

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 247/2000

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SECTION OFFICER (Judl.)

Seahly
2012-17

In The Central Administrative Tribunal
GUWAHATI BENCH : GUWAHATI

ORDER SHEET
APPLICATION NO. 247/2000 OF 199

Applicant(s) Sri Rakimul Hogue Borbhuja.

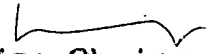
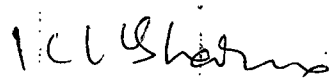

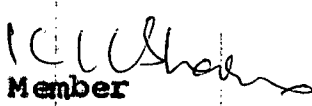
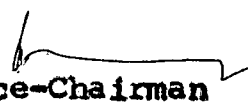

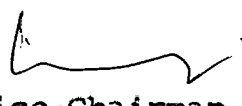
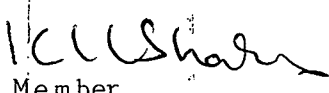
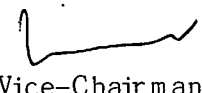
Respondent(s) Union of India and others.

Advocate for Applicant(s) Mr. A.K. Choudhury, Mr. B.K. Acharyya.
Mr. S. Choudhury.

Advocate for Respondent(s) C.G.S.C.

Notes of the Registry	Date	Order of the Tribunal
<p>an application in a form and within time of Rs. 50 deposited vide IPO No. 504/98 Dated 8.8.2000</p> <p>28/1/00 Notice prepared and sent to D/Section for issuing the respondent No 1 to 4 vide D/No 2139/2142 dated 9/10/2000</p>	22.9.00	<p>Present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman.</p> <p>Heard Mr Ak.Choudhury, learned counsel for the applicant and also Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents.</p> <p>Application is admitted. Issue usual notices.</p> <p>List on 17.11.2000 for written statement and further orders.</p> <p>Mr Choudhury prays that he may be allowed to implead the Chief Postmaster General, Assam Circle, Guwahati as respondent No.4 in this application. Prayer allowed.</p> <p>Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal
<p>16-11-2000</p> <p>① Service report are still awaited.</p> <p>② No. written statement has been filed.</p> <p><i>2/11</i> 16.11.00</p> <p>Notice duly served on R-No 3 & 4. Others are still awaited.</p> <p><i>Dr</i> 17/11/00</p> <p>No. written statement has been filed.</p> <p><i>2/11</i> 19.12.2000</p> <p>19-1-2001</p> <p>No. N/S has been filed by the respondents.</p> <p><i>Boro</i></p>	<p>17.11.00</p> <p>pg</p> <p>20.12.00</p> <p>pg</p> <p>22.1.01</p> <p>lm</p> <p>22.1.01</p> <p>lm</p>	<p>Four weeks time is granted to the respondents to file written statement on the prayer of Mr A. Deb Roy, learned Sr. C.G.S.C.</p> <p>List on 20.12.2000 for order.</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>Four weeks time is granted to file written statement on the prayer of Mr A. Deb Roy, learned Sr. C.G.S.C.</p> <p>List on 22.1.2001 for order.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>List on 12.2.01 to enable the respondents to file written statement. Mr. A. Deb Roy Sr. C.G.S.C. to obtain instructions as to ^{payment of} why the subsistence allowance should not be paid to the applicant during the period he was put off duty. List on 12.2.01 for orders. Meanwhile the respondents shall pay the subsistence allowance to the applicant.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>List on 12.2.01 to enable the respondents to file written statement. Mr. A. Deb Roy Sr. C.G.S.C. to obtain instructions as the payment of subsistence allowance during the period he was put off from duty. List on 12.2.01 for orders. Meanwhile the respondents shall pay the subsistence allowance to the applicant.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal
1) Notice duly served on R-2 & 3.	12.2.01	List on 26.2.01 to enable the respondents to file written statement.
2) NO W/S has been filed - NS 23/2/01 -	pg	 Vice-Chairman
	26.2.01	List on 8.3.2001 to enable Mr A. Deb Roy, learned Sr.C.G.S.C to obtain necessary instruction on the matter and for filing of written statement.
	pg	 Member
	8.3.01	 Vice-Chairman
	lm	Written statement has been filed. case is ready for hearing. List for hearing on 8.5.01. In the meantime the applicant may file rejoinder.
	3.4.01	 Member
12.3.2001		 Vice-Chairman
W/S has been submitted by the Respondents.	lm	No order is necessary. List for hearing on 24.4.01.
	8.5.2001	 Member
		 Vice-Chairman
14.6.2001		Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is allowed. No order as to costs.
Copy of the Judgment has been sent to the Office. for issuing the same to the applicant as well as to the Govt. Adv. for the Respondent.	nk m	 Member
HS		 Vice-Chairman

Notes of the Registry	Date	Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./~~XXX~~ NO. 247. of 2000

DATE OF DECISION 8.5.2001

Shri Rahimul Hoque Barbhuya

APPLICANT(S)

Mr A.K. Choudhury, Mr B.K. Acharyya
and Mr S. Chakrabarty

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

The Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C.

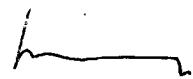
ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?
- 5.

Judgment delivered by Hon'ble Vice-Chairman



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.247 of 2000

Date of decision: This the 8th day of May 2001

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Rahimul Hoque Barbhuiya,
Resident of Village Dhancheri, P.O.- Dhancheri,
District Cachar, Assam.

.....Applicant

By Advocates Mr A.K. Choudhury, Mr B.K. Acharyya and
Mr S. Chakrabarty.

- versus -

1. The Union of India, represented by
The Secretary to the Government of India,
Ministry of Communication,
New Delhi.
2. The Sub-divisional Inspector of Post Offices,
Silchar South-Division,
Silchar.
3. The Senior Superintendent of Post Offices,
Cachar Division,
Silchar.
4. The Chief Postmaster General,
Assam Circle,
Guwahati.

.....Respondents


By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....

O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 has arisen and is directed against the order dated 15.6.1998/12.8.1998 removing the applicant from service with retrospective effect as well as the order dated 26.11.1999 passed by the Appellate Authority dismissing the appeal preferred by the applicant against the order of removal. The relevant facts for proper adjudication of the matter are summed up below:



The applicant prior to the impugned order of removal was working under the respondents as an EDDA-cum-EDMC, in which post he joined on 1.6.1985. By order dated 6.5.1994 the applicant was 'put off duty' with effect from 1.5.1994 in view of his arrest by the Sonai Police Station in connection with Sonai P.S. case No.259 of 1993. It has been stated that the applicant was finally acquitted from the charge by a Judgment and Order dated.31.12.1997.

2. A disciplinary proceeding was initiated against the applicant under Rule 8 of the P & T Agents (Conduct Service) Rules, 1964 vide order No.A1/Ed-Staff/95-96 dated 5.6.1995. The authority by the aforementioned communication forwarded the statement of the article of charges framed against the applicant under the rules alongwith the statement of imputations of misconduct or misbehaviour in support of the article of charges, the list of documents and the list of witnesses. The relevant statement of the article of charges framed against the applicant reads as follows:

"Shri R.H. Borbhuiya, EDDA-Cum-EDMC/Dhanchari B.O. while working as the same took away Chapakhowa M.O. No.743 dt. 16/3/92 for Rs.508/- payable to Shri Badaruddin Barbhuiya Vill.& P.O. Dhanehari with cash for effecting payment under his clear receipt in B.O. Journal dt. 25/3/92 But instead of paying the amount to the real payee Shri Babaruddin Barbhuiya, the EDDA-Cum-EDMC /Dhanehari B.O. Shri R.H. Barbhuiya defrauded the amount by showing the M.O. was paid to one Shri Basiruddin Laskar by writing his name himself against the Chapakhowa M.O.No.743. By his above act he exhibited lack of integrity and devotion to duty thereby violating the Provisions of Rule 17 of the P & T ED Agents (Conduct & Service) Rule 1964."

In the list of witnesses the authority cited the names of one Shri Harkumar Das, Office Superintendent, Mails, South Sub-division, Silchar and Shri Baburuddin Barbhuiyan, Vill.& P.O. Dhanehari and the payee of Chapakhana M.O. No.743 dated 16.3.1992 for Rs.500/-. The authority, in the list of documents also referred to the written statement of the applicant that he submitted to the competent authority on 22.3.1994, the relevant part of which is reproduced below:

"I, Md. Rahumul Hoque Barbhuyan, father of Late Maniruddin Barbhuiya, working in the Dhanehari Post Office as EDDA for last nine years. On 25/3/92 One Money Order bearing No.743 dt. 16/3/92 for Rs.500/- (five hundred only) from Dibrugarh Chapachuwer favouring Md. Bakuruddin Barbhuiya C/O Aftabur Rahman Barbhuyan, P.O.&Vill. Dhanehari I by mere mistake misquoted Basiruddin Laskar instead of Baburuddin Laskar in the Money order Book and delivered the amount of Rs.500/- to him. Now I am regretting for my such mistake I will deposit the said Money order & Rs.500/- to the Departmental Head by next thursday. And I assure that I shall not commit such type of mistake and thus for this time I beg pardon to the Departmental Head."

3. The applicant submitted his written statement denying and disputing the charges. In due course an Inquiry Officer was appointed and the Inquiry Officer held a preliminary enquiry on 17.5.1997. The Inquiry Officer explained the charges to the charged official and the charged official denied all the charges framed against him. In the departmental proceeding the Inquiry Officer examined Shri Harkumar Das, who stated that he proceeded to Dhanehari B.O. on receipt of verbal instruction from SDI (I), Silchar South, to enquire the case of payment of Chapakhowa M.O.743 dated 16.3.1992 for Rs.500/-. He examined the B.O. Journal and Postman Book and noticed that the M.O. was paid to one Shri Basiruddin Laskar instead of the real payee, Shri Babaruddin Barbhuya. As the M.O. was shown as paid to Basiruddin Laskar, Shri Basiruddin Laskar was contacted who denied the receipt of M.O. from the EDDA-cum-EDMC in writing on 26.7.1995. The Office Superintendent, Mails, then contacted Shri Babaruddin Barbhuya, the real payee. He also denied that the M.O. was paid to him. The Inquiry Officer also summoned Md. Babaruddin Barbhuya on 13.6.1996, 3.7.1996, but Babaruddin Barbhuya did not attend the hearing though he was summoned under Registered Post. The Inquiry Officer, on completion of the enquiry, submitted his report and held that the applicant misappropriated the value of the M.O. and admitted the fact in his written statement on 22.3.1994. The Disciplinary Authority, after consideration of the materials on record including the representation of the applicant, accepted the report of the Inquiry Officer and found the applicant responsible for fraudulent payment of the amount by forging

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the signature of Shri Basiruddin Laskar and accordingly found him guilty of the charges. The Disciplinary Authority accordingly ordered for removal of the applicant from service from the date from which the applicant was "put off duty". The applicant preferred an appeal and the Appellate Authority in cryptic order dismissed the appeal. Hence this application assailing the legality and validity of the order of removal as arbitrary and discriminatory.

4. Mr A.K. Choudhury, learned counsel for the applicant, assailed the order of removal on the ground of perversity and also on the ground of violation of the principles of natural justice. Mr Choudhury submitted that there was no material of whatsoever manner to hold the applicant guilty of the charges. The Inquiry Officer reached his finding on the basis of assumption and presumption. The learned counsel further submitted that the respondent authority acted in a most illegal fashion in conducting the departmental proceeding in total violation of the principles of natural justice. The learned counsel submitted that the applicant was put off from duty with effect from 1.5.1994 vide order dated 6.5.1994 and the said order continued till completion of the proceeding and till the impugned order of removal was passed. During this period the applicant was not paid any subsistence allowance, save and except the Ex gratia compensation equivalent to 25% of the basic allowances together with admissible allowance as per Government of India, Department of Posts Order dated 13.1.1997. Mr Choudhury submitted that on the admitted facts the applicant was not provided with reasonable opportunity to defend his case.

5. Mr A. Deb Roy, learned Sr. C.G.S.C., concurring the submissions of Mr Choudhury, referred to the written statement and submitted that the order of removal was passed in accordance with the P & T EDDA (Conduct and Services) Rules, 1964. The applicant was informed of the charges and he was given the opportunity to submit his written statement. In the enquiry one witness and relevant records were examined and on assessment of the materials on record the

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impugned order was passed. There is, however, no dispute as to the fact that the applicant was put off duty from 1.5.1994 to 12.8.1998. It is also not disputed that the applicant was not paid any subsistence allowance during that period. Mr Deb Roy submitted that there is no provision under the rules for any subsistence allowance.

6. There is no indication in the rules as to the payment of subsistence allowance if an employee is put off from duty. The said rule was, however, struck down as ultra vires by the Bangalore Bench of the Tribunal in O.A.No.553 to 556 of 1987, Peter J. Desouza and others, disposed of on 13.7.1988. The said decision was later followed by the Ahmedabad Bench of the Tribunal in O.A.No.221 of 1991, V.B. Raval vs. Union of India and others, disposed of on 12.5.2000. In O.A. No.144 of 2000 disposed of on 2.3.2001 this Bench also followed the aforementioned two decisions. An enquiry held without paying any form of allowance cannot be held to be a just and fair enquiry meeting the test of reasonable opportunity. In the circumstances it cannot be said that the applicant was provided with fair and reasonable opportunity to defend his case. That apart, the materials relied upon by the Disciplinary Authority to hold the applicant guilty did not support the conclusion reached by the Inquiry Officer. The alleged admission that was relied upon by the Inquiry Officer was already mentioned. The aforesaid statement did not indicate that the applicant admitted the guilt. As a matter of fact, the very departmental proceeding containing the statement of allegation was initiated on 5.6.1995, i.e. after receipt of the copy of the alleged admission. As per the charge the applicant instead of paying the amount to the real payee diverted the amount and thereby violated the provisions of Rule 17 of the P&T EDA (Conduct and Service) Rules, 1964. The Inquiry Officer in his report also found that the Disciplinary Authority failed to produce the relative vital evidence in the Memorandum of Charges and to remedy the situation summon was issued to Basiruddin Laskar though he was not a listed witness and accordingly found that the forgery brought against

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the applicant was not proved due to insufficient evidence and thus the charge could not be sustained. The materials on record, itself, did not support the conclusion reached by the Inquiry Officer. The Disciplinary Authority without applying its mind acted on the said report and the Appellate Authority also did not address its mind to those aspects of the matter.

