

30/100

4

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 270/2000

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet. O.A. 270/2000Pg. 1to 3
2. Judgment/Order dtd. 09/08/2001Pg. 1to 3 allowed
3. Judgment & Order dtd.Received from H.C/Supreme Court
4. O.A. 270/2000Pg. 1to 23
5. E.P/M.P. NILPg.to.
6. R.A/C.P. NILPg.to.
- ✓ 7. W.S.Pg. 1to 4
8. Rejoinder.Pg.to.
9. Reply.Pg.to.
10. Any other Papers.Pg.to.
11. Memo of Appearance.
12. Additional Affidavit.
13. Written Arguments.
14. Amendment Reply by Respondents.
15. Amendment Reply filed by the Applicant.
16. Counter Reply.

SECTION OFFICER (Judl.)

FORM NO. 4

(See. Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET
APPLICATION NO. 270/2000 OF 199

Applicant(s) Sri Dipak Kumar Ghosh.

Respondent(s) Union of India and ors.

Advocate for Applicant(s)

Mr. M. Chanda.
Mr. N. D. Goochamie

Advocate for Respondent(s)

Mr. G. N. Chakrabarty.
C. G. S. C.

| Notes of the Registry | Date | Order of the Tribunal |
|---|--|---|
| <p>Application is in form and within time.</p> <p>E. F. of Rs. 50/-</p> <p>Deposited vide</p> <p>PO BD No. 497205</p> <p>Dated 27.9.00</p> <p>9/11/9</p> <p>19/11</p> <p>Notice prepared and sent to D/S for issuing the respondent No 1 to 5 vide D.N. No. 2399 2403 dtd. 31/10/00</p> <p>16/10/00</p> | <p>27.9.00</p> <p>pg</p> <p>27/9/20</p> <p>3.11.00</p> | <p>Present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman.</p> <p>Heard Mr M.Chanda, learned counsel for the applicant. Application is admitted. Issue usual notice. Call for the records.</p> <p>List on 3.11.2000 for written statement and further orders.</p> <p>Vice-Chairman</p> <p>Four weeks time is granted to the respondents on the prayer of Mr.A. Deb Roy, learned Sr. C.G.S.C. for filing of written statement.</p> <p>List on 1.12.00 for written statement and further orders.</p> <p>Vice-Chairman</p> |

Notes of the Registry

Date

Order of the Tribunal

① Notice Served by hand
on behalf of The R. No-
2, 3 & 4, respondent No.
1 & 5 are still awaited

1.12.00

Four weeks time is granted for filing of
written statement on the prayer of Mr. A. Deb
Roy, learned Sr. C.G.S.C.

List on 4.1.2001 for written statement
and further orders.


Vice-Chairman

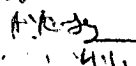
② No. written statement
has been filed.

trd

18.1.01

There was a reference. Written
18.1.2001.

P.L.


14.1.

18.1.01

Written statement has not been
filed. Two weeks time is allowed for
the applicant to file rejoinder if any.
List on 1.2.01 for orders.


Member


Vice-Chairman

1m

1.2.

Coram present at Shillong.
Adjourned to 20.2.2001.

P.L.

12

20.2.01

Written statement has been filed.
by the respondents. List on 15.3.01
for hearing. In the meantime the
applicant may file rejoinder if any.

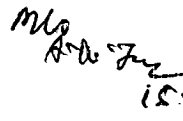

Member


Vice-Chairman

1m

15.3.

The case is adjourned to 29.3.2001.


15.3

29.3.01

On the prayer of Mr B.C. Pathak,
learned Addl.C.G.S.C the case is adjourned
to 18.5.01 so as to enable him to file
connected records.


Member

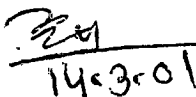

Vice-Chairman

pg

15.2.2001

Written statement
for and behalf of the
respondents No. 1 to 5.
has been filed by the
Addl. C.A.C.

No. Rejoinder has
been filed.


14.3.01

| Notes of the Registry | Date | Order of the Tribunal |
|---|---------|--|
| <p>Written statement has been filed</p> <p><i>2/5</i> 15.6.01</p> | 18.5.01 | <p>Mr. B.C. Pathak, learned Addl. C.G.S.C. again sought for adjournment of the case for production of records. Several adjournments have already been granted for production of records. However, for the ends of justice time is granted for production of records as a last chance.</p> <p>List for hearing on 18.5.2001.</p> <p><i>K.C. Sharma</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>bb</p> |
| | 18.6.01 | <p>Prayer made on behalf of Mr. M. Chanda, learned counsel for the applicant, for adjournment.</p> <p>The case is adjourned to 26-6-2001 for hearing.</p> <p><i>K.C. Sharma</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>pg</p> |
| <p>No rejoinder has been filed.</p> <p><i>2/8</i> 8.8.01</p> | 26.6.01 | <p>Counsel for applicant submits that though written statement was served on him in January 2001 he could not file rejoinder due to oversight. He prays for and granted four weeks time and no more to file rejoinder.</p> <p>List on 9.8.01 for hearing.</p> <p><i>K.C. Sharma</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>pg</p> |
| <p>23.8.2001</p> <p>Copy of the Judgment has been sent to the office for issuing the same to the applicant as well as to the C.G.S.C. for the response.</p> <p><i>[Signature]</i></p> | 10.8.01 | <p>Judgment delivered in open Court. Kept in separate sheets. Application is allowed. No costs.</p> <p><i>K.C. Sharma</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>lm</p> |

| Notes of the Registry | Date | Order of the Tribunal |
|-----------------------|------|-----------------------|
| | | |

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 270 of 2000

Date of Decision...9.8.01.....

Shri Dipak Kumar Ghosh

-----Petitioner(S)

Mr.M.Chanda, N.D.Goswami, Mr.G.N.Chakraborty

-----Advocate for the
Petitioner(s)

-Versus-

Union of India & Ors.

