charge so in the absence of orders from Supdt. of Post Offices. This was admitted by the Govt. servant in reply to Q.No.1 by the I.O.

The argument of the Govt. servant that he was not permitted to examine Shri.P.Chandraiah the regular SPM, and had he got an opportunity to examine him if he was produced as addl. prosecution witness, he could prove that he took charge of SPM as per the orders of P.Chandraiah cannot be accepted. The charge here is that the Govt. servant unauthorisedly relieved the regular S.P.M. on 18-3-85 without orders from the Divisional office, so even if the Govt. servant could establish that he acted as per the orders of Shri.P.Chandraiah, it will not absolve him of the charge that he acted in a manner unbecoming of a Govt. servant when he acted so under the orders of SPM but not under the orders of the SPOs.

If at all the Govt. servant intended to prove that he relieved Shri.P.Chandraiah under his orders, there was no bar for the Govt. servant to produce the said person as a defence witness, instead of shifting the blame to the prosecution that Shri.P.Chandraiah was not produced for the purpose of examination by him.

The I.O. has accepted the version of the Govt. servant that the latter acted under the orders of Shri.P.Chandraiah and held that the Govt. servant had not behaved in a manner of unbecoming of a Govt. servant. This cannot be accepted.

Acting under the orders of a person who is not competent to order changes in the incumbancy of any post cannot be taken as acting faithfully. As such the argument of the Govt. servant that he acted under the orders of SPM can not be accepted.

Further the findings of the I.O. that the Govt. servant was not afforded opportunity to cross examine Shri.P.Chandraiah the then regular SPM Madaram Town ship to prove that the Govt. servant had taken charge of the office under his orders cannot be accepted because the Govt. servant acting under the orders of SPM had failed to act properly as expected of him.

Moreover nothing prevented the I.O. to summon Shri.P.Chandraiah and examine him using the powers vested in him as per the Rules. If the I.O. felt the evidence of Shri.P.Chandraiah was so vital to establish the innocence of the Govt. servant the I.O. could have summoned Shri.P.Chandraiah and examined him as required to find out as to why he handed over the charge to the Govt. servant. But here the charge is against the Govt. servant as to why he had taken charge without proper authority. For the prosecution the evidence of Shri.P.Chandraiah is immaterial as the Govt. servant himself accepted that he had taken charge of the office without the orders of Divisional Office.

Thus the charge that the Govt. servant had taken charge of the office in the absence of orders of Supdt. of Post Offices is amply proved.

Further I hold that the Govt. servant with a mala fide intention had taken charge of the SPM ship on 18.3.85 and committed the offences like allowing withdrawals irregularly in 64 RD accounts mentioned in Article III and failed to pay correct amount in 32 RD A/cs mentioned in article IV and allowed irregular withdrawals in 4 RD A/cs and effected payment to persons other than the correct depositors as mentioned in Article V of this charge sheet. Moreover the Govt. Servant committed the above offences during the period of his holding charge as SPM. During the inquiry it has been held by the I.O. that the articles of charge No. III and V are proved and the article of charge IV as partially proved.

Thus it is clearly established that the Govt. Servant with an intention to commit the said offences while holding the charge of the office independently had taken charge of the office even in the absence of any orders from the Divisional Office.

I, therefore, while holding the first part of the charge pertaining to overstaying of the permitted period of 20 days at Madaram Town ship as not proved, hold, that the remaining part of the charge pertaining to taking charge of the office in the absence of orders from the Divisional Office which is more serious in nature as proved.

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Article of charge No.II : I agree with the findings of I.O.  
Article of charge No.III: I agree with the findings of I.O.  
Article of charge No.IV : I agree with the findings of I.O.  
Article of charge No.V : I agree with the findings of I.O.

The Govt. servant has committed various irregularities such as taking over charge of a post office in the absence of proper authority to do so, allowing withdrawals in a number of RD accounts irregularly, not paying correct amounts in several RD accounts and paying amounts of RD accounts to wrong persons and absenting himself from duty without proper grant of leave or permission. The Govt. servant violated the provisions of rules, failed to maintain absolute integrity and acted in a manner which is un-becoming on the part of a Govt. servant. The charges proved are highly serious in nature and reflects misconduct of the Govt. servant. Such a Govt. servant is not at all fit to continue in the department in the interest of service to the public. The charges proved also say about his dishonesty in dealing with the public transactions and also as not trustworthy. This official deserves deterrent punishment commensurate with the seriousness of the charges proved.

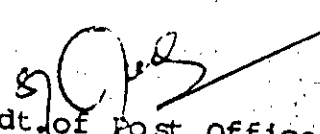
ORDER

I, S.Ch.Krishnamurthy, Supdt.of Post Offices, Adilabad hereby order that Sri.I.Ramudu, P.A. (U/S), Bhainsa be compulsorily retired from service with immediate effect.

  
( S.CH.KRISHNAMURTHY )  
Supdt.of Post Offices  
Adilabad Dn.504001.

A copy of this memo is issued to:-

- AD: 1) Sri.I.Ramudu, P.A. (U/S), Bhainsa.  
( A copy of IO's report dated.25.8.88 is enclosed).  
2) The P.F. of the official.  
3) The Postmaster, Adilabad H.O.  
4) The CR file of the official.  
8) The Sub Postmaster, Bhainsa.  
6) The Register of Disc.cases.  
7/8) office/spare.

  
Supdt.of Post Offices  
Adilabad Dn.504001.



Annexure - II  
- 26 -

A-1

DEPARTMENT OF POSTS, INDIA  
Office of the Supdt. of Post Offices, Adilabad Dn. 50406  
Memo.No.F4-1/85-86, dated at Adilabad the 30-5-1989.

PROCEEDINGS

Read the following:-

- 1) Memo.No.F4-1/88-86, dated. 19.10.85 issued to Sri.I.Ramudu, P.A.Bhainsa along with Annexures I to IV.
- 2) Representation of G.S. dated.29.10.85.
- 3) Memo.No.F4-1/85-86, dated. 26.2.1986 appointing Sri.V.Anjaiah, the then ASP Adilabad as P.O.
- 4) Memo.No.F4-1/85-86, dated.26-2-86 appointing Sri.K.Shankaraiah, ASP Peddapalli as I.C.
- 5) Statement of defence of the G.S. dated. 27.6.88.
- 6) Written brief of P.O. dated.29.7.88.
- 7) Inquiry report of I.C.dated.25.8.88.
- 8) All other connected records and documents.

1) Sri.I.Ramudu, P.A. Bhainsa S.O. was proceeded against under Rule-14 of CCS(CCA) Rules-1965 vide this office memo Ist cited above, with a direction to submit his statement of defence, if any, within 10 days of receipt of this memo. The memo was delivered to the Govt. servant on 24.10.85 and he submitted his defence vide his representation cited at (2) above.

Articles of charge framed against Sri.I.Ramudu are that:

ARTICLE - I

Sri.I.Ramudu while functioning as deputed to work at Madaram T.S. days from 23.2.1985 as an additional allowance of pendency of postings of RD Pass Books. The said Shri. Madaram Town Ship for 23 days upto specified period of 20 days. The said Shri. Ramudu stayed at only the Govt. Servant but also further held the P.O. (20) unauthorisedly regular SPM to proceed on

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The at  
P.A. Bhainsa

2)

That the said Shri. I. Ramudu was deputed to work at Madaram T.S. from 23.2.1985 as an additional allowance of pendency of postings of RD Pass Books. The said Shri. Ramudu stayed at only the Govt. Servant but also further held the P.O. (20) unauthorisedly regular SPM to proceed on

casual leave from 18.3.1985, even in the absence of orders sanctioning such leave from the Divisional Office and thus acted in a manner which is unbecoming on the part of a Govt. Servant contravening the provisions of Rule 3(1)(iii) of CCS (Conduct) Rules-1964.

## ARTICLE - II

That the said Shri. I. Ramudu, while working as SPM at Madaram Town Ship (SO) was relieved on 1.4.1985 in accordance with Divisional Office service message XP/1800/29.3.85 to join back immediately as P.A. at Bhainsa S.O. But the said official did not join immediately at Bhainsa S.O. but was absent from duty without proper permission from 2.4.85 to 21.4.85. Thus he exhibited lack of discipline which is unbecoming of Govt. Servant contravening the provisions of Rule 3(1)(iii) of CCS (Conduct) Rules-1964.

## ARTICLE - III

That the said Shri. I. Ramudu, while functioning as SPM Madaram Town Ship S.O. during the period from 18.3.1985 to 31.3.1985 allowed withdrawals in as many as 64 RD Accounts mentioned in the statement of imputations even though these accounts were not in operation for a period of 12 months at least one year and or there were no credits for 12 monthly instalments in the said accounts as required by Rule-504(i) read with Rule-523/3 of P&T Manual Vol. VI Part-II. Thus he contravened the provisions of Rule-504 (i) and (iii) of P&T Manual Vol. VI part-II read with Rule 523/3 ibid.

## ARTICLE - IV

That the said Shri. I. Ramudu, while functioning as SPM Madaram Town Ship S.O. during the period from 18.3.85 to 31.3.85 allowed withdrawals from the 5 years RD accounts in respect of 32 RD accounts mentioned in the statement of imputations standing open at Madaram Town Ship S.O. but while effecting payments the said Shri. I. Ramudu failed to pay full amounts of withdrawals to the depositors as accounted for in the respective Pass Books and RD list of transactions. Thus the said Shri. I. Ramudu, P.A. has failed to maintain absolute integrity and acted in a manner which is unbecoming of a Govt. Servant contravening the provisions of Rules-3(1) (ii) and (iii) of CCS (Conduct) Rules-1964.

## ARTICLE - V

That the said Shri. I. Ramudu while functioning as SPM Madaram Town Ship S.O. during the aforesaid period, irregularly allowed withdrawals in the following RD accounts without obtaining SD-7 applications from the depositors

contd....3....

concerned and effected payments to the persons other than the depositors in contravention of Rule-504 (iii) read with Rule-523(3) of P&T Man.Vol.VI Part-II.

Sl. No.	RD A/c No.	Name of Depositor:	Date of withdrawal.	Amount of withdrawal.	Name of the person to whom payment effected.
1)	61798	Akritoa Mallaiah MVK-2	30-3-85	Rs. 110/-	B.Rajamallu MVK-2
2)	617999	-do-	30-3-85	Rs. 245/-	-do-
3)	61858	Md.Moinuddin S/O Shri.Raj-Mohammad.	30-3-85	Rs. 25/-	Md.Moinuddin S/O Shri.Nizamuddin.
4)	61859	-do-	30-3-85	Rs. 110/-	-do-

Thus the said Sri.I.Ramudu, failed to follow the provisions of Rule-504(iii) read with Rule-523/3 of Vol. VI Part-II.

3) INQUIRY:- Shri.K.Shankaraiah, ASP Peddapalli was appointed as Inquiring Authority vide this office memo. of even number, dated. 26.2.86 and Shri.V.Anjaiah the then ASP, Adilabad was appointed as Presenting Officer vide this office memo of even number, dated. 26.2.86. The Inquiry was commenced on 16.4.1986 at Peddapalli Divnl. Office and further sittings were held on 17.6.86, 24.7.86, 11/12.11.86, 12.3.87, 20.4.87, 21.4.87, 16/17.9.87, 27/28.10.87, 22.12.87, 5.1.88, 9/10.2.88, 8.3.88, 19/20.4.88, 21.4.88, 27.6.88 and 11.7.88. Inquiry was completed on 11.7.1987 after the I.O. questioned the Govt. Servant. The Presenting Officer submitted his written brief on 29.7.88. But the Govt. Servant did not submit his written brief. I.O. has submitted inquiry report on 25.8.88.