7. For the reasons stated above the impugned order dated 15.6.1998/12.8.1998 thus cannot be sustained and accordingly the same is set aside and the respondents are directed to reinstate the applicant forthwith. However, the removal of the applicant with retrospective effect cannot be sustained and the order of removal will be read as on and from 1998. Accordingly the applicant shall only be entitled to 50% of the wages from the date of the impugned order. The respondents are directed to complete the exercise within two months from the date of receipt of the order.

8. The application is allowed to the extent indicated. There shall, however, be no order as to costs.


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(D. N. CHOWDHURY)
VICE-CHAIRMAN

528, 8 AUG 2000

Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 247/2000

Shri Raninul Hoque Barbhuiya ...Applicant

-VS-

Union of India & ors. Respondents

I N D E X

Sl.No.	Description of the document	Annexures	Page Nos.
1.	Application		1-14
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3.	Order dt.6/5/94 whereby the applicant was placed put off 1 duty.		16-17
4.	Memorandum of Charges dt. 5/6/95	2	18-24
5.	Notice of Enquiry dt.18/9/95	3	25-26
6.	Statements of the applicant dt.22/3/94	4	27
7.	Letter dt.18/11/97 communicating the enquiry report alongwith enquiry report	5	28-43
8.	Representation of the applicant dt.20/12/97	6	44-48
9.	Order of removal from service (impugned order) dt.12/8/98 ...	7	49-66
10.	Appeal before Respondent No.3 against the order of removal	8	67-74
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Filed by

Date: /2000

Advocate, Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. _____/2000

PARTICULARS OF THE APPLICANT

Shri Rahinul Hoque Barbhuiya
S/O Late Moniruddin Barbhuiya
Vill. Dhancheri, P.O. Dhancheri,
Via Sonabarighat, Dist. Cachar (Assam).

PARTICULARS OF THE RESPONDENTS.

1. The Union of India

(Represented by the Secretary to the Govt. of India
Ministry of Communication
~~Department of Post~~), New Delhi.

2. The Subdivisional Inspector of Post office,
Silchar South Sub-Division.
Silchar-788001.

3. Senior Superintendent of Post Offices,
Cachar Division,
Silchar-788001.

* 4. Chief Postmaster General
Assam Circle, Meghdoot Bhawan, Guwahati-1

1. PARTICULARS OF THE ORDERS AGAINST WHICH

THE APPLICATION IS MADE:

The application is made against the order
dt. 12/8/98 passed by the Sub-Divisional
Inspector of Post Offices, Silchar, South
Subdivision (Respondent No. 2) removing
the applicant from his service and the

contd.....3

Filed by:-
Rahinul Hoque Barbhuiya
through
Suman Chakraborty
Advocate

Added vide Court's
Order dtd 22.9.2000
SC

Rahimul Haque
Barthia

the subsequent order dt. 26/11/99 passed by the Sr. Superintendent of Post offices Silchar (Respondent No. 3) dismissing his Appeal against the order of removal .

2. LIMITATION:

The applicant declares that this application is within the time limit prescribed under Sec. 21 of the Administrative Tribunal Act.

3. JURISDICTION:

The applicant declares that the subject matter is within the jurisdiction of this Hon'ble Tribunal.

4. FACTS OF THE CASE:

(1) That the applicant is a Citizen of India and as such is entitled to the rights and privileges guaranteed by the Constitution of India.

(ii) That the applicant worked in the department of post at Dhanekari E.D.B.O. attached with Sonabarighat Sub-Post office of Cachar Postal Division from 1/6/85 to 30/4/94 as EDDA -Cum- DMC.

contd 4

Rahimul Haque
Barbhuiya

-4-

(iii) That the applicant was placed under 'Put off duty' with effect from 1/5/94 vide an Order dt. 6/5/94 passed by the Sub-Divl. Inspector of Post Offices, Silchar Subdivision (Respondent No.2) on his arrest in connection with Criminal Case being lodged and registered at 'Sonai Police' Station vide Case No.259/93 Under Section 498 (A) I.P.C. apparently having no connection with his official duties. However the applicant was released on bail and subsequently acquitted by the Learned Judicial Magistrate, 1st Class, Cachar, Silchar vide his Judgement and order dt. 31/12/97.

A copy of the order dt. 6/5/94 is annexed hereto as Annexure-1.

(iv). That the applicant states that after his release on bail he was not allowed to resume his duties and he continued to be under put off duty during the period of his trial.

(v). That while the applicant was under put off duty he received a memorandum of charges dt. 5/6/95 issued by the Sub-Divisional Inspector of Post Offices, Silchar Subdivision (Respondent No.2) alleging that he, on 25/3/92 took away Chapakhowa, M.O. No.743 dt. 16/3/92 for Rs.500/- with cash under clear receipt in Dhancheri B.O. Journal dt. 25/3/92 for effecting payment to its real payee Shri Babaruddin Barbhuiya of

contd.....5

Rahimul Hoque
Barbhuiya

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of Vill.& P.O.Dhanseri but failed to pay the said M.O. to the Payee Bararuddin Barbhuiya, instead he misappropriated money by forging the signature of Shri Basiruddin Laskar in the Postman book against the M.O. under reference and he also admitted the fact Vide his Written statement dt.23/3/94 to the O/S mail Sub-division Shri Har Kumar Das . The amount was recovered from him and credited at Silchar H.O. Vide ACG-67 receipt No.37 of Book No.SC 612 dt.4/4/94 . It was further alleged that by his above act, the applicant exhibited lack of integrity and devotion to duty and thereby he violated the Provision of Rule 17 of P & T, E.D. (C&S) Rule ,1964 the applicant was given 10 (ten) days time to submit his reply to the charge so framed against him.

A copy of the memorandum of charge issued to the applicant dt. 5/6/95 is annexed hereto as Annexure-2 .

(vi). That on receiving the aforesaid Charge sheet, the applicant submitted his reply on 23/6/95. As the documents which were relied by the disciplinary authority were not furnished to the delinquent earlier, he could not submit his reply within the stipulated time . The applicant in his reply

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Rahimul Haque
Barbhuiya

Categorically denied the Charge of misappropriation of the said amount and did not plead guilty. Thereafter, on 18/9/95 the Respondent No.2 served a Notice of enquiry on the applicant informing him that one Mr. Abhirash Saha & Mr. S. Bose had been appointed as Enquiry officer and presenting Officer respectively to enquire into the charges levelled against him.

A copy of the notice of enquiry dt. 18/9/95 issued by the Respondent No.1 is annexed hereto and marked as Annexure- 3.

(vii). That the applicant states that in the enquiry only one witness, Mr. Har Kumar Das was examined and three documents were placed before the Enquiry officer. The documents which were relied in the enquiry were (i) Dhancheri B.O. Journal dt. 24/3/92 and 25/3/92 (ii) Postman Book of Dhancheri B.O. for the period, (iii) Written statements of the applicant dt. 22/3/94. The applicant begs to state that in his Written Statement dt. 22/3/94 he stated that he by mistake recorded the name of Basiruddin Laskar in place of Baburuddin Barbhuiya in the Postman book and

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Rahimul Haque
Barbhuiya

and delivered the money order amount of Rs.500/- to Basiruddin Laskar instead of Babaruddin Barbhuiya, the actual payee. He also expressed his anguish over the mistake and volunteered to repay the amount which was wrongly paid to Basiruddin Laskar. Thereafter the amount of Rs.500.00 was realised from Basiruddin Laskar by the applicant and credited the same to the Govt. account through O/S. mail South Division at Silchar H.O. Vide ACG 67 receipt No. 37 of Book No. SC 612 dt. 4/4/94. The applicant also stated this fact before the enquiry officer at the time of enquiry. He further stated in the enquiry that every month money orders were paid to Basiruddin Laskar and under that impression he wrongly recorded the name of Basiruddin Laskar in the Postman book in place of Babaruddin Laskar and paid the amount to Basiruddin Laskar.

A translated copy of the written statement dt. 23/4/94 of the applicant is annexed hereto as Annexure- 4.

(viii). That the Enquiry officer thereafter submitted his report to the disciplinary authority which was communicated to the applicant by the Respondent No. 2 Vide Letter

contd.....8

Rahimul Hoque
Bardhaman

dt.18/11/97 .The enquiry officer failed to appreciate the evidence on record and came to a erroneous finding that the applicant was guilty of misappropriation of the Money order amount .The applicant, thereafter submitted a representation before the Respondent No.2 on 20/12/97 against the report of the enquiry officer.

Copies of the Letters dt. 18/11/97 communicating the enquiry report to the delinquent and the representation dt. 20/12/97 of the applicant are annexed hereto as Annexures 5 & 6 respectively.

(ix). That the representation of the applicant submitted against the enquiry report was not considered by the Respondent No.2 and Vide his Order dt.12/8/98 removed the applicant from his service With effect from the date of put off duty.

A copy of the order of removal from service is annexed hereto as Annexure- 7.

(x). That being highly aggrieved by the order of removal from Service, the applicant preferred an appeal before the Sr. Supdt. of Post offices , Cachar Division , Silchar (Resp. No.3). on 25/9/98 .But the Respondent No.3 being influenced by the enquiry report and without appreciating the evidence on record

contd9

Rahimul Haque
Barbhuiya

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dismissed the Appeal and upheld the punishment awarded by the Respondent No.2 Vide his Order dt. 26/11/99.

Copies of the Memo of Appeal and the order dt.26/11/99 passed by the Respondent No.3 are annexed hereto as Annexures 8 & 9 respectively.

5. GROUND WITH LEGAL PROVISIONS :

(i). For that the impugned order was passed on the basis of an erroneous finding of the enquiry officer whose findings was based on wrong appreciation of evidence on record.

(ii). For that List of documents and witnesses examined in the enquiry and the statements of the applicant proved that the Money Order of Rs.500/- was wrongly paid to Basiruddin Laskar, but there was no evidence on record which suggested that the money was misappropriated by the applicant. Thus a Case of wrong payment was converted to misappropriation by the perverse finding of the enquiry officer and hence the order of removal passed on the finding of the enquiry Officer is liable to be set aside and quashed.

contd....10

Rahimul Hoque
Barbora

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(iii). For that in the enquiry no documents or witness were examined to prove the fact that the Money Was not paid to Basiruddin Laskar .The M.O. form which was signed by Basiruddin Laskar while receiving the payment was not exhibited and the said Basiruddin Laskar was also not produced in the enquiry. In absence of these two vital evidence the conclusion of the enquiry officer that the Money was misappropriated is totally a perverse finding and as such the order of removal is liable to be set aside and quashed.

(iv) For that in the enquiry the statements of said Basiruddin Laskar, as recorded by Mr. Har Kumar Das , P.W.1 was produced before the enquiry officer by said Mr. Das , The enquiry officer relied upon the statement which stated that Basiruddin Laskar did not receive the money from the applicant and came to the conclusion that the money was misappropriated by the applicant .The person who made the statements was not produced in the enquiry .The delinquent did not get the opportunity to cross examine him and thus he was deprived of his right of defence which is against the rule of Law .The order of removal is thus liable to be set aside and quashed.

Rahimul Hoque
Barbhuiya

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(v). For that, it is an well established principle of Law that in an enquiry the delinquent must be given all opportunity to defend himself. He must be allowed to Cross-examine all witnesses that are produced against him. It is his right to Cross examine a person whose statements are used as evidence against him and if the person is not produced in the enquiry then his statements shall have no evidentiary value against the delinquent. In the instant Case though the statement of Basiruddin Laskar were relied by the prosecution, but the delinquent was not given the opportunity to cross examine him as he was not produced before the Enquiry Officer and thus caused prejudice to him. The enquiry was vitiated for non-compliance of the Principles of Natural Justice and as such the order of removal is liable to be set aside and quashed.

(vi). For that the order of punishment is disproportionate to the nature of wrong committed by the applicant. It is admitted by the applicant that the Money order amount was wrongly paid to another person in place of the actual payee.

Rahimul Hoque
Barrister

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This is a bonafide mistake and the applicant made good the amount which was subsequently recovered from him and deposited to the Govt. account. The Witness of the prosecution and the admission of the applicant proved only the wrong payment ^{of} money order amount and nothing else. Thus for a small mistake the applicant was removed from his service, when the Department did not suffer any loss as the money was recovered from the applicant. Thus the action of removal from service was shockingly disproportionate ~~to~~ to the nature of wrong committed and hence the impugned order is liable to be set-aside and quashed.

(vii). For that the applicant was placed under put off duty w.e.f. 1/5/94 for an offence which was not related to any of his official duties. But the applicant was removed from his service with effect from the date of put off duty for another offence, although he was acquitted from the charge for which he was placed under put off duty. Thus, order of removal is bad and suffers from non application of mind and hence liable to be set aside and quashed.

Rahimul Hoque
Barbhuiya

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Details of remedies exhausted :

That, the applicant declares that he has exhausted all departmental remedies and there is no other alternative remedy.

