

CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

RECORD SECTION INDEX SHEET

O.A. No. 892 ~~890~~ /1996

a) Applicant (S) P.T.A. A.D. Mohli

Versus

b) Respondent (S) The Director of Postal Services
City Region Hyderabad

Sl.No.	Description of Documents.	Page. No.
	<u>Part. I</u>	
	Order Sheet	1-42
	Original Application <u>19-7-96</u>	3-12
	Ma-terial Papers	13-35
	Order dated <u>13-8-96</u>	36-38
	Counter Affidavit.	
	Reply Affidavit	
	Order dated	
	<u>Part. II</u>	
	Duplicate Order Sheet. <u>[Signature]</u>	
	" Application	
	" Material Papers	
	" Order dt.	
	" Counter Affidavit	
	" Reply Affidavit	
	" Order dt.	
	<u>Part-III</u>	
	Vakalat <u>✓ 19-7-96</u>	
	Notice Papers <u>✓</u>	
	Memo of Appearance <u>✓</u>	

*Part. III and II
Devised
P. Singh
22/2/2007*

*Cus
12/9/98*

②

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH:

O.A.NO

892

1996.

A.D. Varu

Applicant (S)

V E R S U S

The Director of postal Services City Region,

Hud & another

Respondent (S)

Date

Office Note

Orders

5-8-96

At request on behalf
of Mr. S. Ramakrishna Rao
adjourned to tomorrow i.e.
6-8-96.

HHRP
M(A)

HMGCT
VC

BO

Adjourned to tomorrow (7-8-96)

HHRP
M(A)

HMGCT
VC

BO

12-8-96

At the request of applicant
Guided adjourned to 13-8-96

HHRP
M(A)

HMGCT
HVR

89246

①

DATE	OFFICE NOTE	ORDERS
13.8.96.	<p>Shri S.Ramakrishna Rao Shri N.R.Devaraj, Sr. CGSC</p>	<p>The question of competency of the disciplinary authority is raised. O.A. admitted. Issue notice to the respondents Shri N.R.Devaraj, Senior CGSC appears for the respondents. Issuance of notice dispensed with. No interim relief.</p> <p>By consent O.A. taken up for orders.</p> <p>It is stated that the appeal filed by the applicant against the impugned order to the Chief P.M.G., A.P.C. on 24.4.96 has not so far decided. From the appeal (Annexure II) we find that contention about the competency of the authority who has passed the impugned order has been raised. We think it appropriate that the appellate authority should decide the appeal on merits dealing with the above contention also. Hence the Chief P.M.G., A.P.Circle is directed to dispose of the appeal of the applicant on merits within a period of two months from the date of communication of this order. The result of appeal shall be conveyed to the applicant.</p> <p>The O.A. is disposed of in terms of the above directions.</p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div data-bbox="1182 2206 1305 2335"> <p><i>[Signature]</i> HHRP M(A).</p> </div> <div data-bbox="1354 2206 1516 2335"> <p><i>[Signature]</i> HMGCU VC.</p> </div> </div>

my
13/8

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD.

ORIGINAL APPLICATION NO 892 of 1996.

Shri A.D. Varey Applicant(S)

V E R S U S

Dir. of Postal Services: City Regn,
Hyderabad & another Respondent (S)

The application has been submitted to the Tribunal by
Shri S. Ramakrishna Rao Advocate/~~Party in person~~

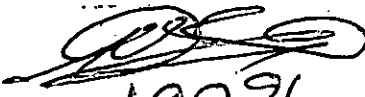
under section 19 of the Administrative Tribunal Act, 1985 and
the same has been scrutinised with reference to the points
mentioned in the check list in the light of the provisions in
the Administrative Tribunal (Procedure) Rules 1987.

The application is in order and may be listed for
admission on _____


Scrutiny Asst. 19.12.96


DEPUTY REGISTRAR (JUDL)

11. Have legible copies of the annexure duly attested been filed. *87*
12. Has the Index of documents been filed, and pagination done properly. *87*
13. Has the applicant exhausted all available remedies. *87*
14. Has the declaration as required by item NO. 7 of form, I been made. *87*
15. Have required number of envelops (file size) bearing full address of the respondents been filed. *87*
16. (a) Whether the relief sought for, arise out of single cause of action. *87*
(b) Whether any interim relief is prayed for. *87*
17. In case an MA for condonation of delay in filed is it supported by an affidavit of the applicant. *87*
18. Whether this case can be heard by single Bench. *No*
19. Any other point. *87*
20. Result of the scrutiny with intial of the scrutiny clerk. *May 28 filed*


Scrutiny Assistant.

Section Officer.

Deputy Registrar.

Registrar.

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

Dairy NO. 2369

Report in the Scrutiny of Application.

Presented by..... SPK Rao Date of Presentation. 15/7/96
Applicant (S)..... AD Venu
Respondent (S)..... DRS, CR, Bd & another
Nature of grievance..... Dismissal
No of applicants..... 1 NO. of Respondents... 2

CLASSIFICATION

subject..... Dismissal (NO.) Department..... Postal (NO.)

1. Is the application in the proper form,
2 (three complete sets in paper books
form in two compilations. ✓
2. Whether name, description and addressed
of all the parties been furnished in the cause
title. ✓
3. (a) Has the application been duly signed
and verified. ✓
(b) Have the copies been duly signed. ✓
(c) Have sufficient number of copies of the
application been filed. ✓
4. Whether all the necessary parties are impleaded. ✓
5. Whether english translation of documents in
a language other than english or Hindi been filed. ✓
6. Is the application on in time. (See Section 21) ✓
- 7.. Has the Vakalatnama/Memo of Apperance/authorisation
been filed. ✓
8. It the application maintainability.
(U/s 2, 14, 18, .or U.R. 8 etc.) ✓
9. Is the application accompanied IPO/DD, for
Rs. 50/- ✓
10. Has the impugned orders Original, duly attested
legitable copy been filed. ✓

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

INDEX SHEET

O.A.NO. 892 of 1995

CAUSE TITLE A.D. Veda

VERSUS

The Director of Postal Services, City Region,
Hyd & another

S.No.	Description of documents	Page NO.
1.	Original Application	1 to 8
2.	Material papers	9 to 31
3.	Vakalat	1
4.	Objection Sheet	-
5.	Spare Copies	2
6.	Covers	2

Reg:- To set aside the Memo dt. 12/4/96
passed by R1, dismissing the
applicant from service.

: PAGE NO. 10 :

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

Bench

O.A. NO: 892 OF 1996

Dismissal
ATTEN/POSTAL

BETWEEN:

A.D. Varu

APPLICANT Postal

A N D

(C)

The Director of Postal Services, City Region,
Hyderabad and another.

CHRONOLOGICAL STATEMENT OF EVENTS

Sl.No: Date:

E V E N T S

1. 12.4.1996 The applicant was dismissed from service by the 1st Respondent on certain alleged irregularities.
2. 24.4.1996 The applicant appealed to the IIInd Respondent requesting to consider his case sympathetically and set aside the punishment order for which there is no response.

As the applicant has no other alternative except to approach this Hon'ble Tribunal, and had therefore, filed this application before the Hon'ble Tribunal.

Hyderabad
6.7.1996

COUNSEL FOR THE APPLICANT.

contd.....

Recd Copy
17/7/96
R. N. D. Dery
R N. D. Dery

(40)

: PAGE NO. 9 :

APPLICATION FILED UNDER SECTION 19 OF ADMINISTRATIVE TRIBUNALS
ACT, 1985.
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCHAT: HYDERABAD

O.A. NO: 892 OF 1996

BETWEEN:

A.D. Varu

APPLICANT

A N D

Director of Postal Services, City Region,
Hyderabad and another.

RESPONDENTS

INDEX

S.No:	Documents relied upon:	Ann.No:	Page No.
1.	APPLICATION	--	1 to 8
2.	Impugned Memo No.ST/Disc/ HD/22/95 dt.12.4.1996 of 1st Respondent.	I	9 to 16
3.	Appeal of the applicant to IInd Respondent dt.24.4.96	II	17 to 31

HYDERABAD
6.7.1996

SIGNATURE OF THE APPLICANT

COUNSEL FOR THE APPLICANT.

FOR USE IN TRIBUNAL'S OFFICE:

Date of Receipt: 0

Registration No.

Signature:
for Registrar.

contd.....

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT: HYDERABAD

O.A. No. 892 of 1996

BETWEEN:

A.D. Varu, S/o Varghese,
aged about 51 years, Occ. LSG/Postal
Assistant (dismissed), Jubilee Head Office,
Hyderabad South East Division, Hyderabad.