4) FINDINGS OF I.O:-

Considering the evidence adduced during the inquiry, the statement of defence and written brief of the P.O. my findings in r/o each article of charge are as under.

ARTICLE OF CHARGE NO: I:-

As per the directions of the SFOs Adilabad in his letter No.L2-43/84-85, dated. 20.2.85 (Exp-98) Shri.I.Ramudu was relieved at Bhainsa and joined at Madaram T.S. SO on 23.2.85. This can be seen from the charge report (Exp.100). The letter (Exp.98) was addressed to SPM, Bhainsa endorsing a copy to the SPM Madaram TS SO to utilise the PA for (20) days and complete the posting work. When the Govt. servant joined at Madaram TS SO as PA it was for the SPM

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to utilise him for 20 days and relieve him promptly after the stipulated period. Here this was not done by the SPM and he is responsible for non-compliance of the orders of the D.O. As the Govt. servant was the P.A. he had to carry out the orders and to await for his relief. In this case the govt. servant was not relieved after completion of 20 days but the charge report Exp.101 shows that he was handed over the charge of SPM by the SPM on 18.3.85 (F/N). No orders of the SPOs were cited in the charge report. He was relieved from the duties of SPM on 1.4.85 (F/N) and the SPOs, Adilabad XP/1800/29 was cited. In this case the principal witness is Shri.P.Chandraiah, the then SPM Madaram T.S.SO. His name was not cited in the list of prosecution witnesses. Though the P.O. requested to include the name of Shri.P.Chandraiah as additional prosecution witness and was permitted he was not examined but dropped at a later date. The fact that as to why he did not relieve the govt. servant after completion of 20 days and as to why he availed C.L. from 18.3.85 to 1.4.85 handing over charge to the govt. servant is not known. As the period from 18.3.85 to 1.4.85 is not a short period the SPOs should have directed Shri.P.Chandraiah to join back and relieve the govt. servant to report back at Bhainsa. But no evidence to this effect was produced in the inquiry and the opportunity to cross examine Shri.P.Chandraiah the then SPM, Madaram T.S. SO was not given. In the absence of the evidence of principal witness the charge cannot be held as proved. Had the govt. servant was relieved by the SPM on completion of 20 days and the govt. servant stayed in the office beyond that period, he should have been held responsible. For the period from 18.3.85 to 1.4.85 the govt. servant was on duty and discharged his legitimate duties and as such he is not responsible for overstaying. Further the govt. servant's action to be on duty discharging his legitimate duties does not involve him in un-becoming of a Govt. servant. The plea of the P.O. that the charge reports, letter of SPOs Adilabad and telegram are sufficient documentary proof for charge cannot be accepted.

Article of charge No.II:-

As seen from the charge report dated. 1.4.85 EXP.102 the official was relieved at Madharam TSO on the F/N of 1.4.85. On relief he was due to join back at Bhainsa as per the direction of the SPOs Adilabad in his XP/1800/29.3.85 EXP.104. But the official remained absent from duty and applied for leave on Medical Certificate. The leave application, SLM-1 and MC were received in the D.O. of Adilabad on 16.4.85. He requested for grant of leave from 2.4.85 as he fell sick. The Government servant argued that he was not un-authorisedly absent from duty but sent leave application. His contention is not correct. The Govt. servant cannot claim the leave as a

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matter of right and mere production of MC does not itself confer upon him any right to leave as laid down in Rule 7 and Rule 19(5) of CCS(Leave) Rules 1972 respectively. As per the instructions contained in DG P&T letter No. 34/1/75-SPB.II dated. 31.10.75 communicated in GO letter no. staff/45-1/75 dated. 10.11.75, the Govt. servant should produce MC within 24 hours. If it is not possible he can post the MC within 24 hours and it is for the concerned official to establish in case of dispute that the certificate was actually posted to the leave sanctioning authority within 24 hours. It is for the Govt. servant to forward the MC to the sanctioning authority within 24 hours and order of that authority awaited. In this case the Govt. servant did not send the leave application, SR-1 and MC in time i.e. within 24 hours after he fell sick. The E.A.P.105 (envelop) shows that it was received in divisional office on 16.4.85 and did not bear the date of posting and from address. The Govt. servant did not produce any evidence that he posted the envelop either on 2.4.85 or 3.4.85 i.e., immediately after he fell sick. From the above it is evident that the Govt. servant posted the letter with back date and that too with out from address to conceal the un-authorized absence from duty. The Govt. servants' argument that he was paid salary for the month of April '85 and hence the question of un-authorized absence does not arise is not correct. Payment of salary is nothing to do with the absence. The Postmaster Mancherial might have drawn the salary by oversight. Thus the charge is held as proved.

Article of charge No.III:- From the pass books of 64 RD A/cs it is evident that all the 64 A/cs were not in operation for one year as on date of withdrawal and there were 12 monthly credits in 36 RD A/cs, 11 monthly credits in 24 RD a/cs and 10 monthly credits in 4 RD a/cs. The Govt. servant accepted this but argued that all the 64 RD a/cs were not having deposits less than 12. The Govt. servants argument that allowing withdrawals in the above RD a/cs was due to heavy work cannot be accepted. By rush of work mistake may happen in one or two cases but not in 64 a/cs. The charge, regarding allowing withdrawals in 64 RD a/cs against to the Rule 504(i) read with Rule 523/3 of P&T Man.Vol.VI Part II is proved by the documentary evidence. The Rule of CCS (Conduct and Service) Rules-1964 which attracted the action of Govt. servant in paying withdrawals against to the rules was not mentioned in the article of charge. The action of the official attracts the provision of Rule 3(1)(ii) of CCS (conduct & service) Rules-1964. (failed to maintain devotion to duty).

Article of Charge No.IV:- The undermentioned prosecution witnesses deposed before the IO, that they were paid less amount while effecting payment of withdrawals in respect of their RD a/cs as detailed below.

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Sl.No.	Name of the P.w.	Amount paid less:
1.	S/Sri.Gone Mallaiah, P.w.1	Rs. 45/-
2.	K.Satyanarayana Reddy, P.w-6	Rs. 30/-
3.	Bhadraru Rajamallu, P.w.8	Rs. 180/-
4.	G.Rajalingu, P.w.10	Rs. 50/-
5.	E.Ramulu, P.w.12	Rs. 200/-
6.	K.Lingaiah, P.w.13	Rs. 80/-
7.	K.Mallaiah, P.w.14	Rs. 75/-

The Pws 2, 3, 4, 5, 7 and 11 though alleged short payments at the time of preliminary enquiry turned hostile and admitted correct payment during the inquiry. Hence the part of charge is not proved. The argument of PO that the additional PWS who recorded the statements of the above witness have confirmed the genuineness of the statements and the short payment is proved cannot be accepted as the oral evidence given bears much weight in the proceedings. Here the investigating officers are not material witness they did not witness the payment. No case can be decided on the basis of their evidence alone. The Pw.2, 3, 4, 5, 7 and 11 are only material witnesses as they are the persons who received the amount and no other witnesses were there at the time of payment.

The Govt. servant stated in his defence that he did not get cash excess in his cash and stamp balance on those dates. Had any short payment was made, there should have been excess cash in his balance. Further he stated that there were no complaints from the depositors that they were paid short and there were no witnesses who witnessed the short payments. Hence the depositors Pw.1, Pw-6, Pw-8, Pw-10, Pw-12, Pw-13 and Pw-14 are the material witnesses and the fact of short payment was confirmed by their oral evidence. The contention of Govt. Servant in his defence statement that there was no complaint from the depositors and as per the warrants of payments there was no short payment is not correct. In the wanted short payments there will not be any excess cash. From the warrants of payment EXP. 2, 3, 8, 9, 13, 14, 18, 19, 35, 36, 61, 62, 67, 68, 73, 74, 83, 84, 96 and 97 it can be seen that there was no witnesses signature, though many of them were illiterate and they were not identified by the group leaders. In some cases, the amount of withdrawal was not noted on them at the time of payment. (in respect of Pw.6) The action of the Govt. servant in not following the procedure in respect of PRSS A/cs, itself speaks his intention. As many of the singareni Colliery workers are illiterate and moody their position was exploited by the Govt. servant. Though there was no specific complaint the department is having every right to enquire into the alleged short payment came to its notice, whether there is a complaint or not. The Government Servant is expected to maintain absolute integrity at all times in dealing Government transactions. In the cross examination, the AGS put several questions to side track them. The Pw.1 (answer to Q.6), Pw.6 (answer to Q.1 in re cross examination) Pw.10 (answer to Q.1 by the IO) Pw.12 (answer to Q.3 in cross examination). EXP.39 (statement of Sri.K.Lin aiah & Pw.13) Exp.44 statement of Pw 8 and EXP.70

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(statement of Pw.14). The Government Servants' plea that his statement was not recorded in preliminary enquiry but disciplinary action was initiated against him is also not correct. The disciplinary action was contemplated when the Department found prima facie case against him and every reasonable opportunity was given in the present Rule 14 enquiry. The Government servants' plea that Shri.M. Laxmaiah Pw 16 was prejudiced against him and he was responsible for this charge sheet is not based on evidence. The Government servant did not produce any evidence. The Pws 1, 6, 8, 10, 12, 13 and 14 whose statements were recorded by the persons other than Sri.M.Laxmaiah deposed in the enquiry that they were short paid in the RD withdrawals. The Govt. servants' plea that there is no documentary evidence that there was short payment is not tenable. Here the material evidence is oral evidence and the Pws.1, 6, 8, 10, 12, 13 and 14 deposed that they were paid short and they were not prejudiced against him. In the departmental disciplinary proceedings the standard of proof required is preponderance of probability and not proof beyond reasonable doubt. Out of 14 Pws produced in connection with this charge 7 Pws confirmed the short payment and 6 Pws turned hostile. As such the charge is partially proved.

Article of Charge No.V:- Shri.Akuthota Mallaiah Pw.9 and Shri.Md.Moinuddin Pw.15 deposed before the IO that they were having two RD a/cs each bearing nos. 61798, 61799 and 61858, 61859 respectively at Madharam TSO. They deposed that neither they applied for withdrawal from their accounts nor received any amount from PO towards withdrawal. They further stated that the signatures on the withdrawal forms were not belonged to them. Shri.Bhodrapu Rajamallu Pw.8 deposed before the IO that he received Rs.175/- as against Rs.355/- (Total in two accounts) noted in the withdrawal forms. The a/c no. noted in the form were of Shri.Akuthota Mallaiah and the mistake happened due to mistake committed while noting the a/c numbers by the pay sheet clerk. He further agreed for recovery of the same from his RD a/cs. Sri.Md.Moinuddin S/O Nizamuddin did not attend the inquiry despite repeated notices issued to him. From the documentary evidence i.e., the statement recorded during the preliminary enquiry, it is evident that he received the payment of Rs.130/- as against Rs.135/- noted in the SB-7 forms. The Govt. servants' plea made in his statement of defence accepted that the wrong payment was made due to misleading information furnished by the pay sheet clerk and handing over the PBs of Akuthota Mallaiah and MD.Moinuddin S/O Raj Mohmd cannot be accepted. Before paying the withdrawals, The Govt. servant as a SPM should have checked the specimen signatures and confirmed the names of depositors. These two wrong payments were made on the same day i.e., 30.3.85. The Govt. servant has thus failed to follow the prescribed procedure as laid down in Rule 504(iii)

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read with Rule 523(3) of P&T Man. Vol. VI Part II. The wrong payment in contravention of above rules is thus proved by the documentary and oral evidence. The Rule of CCS (Conduct & Service) Rules 1964 which attracted the failure of Government servant was not mentioned in the article of charge. The above action of the Govt. servant attracts the provision of Rule 3(1)(ii) of CCS (Conduct & Service) Rules 1964. (failure to maintain devotion to duty).