7. Matters not previously filed or pending in any Court.

The applicant declare that he has not filed any other application or case before any Court on the above subject-matter.

Relief sought for :

In the facts and circumstances of the case, the applicant prays for the following :

(i). The impugned order dt. 12/8/98 where by he was removed from services w.e.f. 1/5/94 be set aside and quashed.

(ii). The applicant be reinstated with full back-wages including increments and other service benefits from the date he was placed under put off duty.

Rahimul Haque
Barbican

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Particulars of the Postal order:

I.P.O. Number : 2G 502498

Date : 8-8-2000

Issued from : G.P.O. Guwahati

Payable at G.P.O. Guwahati

Particulars of Enclosures:

As indicated in the Index of
the application.

VERIFICATION

I, Shri Rahimul Hoque Barbhuya Son of Late
Maniruddin Barbhuya, aged about 35 years ,
resident of Vill.& P.O.Dhancheri Via Sonabarighat
Dist.Cachar (Assam)do hereby verify and declare
that the statements made in paragraphs 4[i, ii, iv]
_____ are true to my knowledge and that
the statements made in paragraphs 4[ui, v, vi, vii, viii, x, x]
are true to my information as derived from the record .

And I sign this Verification on this 4th day of
August
~~June~~, 2000 at Guwahati.

Rahimul Hoque Barbhuya .

(Signature)

G. 6. 99
(12.8.98)

ANNEXURE- 1

OFFICE OF THE SUBDIVISIONAL INSPECTOR OF POST OFFICES

Silchar South Division : Silchar-788001.Memo No. Al/Dhanehari : Dt. Silchar the 6/5/94

Shri Rohinul Hoque Barbhuiya , EDDA Cu m-DMC/
 Dhanehari B.O. was on leave with M/C.W.e.f. 22/12/93.
 Shri Barbhuiya had been arrested by the Police of
 Sonai P.S. on the night of 30/4/94 as reported by the
 SPM/Sonabarighat S.O. Vide Letter No. Nil dt. 3/4/94.
 The O/C. of Sonai P.S. also intimated Vide Letter No. Nil
 dt. 4/5/5/94 that Shri Barbhuiya had been arrested by
 the Police Under Section 498 (A) IPC and was forwarded
 into Court on 2/5/94 and filed a case against Shri Barbhui-
 ya Vide No. Sonai P.S. Case No. 259/93.

Shri Barbhuiyan ~~was~~ deemed to have been placed
 under Put off duty ~~since~~ w.e.f. 1/5/94.

Sa/-

Sub -Divl. Inspector of Post offices,
 Silchar South Subdivision,
Silchar-788001.

contd....2

led by
 akra boby
 Advocate

-2-

Copy forwarded to :-

Regd. A/D.

1. Shri Rohinul Hoque Barbhuyia ,EDDAC^U -EDMC
Dhanepari B.O. Via Sonabarighat S.O.
2. The Sr. Supdt. of P.O.S , Cachar Divn. Silchar-1 for
information and n/a. Pl.
3. The Sr. Post Master, Silchar H.O for information
and necessary action Pl.
4. The O/C. Sonai P.S. With Sonai P.S. Case No. 259/93
U/S. 498 (A) I.P.C. He is requested kindly to intimate
the present development of the Case.

Sd/ illegible.

Sub-Divl. Inspector of Police,
Silchar North Subdivision,

Silchar-788001.

checked by
Chakraborty
Advocate

ANNEXURE- 2Regd. A/D.

departments of Posts, India .
Office of the Sub-Divl. Inspector of Post offices,
Silchar South Subdivision, Silchar-788001.

To

Shri Rahinul Hoque Barbhuiya EDDA-Cm-E DMC
/Dhanbari B.O. now under Put off duty
Via Sonabarighat S.O.

No. A1/ED-Staff/96-96 Dt. Silchar 5/6/96.

Sub: Memorandum of imputation of misconduct or
misbehaviour.

Please find herewith a Memorandum on the subject
with Annexures I, II, III & IV and submit your statement
of defence within the time as mentioned therein.

Please acknowledge the receipt of this Memorandum.

Sa/- illegible.

Sub-Divl. Inspector of Post offices,
Silchar South Subdivision,
Silchar-788001.

Copy to:-

The SSPOS / Cachar Divn. Silchar-1 for information
and n/a. please .

Sa/- illegible.

Sub-Divl. Inspector of post offices,
Silchar South Subdivision,
Silchar-788001.

Attested by
B. Chakraborty
Advocate

Annexure- 2

Govt. of India
 Department of Posts
 Office of the Sub-Divl. Inspector of Post offices
South Subdivision, Silchar-1

Nb. A1/Ed-Staff/.95-96 pt. Silchar 5/6/95

MEMORANDUM

The undersigned proposed to hold an enquiry against
 Shri Rohinul Hoque Barbhuyan , EDDA and EDC/Dhanehari
 B.O. under Rule 8 of P & T Agents (Conduct services)
 Rules 1964. The statement of the imputations of misconduct
 or misbehaviour in respect of which the enquiry is proposed
 to be held is silent in the enclosed statement of Articles
 of Charges (Annexure-1) A statement of the imputation of
 misconduct or misbehaviour in support of each article of
 Charge is endorsed (Annexure-11) . A list of documents by
 which a list of witnesses by whom the Articles of charge
 are proposed to be sustained are also enclosed (Annexures
 III & IV).

2. Shri Rohinul Hoque Barbhuiya , EDDA cum- E DMC /Dhane-
 hari B.O is directed to submit within 10 (ten) days of
 the receipt of this Memorandum/Completion of inspection
 of listed documents a written statement of his defence

contd.....2

-2-

and also to state whether he desires to be heard in person .

3. He is informed that an enquiry will be held only in respect of those articles of charges as are not admitted .He should therefore specifically admit or deny each article of charges.

4. Shri R.H.Barbhuiya EDDA -cum-E DMC ,Dhaneshari B.O. is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above or does not appear in person before the - Inquiring authority or otherwise fails or refuse to comply with the Provisions of Rule 8 of P & T ED Agents (Conduct & Service) Rules 1964 or the orders /directions issued in Pursuance of the said Rule ,the Inquiring authority may hold the enquiry against him ex parte.

5. Attention of Shri R.H.Barbhuiya ,EDDA & EDC ,Dhaneshari B.O.is ~~known~~ invited to Rule 25 of the P & T Agents (Conduct & Service)Rule 1964 under which no ED Agent shall bring or attempt to bring any Political or outside influence to bear upon any superior authority to further his interest in respect of matters /pertaining to his service under the Govt.

contd.....3.

If any representation is received on his behalf from another person in respect of any matter dealt within these Proceedings it will be presumed that Shri R.H. Barbhuiya, EDDA -cum-EDMC /Dhaneshari B.O. is a source of such a representation and that it has been made, at his instance and action will be taken against him for violation of Rule 26 of P & T ED Agents (Conduct & Service) Rules 1964.

ANNEXURE- 1

Statement of Articles of charges framed against Shri R.H. Barbhuiya, EDDA -Cum- EDMC/Dhaneshari B.O. under Rule 8 of P & T ED Agents (Conduct & Service) Rules 1964.

Article-1

Shri R.H. Barbhuiya, EDDA -Cum-EDMC /Dhaneshari B.O. While working as the same took away Chapaktowa M.O. No.743 dt. 16/3/92 for Rs.508/- payable to Shri Badaruddin Barbhuiya Vill.& P.O.Dhaneshari with cash for effecting payment under his clear receipt in B.O. Journal dt. 25/3/92 But instead of paying the amount to the real payee Shri Babaruddin Barbhuiya, the EDDA -Cum-EDMC /Dhaneshari B.O. Shri R.H. Barbhuiya defrauded

contd....4

-4-

the amount by showing the M.O. was paid to one Shri Basiruddin Laskar by writing his name himself against the Chapakhwa M.O. No. 743. By his above act he exhibited lack of integrity and devotion to duty thereby violating the Provisions of Rule 17 of the P & T Ed Agents (Conduct & Service) Rule 1964.

ANNEXURE- 11

Statement of imputation of misconduct or misbehaviour in support of the Article 9 Charge framed against Shri R.H. Barbhuiya EDDA -cum-EDMC /Dhaneshari B.O. (now under Put off duty).

ARTICLE - 1

Shri Rohinul Hoque Barbhuiya while working as EDDA -Cum-EDMC /Dhaneshari B.O. on 25/3/92 take away Chapakhwa No. 743 dt. 16/3/92 for Rs. 500/- with cash under clear receipt in Dhaneshari B.O. Journal dt. 25/3/92 for effecting payment to its real payee Shri Baburuddin Barbhuiya of Vill & P.O. Dhaneshari. But failed to paid the said M.O. to the Payee - Shri Baburuddin Barbhuiya. Instead he misappropriated the money by ~~paying~~ forging the signature of one Shri Basiruddin Lashkar in the Postman book against the M.O. under reference Shri R.H. Barbhuyan EDDA cum-EDMC /Dhaneshari B.O.

contd....5

-5-

admitted the fact vide his Written statement
 dt. 22/3/94 to the O/S. mail South Subdivision
 Shri Harkumar Das. The amount was recovered from
 Shri R.H. Barbhuiya, EDDA -cum- E DMC, Dhanepari B.O.
 and credited at Silchar H.O. vide ACG 67 receipt No. 37
 Book No. SC 612 dt. xxxx 4/4/94.

By his above act Shri R.H. Barbhuyan exhibited
 lack of integrity and devotion to duty and thereby
 he violated the Provision of Rule 17 of P & T Employees Agents
 (Conduct & Service) Rules 1964.

Annexure - 111.

The list of documents by which the article of
 Charges framed against Shri Rohinul Hoque Barbhuyan,
 EDDA cum-EDMC /Dhanepari B.O. are proposed to be sustained
 are .

1. Dhanepari B.O. Journal dt. 24/3/92 and 25/3/92.
2. Postman Book of Dhanepari B.O. for the period.
3. Written statement of Shri R.H. Barbhuyan, EDDA
 Cum-EDMC /Dhanepari B.O. dt. 22/3/94.

contd....6

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ANNEXURE-IV.

List of Witnesses by whom the article -3
Chargws framed against Shri Rohinul Hoque-
Barbhuiyan ,HDA cum-DMC /Dhanehari B.O.
are proposed to be sustained.

1. Shri Harkumar Das O/S.mails

South Subdivision, Silchar.

2. Shri Baburuddin Barbhuiyan ,Vill.& P.O.

Dhanehari and the payee of Chapakhana M.O .

No.743 dt. 16/3/92nd r Rs.500/-

Attested by
S. Chakrabarti
Advocate

ANNEXURE- 3Department of Posts.

Subdivisional Inspector of Post office,

Silchar South Subdivision, Silchar-788001.Memo No .AI/Ed -Staff/95 Dt. Silchar 18/9/95.

Whereas an enquiry Under Rule 8 of the P & T Ex-Agents (Conduct & Service) Rules 1964 is being held against-
 Shri Rohinul Hoque Barbhuyan, EDDA -Cum-EDMC Dhanbari
 B.O.(Under put off duty).

And whereas the undersigned considers it necessary that
 an Inquiry authority should be appointed to enquire into
 the charges framed against Shri Rohinul Hoque Barbhuyan
 and also to nominate a person to present the Case in
 support of the articles of charges before the Inquiry
 authority.

Now In pursuance of the DVL office Letter No.A 328
 dt. 12/9/95 appoints Shri Abhinash Saha SDIPOS, Haila-
 kandi Sub-Divn., Hailakandi as the Inquiring authority
 to enquire into the Charges and Shri S. Bose/C.I.Dvl.
 Office, Silchar-1 to present the case in support of the
 articles of charges.

Sd/-

Sub-Divl. Inspector of Post offices,
 Silchar South Subdivision,
Silchar-788001.

cont.....2

-2-

Copy to :

1. Shri Rahimul Hoque Barbhuyan , BDA -
-Cum-EnIMC /Dhanepari B.O (Under Put off
duty).
2. Shri Abhinash Saha, SDI POS /Hailakandi
Subdivision ,Hailakandi for information and
necessary action Pl .
3. Shri S. Bose ,C.I.D vl. Office, Silchar for
information and n/a. Pl .
4. The SS POS /Cachar Divn. Silchar-1 for information
With No .A-328 dt. 12/9/95.

Sd/-

Sub-Divn. Inspector of Post offices,
Silchar South Subdivision,
Silchar- 788001.

Attested by
S. Chakraborty
Advocate

ANNEXURE- 4Extract copy of the Annexure- 4

E

I, Md. Rahimul Hoque Barbhuyan, father of
 Late Maniruddin Barbhuiya, working in the Dhanehari
 Post office as EDDA for last nine years. On 25/3/92
 one Money Order bearing No. 743 dt. 16/3/92 for Rs. 500/-
 (five hundred only) from Dibrugarh Chapachuwor favouring
 Md. Bakuruddin Barbhuiya C/O Aftabur Rahman Barbhuyan,
 P.O & Vill. Dhanehari I by mere mistake misquoted Basiruddin
 Laskar instead of Baburuddin Laskar in the Money order Book
 and delivered the amount of Rs. 500/- to him. Now I am regretting
 for my such mistake I will deposit the said Money order &
 Rs. 500/- to the departmental Head by next thursday And I assure
 that I shall not commit such type of mistake and thus for this
 time I beg pardon to the departmental Head.]

By Rahimul Hoque Barbhuyan

Dt. 22/3/94

Attested by
 S. Chakraborty
 Advocate

ANNEXURE - 5

DEPARTMENT OF POST, India.
Office of the Subdivisional Inspector of Post office
Silchar South Subdivision,
Silchar-788001.

