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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 477/2001

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Application No. 477 /2001

Applicant(s) :- Ahar Ali Seikh

Respondant(s) :- U.O.I. Jams

Advocate for the Applicant :- Mr. A.R. Seikhda, Mr. A. Islam
Mr. G.K. Sarma

Advocate for the Respondant :- CASE

| Notes of the Registry | Date | Order of the Tribunal |
|--|-------------------|--|
| This is application in form C. F. for Rs. 50/- deposited vide IP 100/01 dated 24.12.01 Dated 24.12.01 By Registrar | 24.12.01 | None is present for the applicant. List again on 7.1.2002 for admission. |
| mb | | ICU Sharma Member |
| | | Vice-Chairman |
| Steps taken. Notice prepared and sent to A/R for filing the respondents No. 1 to 3 by Regd. A/R. 15/1/02 | 20/12/01 7.1.2002 | The application is admitted. Call for the records. |
| | | ICU Sharma Member |
| | | Vice-Chairman |
| BINo 143-146 Dtd. 23/1/02 | 6.2.02 | The respondent has entered appeara- nce thorough Sri A.K. Choudhury, learned Addl C.G.S.C. and sought for time for filing written statement. Prayer is allowed. List on 13.3.2002 for order. |
| Appearance has been filed by Mr. A.K. Chandley, Addl. Clerk 16/01/02 | 13.3.02 | List on 11.4.2002 to enable the Respondents to file written statement. |
| | | ICU Sharma Member |
| | | Vice-Chairman |
| | | mb |
| | | ICU Sharma Member |
| | | Vice-Chairman |

1.4.2002

W/s submitted
by the Respondent no. 1, 2 and 3.

[Signature]

No rejoinder has
been filed.

[Signature]
10.5.02

11.4.02

Written statement has already
been filed by the Respondent Nos. 1,
2 and 3. Copy of the written state-
ment has served to the learned
counsel for the applicant, today by
Mr. A.K. Choudhury, learned Addl.
C.G.S.C. for the Respondents. The
case is ready for hearing. The
applicant may file rejoinder, if
any, within ~~10~~ two weeks from
today.

List the matter for hearing
on 13/5/2002.

[Signature]
Member

[Signature]
Vice-Chairman

mb

14.5.2002

Rejoinder submitted
by the applicant
to the W/s.

[Signature]

13.5.02

It has been stated by Mr. A.K.
Choudhury, learned Addl. C.G.S.C.
for the Respondents that he has
received the rejoinder today and
he wants to go through the same.
Also heard learned counsel for the
Applicant.

List on 21.5.2002 for hearing.

[Signature]
Member

[Signature]
Vice-Chairman

mb

Received copy
of Choudhury
Addl. C.G.S.C.
19/5/02

21/5

Heard Mr. A.K. Choudhury, learned
counsel for the applicant &
Mr. A.K. Choudhury, Addl. C.G.S.C.
for the respondent.
Hearing concluded.
Judgment reserved.

[Signature]
21/5

11.6.02

Judgment delivered in open Court
kept in separate sheets. The applicati-
on is allowed. No order as to costs.

[Signature]
Member

[Signature]
Vice-Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. No. 477 of 2001

DATE OF DECISION . . . 11-6-2002

Md . Ahar Ali Sheikh

APPLICANT(S)

Sri A.R.Sikdar

ADVOCATE FOR THE APPLICANT(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)

Sri A.K.Choudhury, Addl.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 Admn. Member.

K. K. Sharma

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 477 of 2001.

Date of Order : This the 11th day of June, 2002.

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

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

Md. Ahar Ali Sheikh,
Son of late Panu Mahmud Sheikh,
Vill. Indira Gandhi Road,
Ward No. 13, P.O. A M Co Road,
P.S. & Dist. Dhubri, Assam.

...Applicant

By Advocate Mr A.R.Sikdar

- Versus -

1. The Union of India
through the Secretary to the
Govt. of India, Ministry of Communication,
New Delhi-1.
2. The Director of Postal Services (HQ)
Assam Circle,
Guwahati-1.
3. The Superintendent of Post Offices,
Goalpara Division,
Dhubri-783301.

...Respondents

By Sri A.K.Choudhury, Addl.C.G.S.C

O R D E R

K.K.SHARMA, MEMBER(A),

In this application the applicant has challenged the Order No.Vig/6/4/95(Part) dated 3.10.2001 (Annexure-7 to the O.A). By this order the penalty imposed by the Superintendent of Post Offices by Memo No. F 6-4/98-99 dated 23.2.2001 was enhanced. Vide order dated 23.2.2001 the Superintendent of Post Offices, Goalpara Division, Dhubri had imposed a penalty of reduction of pay by one stage from Rs.5375/- to Rs.5250/- for a period of two years with a direction that the reduction of pay would not have

the effect of postponing the future increments. The Director of Postal Service by the impugned order dated 3.10.2001 enhanced the penalty to reduction of pay from Rs. 5375/- to Rs.5125/- with cumulative effect which would have the effect of postponing the future increments of pay.

2. The applicant was holding the post of Sub Post Master at Fekamari Sub Post Office. By order dated 16.2.98 of Superintendent of Post Offices, Dhubri the applicant was transferred as Sub Post Master, Sukchar. However, the applicant made a request for continuing at Fekamari. While the applicant was continuing at Fekamari on 20.3.99 the Assistant Superintendent of Post Offices, came there Goalpara /alongwith one Postal assistant and asked the applicant to hand over his charge . It is stated that the ASPO did not give the applicant any chance to produce the entire cash balance. Due to shortage of cash on 20.3.99 a disciplinary proceeding was initiated vide Memo No. F6-4/98-99 dated 10.6.99 for violation of Rule 217 of Posts & Telegraphs Manual Vol.5, Rule 58 of FHB Vol.1 and Rule (I)(i)(ii)(iii) of CCS (Conduct) Rules, 1964. The only one memo contained /article of charge, which is extracted below

"That the said Md. Ahar Ali Sheikh while functioning as SPM, Fekamari S.O. during the period 05.05.95 to 20.03.99 retained cash Rs.57,897.37 on 20.3.99 and failed to produce

contd..3

Rs.44,891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only when called upon on 20.3.99. Thus Md Ahar Ali Sheikh violated Rule 217 of P & T Manual Volume V, Rule 58 of FHB Vol-I and Rule 658 of P & T Manual Vol-VI Part-III and thereby attracted the provisions of Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964."

The applicant submitted written statement dated 21.6.99 admitting the charge of retaining excess cash. An enquiry officer was appointed who submitted his report, copy of which was not given to the applicant.- The Superintendent of Post Offices imposed penalty of reduction of pay by two stages for two years by order dated 6.9.99 (Annexure-2 to the O.A). The applicant being aggrieved by the order dated 6.9.99 made an appeal before the Director of Postal Services who after perusing the record and on hearing the parties up held the part of the order by setting aside the punishment awarded to the applicant with an observation that there was no bar to the disciplinary authority for initiating de novo proceeding. A fresh enquiry was ordered and the enquiry report was submitted on 12.9.2000. Considering the enquiry report the Superintendent of Post Offices by order dated 23.2.2001 imposed the penalty as under :

"I Sri B.K.Marak, Supdt. of Post Offices, Goalpara Division, Dhubri therefore ordered that the pay of Sri Ahar Ali Sheikh be reduced by one stage from Rs.5375/- to Rs.5250/- in the time scale of pay of Rs.4500-125-7000 for a period of 2(two) years with effect from 1.3.2001. It is further directed that Shri Ahar Ali Sheikh will earn increment of pay during the period of reduction and that on the expire

10/11/01

of this period, the reduction will not have effect of postponing his future increment of any."