IX Conclusion:- As narrated above I held the article of charge No. I as not proved, article of Charge No. II, III and V as proved and article of Charge No. IV as partially proved. (A copy of I.O's report dt 25.8.85 is enclosed)

FINDINGS OF THE DISC. AUTHORITY:

I have carefully gone through the report of the I.O. and connected record of Inquiry and give my findings as follow.

Article of Charge No. I:-

I agree with the findings of the I.O. that this charge was not proved in as much as the part of the charge that the Govt. servant overstayed at Madaram Town Ship for 3 days beyond the period of 20 days deputation which was ordered by the Supdt. of Post Offices. But I donat agree with his findings in as much as the remaining part of the charge that the said Govt. servant had taken charge of the office from Shri.P.Chandriah the regular SPM on 18.3.85 without any orders from the Divisional Office granting leave to Shri.P.Chandriah for the following reasons.

I. The Govt. servant was well aware of the fact that the case mark of the orders either ordering deputation or granting leave to any official has to be noted in the charge reports of relinquishing and assuming of charge of any post. This is evident from the charge report dated. 21.2.85 of his relinquishing charge as P.A. at Bhainsa (EXP.99) in which the case mark of SP Adilabad No.12-43/04/85, dated. 20.2.85 was noted. The same case mark was also noted in the charge report dated. 23.2.85 of his assuming charge of P.A at Madaram Town Ship on 23.2.85 (EXP-100). The code of telegraph message XP/1800/29 from SP Adilabad asking the Govt. Servant to join at Bhainsa was also noted in the charge report when the Govt. servant handedover charge of the office as SPM to Shri.P.Chandriah on 1.4.85 (EXP.102).

But it is seen that no case mark was noted in the charge report of his taking charge on 18.3.85 from Shri.P.Chandriah the regular S.P.M.

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From the above it can be ~~concluded~~ concluded that the Govt. servant is in the know of the procedure to be followed while assuming and relinquishing charge of any post. But he did not note the case mark if any authority authorising him to take charge of SPM Ship of Madaram T.S. on 18.3.85. The Govt. servant stated in his defence that he took charge from Shri.P.Chandriah under the orders of the latter. In such case nothing prevented the Govt. servant to ascertain under which orders Shri.P.Chandriah transferred the charge of the office and to note the No. of such orders in the charge report. Had the Divisional Supdt. granted leave to Shri.P.Chandriah, he would have definitely quoted the case mark in the order of the letter and in turn the Govt. servant could have noted the said case mark in the charge report of 18.3.1985 (Exp.101). The Govt. servant has put in a pretty long service of about 20 years on that day and he was well aware of preparation of charge reports. Thus it can be easily concluded that the Govt. servant had taken charge from Shri.P.Chandriah with a malafide intention but nothing else.

Moreover the Govt. servant failed to report to the Divisional Office about his taking charge. So in the absence of orders from Supdt. of Post Offices. This was admitted by the Govt. servant in reply to Q.No.1 by the I.O.

The argument of the Govt. servant that he was not permitted to examine Shri.P.Chandriah the regular SPM, and had he got an opportunity to examine him if he was produced as addl prosecution witness, he could prove that he took charge of SPM as per the orders of P.Chandriah cannot be accepted. The charge here is that the Govt. servant unauthorisedly relieved the regular SPM on 18.3.85. This implies that the Govt. servant should have not relieved Shri.P.Chandriah the regular SPM without orders from the Divisional Office, so even if the Govt. servant could establish that he acted as per the orders of Shri.P.Chandriah, it will not absolve him of the charge that he acted in a manner unbecoming of a Govt. servant when he acted so under the orders of SPM but not under the orders of the SPOs.

If at all the Govt. servant intended to prove that he relieved Shri.P.Chandriah under his orders, there was no bar for the Govt. servant to produce the said person as a defence witness, instead of shifting the blame to the prosecution that Shri.P.Chandriah was not produced for the purpose of examination by him.

The I.O. has accepted the version of the Govt. Servant that the latter acted under the orders of Shri. P.Chandriah and held that the Govt. servant had not behaved in a manner of unbecoming of a Govt. servant. This cannot be accepted.

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Acting under the orders of a person who is not competent to order changes in the incumbancy of any post cannot be taken as acting faithfully. As such the argument of the Govt. Servant that he acted under the orders of SPM can not be accepted.

Further the findings of the I.O. that the Govt. Servant was not afforded opportunity to cross examine Shri.P.Chandriah the then regular SPM Madharam Town Ship to prove that the Govt. Servant had taken charge of the office under his orders cannot be accepted because the Govt. Servant acting under the orders of SPM had failed to act properly as expected of him.

Moreover nothing prevented the I.O. to summon Shri.P.Chandraiah and examine him using the powers vested in him as per the Rules. If the I.O. felt the evidence of Shri.P.Chandriah was so vital to establish the innocence of the Govt. Servant the I.O. could have summoned Shri.P.Chandriah and examined him as required to find out as to why he handed over the charge to the Govt. Servant. But here the charge is against the Govt. servant as to why he had taken charge without proper authority. For the prosecution the evidence of Shri.P.Chandriah is immaterial as the Govt. servant himself accepted that he had taken charge of the office without the orders of Divisional Office.

Thus the charge that the Govt. servant had taken charge of the office in the absence of orders of Supdt. of Post Offices is amply proved.

Further I hold that the Govt. servant with a mala fide intention had taken charge of the SPM ship on 18.3.1985 and committed the offences like allowing withdrawals irregularly in 64 RD accounts mentioned in Article III and failed to pay correct amount of 32 RD A/cs mentioned in Article IV and allowed irregular withdrawals in 4 RD a/cs and effected payment to persons other than the correct depositors as mentioned in Article V of this charge sheet. Moreover the Govt. servant committed the above offences during the period of his holding charge as SPM. During the Inquiry it has been held by the I.O. that the articles of charge No. III and V are proved and the article of charge IV as partially proved.

Thus it is clearly established that the Govt. servant with an intention to commit the said offences while holding the charge of the office independently had taken charge of the office even in the absence of any orders from the Divisional Office.

I, therefore, while holding the first part of the charge pertaining to overstaying of the permitted period of 20 days at Madaram Town Ship as not proved, hold, that the remaining part of the charge pertaining to taking charge of the office in the absence of orders from the Divisional Office which is more serious in nature, is proved.

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- Article of charge II:- I agree with the findings of the I.O.
- Article of charge III:- I agree with the finding of the I.O.
- Article of charge IV:- I agree with the finding of the I.O.
- Article of charge V:- I agree with the findings of the I.O.


The Govt. servant has committed various irregularities such as taking over the charge of a Post Office in the absence of proper authority to do so, allowing withdrawals in a number of RD accounts irregularly, Not paying correct amounts in several RD accounts and paying amounts of RD accounts to wrong persons and absenting himself from duty without proper grant of leave or permission.

If such person is allowed to continue in the service, who had brought a very bad name to the department by such activities, and who proved himself as not honest and trustworthy, there is further danger of his involving himself in further such activities and not only mar the good name the department is enjoying so far, but will make the public loose their confidence in the department and the coworkers to follow his foot steps. As such this official deserves deterrant punishment commensurate with the seriousness of the misconduct committed by him.

But this official is putting in service of 24 years and his age is 46 years. Though the total service rendered is not altogether satisfactory, some reasonable consideration is necessary in view of his advanced age and length of service.


To achieve the two objects viz not to allow the Govt. servant to continue in the service any more and at the same time not to subject the Govt. servant to much hardship at this advanced age, I consider that there is need to take a lenient view inspite of the seriousness of the misconduct committed by the Govt. servant.

As such I, G. Devavaram, Supdt. of Post Offices Adilabad Division hereby order that Shri. I. Ramudu P. A. Bhainsa be compulsarily retired from service with effect from 31-5-1989 A/N.

  
( G. DEVAVARAM, )  
Supdt. of Post Offices,  
Adilabad Dn. 504001.

✓ A copy of this memo is issued to:

- 1) Sri. I. Ramudu, P. A. Bhainsa S.O. (A copy of IO's report dated. 25.8.88 is enclosed)
- 2) The SPM Bhainsa for information and necessary action.
- 3) The P.F. of the Official.
- 4) The Postmaster, Adilabad HO.
- 5) The CR file of the official.
- 6) Register of Disc. cases.
- 7-8) Office/spare.

  
अधीक्षक पोस्ट, आदिलाबाद  
Supdt. of Post Offices  
Adilabad Division  
ADILABAD 504001

From:

I. RAMUDU,  
P.A.Bhainsa (Compulsority Retd)  
ADILABAD DIVISION.

To

The Director of Postal Services,  
Office of the Post Master General  
Hyderabad Region,  
H Y D E R A B A D.

Respected Sir,

Sub: Appeal against the order of  
compulsory retirement issued  
by the SPOs Adilabad vide his  
Memo No.F4-1/85-86 Dt:13-11-90.

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Aggrieved by the above orders I submit the following few lines for favour of kind consideration and favourable orders.

2. Brief facts of the case

The SPOs Adilabad issued a Memo of Charges to me under rule 14 of CCS (CCA) rules 1965 vide his Memo No.F4-1/85-86 dated 19-10-1985. An inquiry was held and the inquiry officer held that charge No.2,3,4 and 5 were proved. Without supplying the inquiry report to me the SPOs passed orders compulsorily retireing me from service. I approached the Hon'ble CAT Hyderabad on whose orders I was supplied with a copy of the IOs report and I submitted representation. There upon the SPOs issued the impugned order.

The charges against me in brief were (1) That I overstayed my deputation at Madharam Town Ship 80 and unauthorisily took charge as SPM, (2) from there, I unauthorisily absented (3) I allowed half withdrawals in 64 RD Accounts before completion of 12 months existance (4) I made short payments in R/O 14 RD withdrawals and (5) I effect two RD withdrawals to wrong persons.

3. Grounds for the appeal.

- (a) (1) The Charge Sheet is not maintainable for the reasons that it violates rule 4(1) and 4(ii) of P & T Manual Vol.III. Both in Annexure I and II the disciplinary authority has expressed definite opinion about the Commissioner of the offence and such a charge sheet is liable to be quashed.

Contd...2

Received  
4-12-90  
as per  
6.6.91  
M. R. Rao

Vide case law Surendra Chandra Das Vs State of West Bengal 1982 Lab IC 574, it has been made clear by the Honourable Court that if the Charge is a predrawn conclusion on the Commission of offence, the punishment is liable to be quashed.