To

The Rahimul Hussain Barbhuya ,
EDDA (C) EDMC (Put off).
Dhanbari B.O.P.O.Dhanbari Via Sonabarighat.

NO. AI/Ed. Staff/95

dt. 18/11/97.

The report of the Inquiry Officer is enclosed.
The disciplinary authority will take a suitable decision
after considering the report. If you wish to make any
representation or submission, you may do so in writing to
the Disciplinary authority within 15 days of receipt of the
Letter.

Sd/-

Inspector of Post offices.
Silchar South Subdivision,
Silchar- 788001.

Encl: 7 (seven).

Attested by
S. Chakraborty
Advocate

ANNEXURE - 5

Inquiry report under Rule 8 of the P & T (Conduct & Service) Rules 1964 against Md. Rahimul Haque Barbhuya ,
EDDA -C- EDMC (now put off duty).

1. Name of the I.O. and Letter of authority.

a). Shri A. Saha formerly SDI (P) Hailakandi and now
 Offg. as ASPOs (Division), Dibrugarh. Appointed to act
 as I.O. Vide SDI (P) Silchar South Sub. Divn. No. AI/ED/
 staff/95 dt. 18/3/95 which was approved by the SSC/
 Silchar No. 323 of 12/9/95.

b). Name of the P.O.

Shri S. Bose , CI Divisional Officer, Silchar.

c). Name of the charged official :

Md. Rahimul Haque Barbhuya .

d). Name of the defence Assistant.

Shri N.N. Biswas , a retired SPn of Cachar Divn.

e). Disciplinary Authority.

SDI (P) Silchar South Sub-Divn. Silchar.

2. The charged official participated in the enquiry from
 beginning to end. Shri N.N. Biswas , a retired Govt. Servant
 (SPn) has been appointed as defence Asstt. to defend the
 case on his behalf.

3. Only one article of charges was framed against the charged
 official and the same is as under.

ARTICLE - 1

Article of the charge framed against Md. Rahimul Haque
 Barbhuya, EDDA -C- EDMC of Dhanchari B.O. (now put off)
 Shri Rahimul Haque Barbhuya while working as EDDA -C-
 EDMC /Dhanchari B.O. on 25/3/92 took away Chapakhawa

contd....

-2-

M.O. No. 743 dt. 16/3/92 for Rs. 500/- with cash under receipt in Dhanbari B.O. Journal dt. 25/3/92 for effecting payment to its real payee Shri Babaruddin Barbhuya of Vill. & P.O. Dhanbari. But failed to pay the said M.O. to the payee - Shri Babaruddin Barbhuya. Instead he misappropriated the money by forging the signature of one Shri Basiruddin Laskar in the Postman Book against the M.O. under reference. Shri R.H. Barbhuya EDDA C-EDMC Dhanbari B.O. admitted the fact vide his written statement dt. 22/3/94 the O/S. Mills South Sub-Divn. Shri Hara Kr. Das. The amount was recovered from Shri R.H. Barbhuya, EDDA C-EDMC, Dhanbari B.O. and credited at Silchar H.O. vide ACG -67 receipt No. 37 of Book No. SC-612 dt. 4/4/94.

By his above act Shri R.H. Barbhuya exhibited lack of integrity and devotion to duty and thereby he violated the provision of Rule 17 of P & T ED (conduct & Service) Rules 1964.

List of documents by which the articles of charge framed against Mr. Rahim H. Barbhuya EDDA C-EDMC, Dhanbari B.O. as per Annexure-111 of the charge sheet.

contd....3

- (i). Dhaneshari B.O. Journal dt. 24/3/92 to 25/3/92.
- (ii). Postman Book of Dhaneshari B.O. for the above period.
- (iii). W/S. of Shri R.H. Barbhuya, EDDA_C_EDMC, Dhaneshari B.O. of 22/3/94.

5. List of witnesses by whom the article of charged framed against Mr. R.H. Barbhuya is as under:

- (a) Shri Har Kr. Das, O/S. Mills, Silchar.
- (b) Shri Babaruddin Barbhuya Village & P.O. Dhaneshari, the payee of the Chapakhawa M.O. No. 743 of 16/3/92 for Rs. 500/- .

Preliminary hearing of the case has been undertaken and held on 17/5/97 at Sonabarighat at 1200 hours. Both the charged official and the B.O. were present in the hearing .

In course of preliminary hearing the charges were clearly explained to the charged official in regional Bengali Language and the charged official stated that he understood the charged framed against him.

However, the charged official in preliminary hearing denied all the charged framed against him expressed his willingness to appoint one Shri N.N. Biswas a retired SP as his defence assistant to defend the case on his behalf. His prayer has been granted Vide Letter of 18/5/97. The P.O. Shri S. Bose handed over the documents in original as not in the Annexure III of the Charge sheet.

The charge officials wanted to get through the document in original listed in Annexure-III of the Charge sheet and his prayer has been granted and the date for inspection of documents has been fixed on 30/5/96.

-4-

On 30/5/96 the charged official inspected the documents with the help of his defence assistant and admitted all the documents as valid one and the next date of examination/re-examination of the witness have been fixed on 12/6/96 & extended both by the P.O. and the defence assistant.

Shri H.K. was during enquiry stated that he proceeded to Dhaneswari B.O. on receipt of verbal instruction from the SDI (I), Silchar South with a view to enquire case of payment of Chapakhawa M.O. 743 dt. 16/3/92 for Rs. 500/-. After examination the B.O. Journal and Postman book he noticed that the M.O. was paid to one Shri Basiruddin Laskar instead of real payee Shri Babaruddin Barbhuya. As the M.O. was shown as paid to Basiruddin Laskar, the O/S. Mr. Shri Das contacted Md. Basir uddin Laskar but Shri Laskar denied the receipt of the M.O. from the EDDA C-EDMC in writing on 26/7/95. Then the O/S. Mr. Das contacted the Babaruddin Barbhuya, the real Payee. But he also denied the payment of the M.O. to him. In reply to a question Shri Har K. Das stated that the value of the M.O. recovered from the EDDA as the EDDA admitted Vide his written statement dt. 22/3/94 that the value of the M.O. recovered from the EDDA as the EDDA admitted Vide his written statement dt. 22/3/94 was misappropriated by him by putting the signature of one Basiruddin Laskar, Shri Das stated that the amount was credited at Silchar H.O. Vide ACG-67 receipt No. 37, Book No. S. 612 dt. 04/4/94.

contd....5

The other witness Md. Babaruddin Barbhuya was summoned by me on 12/6/96, 3/7/96 but Md. Babaruddin Barbhuya did not attend the hearing though he has been summoned under Regd. post, however both the P.O. and defence assistant also expressed their unwillingness to examine him and the proposal for examination of Md. Babaruddin Barbhuya has been dropped in the hearing on 12/3/97 I also did not consider recording his deposition as material one.

In the deposition of Md. R. H. Barbhuya, the charged official was recorded on 7/2/97 and during enquiry he stated that he took the money order from the Bpn, Dhaneshari B.O. on 25/3/92 and paid the same to one Shri Basiruddin Laskar wrongly. He further stated that he paid the M.O. to one Shri Basiruddin Laskar on the analogy that there is no person in the name of Md. Babaruddin Barbhuya. He further stated that every month money orders are paid to Md. Basiruddin Laskar. From that analogy he paid the M.O. to Md. Basiruddin Laskar. From that analogy he paid the M.O. to Md. Basiruddin Laskar. He further state that he took the acquittance of Md. Basiruddin Laskar in the M.O. form but not in the Postman Book. After enquiry he contacted Md. Basiruddin Laskar and recovered the money from him and handed over the O/S. Mails Shri Har Kr. Das, Shri Har Kr. Das then credited the money as UCR on Silchar H.O. No. EI No. 37 of Book No. SC-612 dt. 4/4/94 his name.

The P.O. Shri S. Bose has been asked to submit his written brief if any and accordingly he submitted a brief which was received by me on 28/4/97. The brief submitted by the P.O. is nothing but an analytical review of the Case. The sum & substance of the brief is as under:

After examination/Cross examination of the witness, charged official, list of documents etc. by me I am in the opinion that the fact of misappropriation of amount of Rs. 500/- five hundred of Chapakhawa M.O. No. 743 of 16/3/92 P/t. Md. Babaruddin Barbhuya Vill. & P.O. Dhanbari by Md. R.H. Barbhuya, the EDDA_C_EDNC of Dhanbari B.O. without effecting payment to the payee comes true. And the fact was found to be clearly admitted by the charged official in his written statement dt. 22/7/94 to the O/S. Mills over and above the defrauded amount of Rs. 500/- was handed over to the O/S. Mills by the charged officials for crediting the same to the Govt. account and the amount was subsequently credited at Silchar H.O. on 4/4/94 through the O/S. Mills which also proves that Shri R.H. Barbhuya misappropriated the amount of Chapakhawa M.O. No. 743 dt. 16/3/92 for Rs. 500/- p/t Md. Babaruddin Barbhuya the real payee.

contd.....7

Shri R.H. Barbhuiya received the M.O. u/r from the
EPN ,Dhanehari B.O. of 25/3/92 under clear receipt in
the B.O. Journal dt. 25/3/92 for effecting payment of the
M.O. to the Payee but instead of the paying the M.O. to
the real payee Md. Basiruddin Barbhuiya ,Shri R.H. Barbhuiya
the EDDA-C-DMC defrauded the amount of Rs. 500/- by showing
payment of the M.O. to one Basiruddin Laskar P.O & Vill.
Dhanehari by putting & forging the signature of Md. Basiru-
ddin Laskar himself in the M.O. paid voucher as well as on
the Postman book on 25/5/92 against the Chapakhwa M.O. No.
743 although Md. Basiruddin Barbhuiya and Md. Basiruddin Laskar
are two different persons residing at two different places
in the locality .As an EDDA Shri R.H. Barbhuiya supposed to
pay the amount of the M.O. to the real payee and if the real
Payee was not found the M.O. under reference should have been
returned to the Postman book ,but Shri R.H. Barbhuiya inten-
tionally did not do so rather he misappropriated the amount
of the M.O. without effecting payment of the M.O. to the real
payee.

As per written statement of Md. Basiruddin Laskar
dt. 22x 26/7/95 as recorded by Shri Har Kr. Das ,O/S. Mails
(witness No.1) on the date Md. Basiruddin Laskar was to deny
the receipt of the M.O. from Shri R.H. Barbhuiya ,the EDDA-C
E DMC Shri R.H. Barbhuiya was asked by Shri Har .Kr. Das

the O/S.Mails about the signature of Md. Basiruddin Laskar on the Postman book dt. 25/3/92, Shri R.H.

Barbhuiya stated that Basiruddin Laskar had put the said /signature himself on the Postman book on 25/3/92 which was found to be a false statements of Shri R.H. Barbhuiya .

Moreover Shri Har Kr.Das ,the O/S.Mails had contacted Shri Babaruddin Barbhuiya (the real payee of the M.O) on 8/3/94 and in his written statement dtl 8/3/94 Shri Babaruddin Barbhuiya denied the receipt of the amount of Chapakhwa M.O .No.743 dt. 16/3/92 from Shri R.H.Barbhuiya , the RDDA.

Hence, it is found clear that the M.O.u/r was neither paid to Shri Babaruddin Barbhuiya (the real payee) nor was pay to Basiruddin Laskar by Shri R.H.Barbhuiya but the amount of the M.O. was defrauded by Shri R.H.Barbhuiya the RDDA on 25/3/92.

By the by ,during the examination of Shri R .H. Barbhuiya by me on 7/2/92 in reply to my question No.1 Shri R.H. Barbhuiya stated that on the M.O.had been paid to Md. Basiruddin Laskar ,Babaruddin Barbhuiya (real payee) was informed by him that no such M.O. ,p to Md. Basiruddin Barbhuiya

had been received by the EDDA for effecting payment till the date, which was a false information conveyed by the EDDA though Shri R.H. Barbhuiya had received the M.O. on 25/3/92 and then Shri R.H. Barbhuiya had concealed the fact in r/o receipt of the Chapaknwa M.O. No. 743 on 25/3/92 to Md. Basiruddin Barbhuiya.

Moreover during the examination of Shri R.H. Barbhuiya by me on 7/2/97 Shri Barbhuiya quite failed to counter the charge levelled against him in the Charge sheet to give satisfactory explanation before the enquiry authority in this respect.

Thus it has been undoubtedly proved that Shri R.H. Barbhuiya, EDDA-C-EDMC, Dhanepari B.O. (now put off) duty neither paid the M.O. to the real payee but misappropriated the amount of the M.O. himself on 25/3/92 by putting & forging the signature in the name of Basiruddin Lakkar in the Postman Book of 25/3/97.

Hence from the facts and as mentioned above it is clear and obvious that Shri R.H. Barbhuiya, EDDA-C-EDMC of Dhanepari ED (now put off) has violated the pronouncement of Rule 17 of the P & T EDA (Conduct & Service) Rules 1964 and Shri R.H. Barbhuiya deserves to be awarded with a Deptt. punishment as per provisions of Rule of the P & T, EDA (Conduct & services) Rule 1964.

The brief of the P.O. has been sent to the charged Official under Regd. Post on 29/4/97 and the Counter brief from defence side was received on 10/7/97 after issuing several reminders.