-----Respondent(s)

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

-----Advocate for the
Respondent(s)

THE HON'BLE

MR.JUSTICE D.N.CHOUDHURY, 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 ?

Judgment delivered by Hon'ble : VICE-CHAIRMAN

~

2

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.270 of 2000

Date of Order: This the 9th Day of August 2001

HON'BLE MR.JUSTICE D.N.CHOUDHURY, VICE-CHAIRMAN
HON'BLE MR.S.S.SHARMA, ADMINISTRATIVE MEMBER

Shri Dipak Kumar Ghosh
Son of Late Jatindra Mohan Ghosh
Residence of Village : Khatkhati
P.O. Khatkhati, Vice Bokajan
Dist: Karbianglong, Assam ... Applicant.

By Advocate Mr.M.Chanda, Mrs. N.D.Goswami, Mr.G.N.Chakraborty

-Vs-

1. Union of India
Through the Secretary
Department of Posts
New Delhi-1
2. The Director of Postal Services
Assam Circle
Guwahati-1
3. The Chief Post Master General
Assam Circle
Guwahati-1
4. The Post Master General
Assam Region,
Guwahati-1
5. The Superintendent of Post Offices
Nagaon Division, Nagaon-1 ... Respondents.

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

O R D E R.

CHOUDHURY J(V.C.)

The applicant at the relevant time was working as Extra Departmental Branch Post Master(EDBPM for short) at Khatkhati Branch Post Office. While working as such he was served with a notice indicating of holding of a Disciplinary Enquiry under Rule 8 of Extra Departmental Agents(Conduct and Service) Rules, 1964. The Article of charges reads as follows :-

contd/-


"That the said Sri Dipak Kr. Ghosh while working as EDBPM Khatkhati B.O. during the period from 1.12.81 to 9.9.97 failed to produce a sum of Rs.5400/- (Rupees five thousand four hundred) only being the part of cash balance of the B.O. on 23.8.97 for removal of excess cash by the O/S mails, Diphu and thereby he is alleged to have violated the provision of Rule - 177(3) of Rules for Branch Offices."


The applicant replied to the charges and the authority conducted the enquiry through the SPO, the Enquiry Officer submitted the report on the basis of the Admission. It may be stated that the respondents have provided an opportunity to deposit the amount of Rs.5400/-, but he did not deposit the money within the time specified. However, the same was deposited on 08.9.97 by him. The Disciplinary Authority by the order dated 31.3.99 dismissed the applicant from service. The Disciplinary Authority itself observed that there was no charge for retaining surplus cash, which was framed against the applicant, despite that he acted upon the certain materials which was not part of the charges. The applicant preferred an appeal before the appellate authority. The appellate authority passed an order by rejecting his appeal and confirming the impugned order dated 31.3.99. The Appellate Authority also did not consider as to whether the punishment was disproportionate or not. In the facts and circumstances it appears to us that the punishment imposed on the applicant was disproportionate and we are of considered opinion that it should be sent back to the Superintendent of Post Offices to reconsider the said punishment on the basis of the materials on records. The Superintendent of Post Offices is directed not to take into consideration on the observations & findings made by the Superintendent of Post Offices at Paragraph 8.6.1, 8.6.2 and 9, he shall take own decision on the basis of the materials on overlooking those aspects mentioned above.

contd/-

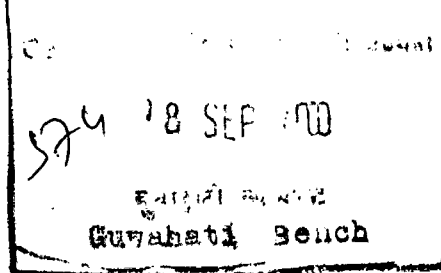
In the facts and circumstances the matter should be disposed with utmost despatch. The Superintendent of Post Offices is directed to take a fresh decision on the quantum punishment other than the punishment of dismissal and removal on taking into consideration the past services of the applicant and the fact that the money was deposited by the applicant. The Superintendent of Post Offices shall take decision preferably within two months from the date of receipt of this order. The impugned order of dismissal thus is set aside.

Application is allowed to the extent indicated above. There shall however, no order as to costs.


(K.K.SHARMA)
ADMINISTRATIVE MEMBER


(D.N.CHOUDHURY)
VICE-CHAIRMAN

LM



In the Central Administrative Tribunal

Guwahati Bench :::: Guwahati.

(An application under section 19 of the Administrative
Tribunals Act, 1985).

Title of the Case : O.A. No. 270 /2000

Shri Dipak Kumar Ghosh : Applicant.

-Versus-

Union of India and others : Respondents.

I N D E X

| <u>Sl.No.</u> | <u>Annexure</u> | <u>Particulars</u> | <u>Page No.</u> |
|---------------|-----------------|---|-----------------|
| 1. | - | Application | 1 - 11 |
| 2. | - | Verification | 12 |
| 3. | 1 | Copy of the memorandum of Charges dated 28.11.97. | 13 |
| 4. | 2 | Copy of the written statement dated 29.11.97 | 14 |
| 5. | 3 | /Inquiry Report Copy of the/letter dt. 22.2.99 | 15 |
| 6. | 4 | Copy of the reply dt. 11.3.99 | 16 |
| 7. | 5 | Copy of the memo dated 31.3.99 | 17-19 |
| 8. | 6 | Copy of the representation dated 17.5.99. | 20-21 |
| 9. | 7 | Copy of the order dated 29-5-2000 | 22-23 |

Filed by

N.D. Goswami

Advocate.

Dipak Kumar Ghosh

Filed by me applic
N.D. Goswami
Advocate

11
In the Central Administrative Tribunal

Guwahati Bench ::::::: Guwahati

(An Application under Section 19 of the Administrative
Tribunals Act, 1985)

O.A. No. 270 /2000

Between

Dipak Kumar Ghosh

Son of late Jatindra Mohan Ghosh

Residence of Village: Khatkhati

P.O. : Khatkhati vice Bokajan

Dist : Karbianglong, Assam.