APPLICANT

A N D

1. The Director of Postal Services,
City Region, Hyderabad.
2. The Chief Postmaster General,
A.P. Circle, Hyderabad.

RESPONDENTS

DETAILS OF THE APPLICANT:

Address for service of summons/
notices on the applicant: SANKA RAMA KRISHNA RAO
ADVOCATE, 1-1-230/9,
Andhra Bank Lane,
Chikkadpally, HYDERABAD.20.

1. Particulars of the order against which the application is
made:

"This application is against the impugned Memo
No. ST/Disc/HD/22/95 dated 12.4.1996 of Director of Postal
Services (Hyderabad City Region) Office of Chief Postmaster
General, A.P. Circle, Hyderabad, dismissing the applicant from
service."

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.....

[Signature]

4. FACTS OF THE CASE:

(1) The applicant respectfully submits that he was working as LSG/Sub-Postmaster, Amberpet Sub-Post Office during which time certain frauds alleged to have taken place. A charge sheet was issued and the applicant was dismissed from service against which he submitted an appeal on 24.4.1996. (Annex.I).

(2) The applicant humbly submits that his dismissal from service was not covered under any rule. In his appeal he brought to the notice of the appellate authority about the fallaciousness of the departmental authorities in recognizing the applicant's so called irregularities and the applicant being punished for no fault of him by an authority not empowered to do so.

(3) It is further submitted that the applicant was an LSG appointed by the Director of Postal Services, some where was a circle cadre. Subsequently, the LSG was abolished and though the head of the division was the appointing authority for LSG after divisionalisation the applicant who were appointed to LSG cadre were appointed on under Article 311 of the Constitution of India and the applicant could not have been awarded with any major penalty by any one lesser than a Director and as the Director of Postal Services who had nothing to do with the appointment of the applicant in LSG cadre have no right to award major penalty on him without a general or specific order from the President of India.

contd.....

Shree

(4) It is further submitted that one of the submissions in the appeal of the applicant against his dismissal is that the Director of Postal Services has no power to punish the applicant unless he was authorized to do so by a general or specific order. The Director General, Posts, New Delhi, some where in 1989 issued a fallacious order that the cases of those appointed by DPS would be decided by the DPS. It is humbly submitted that the question is not whether who appointed the applicant to LSG Cadre, but is whether who is the appointing authority of the LSG Official at the time of the dismissal of the applicant. Schedule to CCS (CCA) Rules is a part of the rules and CCS (CCA) Rules are promulgated by the President and no subordinate authority has a right to go against the rules and D.G. Posts is quite a subordinate to the President by two stages as the applicant understands and he had no power to issue an order in contravention of CCS (CCA) Rules and the schedule issued under it in the name of the President of India. This means the applicant was dismissed from service without statutory authority. The applicant had invited the attention of the authorities in his appeal to the decision rendered by the Hon'ble CAT Ernakulam vide 1992 (19) ATC 625, where in it was clearly laid down that the DPS cannot assume disciplinary power over LSG Officials appointed by DPS in the absence of Presidential sanction (after the cadre was divisionalised). The applicant also had submitted in the appeal that under rule 49 of P & T Manual Vol.III the disciplinary authority is to be determined at the particular stage and when he was dismissed the disciplinary authority who had power to dismiss an LSG Official was the Divisional Head and if he could not do so due to the applicant being appointed by a higher authority, an adhoc Disciplinary authority in the cadre of a Director should have been appointed under the authority of President of India,

contd:.....

: PAGE NO. 4 :

since the CCS (CCA) Rules were made in his name. The applicant also invited the attention of the appellate authority to the finding of the Hon'ble Tribunal of Ernakulam vide 1990 14 ATC 619 that no authority higher than the prescribed disciplinary authority can impose a major penalty and the appellate authority also is barred from doing so and as the rules stand now the applicant's disciplinary authority is Head of the Division and the DPS is only the appellate authority.

(5) It is further submitted that due to the violation of rules,, infirmities, and fallacious application of rules, the dismissal order issued to the applicant cannot be sustained. Meanwhile the department may enforce the dismissal order and deprive the applicant of any benefit and the result would be starvation of the applicant, his wife and children till the legality of the order is established by a Court of Law. None who starves can withstand this rigour and it is humbly prayed that this Hon'ble Tribunal may be pleased to consider the illegality of the dismissal of the applicant.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

(1) It is respectfully submitted that the applicant was appointed as Lower Selection Grade/Postal Assistant in the year 1983 by the Director of Postal Services. At that time LSG was a circle cadre. Later on LSG was divisionalised and the Head of the Division was empowered to impose even major penalty to the LSG officials of the Department of Posts. The punishment imposed on the applicant is in violation of Article 311 of the Constitution of India.

contd.....

[Signature]

(2) It is further submitted that under Rule 49 of P & T Manual Vol.III the competence of the punishing authority is to be determined with reference to the stage of the case. In the applicants' case he being an LSG official appointed by the Director of Postal Services, the Senior Superintendent of Post Offices has no power to impose any major penalty. If the intention was to punish him with a major penalty it was necessary for the punishing official either to be vested with original power under CCS (CCA) Rules or special entrustment by the President.

(3) It is further submitted that in the applicant's case, the Director of Postal Services who dismissed him from service had no locus standi to do so. The applicant was appointed to LSG by the then Director of Postal Services, Northern Region, Hyderabad and under Rule 45 of P & T Manual Vol. III only an officer with major disciplinary power could have imposed the penalty of dismissal. As on the date of punishment the Divisional Head was fully competent to impose any penalty on LSG Officials. But in the applicant's case, the provisions of the Article 311 prevented the Senior Superintendent of Post Offices, Hyderabad South East Division to impose any major penalty. But at the same time, the Director of Postal Services, Hyderabad City Region, could not have imagined that she is competent to pass any order since she has to act under statutory Rules and while her rank enables her to punish the applicant with a major penalty, she is nowhere either in the schedule or she has not stated that the President authorized her to do so. It is therefore, humbly submitted that the punishment is without jurisdiction.

contd.....

(4) It is further submitted that the applicant's major disciplinary authority is the Divisional Head and if he is to be punished by a Director of Postal Service who is the appellate authority, she should have obtained the orders from the President impose punishing the applicant. In this connection the applicant invites the kind attention of the Tribunal to the observations of the Hon'ble CAT Madras vide (1989) 9 ATC 837 and (1990) 14 ATC 325 Madras and (1990) 14 ATC 619 Ernakulam and also to the observation of the Hon'ble CAT Ernakulam 1992 (1) CAT 585. It is humbly submitted that the disciplinary order issued to the applicant is violative of the CCS (CCA) Rules and also the Constitution of India and as such the order is liable to be set aside.

6. DETAILS OF THE REMEDIES EXHAUSTED:

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

It is submitted that the applicant was dismissed from service by an authority without such statutory powers. The applicant belongs to a cadre for which the major disciplinary authority is the Head of Division as the rules stand today but he was punished by the next higher authority. In the circumstances he could not prefer an appeal to the DPS since the DPS issued the order and the applicant was deprived of an opportunity to approach the higher authority since the punishment itself was imposed by the appellate authority for LSG Officials as per the rules stand today. As the applicant has no other alternative except to approach this Hon'ble Tribunal seeking redressal of his grievance, filed the O.A. before the Hon'ble Tribunal.

contd.....

[Signature]

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

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

8. RELIEF(S) SOUGHT:

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

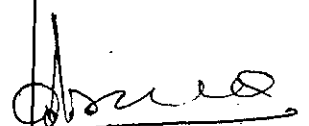
It is respectfully prayed that the Hon'ble Tribunal may be pleased to set aside the impugned Memo No.ST/Disc/HD/22/95 dated 12.4.1996^{AKSP-9} passed by the 1st Respondent, dismissing the applicant from service, declaring the same as arbitrary, illegal, unwarranted, frivolous and in violation of Articles 14 and 16 of the Constitution of India in view of the infirmities mentioned above, in the interest of justice, 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.

9. INTERIM ORDERS IF ANY PRAYED FOR:

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

It is respectfully prayed that the Hon'ble Tribunal may be pleased to suspend the operation of the order No.ST/Disc/HD/22/95 dated 12.4.1996^{AKSP-9} passed by the 1st Respondent, since the illegal order has deprived the applicant and his family from livelihood and the balance of convenience is in his favour, 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 case.

contd.....