Within less than a month of the order of penalty the Director of Postal Services issued memo No.Vig/6/4/95 dated 20.3.2001 (Annexure-6) to the applicant whereby he proposed to revise the punishment of reduction of pay by one stage to removal from service. Against the proposed notice of enhancement of punishment the applicant submitted his written statement on 11.4.2001. The appellate authority after considering the representation revised the penalty as under :

"I Sri Subrat Das, Director of Postal Services (HQ), Assam Circle, Guwahati and the Reviewing Authority hereby order reduction of pay by two stages from Rs.5375/- to Rs.5125/- in the scale of pay Rs.4500-125-7000/- for five years with cumulative effect. It is further directed that the official will not earn any increment of pay during the period of reduction and that on the expiry of this period, the reduction will have effect of postponing his future increment of pay. I think this will meet the ends of justice."

It is the order which is now challenged in the O.A. The order of enhancement of penalty has been challenged on numerous grounds. It is stated that the punishment is in violation of rules and provisions of law. The applicant had not committed any fraud for which a major punishment could be awarded. It is stated that as the applicant had made good the shortage within a short spell of time and prayed this was the for exoneration. As first instance the authority ought to have considered the prayer. The order is also challenged

12/11/2001

on the ground that the review was not done within a period of six months from the date of order which is in violation of the provisions of Rule 29(1) of CCS(CCA) Rules 1965. It is also admitted that the review was initiated without allowing the applicant time to file appeal which is violative of Rule 25 of CCS(CCA) Rules. Rule 25 provides for a period of 45 days from the date of receipt of the order appealed against. for filing of appeal.

3. Heard Mr A.R.Sikdar, learned counsel on behalf of the applicant. Mr Sikdar referred to Rules 25 and 29 of the CCS(CCA) Rules. The learned counsel argued that the enhancement of punishment was not justified. The respondents have filed their written statement contesting the claim of the applicant. Mr A.K.Choudhury, learned Sr.C.G.S.C appearing on behalf of the respondents also made his submission supporting the written statement. It is stated in the written statement that the applicant was found to have kept shortage of Rs.44,891.55 in his office cash account which was a misconduct of misappropriating government money. It is stated that the disciplinary authority was justified in passing the order of punishment as reduction of pay by two stages without cumulative effect was found to be lenient considering the serious misconduct. Though the authority had issued notice for

lc Usha

removal from service but ultimately imposed punishment of reduction of pay by two stages. The enquiry officer had found the applicant guilty of the charges levelled against him. the respondents have been fair in following the prescribed procedure when it was found that the disciplinary authority had not supplied copy of the Enquiry Report, the appellate authority set aside the order of penalty dated 6.9.99. The punishment was quite inadequate considering the gravity of misconduct of the applicant. No infirmity is found in the order dated 3.10.2001.

4. We have herad learned counsel for the parties at length. The impugned order of enhancement of punishment has been challenged on legal grounds. Rule 25 and relevant part of the Rule 29 which have been relied on by the counsel for the applicant are reproduced below :

U 25.

" Period of limitation of appeals

No appeal preferred under this part shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against is delivered to the applicant:

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time."

29. Revision

(1)(v) the appellate authority, within six months of the date of the order proposed to be (revised); or

(vi) any other authority specified in this behalf by the President by a general or special

10/11/01

order, and within such time as may be prescribed in such general or special order;

may at any time, either on his or its own motion or otherwise call for the records of any enquiry and (revise) any other made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may -

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case ; or

(d) pass such other orders as it may deem fit :

(Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under Rule 14 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 subject to the provisions of Rule 19, and except after consultation with the Commission where such consultation is necessary):"

5. It is not disputed that there was a shortage of cash on the day of inspection. Enquiry Officer found the charge as proved. The applicant has not challenged the finding of the enquiry officer. The legality of the

10/11/54

order of enhancement of penalty is challenged. There is no dispute that the appellate authority has the power to enhance the penalty but such power is subject to certain restrictions. The power is not unlimited. The power is given by Rule 29 of CCS(CCA) Rules. The Rules have statutory powers and have to be observed strictly. This is done so that the power given to an authority is not used arbitrarily or maliciously. The existence of Rules gives a certainty to the affected person to know his rights. The following points emerge from reading of Rules 25 and 29 of CCS (CCA) Rules.

(a) There is a time limit of 45 days from the date of receipt of order for filing an appeal. For sufficient cause the appellate authority may entertain appeal after the expiry of 45 days also.

(b) The appellate authority ^{may} within 6 months from the date of the order proposed to be revised, confirm, reduce, enhance, set aside the penalty imposed or impose penalty where no penalty has been imposed - Rule 29(1)

(b) - CCS (CCA) Rules.

(c) No order of enhancing penalty shall be made unless a reasonable opportunity of making a representation against the proposed penalty is given.

6. From the facts observed above it can be seen that the penalty order proposed to be enhanced was dated 23.2.2001. The show cause notice for enhancement was issued on 20.3.2001, which is less than 45 days time

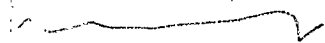
1c 11/11/01

from the date of receipt of the order (dated 23.2.2001) - allowed under Rule 25 of CCS (CCA) Rules. It is stated that the applicant has not filed an appeal. Thus the applicant's right to file appeal has been affected. The order enhancing penalty has been passed on 3rd October 2001, while the time available for revision under Rule 29 (1) (v) was upto 22nd August 2001. The penalty has been revised after the statutory period of 6 months. The impugned order dated 3.10.2001 is unsustainable - being violative of Rules 25 and 29 of CCS (CCA) Rules. The impugned order is accordingly set aside and quashed.

The application is allowed. There shall, however, be no order as to costs.


(K.K.SHARMA)

ADMINISTRATIVE MEMBER


(D.N.CHOWDHURY)
VICE CHAIRMAN

3/11/2001

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IN THE ~~ADM~~ CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI.

ORIGINAL APPLICATION NO. 477 / 2001.

Md. Ahar Ali Sheikh ... Applicant

-Vs-

The Union of India and Ors... Respondents.

I N D E X

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Filed by :-


(ADVOCATE)

Date : 19-12-2001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI.

Filed by the appellant
Mr. h
Headman Rahman S. Laskar
Dhribri, G.H.
19.12.2001

(An application under Section 19 of the Central
Administrative Tribunal Act, 1985)

ORIGINAL APPLICATION 477 /2001.

Md. Ahar Ali Sheikh ... Applicant

- Versus -

The Union of India & Others ... Respondents.

DETAILS OF THE APPLICANT :-

1. Name of the Applicant & Address. : Md. Ahar Ali Sheikh,
S/o Late Panu Mahmud Sheikh,
R/o Vill. Indira Gandhi Road,
Ward No.13,
P.O. A M Co Road,
P.S. & Dist. Dhubri, Assam.
2. Designation : Sub Post Master (SPM),
Fekemari Sub-Post Office
under S.P. Dhubri.
- Particulars of the Respondents :
 - 1) The Union of India through
the Secretary, Ministry of
Communication, Govt. of
India, New Delhi - 110 001.
 - 2) The Director of Postal
Services (HQ) Assam Circle,
Guwahati - 781 001.
 - 3) The Superintendent of Post
Offices, Goalpara Division,
Dhubri - 783 301.

Recd

PARTICULARS OF ORDER AGAINST WHICH THE APPLICATION
IS MADE :-

1. Against the review order vide Memo No.Vig/6/4/95 (Part) dated 3rd Oct/2001 issued under the signature of Shri Subrat Das, the Director of Postal Services (HQ), Assam Circle, Guwahati enhancing the awarded punishment from one (1) stage reduction to two stage reduction of pay from Rs.5375 to 5125/- in the scale of pay of Rs.4500-125-7000 for five years with cumulative effect and stopping the increment of the applicant during the period of reduction.