- And -

..... Applicant.

1. Union of India
Through the Secretary
Department of Posts
New Delhi -1
2. The Director of Postal Services
Assam Circle
Guwahati-1.
3. The Chief Post Master General
Assam Circle
Guwahati-1

Contd.....

Dipak Kumar Ghosh

4. The Post Master General
Assam & Region
Guwahati-1
5. The Superintendent of Post Offices
Nagaon Division, Nagaon-1.

..... Respondents.

1. Particulars of Order(s) against which this application is made.

This application is made against (i) the order dated 31.3.99 passed by the respondent no.5 in arbitrary exercise of power thereby dismissing the applicant from service with immediate effect and (ii) consequent non-consideration of his representation dated 17.5.99 addressed to the respondent nos. 2, 3 and 4.

2. Limitation

Jurisdiction of the Tribunal.

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

3. Limitation.

The applicant further declares that this application is made within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.

Contd.....

Dipak Kumar Ghose

4. Facts of the case :

4.1 That the applicant is a Citizen of India and a resident of the address given in the cause title and as such he is entitled to all the rights and privileges guaranteed under the Constitution of India.

4.2 That the applicant had been working under the respondents as Extra Departmental Branch Post Master (for short, EDBPM) and was posted in the Extra Departmental Branch Office (for short, EDBO) at Khatkhathi. During his tenure at Khatkhathi, the applicant was put off duty vide memo dated 30.8.97 issued by the Asstt. Superintendant of Post Offices, Diphu Sub-Division. The put off order was passed on the ground that a departmental proceeding was being contemplated against the applicant. However, subsequently on 16.9.97 the put off order was ratified vide memo no. F.6-2(C)/97-98.

4.3 That on 28.11.97, the then respondent no.5 issued a memorandum proposing to hold an enquiry against the applicant under Rule 8 of Extra Departmental Agents (Conduct and Service) Rules, 1964. The said memorandum was also accompanied by a list containing article of charges and a list of documents by which and a list of witnesses by whom the charges were proposed to be substantiated. By the said memorandum, the applicant was also asked to submit his written statement within 10 days from the date of receipt of the memorandum. The charge framed against

Contd.....

Dipak Kumar Ghose

the applicant was that on 23.8.97 when Shri S.C. Mahanta, O/S Mails, Diphu visited the Branch Office at Khatkhati for removal of excess cash, he found a sum of Rs. 5400/- short in office cash balance and the applicant failed to produce the said sum to the O/S Mails for remittance. The applicant was therefore alleged to have violated the provision of Rule 177(3) of Rules for Branch Offices.

A copy of the memorandum of charges dated 28.11.97 is annexed herewith as Annexure -1.

4.4 That the applicant on receipt of the memorandum dated 28.11.97 immediately submitted his reply on 29.11.97. In his reply the applicant stated that on 20.8.97 suddenly ~~his~~ his wife fell seriously ill and was required to hospitalised and operated upon to save life. In such a situation, the applicant approached one of his friends for money required for operation etc. and was assured by his friend that he would be paid the money the next day. The applicant, finding no alternative, paid the operation charges etc. from the Cash Balance with the hope that he would make up the balance next day on receipt of the loan from his friend. But unfortunately, his friend failed to pay the money resulting in shortage of Cash Balance.

The applicant thus explained the circumstances in his written statement and prayed for consideration of his case on humanitarian ground. He stated that the applicant, however, deposited the sum of Rs. 5400/- on 8.9.97 at Bokajan P.O.

Dipak Kumar Ghose

A copy of the written statement dated 29.11.97 is annexed herewith as Annexure -2.

4.5 That thereafter a preliminary inquiry into the charges framed against the applicant was held against the applicant and during the preliminary inquiry/hearing held on 30.1.99, the charges were read over and explained to the applicant to which he pleaded guilty and admitted the charges. The case was therefore concluded.

4.6 That thereafter the respondent no.5 vide his letter dated 22.2.99 forwarded a copy of the Inquiry Report to the applicant. The applicant was also asked to submit his reply, if any, against the Inquiry Report within 15 days of receipt of the letter dated 22.2.99. It may be stated that the Inquiry Authority, in his report, held the charges against the applicant to have been proved.

A copy of the letter dated 22.2.99 alongwith a copy of the Inquiry Report is annexed herewith as Annexure - 3.

4.7 That upon receipt of the Inquiry Report, the applicant submitted his reply dated 11.3.99 to the respondent no.5 and while admitting his guilt, he again narrated the circumstances under which he had to utilise the money from cash balance. He, therefore, prayed for favourable consideration of his case on humanitarian ground. He further prayed for reinstating him in service.

A copy of the aforesaid reply dated 11.3.99 is annexed herewith as Annexure - 4.

Dipak Kumar Ghose

4.8 That thereafter, the disciplinary authority took up the matter and surprisingly on 31.3.99 arbitrarily passed an order dismissing the applicant from service. The disciplinary authority (the respondent No.5) did not consider the evidence in its proper perspective and also failed to take into consideration the circumstances in which the applicant had to utilise the money from cash balance. The fact that the said sum of Rs. 5400/- was subsequently deposited by the applicant was also not taken into consideration and consequently the harsh and disproportionate punishment of dismissal from service was inflicted upon the applicant.

A copy of the memo dated 31.3.99 is enclosed herewith as Annexure-5.

4.9 That the applicant being highly aggrieved the disproportionate order of punishment passed by the respondent no.5, preferred representations on 17.5.99 before the respondent nos. 2, 3 and 4 praying for revision of the order of punishment passed by the respondent no.5. The applicant, on the facts and circumstances of the case, thus prayed for reducing the disproportionate punishment and to reinstate him in service. But unfortunately, neither of the representations submitted by the applicant has received any attention so far and his grievances has remained unattended.

Copy of the representation dated 17.5.99 is annexed herewith as Annexure -6.

Contd.....