(12)

10. NOT APPLICABLE:

11. PARTICULARS OF THE BANK DRAFT/POSTAL ORDER filed in respect of the application fee:

1. P.O. No. 812209033

2. Date: 17-7-96

3. Fee: Rs.50/-

4. Name of the office of issue: T.P.O. H.Y.D

5. Name of the office payable at: T.P.O. H.Y.D

1.P.O. B.C.D. removed

12. LIST OF ENCLOSURES:

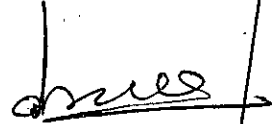
Sl.No. Details of the documents

AS PER INDEX

Annexure

VERIFICATION

I, A.D. Varu S/o Varu, aged about 51 years, LSG/Postal Assistant, Jubilee Head Post Office, South East Division, Hyderabad, do hereby verify that the contents of paras 1 to 4 and 6 to 12 are true to the best of my knowledge and belief and para 5 believed to be true on legal advice.



Hyderabad.

Date: 6.7.1996.

SIGNATURE OF THE APPLICANT


COUNSEL FOR THE APPLICANT.

contd.....

A. N. I. (13) 15-4-96
GOVT. OF INDIA
POSTAL DEPARTMENT
HYDERABAD
9

Govt. of India/Deptt. of Post
Office of the Chief Postmaster General, A.P. Circle, Hyderabad-500001
Memo No. ST/Disc/HD/22/95 dtd at Hyd-1, the 12.1.1996

Read the following:

1. SSPO's, Hyd. SE Dn. Memo No. F4-1/90.91, dt. 30.8.91
2. IO and OSD, %Chief PMG, Hyd. inquiry report dtd. 26.6.95
3. Representation dtd. 26.7.95 of Sri A.D. Varu, LSG PA, Hyd. Jubilee HO
4. Other connected records

Sri A.D. Varu, PA, Hyd. Jubilee HO was proceeded against under rule-14 of CCS(CCA) rules, 1965 by the SSPO's, Hyd. SE Dn, vide memo No. F4-1/90.91, dtd. 30.8.91 and a statement of articles of charge, statement of imputations a list of documents and a list of witnesses were enclosed to the said Memo. of charges. The brief details of articles of charge and statement of imputations are reproduced below:-

Statement of Articles of charge framed against Sri A.D. Varu, PA, Hyd. Jubilee HO.

Article-I

That Sri A.D. Varu while working as SPM, Amberpet HO during the period from 11.1.89 to 15.11.90 allowed Smt Y. Rajarajeswari, PA of Stn. Kachiguda HO to work unauthorisedly in his office during the period from 8.11.90 to 12.11.90 facilitating her commission of frauds in violation of rule 653 of P&T Man. Vol. II. It is, therefore, alleged that Sri A.D. Varu failed to maintain devotion to duty as required under rule 3(1) (ii) and also failed to ensure absolute integrity of the subordinate as required under rule 3(2) (i) of CCS (Conduct) rules, 1964.

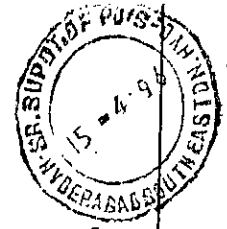
Article-II

That Sri A.D. Varu, SPM, Amberpet HO for the period from 8.11.89 to 12.11.90 failed to shift Smt Y. Rajarajeswari from SB counter after her completing six months service in the branch in violation of rule 4(5) of P&T Man. Vol. II which resulted in commission of fraud by Smt Y. Rajarajeswari, PA. Therefore, it is alleged that Sri A.D. Varu, failed to maintain devotion to duty as required under rule 3(1) (ii) & also failed to ensure absolute integrity of the subordinate as required under rule 3(2) (i) of CCS (Conduct) rules, 1964.

Article-III

That Sri A.D. Varu failed to observe the incorrect opening balance noted in the F&B issued in SB A/c no. 218425 dtd. 29.1.90. Though the actual balance was Rs. 27.85, the F&B showed the opening balance as Rs. 6744.85. The unaccounted transaction in this account resulted in a fraud of Rs. 8300/-.

.....2/-



(14)
(10)

/ : : 2 : : /

<u>Account No.</u>	<u>DOT</u>	<u>Deposit</u>	<u>Withdrawal</u>
218 425	20.2.90	--	4000
	10.3.90	--	500
	26.3.90	--	200
	16.4.90	--	300
	18.7.90	6500	--
	25.7.90	6000	--
	22.8.90	3000	--
	13.10.90	--	200
	10.11.90	--	2000
		15500	7200

Thus it is alleged that Shri A.D.Varu failed to maintain devotion to duty as required under rule 3(1) (ii) of CCS (Conduct) rules, 1964.

Article-IV

That Shri A.D.Varu passed the following withdrawals through the amounts accounted for were different. This resulted in loss of Rs. 12040/-

<u>A/c No.</u>	<u>DOT</u>	<u>Wdl.as per SB.7</u>	<u>Wdl.accounted for</u>
216 246	30.4.90	10040	11520
218 107	24.4.90	2000	2815

Thus it is alleged that Sri A.D.Varu failed to maintain devotion to duty as required rule 3(1) (ii) of CCS (Conduct) rules, 1964.

Article-V

That Sri A.D.Varu failed to check the deposit slips/SB.7 forms with PB, ledger and long book in the following cases:

SB A/c no. 218 194 of Sri B.Sailu:

<u>DOT</u>	<u>Deposit</u>	<u>Withdrawals</u>
3.11.89	800	--
8.11.89	200	--
28.11.89	240	--
6.12.89	800	--
15.12.89	300	--
6. 1.90	900	--
27. 1.90	300	--
3. 2.90	500	--
2. 5.90	1000	--
8. 5.90	300	--
25. 6.90	2800	--
26.7. 90	1900	--
30. 8.90	1000	--
17. 9.90	2800	--
27. 9.90	800	--
15.10.90	800	--

Total Rs. 13840

In the above account the SB PA committed a fraud of Rs. 13,840/- resulting in loss to the department to that extent.

Thus, it is alleged that Sri A.D.Varu failed to maintain devotion to duty as required under rule 3(1) (ii) of CCS (Conduct) rules, 1964.

/ : : 3 : : /

15
SR. SUPD. P.O. S.D. DISTRICT
HYDERABAD 204
15-11-90
10

Statement of imputation in support of articles of charge

Article-I

Statement of imputations of misconduct or misbehaviour in support of articles of charge framed against Sri A.D.Varu, PA, Hyd. Jubilee HO.

Sri A.D.Varu while working as SPM, Amberpet PO during the period from 11.1.89 to 15.11.90 allowed Smt Y.RajaRajeswari, PA, Stn. Kachiguda HO to enter his office and meddle with the work and handled SB transactions during the period from 8.11.90 to 12.11.90. During this period, she committed several SB frauds as detailed in the articles of charge. Thus it is alleged that Sri A.D.Varu displayed utter lack of devotion to duty as required under rule 3(1) (ii) of CCS (Conduct) rules, 1964, and also failed to ensure the integrity of CCS (Conduct) rules, 1964 besides violation of rule 653 of P&T Man. Vol. II by allowing an unauthorised person to meddle with the office work.

Article-II

Sri A.D.Varu while working as SPM, Amberpet PO during the period from 11.89 to 15.11.90 did not change the branches of PA's handling cash every six months as required under rule 4(B) of P&T Man. Vol. VI Part. I. During the said period Smt Y.Rajarajeswari, the SB counter PA who was in the branch for more than six months committed several SB frauds as mentioned in articles of charge and it is therefore, alleged that Sri A.D.Varu displayed utter lack of devotion to duty in contravention of rule 3(1) (ii) of CCS (Conduct) rules, 1964.

Article-III

Sri A.D.Varu while working as SPM, Amberpet PO did not thoroughly check the transactions in SB A/c no. 218425 wherein Smt Y. Rajarajeswari committed SB frauds to the extent of Rs. 8300/- during the period from 20.2.90 to 10.11.90 by manipulating transactions as shown in the article of charge. It is therefore alleged that Sri A.D.Varu failed ^{to maintain devotion to duty as required under Rule 3(1) (ii) of} CCS (Conduct) rules, 1964.

Article-IV

During the period from 24.4.90 to 30.4.90 when Sri A.D. Varu was the SPM, Amberpet PO, Smt. Y. Rajarajeswari committed SB frauds of Rs. 10040/- on 30.4.90 in SB A/c no. 216246 and Rs. 2000/- on 24.4.90 in SB A/c no. 216107 and Sri A.D.Varu passed these transactions through the amounts mentioned in SB withdrawal forms different from amounts accounted for. It is therefore alleged that the lack of devotion to duty on the part of Sri A.D.Varu resulted in a loss of Rs. 12040/- ~~by this~~ and he has thus contravened rule 3(1) (ii) of CCS (Conduct) rules, 1964.