The brief submitted by Shri R.H. Barbhuiya the charged official is as follows:-

It is clear from the Dhanehari B.O. journal of 24/3/92 and 25/3/92 that Chapakhwa M.O. No. 743 dt. 16/3/92 for Rs. 500/- was received by Dhanehari B.O. and sent out for making payment to the Payee Shri Babaruddin Barbhuiya of Village Dhanehari on 25/3/92 after duly entered in the B.O. Journal. Shri R.H. Barbhuiya, the BODA-C-EDMC of Dhanehari B.O. signing the B.O. journal received the M.O. Voucher and amount for effecting payment to the Payee. He entered the M.O. in the Postman book noted the name of the Payee as Basiruddin Laskar instead of Babaruddin Barbhuiya, actual payee. Shri R.H. Barbhuiya stated in his statement dt. 7/2/97 that he paid the M.O. to one Md. Basiruddin Laskar on the analogy that there was no person in the name of Babaruddin Barbhuiya, further it is stated every month Money orders were paid to Md. Basiruddin Laskar. Though the analogy stated in his above statement is not tenable as per Rule. However as per B.O. journal, Postman book and the statement of R.H. Barbhuiya of 7/2/97 it is proved beyond any doubt that the M.O. was not paid to the real payee.

contd....11

It is also clear from the Postman Book and from the statement of Shri R.H. Barbhuiya EDDA-C-EDMC, Dhanehari B.O. dt. 7/2/97 that the EDDA did not obtain the signature of Basiruddin Laskar in his Postman Book but he stated that he took the signature of Basiruddin Laskar in the M.O. paid-voucher in place proved the purpose. From the above statement it is clearly proved that the EDDA Dhanehari B.O. committed some irregularity but did not prove the defraud charge brought against him.

One of the two witnesses Babaruddin Barbhuiya, payee of the M.O. did not attend the hearing. Shri Har Kr. Das O/S. Maib South Sub-Divn. attend the enquiry but nothing new evidence has been produced through his Cross examination on the basis of which the charge of defraud of the M.O. may be proved.

In fact the Charge of fraud against Shri R.H. Barbhuiya, EDDA -C- EDMC of Dhanehari B.O. Without sufficient documents of evidence and witnesses. The documents furnished in Annexure-III and the Witness furnished in Annexure-IV of the Charge Sheet are not sufficient to prove the forgery charges i.e. M.O. paid-Voucher authenticated statement or witness of Basiruddin Laskar to whom the M.O. was wrongly paid and the witness of Babaruddin Barbhuiya actual payee. But the Respondent failed to produce this relative vital evidence either in the memorandum of charges or inquiry stage of enquiry. The enquiry authority himself realised the fact and trying to fill up the defect by issuing summon to Md. Basir

contd....

uddin Laskar though he is not a listed witness .However he did not attend the enquiry .So the forgery charge brought against Shri R.H. Barbhuya EDDA-C-EDMC Dhanehari B.O. is not fully proved due to insufficient evidence/witness and thus the charge cannot be sustained. ✓

I tried to explain the Case on the basis of document/ Witness and the evidence produced in the enquiry and this I conclude my brief.

I have gone through the Charge sheet ,Witness as mentioned above and the list of document etc. and my observation into the case are given below :

EDDA is responsible for the correct delivery of all articles and the correct payment of all money order ,entrusted to him .In case of any doubt the EDDA must satisfy himself the Payee's identity by making proper enquiries before paying the M.O's .But here in this Case, Shri R.H. Barbhuya did not do so .He did not go through the M.O. and stated to have been paid the M.O. to Shri Basiruddin Laskar .During enquiry the SPs tried to conceal the real truth & tried to establish the case as wrong payment of M.Os .Further, the S.Ps during enquiry & even in the written brief submitted by him admitted that the M.O. was not paid to the correct Payee .Being an EDDA it, was his duty to confirm the identity of the Payee before payment of M.Os .

Here in this Case ,the original Payee of the M.O Was Babaruddin Barbhuiya but the EDDA stated that he paid the M.O.to one Basiruddin Laskar ,where there is not relevancy in between the two ,names .Besides this,both the persons are residing in different villages .The Wrong payment of M.Os is being made where there is relevancy in the names of Wrong receipient and the real payee .And the EDDA cannot identify the real Payee as the two persons are holding the same name. But in this case EDDA intentionally shown the payment to one Shri Basiruddin Laskar and defrauded the value of the M.O.He showed payment of the M.O.to one Shri Laskar in cool brain With a view to misappropriate the value of the M.O.The value of the M.O.was subsequently realised by the O/S.Maib from the SPS and credited to the Govt.account in the name of Shri R.H. Barbhuiya .

Though at the first instance,the case is seen as a wrong payment of t e M.O.but after through a deep study ,it is seen that the Case is nothing but a fraudulent payment one and the EDDA intentionally misappropriated the M.O.in cool brain and in preplanned way.He took the M.O.from the B.O.With cash but he intentionally wrote the name of the Payee of the M.O. as Basiruddin Laskar .Secondly he took the payment of the M.O by putting his signature in the M.O.form which was admitted

by him in his W/S. dt. 22/3/94. Thirdly, he informed the original payee -Shri Baburuddin Barbhuiya when he enquired about the M.O. the EDDA stated that no M.O. was received by him. He concealed the real truth in such a way .

The charged official in his written brief stated that the M.O. paid -Voucher and the listed witness Md. Babaruddin Barbhuiya were not examined in the enquiry .

It is true that above document and witness were not examined as I did not feel it necessary , because from the very beginning of the enquiry the EDDA admitted that the M.O. was paid to one Shri Basiruddin Laskar instead of the real payee . Secondly , the real payee Md. Baburuddin Barbhuiya is out of picture , because the EDDA did not go to his residence for payment . Besides this, both the prosecution side and the defence side did not give any importance of examination of the above document/witness hearing at.

12/3/97.

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Shri R.H. Barbhuiya admitted the fact of misappropriation of the M.O.No.743 dt.16/3/92 for Rs.500.00 in the W/S.stated 22/3/94 and refund the money to the O/S.mails and the said O/S.credited the money to the O/S.Mails and the said O/S.credited the money to Silchar H.O. ACG-67 No.SC 612 R/No.37 dt.4/4/94 as UCR .Further the charged official himself stated in his brief (last line of the last para but one para)dt.01/7/97 that the charged brought against Shri R.H.Barbhuiya BDA-C-DMC Dhanepari B.O.is not fully proved due to insufficient evidence / witness.Thus he admitted that the charge was proved to some extent .

From the above discussion it is clear that the BDA of Dhanepari B.O.misappropriated the value of the M.O.in Cool train and he also admitted the fact in his written statement dt.22/3/94 .The charged framed against the Shri R.H.Barbhuiya ,BDA -C-DMC for violating of Rule.17 of the P & T BDA (Conduct & Service) Rules 1964 thus fully proved beyond doubt .

Sd/ illegible 10/9/97.

Asstt.Supt.of Post offices,
Dibrugarh Division,Dibrugarh-I.

Attested by
S. Chakraborty
Advocate

ANNEXURE-6

To

The Inspector of PO's ,Silchar South Sub-Divn.

SILCHAR.

Sub: Defence against enquiry report
 under Rule 8 of the P & T (Conduct
 & Service) Rules 1964 against R.H.
 Barbhuyan , EDDA -cum-EDMC ,Dhanepari ED.
 B.O.

Sir,

With Reference to your Letter No .AI/ED .Staff/95
 Dt.18/11/97, I am to state that I have narrated my argu-
 ments and facts in my defence ,brief submitted to the
 I/O on 14/05/97 and 30/06/97 respectively repetition of
 same argument/facts is not necessary .So,I confirmed my
 arguments only on the observation and findings of the I/O.

1. As regards 1st para of the I/O.report,I am to state
 that the responsibility for wrong payment of the Chaoa-
 khwa M.O. No .743 dt. 16/03/92 for Rs.500.00 has been
 proved from the evidence i.e.from the listed documents,
 Nb.1 and 11 (S.O.Journal and Post man Book) .Besides this-
 the Charged official also admitted the fact from the
 very begining of the enquiry ,which was admitted by the
 I/O.in the 3rd para of his report .So,this pprtion of
 Wrong payment of M.O.U/R.has been proved through evidence

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evidence and confessional statement of the C.O.

2. The defraud charge framed Under Rule 8 against R.H.Barbhuiya ,DDA-cum-DMC ,Dhanehari B.O.on the basis of three documents and two witnesses namely

(1) Dhanehari B.O.Journal (2) Postman Book (3) Written statement of R.H.Barbhuiya ,DDA -cum-DMC ,Dhanehari EDHO ,dt. 22/03/94.

Witnesses: 1.H.K.Das O/S.Mails ,(2) Babaruddin Barbhuiya Payee of the M.O.No other document or witness have been produced either in the Charge sheet or any stage of the enquiry.

2. In the B.O.Journal (Listed document No.1) name of payee was written as Babaruddin Barbhuiya but in the listed document No.2 (Postman Book) the name of the Payee was written as Masiruddin Laskar.Listed document No.3 (Written statement of R.H.Barbhuiya dt.22/03/94) was a confessional statement of wrong payment of Chapaknwa M.O.No.743 dt. 16/03/92 for Rs.500/-.All these documents clearly indicates towards wrong payment of the M.O.u/r.and in no way any indication of defraud so the forgery charges cannot be sustained on the basis of these documents referred to above.

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3. As regards the listed witnesses, Shri Har Kumar Das (S.W.1) attended the enquiry and examined by the P.O. and Cross examined by the D/A. Shri Babaruddin Barbhuiya (S.W.2) did not attend the enquiry.

Shri Har Kumar Das (S.W.1) in his deposition stated that he visited the Dhaneshari B.O. and checked B.O. Journal & Postman book and found the name of the Payee noted in the B.O. Journal & Postman book, does not tally with each other. Then he contacted Babaruddin, the real payee and Basiruddin Laskar to whom the M.O. was wrongly paid and Shri R.H. Barbhuiya, EDDA-Cum EDC, Dhaneshari B.O. and obtained three written statements in different dates but neither the Charge sheet nor in any stage of the Inquiry these documents were produced except the confessional statement of wrong payment made by the C.O. Deposition of H.K.D. as (S.W.1) did not produce any evidence in support of defraud charge brought against the C.O. In fact, the prosecution totally failed to produce any evidence either by the document or by the witnesses. Therefore no concrete evidence has been adduced during the enquiry. As such penalty cannot be imposed according to the Art. 311 of the Constitution of India.

4. The following documents and witnesses, are necessary to prove the defraud charge in addition to the document produced before the enquiry (A) Statement and witnesses of Basiruddin Laskar to whom the M.O. was wrongly paid, (B) M.O. Paid-voucher to ascertain the wrong payment (c) Statement and witness of Basiruddin Barbhuiya, actual payee. But these documents were not produced by the Prosecution in any stage of the enquiry. In spite of this, inquiry authority imaginarily concluded his findings without any basis of evidence that the C.O. misappropriated the value of M.O. in cool brain and thus the I/O put forwarded some helpless arguments on assumption without any evidence.

5. Grounds as to why the charge cannot be sustained.

(a). Forgery charge has not been proved according to the evidence adduced during the enquiry.

(b). Evidence indicates that it was a simple case of wrong payment but the charge framed for defrauding the amount of the Chapakhwa M.O. No. 743 dt. 16/03/92.

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(C) Required records as noted above has not been produced even after demanding by the defence.

(D) All the witnesses were not attended the Inquiry though they had been summoned by the I/O.

(E). No evidence has been adduced during the inquiry on the basis of which defraud charge can be proved.

Signature of R.H. Barbhuiya ,

EDDA-cum-EDMC ,Dhanbari, E.O.

Silchar

Dt. the 20th Dec. 97.

Sd/ Rohimul Hoque Barbhuyan.

Attested by:-
S. Chakraborty
Advocate

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ANNEXURE- 7

DEPARTMENT OF POST : INDIA

OFFICE OF THE SUB DIVL. INSPECTOR OF POST OFFICES

SILCHAR SOUTH SUB DIVN.

Silchar- 788001.

No. AI/E.D. Staff/95-96

Dt. Silchar-788001 15/6/98
12/8/98.

It was proposed in this office Memo of even No. dt. 5/6/95 to hold an enquiry into the Charge framed against Shri Rashinul Hoque Barbhuiya, EDDA-cum-EDMC of Dhanehari B.O. under Rule 8 of EDA (Conduct & Service) Rules 1964. These charges are as under:

ARTICLE - 1

Articles of charges framed against Mr. Rashinul Hoque Barbhuiya, EDDA-C-EDMC of Dhanehari B.O. (now put off) Shri Rashinul Hoque Barbhuiya while working as EDDA -C-EDMC Dhanehari B.O. On 25/2/92 took away Chapakhwa M.O. No. 743 dt. 13/3/92 for Rs. 500.00 with cash under clear receipt in Dhanehari B.O. Journal dt. 25/3/92 for effecting payments its real payees Shri Babaruddin Barbhuiya of Vill & P.O. Dhanehari. But failed to pay the said M.O. to the Payee. - Shri Babaruddin Barbhuiya instead he misappropriated the money by forging the signature of one Shri Basiruddin Laskar in the Postman Book against the M.O. under reference Shri R.H. Barbhuiya, EDDA -C-EDMC, Dhanehari B.O. admitted the fact vide his Written statement dt. 22/3/94 to the O/S. Mail s, South Subdivn. Shri Har Kumar Das. The amount was recovered from Shri R. H. Barbhuiya, EDDA -C-EDMC, Dhanehari B.O. and credited at Silchar H.O. vide ACG-67, Receipt No. 37 of Book No. SC. 612 dt. 4/4/94.

contd....2.

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By his above act Shri R.H.Barbhuyan exhibited lack of integrity and devotion to duty and thereby he violated the Provisions of Rule 17 of P & T R (Conduct & Service) Rules 1964.

List of documents by which the articles of Charges framed against Shri R .H.Barbhuiya , EDDA -C-E DMC of Dhanepari B.O.as per Annexure -III of the Charge sheet,

(i).Dhanepari B.O.Journal ~~etc~~ dt. 24/3/92.