(2) The Charge Sheet is further defective for not citing the relevant rules which are violated. In support of charge No.2 conduct rule 3(1) (iii) is cited whereas the allegation is about overstaying for which there are distinct rules and the conduct rule cited is not applicable. There is no allegation of any malpractice in R/o Charge No.3 and the rule applicable i.e. rule 3(1) (ii) of CCS conduct rules has not been cited. In r/o.charge No.4, allegation is of Short payment and the only rule applicable is rule 3(1) (i) but rule 3(1) (ii) and 3(1) (iii) also have been quoted. Charge No.5 relates to wrong withdrawals and in the absence of allegation of any motive, the only rule applicable is rule 3(1) (ii) of CCS conduct rules which has not been quoted. The I.O.also has accepted that rules were wrongly quoted. Such a charge sheet is not maintainable.

(b) (1) Preliminary enquiry is a must under rule 3 of P & T Manual Vol.III and the procedure prescribed therein must be followed. The preliminary investigation should be done at the "APPROPRIATE LEVEL" vide rule 2(a) ibid. In my case this was not done and the charge sheet is in consequence of an incompetent and unauthorised investigation. In pursuance of rule 2(a) the dept has prescribed levels of investigation and the lowest investigating authority is an Inspector of Post Offices. In my case the two additional prosecution witnesses S/S L-Shankar and Mohd.Abdulla, Mail oversers clearly admitted during the enquiry that they enquired in to the case and recorded statements for which they have no power. No statement was recorded in my presence. No statement was taken from me.

(ii) It is saddening that the humiliating aspect of the investigation went unnoticed. At the time of the investigation I had a standing of 20 years in clerical cadre in the Department but my fate was to be decided

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by two mail oversers who are below the clerical cadre. They were allowed to probe in to the work done by me who is superior to them. It is no consolation to say that the present punishment is based on a rule 14 inquiry as the inquiry itself was based on a charge sheet issued in consequence of such an incompetent, unauthorised and humiliating investigation.

(c) The following documents found relevant by the I.O. were not produced greatly hampering my defence.

- (1) Leave application of Sri P.Chandraiah.
- (2) My leave application.

Further, though several transactions entered in the ledger were subjected to Scrutiny during the inquiry, the original ledgers were not produced during the enquiry inspite of my request. Thus veracity of the documents relating to the transactions produced during the inquiry has not been established.

(d) Following witnesses listed in the Charged Sheet whose evidence the disciplinary authority felt necessary to sustain the charges were not produced.

- (1) Vemula Rajamallu.
- (2) S.Tirupathi
- (3) E.Posham
- (4) Mohd.Moinuddin

In the absence of the evidence of the listed witnesses, it was not judicious to hold the charges as proved.

(e) Rule 2 of P and T Manual Vol.III prescribes that the procedure laid down in C.C.S. (C.C.A.) rules should be "rigidly" followed. But this was blatantly violated during the inquiry.

(1) As per the daily docket dated 20-4-1988 and 21-4-1988, the listed documents were produced by the P.O. and filed on 20-4-1988 and 21-4-1988. By that time the case on behalf of the prosecution was over. This means that the listed documents were not produced during the examination of witnesses and that they were in the unauthorised

custody of the P.O. This casts serious doubt about the genuineness, of the listed documents produced belatedly and so these documents can not be relied upon.

(ii) Vide D.O.No.134/7/85 A, ADVT I dated 11-6-1976, there is no need for examination in Chief in r/o prosecution witnesses whose statement were recorded earlier and who admit the contents in the rule 14 inquiry. But when the witnesses disown the contents of their earlier statement examination in Chief has to be conducted. Nobody can be cross examined unless he has been examined in Chief, i.e., unless he was given an opportunity to depose his version. Prosecution witnesses can not be cross examined by the P.O. unless they are declared as hostile by the P.O. and permitted by the I.O. to be cross examined. These are the accepted procedures and any violation would strike at the root of principles of natural justice.

In my case the following prosecution witnesses disowned the contents of the earlier statements.

- (1) Sri G. Rajareddy.
- (2) Sri T. Vijaya Kumar.
- (3) Sri I. Krishna.
- (4) Sri Lingaiah.
- (5) Sri D. Odelu.
- (6) Sri K. Lingaiah.

They were not examined by P.O. They were not declared hostile by him. I.O's permission was not sought to cross examine them. Yet they were straight away cross examined. This serious irregularity alone nullifies the entire proceedings.

(iii) During the inquiry the I.O. acted in a manner as if it was his duty to prove the charge. His questioning Sri I. Krishna PW1, whether the investigating officer forced him to say that there was short payment, of Sri T. Vijaya Kumar another PW1 whether any body forced him to say that there was short payment does not betray disinterestedness in the case as the attempt was to stick to the original statement and not to ascertain facts as deposed.

(4) The disciplinary authority went beyond his scope in his attempt to hold that Charge No.1 is partially proved. (Which charge incidentally the I.O.held as not proved). He says, if the I.O.felt that the appearance of Sri.P. Chandraiah was essential he should have enforced it using his power. For one thing, any failure on the part of the I.O.should not be at the cost of the Government servant,for another the S.P.O's suppressing the fact that it was the P.O. who is the representative of the Disciplinary Authority, who dropped the witness Sri P.Chandraiah vide proceedings dated 21-4-1988. It may be interesting to note that this witness was a S.P.M.working under the same SP who was not originally cited, but was summoned as an additional witness at the request of the P.O. and also dropped at the request of the P.O.and the S.P.O's now say that the I.O.should have enforced the apperance using his power.

(g) Though the disciplinary authority chose to disagree with the finding of the I.O.on charge No.1 he did not communicate the disagreement or reasons therefore while forwarding the inquiry report to mea as required under the orders of various Tribunals. This is a serious violation of principales of natural justice as I was kept in dark about the reasons for punishing me till the end and was denied the minimum requirement of providing an opportunity to refute the same.

(h) I may be permitted to briefly state my submissions on the findings of the I.O.and Disc.authority on the various charges.

(1) Charge No.1: The I.O.held that the charge was not proved. Without giving me an opportunity to explain, the Disciplinary authority held the charge as partly proved. This finding is not based on evidence produced during inquiry. Sri.P.Chandraiah was the S.P.M. and I was the P.A. Sri P.Chandraiah did not depose that there was no order from D.O., that he did not make an order book entry directing me to take charge or that I usurped the charge. The order book of the office was not produced to prove that there was no order from the S.P.M., and if there was any entry, the authority of the D.O. is not quoted.



As the P.A. I am entirely guided by the S.P.M's written orders and in the absence of the witnesses of Sri.Chandraiah and production of the order book there is not even an iota of evidence to hold the charge as proved.

(2) Charge No:2 : While holding this charge as proved the I.O. observes that I posted the letter with back date. This allegation is not even included in the charge sheet. The charge only speaks of wanting date stamp impression on the cover in which I sent the application. If the date of posting was doubted and non stamping of the cover was to hushup the delay, S.P.O's should have made enquiries first with the office of posting. Any way I am not cocerned with the wanting date stamp impression. The I.O. says the P.M.Mancherial would have drawn the salary by mistake. This is a clear instance where the I.O. is stepping into the witness box. Postmaster Mancherial was not a witness and except for the subjective thinking of the I.O. there is absolutely no evidence to show that the salary was drawn by mistake. Here the fact is that I had applied for leave on medical ground which was not refused nor was I asked to explain late submission of application and the leave salary was promptly paid which goes to show that the leave was sanctioned. Later on when some other charges were foisted on me, a charge of unauthorised absence was also, cooked up. It is also submitted that irrelevant rules i.e., rules unrelated unauthorised absence have been quoted in support of the charge. This charge has not been proved through documentary or oral evidence and the inference drawn by the I.O. from a Vacuum of evidence would remain empty.

Charge No.3 : It is stated that I allowed half withdrawals from 64 R.D.accounts before completion of 12 months existence No witness was produced to prove this allegation. The documents relating to this charge were produced on 21-4-1988 after completion of the prosecution case and so cannot be relied upon.

These documents were not identified by the persons who have custody of them or by me also and the genuineness of these documents has not been established. Certain pass books purported to have been handled by me were produced but I was never questioned about the transactions. If the I.O. can draw conclusions from unidentified and unaccepted documents behind my back it cannot be judicious, rendering a quasi judicial enquiry redundant. Thus the charge is not legally proved.

Charge No.4: As already stated listed witnesses were not examined. Documents were produced on 20-4-1988 i.e., after completion of the prosecution case and so there is not a single legally valid documentary evidence in the case. Cause of action in the case is shrouded in mystery. There was no complaint from any source and in fairness, to eliminate attributes of malafide, the S.P.O's is obliged to say the reasons for his SUO MOTU action in investigation. Generally in our department any short payment should be reported within a reasonable time. Many of the depositors who were produced as witnesses are literate enough to understand the correct amounts due to the mand they have accepted the withdrawals and made no complaint of short payment to anybody in the Department. Even commonsense warrants that there should be a complaint within a reasonable time if not immediately. The treatment meted out to me might have suited the S.P.O's in sacking me. But the procedure is fraught with danger. Months after the transactions some one (including mail overseers) can go to the depositors and obtain statements alleging short payments even if they had no complaints and in such vicious atmosphere no official can function. The only point to be considered is whether there was any complaint from the depositors and if not, what documentary evidence is there about the short payments. I have already pointed out the level of investigation applied in the case. In all the cases payment was made in the presence of witnesses and more of them was produced during the inquiry to prove the charge. As such this charge is not proved.

Charge No.5: This is only about wrong payments in two cases. Besides not having any documentary evidence produced legally as they were filed only on 20-4-1988 and 21-4-1988, it is submitted that one Mohd.Moinuddin prosecution witness was not produced during inquiry and for this alone this part of the charge is not proved. Regarding the other account the person who received payment clearly stated that the amount was correctly received by him and it was just a wrong payment occurred due to rush of work but my integrity cannot be questioned on the basis of this single instance.

44\* Prayer: I respectfully submit that I belong to a tribal community coming from a very backward area and it is true that I do not have the same standard of culture and sophistication. It is also true that I may be wanting in behaviourism. More privileged brotheren have a social obligation to lead us to the main stream of culture and mannerism. But to my fate, a few of my privileged and influential colleagues indulged in a type of behaviour bordering social ostracism with me and I am a victim of this for the last one and a half decades. Fostering complaints against me and fabricating evidence have been their hobby. The present case is also a foisted one with fabricated evidence. Unfortunately the S.P.O's did not see through this game. I am a man of children and have 10 more years to go, in service. The present punishment has caused enormous hardship to me and my family which is unnumberable. I, most humbly pray to you, Sir, that, in view of the irregular investigation, irregular charge sheet, and defective inquiry, the cruel punishment imposed on me be set aside for which act of kindness, I will ever be grateful.

Thanking you Sir,

Yours faithfully,

( I. RAMUDU )

Copy to the Superintendent  
Post Offices, Adilabad Division.

No. ST/21-3/11/91

dated at Hyderabad-500 001 the- 3.92

Proceedings:Read the following:

1. Memo. No. F4-1/85.86 dated 19.10.85 of SPOs, Adilabad issued to Sri I. Ramudu, P.A Bhainsa.
2. I.O report dtd 25.8.88 of Sri K. Shankaraiiah ASP, Peddapalli
3. Proceedings of SPOs, Adilabad No. F4-1/85-86 dtd 30.5.89 and 13.11.90.
4. Appeal dated 4.1.91 of Sri I. Ramudu Ex P.A Bhainsa.
5. Other connected records.