2. JURISDICTION OF THE TRIBUNAL :-

The applicant declares that the cause of action has arisen within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :-

The applicant declares that the application is filed before this Hon'ble Tribunal within the time limit prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE :-

4. 1. That the applicant is a citizen of India and a permanent resident of Indira Gandhi Road, Ward No.13, A M Co Road, P.S. and Dist. Dhubri,

Ali

Assam. The petitioner passed H.S.L.C. Examination in the year 1971 and before passing his H.S.L.C. Examination, he joined in service on temporary basis but after passing the H.S.L.C. examination he was appointed on regular basis. The applicant was serving as Sub-Post Master at Fekamari Sub-Post office during the period from 5.5.94 to 20.3.94 and during the aforesaid period the applicant discharged his duties with utmost care, attention and sincerity. The applicant was transferred as SPM, Sukchar vide SPO's, Dhubri vide Memo No.B/A-20/Pt-V dated 16.12.98 and 8.2.99. The applicant on receipt of the said transfer order prayed for to allow him to his service as SPM at Fekamari S.O. till completion of H.S.L.C. Examination of his only daughter. The applicant did not receive any response to such prayer and he was continuing his duty as SPM at Fekamari.

- 4.2. That the applicant begs to state that he was continuing his duty at Fekamari as SPM but on 20.3.99 the Asstt. Superintendent of Post Office (ASPOS), Goalpara accompanied with one Mr. Rajab Ali Mondal, P.A., Goalpara suddenly visited the office of the applicant and at the last hours of the day the Asstt. Superintendent of Post Office, Goalpara asked the applicant to handover the charge. The applicant apprised him that his daughter's H.S.L.C. Examination/99 started from 19.3.99 and since he applied for allowing him to work till completion of her

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final Exam/99, he may be allowed to work as SPM, at Fekamari till completion of his daughter's exam. But the ASPO, Goalpara paid no attention on his request and forcefully relieved him from the charge at 17.00 hrs. on 20.3.99. The ASPO, Goalpara did not give the applicant any chance to leave the office for any moment on 20.3.99 for which he could not produce the entire cash balance on 20.3.99 and he re-couped the alleged shortage of cash on 26.3.99.

This fact of shortage of cash on 20.3.99 was perhaps reported to the Superintendent of PO's Phubri and consequently he initiated a disciplinary proceeding against the applicant under Rule - 14 of CCS (CCA) Rules, 1965 vide his Memo No.FA-6/98-99 dated 10.6.99 and levelled charges for violation of Rules 217 of Posts & Telegraphs Manual Vol. 5, Rule 58 of FHB Vol. 1, and Rule (I)(i)(ii)(iii) of CCS (Conduct) Rules, 1964. By the said memorandum of disciplinary proceeding, the authority directed to hold an enquiry and the applicant was directed to submit written statement of his defence within 10 days and to appear before the enquiry authority. The applicant submitted his statement dated 21.6.99 admitting the charge of retaining of excess cash but not intentionally but for an unavoidable situation which compelled him and he prayed for exoneration for such lapse on his part. He also prayed that his personnel hearing is not required and exercised his option

A. Ali

to decide the case in own accord of the disciplinary authority. But the SPO's Dhubri appointed I.O. & P.O. for holding oral enquiry and submitted his report without sending the copy of the report to the applicant and passed the final order with punishment, "Reduction to 2 (two) stages for two years adversely affecting on pension".

A copy of the Memorandum vide Memo F6-4/98-99 dtd.10.6.99 drawing disciplinary proceeding is annexed as Annexure No.1.

A copy of the order dtd.6.9.99 awarding punishment to the applicant is annexed as Annexure No.2.

- 4.3. That this applicant being aggrieved by and dissatisfied with the order dated 6.9.99 (vide Annexure-2) awarding punishment to the applicant preferred an appeal before the Director of Postal Services, Guwahati. The learned appellate authority after perusing the records and hearing the parties uphold a part of the appeal and ordered setting aside the punishment awarded to the applicant. However, it was also observed that there will be no bar to the disciplinary authority in initiating as a de-novo proceeding on the same charges.

A copy of the appeal petition dated 11.10.99 is annexed as Annexure No.3.

A copy of the order dtd.15.2.2000 is annexed as Annexure No.4.

A-ali

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4.4. That the respondent authority i.e. SPO, Goalpara pursuant to the order dated 15.2.2000 (vide Annexure-4) proposed to hold de-novo enquiry under Rule 14 of CCS(CCA) Rules, 1965. Accordingly a de-novo enquiry proceeding was held. The enquiry authority appointed in the proceeding conducted the de novo enquiry into the charge framed against the applicant and submitted the reports. The Supdt. of Post Offices, Goalpara awarded punishment by order dated 23.2.2001 by reducing one stage from Rs.5375/- to Rs.5250/- in the scale of pay of Rs.4500-125-7000 for a period of two (2) years with effect from 1.3.2001. It is further directed that this applicant will earn increment of pay during the period of reduction and that on the expiry of this period, the reduction will not have effect of postponing his future increment of pay.

A copy of the order dated 23.2.2001 on the basis of de-novo enquiry is annexed as Annexure No.5.

A. Ali

4.5. That the applicant begs to state that Reviewing authority namely the respondent no.2 immediately after the order vide Annexure No.5 proposed to revise and enhance the punishment by drawing up review proceeding in terms of Rule 29 of CCS(CCA) Rules, 1965 and in this connection the applicant was served a notice vide Memo No.Vig/6/4/93 dated 20.3.2001 giving an instruction to make representation within 15 days from the date of receipt of

the said notice/memorandum. The humble applicant submitted his representation on 11.4.2001. The learned Reviewing Authority after perusing the representation and records available before him passed the impugned order enhancing the punishment by reducing the pay by 2 (two) stages from Rs.5375/- to Rs.5125/- in the scale of pay Rs.4500-125-7000/- for five years with cumulative effect. It was further directed that the applicant will not earn any increment of pay during the period of reduction and that on the expiry of this period, the reduction will have effect of postponing his future increment of pay.

A copy of the Memorandum dated 20.3.2001 is annexed as Annexure No.6.

A copy of the impugned review order dated 3.10.2001 enhancing the punishment is annexed as Annexure No.7.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :-

- I) For that the learned Reviewing Authority passed the impugned order vide Annexure No.7 enhancing the punishment in violation of rules of provisions of law and hence the impugned order is bad in law and liable to be set aside.
- II) For that the learned Reviewing Authority has committed error of law and facts in awarding quantum of punishment.

A. Ali

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- III) For that the instant case is a case where offence committed is not deserving a major punishment as because the applicant has not committed a fraud and the department has not sustained any loss. Whatever mistake is done by the applicant is not with willful intent manner. There was no mens rea in committing any offence. Under these position of facts, the reviewing authority ought not to have taken such view which is too harsh and causing immense loss and suffering to the applicant. Hence, the impugned enhancement of punishment by order dated 3.10.2001 is bad in law and liable to be set aside and quashed.
- IV) For that the humble applicant in all his representation and during the enquiry admitted frankly his fault which was because of unavoidable circumstances and made good the shortage within a short spell of time and prayed for exoneration as 1st instance and the Reviewing authority ought to have considered his prayer of excuse or atleast punishment ought not to have enhanced.
- V) For that the reviewing authority failed to dispose of the proposal of review and enhancement order within the period of six months which is violation of provision of law under Rule 29(1) of CCS(CCA) Rules, 1965 read with Govt. of India's instruction No.6 below the said Rules. The review proposal was made on 20.3.2001 and impugned enhancement order has been passed on 3.10.2001.
- VI) For that in the impugned order it has not been and from which date, the same is to be operated and because of it there is likelihood to be given from any arbitrary date. Thus the operative portion of the order imposed
- S. Ali*

by the Revisional order has been worded violating the Govt. of India's instruction No.15 below Rule-11 of CCS(CCA) Rules, 1965.

VII) For that the Revisional authority has provided wrongly in adopting the review proposal and they ought to have set aside/cancelled the orders of punishment passed by the subordinate authority and simultaneously served show cause notice for the imposition of higher penalties. Even in the final stage modifying the original penalty, the original order of penalty is not set aside. This has violated the Govt. of India's order vide G.I., M.H.A., O.M.39/2/68-Ests/(A) dt.14th May, 1968.