(ii).Postman Book of Dhanepari B.O.for the above period .

(iii).W/S.of Shri R.H.Barbhuiya , EDDA -C-E DMC , Dhanepari of 22/3/94.

5.List of Witnesses by whom the article of charges framed against Shri R.H.Barbhuyan is as under:-

(a). Shri Har Kumar Das ,O/S.Mails ,Silchar

(b).Shri Babaruddin Barbhuiya Vill.& P.O.Dhanepari, the payee of the Chapakhwa M.O.No.743 dt.16/3/92.

3. Md.Rahimul Hoque Barbhuiya received the above Memo and submitted his Written statement of Defence on 23/6/95, wherein he denied the charges and did not plead guilty of his charges .It was considered expedient to hold the enquiry by appointing an Inquiry authority and accordingly Shri Aginash Saha ,the then SDIPOS ,Hailakandi was Vide No AI/Ed Staff dt. 18/9/95 appointed as the Inquiry Officer to enquire into the charges framed against Shri R.H.Barbhuiya , EDDA-C-E DMC ,Dhanepari .Sri S.Bose CI Divl,iffice was appointed as Presenting Officer to present the case on behalf of the Di sciplinary authority.

contd

Shri N.N.Biswas ,Retd.S.P.M.of Cachar Division was the Defence Assistant .

3. The enquiry was duly held and the report thereof was received under inquiry Officer's Letter No AI/Enquiry/Dhanepari dt.10/9/97.The article of charge brought against have been proved in the enquiry .The report of the enquiry Officer as cited above is reproduced as under:

* Enquiry report Under Rule 9 of the P & T (Conduce & Service) Services Rules ,1964 against Md.Rahinul Hoque Barbhuiya ,EDDA-C-EDMC (now put off duty) .

1. Name of the I.O.and Letter of authority:

(a). Shri A.Saha ,formerly SDI (P) ,Hailakandi and now Offg.as ASPOS (Division)Dibrugarh appointed to act as I.O.Vide SDI(P) Silchar South Sub-Divn.

Nb.AI/ED /Staff /95 dt. 18/3/95 which was approved by the SSP/Silchar Nb.A-328 dt. 12/9/95.

(b). Name of the P.O.- Shri S.Bose ,C.I.Divl.Office,Silchar

(c). Name of the charged officials.

Md.Rahinul Hoque Barbhuiya

(d). Name of the defence Assistant .

Shri N.N.Biswas ,Retd.SPM of Cachar Division.

(e). Disciplinary authority.

SDI (P) ,Silchar South Divn.Silchar.

2. The charged officials participated in the enquiry from begining to end ,Shri N.N.Biswas ,a Retd.Govt.servant (SPM) has been appointed as Defence Asstt.to defend the case on his behalf .

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4. Only one Article of charge was framed against the Charged officials and the same is as under:-

ARTICLE -1

Article of charges framed against Md. Rahinul Hoque Barbhuiya, EDDA-C-E DMC of Dhanehari B.O. put off now. Shri Rahinul Hoque Barbhuiya, while working as EDDA-C-DMC/Dhanehari B.O. on 25/3/92 took away Chapaknowa M.O. No. 743 dt. 16/3/92 for Rs. 500/- with cash under clear receipt in Dhanehari B.O. Journal dt. 25/3/92 for effecting payment to its real payee Shri Babaruddin Barbhuiya of village and P.O. Dhanehari but failed to pay said M.O. to the Payee, Shri Babaruddin Barbhuiya instead he misappropriated the money by forging the signature of Shri Basiruddin Laskar in the Postman Book against the M.O. under reference. Shri R.H. Barbhuiya EDDA-C-DMC, Dhanehari B.O. admitted the fact vide his written statement dt. 22/3/94 to the O/S. Mails, South Subdivision, Shri Hara Kumar Das. The amount was recovered from Shri R.H. Barbhuiya EDDA-C-DMC, Dhanehari B.O. and credited at Silchar H.O. vide ACC-67 Receipt No. 37 of Book No. SC-612 dt. 24/4/94.

By his above act Shri R.H. Barbhuiya exhibited lack of integrity and devotion to duty and thereby he violated the Provision of Rule 17 of P & T M (Conduct and Service) Rules 1964.

contd....5

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List of documents by which the Articles of charges framed against Md. Rahimul Hoque Barbhuiya, BDA-C-EDMC of Dhanehari B.O. as per Annexure -III of the Charge sheet.

- (i). Dhanehari B.O. Journal dt. 24/3/92 dt. 25/3/92
- (ii). Postman book of Dhanehari B.O. for the above period
- (iii). W/C of Shri H.R. Barbhuiya, BDA -C-EDMC, Dhanehari B.O. of 22/3/94.

5. List of witnesses by whom the article of charge framed against Md. H.R. Barbhuiya is as under;

- (a). Har Kumar Das, O/S. Mail, Silchar.
- (b). Shri Babaruddin Barbhuiya, Vill Dhanehari, the Payee of the Chapakhwa M.O. No. 743 of 16/3/92 for Rs. 500.00.

Preliminary hearing of the Case has been undertaken and held on 17/5/97 at Sonabarighat at 12.00 hrs. Both the charged officials and the P.O. were present in the hearing.

In course of Preliminary hearing, the charges were clearly explained in the Charged official in regional Bengali Language and the charged official stated that he understood the charges framed against him.

However the Charged official in preliminary hearing denied all the charges framed against him and expressed his willingness to appoint one Shri N.N. Biswas, a retired SPM as his defence Assistant to defend the Case on his behalf. His prayer has been granted vide my Letter of 18/5/97. The P.O. Shri S. Bose handed over the document in original as noted in the Annexure-III of the Charge sheet.

The Charged official wanted to get through the document in original listed in Annexure-III of the Charge sheet and his prayer has been granted and the date for inspection of documents has been fixed on 30/5/96.

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On 30/5/96 the Charged officials inspected the documents with the help of his Defence Assistant and admitted all the documents as valid and on the next date of examination / reexamination of the witnesses have been fixed on 12/6/96 and on that day the witness Shri Har Kumar Das was examined and reexamined both by the P.O. and the Defence Asst.

Shri H.K.Das during enquiry stated that he proceeded to Dhanehari B.O. on receipt of verbal instruction from the SDIPOS, Silchar South with a view to enquire the case of payment of Chapakhawa M.O. No. 743 dt. 16/3/92 for Rs. 500/- After examination of the B.O. Journal and Postman Book he noticed that the M.O. was ~~paid~~ paid to one Shri Basiruddin Laskar instead of real payee Shri Babaruddin Barbhuiya As the M.O. was shown as paid to Shri Basiruddin Laskar, the O/S. Mails, Shri Das contacted Md. Basiruddin Laskar but Shri Laskar denied the receipt of the M.O. from the EDDA-C-EDMC in writing on 26/7/95. Then the O/S. Mails contacted the Babaruddin Barbhuiya, the real payee. But he also denied the payment of M.O. to him. In reply to a question Shri Babaruddin stated that the value of the M.O. was recovered from the EDDA as the EDDA admitted vide his written statement dt. 22/3/94 that the value of the M.O. was recovered from the EDDA as the EDDA admitted vide his written statement dt. 22/3/94 that the value of the M.O. was misappropriated by putting the signature of one Basiruddin Laskar, Shri Das stated that the amount credited at Silchar M.O. vide A.C.G. Receipt No. 37, Book No. SC-612 dt. 04/4/94.

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The other Witnesses Md. Babaruddin Barbhuyan was summoned by me on 12/6/95 & 3/7/96 but Md. Babaruddin Barbhuiya did not attend the hearing though he has been summoned under Regd. Post. However, both the P.O. and the Defence Asstt. also expressed their unwillingness to examine him and the proposal for examination of Md. Babaruddin Barbhuiya has been dropped in the hearing on 12/3/97. I also did not consider recording his deposition as material one.

The deposition of Mr. R. E. Barbhuiya, the charged official was recorded on 7/2/97 and during the enquiry he stated that he took the money order from the BPM, Dhauchar B.O. on the 25/3/92 and paid the same to one Shri Basiruddin Laskar on the analogy that there is no person in the name of Md. Babaruddin Barbhuyan. He further stated that every month money orders are paid to Md. Basiruddin Laskar. He further stated that he took the signature of Basiruddin Laskar in the M.O. form but not in the Postman book. After enquiry he contacted Md. Basiruddin Laskar and received the money from him and handed over the O/S. Mails, Shri Har Kumar Das. Shri Har Kumar Das then credited the money as U.C.R. on Silchar H.O. under ACG-67, Receipt No. 37, Book No. SC.612 dt. 4/4/94 in his name.

The B.O. Shri S. Bose has been asked to submit his Written Brief, if any and accordingly he submitted a brief which was received by me on 23/4/97. The brief submitted by the P.O. is nothing but an analytical review of the case. The sum and substance of the brief is as under:

, After the examination /Cross examination of the Witness charged official, list of documents etc. by me I am in the opinion that the fact of misappropriation of the amount of Rs.500/- (Five hundred) only of Chapaknawa H.O. No.1743 of 16/5/92 payable to Md. Babaruddin Barbhuyan Vill. & P.O. Dhanehari by Md. R.H. Barbhuya the EDDA-C-EDMC of Dhanehari B.O. without affecting payment to the Payee comes true. And the fact was found to be clearly admitted by the Charged official in his Written statement dt. 22/7/94 to the O/S. Mails, over and above the defrauded amount of Rs.500/- was handed over to the O/S. Mails by the charged officials for crediting the same to the Govt. account and the amount was subsequently credited at Silchar H.O. on 4/4/94 through the O/S. Mails which also proves that Shri R.H. Barbhuiya misappropriated the amount of Chapaknawa M.O. No. 743 dt. 16/3/92 for Rs.500/- p/t Md. Babaruddin Barbhuiya, the real payee.

Shri R.H. Barbhuiya received the M.O. u/r from the HPM Dhanehari on 25/3/92 under clear receipt in the B.O. Journal dt. 25/3/92 for effecting payment of the M.O. to the payee but instead of paying the M.O. to the real payee, Md. Babaruddin Barbhuiya, Shri R.H. Barbhuiya, the EDDA-C-EDMC, Dhanehari defrauded the amount of Rs.500/- by showing payment of the M.O. to one Shri Basiruddin Laskar, P.O. & Vill. Dhanehari

by putting and forging the signature of Md. Basiruddin Laskar himself in the M.O. Paid voucher as well as on the Postman book on 25/3/92 against that Chapakhwa M.O. No. 743 although Md. Babaruddin Barbhuiya and Md. Basiruddin Laskar are two different persons residing at two different places in the locality. As an EDDA, Shri R.H. Barbhuiya supposed to pay the amount of the M.O. to the real payee and if the real Payee was not found the M.O. under reference should have been returned to the remitter with a suitable remark on the M.O. Voucher and on the Postman Books; but Shri R.H. Barbhuiya intentionally did not do so rather he misappropriated the amount of the M.O. without affecting payment of the M.O. to the real payee.

As per written statement of Md. Basiruddin Laskar dt. 26/7/95 as recorded by Shri Har Kumar Das, O/S. Mails (Witness No. 1) on the date Md. Basiruddin Laskar was found to deny the receipt of the M.O. from Shri R.H. Barbhuiya, the EDDA-C-E DMC Shri R.H. Barbhuiya was asked by Shri Har Kumar Das, the O/S. Mails about the signature of Md. Basiruddin Laskar on the Postman Book dt. 25/3/92, Shri R.H. Barbhuiya stated that Basir uddin Laskar had put the said signature himself as the Postman Book on 25/3/92 which was found to be a false statement of Shri R.H. Barbhuiya.

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10-11-93

Moreover Shri Harinar Das, the O/S -Mails had contacted Shri Babaruddin (the real payee) of the M.O on 8/3/94 and in the Written statement dt.8/3/94 .Shri Babar uddin Barbhuiya denied the receipt of the amount of Chapakhwa M.O.No. 743 dt.16/3/92 from Shri R.H.Barbhuiya, the EDDA .

Hence ,it is found clear that the M/O ,u/r was neither paid to Shri Babaruddin Barbhuiya (the real payee) nor was paid to Basiruddin Laskar by Shri R.H.Barbhuiya but the amount of the M.O.was defrauded by Shri R.H.Barbhuiya ,the EDDA on 25/3/92.

By the by during the Examination of Shri R.H.Barbhuiya by me on 7/2/92 in reply to my question No.1 Shri R.H.Barbhuiya stated that the M.O.had been paid to Basiruddin Laskar and Babaruddin Barbhuiya (real payee) was informed by him that no such M.O.paid to Babaruddin Barbhuiya (real payee) , had been received by the EDDA for effecting payment till the date ,which was a false information conveyed by the EDDA though Shri R.H.Barbhuiya had received the M.O.on 25/3/92 and thereby Shri R.H.Barbhuiya had concealed the fact in respect of receipt of the Chapakhwa M.O.No.743 on 25/3/92 to Md.Babaruddin Barbhuiya .

Moreover ,during the examination of Shri R.H.Barbhuiya by me on 7/2/97 Shri Barbhuiya quits failed to counter the charge levelled against him in the Charge sheet to give satisfactory explanation before the Enquiry authority in this respect.

contd...11

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Thus, it has been undoubtedly proved that Shri R.H. Barbhuiya, EDDA -C-EDMC, Dhanehari B.O. (now put off duty) neither paid the M.O. to the real payee but misappropriated the amount of the M.O. himself on 25/3/92 by putting forged signature in the name of Basiruddin Laskar in the Postman Book of 25/3/92.