Dipak Kumar Ghose

4.10 That the applicant states that on 29.5.2000, respondent no.2(the Appellate Authority) passed an order arbitrarily rejecting his representation and confirming the impugned order dated 31.3.99. It is stated that the order of rejection of representation is a mechanical one and has been passed without application of mind. The same is, therefore, liable to be set aside and quashed.

A copy of the order dated 29.5.2000 is annexed herewith as Annexure -7.

4.11 That the applicant ~~and~~ states that he admitted his guilt from the very day when the shortage in cash balance was detected and never tried to mislead the authority. But the authority has exercised the power vested in them in a most arbitrary and unfair manner by inflicting the most harsh punishment of dismissal from service upon the applicant for the guilt that he failed to produce a sum of Rs. 5400/- before the O/S, Mails on 23.8.97. It is stated that the ~~severe~~ punishment is too ~~severe~~ and disproportionate to the offence committed and the impugned order dated 31.3.99 and 29.5.2000 have suffered from arbitrariness and non application of mind. The said orders are therefore liable to be set aside.

4.12 That this application is made bonafide and in the interest of justice.

5. Grounds for Relief with Legal Provision .

5.1 For that, the impugned order dated 31.3.99 is bad in law and thus liable to be set aside.

Dipak Kumar Ghose

- 5.2 For that, in view of the fact that the applicant had to use the sum of Rs. 5400/- from cash balance in a compelling circumstance to save the life of his wife and the fact that he subsequently deposited the said sum, in the office, infliction of punishment of dismissal from service is highly disproportionate and not warranted in the facts and circumstances of the case.
- 5.3 For that, the authorities have acted in an arbitrary and unfair manner in passing the order of disproportionate punishment and therefore the impugned order dated 31.3.99 is liable to be set aside.
- 5.4 For that, non consideration of the representation of the applicant by the respondents has amounted to denial of justice to him which is unjust and against good conscience.
- 5.5 For that, the applicant is a person having five children and wife as dependant members on him who are facing starvation because of the impugned order of disproportionate punishment and justice demands review of the said order which is without any basis.
- 5.6 For that, the disciplinary authority has exceeded his jurisdiction while considering the inquiry report and passing the impugned order of dismissal from service inasmuch as the impugned order has been

Dipak Kumar Ghosh

-9-

passed on preponderance of probabilities.

5.7 For that, in view of the fact that no charge was framed against the applicant for retaining surplus cash, the disciplinary authority act without jurisdiction in passing the impugned order inflicting punishment on the basis of past conduct which was not the subject matter of the chargesheet

5.8 For that, the action of the appellate authority in mechanically rejecting the representation of the applicant without application of mind & has resulted in miscarriage of justice.

5.9 For that, in any view of the matter the impugned orders are bad in law and thus liable to be set aside.

6. Details of remedy exhausted.

The applicants beg to state that there is no other alternative remedy under any rule available before the applicant then to approach the Hon'ble Tribunal by way of filing this Original Application.

7. Matter not pending before any other Court/Tribunal.

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any court of law or any other authority or any other Bench of the Tribunal and/or any such application

Dipak Kumar Ghose

writ petition or suit is pending before any of them.

8. Reliefs sought for :

Under the facts and circumstances of the case the applicant prays for the following reliefs :-

8.1 That the impugned order of punishment dated 31.3.99 be declared illegal and disproportionate and be set aside.

8.2 That the order of the appellate authority be declared illegal and set aside.

8.3 That the respondents be directed to reinstate the applicant in service with full service benefit including monetary ;

8.4 Any other relief(s) to which the applicant is entitled under the facts and circumstances of the case ;

8.5 Cost of the application.

9. Interim Relief Prayed for :

The applicant does not pray for any interim relief in the case. However, the Hon'ble Tribunal may be pleased to direct the respondents that pendency of this application shall not be a bar for considering his case.

10.

This application is filed through Advocate.

Contd.....

Dipak Kumar gh

-11-

11. Particulars of Postal Order :

- i. I.P.O. No. : 06 497705
- ii. Date of Issue : 3-7-2000
- iii. Issued from : G.P.O., Guwahati.
- iv. Payable at : G.P.O., Guwahati.

12. List of enclosures :

As stated in the Index.

Verification

Dipak Kumar Ghose

V E R I F I C A T I O N

I, Shri Dipak Kumar Ghosh, son of late Jatindra Mohan Ghosh aged about 36 years, resident of Khatkhati P.O. Khatkhati via Bokajan District. KarbiAnglong, Assam and working as Extra Departmental Branch Post Master , at Khatkhati applicant in this original application do hereby verify that the statements and declare that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I, sign this verification on this the 12th day of September, 2009 at Guwahati.

Dipak Kumar Ghose
Signature.

13

No. F6-2(e)/97-98

23

Annexure-1

Government of India
Department of Posts
Dated 28-11-97

M E M O R A N D U M

The undersigned proposes to hold an enquiry against Shri Dipak Kr. Ghosh under Rule 8 of Extra Departmental Agents (Conduct & Service) Rules, 1964. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is sent out in the enclosed statement of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which and list of witness by whom the articles of charges are proposed to be sustained are also enclosed (Annexure III & IV).

2. Shri Dipak Kr. Ghosh is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

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

4. Shri Dipak Kr. ghosh 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 with the provisions of Rule of EDA's (Conduct & Service) Rules 1964 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him exparte.

5. Attention of Shri Dipak Kr. ghosh is invited to Rules 25 of the EDA (Conduct & Service) Rules 1964 under which Government servant shall bring or attempt to bring any political outside influence to bear upon any superior authority to further interests in respect of matter pertaining to his service under the Govt. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri ghosh is aware of such a representation so that it has been made at his instance and action will be taken against him for violation of Rule 25 of the EDA (Conduct & Service) Rules 1964.

6. The receipt of this memorandum may be acknowledged.

Encl: As above.