⊕ The officials who worked under him as required 4/-
Under Rule 3(2) (i) of

(16) (12)

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Article-V

Sri A.D.Varu while working as SPM, Amberpet PO failed to check the deposit slips and SB.7 with Ps, ledger and long book in respect of SB A/c no.218194 during the period from 3.11.89 to 15.10.90 wherein Smt Y.Rajarajeswari committed SB frauds to extent of Rs. 13840/- by not accounting for the deposit made. It is, therefore, alleged that Sri A.D.Varu failed to maintain devotion to duty as required under rule 3(1) (ii) of CCS(Conduct) rules, 1964.

2. The memo. of charges was received by the official on 30.8.91 and he denied the charges on 9.9.91. Sri G.Subbarayudu, OSD, Chief PMG, Hyd. was appointed as inquiry officer on 8.11.91 to inquire into the charges framed against the said official and Sri Y. Appalaraju, ASP(C) Sub Dn. was appointed as IO on 8.11.91 to present the case on behalf of the Disz. authority. Subsequently, as there was change in the incumbency of OSD, Sri M.Venkatreddy, Sri G.Buddappa and Sri G. Devavaram were appointed as inquiry officer on 19.8.92, 15.2.93 & 17.8.94 respectively. Similarly Sri A.Venkatesu was appointed as PO on 8.2.94 in place of Sri V. Appalaraju. The inquiry officer conducted the inquiry from 20.11.91 to 10.3.95 and submitted his report on 26.6.95 holding that the charges mentioned in article-I, II, III & V were proved and that of article. IV as not proved. On receipt of inquiry officer's report, the SSPO's, Hyd. SE Dn. sent a copy of IO's report to the charged official on 17.7.95 for submitting his representation, if any, against the findings of IO. The charged official submitted a representation dtd. 26.7.95 to the SSPO's, Hyd. SE Dn. As the charged official was appointed to LSG cadre by the DPS, the SSPO's, Hyd. SE Dn. has forwarded the entire case to the DPS(HCR) on 8.8.95 for finalisation.

3. Assessment of Evidence: (a) The evidence adduced in the inquiry is discussed hereunder charge-wise.

i) Article. I: In support of this charge, the documentary evidence vide Ex P5, P6, P62 - P63 was produced in the inquiry and the oral evidence of Sri V. Balappa, SP(R) (PW.2) was recorded by IO on 5.1.94. The PW.2 inquired into the case and indentified the statements dtd. 29.11.90 (Ex-P5) and dtd. 30.11.90 (Ex-P6) of Sri A.D. Varu, which were recorded by the PW.2. In the statement dtd. 29.11.90 (Ex-15) the CO unequivocally admitted that he had allowed Smt Y. Rajarajeswari, PA to work at Amberpet, PO, after her relief to Kachiguda

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HO and she attended to posting of interest in ledgers and other pending work during the months of Sept, 90, Oct. 90 and Nov. 90. and she also helped in Rpt. delivery, HO paid and SB branches during the said periods. He also admitted in his statement that there were no orders to utilise her services at Amberpet SO from any higher authority. The documentary evidence produced vide Ex-P62 indicated that Smt Y. Rajarajeshwari stood posted to Stn. Kachiguda HO instead of PA Divl. office and Ex P-63 indicated that she joined at Stn. Kachiguda HO as PA on 17.9.90 P/N.

Further the depositors of SB PB no. 218194-Sri B. Sailu (PW.3) and Sri T. Mohanreddy, depositor of PB No. 218425 (PW.4) in their deposition given before the IO have confirmed the fact that Smt Y. Rajarajeshwari was working as SB counter A at Amberpet SO at the relevant period.

Thus the oral and documentary evidence adduced during the inquiry proved the fact that the charged officer has unauthorisedly allowed Smt Y. Rajarajeshwari of PA Stn. Kachiguda HO to work at Amberpet SO from 8.11.90 to 12.11.90 in violation of rule. 653 of P&T Man. Vol. II. Thus the charge I stands proved.

ii) Article. II: In his statement dtd. 29.11.90 (Ex- P5) the CO stated that he did not check the rotation of Smt Y. Rajarajeshwari and he felt that she would manage the SB counter efficiently and that is why he did not think of her rotation.

In the general questioning by the IO on 10.3.95, the CO stated that he allowed Smt Y. Rajarajeshwari beyond the tenure in the interest of service and that inspecting officers never raised any objection. The plea put forth by the CO that he allowed her because no officer raised objection is not in sound lines. As head of the officer, he has to follow the rules prescribed in the ~~xxxxxx~~ ^{volumes} ~~He~~ ^{Provisions} thus violated the provisions of Rule 4(5) of Vol. VI Part. I, which resulted in commission of frauds by Smt Y. Rajarajeshwari. Thus, the charge levelled against the CO stands proved.

iii) Article. III: The deposits ~~and~~ ^{withdrawals} entered in SB PB no. 218 425 from 20.2.90 to 10.11.90 were not reflected in the SB ~~long~~ ^{long} book and LOTS of respective dates of Amberpet SO. The LOTS ~~and~~ ^{long} book/ ~~relevant~~ for the relevant dates were produced during inquiry and they were marked (LOTS) as Ex P. 59, P12, to P. 127, and (Longbook) as Ex P. 60, P61, P36 to P43. There were 3 deposits to the extent of Rs. 15,500/- and 6 withdrawals to the extent of Rs. 7200/- during this period (20.2.90 to 10.11.90) which were not reflected in the SO long book and LOTS of Amberpet SO. Thus, there was a fraud of Rs. 8300/- (Rs. 15,500/- - Rs. 7200/-) in this SB account.



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The depositor in his statement dtd.18.12.90 (Ex P1) stated that the used up PB was seized by the post office and a fresh ~~PB~~ ^{PB} was issued to him and ~~one~~ lady clerk sitting at the counter issued the fresh PB and he had personally written pay-in-slips and withdrawal form.

The FPB was issued on 29.1.90 by lady clerk and CO allowed her to issue FPB with incorrect balance brought forward from old PB. The BF balance in PB was noted as 6744.85 instead of Rs.27.85.

When the IO questioned the CO on 10.3.95 for this charge, the CO stated that he allowed the stock register of plank PBs to be maintained by Smt Y. Rajarajeswari, PA and did not check the ~~register~~ register, which resulted into fraud due to pressure of work. The P.I.4 also stated in his statement (Ex P1) on 10.11.90, he withdraw Rs.2000/- after consulting the SPM i.e. CO and thus it has gone to his notice 10.11.90, but, the CO failed to notice the difference.

Thus the evidence of P.I.4, and other documentary evidence as discussed above has established the charge that the CO failed to notice the incorrect opening balance noted in FPB No.218425 issued on 29.1.90. Thus, he failed to maintain devotion to duty as requested by rules.

iv) Article IV: The evidence ~~adduced~~ adduced in the inquiry has not proved the charge.

v) Article V: The documentary evidence produced during the inquiry vide Ex-P7 and Ex #10 revealed that the deposits made by the depositor in PB No.218194 during the period from 3.11.89 to 15.10.90 were accepted by the lady clerk and they were not accounted for in the ledger and long book. The last 3 deposits made on 17.9.90, 27.9.90 and 15.10.90 were also accepted by lady clerk i.e. Rajarajeswari unauthorisedly, as she was already for Kachiguda HO as per Ex P.63&62. Thus, the evidence adduced during inquiry reveals that the CO allowed the said lady PA to work in SB counter unauthorisedly and she had committed frauds in this SB account to the extent of Rs.13,840/- for which the SPM is to be held responsible. ^{argument} ~~This~~ ^{argument} ~~account~~ that she made entries independently behind his back can not be accepted as the head of the office he had unauthorisedly allowed her to work in SB counter. The evidence adduced in the inquiry proved the charge levelled against the CO.

3(b) I, therefore, agree with the findings of IO that the charges levelled against Sri A.D. Varu in Article-I, II, III & V have been proved beyond reasonable doubt.