Hence, from the facts as mentioned above it is obvious that Shri R.H. Barbhuiya, EDDA -C-EDMC, Dhanehari EDDO (now put off) has violated the provisions of Rule 17 of the P & T EDA (Conduct & Service) Rules, 1964 and Shri R.H. Barbhuiya deserved to be awarded a departmental punishment as per Provision of Rule of the P & T EDA (Conduct & Service) Rules.

The brief of the P.O. has been sent to the charged officials under Regd. Post on 29/4/97 and the Counter brief defence side was received on 10/7/97 after issuing several reminders.

The brief submitted by Shri R.H. Barbhuiya, the charged official is as follows: -

'It is clear from the Dhanehari B.O. Journal of 24/3/92 and 25/3/92 that Chapakhwa M.O. No. 743 dt. 16/3/92 for Rs. 500.00 was received by Dhanehari B.O. and sent out for making payment to the Payee Shri Babaruddin Barbhuiya of Vill. Dhanehari on 25/3/92 after duly entered in the B.O. Journal Shri R.H. Barbhuiya, the EDDA -C-EDMC of Dhanehari B.O. signing the B.O. Journal received the M.O. Voucher and amount for effecting payment to the payee. He entered the M.O.

contd....12

in the Postman Book noted in the name of the payee as Basiruddin Laskar instead of Baharuddin Barbhuiya , actual payee ,Shri R.H.Barbhuiya stated in his statement dt.7/2/97 that he paid the M.O. to one Md.Basiruddin Laskar on the analogy that there was no person in the name of Babar uddin Barbhuiya .Further it is stated every month Money order was paid to Md.Basiruddin Laskar from that analogy stated in his above statement is not tenable as per rule .However as per B.O .Journal ,Postman book and the statement of R.H.Barbhuiya of 7/2/97 ,it is proved beyond any doubt that the M.O. was not paid to the real payee.

It is also clear from the Postman Book and from the statement of Shri R.H .Barbhuiya ,EDDA-C -EDMC ,Dhanchari dt.7/2/97 that the MDDA did not obtained the signature of Basiruddin Laskar in his Postman Book but he also stated that he took the signature of Bssiruddin Laskar in the M.O. paid Voucher in place provided for the purpose from the above statement,it is clearly proved that the EDDA,Dhanchari B.O. committed same irregularity but did not prove the defraud charge brought against him.

Out of the two witnesses Babaruddin Barbhuiya ,payee of the M.O.did not attend the hearing .Shri Har Kumar Das,0/s. Mails South Subdivision attended the enquiry but nothing new evidence has been produced through his Cross examination on the basis of which the charge of defraud of the M.O.may be proved.

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In fact the Charge framed against Shri R.H. Barbhuiya EDDA-C-EDMC, Dhaneshari B.O. without sufficient evidence, document and witness, the documents furnished in Annexure-III and the Witness furnished in Annexure-IV of the Charge sheet are not sufficient to prove the forgery charges i.e. M.O. paid Voucher /authenticated statement of witness of Basiruddin Laskar to whom the M.O. was wrongly paid and the witnesses of Babaruddin Barbhuiya, actual payee. But the Respondent failed to produce this relative vital evidence either in the Memorandum of charges or inquiry stage of enquiry. The Enquiry authority himself realised the defect and trying to fill up the defect by issuing Summons to Basiruddin Laskar, though he is not a listed witness. However he did not attend the enquiry. So, the forgery charge brought against Shri R.H. Barbhuiya EDDA-C-EDMC, Dhaneshari B.O. is not fully proved due to insufficient evidence /witness and thus the charges cannot be sustained.

I tried to explain the Case on the basis of document/witness and the evidence produced in the enquiry and this I conclude by brief.

I have gone through the charge sheet, witness as mentioned above and the list of documents etc. my observation into the case given below.

contd...14

EDDA is responsible for the correct delivery of all articles and correct payment of all moneys order entrusted to him. In case of any doubt the EDDA must satisfy himself the Payee's identity by making proper enquiries before paying the M.O.s. But here in this Case Shri R.H. Barbhuiya ~~before expaying~~ ~~the M.O.s~~ did not do so He didnot go through the M.O. and stated to have been paid the M.O. to Shri Basiruddin Laskar. During enquiry the S.P.s tried to conceal the real truth and tried to establish the Case as wrong payment of M.O.s. But then the S.P.s during enquiry and even in this written brief submitted by him admitted that the M.O. was not paid to the correct Payee. Being an EDDA, it was his duty to confirm the identity of the Payee before payment of the M.O. Here in this Case, the original payee of the M.O. ~~taxonxBarx~~ was Basiruddin Barbhuiya but the EDDA stated that, he paid the M.O. to one Basiruddin Laskar where there is no relevancy in between the two names. Besides this, both the persons are residing in different villages. Wrong payment of M.O. is being made where there is relevancy in the names of wrong recipient and the real payee and the EDDA cannot identify the real payee as the two persons are holding the same name. But in this Case the EDDA intentionally show the payment to one Shri Basiruddin Laskar and defrauded the value of the M.O. He showed payment of the M.O. to one Shri Basiruddin Laskar in Cool brain with a view to misappropriate the value of the M.O. The value of the M.O. was subsequently realised by the O/S Mails from the SPs and credited to the Govt. account in the name of Shri R.H. Barbhuiya.

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Though at the first instance, the case is seen as a wrong payment of the M.O. but after thorough and deep study it is seen that the case is nothing but a fraudulent payment one and the EDDA intentionally misappropriated the M.O. in cool brain and the preplanned way. He took the Money order from the B.O. with cash but he intentionally wrote the name of the payee of the M.O. as Nasiruddin Laskar. Secondly, he took the payment of the M.O. by putting his signature in the M.O. form which was admitted by him in his W/S. dt. 22/3/94. Thirdly, he informed the original payee Shri Babaruddin Barbhuiya when he enquired about the M.O. the EDDA stated that no M.O. was received by him. He concealed the real truth in such a way.

The charged official in his written brief stated that, the M.O. Paid - Voucher and the listed witness Md. Babaruddin Barbhuiya were not examined in the enquiry. It is true that above document and witness were not examined as I did not feel it necessary. Because from the very beginning of the enquiry the EDDA admitted that the M.O. was paid to one Shri Nasiruddin Laskar instead of the real payee. Secondly the real payee Md. Babaruddin Barbhuiya is out of picture, because the EDDA did not go to his residence for payment. Besides this, both the prosecution side and the defence side did not give any importance of examination of the above document/witness (hearing dt. 12/3/97).

contd...16

Shri R.H. Barbhuiya admitted the fact of misappropriation of the M.O. No. 743 dt. 16/3/92 for Rs. 500/- in his W/S. dated 22/3/94 refund the Money to the O/S. M/s and the said O/S. credited the money to Silchar H.O. ACG-67 Receipt No. 37 Book No. SC-612 dt. 4/4/94 as U.C.R. Further the charged Officials himself stated in his brief (last line of last one para) dt. 01/7/97 that the charges brought against Shri R.H. Barbhuiya EDDA-C-EDMC, Dhanbari B.O. is not fully proved due to insufficient evidence/witness. Thus he admitted that the charge was proved to some extent . .

From the above discussions it is clear that the EDDA of Dhanbari B.O. misappropriated the value of the M.O. in Cool brain and he also admitted the fact in his written statement dt. 22/3/94. The charges framed against Shri R.H. Barbhuiya, EDDA-C-EDMC for violating the Rule 17 of the P&T EDA (Conduct & Service) Rules 1964, thus fully proved beyond doubt.

contd.....17

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4. I have gone through the report of the Enquiry Officer carefully and fall in the one with the view of the enquiry Officer regarding his hearing on the Article of charges .Md.Rahimul Hoque Barbhuiya has totally failed to refute the charges framed against him before Enquiry Officer .It has been well established that Md.Rahimul Hoque Barbhuiya received Chapakhawa M.O.No.743 dt.16/2/92 for Rs.500/- with cash under clear receipt in Dhanekari B.O. Journal dt. 25/2/92 for effecting payment to its real payee , Shri Baburuddin Barbhuiya of Vill.& P.O.Dhanekari .But failed to pay to the Payee,Shri Babaruddin Barbhuiya.Instead he misappropriated the Money by forging the signature of one Shri Basiruddin Laskar in the Postman Book ,against the entries of the M.O.under reference.

The said Rahimul Hoque Barbhuiya could not cite any valid or compelling circumstances that led him to effect payment of the M.O. to Shri Basiruddin Laskar ,while Shri Laskar in no way related to the said M.O.

I,therefore hold him responsible for such fraudulent payment of the M.O.by forging the signature of Shri Basiruddin Laskar which made him fully responsible for unbecoming of Govt. servant for which the Article of Charge framed against him.

contd.....18

O R D E R

I, Shri S. Suklabaidya, the Sub-Divisional Inspector of Post Offices, Silchar South Subdivision, Silchar hereby order that Md. Rahimul Hoque Barbhuiya, EDDA_C-EDMC, Dhanchari B.O. be removed from Service with effect from the date of Put off duty to meet the ends of Justice.

(S. Suklabaidya).

Sub-Divl. Inspector of Post offices,

Silchar South Sub-Divn. Silchar.

No. AI/E.D/St233/95-96 Dt. Silchar -788001 15/6/98.

Copy forwarded to:

1. Md. Rahimul Hoque Barbhuiya, EDDA_C-EDMC (Put off) Dhanchari B.O.
2. The Sr. Supdt. of Post offices, Cachar Divn. Silchar-1.
3. The Sr. Post Master Silchar H.O. for information and necessary action.

Sd/-

Sub-Divl. Inspector of Post offices,

Silchar South Sub-Divn. Silchar.

Attested by
Chakraborty
Advocate

ANNEXURE- 8

BEFORE THE SR. SUPDT. OF P.O.S ,CACHAR POSTAL DIVISION

In the matter of an Appeal
Under Rule 10 of BDA Conduct
and Service Rules imposing the
Major Penalty of removal from
Service in the post of BDDA Cum-
DMC ,Dhanehari BDO Vide Office
Memo No.A1/B Staff /95-96 dt.12/8/98
of the Inspector of P.O.'s ,Silchar
South Division,Silchar.

-And-

In the matter of an appeal filed
by Shri Rahimul Hoque Barbhuiya,
Ex-BDDA-Cum-BDM Dhanehari BDO under
Sonabarighat S.O.Present address :
P.O.& Vill.Dhanehari Via Sonabarighat
Dist.Cachar (Assam).

Being aggrieved and dissatisfied with the order passed
by the Inspector of P.O.'s Silchar South Subdivision,
Silchar removing the humble appellant from his Service
Vide Office Memo No.A1/B Staff/95-96 dt.12/8/98 basing
on the Enquiry report dt. 10/9/1997.In the disciplinary
proceedings held against the appellant by Shri A.Sana
formerly S.D.I.(P) Hailakandi the Inquiry officer begs to
submit this appeal for favour of your kind consideration
and decision.

contd....2.

The facts of the Case:

The humble appellant was Put off duty w.e.f. 1/5/94 by an order of the Sub-Divisional Inspector of Post Offices Silchar South Sub-Divn. Silchar Vide his Memo No. AL/Dhananari dt. 6/5/94 on the alleged ground that a Criminal Case has been filed against the (Sonai P.S. Case No. 255/93 Under Sec. 498(A) I.P.C) unconnected with Official duties (Copy of which is enclosed herewith and marked as Annexure-1).

Thereafter SDIPO's South Subdivision, Silchar Vide his Office No. AL/Ed Staff/ dt. 9/5/95 requested the appellant to submit a copy of the Charge sheet framed by the Police for consideration of the Case, accordingly a copy was submitted but no action has been taken in the matter (Copy enclosed as Annexure-11).

2. Against the said order of Put off, the ^{humble} ~~make~~ appellant submit prayer application for reinstatement to the SDIPO's South Subdivision, Silchar on 31/3/98 as the humble appellant has been acquitted honourably from the charges but the SDIPO's South Subdivision, Silchar did not take any action in the matter inspite of reminder issued by the appellant. (Copy enclosed and marked as Annexure-111).

3. At last the humble appellant submitted an appeal to the Sr. Superintendent of P.O.'s Cachar Divn. Silchar on 21/7/98 sought for reinstatement but no action has been taken. Meanwhile SDIPO's South Sub-Divn. Silchar instead of reinstate removed the appellant from the service Vide his ~~mak~~ Office No. AL/Ed Staff/95-96 dt. 12/8/1998.

(Copy enclosed herewith and marked Annexures
IV & V).

4. That the order of 'Put off duty' issued by the
SDIPO 's South Sub-Divn. Silchar vide his Memo No. AI/
Dhanahari dt. 6/5/94. Shows that the ground of 'put off
duty' was completely unconnected with official duties
and 'put off duty' during pendency of Criminal Proceedings
unconnected with official duties not valid according to
Sub-rule (1) of rule 9 of the P & T DA (C&S) rules.

The jurisdiction to put off an employee is only
pendency on inquiry into any complaint or allegation of
misconduct against him. There was no case for the respondent
that any complaint has been received by the department against
the appellant, much less any allegation of misconduct.