Regd/AD

(B. Hazarika)
Supdt. of Post Offices
Nagaon Dn. Nagaon - 782001

To

Shri Dipak Kr ghosh EDBPM (under put off duty)
Khatkhati EDBO
in a/c with Bokojan S.O. : 782480
Dist. KarbiAnglong (Assam).

14

24

Annexure -2

To

The Supdt. of P.O.'s Nagaon Divi. Nogaon,

Dated Nogaon the 29th December, 1997.

Sub:- Statement against F6-2/C)97-98 of 18.11.97.

Sir,

Respectfully I beg to state that on 20. 08. 97 my wife was immediately to be hospitalised and operated upon. My one of the friends while approached for money required for the operation etc. assured me to pay the money. Accordingly with that assurance and the amount immediately demanded by the doctor, paid the amount of from the cash balance to make up the same immediately on receipt from the friend as assured. But sir, the man whom I sinly relied upon failed to pay me the amount resulting in the shortage of cash balance.

That Sir, in order to save the life of my wife I have had to resort to this fund and that too, to make up the same immediately as explained above.

Under the circumstances I cordially request you to consider my case as a humanitarian ground and allow me to join my duty. For this act of your kindness I shall remain evergrateful.

Yours faithfully,

(Dipak Kumar Ghosh)
EDBPM (underput off duty)
Khatkhati EDBO.

15

Dept of Post India

✓

Annexure - 3
Regd

To

O/O

Superintendent of Post Offices
Nagaon Division
Nagaon 782001

Shri Dipak Kr. Ghosh
EDBPM (under putoff duty)
Khatkhati EDBO
in a/c with Bokojan SO
Dist. Karbi Anglong.
(Assam)

No. F6-2(C) /97-98 Dtd Nogaon (Ass) 22-02-99.

Sub: Deptt inquiry under Rule-8
of EDAs (Conduct and service)
W Rule 1964 against Sri Dipak
Kr. Ghose EDBPM (Put off)
Khatkhati BO in atagth Bokajan S.O.

The report of the Inquiry Authority is enclosed. The Disciplinary Authority will take a suitable decision considering all aspects of the report. If you wish to make any representation are submission against it. You may do so in conting within 15 (fifteen) days of receipt of this letter.

Sd/-

(A.K. Biswas)
Superintendent of Post Offices
Nagaon Division
Nagaon- 782001

Encl : As above.

22

16

Annexure -4

To

The Superintendent of Post Office,
Nagaon Division,
Nagaon - 782001.

Ref: Your letter No. F6-2(C)/97-98 dt.22/2/99.

Sub: Departmental enquiry order Rule 8 EDA (conduct & service rule 1964 against Sri Dipak Kr. ~~Gha~~ Ghose, EDPBM Khotkhoti B.O. A/c with Bokajan S.O. (Put-Off)).

Respected Sir,

Most respectfully I beg to state that the following few lines for favour of your kind consideration.

That Sir, I have already admitted my guilty from the very beginning and never tried to mislead or deny the charge on my part. That Sir, I am repenting for such unintentional guilty which could take place for the unavoidable circumstance mentioned earlier.

That Sir, I had suffered a lot for this reason and now I swear in the name of God that I shall not repeat such guilty in future.

So, could you be kind enough to excuse my first and last guilty and order me to reinstale in my service and which act of your so kindness I shall remain ever grateful and oblige.

Most respectfully yours,

Dated.
The 11.3.99.

Dipak Kr. Ghose
EDPBM Khotkhoti (Put off)

DEPARTMENT OF POSTS : INDIA
OFFICE OF THE SUPDT. OF POST OFFICES, NAGAON DN. NAGAON-782001

Memo No. F6-2(C)/97-98 Dated at Nagaon (Assam), the 31.03.99

1. Read the following

- 1) This office memo No. F6-2(C)/97-98 dated 28.11.97.
- 2) The written statement of defence dated 29.12.97.
- 3) The Inquiry Report of the Inquiry Authority vide his letter No. A-1/Inquiry/1/98 dated 17.02.99.
- 4) Written representation dated 11.3.99 submitted by Sri Dipak Kr. Ghose against the Inquiry Report.

2. Sri Dipak Kr. Ghose, EDBPM (under put off duty) Khatkhathi B.O. in a/c with Bokajan S.O. was proceeded under Rule-8 of EDAs (Conduct & Service) Rules 1964 vide this office memo. No. F6-2(C)/97-98 dated 28.11.97. The article of charge, the statement of imputation of misconduct or misbehaviour in support of the article of charge framed against the said Sri Dipak Kr. Ghose, the list of documents by which and list of witnesses by whom the article of charge proposed to be sustained were annexed as Annexure I, II, III & IV.

3. The article of charge framed against Sri Dipak Kr. Ghose is as under :-

" That the said Sri Dipak Kr. Ghose while working as EDBPM, Khatkhathi B.O. during the period from 1.12.81 to 9.9.97 failed to produce a sum of Rs. 5400/- (Rupees five thousand four hundred) only being the part of cash balance of the B.O. on 23.8.97 for removal of excess cash by the O/S mails, Diphu and thereby he is alleged to have violated the provision of Rule-177(3) of Rules for Branch Offices".

4. Sri Dipak Kr. Ghose was given an opportunity to submit a written statement of his defence within 10 (ten) days of receipt of the said charge memo dated 28.11.97 and Sri Dipak Kr. Ghose submitted his written statement of defence dated 29.12.97 which was received on the same day by this office i.e. on 29.12.97.

5. Sri Tarun Ch. Kalita the SDI of POs, Hojai Sub Dn. Hojai and Sri Kanchan Deb, APM, Diphu H.O. were appointed as Inquiry Authority and Presenting Officer respectively vide this office memo of even no. dated 28.01.98. Sri Kanchan Deb was subsequently replace by Sri Tarun Ch. Bora the then PA, Hojai S.O. vide this office memo of even no. dated 10.11.98 to act as Presenting Officer.

6. The Inquiry Authority submitted his Inquiry Report on 17.02.99.

7. The said Sri Dipak Kr. Ghose was given a copy of the IA's report to submit his representation if any vide this office letter of even no. dated 22.02.99 and he submitted his representation dated 11.03.99 which was received on 15.03.99.