This is an appeal dated 4.1.91 submitted by Shri I. Ramudu Ex P.A Bhainsa against the punishment of compulsory retirement from service w.e.f 13.11.90 issued by the Supdt. of Post offices, Adilabad Division. The history of the case is as follows: Shri I. Ramudu while working as P.A, Bhainsa had been deputed to Madaram post office on 23.2.85 to attend to R.D PRSS Postings for 20 days. He held the charge of Sub Postmaster, Madaram T/S S.O unauthorisedly relieving the regular SPM even in the absence of orders, and worked as Sub Postmaster from 18.3.85 to 31.3.85. And on relief at Madaram T/S S.O on 1.4.85 he did not join at Bhainsa immediately but joined only on 22.4.85. During the time he worked as SPM Madaram he allowed half withdrawals in 64 RD accounts even though these accounts were not in operation for a period of one year and there had been no credits over 12 months. He allowed irregular withdrawals in 5 RD accounts. Charge sheet under Rule 14 of (CCS(CCA) Rules was issued to the Govt. servant on 19.10.85 and the Disciplinary authority holding the charges 2, 3 and 5 as proved and charge No. 4 as partially proved, issued the final proceedings on 30.5.1989 imposing the penalty of compulsory retirement from service w.e.f 31.5.89. Thereafter the official preferred an appeal to the Director of Postal Services on 10.7.89 against the orders

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of compulsory retirement. On 30.3.90 the official filed an application before C.A.T. Hyderabad stating that his appeal had not been disposed of by the appellate authority. While disposing of the application, the C.A.T. quashed the penalty of compulsory retirement from service on the ground that copy of I.O's report was not furnished to the Govt. servant before passing final orders and asked the Disciplinary authority to supply a copy of the I.O's report/the Govt. servant and give him reasonable opportunity. Accordingly a copy of I.O's report was supplied to the Govt. servant on 1.5.90 and he was asked to submit his representation if any within 15 days of receipt. But the appellant did not submit any representation and finally the Disc. authority imposed penalty of compulsory retirement from service on 13.11.90.

2. In his appeal the appellant states that (i) the charge sheet is not maintainable for the reasons that it violates Rule 4(i) and 4(ii) of P&T Man. Vol. III and the disciplinary authority has expressed definite opinion about the commission of the offence; (ii) the charge sheet is defective for not citing the relevant rules which are violated, and also rules have been wrongly quoted in respect of charge No. II. (iii). Preliminary investigation was not done in the case and the charge sheet is in consequence of unauthorised investigation. Further in his case the additional prosecution witnesses S/Shri L. Shankar and Mohd Abdulla Mail overseers admitted during the inquiry that they had enquired into the case for which they are not authorised. Further the appellant claims that no statement was recorded in his presence and no statement was taken from him. (iv). At the time of the investigation the appellant claims that he had a standing of 20 years in clerical cadre in the Department but his fate was decided by two Mail overseers who were below him in rank. (v). That documents asked for by him were not produced during the inquiry. Original ledgers were not produced. Further witnesses listed in the charge sheet by whom the charges were

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to be sustained were not produced. Procedure as laid down in CES(CCA) Rules was not followed. Listed documents were not produced during the examination of witnesses, but were produced later. The appellant further questions the method of cross examination and many prosecution witnesses disowned the contents of their own earlier statements were not examined by the P.O and they were not declared hostile by him. He says that the Inquiry Officer acted in a manner as if it was his duty to prove the charge. The appellant claims that the Disc. authority went beyond his scope in his attempt to hold that the charge no. 1 is partially proved, which charge the I.O held as not proved. And the Disc. authority did not give any reason for disagreeing with the finding of the Inquiry Officer. Finally the appellant has gone into the details of the inquiry, discussing each charge and the method in which the Inquiry Officer has conducted the Inquiry and it is in his opinion that the charges had not been proved.

3. In case of charge no.1 which the Disciplinary authority held as partially proved, as prosecution witness Sri P.Chandrabah did not depose that there was no order from D.O. In the case of charge no.2 the appellant says that though the I.O held that the charge as proved, he claims that he had applied for leave on medical ground which was not refused and nor he was asked to explain late submission of application and the leave salary was promptly paid which goes to show that the leave had been sanctioned.

In case of charge No.3 the appellant states that no witnesses was produced to prove this allegation, that he had allowed half withdrawals from 64 RD accounts before completion of 12 months existence. He also states that the documents relating to this charge were produced on 21.4.88 after completion of the prosecution of the case and so it cannot be relied upon.

In respect of charge No.4 he says listed witnesses were not examined, and documents were produced after completion of prosecution case. He says there was no complaint from any source and in fairness this eliminate attributes of mala fide.

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In case of charge No.5 the appellant says that this is only about wrong payments in 2 cases besides documentary evidence produced. He says the prosecution witness was not produced during the inquiry and he says in one case the wrong payment occurred due to rush of work and his integrity could not be questioned.

Finally the appellant submits that he belongs to a tribal community coming from a very backward area. He says "more privileged brothers have a social obligation to lead us to the main stream of culture? But he had been the victim of this type of behaviour bordering on social ostracism. A case has been foisted upon him and the evidence has been fabricated. He says that he is a man of children and 10 more years to go in service, the punishment has caused enormous hardship to him and his family. He prays that in view of the irregular investigation, irregular charge sheet and defective inquiry and the cruel punishment imposed on him, the punishment be set aside.

I have gone through the connected records in detail. As regards Appellant's claim that the charge sheet is not maintainable for the reasons that it violates Rule 4(1) and 4(11) of P&T Manual Vol.III and that the Disc.authority has expressed definite opinion about the commission of the offence, I find that the argument of the official has no basis. Proper enquiries have been conducted in full detail and I find that the disc.authority had at any time during the course of the enquiries exhibited any kind of bias.

In respect of the second claim that the charge sheet is defective for not citing the relevant rules which are violated and also rules have been wrongly quoted in respect of charge No.II, it is seen that this charge relates to unauthorised absence from duty after relief on 1.4.1985 at Madaram TSO from 2.4.1985 to 21.4.1985. As the appellant behaved in a manner which is unbecoming of a Government servant, Rule 3(1)(iii) of CCS (Conduct) Rules, 1964 was cited which is relevant also.

The appellant claims that preliminary investigation was not done in the case and charge sheet was issued without any investigations and unauthorised investigations were done by the

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Mail overseer, which is irregular. In this case, preliminary investigation was conducted by a team of sub divisional Inspectors and Mail overseers assisted them in contacting the depositors and recording their statements. There was nothing wrong in this. The Mail overseers never recorded the statement of the appellant. It was the depositors whose statements were recorded by the mail overseers. Thus, his claim that the charge sheet was issued based on incompetent investigation is baseless and it was only an attempt to complicate the issue.

The appellant says that at the time of the enquiries into the case, he had put in 20 years of service in clerical cadre and his fate was decided by a mail overseer. This argument, as pointed out earlier, holds no water.

In his next argument, the appellant claims that his leave orders and that of Shri P.Chandraiah for the period from 2.4.1985 to 21.5.1985 and 18.3.85 to 31.3.1985 respectively have not been produced during the enquiry though he has asked for them. Since the leave of Shri P.Chandraiah and the appellant had not been granted to either of them, the question of supplying them did not arise. To his argument that documents were not produced during enquiry, the fact remains that the original SB-3 cards and ledger cards cited in the article of charge were produced during the inquiry on 12.2.1987 and the same were perused by the appellant and hence the contention of the appellant that the documents were not produced is mis-leading.

The appellant further questions the method of cross examination and many prosecution witnesses disowned their own earlier statements. They were not examined by the P.O and they were not declared hostile by him. He also questions the method of the I.O. in conducting the enquiry. None of his arguments have any basis nor do I find any lacuna in the enquiry carried out.

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It is conclusively proved during the inquiry that he had allowed half withdrawals from the 64 RD accounts before completion of 12 months existence.

It is evident that the offences committed by the appellant as detailed in the charge sheet, have been proven except for the charge No.1 which was partially proved, and for him now to state that he is not guilty is not at all acceptable. The nature of irregularities committed by the appellant is nothing to do with his caste. The charge sheet was based on the gravity of offence. In fact, I am of the impression that the appellant has been dealt with very leniently by the disciplinary authority. I do not find any reason to interfere with the orders issued by the disciplinary authority. Accordingly, I reject the appeal.

( RADHIKA DORAISWAMY )  
Director of Postal Services  
& the Postmaster General  
Hyderabad Region, Hyd-500001

To,  
Sri I. Ramudu, Ex PA B  
Bhainsa (through the SPOs, Adilabad)

(60)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. No. 438 of 1992

Between:

I. Ramudu

Applicant

and

The Director of Postal Services,  
Andhra Pradesh Northern Region,  
Hyderabad and another.

Respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF ALL THE RESPONDENTS:

I, V.S. Krishna Murthy, S/O Sri. V. Satyam, aged 54 years  
occupation: Government Service, do hereby affirm and state  
as follows:

1. I am the Asst. Director in the % the Postmaster-General,  
Hyderabad Region, as such I am fully acquainted with all facts  
of the case. I am filing this Counter Affidavit on behalf of  
all the respondents as I have been authorised to do so. The  
material averments in the O.A. are denied, save those that are  
specifically admitted hereunder:

The brief History leading to file this case is stated  
as under:


The applicant was deputed to Madaram Township Post Office  
as an additional hand to clear the pendency of posting of  
deposits into the R.D. Pay Roll savings pass books for a  
period of 20 days from 23.2.85. But he stayed there for 23 days  
unauthorisedly. He also unauthorisedly relieved the regular  
SPM, Sri. P. Chandraiah to proceed on casual leave even in the  
absence of orders from the Divisional Superintendent of Post Offices,  
Adilabad and worked as Sub-Postmaster from 18.3.85 to 31.3.85.  
On relief at Madaram Township on 1.4.85 he did not join duty  
at Bhainsa immediately and remained unauthorisedly absent from  
2.4.85 to 21.4.85.

  
Attester

  
Deponent

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While he was unauthorisedly holding charge as Sub Postmaster Madaram Township, he misused his authority and allowed half withdrawals in 64 RD accounts, even though they were not in operation for a period of one year and there were no credit of 12 months. In respect of 32 RD accounts, he failed to pay full amounts of withdrawals and the depositors denied to have been received full amounts as mentioned in the voucher. In respect of four(4) RD accounts, he did not obtain withdrawals forms (SB.7) from the concerned depositors and payment was effected to the persons other than the depositors. Thus, moral turpitude of the applicant was involved in the cases and, therefore, a charge-sheet under Rule-14 of CCS(CCA) Rules, 1965 was issued to the applicant on 19.10.1985. Inquiry Officer/ Presenting Officer were also appointed to inquire into the articles of charge on 26.2.1986. The Inquiry Officer submitted his Inquiry Report on 25.8.88 holding the article of charge II, III and V as proved, charge No. I as not proved and charge No. IV as partially proved. Final proceedings were issued on 31.5.89 imposing the penalty of 'compulsory retirement' w.e.f. 31.5.89 A/N. Thereafter, the applicant preferred an appeal to the Directorate of Postal Services, Hyderabad Region on 10.7.89. The applicant has, in the meantime, filed O.A. No.220/90 on ~~30.3.90~~ before the C.A.T., Hyderabad bench even before the appeal dated 10.7.1989 was disposed off by the first Respondent. The Hon'ble Tribunal has, while disposing the O.A. No.220/90, on technical grounds, directed the second respondent to furnish a copy of Inquiry Officer's report to the applicant before finalisation of the disciplinary case. Accordingly, a copy of the report of the Inquiry Officer was sent to the applicant on 1.5.90 and his representation, if any was called for within 15 days. The applicant did not submit any representation. Therefore the applicant was ~~again~~ imposed with the penalty of compulsory retirement on 13.11.1990. He preferred an appeal against these orders on 4.1.1990. Even before disposal of this appeal, the applicant filed another O.A. No.179 of 1992 before the C.A.T., Hyderabad. The Hon'ble Tribunal, vide its <sup>order</sup> dated 3.3.1992 directed the first respondent to dispose of the appeal dated 4.1.1991

  
Attestor

  
Deponent

within a period of two months. Accordingly, the first respondent disposed the appeal vide Memo dated 31.3.1992 rejecting the appeal. The applicant has filed this O.A. against the said order dated 31.3.92 of the first respondent.