VIII) For that in any view of the matter, the impugned enhancement order of punishment is not sustainable in law.

6. DETAILS OF REMEDIES EXHAUSTED :-

The humble applicant submitted his representation on 11.4.2001 which was rejected.

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

The applicant declares that he has not filed any application, writ petition or suit regarding the present matter in any Court of law or Tribunal and no case is pending before any Court.

8. RELIEF PRAYED FOR :-

Under the above circumstances of the case as stated above, the humble applicant most respectfully prays for following relief :-

- i) That this Hon'ble Tribunal may kindly be pleased to pass an order altering and/or modifying the order vide Memo No.Vig/6/4/95 (part) dated 3.10.2001 issued issued by the Director of Postal

A. Ali

Services(HQ), Assam Circle, Guwahati-781 001(vide Annexure-7) and further be pleased to pass an order exonerating him from the punishment or enhancement of the punishment in the interest of justice.

ii) To pass any other order or orders as deemed fit and proper by the Hon'ble Tribunal in the interest of justice.

9. INTERIM RELIEF PRAYED FOR:-

In the interim, applicant prayed for-

stay of the operation of the impugned enhancement of punishment order dtd.3.10.2001 vide Annexure No.7 in the interest of justice.

10. DETAILS OF POSTAL ORDER:-

Postal Order No :- 66790422
Date of Issue :- 14-12-2001
Issued from :-
Payable at :- Guwahati.

11. LIST OF PARTICULARS:-

As per Index.

VERIFICATION.....

A. Ali

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V E R I F I C A T I O N :†

I, Md. Ahar Ali Sheikh, S/o. Late Panu Mahmud Sheikh, Resident of Village Indira Gandhi Road, Ward No.13, P.O.AM Co. Road, P.S. & Dist. Dhubri, Assam presently as SPM Sub Post Office, Fekamari, do hereby verify that the contents in paragraph 1, 2, 3, 4, 6, 7, 10 and 11 are true to my knowledge and paragraphs 5, 8 and 9 are believed to be true as legal advice and I have not suppressed any material facts.

And I sign this verification on this 19th day of December, 2001 at Guwahati.

Place:- Guwahati.

Date:-

SIGNATURE OF THE APPLICANT.

Md. Ahar Ali SH.

APPENDIX - I
STANDARD FORM OF CHARGE SHEET
(Rule 14 of the C.C.S (CCA) Rules , 1965)

OFFICE OF THE SUPERINTENDENT OF POST OFFICES : GOALPARA DIVN. : DHUBRI

Memo No. FG-4/98-99

Dated at Dhubri the 10/6/99

MEMORANDUM

1. The undersigned proposes to hold an inquiry against Sri Md. Ahar Ali Sheikh under Rule 14 of the Central Civil Services (classification, Control & Appeal) Rules, 1965. The substance of the imputations of mis-conduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement or articles of charge (Annexure I). A statement of the imputations of misconduct or mis-behaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexure III & IV).

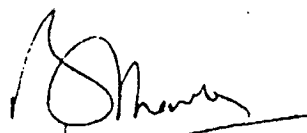
2. Sri Md. Ahar Ali Sheikh is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

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

4. Sri Md. Ahar Ali Sheikh 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 refuses to comply with the provisions of Rule 14 of the C.C.S (CCA) Rules, 1965 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him ex parte.

5. Attention of Sri Md. Ahar Ali Sheikh is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government servant 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 Government. 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 Sri Md. Ahar Ali Sheikh is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the C.C.S. (Conduct) Rules, 1964.

The receipt of the Memorandum may be acknowledged.


(K. K. Khorak)

Supt. of Post Offices
Goalpara Division : Dhubri - 783301

Recd. AD

2d. To Sri Md. Ahar Ali Sheikh
Postal Assistant
Dhubri H. P. O.

ANNEXURE-I

Statement of articles of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O.

ARTICLE - I

That the said Md. Ahar Ali Sheikh while functioning as SPM, Fekamari S.O. during the period 05.05.94 to 20.03.99 retained cash Rs. 57,897.37 on 20.3.99 and failed to produce Rs. 44,891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only when called upon on 20.3.99. Thus Md. Ahar Ali Sheikh violated Rule 217 of P & T Manual Volume V, Rule 58 of FHB Vol-I and Rule-658 of P & T Manual Vol-VI Part-III and thereby attracted the provisions of Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964.

ANNEXURE-II

Statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against Md. Ahar Ali Sheikh Ex-SPM, Fekamari S.O. now PA, Dhubri H.O.

ARTICLE - I

That the said Md. Ahar Ali Sheikh while functioning as SPM, Fekamari S.O. during the period from 5.5.94 to 20.3.99 has been retaining excess cash which was reported by the Postmaster, Dhubri H.O. In pursuance of the report of Postmaster, Dhubri H.O., the ASPOs, Goalpara Sub-Division visited his office on 20.3.99 and after days transactions on physical verification of cash and stamps found Rs. 13,005.82 (Rupees thirteen thousand five and paise eighty two) only as detailed below :-

| | | |
|---------------|---|--------------|
| Cash | = | Rs. 1386.00 |
| Stamps | = | Rs. 7522.55 |
| Revenue | = | Rs. 357.85 |
| S/Stamps | = | Rs. 945.00 |
| CRF | = | Rs. 150.00 |
| S.Os balances | = | Rs. 2644.42 |
| Total Rupees | = | Rs. 13005.82 |

But as per S.O. account dated 20.3.99 the closing balance of the office was Rs. 57,897.37. So the shortage of cash and stamps balance of Fekamari S.O. was found Rs. (57897.37 - 13005.82) = Rs. 44891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only. An inventory of cash and stamps was

Contd....2....

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Accordingly prepared by Md. Ahar Ali Sheikh in presence of ASPOs, Coalpara and other witnesses on 20.3.99 and the shortage amount of Rs. 44891.55 was charged as UCP on 20.3.99 in the daily account of Fekamari S.O. as Md. Ahar Ali Sheikh failed to make good the shortage on the same day. In his written statement dated 20.3.99 Md. Ahar Ali admitted the shortage of cash and promised to make good the amount within 31.3.99 and accordingly he voluntarily credited Rs. 44891.55 as UCR vide Dhubri H.O. ACG-67, Receipt No. 42 dated 26.3.99 which was incorporated in the cash account of Dhubri H.O. on the same day.

By doing the above acts Md Ahar Ali Sheikh has violated the provisions of Rule 217 of P & T Manual Volume V Rule 58 of FMB Vol-I and Rule 658 of P & T Manual Volume VI part III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of Govt. servant violating Rules 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964.

ANNEXURE - III

List of documents by which the articles of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. are proposed to be sustained.

1. Inventory of cash and stamps dated 20.3.99
2. Written statement dated 20.3.99 of Md. Ahar Ali Sheikh, SPM, Fekamari.
3. Fekamari S.O. daily account dated 20.3.99.
4. Fekamari S.O. Account book from 1.1.98 to 20.3.99
5. Stamp balance-register of Fekamari S.O. from 16.12.98 to 20.3.99
6. H.O. Summary of Fekamari S.O. from 10.6.98 to 20.3.99.

ANNEXURE - IV

List of witnesses by whom the articles of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. are proposed to be sustained.

1. Sri R. Biswas, ASPOs, Coalpara.
2. Sri Rajab Ali Mondal, PA, Coalpara S.O. now offg. SPM, Fekamari S.O.

Supdt. of Post Offices
Coalpara Division
Dhubri - 783301

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Annexure - 2

DEPARTMENT OF POSTS
OFFICE OF THE SUPDT. OF POST OFFICES : GOALPARA DIVISION:::DHUBRI.

Memo No. F 6-4/98-99

Dated at Dhubri the 06.09.99.