8. ----- OBSERVATIONS & FINDINGS

Cont'd on....2

Attest
AO
File

177(3)

8.1. The undersigned has gone through the Inquiry report and the charged ED official's written statement of defence dated 29.12.97 and written representation dated 11.03.99 very carefully. At preliminary hearing held on 30.01.99, the charged ED official admitted the charge framed against him. Inquiry Authority in his findings held that on the basis of the admission of the charge by the charged ED official, the charge framed against him stood proved.

8.2. In whis written representation dated 11.03.99 against the Inquiry Report, the charged ED official submitted that he had already admitted his guilt from the very beginning and had never tried to mislead or deny the charge on his part. He also submitted that he had been repenting for such unintentional guilt, which could take place for the unavoidable circumstance mentioned earlier.

8.3 In his written statement of defence dated 29.12.97, his sbmission was that in order to save the life of his wife who was to be hospitalised and operated upon immediately on 20.08.97, he paid the amount to the Doctor from the cash balance for the operation etc and his friend who arranged to pay the money failed to pay him the amount resulting in shortage of cash balance.

8.4 His written statement dated 23.08.97 given in the presence of the witnesses S/Shri Ramnath Sahani and Jagannath Sahani, Khatkhathi is a listed document in this case. In this written statement, the charged ED official stated that there was shortage of cash of Rs. 5400.00 on 23.08.97 and the said amount of cash could not be produced to Shri S.C. Mahanta, O/S Mail on 23.08.97 as the same was spent by him for his personal use. He also stated that reasonable time was allowed by the O/S Mail for producing the amount to him but he could not produce the same within the reasonable time as the same was spent for his personal affairs.

8.5 In his statement of admission given and recorded at the preliminary hearing, the charged ED official pleaded his guilt and admitted the charge framed against him vide charge memo No. F6-2(C)/97-98 dated 28.11.97. He also stated that he could not produce the amount of Rs. 5400.00 found short on 23.08.97 as the amount was spent on account of his wife's illness and that the said amount was credited on 08.09.97 in the accounts of Bokajan Sub Post Office.

[8.6.1 The B.O. Account (two books) from 4/96 to 8/97 of Khatkhathi EDBO is a listed document in this case. B.O. Account from 4/96 to 8/97 shows that the charged ED official used to retain surplus cash with him on every day in every month either without any liability or beyond the total amount of liabilities and he also used to make no regular remittance to A.O. He used to keep surplus cash with him and at the same time he used to delay liquidation of liabilities of account of MO payments. Retention of surplus cash by the charged ED official either without any liability or beyond the amount of liabilities during the aforesaid period from 4/96 to 8/97 ranges from Rs. 4000/- to Rs. 14000/-. As for example, the charged E.D. official retained cash of Rs. 16,682.90 with him on 23.07.96 total against liabilities for Rs. 2487.00 for MO payments and MSY withdrawal. The aforesaid liabilities were subsequently liquidated on 24.07.96 (MO), on 30.07.96 (MSY withdrawal) and on 02.08.96 (MO). There was not a single day during the period from 4/96 to 8/97 when the charged ED official had not kept any surplus cash with him.

Cont'd on.....3

Supdt. of Post Offices
Nagaon Dn. Nagaon-782004.

20

Annexure - 6

30

From : Shri Dipak Kumar Ghose,
Ex-EDBPM, Khatkhati EDBO,
in a/c with Bokajan S.O.,
Dist. Karbi Anglong (Assam).

Dated at Khatkhat, the 17th May/1999.

To

The Director of Postal Service,
Assam Circle,
Guwahati- 781001.

Sub. : Prayer for revision of punishment ordered by the
Divisional Supdt of Pos, Nagaon.

Respected Sir,

Most respectfully I beg to submit before you the following for favour of your kind information and consideration for revision.

1. That sir, I rendered my best noble services as EDBPM, Khatkhati BO in a/c with Bokajan so in the district of Karbi Anglong (Assam) about sixteen years continuously without any adverse comment from any corner.
2. That sir, I was placed under put off duty w.e.f 09.09.97 vide SIOS, Diphu Sub-Division memo Dtd. 30.8.97 and SIOS/Nagaon's Memo dt. 16.9.97.
3. That sir, the only charge brought against me was that I failed to produce immediately a sum of Rs.5400/- being the cash balance of my office on 23.8.97 to the O/S., Mail, Diphu. Though, I had credited the sum subsequently on 8.9.97 as instructed me to do so by the O/S Mail, Diphu.
4. That sir, consequent on receipt of the article of charge framed against me in the notice of Dec/97 I had duly submitted my statement of defence admitting the charge and prayed for ~~excuse~~ excuse of my guilt.
5. That sir, an affective inquiry to my case could be held only on 30.01.99 since Dec./97 though I had never tried to mislead the truth and the authority and admitted the charge that brought against me from the very beginning of the case.
6. That sir, under Memo NO. F -2(c)/97-98 dt.31.3.99, the Divisional Supdt., Nagaon has dismissed me from service (which I received in April/99) which is too severe, excessive and injustice.
7. That sir, the additional ~~irregularities~~ irregularities that have been pointed out in para 8.6.1 of the Sios Nagaon's memo dt. 31.3.99 are not warranted by the facts and circumstances of the case. That sir, if ever I had kept cash in my office that might have arisen due to one of the following reasons :-
 - a) Liabilities for no payment, SB/RD/MSY/ withdrawals or for bills payment (for the last week of each month)

Attest
[Signature]

b) Due to wanting L/C bag from the account office which usually found short with the Bo bag.

Again sir, I never made unnecessary delay in no payment while payee was found available. I had never use govt. money for personal purpose except on 20.8.97 to save the life of my beloved wife and finding no way then to did so I was compelled to commit such guilt which I admitted from the very beginning.