In reply to para 4 it is submitted that on denial of full amounts of half withdrawals by the depositors and on payment of withdrawals to the persons other than the depositors the moral turpitude of the applicant was seriously involved, and therefore, a chargesheet under Rule-14 was issued on 19.10.85 and on receiving the Inquiry Officer's report holding the articles of charge-II, III and V as proved and IV as partially proved, the applicant was compulsorily retired on 31.5.1989, but when it was directed by the Hon'ble Tribunal in O.A.No.220/90, a copy of the I.O.'s report was supplied to the applicant on 1.5.1990 with directions to submit representation, if any, within 15 days. But the applicant did not submit any representation. On examination of the case, the second respondent has imposed the penalty of compulsory retirement, vide his Memo dated 13.11.1990. The applicant preferred an appeal against the said order, dated 13.11.1990, on 4.1.1991 and even before its disposal, he again filed O.A. No.179/92 before the Hon'ble C.A.T., Hyderabad Bench. The Hon'ble Tribunal directed the first respondent on 3.3.1992 to dispose the appeal, dated 4.1.1991 within two (2) months and accordingly it was disposed on 31.3.1992 rejecting the appeal.

In reply to para 5 it is submitted that the question of supplying a copy of I.O.'s report to the applicant has been given effect w.e.f. 20.11.1990 in the case of Ramzankhan (vs) Union of India, even though a copy of the I.O.'s report was furnished in this case on 1.5.1990 and when no representation was received, the penalty of compulsory retirement was imposed on 13.11.1990.

The second respondent has <sup>no where</sup> ~~nowhere~~ expressed definite opinion about the guilt of the applicant ~~as~~ contended and, therefore, his argument that the Disc.Authority has expressed definite opinion, is not tenable.

  
Attestor

  
Deponent

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Further, the claim of the applicant that irrelevant rules are cited in the articles of charge is not tenable. He remained unauthorisedly absent in continuation of a motivative action of short payment of R.D. withdrawal amounts with a fear that he would have been facing deterrent action of suspension, etc. and his action certainly become unbecoming of a Govt. Servant. Hence, Rule 3(1) (iii) was cited. The action of the applicant in irregular payment of withdrawals in respect of 64 R.D. accounts even before completion of deposits of 12 months and period of one year, have attracted the provisions of Rule 504(1) read with Rule 523/3 of P&T Manual Vol.VI, Part II, hence these rules have been cited in the articles of charge No.II. The charge No.IV relates to short payment of amounts involving short payment of amounts of withdrawals and it amounts to unbecoming of a Govt. Servant also and hence Rule 3 (1) and (iii) have also been cited. The relevant rule <sup>violated</sup> ~~violated~~ by the applicant in wrong payment of withdrawals to persons other than depositors contravening provisions of Rule 504(iii) read with Rule 523(3) of P&T Manual Volume VI, Part-II and hence the said rule was quoted. The applicant has in other words admits the guilty, but queries the charge-sheet in application of rules.

The preliminary investigation was conducted by a squad consisting of Sub-divisional Inspectors (Postal) assisted by Mailoverseers in contacting the depositors and recording their statements. The Mailoverseers did not record any statement from the applicant as admitted by him.

The contention of the applicant that investigation was taken up by officials lower in rank than the applicant is not tenable in as much as the investigation was conducted by Sub-Divisional Inspectors (Postal), Mancherial East, Sirpur Kagaznaga and Adilabad, who are higher in rank than the applicant and charge-sheet was issued by the Divisional Supdt. Adilabad. The averment of the applicant that unauthorised and humiliating investigation was done by the Mailoverseers is baseless and this is an act of misleading the Hon'ble CAT.

The applicant has placed requisition on 12.11.1986 to supply leave orders of Shri.P.Chandraiah, Sub-Postmaster,

  
Attestor.

  
Deponent.


Madaram Township S.O. for the period from 2.4.85 to 21.4.85 and 18.3.85 to 31.3.85 but it was not granted at all to Shri.P. Chandraiah and, therefore, the question of supplying leave memos does not arise. Further, the original SB.3 card and ledger card cited in the articles of charge were perused by the applicant alongwith his Assisting Government Servant on 12.2.1987 during the inquiry. The applicant did not adduce any defence witnesses to prove that he has effected payment of withdrawals fully. Contrarily he went on finding faults with his general observations, as regards the articles of charge No.IV. Documentary evidence produced during the inquiry amply proved the article of charge No.V.

The applicant narrates his 'ST' community and facilities/ social obligations extended to it and found fault with investigation. In fact, he has committed grave irregularities which have marred the very reputation of the department in irreparable loss in the area.


The punishment of compulsory retirement commensurate the gravity of offence committed. In fact, the applicant deserves severe punishment, but taking his service and community, etc. into consideration the penalty of compulsory retirement was imposed.

For the reasons stated above, the applicant has not made out any case either on the facts or on law and there is no merit in the O.A. It is therefore prayed that this Honourable Court may be pleased to dismiss the O.A. with costs and pass such further and other order or orders as this Honourable Court may deem fit and proper in the circumstances of the case.

Solemnly and sincerely affirmed  
this...*20th*...day of *June*...1993  
and 20.6.93 signed his name in  
my presence.

  
Deponent  
Assistant Director of Postal Services  
O/o. The Postmaster-General,  
Hyderabad Region, Hyderabad-500 001

Before me

  
Attestor  
सहायक निदेशक डाक सेवा  
पोस्टमार्शल जनरल का कार्यालय,  
हयराबाद क्षेत्र, हैदराबाद-500 001  
Assistant Director of Postal Services  
O/o. The Postmaster-General,  
Hyderabad Region, Hyderabad-500 001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

HYDERABAD BENCH

AT HYDERABAD

O.A. No. 438 of 1992

Between:

I, Ramudu

Applicant

and

The Director of Postal Services,  
Andhra Pradesh Northern Region,  
Hyderabad.

and others

Respondents



E  
2/21/97

Filed by:—  
N. R. Dewary  
S. K. Ch

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT: HYDERABAD

O.A.NO: 438 OF 1992

BETWEEN:

I. Ramudu S/o I. Ramaiah,  
aged about 49 years, Occ.LSG/Postal Asst.  
(Compulsorily Retired) Bhainsa,  
Adilabad Dist. ..

APPLICANT

A N D

1. Director of Postal Services,  
Hyderabad Region, Hyderabad.
2. Superintendent of Post Offices,  
Adilabad Division, Adilabad.

RESPONDENTS

WRITTEN ARGUMENTS FILED ON BEHALF OF APPLICANT

May it please your Lordships:

It is respectfully submitted that the charge sheet is not maintainable as it expressed and positive conclusion of the commission of the offense has been drawn. This is against the provisions of Rule 4(1) of P & T Vol.III. as observed by the Hon'ble Calcutta vide 1987 (3) ATC Calcutta, that a charge sheet of the type though assailed was felt to be acceptable only for the reason that the Govt. Servant admitted the charges. In the case of the applicant, he did not admit the charge and as per the case law cited the charge sheet is liable to be assailed.

2. It is submitted that the I.O. held charge No:1 as not proved. The Charge No.2 relates to overstaya which has to be regularized under FR 17 if necessary applying Rule 62 of P & T Manual Vol.III but the rule cited is 3(1) (iii) of CCS (Conduct) Rules, 1964. The I.O. held that the applicant might have posted the leave application late but this was not an original allegation and the applicant was denied opportunity to prove his innocence. In respect of charge No.3 there is no allegation of

CONTD..



any malpractice and the only rule applicable was Rule 3(1)(ii) which was not quoted. In respect of charge No:4 also there was no relevant rules quoted. In respect of charge No:5, the I.O. himself admitted that relevant rules were not quoted.

3. It is further submitted that Department prescribed certain limits of investigation and the lowest investigating officer is the Inspector of Post Offices. In the applicant's case the enquiries about short payments were made by Mail Overseer who has no authority to do so and that too without any complaint. The entire action against the applicant was mala fide.

4. It is further submitted that the document i.e., the leave applications of the applicant and Sri P.Chandraiah were found relevant but not produced. Withholding of documents found relevant was assailed vide AIR 1971 Delhi 133; 1982 CWN 538. The applicant requested for production of the S.B. Ledger as all the transactions were to be entered therein and which happened to be basic record of S.B. Transactions, but the SB Ledger was not produced which is in violation of observation of the Hon'ble Supreme Court in 1961 SC 1623.

5. It is further submitted that four of the Prosecution Witnesses were not produced at all to deny the opportunity to the applicant to cross examine them.

6. It is further submitted that the list of documents as explained elsewhere not produced before commencement of the regular enquiry.

In all there are 5 charges against the applicant which are assailed as follows:

- (a) The I.O. held charge No.1 as not proved. Disciplinary authority did not record reason for disagreement and communicated the I.O.'s report but while finalizing the case, disagreed with the I.O. This is irregular vide case law 1993 (23) ATC 726 Ahmedabad.
- (b) Charge No:2: Leave application was submitted and received by the Superintendent of Post Offices, may be late, though posted correctly. Leave salary was also drawn by Postmaster, Mancherial. There are several instances when copies of the leave orders are not received by officials but communicated to the Postmaster to enable him to draw the salary. If no leave order is received the Postmaster would not have drawn the salary. The proof that the leave was sanctioned is that the leave salary was paid to the applicant. His absence was on Medical grounds and his medical certificate was not subjected to second verification. The leave sanctioning authority has no right to refuse medical leave unless the medical certificate produced by the applicant was proved to be bogus. Even according to Superintendent of Post Offices, Adilabad the Medical Certificate was received on 16.4.1985 and the applicant was charge sheeted on 19.10.1985. The Superintendent of Post Offices, has even not called for the explanation of the applicant for late submission of the Medical Certificate. He did not make any endorsement whether the applicant posted M.C. late and he did not include in the charge sheet the allegation that the applicant posted the M.C. late but the I.O. in his report says that the applicant posted the M.C. late. Since this item was not a part of the charge sheet, it is a new allegation and the I.O. forbidden to

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pass such a verdict without giving reasonable opportunity to the applicant to defend himself as per the explanation below Rule 14 (23) of CCS (CCA) Rules, 1965.