In this office memo of even no. dated 10.6.99 it was proposed to hold enquiry under Rule-14 of CCS(CCA) Rules, 1965 against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. The article of charge and the statement of imputation of misconduct or misbehaviour on the basis of which the charges were framed against Md. Ahar Ali Sheikh was as follows :-

ANNEXURE - I

Statement of articles of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O.

ARTICLE - I

That the said Md. Ahar Ali Sheikh while functioning as SPM, Fekamari S.O. during the period 05.05.94 to 20.03.99 retained cash Rs. 57,897.37 on 20.3.99 and failed to produce Rs. 44,891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only when called upon on 20.3.99. Thus Md. Ahar Ali Sheikh violated Rule 217 of P & T Manual Volume V, Rule 58 of FHB Volume-I and Rule 658 of Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules 1964.

ANNEXURE - II

Statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O.

ARTICLE - I

That the said Md. Ahar Ali Sheikh while functioning as SPM, Fekamari S.O. during the period from 5.5.94 to 20.3.99 has been retaining excess cash which was reported by the Postmaster, Dhubri H.O. in pursuance of the report of Postmaster, Dhubri H.O. the ASPOs, Goalpara Sub-Division visited his office on 20.3.99 and after days transaction on physical verification of cash and stamps found Rs.13,005.82 (Rupees thirteen thousand five and paise eighty two) only as detailed below :

| | |
|---------------|---------------|
| Cash | = Rs. 1386.00 |
| Stamps | = Rs. 7522.55 |
| Revenue | = Rs. 357.85 |
| S/ Stamps | = Rs. 945.00 |
| CRF | = Rs. 150.00 |
| B.Os balances | = Rs. 2644.42 |

Total Rupees = Rs.13005.82

But as per S.O. account dated 20.3.99 the closing balance of the office was Rs. 57,897.37. So the shortage of cash and stamps balance of Fekamari S.O. was found Rs. (57897.37 - 13005.82) = Rs. 44,891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only. An inventory of cash and stamps was accordingly prepared by Md. Ahar Ali Sheikh in presence of ASPOs, Goalpara and other with

Contd...2...

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sses on 20.3.99 and the shortage amount of Rs.44891.55 was charged as UCP on 20.3.99 in the daily account of Fekamari S.O. as Md. Ahar Ali Sheikh failed to make good the shortage on the same day. In his written statement dated 20.3.99 Md. Ahar Ali Sheikh admitted the shortage of cash and promised to make good the amount within 31.3.99 and accordingly he voluntarily credited Rs. 44891.55 as UCR vide Dhubri H.O. ACG-67 Receipt No. 42 dated 26.3.99 which was incorporated in the cash account of Dhubri H.O. on the same day.

By doing the above acts Md. Ahar Ali Sheikh has violated the provisions of Rule 217 of P & T Manual Volume V Rule 58 of FHB Vol-I and Rule 658 of P & T Manual Volume VI part III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of Govt. servant violating Rules 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964.

ANNEXURE - III

List of documents by which the articles of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. are proposed to be sustained.

1. Inventory of cash and stamps dated 20.3.99.
2. Written statement dated 20.3.99 of Md. Ahar Ali Sheikh, SPM, Fekamari.
3. Fekamari S.O. daily account dated 20.3.99.
4. Fekamari S.O. Account book from 1.1.98 to 20.3.99.
5. Stamp balance register of Fekamari S.O. from 16.12.98 to 20.3.99.
6. B.O. Summary of Fekamari S.O. from 10.6.98 to 20.3.99.

ANNEXURE - IV

List of witnesses by whom the articles of charges framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. are proposed to be sustained.

1. Sri R. Biswas, ASPOs, Goalpara.
2. Sri Rajab Ali Mondal, PA, Goalpara S.O. now offg. SPM, Fekamari S.O.

(2) In the said memorandum Md. Ahar Ali Sheikh was asked to submit his written statement of defence within 10 (ten) days of the receipt of the memorandum. The said Md. Ahar Ali Sheikh received the Memo on 12.6.99 and submitted his defence statement dated 21.6.99 which was received by this office on 22.6.99. The defence statement of Md. Ahar Ali Sheikh dated 21.6.99 is reproduced below :-

While acknowledging receipt of your memo No. F 6-4/98-99 dated 10.6.99 I Sri Ahar Ali SK, Ex-SPM, Fekamari now PA, Dhubri H.O. beg to lay before you the following few lines for favour of your kind Sympathetic consideration.

1. That Sir, I have admitted all the charges framed against me unconditionally and I have not desired to heard in person.

2. That Sir, the shortage of cash was occurred due to some unavavoidable circumstances and I assure you that in future I shall guard myself against such happenings.

Contd.....3.....

I therefore request you would kindly excuse me for the first time and take action as deem fit which may save my livelihood and for this I beg to pray mercy from your kindself and oblige thereBy

(3) In the aforesaid written statement though Md. Ahar Ali Sk admitted the charges it was decided to hold an oral enquiry and accordingly Sri T.K.Choudhury, ASPOs (HQ), Dhubri and Sri B.Sarmah, SDI(P), Dhubri were appointed as the Inquiry Authority and the Presenting Officer respectively vide this office memo of even no. dated 28.6.99 and directed to proceed the enquiry under the frame work of the CCS(CCA) Rules, 1965.

(4) Sri T.K.Choudhury, the Inquiry Authority conducted the oral enquiry holding hearing and extending full justice and opportunity to Md. Ahar Ali Sheikh. The Inquiry authority concluded the enquiry and submitted his finding in his report vide No. ASP/I.O/99 dated 23.8.99 in which he had brought out clear picture of the enquiry and held all the charges proved. The report of Inquiry officer referred to above is reproduced below :-

Enquiry report in the case against Md. Ahar Ali Sheikh, EX-SPM, Fekamari S.O. now PA, Dhubri H.O.

Under Sub-Rule (2) of the Rule-14 of CCS(CCA) Rules, 1965 the undersigned was appointed as the Inquiry Authority as per Memo No. F 6-4/98-99 dated 28.6.99 of the SPOs, Dhubri to enquire into the charges framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. vide the Supdt. of P.Os, Dhubri memo No. F 6-4/98-99.

2. Sri Badal Sarmah, SDI(P), Dhubri has been appointed as presenting officer in the case and he functioned as such.

3. The undersigned has completed the Inquiry and in exercise of powers conferred by Sub Rule (23) of Rule-14 of the CCS(CCA) Rules 1965 submitted the inquiry report as under.

4. The Disciplinary Authority framed the following charge sheet against Md. Ahar Ali Sheikh.

A N N E X U R E - I

Statement of article of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O.

A R T I C L E - I

That the said Md. Ahar Ali Sheikh while functioning as SPM, Fekamari S.O. during the period 05.05.94 to 20.3.99 retained cash Rs. 57,897.37 on 20.3.99 and failed to produce Rs.44,891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only when called upon on 20.3.99. Thus Md. Ahar Ali Sheikh violated Rule 217 of P&T Manual Volume V, Rule 58 of FHB Vol.I and Rule 658 of P&T Manual Volume VI part-III and thereby attracted the provision of Rule 3(1)(i) (ii) and (iii) of CCS (Conduct) Rules 1964.

A N N E X U R E - II

Statement of imputation of misconduct or misbehaviour in support of the article of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O.

Contd...4....