8. Finding no way now to save myself and my family I am to pray your kind intervention to the case and to review the order of the Divisional Supt. Nagaon by ^{reducing} my punishment so that I may be reinstated into the service and able to run my family from the present hardship.

All the documents in c/w the case are enclosed for kind perusal and ready reference.

Enclosed :-

Yours faithfully,

Attested
D. G. S.

DEPARTMENT OF POSTS INDIA
OFFICE OF THE POSTMASTER GENERAL ASSAM REGION
GUWAHATI - 781 001

Memo. No. Staff/2/25-5/99/RP

29th May/2000

Sri Dipak Ghosh EDBPM, Khatkhati B.O. in account with Bokajan S.O. in Nagaon Division has preferred an appeal dt. 17.5.99 against the order of S.P.Os, Nagaon Memo. No. F6-2(c)/97-98 dt. 31.3.99 for dismissal from the post of EDBPM, Khatkhati B.O.

Sri Dipak Ghosh was proceeded against under Rule-8 of ED Agent Conduct and Service Rules-1964 under SPOs, Nagaon memo. No. F6-2(C)/97-98 dt. 28.11.99 on the following charges that – Sri Dipak Kr. Ghosh while working as EDBPM, Khatkhati BO during the period from 1.12.81 to 9.9.97 failed to produce a sum of Rs. 5400/- (Rupees five thousand four hundred) only being the part of cash balance of the B.O. on 23.8.97 for removal of excess cash by the O/s mails, Diphu. While verifying the cash balance it was found as part of B.O. account book Rs.6035.90 but on physical verification it was found Rs. 635.90 thus there was short of Rs. 50400.00 which was charged as UCP at the B.O. on 23.8.97. The amount was subsequently credited by the BPM as UCR at Bokajan S.O. on 8.9.97. Thus Sri Dipak Ghosh, BPM, Khatkhati violated the provision of rule 177 (3) of Rules for Branch Office.


The SPOs, Nagaon has appointed Sri T.C. Kalita, SDI, Hojai as Inquiry Officer and Sri T.C.Bora, PA Hojai SO as the Presenting Officer. The I.O. has submitted his report on 17.2.99 proving the charges brought against the ED official.

In the appeal Sri Dipak Ghosh stated that he has kept the money for clearing of M.O. and SB/RD MSY withdrawal liabilities and for bill payment. Sometime he keeps the money for non-receipt of L.C. bag from the account office.

I have gone through the charges and the relevant papers, Inquiry report and the appeal of the official. Whatever may be the circumstances, as a condition of service of BPM, he is responsible for cash and valuables and he should produce within a reasonable time. But in the instance case, there was shortage of cash of Rs. 5400/- in his account which differs on physical verification as per the B.O. Account Book maintained by him and he should have produced immediately to the O/s mails who was deputed for clearance of surplus cash. He failed to produce the amount. Although he credited the amount only on 8.9.97 instead of 27.7.97 i.e., on the day of verification by the O/s Mails. This is definitely violation of the provision of B.O. Rules and Sri Dipak Ghosh failed to maintain absolute integrity and devotion to duty and there is reason to believe that Sri Ghosh might have misused the Govt. Money.

I Sri Shailendra Dashora, Director Postal Services, Assam Region, Guwahati do not find any reason to modify the punishment awarded by the SPOs, Nagaon as he has misused the Govt. Money violating the provision of Rules for Branch Office and therefore the **Appeal is rejected.**

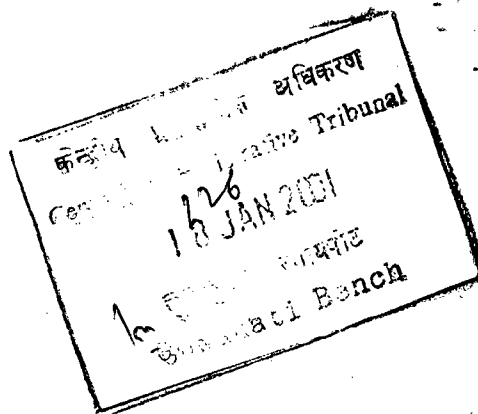
1999
1981
18


(Shailendra Dashora)
Appellate Authority
&
Director Postal Services
Assam Region: Guwahati - 781 001

Copy to -

- ✓ Registered. 1-2 The S.P.Os, Nagaon Division, Nagaon.
3. Sri Dipak Ghosh, Ex- BPM, Khatkhathi via - Bokajan (K. Anglong)
4. O.C.


Director Postal Services
Assam Region: Guwahati - 781 001



24
32
Filed
18 JAN 2001
Addl. Secy. to Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

OA No 270/2000
Sri Dipak Kumar Ghose – Applicant

- Versus -

Union of India & Ors – Respondents

Written Statement for and behalf of the Respondents - 1 to 5

I, Shri Amar Kumar Biswas, Superintendent of Post Offices, Nagaon Division, Nagaon, do hereby solemnly affirm and say as follows :-

1. That I am the Superintendent of Post Offices, Nagaon and Respondent No 5 in the above case and am acquainted with the facts and circumstances of the case. I have gone through a copy of the application and have understood the contents thereof save and except whatever is specifically admitted in this written statement and other contention and statements made in the application may be deemed to have been denied. I am authorised to file this written statement on behalf of all the respondents.
2. That with reference to the paragraph I of the Application the Respondents beg to state that the punishment awarded to the Applicant is not arbitrary. It is according to the merit of the case and it is in exercise of the powers conferred by the Rule-7 of EDAs (Conduct & Service) Rules, 1964.
3. That the Respondents have no comment to the statements made in paragraph 2 and 3.
4. That the Respondents have no comment against the paragraph no 4.1. of the Application.
5. That with reference to the paragraph 4.2. of the Application the Respondents beg to state that Sri Dipak Kr Ghose had been working as Extra Departmental Branch Postmaster Khatkhathi Extra Departmental Branch Post Office during the period from 01-12-81 to 09-09-97. Sri Dipak Kumar Ghose was placed under put off duty on 09-09-97 (Afternoon) vide Assistant Supdt of Post Offices Diphu Sub Dn Diphu's memo no A2/Khatkhathi/Diphu Dtd 30-08-97 and it was subsequently ratified by the Supdt of Post Offices Nagaon vide memo no. F6-20/97-98 Dtd 16-09-97. The put off order was passed on the ground that a departmental proceeding is being contemplated in view of the shortage of cash amounting to Rs 5400.00 (Rupees Five thousand four hundred) only which could not be produced before the O/s Mails on 23-08-97 who was directed by the Assistant Supdt Diphu Sub Dn Diphu to remove the excess cash with the BPM to the

37

Account office . The office cash balance dtd.23-08-97 as per the BO Account was for Rs 5400.90 whereas the Applicant could produce only Rupees 00.90 .