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(15) (18) 15-4-96
S.D. JUDGE
MADRAS

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4) Representation of the charged official: In his representation dtd. 26.7.95, the CO in response to the IO's report, supplied to the official, the CO made the following submissions charge-wise, which are discussed here under:-

i) In r/o charge.1, the CO stated that Smt Y. Rajarajeswari never worked in Amberpet SO from 8.11.90 to 12.11.90, at the same time, conceding that his case is not that she did not work at Amberpet SO after her relief, but, the IO twisted the issue from his statement. The CO's argument is that he allowed her with the oral orders of CSPO's, which was not supported by any evidence in the inquiry. Even if oral orders are there, it is the responsibility of the CO to establish it through evidence. But, he had not brought out any evidence. Further he ~~argued~~ ^{argued} that there is no evidence that she had not done any work during the said period at Amberpet. This plea of the CO, is not tenable in as much as there is ample evidence to show that Smt Y. Rajarajeshwari had worked unauthorisedly at Amberpet SO after her relief to Kachiguda IO, and this evidence is ~~thoroughly~~ ^{thoroughly} discussed in para 3(a) (i) above.

ii) Regarding charge.2, the CO pleaded that there was shortage of staff and Smt Y. Rajarajeshwari was already working in SB prior to his relief at Amberpet SO and the inspecting officers was also responsible for her retention beyond tenure and he cannot be singled out for this issue. His argument is not tenable in as much as it has been proved that he failed to rotate her after the period of 6 months and he cannot make it ~~as his duty~~ ^{as his duty} for his failure. It is ~~his duty~~ ^{his duty} to ensure rotation of staff, which cannot be accepted. If he could not effect rotation due to shortage of staff, he should have made a report to Divl. head and obtained the approval. And he had even failed to bring the fact to the notice of higher authority and none he cannot shelter under this plea.

iii) Regarding charge.3, the CO pleads that he did not sign the F&B and he cannot be held responsible and IO is silent on this point. He also pleaded that allowing lady PA to maintain stock register of PBs is not the direct evidence for the frauds committed in A/c no. 218425. It may be pointed out that though the SPM did not sign the F&B, it is the CO who allowed the lady clerk to meddle with the records by allowing her to maintain stock register of PBs and issue of FPBs. Further the transaction that took place on 10.11.90 had been done only after consulting the CO by depositor, which is evident from the evidence of PW.4 vide Ex-P1. Even at that time, if the CO had noticed the difference in opening balance in PB, the entire fraud that took place in this account (218425) would have come to light. For all this mess, the CO has to be held responsible, as he failed to maintain devotion to duty.

iv) With regard to charge.5 the CO pleaded that IO has relied on the statement of Sri N. Subbarao and Sri P. Sailu & M. Suobbarao is the investigating officer lacking in first hand information about the fraud. Sri Sailu said that the transactions were done by lady clerk. Therefore, he pleads that if the SB counter PA commits certain frauds independantly, SIM has no means to check the frauds. The IO harps on general supervision which cannot be stretched beyond one's investigation.

In this regard, it is established that it was the CO who allowed the lady PA to work unauthorisedly at Amberpet SO after her relief to Kachiguda HO, if she committed frauds w/o bringing the transactions to his notice, the CO alone has to be blamed, but, none else for such frauds. The evidence of PW.1 and PW.3 which was adduced during the inquiry had to be relied upon by the IO as there was no dispute about their evidence. Therefore, the plea of the CO is not tenable. The CO has raised some other points relating to inquiry, which were already discussed by the IO in his report vide para 16, 17 & 18.

5) As discussed in paras supra, the charges levelled against Sri A.D. Varu vide Article-I, II, III & V were proved beyond reasonable doubt on the basis of evidence adduced during the inquiry. Sri A.D. Varu, being the head of office, has miserably failed in his duties to check the frauds being committed by his office PA under his very presence. Further he had committed a serious offence by allowing Smt. Y. Rajarajeswari, PA of Kachiguda HO to work unauthorisedly at Amberpet SO and meddle with important SB records knowing well that she was already relieved for Kachiguda HO. This is very serious in nature. I do not consider that the charged official is a reliable and trust worthy to be retained in service. I, therefore, hereby order that Sri A.D. Varu, LSG, PA of Hyd. Jubilee HO be "Dismissed" from service with immediate effect.

(Radhika Doraiswamy)
Director of Postal Services (HCR)
Chief PMG, APCircle, Hyderabad-1

✓ To

Sri A.D. Varu
LSG PA, Hyd. Jubilee HO (through SSPO's, Hyd. SE Dn, Hyd. 27)

Tic

From
A.D. Varu,
LSG PA, (Dismissed),
Hyderabad South East Division,
H.NO. 19-27, Vivekananda Nagar,
Bilaski Nagar, Hyderabad-500009.

AL B 5882
26.4.96

To
The Chief Post Master General,
Andhra Pradesh,
~~XXXXXXXXXXXXXX~~
HYDERABAD - 500001.

Sub: Appeal against the order of dismissal issued
by the DPS, Hyderabad City Region.
Ref: Memo No. ST/Diso/HB/22/95 dt. at Hyd-1; the
12-4-96.

Respected Sir,

Agrieved by the above orders, I submit the following
few lines craving for justice.

2. Brief Facts of the Case: I was served with a memo of charges
by the SSPOs, Hyderabad South East Division on 30-6-91. An
enquiry was held and the IO had held charge Nos. 1, 2, 3, and 5
as proved, and charge No 4 as not proved. I submitted my repre-
sentation to the IO report on 26-7-95 but without considering
any of the points raised by me the DPS issued orders imposing
the extreme penalty of dismissal from the service which is un-
justified and inconsiderate and hence this humble appeal on the
following grounds.

3. Grounds: The action of the DPS is without jurisdiction.
I belong to LSG cadre and as per the schedule CCA, CCS rules
(postal department) head of the division is the competent autho-
rity to impose any penalty on the LSG official. By introducing
this schedule in 1989, under the authority of President of India
the DPS is divested of his power to punish any LSG official,
especially so under rule 45 of P&T Volume III, which says no
higher authority including appellate authority can punish an
official. It is true that I was appointed to the LSG cadre by
one DPS, but under rule 49 of P&T Volume III, the authority is
to be determined at the relevant stage of the case. I was puni-
shed in 1990, and at that time the appointing authority for
LSG was the divisional head and so DPS does not figure as even
my appointing authority. As per rule 12 of CCS and CCA rules it

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is only the President, the appointing authority, the authority mentioned in the schedule, and the authority generally or specially empowered by the President can impose a penalty. In the light of rule 49 of P&T manual Vol III, the DPS is not the appointing authority for the LSG. The DPS does not figure in the schedule relating to postal department for LSG officials. The DPS did not obtain Presidential sanction to act as my disciplinary authority. Therefore the DPS has no locusstandi or jurisdiction to punish me. It appears the DG posts issued an order that cases relating to LSG officials appointed by DPS should be decided by the DPS. I apprehend the usurpation of disciplinary power by the DPS is in pursuance of the illegal order of the DG. The DG is a subordinate of the President, not even the direct subordinate which being the central government (it may kindly be noted that the above order was issued from postal services board and not by the secretary, Ministry of Communications, Department of Posts). It is humbly submitted that the law of the land demands that an officer not below the rank of a DPS was appointed by the President, as my disciplinary authority. In this connection I invite your kind attention to the observation of the Hon'ble JAT, Ernakulam, vide (1992) 19 ATC 625, that the DPS cannot assume disciplinary powers in respect of LSG officials appointed by DPS in the absence of presidential order. Under rule 49 of P&T manual Volume III, the DPS cannot be treated as my appointing authority, and DPS is a higher authority to my appointing authority and upholding rule 45 of P&T manual Volume III, the Hon'ble JAT Ernakulam also held that no higher authority can impose a penalty vide (1990) 14 ATC 619. I therefore humbly submit that in the absence of a Presidential order the DPS has no power to punish me and therefore the punishment is liable to be set aside. *

(2) While condemning me to the capital departmental punishment the minimum expectation is the punishing authority applies his or her mind and no slipshod or perfunctory order

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To my misfortune, for all the representations consisting of typed pages against the IOs findings the DPS had to say six sentences and perfunctory nature of her order and her utter contempt to law and judiciousness is explicit in the last sentence of para 6 which reads "The GO has raised some other points relating to enquiry which were already discussed by the IO in his report".