A R T I C L E - I

That the said Md. Ahar Ali Sheikh while functioning as SPM, Fekamari S.O. during the period from 5.5.94 to 20.3.99 has been retaining excess cash which was reported by the Postmaster, Dhubri H.O. In pursuance of the report of Postmaster, Dhubri H.O. the ASPOs, Goalpara Sub-Division visited his office on 20.3.99 and after days transactions on physical verification of cash and stamps found Rs. 13005.82 (Rupees thirteen thousand five and paise eighty two) only as detailed below.

| | |
|---------------------|-------------------|
| Cash | = Rs. 1386.00 |
| Stamps | = Rs. 7522.55 |
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| S/Stamps | = Rs. 945.00 |
| CRF | = Rs. 150.00 |
| B.Os balances | = Rs. 2644.42 |
| Total Rupees | = 13005.82 |

But as per S.O. account dated 20.3.99 the closing balance of the office was Rs. 57,897.37. So the shortage of cash and stamps balance of Fekamari S.O. was found Rs. (57897.37 - 13005.82) = Rs.44,891.55 (Rupees fortyfour thousand eighty hundred ninety one and paise fiftyfive) only. An inventory of cash and stamps was accordingly prepared by Md. Ahar Ali Shekh in presence of ASPOs, Goalpara and other witnesses on 20.3.99 and the shortage amount of Rs. 44891.55 was charged as UCP on 20.3.99 in the daily account of Fekamari S.O. as Md. Ahar Ali Sheikh failed to make good the shortage on the same day. In his written statement dated 20.3.99 Md. Ahar Ali Sheikh admitted the shortage of cash and promised to make good the amount within 31.3.99 and accordingly he voluntarily credited Rs. 44891.55 as UCR vide Dhubri H.O. ACG-67 Receipt No. 42 dated 26.3.99 which was incorporated in the cash account of Dhubri H.O. on the same day.

By doing the above acts Md. Ahar Ali Sheikh has violated the provisions of Rule of P & T Manual Volume V Rule 58 of FHB Vol. I and Rule 658 of P & T Manual Volume VI part III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of Govt. servant violating 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules 1964.

A N N E X U R E - III

List of documents by which the article of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. are proposed to be sustained.

1. Inventory of cash and stamps dated 20.3.99.
2. Written statement dated 20.3.99 of Md. Ahar Ali Sheikh, SPM, Fekamari.
3. Fekamari S.O. daily account dated 20.3.99
4. Fekamari S.O. Account book from 1.1.98 to 20.3.99.
5. Stamp balance register of Fekamari S.O. from 16.12.98 to 20.3.99.
6. B.O. Summary of Fekamari S.O. from 10.6.98 to 20.3.99.

Contd....5....

A N N E X U R E - I V

List of witnesses by whom the articles of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. are proposed to be sustained.

1. Sri R. Biswas, ASPOs, Goalpara.
2. Sri Rajob Ali Mondal, PA, Goalpara S.O. Now Offg.SPM, Fekamari S.O.

(5) A notice for preliminary hearing was served on 5.7.99 to the charged official and all other concerned fixing the date on 15.7.99 at 1100 hours at Dhubri H.O.(I.B), but due to medical leave of the charged official the hearing could not be held on the schedule date. A second notice of preliminary hearing was issued on 20.7.99 fixing date of hearing on 30.7.99 at 1100 hours and venue at O/O the SDI(P), Dhubri to all concerned but due to sudden illness of the presenting officer no hearing was held on 30.7.99. At the convenience of the charged official and the presenting officer another notice for preliminary hearing was issued on 3.8.99 fixing date on 4.8.99 at 1100 hours and venue at the O/O the SDI(P), Dhubri. Accordingly the charged official appeared before me on 4.8.99. He did not however inform the particulars of any official nominating to act his DA nor brought any one with him to act as DA, while appearing for preliminary hearing. The Disciplinary authority was represented by Sri B. Sarmah, SDI(P), Dhubri as presenting officer.

6. The charged official admitted the receipt of memo of charge sheet issued under SPOs, Dhubri Memo No. F 6-4/98-99 dated 10.6.99. On enquiry whether the contents and meaning of the charge sheet was understood or not. The charged official replied in affirmative.

7. The charged official was then asked to say whether he admits or denies the charges and to desire for detailed enquiry. In reply he stated that the charges framed are admitted by him totally and he does not desire for any further detailed enquiry in this regard. A written deposition admitting the charges by the charged official was obtained and ordered to be treated as silent documents of the preliminary enquiry.

8. In view of clear and categorical admittance of the charges by the charged official it was ordered not to proceed further enquiry and conclude the enquiry and submit my report as per provision of sub rule (9) and (10) or Rule-14 of CCS(CCA) Rules 1965.

F I N D I N G S

The charged official was given reasonable opportunity to defend against him. He had admitted the charges unequivocally and did not desire to have any further detailed enquiry. This establishes the fact that the charges are true and sustainable and the charged official has nothing to defend or refute the charges.

The case is, therefore, returned to the disciplinary authority with findings that the charges framed against Md. Ahar Ali Sheikh stand proved without shadow of any doubt.

(5) A copy of Inquiry report submitted by the I.A. has not been furnished to the charged official for submission of his defence statement in view of his clear admission of all charges brought against him in his written statement of defence dated 21.6.99 received on 22.6.99 received on and also the and also his admission of all charge levelled against him before Inquiry authority who held preliminary Inquiry on 4.8.99.

Contd.... 6...

I have gone through the inquiry report submitted by the Inquiry Authority on 23.8.99 and convinced that Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. and the charged official in the case was extended full justice and opportunities to refute and defend the charges levelled against him. I have no shadow of doubt that the charged official has fully realised the offence he had committed and as such he was no longer ~~hexxxxxxxxxxx~~ willing to defend the charge unnecessarily and did not therefore desire to have further detailed Inquiry. The offence committed by said Sri Ahar Ali Sheikh was of gravisous nature reflecting clearly his doubtful integrity and moral guilty. He is therefore deserved severe punishment. However, considering his clear confession of guilt committed by him and the length of service rendered by the official in the department and also with a view to giving him last opportunity for rectification, I am inclined to take a lenient view of his case and award the following punishment to meet the end of justice.

O R D E R

I Sri B.K.Marak, Supdt. of Post offices, Goalpara Division, Dhubri is therefore ordered that the pay of Sri Ahar Ali Sheikh be reduced by (2) two stages from Rs. 5125/- to Rs. 4875/- in the time - Scale of pay of Rs. 4500-125-7000 for a period of (2) two years with effect from 01.09.1999. It is further directed that Sri Ahar Ali Sheikh will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay.

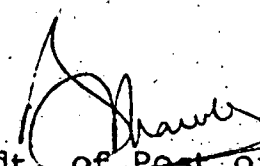
pay Reduced by two stages

Sd/-

(B. K. MARAK)
S U P E R I N T E N D E N T

Copy to :-

1. ✓ Md. Ahar Ali Sheikh, PA, Dhubri H.O.
2. The Postmaster, Dhubri H.O. for information and taking necessary action.
- 3-4. Punishment register.
5. CR file of the official.
6. Personal file of the official.
- 7-8. Office and spare.


Supdt. of Post Offices
Goalpara Division
Dhubri - 783301

-2/-

Annexure - 3

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To,

Hon'ble Shri A.N.D. Kachari
Director of Postal services
O/o the Chief P.M.G. Assam circle, Guwahati - 781001

Dated at Dhubri the 11th October, 1999.
Through Proper Channel.

Sub:- Appeal against Punishment " Reduction to lower stages with cumulative effect" vide SPD'S. Dhubri Memo No.F6-4/98-99 dated 06-09-99 against Md. ahar Ali Sheikh, PA, Dhubri H.O.

Respected Sir,

I beg most respect fully to prefer my appeal against SP/Dhubri order No. Cited on the above Subject and would like to state before your good self the following few lines for favour of your kind consideration and sympathetic action:-

That sir, I had been working as SPM, Fekamari SO. from 5-05-94 to 20-03-99 and during the afore said period discharged my duties with Ut most care, attention and most sincerely, on completion of my tenure I was transferred as SPM, Sukchar vide SPD's, Dhubri Memo No.B/A-20/Pt-V dated 16-12-98 and 8-02-99 (photo copy enclosed). On receipt the said order I submitted one application dated 12-01-99 (copy enclosed) to SPD's Dhubri for allowing me to work as SPM, Fekamari SO. till completion of H.S.L.C. Exam/99 which commenced from March/99 as my only daughter appeared at H.S.L.C. Exam/99 from Janata Higher secondary, school, Kharuabanda, P.O. Fekamari so that she can be completed her final examination without any interruption. (photo copy of Admit card of my daughter is enclosed). However I have not received any response from the authority regarding acceptance or rejection of my above stated prayer and I presumed that my Prayer was accepted.