6 . That the Respondents have no comment with reference to the paragraph 4.3 of the Application .

7 . That with reference to the paragraph 4.4. of the Application the Respondents beg to state that the Applicant used to retain surplus cash without any liability or without remitting the surplus cash to the Account Office as per the provision in existence . From the instances of keeping surplus cash on regular basis as appeared from the BO Accounts it is obvious that the Applicant was in the habit of misusing Govt cash for personal purpose. Had it been not so , the amount of surplus cash could have been remitted to the Account Office regularly without keeping any amount of surplus cash with him (BPM) . But he did not do it . He was given reasonable opportunity to deposit the amount found short within reasonable time but failed to deposit the said amount of Rs 5400.00 within a day or two to the Govt Account . He subsequently credited the amount on 08-09-97 in the Accounts of Bokajan Sub Post Office .

8 . That the Respondents have no comment in respect of the paragraphs 4.5,4.6 and 4.7 of the Application .

9 . That with reference to the paragraph 4.8 of the Application the Respondents beg to state that the case was considered carefully . In the preliminary hearing held on 30-01-99 , the Applicant admitted the charge framed against him and on receipt of the Inquiry Report dtd 17-02-99 he further admitted the charge framed against in his representation dtd 11-03-99 against the Inquiry Report Dtd 17-02-99 . The order passed for dismissal from service was according to gravity of the case since spending of the govt money for personal purpose can not be said unintentional guilt and thus integrity of the Applicant is not absolute . The fact of spending a sum of Rs 5400.00 and the circumstances involved were also considered and found nothing in his favour . As per the condition of the service, the person holding the post of Branch Postmaster should have an adequate means of income from other sources for his livelihood , in addition to the duty allowances received from the department for serving as EDBPM . So , there should not be any excuse for spending govt money for personal use .

10 . That with reference to the paragraph 4.9 of the Application the Respondents beg to state that the representation dtd 17-05-99 submitted by the Applicant was carefully considered by the Appellate Authority while disposing the case of Appeal which was forwarded to the Director of Postal Services Assam Region Guwahati vide letter no. B2/Appeal/3/99 dtd 30-06-99 .

11. That with reference to the paragraph 4.10 of the Application the Respondents beg to state that the order was passed carefully considering the representation submitted by the Applicant .

12 . That with reference to the paragraph 4.11 of the Application the Respondents beg to state that the comments are same as stated in para 9 above .

13 . That with reference to the paragraph 4.12 of the Application the Respondents have no comment .

14 . That with reference to paragraph 5.1 of the Application the Respondents beg to state that the order of punishment is according to the merit of the case . It is a established fact that he spent the government money for personal use .

15 . That with reference to the paragraph 5.2 of the Application the Respondents beg to state that the comments are same as above in para 9 .

16 . That with reference to the paragraph 5.3 of the Application the Respondents beg to state that the order of punishment was passed in a fair manner considering the gravity of the offence committed and past records of his performances by examining the BO Accounts . The Supdt of Post Offices Nagaon and Respondent No 5 is left with no other option but to conclude that the Dipak Kumar Ghose is unlikely to rectify himself and given an opportunity is likely to repeat such misdemeanour and therefore he was found unfit to continue in service .

17 . That with reference to the paragraph 5.4 of the Application the Respondents beg to state that the representation of the Applicant was considered carefully .

18 . That with reference to the paragraph 5.5. of the Application the Respondents beg to state that the punishment awarded is quite justified and it is based on fact and circumstances of the case .

19 . That with reference to the paragraph 5.6 of the Application the Respondents beg to state that the Disciplinary Authority has not exceeded his jurisdiction . He has acted as per powers conferred on him as per rules .

20 . That with reference to the paragraph 5.7 of the Application the Respondents beg to state that the Disciplinary Authority passed Order within his jurisdiction on the basis of facts and figures on record and also on past record of the service of the BPM .

21 . That with reference to the paragraph 5.8 of the Application the Respondents beg to state that the action of the Appellate Authority is quite justified to meet the end of justice.

22 . That with reference to the paragraph 5.9 of the Application the Respondents beg to state that the order passed against the Applicant is quite justified .

23 . That the Respondents have no comment against paragraph 6 and 7 of the Application

24 . That the Applicant is not entitled any relief sought for in the Application and the same is liable to be dismissed with cost . The respondents also crave the leave of this Hon'ble Tribunal to allow them to rely upon and produce the relevant case records and provisions of rules and law at the time of hearing of the case .

Verification

I, Shri Amar Kumar Biswas S/o Late Amulya Kumar Biswas aged 53 years working as Supdt of Post offices , resident of Itachali Postal Complex Nagaon do hereby verify that the statements made in paragraph 1 to 23 are true to my knowledge , these made in paragraph — being matter of record are true to my information derived there from and these made in the rest are humble submission before the Hon'ble Tribunal and I have not suppressed any material fact .

I sign this verification on this the 17-11-2001 day of January 2002 at Nagaon

Amar Kumar Biswas

Deponent

अधिसक डाकघर,

Superintendent of Post Office,

नगाँव मंड 1 / Nagaon Division

बगाव / Nagaon 782001