Initiation of Criminal proceeding and the registration
of a Crime against the employee cannot be considered as an
enquiry pending against the employee so as to attract Sub-
rule (1) of rule 9 of the rules. The impugned order shows that
it is only on the ground that a Criminal case has been filed
against the appellant that he is being 'put off duty' which
was an unauthorised act contrary to the Sub-rule (1) of rule
9 of R.D.A. (C&S) rules and cannot be sustained under rule 9
of the rules.

contd....4

-4-

5. The appellant received a Memorandum of charges dt. 5/6/95 alleging that he on 25/3/92 took away Chapakhowa M.O.No.743 dt. 16/3/92 for Rs.500.00 with cash under clear receipt in Dhanehari B.O.Journal dt. 25/3/92 for effecting payment to its real payee Shri Babar uddin Barbhuiya of Vill.& P.O.Dhanehari but failed to pay the said M.O.to the Payee Babaruddin Barbhuiya instead he misappropriated the money by forging the signature of the Basiruddin Laskar in the Postman book against the M.O.Shri R.H.Barbhuiya , EDDA cum-EDMC,Dhanehari B.O.admitted the fact vide his Written statement dt. 22/3/94 to the O/S.mail South-Sub-Dvn. Shri Har Kumar Das.

The amount was recovered from Shri R.H.Barbhuiya EDDA-Cum-EDMC,Dhanehari B.O.and credited at Silchar H.O. Vide ACS.67 receipt No.37 of the Book No.SC.612 dt.4/4/94 by his above act -Shri R.H.Barbhuiya exhibited lack of integrity and devotion to duty and thereby he violated the provisions of rule 17 of P & T ,E.D.(C&S) rules 1964.

6. In the memorandum of charges besides detailing the imputation of misconduct the list of documents by which and the list of witnesses by whom the charge would be proved were mentioned.But no copy of the documents were supplied at that stage and thereby the humble appellant was highly prejudiced to prepare his defence/written reply .However ,the humble appellant submitted his reply on 23/6/95 denying the charge and did not plead guilty (Copy of memorandum of charges is enclosed ,and marked Annexure-VI). contd...

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7. That thereafter SDI P.O.'s South Sub-Divn. Silchar vide his No. A1/ED Staff dt. 18/9/95 appointed Shri Abinash Saha, the then SDI P.O.'s Hailakandi as Inquiry authority to enquire into the charges. The enquiry started from 17/5/96 and concluded on 12/3/97 on the basis of listed documents and witnesses. There were only three documents and two witnesses enlisted in the Charge sheet namely (1). Dhanehari B.O. Journal dt. 24/3/92 and 25/3/92, (2). Postman book of Dhanehari S.O. for the period, (3). Written statement of R.H. Barbhuiya BDA-Cum-DMC Dhanehari B.O. dt. 22/3/94.

(Copy of the statement is enclosed and marked Annexure-VII).

Name of the witnesses were (1) Shri M.K Das O/S.Mails South Sub-Divn. Silchar (2) Babaruddin Barbhuiya, the payee of the M.O. u/r.

8. The aforesaid three listed documents clearly shows that the Chapakhowa M.O. No. 743 dt. 16/3/92 for Rs. 500.00 has not been paid to the real payee, Shri R.H. Barbhuiya BDA-Cum-DMC also stated in his written statement dt. 22/3/94 that he paid the M.O. to the Basiruddin Laskar instead of real payee Babaruddin Barbhuiya through oversight. The charge official accepted the responsibility of wrong payment of the M.O. under reference and realised the money from Basiruddin Laskar to whom the M.O. was wrongly paid and credited the same to the Govt. Account through O/S. mails South Sub-Divn. Silchar. The fact stated above has been established through evidence.

contd....6

9. That the prosecution failed to produce any evidence/ documents in support of the allegation of misappropriation of Govt. money levelled against the appellant either in the Charge sheet or any stage of the enquiry although demanded by the appellant. Inquiring authority instructed the prosecution to submit the M.O. paid Voucher. And issued Summon to Basiruddin Laskar although he was not a cited witness, accordingly Basir uddin Laskar attended the hearing on 17/6/96 but I/O was absent on that day on next date I/O was present but Basiruddin Laskar was absent. Meanwhile prosecution intimated that they are unable to produce the M.O. paid Voucher. Thereafter I/O. concluded the hearing in absence of aforesaid vital documents and witness and delivered his findings on assumption. And on the basis of the aforesaid report disciplinary authority imposed major penalty of removal from service without basing on evidence.

It is not out of place to mention here that the statement of another cited witness Babaruddin Barbuiya, the real payee of the M.O. under reference also has not been taken.

10. That the Prosecution alongwith other listed documents a Postmen book has been produced before the Enquiry to prove the forgery /misappropriation charges. The Postman book is a Book written and maintained by the Postman/delivery agent to ascertain received/delivery/non-delivery of a Postal articles

contd.7

entrusted to him .Obtaining payees signature in the Postman Book is not mandatory ,as there is no provision or specific instruction of rules in this respect in the rules for branch Offices. Therefore writing the name of the Payee in the postman Book for indicating the delivery of a Postal articles neither a offence nor violation of any rules. So, the Postman book can not be considered as an authenticated document to prove the forgery charges.

From the above, it is clear that the penalty of removal from service imposed by the disciplinary authority Vide his No .A1/ED Staff /95-96 dt. 12/8/98 does not based on evidence, therefore the order cannot be sustained.

G R O U N D O F A P P E A L .

1. For that the impugned order of 'put off duty' issued by the SDIPO's South Sub-Divn, Silchar Vide his No A1/Dhanehari dt. 6/5/94 incongruent to the Sub rule (1) of rule 9 of E.D.A. conduct and service rules 1964 .The order of SDIPO's South Sub-Divn. Silchar besides being perverse tainted with illegality and biasness ,as a result of which the appellant have to stay out of job without remuneration from 1/5/94 to 12/8/98 about a period of four years three months.

contd.....8

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Prolongation of 'Put off duty' unwarranted by the fact may be considered as a severe action even after acquitted from the charges. The same is thus liable to be set aside.

2. That the order of 'removed from Service' passed by the SDIPO's South Sub-Divn. Silchar Vide his Office No. AI/Rd. Staff/95-96 dt. 12/8/98 basing on perverse and illegal finding of the Inquiry officer also perverse and illegal as the order is unwarranted by the evidence on the record and against the Provisions of rules and principle of article 311 of the Constitution of India and is liable to be set aside.

In the above premises, your humble appellant prays that this appeal may be accepted by your honour and your humble appellant may be allowed to reinstate in his post of EDDA -cum-EDMC Dhanehari B.O. and your honour may be pleased to pass orders for payment of back wages of the appellant for the entire period he has been kept on 'Put off duty' in violation of the rules and Provisions of Law.

And for this act of kindness, your petitioner shall ever pray.

Sd/R ahinul Hoque Barbhuiya
Ex. EDDA -cum-EDMC

Dhanehari B.O.

Via Sonabarihat, Cachar (Assam)

Dt. 25th Sept. 98.

List of enclosures: 7 sheets.

Attested by
S. Chakraborty
Advocate

ANNEXURE- 9

DEPARTMENT OF POSTS ,INDIA
 OFFICE OF THE SENIOR SUPERINTENDENT OF POST OFFICES
CACHAR DIVISION SILCHAR- 788001.

Memo No: A-328/R.H.Barbhuiya /Appeal Dt.Silchar
The 26/11/99.

This is an appeal preferred by Shri Rahimul Hoque Barbhuiya ,Ex.BDA-Cum-DMC ,Dhanehari DM against the punishment of removal from Service awarded on him by the SDIPOs ,Silchar South Sub-Divn.Silchar under his Office Memo No.AI/DM staff /95-96 dt. 12/08/98.

I have examined the appeal Case along with the Disciplinary Proceedings drawn against him by the SDIPOs ,Silchar South Sub-Divn.With all the relative records /exhibits etc.Though it is a fact that Shri Rahimul Hoque Barbhuiya was initially put off from duty with effect from 01/05/94 for some other reason yet the disciplinary proceedings were initiated against him for fraudulent payment of one Chapa Knowa M.O.No.743 dt. 15/03/92 for Rs.500.00 payable to Shri Babaruddin Barbhuiya of Vill.& P.O.Dhanehari.During enquiry into the allegation it was proved as per report of the Inquiry officer that the Charges of fraudulent payment of the above money order was proved.

contd.....2

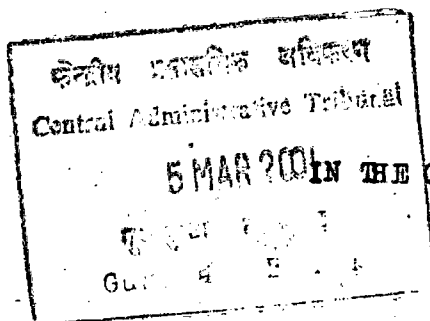
I have given due consideration to the appeal preferred by said Shri Rahimul Hoque Barbhuiya and consider that the Offence done by him on a Public servant in payment of a Money order to its payee is very very serious in nature which deserves different action against him and the punishment of & Removed from Service' Vide SDPOS , Silchar South Sub-Divn. Silchar under his office Memo No. AI/ED staff /95-96 dt. 12/08/98 is considered awarded in conformity With the gravity of the case to meet the ends of Justice.

O R D E R

I, Shri J.K. Barbhuiya , Sr. Supdt. of Post offices, Cachar Dn. Silchar , therefore do not find any necessity to revise the orders and uphold the punishment awarded to Shri Rahimul Hoque Barbhuiya , Ex. EDDA -Cum-EDMC , Dhanbari ED EO.

(J.K. Barbhuiya)
Sr. Supdt. of Post offices,
Cachar Divn. Silchar -788001.

*Attested by
S. Chakraborty
Advocate*



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

O.A. No. :- 247 OF 2000

Shri Rahimul Hoque Barbhuiya

- VERSUS -

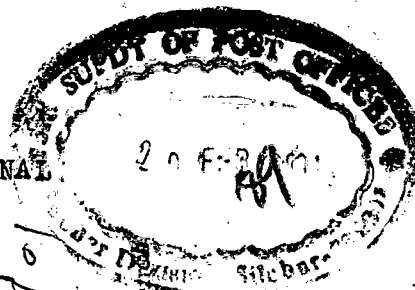
Union of India and others

IN THE MATTER OF

Written statement submitted by the respondents.

The respondents beg to submit the written statement as follows :-

1. That with regard to para 4. I, II the respondents beg to offer no comment.
2. That with regard to para 4, III respondents beg to state that the applicant Shri Rahimul Hoque Barbhuiya placed under put off duty consequent on his arrest at Sonai Police Station case No. 59/93 under section 438 (A) IPC in connection with criminal case.
3. That with regard to para 4, IV the respondents beg to offer no comment.
4. That with regard to para 4, V the respondents beg to state that while under put off duty a memorandum of charges dated 05-06-95 was issued to the applicant on the charge of misappropriation of the value of Chupakhowas MO No. 743 of 16-0392 for Rs 500/- on 25-03-92 after forging the signature of the payee in violation of rule 17 of P & T EDA (C & S) Rules 1964.
5. That with regard to para 4. VI respondents beg to state that while Shri Rahimul Hoque Barbhuiya the applicants categorically denied the charges leveled against him, a regular enquiry was held consisting of Inquiry Officer and the Presenting Officer.
6. That with regard to para 4. VII respondents beg to state that at the time of enquiry, one witness and relevant records like a) BO Journal b) Postman book c) written statement of applicants



Recd 17/3/01
(A. DEB ROY)
Sr. C. G. S. C.
C. A. T. Guwahati

Rahimul Hoque

dated 22-03-94 were examined thoroughly. Another witness Shri Babur Uddin Barbuiya the actual payee was not examined as the applicant admitted his guilty for non-payment of MO to the actual payee rather he recorded in his Postman book another name Shri Basir Uddin Iasker by mistake.

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7. That with regard to para 4. VIII the respondents beg to state that on completion of enquiry, the Inquiry Officer in his findings stated that the charges leveled against the applicant is justifiable and proved beyond doubt.
8. That with regard to para 4.IX the respondents beg to state that the representation of the applicant against the Inquiry report was duly considered and could not be acceded to and a removal order was issued.
9. That with regard to para 4.X the respondents beg to state that the case was gone through on receipt of appeal with relevant records and need no revision and upheld the punishment order issued by the SMOs (S) Silchar.
10. That with regard to para 5.I the respondents beg to offer no comment.
11. That with regard to para 5.II the respondent beg to state that neither the MO was paid to the actual payee Shri Babur Uddin Barbuiya nor the wrong payee Shri Basir Uddin Iasker rather misappropriated by him after forging the signature of wrong Payee Shri Basir Uddin Iasker. So it is a misappropriation case.
12. That with regard to para 5.III the respondents

beg to state that only Shri Har Kumar Das O/S mail Silchar as witness and listed documents were examined. The MO from lies with the DA (P) Calcutta for audit purpose.

13. That with regard to para 5.IV the respondents beg to offer no comment.

14. That with regard to para 5.V the respondents beg to state the applicant along with the defence assistance were present on the dates of hearing and he did not want to produce Basir Uddin Laskar before the enquiry. So, the removal was proportionate to the committed mistake as the records produced before the inquiry went against him.

15. That regard to para 5.VI the respondents beg to state that as it is a misappropriation case, the mistake committed by the applicant does not take place as of bona-fied character.

16. That with regard to para 5.VII the respondents beg to state that the applicants was placed under put off duty with effect from 01-05-94 for his detention in the Sonai Police Station which proves disintegrity and dishonesty to his duties.

17. That with regard to paras 6,7,8 the respondents beg to offer no comment.

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Fazimad Deb

VERIFICATION

I ~~Shri Kishan Kumar Barh~~ Shri Kishan Kumar Barh, _____

Shri Kishan Kumar Barh being authorised do hereby solemnly declare that the statements made in this written statement are true to my knowledge and information and I have not suppressed any material fact.

And I sign this verification on this 20th day of February 2001.

Shri Kishan Kumar Barh
DECLARANT

Senior Supdt., Post Offices,
Cachar Division, Silchar-788001

Shri Kishan Kumar Barh