But sir, the ASPD's Goalpara accompanied with Rajab Ali Mondal, PA, Goalpara suddenly visited my office on 20-03-99 and at the last hours the ASPD's Goalpara asked me to hand over the charges. I apprised him that my daughter's H.S.L.C. Exam/99 started from 19-03-99 and since I applied for allowing me to work till completion of her final Exam/99 I may be allowed to work as SPM, Fekamari till completion of her Exam. But ASPD's Goalpara paid no attention to my request and he forcefully relieved me from the charges at 17.00 hours on 20-03-99 and I compelled to make over the charges to Md. Rajab Ali Mondal in his presence.

That sir, the ASPD's Goalpara did not give ^{me} any chance to leave Office for any moment on 20-03-99 for which I could not produce the entire cash balance on 20-03-99. However I recouped the alleged shortage of cash on 26-03-99.

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That sir, Perhaps on receipt of a report from ASPO's, Goalpara regarding the alleged shortage of cash the supdt. of PD'S, Dhubri initiated disciplinary action against me under Rule-14 of CCS (CCA) Rules, 1965 vide his Memo No.F4-6/98-99 dated 10-06-99 (copy enclosed) and levelled charges for violation of Rules 217 of P&T Manual Vol-V, Rule 58 of FHB Vol -I, and Rule 3 (I) (i) (ii) (iii) of CCS,(conduct) Rules, 1964.

But sir, All the charges leveled against me with as motive only to punish me though offence committed by me was not so serious. Secondly the case has no merit for imposing major penalties as I have not committed any fraud and the department has sustained no loss in the instant case. The charge of misappropriation levelled against me is found not justified as the authority concerned failed to repost the case to Police for prosecuting me in the court of law which is obligatory one in case of misappropriation of public fund exceeding loss of Rs. 2000/- (As per instruction 1 & 2 of GII below Rule 14 of CCS (CCA) Rules, 1965).

That sir, on receipt of the said Memo^{of} charge sheet I thought not to challenge the case and I admitted ^{the} charges vide my defence statement dated 21-06-99 (Copy enclosed) and prayed for exoneration to save my livelihood. In the said defence statement I categorically denied to be heard in person and exercised my option to decide the case of his own accord of the disciplinary authority.

But sir, the SPO's Dhubri paid no weightage to my representation and appointed I.O & P.O vide his Memo No. F6-4/98-99 dated 28-06-99 (Copy enclosed) for holding oral enquiry which is in contravention of Sub-Rule 5(a) of Rule -14 of CCS (CCA) Rules, 1975. According I.A. Concerned conducted oral enquiry and I am compelled to attend the hearing.

That sir, the I.A. Concerned concluded the hearing and submitted his enquiry report with what findings remained dark to me as the disciplinary authority failed to furnish a copy of I.A.S. repost to me for making my representation as per instruction 7 of Govt. of India below Rule -15 of CCS (CCA) Rules, 1965 and passed final order with punishment, "Reduction to 2(two) stages for two years adversely affecting on pension" which is too much severe and impossible for me to bear the loss (Copy enclosed)

That sir, I admitted the faults on my part from beginning of the case with a view to get justice from my authority but sir, the authority concerned denied ~~denied~~ justice to me by awarding severe punishment for minor lapse on my part without following the proper procedures as laid down in Rules and without keeping in view the requirement of article 312 of the constitution.

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I, there fore, request your honour would be kind enough to consider my case sympathetically and set aside the severe Punishment imposed on me for minor lapses without observing proper procedure by the disciplinary authority and thus oblige.

Md. Ahar Ali SK.
yours obediently

Encl:-

- (1) Transfer Memo dated 16-12-98.
- (2) Transfer Memo dated 8-02-99.
- (3) My application dated 12-01-99.
- (4) Admit card of my daughter.
- (5) Charge sheet dated 10-06-99.
- (6) Defence statement dated 21-06-99.
- (7) Appoint^{ment} of IA/PO dated 28-06-99.
- (8) Final order dated 6-09-99.

Memo no.Staff/9-52/99

Dated 15/2/2000

This is an appeal submitted by Md Ahar Ali Sheikh PA Dhubri HO dated 13/10/99 against the punishment order issued by Suptd of POs vide his memo F6-4/98-99 dated 6/9/99. I, the undersigned and the appellate authority, have gone through the appeal and the related papers very carefully and my findings are given below.

The appellant was proceeded against under Rule-14 of CCS(CCA) Rules 1965. After conducting the proceedings the disciplinary authority awarded the punishment of reduction of pay by two stages from Rs 5125 to Rs 4875 for a period of two years with the further instruction that the appellant will not earn increment of pay during the period of reduction and that on expiry of these period the reduction will have the effect of postponing his future increments of pay.

Only one Article of Charge was framed against the appellant and this was as follows.

That the said Md Ahar Ali Sheikh while functioning as SPM Fekamari SO during the period 05.05.94 to 20.03.99 retained cash Rs 57897.37 on 20.3.99 and failed produce Rs 44891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only when called upon on 20.3.99. Thus Md Ahar Ali Sheikh violated Rule 217 of P & T Manual Volume V, Rule 58 of FHB Vol-I and Rule 658 of P&T Manual Vol-VI Part III and thereby attracted the provisions of Rule 3(1) (i)(ii)(iii) of CCS(Conduct) Rules 1964.

In the paras 2 and 3 of his appeal the appellant makes mention of his request for his retention at Fekamari SO and the circumstances under which he was relieved from the post. I find no relevance of these facts to the case in hand. From what has been stated in para 4 it can be concluded that there was actually shortage of cash in the SO on 20/3/99. Para 5 does not require any comment.

In para 7 he admits that he had committed an offence. But he feels that it was not a serious offence and that he committed no fraud as there was no loss to the Department. Moreover he mentions that as the case was not reported to the police the charge of misappropriation is not justified. I have carefully considered the view of the appellant. The fact remains that on 20/3/99 the closing balance of Fekamari SO was Rs 57897.37p. As SPM it was the responsibility of the appellant to ensure that this amount was available in the office on 20/3/99. But it was not found so and only an amount of Rs 13005.82p was available on that day. The fact that he made good the shortage subsequently is a different matter. This does not make his offence of keeping less cash in the office any lighter. Further whether the case was reported to the police or not is not relevant. Disciplinary proceedings have been drawn up for violation of Departmental Rules and procedures.

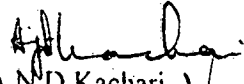
In para 8 he accepts that he had admitted the charge framed against by the disciplinary authority.

In para 9 he appeals that Inquiry Authority's report was not furnished to him and that the Disciplinary authority passed the punishment order without giving him any opportunity to submit representation against the finding of the Inquiry Authority.

It is seen that the disciplinary authority did not give the IA's report to the appellant because he had admitted all the charges in the preliminary hearing during the inquiry. This is irregular and violation of natural justice. When it was decided to constitute an inquiry under the provision of Rule 14 of CCS(CCA) Rules 1965 and the Inquiry Authority had duly submitted his inquiry report it was binding on the disciplinary authority to supply the Inquiry Report to the appellant as his decision was based on that.

Thus without considering the other paras of the appeal I conclude that principle of natural justice has been violated in this case.

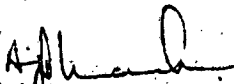
Therefore I, the undersigned and the appellate authority, uphold a part of the appeal and order that the punishment awarded to Md. Ahar Ali Sheikh by Suptd. of POs Goalpara Division, Dhubri vide his memo no. F6-4/98-99 dated 06.09.99 be set aside. However this will not bar the disciplinary authority in initiating de-novo proceeding on the same charges.