Dispensing with the show cause notice in 1977 agitated the judicial conscience and finally after a decade, several Administrative Tribunals held that the charged officer should be given an opportunity to represent against the IOs finding, and keeping it in view, the department of personnel prescribed in 1969 that a representation against the IOs finding should be obtained and finally in 1990 the Supreme Court upheld this point. This is the stage after the IO submitted the report and to say that the IO discussed these points is putting the horse before the cart. The IO being not a judicial officer but a departmental officer the inherent inhibitions of a departmental officer cannot be ruled out even in quasi judicial enquiry. I had pointed out several irregularities on the part of the IO in my brief but no departmental officer can be expected to do it as we are short of Lal Bahadur Shastri (courtesy observation of the Supreme Court about Smt. Shiela Kaul, in the house allotment scam). Whatever it is the point to be considered is whether any point raised by me in my representation against the IO can be dismissed by an asserting disciplinary authority inconsiderately. The judicial view that the charged officer has a right to represent against the IOs finding is derived from Article 311 of the constitution and principles of natural justice. A prejudiced IO would uphold all his ~~malfeasances~~ malfeasances and remedy lies in the sober and mature consideration of the disciplinary authority and it is exactly for this that an opportunity is given to represent against the IOs report. Secondly, no man can be his own judge. When a charged official points out numerous irregularities in enquiry, the enquiry officer cannot judge it and his failure is out of human vulnerability but the failure of the DPS to disp

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is either prejudice or abdication of quasi judicial responsibilities. But, by abdication one cannot ignore this submission and the Hon'ble CAT, Ahmedabad, Vide (1992) 19 ATG 374, held that it is necessary that all the points raised in appeal are summarised and legally discussed to show whether they are accepted or not. This is equally applicable in respect of the representation against the ICs report as virtually it is an appeal against the ICs finding and no DPS can abdicate responsibility to discuss the point and I therefore humbly submit that the decision of the DPS cannot be sustained for its being ~~xxxx~~ evasive, inconsiderate, if not immature and obdurate. The DPS was bound to answer every point raised in my representation.

(3) I was charge sheeted by the SNEOs, Hyderabad South East Division and he had the full authority to punish me with a minor penalty and his satisfaction that a major penalty called for is not reflected in the punishment order. In all the charges, I was accused of lack of devotion and failure to see that the subordinates maintain their integrity. This means, I was never charged for committing the fraud or abetting the fraud. There might have been contributory negligence on my part. Under rule 106 of P&T Manual Volume III the punishment should have been recovery of loss if my contribution is established. But my dismissal displays not only bureaucratic high handedness but also the incapacity of the DPS to act as a quasi judicial authority. I do not know whether she is burdened or over burdened about the recovery of the amount but she has proved that she lacks attributes required of a quasi judicial authority. I submitted that the fraud existed before my joining as SPM, the frauds continued when I was on leave while working as SPM and that I was not responsible for the frauds. The DPS who could not answer to this point takes refuse on the ~~XXXXXXXXXXXX~~ groundless ground. That the IC discussed all my submissions and she did not discuss a single point which did not suit her.

(4) The first charge against me was my alleged allowing Smt. Raja Rajeswari to work at Amberpet PO 8-11-90 to 12-11-90.

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The charge is so specific that my allowing her in for five days and my explanation was that during this period she did not attend to Amberpet PO. None of the case referred to in the charge sheet against me occurred during the period, except one transaction which was correctly handled and accounted for by the SB counter PA. The DPS says that there is ample evidence that I allowed her to work but the amplexness observed by the DPS is shrouded in the ambiguity that she was unable to explain and or express what was that evidence. When I was specifically charged for allowing Smt. Rajarajeswari to work in my office for a particular period, it was the duty of the prosecution to prove through documentary/oral evidence that I did so and no authority how are great including the DPS cannot escape by an ambiguous remarks that there is ample evidence. No evidence was thrown out during the enquiry and even when I was sacked the DPS failed to show what was the evidence against me.

The DPS relied on my preliminary statement as the IO also did but the point is Smt. Rajarajeswari who was a relative of the then SSPOs and who kept several items pending in SB branches were directed by the then Supts to complete the pending items and he phoned to me to allow her to complete the pending items and in obedience and obedience and out of deference to the SSPOs I allowed her to complete the pending SB work. But in the charge sheet issued to me the allegation about allowing her inside Amberpet PO is limited to five days from 8-11-90 to 12-11-90 and during this period she did not attend Amberpet PO and the prosecution did not produce any evidence to the effect that she attended the PO. In fact she worked as PA Smt. Kachi-guda SO during that period. In the circumstances nobody can hold charge no.1 as proved unless he or she is of perverted mind. Having clearly established that she did not come to Amberpet PO during the period 8-11-90 to 12-11-90, it is beyond comprehension whether the authority who holds charge no.1 as proved is capable of acting sensibly.

(5) Charge no.2 relates to my not shifting Smt. Rajarajeswari from SB branch. I submitted that after all I am a promotee from PA cadre and I may not know the rules from the angle of administration and during my service as Smt. Amberpet PO several inspections took place and as I understand from my long service in the department in various capacities the inspecting Officers have to see if the tenure is strictly maintained. The DPS has no answer to this point and she says I cannot throw blame on others. The allegation is that I did

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not change her from the branch and if that is true I may be partly responsible but the inspecting Officers were more responsible. There is no evidence produced by prosecution that the frauds were committed since she continued as SS PA beyond tenure. I also submitted in reply to the IO's report that the tenure of the officials working in SS branch varies from one person to person depending on whether one is qualified, and whether one is appointed to the branch on the basis of the latest order where the tenure is five years. I also submitted that the acute shortage of staff at Ambetpet PO resulted in my not shifting her. The DPs has only a bald explanation that I should have reported my inability to shift her to the SSPOs. This means my failure is not in allowing her to function as SS PA but is that I did not report my inability to shift her due to shortage of staff and I humbly submit that if I am to be punished for this the charge sheet should have been for not my shifting the official but my inability to shift her and I am punished for something not called upon to explain. As such charge no.2 cannot be held as proved.

(6) Regarding charge no.3 while cross examining Sri Mohan Reddy clearly stated that his pass book was seized by a postal officer and one lady clerk sitting at the counter issued the fresh pass book. He also admitted that he did not observe that each transaction entered in the pass book signed by the postmaster. He categorically stated that the counter clerk used to independently make every entry and sign all the records. It is submitted that Smt. Nagarajeswari kept me in dark about what she was doing but the categorical statement of Sri Mohan Reddy about the handling of the transaction by the lady clerk should absolve me. The IO had no evidence and so relied on the statement of the investigating officer Sri N. Subbarao. I have not signed the PFB, and the IO kept silent on this plea but the DPs says I allowed access to the stock of PFBs which is not a charge against me at all. So I am punished for something which I am not charged against.

(7) The I.O. was pitifully magnanimous to hold charge no.4 as not proved and if he considered my explanation to other charges he could not have held them also as not proved. Anyhow it is my misfortune that my IO was guided by pick and choose method and his magnanimity was just to hold charge no.4 as not proved but

based on the statement of the investigating officer the ~~10~~ and ~~11~~ held charge No 5 as proved. The depositor has clearly stated that the transactions were done by a lady P.A.

The only ground for the DPS to agree with the 10 in respect of charge NO 1, was my ~~preliminary~~ preliminary statement. But in this statement, I had stated that her services were utilised for completion of pending SB work, but never admitted allowing her to work as SBPA. Further the charge should have been proved through some documentary evidence like the writings of her during the specific period. I stoutly denied that she did not come to Amberpet post office at all and in proof of this none of the transactions mentioned in the charge sheet took place during the period mentioned except one, which was not in her hand writing. Further the DPS speaks of my allowing her during September, October and November 1990, where as the charge relates to 8-11-90 to 12-11-90. The DPS says, PW3 & 4 stated that Smt. Rajeswari was at the relevant period. But the transactions of these witnesses did not take place during the period mentioned in the charge sheet. Closing her eyes to this glaring aspect, she says in an ambiguous manner that oral and documentary evidence adduced during the enquiry proved the charges. As already stated, no documentary evidence was produced by the prosecution and it was impossible to do so, as she never came to the post office during the period from 8-11-90 to 12-11-90. The PW 3 or PW 4 could not testify to this point as there is no evidence that transactions took place in their pass books during the period mentioned in the ~~charge~~ charge sheet. Information of the investigation officer is only secondary and as such there is no oral proof also. Holding this charge as proved is totally unjustified.

Regarding the charge No 2 the DPS says, that my submission that during the inspections, none instructed me to change her from the branch is not on sound lines. As one put in about 25 years service at that time, I am quite sure that the inspecting officers have to meticulously check this point. This plea did not please the DPS. My another submission was there are types of tenure for SB clerks, one for untrained, one for trained and yet another for those working under incentive scheme. The DPS is silent about

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this. As such this charge also cannot be taken as proved.