(c). It is further submitted that the only Rules applicable to officials of Postal and Telecommunication Departments regarding unauthorized absence are Rule 62 and 63 of P & T Manual Vol.III. As per Rule 62 unauthorized absence should be treated as dies-non and as per Rule 63 disciplinary action may be initiated for the unauthorized absence. The isolated instance of the applicant's absence from duty from 1.4.1985 to 20.4.1985, even unauthorized does not call for disciplinary action as per Rule 63 of P & T Manual Vol.III. Whether absence of 20 days, authorized or unauthorized, but in one spell cannot be the course of disciplinary action for an official with more than 20 years of service. The only punishment in such an isolated case can be treating the period as dies non. It was held by the Hon'ble CAT Jabalpur that any charge relating to unauthorized absence does not involve misconduct vide 1989 (11) ATC 340 Jabalpur. It was also held by the Hon'ble CAT Ernakulam that if absence is due to compelling reasons it cannot be treated as unauthorized absence (1989 (8) ATC 26 Ernakulam). In the applicant's case he had submitted periodical certificates from qualified Doctor and the Superintendent of Post Offices did not dispute the same nor had asked the applicant to appear before the Civil Surgeon which shows that the absence of the applicant was due to the compelling reasons of sickness and the Superintendent of Post Offices has no ground to issue a charge sheet to the applicant for such absence which was not challenged by him and for which the applicant was paid salary. The I.O. observes that the Postmaster, Mancherial would have drawn the salary of the applicant by mistake, but the Postmaster, Mancherial was not produced as witness to say that

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drawal was by mistake. On this point the I.O. clearly assumed the role of the witness by stating in his report the expected version of the Postmaster also, as to what he wanted the Postmaster, Mancherial to say, had he been produced as a witness. Such a report of I.O. is not quasi-judicial. This charge is groundless. The I.O.'s conclusion is based on surmises and conjunctures as observed by the High Court of Patna vide AIR 1967 Patna 133 and 1992 (1) SLJ CAT Madras.

(d). Charge No.3:

It is further submitted that no witness was produced to prove the charge. It was held by the Supreme Court that no material can be relied upon to abolish a contested fact which are not spoken to by persons who are competent to speak about them and subjected to cross examination by the Party against whom they are sought to be used. (1991 (15) ATC 352 Ernakulam, and 1993 (1) SLJ CAT 172 Ernakulam.) In the absence of witnesses the charge cannot be held as proved. The documents were produced on 21.4.1988 i.e., after the prosecution case was over. The applicant was handicapped that he could not cross examine the witnesses on these documents as they were not produced in time. Rule 5(iv) of P & T Manual Vol.III clearly states that one has right to have all the documents before the regular hearing is commenced and by producing the documents after all the witnesses are examined, the charge cannot be taken as proved.

(e). Charge No.4:

It is further submitted that the documents were produced on 20.4.1988 after examination of all prosecution witnesses, enabling the applicant to cross examine them about their genuineness. For the reasons submitted above this charge cannot be held as proved. Added to this even the listed witnesses were not produced. The charge relates to alleged short payments

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and atleast some of the depositors were literate. It is only a matter of common sense that in case of short payments there should be complaints within the reasonable time. There was no complaint and this suo motto action of the Superintendent of Post Offices to proceed against the applicant in the absence of complaints is malafide and an authority with malafide intention cannot act as disciplinary authority. The Superintendent of Post Offices, was not only bent upon punishing the applicant but also to humiliate the applicant by asking a Mail Overseer who is the subordinate of the applicant to make enquiry against the applicant. Since the action of the Superintendent of Post Offices is malafide his findings that the charge is proved should prick legal conscience.

(f). Charge No.5:

This is regarding some wrong payments and no motive is attributed to the applicant. It was held by the Hon'ble CAT Ahmedabad (vide 1989 (9) ATC 509 Ahmedabad and 1976(1) SLR 133 Delhi) that in the absence of allegations of personal gain or corrupt practices the irregularity is beyond the disciplinary jurisdiction of the department. It was held by the Hon'ble Supreme Court that misconduct means misconduct arising from ill motive vide (1979) 2 SCC 286, 1979 SCC (L & S) 157, AIR 1979 SC 1022, 1989 (9) ATC 369 Calcutta. In busy office if some wrong payment takes place inadvertently, it is not a misconduct at all and if there is no misconduct charge sheet can not be issued and in the applicant's case this charge is void ab-initio.

7. It is further submitted that the applicant submitted an appeal to the Director of Postal Services, Hyderabad, highlighting all the omissions and commissions of disciplinary authority. As observed by the Hon'ble CAT Ahmedabad in case reported 1992 (19) ATC 374 the appellate authority has to discuss all the

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PAGE: 7 :

points raised in the appeal and pass a speaking order, but the appellate authority utterly failed to do so driving the applicant to this Hon'ble Tribunal. For an instance, the applicant submitted that the charge sheet was defective for the disciplinary authority expressed a definite opinion about the commission of the offense. The appellate authority is silent on this point but says that there is no basis to say that the disciplinary authority exhibited bias at any time. What was expected of the appellate authority was to admit or deny whether the disciplinary authority expressed a definite opinion. Ambivalence cannot substitute a definite finding expected of the appellate authority.

8. It was submitted by the applicant that the relevant rules about unauthorized absence were not quoted. As far as P & T officials are concerned, the only relevant rules regarding unauthorized absence is rule 62 and 63 of P & T Manual Vol.III and the Govt. of India have given strict instructions that one should not resort to conduct Rule 3 when the act is in violation of other rules, (Dept. of Personnel O.M.No.11013/18/76-Estt.(A) dated 7.2.1977. The Director of Postal Services was silent on this point also but says that the applicant acted in a manner of unbecoming of a Govt. servant by unauthorisedly absenting from duty and so conduct rules were cited. It was contended by the applicant that the investigation was done by the subordinate of the applicant violating the departmental rules. The Director of Postal Services says that a team of Inspectors and Mail Overseers made the enquiry but the fact is that no Inspector appeared as witness regarding the payments but the M.Os. appeared and given statement that they inquired into the short payment. When making investigation against a Sub-Postmaster even by team, the Mail Overseer should not be included in the team.

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9. It is further submitted that it was submitted by the applicant to the Director of Postal Services that the fate of a clerical cadre official with more than 20 years service was by a Mail Overseer. The Director of Postal Services simply says that the plea does not hold water. The Director of Postal Services, has no reason to adhere to this finding.

10. It was further submitted that the leave orders of the applicant and Mr. Chandriah were not produced during the enquiry. The DPS says that the leave was not granted. The leave pertains to 1985 and if the leave is not granted so far, there is something seriously wrong with the administration. It may also be submitted that Sri Chandraiah was not proceeded against for availing leave, handing over charge to the applicant.

11. It was submitted that the documents cited in the charge sheet were not produced. The DPS says that SB 3 and Ledger cards were produced. These were not the documents which the prosecution failed to produce and there is no valid explanation for not production of the same.

12. It was submitted that the conduct of enquiry was irregular, mainly because of irregular cross examination of witnesses. The DPS says that my contention has no basis but does not say why.

13. For the remaining part of my detailed appeal, the DPS simply says that it is conclusively proved that the applicant allowed half withdrawals. If this contention is acceptable, I should have been exonerated of all other charges. The perfunctory disposal of the appeal by the appellate authority has driven the applicant to file the O.A. before the Hon'ble Tribunal.

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IN THE CENTRAL ADMINISTRATIVE  
TRIBUNAL: HYDERABAD BENCH:  
AT: HYDERABAD.

O.A. NO: 438 OF 1992

BETWEEN:

I. Ramudu ..

APPLICANT

AND

DIRECTOR OF POSTAL  
SERVICES, HYDERABAD  
REGION, HYDERABAD AND  
ANOTHER. RESPONDENTS.

WRITTEN ARGUMENTS FILED ON BEHALF OF  
THE APPLICANT.

FILED ON: 20.10.1995.

*Recd copy  
12/11/95  
for N.R. Dammij  
Sru*

FILED BY:

SANKA RAMA KRISHNA RAO,  
ADVOCATE, 1-1-230/9, ANDHRA BANK  
LANE, CHIKKADPALLY, HYDERABAD.20.

COUNSEL FOR THE APPLICANT.

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14. It is submitted that the punishment is totally disproportionate to the allegations made against the applicant. It may be true that some negligence could justifiably or unjustifiably be attributed to the applicant, but there is no ground to suspect the applicant's integrity or honesty. In similar circumstances the Hon'ble CAT Chandigarh vide 1988 (8) ATC 882 held that the punishment of compulsory retirement was disproportionate and modified the same to a minor penalty.

It is therefore respectfully prayed that the Hon'ble Tribunal may be pleased to direct the Respondents to grant all the reliefs prayed for in the O.A. with all the consequential benefits and be pleased to pass such other and further order or orders as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Hyderabad.

20.10.1995.

  
COUNSEL FOR THE APPLICANT

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH

~~R.A./M.A./C.A.NO.~~

ORIGINAL APPLICATION NO. 438/92 OF 199

TRANSFER APPLICATION NO.

OLD PETN.NO.

CERTIFICATE


Certified that no further action is required to be taken and the case is fit for consignment to the Record Room(Decided)

Dated: 17/9/96.

Counter Signed:

Section Officer, Court Officer.

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Signature of the Dealing  
Assistant.

(710)

CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : HYDERABAD.

C.A. No. 438/92

T.A. NO.

DATE OF DECISION 26-8-96

I. Ramudu

(PETITIONER (S))

S. Ramakrishna Rao

ADVOCATE FOR THE PETITIONER(S)

VERSUS

Director of Postal Services  
Andhra Pradesh Northern Region  
Hyderabad and another

RESPONDENT (S).

N.R. Devaraj

ADVOCATE FOR THE RESPON-  
DENT (S).

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI, VICE-CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

1. Whether Reporters of local papers may be allowed to see the Judgement ? yes
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgement ? no
4. Whether the Judgement is to be circulated to the other Benches ?

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Judgement delivered by Hon'ble Justice Mr. MG. Chaudhari, VC

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH  
AT HYDERABAD

OA.438/92

dt.26-8-96

Between

I. Ramudu

: Applicant

and

1. Director of Postal Services  
Andhra Pradesh Northern Region  
Hyderabad

2. Supdt. of Post Offices  
Adilabad Division  
Adilabad

: Respondents

Counsel for the applicant

: S. Ramakrishna Rao  
Advocate

Counsel for the respondents

: N.R. Devaraj  
SC for Railways

CORAM

HON. MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

HON. MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

## Judgement

Oral order (per Hon. Mr. Justice M.G. Chaudhari, VC)

Counsel for the applicant absent. Mr. N.R. Devaraj  
Senior CGSC present.

1. We have heard the submissions of Mr. N.R. Devaraj. The applicant is aggrieved by the order of compulsory retirement imposed upon him by the Respondent-1 vide memo dated 13-11-90. Appeal against the said order was also rejected by the Appellate authority. Briefly stated, a disciplinary proceeding was held against the applicant under Rule 14 of CCS(CCA) Rules, 1965. The applicant participated at the inquiry. There were five articles of charge framed against the applicant, inter-alia relating to overstay, taking charge of the office in the absence of the order from the Divisional office, allowing withdrawals in as many as 64 RD Accounts illegally as these accounts were not in operation and thereby committing breach of the rules, failing to pay full amounts to the withdrawals as accounted in respective pass books and RD Books of transactions and allowing irregular withdrawals of certain RD accounts while functioning as SPM, Madaram Township S.O. and thus contravening provisions of Rule 3(1)(ii) and (iii) of CCS(Conduct) Rules, 1964 as also acting in contravention of Rule 504 (i)(iii) of P&T Vol.VI, Vol.II read with Rule 523(3) and further contravening provisions of Rule 3(1)(ii)(iii) of CCS(Conduct) Rules, 1964 and 504 (iii) read with Rule 523(iii) Vol.VI, Part II of the P&T Manual. The Inquiry Officer held that Articles of charge relating to overstay of 20 days was not proved but the remaining charges were proved. The disciplinary authority although agreed with the conclusion that allegation of overstay under Article 1 was not proved but disagreed with other conclusions pertaining to taking charge of

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office in the absence of orders from the office which he regarded more serious in nature and held it proved. He agreed with the findings of the inquiry officer on other articles of charge holding that the applicant had committed various irregularities and had contravened the provisions of the Rules and thus held that he was not considered fit to be retained in the Department in the interest of public service. He also held that it was revealed that the applicant had acted dishonestly in dealing with the public transactions and found him to be untrustworthy as officer deserving deterrent punishment commensurate with the seriousness of the charges proved. Consequently, he passed the order of compulsory retirement dated 30-5-1989.