Regarding charge No 3 the DPS says, that the entries from 20-2-90 to 10-11-90 in PB NO 218425, were not reflected in the long book and LOTS, and so there was fraud. She further says, that the depositor in his ~~xxx~~ preliminary statement stated that the lady clerk issued the FFB. Transactions from 20-2-90 to 10-11-90, not being reflected in the long book and LOT is quite natural, and my pleading was, these were done behind my back. I have not signed the FFB, and the DPS does not deny this and then it is beyond comprehension, how I am responsible. The DPS has a stock phrase that, I allowed her to work and as SPM I was responsible for this. Regarding my allowing her to work, the DPS should be confined to what is alleged in charge NO 1. Overall responsibility of the SPM is mitigated by the special circumstances, which was explained to her, and I would explain again else where. ~~xxxx~~

Regarding Charge No 5, the DPS again repeats her pet theory that I allowed her to work. The dates mentioned are from 3-11-89 to 15-10-90 and 17-9-90, 27-9-90 and 15-10-90. ~~But~~ I am facing a specific charge of allowing her unauthorisedly for the period from 8-11-90 to 12-11-90 and any comment by DPS about unauthorisedly allowing her should relate to these five days only. As such this charge is also not proved.

(8) I had submitted to the DPS, that Amberpet post office was functioning in a cramped building with one room for delivery, and another room for counters, and the total staff strength ~~xx~~ was about 20. These rooms are so small, that there is no moving space. Apart from general supervision the SPM is saddled with the responsibility of delivery. ~~Due~~ Due to the heavy work and late receipt of mails, usually delivery goes out at 12.30 hrs and till such time the SPM will be heavily engaged in the delivery room from where he cannot see the counters. After this fraud had taken place the PO was shifted and if the shifting took place

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in time as the SPM while working in delivery branch could have observed counter transactions. If one or two people are sighted at the SB counter, and if the records do not come to the SPM he could have suspected something and initiated action. But in my case it was not possible due to the unsuitability of the departmental building meant for a single handed office being used for a heavy LSG office. Under rule 107 of P&T manual Volume III, extenuating circumstances should be taken into consideration and for all this submission the DPS in a slipshod manner says, "Other points are considered by the IO" though the extenuating circumstances are to be considered by the disciplinary authority and not by the IO and I raised this plea in my representation dated 26-7-95.

(9) I had submitted that I was only SPM, and I was charge sheeted only for violation of rule 3 (1) (2) and rule 3 (2) (1) of CCS conduct rules. This means the allegation against me was, "I lacked devotion to duty, and also I failed to ensure ~~max~~ integrity of my subordinates. The charge sheet issued for violation of the above two rules should come to my rescue to prove that I was utmost honest. There is no allegation that I committed any fraud. Some times I was on leave, for example 26-7-90 and some irregularity took place when another SPM was working which clearly proves that no SPM could have prevented the fraud. In fact, apart from my self six so called subsidiary offenders were charge sheeted but they were all charge sheeted under rule 16 (except one to whom rule 14 seems to have been issued as he was suspended for some time). This includes ~~max~~ two officiating sub post masters. If the officiating sub post masters could be charge ~~sheeted~~ sheeted under rule 16, there was no justification to charge sheet me under rule 14, especially in view of the conduct rules cited in my charge sheet. For all this submission, the ~~max~~ DPS says, the IO discussed and decided the points. If, Omission or commission of the IO is ultimate the DOP should not have insisted on obtaining representation on IOs report. Your kindself will kindly consider whether, slipshodness, or ferfentoryness on the part of a disciplinary authority, while depriving one of his lively hood is becoming of him/her or unbecoming.

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(10) As I understand at the instance of the department I was prosecuted in the special court, as accused NO 2 in the frauds committed by Smt. Rajeswari. The department and CBI exhibited, their ingenuity by showing other instances where Smt. Raja Rajeswari committed fraud apart from what is contained in my charge sheet. The heartless department, ruthlessly subjected to that prosecution but I was Honourably acquitted by the order of the Honourable special court dt. 16-7-93 in R.C. NO. 13 (A) 1991. The point to be considered is whether I am involved in the fraud or not. The department exercised too much to involve me and I was made a party rather accomplice in the fraud committed by Smt. Raja Rajeswari, and the judicial culmination was my acquittal. Every thing is not run by letter alone, but some times especially when one is to be deprived of his livelihood spirit too counts. The Hon'ble High Court of AP, vide 1990, LLR (21) 59 held that disciplinary authority has to take into account the judgement in the criminal case. The inconsiderate order of the DPS is in violation of the above citation. Having not been charge sheeted for committing fraud and having been acquitted for abetting fraud, no sane person can justify awarding the punishment of dismissal for certain supervisory defaults, which too occurred in circumstances beyond ones control. Discrimination between regular SPM and acting SPM is in violation of Article 14 and of the constitution of India. It is therefore submitted that the punishment awarded by the DPS cannot be justified.

(11) I had submitted to the DPS that the charges were vague, for not giving the details of the frauds committed by Smt. Raja Rajeswari.. In all the 4 charges held as proved it is mentioned that my omission/commission facilitated the frauds. But details of frauds committed are not given. Under Article 311 of the constitution I had a right to know what is my mistake before being dismissed. This means in all the four charges shown as proved the details of the frauds the modus operandi and how I could have prevented the fraud should have been shown. Constitutional

Contd. 11

provisions need no support of law, but to justify violation of constitutional provision I think no law can do it. In every charge, it was alleged that I facilitated or abetted fraud by Smt. Raja Rajeswari without showing what was the fraud committed by her and what was the amount involved. Without knowing my fault, I could not have defended and any punishment based on such vague charge sheet is unmaintainable.

(12) Right from the day of joining as PA Amberpet and SB PA at the benevolence of the ~~SPM~~ then SPM Smt. Raja Rajeswari was committing frauds. I faced fait accompli in that, when I joined as SPM, a fraudulent SB clerk who has committed several frauds was already the SB PA. I come from clerical cadre and was not an inspector, or ASP and during the period she committed fraud before my joining at least one inspection took place and the highly qualified inspector/ASP/SSP could not detect any thing and to expect me that I should have checked the frauds is too much. It is more than too much that the then SPM, when the first fraud took place is not charge-sheeted but allowed voluntary retirement perhaps out of his financial resources. And if so there was no justification to proceed against me under rule 14. For all this there is no answer from the DPS.

(13) The enquiry held against me was ~~fake~~ farce. I had requested for eight additional documents which were rejected without showing any reason in violation of rule 14 (12). One of the document was the information about the perpetual shortage of staff, and another was about the congestedness of the PO building. Another document was the letter authorising ASP/IPOC by the SSPOs to enquire in to the matter. The fraud seems to be more than Rs. 5,000/ and the ASP/IPO has no jurisdiction to investigate. The genesis of my today's faith is the investigation done by ASP/IPOC and if that officer/officers were not competent the entire proceedings against me have to be scrapped. But the IO arbitrarily rejected this request.

Contd. 12

The SSPOs issued chargesheet to me and he does not know the result of investigation except through the investigation report submitted to him. This means, the SSPOs has gone through the investigation report, looked into it, relied on it. It was held by the Hon'ble High Court of Calcutta vide 1982 (1) S.J. 196 that nothing is confidential and any material employed against has to be brought to his notice. It was also held by the Hon'ble Supreme Court vide (1993) 23 ATC 403 that material not shown or supplied cannot be taken into account. This rulings warrant supply of the investigation report and the IOs arbitrary order rejecting the same does not stand the test of law.

In my case, no original document was produced but only xerox copies before they were got admitted by me after showing the originals. Another grave mistake was that the document should have been produced before commencement of regular hearing vide rule NO 5 (iv) of PET manual Volume III. The last prosecution witness was examined on 7-1-94. After this the prosecution has no right to produce any new evidence under rule 14 (15), but nearly one year later on 13-12-94, the xerox copy of the ledger card of account NO 218194 was produced. The original IO of account NO. 218425 was also filed on that day. In my brief I objected to this illegality but the IO in his report says that I did not object to production of this document. Suppose I do not know the rules I do not object any thing of the aberration of the IO out of ignorance of rules, can it be taken as a license to the IO to perpetuate illegality on the ground that I did not object. After all the IO had to act under CCS, COA rules whether the charged official knows the rule or not. After all the IO is expected to know the rules and his violating the rules is either deliberate or out of ignorance, in which both cases, I am entitled for benefit of doubt.

The disciplinary authority wanted to introduce new evidence and the proper course was to act through the PC under rule 14 (15), but the disciplinary authority issued addendum and

Contd. 13

addenda number of times as convenient to him. The irregularity brought to the notice of the IO was buried by him and when it is brought to the notice of the DPS she buried it ten fathoms deep and it was impossible to get any explanation from such depth. This means no proper enquiry was made against me and the dispensation of justice remained as dispensing with justice. I therefore humbly request you to appreciate the illegality about the enquiry and the disciplinary order.

(14) The SSPOs Hyderabad, South East Division, called for my reply to the IOs report and as he was my minor disciplinary authority I submitted the reply which legally binds him to dispose the case. His forwarding the case to the DPS and the DPS replying to my representation which is not addressed to her make little sense as per G.I., Dept. of Per & Trg., O.M.No. 11012/13/85-BST, (A), dated the 20th June, 1989., it is for the disciplinary authority and the disciplinary authority alone to obtain and consider the representation against the IOs report and as the SSPOs obtained my representation, the consideration by the DPS is by proxy which is not allowed under law. ~~xxxxxx~~ Had the DPS has called for my explanation I could have explained better-if I am to be punished by the DPS, she was obliged to give me this opportunity and consideration of my representation to the SSPOs and punishing with me dismissal is contrary to the orders of the DOPR.

4. PRAYER: I respectfully submit that, I was already put in 25 years of service, when the case came to light. I worked in various capacities and I was ^{never} ~~reputed~~ for lack of integrity. Smt. Raja Rajeswari, was already a PA at Amberpet when I joined as SPM. As could be seen later she was committing fraud even before my joining the office. I am coming from clerical cadre and thrust being management of the operative office rather than detesting frauds it may be my lapse that I could not realise the fraudulent nature of that lady. Nevertheless, inspite of persecution through prosecution and departmental action I was Hon'bly acquitted by the court but in the departmental action the DPS has awarded me a punishment which she or her depute did not award to the acting SPMs. The only point to be considered is whether I committed the frauds and it is cleared by the charge sheet issued to me wherein I am alleged

Amberpet

to have lacked in devotion to duty and failed to check the integrity of my subordinates. To that extent the charge sheet is ~~presently~~ true though the circumstances under which I acted are not reflected therein. Here, rule 107 of S&T manual Vol III must rescue me if it is true that I did not commit any fraud. The charge sheet does not say that I commit any fraud. Considering rule 107, may be at the discretion of the DPS and it may also be that she exercised her discretion on the wrong side but then I am being punished for lack of devotion to duty and not ensuring the integrity of subordinates which means I can be punished monetarily if there is proof and not more than that. Had I been a party to the frauds, the charge sheet would have shown so and I would have been charged under rule 3 (1) 1 and in the absence of such a charge dismissal of an official put in about 30 years unblemished service, cannot be justified by any canon of justice. In my short period as SPM Amberpet, what should not have happened happened, and all this happened during which period four SPMs worked either regularly or in officiating capacity. If the fraud is committed at my instance, it could not have taken place before my joining the office and that the fraud took place earlier shows that I am not responsible for the fraud. Nevertheless, I plead that I accept the responsibility as SPM especially when the condition in which, I worked as SPM like perpetual shortage of staff and lack of accommodation but nothing prevented the DPS to award me a punishment if at all required as given to others and have dismissing me smacks of discrimination, inconsideration and inability to go through the evidence, may be impatience, as can be seen from the order that she dismissed all the vital technical points perfunctorily remarking that the IO discussed them as if the disciplinary authority as has immunity to discuss the defence pleas and licence to punish some one according to his/her will and pleasure. I most respectfully pray to you to intervene in the matter and set right injustice done to me and set aside the punishment order. In view of para 3 and 4 of my appeal the order is without jurisdiction and I humbly pray to you to stay the

Contd. 15

operation of the order pending disposal of the case. I am man of children without any property and the order will adversely affect not only myself who is not even alleged criminal but my family members who are never involved in such sort of case. Law may be blind but justice cannot be blind and there is lot of difference between law and justice and in my humble position I understand that no law can sack me and your kindness must understand if principles of justice would allow my sacking. Grave injustice has been done to me and I humbly pray that it is undone for which I will be grateful for ever.

Date: 24. 4. 86

Place: Hyd. 60

Yours faithfully,

[Signature]
(A. D. KARU)

Copy submitted to the Director of Postal Services
Hyderabad region city region for information

RL B. 8983
24.4.86

T.C
[Signature]

(36)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD.

DA.No.892/96.

Date of order:-13.8.96.

Between:-

A.L./ru

...

Applicant.

vs

1. The Director of Postal Services,
City Region, Hyderabad.
2. The Chief Postmaster General,
A.P.Circle, Hyderabad.

...

Respondents.

Counsel for the Applicant: Mr.S.RamaKrishna Rao

Counsel for the Respondents: Mr.N.R.Deva Raj, Sr. JC C.

COR AM

HON'BLE M.JUSTICE M.G.CHIDAMBARI, VICE CHAIRMAN

HON'BLE SHRI L.RAJENDRA PRASAD, JUDGE (A)

HON'BLE TRIBUNAL MEMBERS FOLLOWING ORDER:-

The question of competency of the disciplinary authority is raised. J.A. admitted. Issue notice to the respondents. Shri N.R.Devaraj, Senior JC C appears for the respondents. Issuance of notice dispensed with. No exam interim relief.

By consent J.A.taken up for orders.

It is stated that the appeal filed by the applicant against the impugned order to the Chief P.M.C., A.P.Circle, on 24-4-96, has not so far been decided. From the appeal (Annexure II) we find that the contention about the competency of the authority who has passed the impugned order has been raised. We think it appropriate that the appellate authority should decide the appeal on merits dealing with the above contention also. Hence the Chief P.M.C., A.P.Circle is directed to dispose of the appeal of the applicant on merits within a period of two months from the date of communication of this order. The result of the appeal shall be conveyed to the applicant.

*revised, the appeal is to be decided on merits of the above appeal.
The order is disposed of in terms of the above direction.*

By Rego (T.Y.)

OA.No.892/96.

Copy to:-

1. The Director of Postal Services,
City Region, Hyderabad.
2. The Chief Postmaster General,
A.P.Circle,Hyderabad.
3. One copy to Mr.S.Ramakrishna Rao,Advocate,
CAT,Hyderabad Bench,Hyderabad.
4. One copy to Mr.N.R.Devaraj,Sr.CGSC.CAT.Hyd.
5. One spare copy.

kku.

I COURT

TYPED BY

CHECKED BY

COMPARED 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: 13-8-1996

ORDER/JUDGMENT

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

In

O.A.No. 595/96

892/96

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

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
अपेक्षा/DESPATCH

- 2 SEP 1996

हैदराबाद बेंच
HYDERABAD BENCH

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD.

O.A.No.892/96.

Date of order:-13.8.96.

Between:-

A.D.Varu

Applicant.

And

1. The Director of Postal Services,
City Region, Hyderabad.
2. The Chief Postmaster General,
A.P.Circle, Hyderabad.

Respondents.

Counsel for the Applicant: Mr.S.Ramakrishna Rao

Counsel for the Respondents: Mr.N.R.Deva Raj, Sr. J.C.C.

CORAM:

HON'BLE MR.JUSTICE M.G.CHOUDHARI, VICE CHAIRMAN

HON'BLE SHRI H.RAJENDRA PRASAD, JUDGE (A)

HON'BLE TRIBUNAL MADE THE FOLLOWING ORDER:-

The question of competency of the disciplinary authority is raised. O.A.admitted. Issue notice to the respondents. Shri N.R.Devaraj, Senior J.C.C appears for the respondents. Issuance of notice dispensed with. No extra interim relief.

By consent O.A.taken up for orders.

It is stated that the appeal filed by the applicant against the impugned order to the Chief P.M.G., A.P.Circle, on 24-4-96, has not so far been decided. From the appeal (Annexure II) we find that the contention about the

competency of the authority who has passed the impugned order has been raised. We think it appropriate that the appellate authority should decide the appeal on merits dealing with the above contention also. Hence the Chief

P.M.G.A.P.Circle is directed to dispose of the appeal of the applicant on merits within a period of two months

from the date of communication of this order. The result of the appeal shall be conveyed to the applicant.

The O.A. is disposed of in terms of the above directions.

CERTIFIED TO BE TRUE COPY

न्यायालय अधिकारी
COURT OFFICER