2. The applicant preferred an appeal to the Director of Postal Services on 10-7-1989. He, however, filed OA.220/90 on 30-3-1990 challenging the proceedings. By its order the Tribunal directed R-2 to furnish a copy of the Inquiry report to the applicant before finalisation of the disciplinary case. Accordingly, a copy of the report was sent to the applicant but he did not submit any reply. It was thereafter that by further order dated 13-11-1990, the Disciplinary authority, once again passed the order of compulsory retirement by giving detailed reasons in support of its conclusion. Against that order the applicant preferred an appeal to the Appellate authority. While the appeal was pending, the applicant again rushed to the Tribunal by filing OA.179/92. The Tribunal directed, the appeal to be disposed of within a period of two months by order passed in that OA. Thereafter the Appellate authority passed the order on 31-3-1992 rejecting the appeal.

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3. We have gone through the appellate order and we find that the Appellate authority has dealt with the points raised by the applicant in the memorandum of appeal.

4. It is well settled that the Tribunal cannot reappreciate the evidence nor can go into the question of proportionality of the punishment. The limited scope in which the Tribunal can interfere is where an illegality in the proceedings is pointed out or the order suffers from malafides. In the instant case, the applicant, firstly, contends that the chargesheet, itself was illegally issued as there was pre-drawn conclusion of the commission of offences indicated in the charge memo and therefore, it was defective. This ground does not impress us, as it had to be raised in the earlier OA and it cannot be raised at this stage. Secondly, we have gone through the Articles of charge and we do not find that any conclusion of guilt as such has been drawn. The applicant is clearly confusing between an allegation on the basis of which a charge is framed and a conclusion drawn at the enquiry. Thirdly, there was a regular inquiry held in which the applicant had participated. The manner in which the charge sheet is framed has no relevance in the findings based on the evidence.

5. The second ground which has some semblance of permissible ground to be raised is that some of the listed documents were not produced during the examination of the witnesses and the inquiry officer had cross-examined certain witnesses whose statements were recorded during the preliminary inquiry but these witnesses had resiled from them. Suffice it to say that the number of listed documents is not a pointer to the material evidence or its sufficiency and since the available material was taken into account and the charge has been held

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proved, it is not open to the applicant to make this grievance. Moreover, when the witnesses resiled from earlier statements they could be cross-examined ~~legally~~ legally and the applicant had every opportunity to reexamine them in his own turn. The procedure adopted by the inquiry officer cannot be said to introduce any illegality in the proceedings of the inquiry. These aspects have been examined by the Disciplinary authority as well as the Appellate authority.

6. The rest of the grounds raised relate to the merits and involve reappraisal of the evidence which is not permissible to be done by the Tribunal. It is contended that the Disciplinary authority had partly disagreed with the finding of the inquiry officer in respect of article No.1 of the charge. However, we find that in support the Disciplinary authority has given cogent reasons and his findings having been confirmed by the Appellate authority and no advantage, therefore, can be drawn by the applicant from that circumstance.

7. It is also clear from the order of the Appellate authority that there was no irregularity in carrying out investigation on the basis of which the charge sheet was issued in as much as it was conducted by an officer who was higher in rank to the applicant and also because the charge sheet was issued by the Divisional Superintendent. ~~\_\_\_\_\_~~

8. ~~Apart from the aforesaid grounds~~ we found no other point raised which would require consideration by us without reappreciation of the evidence which cannot be done.

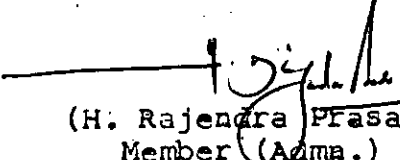
9. Misconduct proved against the applicant is of a very serious nature. The authorities have already taken a lenient view and imposed the lesser penalty of compulsory retirement.

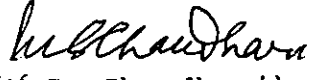


It cannot be stated that the punishment is perverse so as to call for our interference.

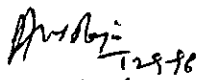
10. In the light of the above discussion we held that there is no merit in the application and the OA is liable to be dismissed.

11. The OA is dismissed. No order as to costs.

  
(H. Rajendra Prasad)  
Member (Adm.)

  
(M.G. Chaudhari)  
Vice Chairman

Dated : August 26, 96  
Dictated in Open Court

  
Deputy Registrar (Dce)

sk

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-6-

O.A.438/98

To

1. The Director of Postal Services,  
A.P.Northern Region, Hyderabad.
2. The Supdt.of Post Offices,  
Adilabad Division, Adilabad.
3. One copy to Mr. S.Ramakrishna Rao, Advocate, CAT.Hyd.
4. One copy to Mr. ~~Mr. Rajaram~~ N.R.Devraj, SC for Rlys,  
CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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07/10/96

I COURT

TYPED BY

CHECKED BY

COMPALED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI  
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

Dated: 26-8-1996

~~ORDER / JUDGMENT~~

M.A/R.A./C.A. No.

in

O.A.No.

638/92

T.A.No.

(w.p.)

Admitted and Interim Directions  
Issued.

Allowed.

Disposed of with directions

Dismissed

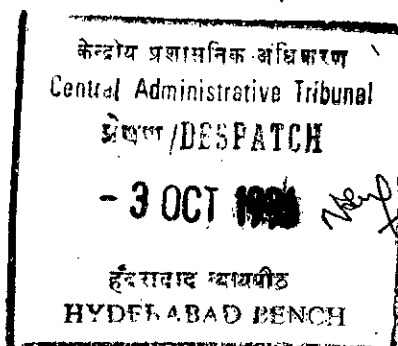
Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

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## Judgement

Oral order (per Hon. Mr. Justice M.G. Chaudhari, VC )--

Counsel for the applicant absent. Mr. N.R. Devaraj  
Senior CGSC present.

1. We have heard the submissions of Mr. N.R. Devaraj. The applicant is aggrieved by the order of compulsory retirement imposed upon him by the Respondent-1 vide memo dated 13-11-90. Appeal against the said order was also rejected by the Appellate authority. Briefly stated, a disciplinary proceeding was held against the applicant under Rule 14 of CCS(CCA) Rules, 1965. The applicant participated at the inquiry. There were five articles of charge framed against the applicant, inter-alia relating to overstay, taking charge of the office in the absence of the order from the Divisional office, allowing withdrawals in as many as 64 RD Accounts illegally as these accounts were not in operation and thereby committing breach of the rules, failing to pay full amounts to the withdrawals as accounted in respective pass books and RD Books of transactions and allowing irregular withdrawals of certain RD accounts while functioning as SPM, Madaram Township S.O. and thus contravening provisions of Rule 3(1)(ii) and (iii) of CCS(Conduct) Rules, 1964 as also acting in contravention of Rule 504 (i)(iii) of P&T Vol.VI, Vol.II read with Rule 523(3) and further contravening provisions of Rule 3(1)(i)(iii) of CCS(Conduct) Rules, 1964 and 504 (iii) read with Rule 523(iii) Vol.VI, Part II of the P&T Manual. The Inquiry Officer held that Articles of charge relating to overstay of 20 days was not proved but the remaining charges were proved. The disciplinary authority although agreed with the conclusion that allegation of overstay under Article 1 was not proved but disagreed with other conclusions pertaining to taking charge of



office in the absence of orders from the office which he regarded more serious in nature and held it proved. He agreed with the findings of the inquiry officer on other articles of charge holding that the applicant had committed various irregularities and had contravened the provisions of the Rules and thus held that he was not considered fit to be retained in the Department in the interest of public service. He also held that it was revealed that the applicant had acted dishonestly in dealing with the public transactions and found him to be untrustworthy as officer deserving deterrent punishment commensurate with the seriousness of the charges proved. Consequently, he passed the order of compulsory retirement dated 30-5-1989.

2. The applicant preferred an appeal to the Director of Postal Services on 10-7-1989. He, however, filed OA.220/90 on 30-3-1990 challenging the proceedings. By its order the Tribunal directed R-2 to furnish a copy of the Inquiry report to the applicant before finalisation of the disciplinary case. Accordingly, a copy of the report was sent to the applicant but he did not submit any reply. It was thereafter that by further order dated 13-11-1990, the Disciplinary authority, once again passed the order of compulsory retirement by giving detailed reasons in support of its conclusion. Against that order the applicant preferred an appeal to the Appellate authority. While the appeal was pending, the applicant again rushed to the Tribunal by filing OA.179/92. The Tribunal directed, the appeal to be disposed of within a period of two months by order passed in that OA. Thereafter the Appellate authority passed the order on 31-3-1992 rejecting the appeal.

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*well*

It cannot be stated that the punishment is perverse so as to call for our interference.

10. In the light of the above discussion we hold that there is no merit in the application and the OA is liable to be dismissed.

11. The OA is dismissed. No order as to costs.

प्रमाणित प्रति  
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*J. Sune* *13/9/96*

मान्यवर न्यायाधीश  
COURT OFFICER  
केन्द्रीय प्रशासनिक न्यायालय  
Central Administrative Tribunal  
हैदराबाद बेंच  
HYDERABAD BENCH

sk

केस संख्या	OA 438/92
CASE NUMBER	OA 438/92
निर्णय का तिथि	26.8.96
Date of decision	26.8.96
निर्णय का तिथि	1.10.96
Date of decision	1.10.96
अन्य	
Signature	

proved, it is not open to the applicant to make this grievance. Moreover, when the witnesses resiled from earlier statements they could be cross-examined ~~legally~~ legally and the applicant had every opportunity to reexamine them in his own turn. The procedure adopted by the inquiry officer cannot be said to introduce any illegality in the proceedings of the inquiry. These aspects have been examined by the Disciplinary authority as well as the Appellate authority.

6. The rest of the grounds raised relate to the merits and involve reappraisal of the evidence which is not permissible to be done by the Tribunal. It is contended that the Disciplinary authority had partly disagreed with the finding of the inquiry officer in respect of article No.1 of the charge. However, we find that in support the Disciplinary authority has given cogent reasons and his findings having been confirmed by the Appellate authority and no advantage, therefore, can be drawn by the applicant from that circumstance.

7. It is also clear from the order of the Appellate authority that there was no irregularity in carrying out investigation on the basis of which the charge sheet was issued in as much as it was conducted by an officer who was higher in rank to the applicant and also because the charge sheet was issued by the Divisional Superintendent.

8. Apart from the aforesaid grounds we found no other point raised which would require consideration by us without reappraisal of the evidence which cannot be done.

9. Misconduct proved against the applicant is of a very serious nature. The authorities have already taken a lenient view and imposed the lesser penalty of compulsory retirement.

*Wm*

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