(A.N.D. Kachari)
DPS Guwahati

legd

Copies to

1. Md Ahar Ali Sheikh PA Dhubri HO with respect to his appeal dated 13/10/99.
2. Suptd of POs Dhubri w.r.t his letter no. F6-4/98-99 dated 29.11.99
3. Do
4. Postmaster Dhubri HO Dhubri for necessary action.
5. O/C
6. Spare


(A.N.D. Kachari)
DPS Guwahati

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Annexure - 5

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DEPARTMENT OF POSTS
OFFICE OF THE SUPDT. OF POST OFFICES: GOALPARA DIVN. DHUBRI.

Memo No. F6-4/98-99

Dated at Dhubri the 23.02.2001

In this office Memo of even No. dated 25.02.2000 it was proposed to hold de-novo Inquiry under Rule-14 of CCS(CCA) Rules, 1965 against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now SPM, Salmara South S.O. The article of charge and the statement of imputation of misconduct or misbehaviour on the basis of which the charges were framed against Md. Ahar Ali Sheikh was as follows:-

A ANNEXURE - I

Statement of articles of charges framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O.

ARTICLE - I.

That the said Md. Ahar Ali Sheikh while functioning as SPM, Fekamari S.O. during the period of 5.5.94 to 20.3.99 retained cash Rs. 57,897.37 on 20.3.99 and failed to produce Rs. 44,891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only when called upon on 20.3.99. Thus Md. Ahar Ali Sheikh violated Rule 217 of P & T Manual Volume- V Rule 58 of FHB Vol. I and Rule 658 of P & T Manual Vol- VI part - III and thereby attracted the provisions of Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964.

ANNEXURE- II

Statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now P.A, Dhubri H.O.

ARTICLE - I

That the said Md. Ahar Ali Sheikh while functioning as SPM, Fekamari S.O. during the period from 5.5.94 to 20.3.99 has been retaining excess cash which was reported by the Post Master, Dhubri H.O. In pursuance of the report of Post Master, Dhubri H.O. the ASPOs, Goalpara Sub-Division visited his office on 20.3.99 and after days

transactions of physical verification of cash and stamps found Rs.13,005.82(Rupees thirteen thousand five and paise eighty two) only as detailed below:-

| | |
|----------------|----------------------|
| Cash | - Rs. 1386.00 |
| Stamps | -Rs. 7522.55 |
| Revenue | - Rs. 357.85 |
| S/Stamps | - Rs. 945.00 |
| CRF | - Rs. 150.00 |
| B.Os- | |
| <u>balance</u> | <u>- Rs. 2644.42</u> |
| Total Rupees- | 13005.82 |

But as per S.O.account dated 20.3.99 the closing balance of the office was Rs.57,897.37. So the shortage of cash and stamps balance of Fekamari S.O. was found(Rs.57897.37 -13005.82) = Rs.44891.55(Rupees fourty four thousand eight hundred ninety one and paise fifty five) only. An inventory of cash and stamp was accordingly prepared by Md.Ahar Ali Sheikh in presence of ASPOs, Goalpara and other witnesses on 20.3.99 and the shortage amount of Rs.44891.55 was charged as UCP on 20.3.99 in the daily account of Fekamari S.O. as Md. Ahar Ali Sheikh failed to make good the shortage on the same day. In his written statement dtd.20.3.99 Md.Ahar Ali Sheikh admitted the shortage of cash and promised to make good the amount within 31.3.99 and accordingly he voluntarilly credited Rs.44891.55 as UCR vide Dhubri H.O.ACG-67 Receipt No.42 dated 26.3.99 which was incorporated in the cash account of Dhubri H.O. on the same day.

By doing the above acts Md.Ahar Ali Sheikh has violated the provisions of Rule 217 of P & T Manual Volume V Rule 58 of FHB Vol-I and Rule 658 of P & T Manual Volume VI Part-III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of Govt.servant violating Rules 3(1)(i)(ii) and(iii) of CCS (conduct) Rules, 1964.

ANNEXURE - III.

List of documents by which the articles of charge framed against Md.Ahar Ali Sheikh, Ex.SPM, Fekamari S.O. now P.A Dhubri H.O. are proposed to be sustained.

1. Inventory of cash and stamps dated 20.3.99
2. Written statement dated 20.3.99 of Md.Ahar Ali Sheikh, SPM, Fekamari, S.O.
3. Fekamari S.O. daily account dated 20.3.99
4. Fekamari S.O. Account book from 1.1.98 to 20.3.99
5. Stamp balance register of Fekamari S.O. from 16.12.98 to 20.3.99.
6. B.O. Summary of Fekamari S.O. from 10.6.98 to 20.3.99.

ANNEXURE - IV

List of witnesses by whom the articles of charge framed against Md.Ahar Ali Sheikh, Ex-SPM, Fekamari S.O now PA, Dhubri HoQ are proposed to be sustained.

1. Sri R. Biswas, ASPOs, Goalpara,
2. Sri Rajab Ali Mondal, PA, Goalpara S.O.
now offg. SDI(P), Kokrajhar.

(2) In the sa-id Memorandum Md.Ahar Ali Sheikh was asked to submit his written statement of defence within 10(ten) days from the date of receipt of the Memorandum. The said Md.Ahar Ali Sheikh acknowledged receipt of the memo on 3.3.2000 and prayed for extension of 15 days more to submit his defence statement. Accordingly the extension of time to submit his defence as prayed by Md.Ahar Ali Sheikh was granted. The said Md.Ahar Ali Sheikh submitted his defence statement dated 28.3.2000 in Assameese which was received by this office on 31.3.2000. The defence statement dtd.28.3.2000 of Sri Ali written in Assameese is translated in English which is as under:-

" With due respect and humble submission, I beg to state that I made an appeal to the Hon'ble DPS, Guwahati to reconsider the major punishment with heavy financial loss imposed upon me vide your Memo No. F6-4/98-99

dtd.6.9.99. Accordingly on the basis of my prayer the Hon'ble DPS, Guwahati has sent a memo under No.Staff/99-52/9952 dated 15.2.2000 to you for reconsideration. Under the above circumstances I am neither admitting nor denying the charges levelled against me.

So I pray to your honour to be kind enough not to initiate the de-novo enquiry against me and excuse me for this time. This is my humble appeal to you."

(3) On due consideration of the above defence statement of Md.Ahar Ali Sheikh it was decided to hold an oral Inquiry and accordingly Sri R.C.Rabha, ASPOs, Goalpara and Sri A.J.Sarkar, SDI(P), Dhubri were appointed as the Inquiry Authority and the Presenting Officer vide this office Memo of even no.dtd.2.6.2000 and 1.6.2000 respectively and directed to proceed the Inquiry under the frame work of the CCS(CCA) Rules, 1965.

(4) Sri R.C. Rabha, the Inquiry Authority conduct the oral enquiry holding hearing and extending full justice opportunity to Md.Ahar Ali Sheikh. The Inquiry Authority conducted the Inquiry and submitted his finding in his report vide No.ASP/Rule-14/2/2000 dated 12.9.2000 in which he brought out clear picture of the inquiry and held all the charges proved. The report of the I.A. referred to above is reproduced below:-

INQUIRY REPORT.

In the case against Md.Ahar Ali Sheikh, PA, Dhubri H.O.now on deputation at Salmara South S.O.

1.1 Under Sub-Rule(2) of rule-14 of CCS(CCA) rules 1965 I was appointed by the Supdt. of post offices, Goalpara Division, Dhubri, as the Inquiry Authority to Inquire the De-novo inquiry into the charge framed against Md.Ahar Ali Sheikh, PA, Dhubri H.O. now on deputation at Salmara South S.O. vide his no. F6-4/98-99 dtd.2.6.2000.

I have since completed the inquiry and on the basis of documentary and oral evidences adduced before me, prepared by inquiry report as follows.

2.0. Participation by the charged officer in the inquiry and the defence assistant available to him.

2.1. The charged officer participated in the inquiry from beginning to the end. The charged officer did not prefer any defence assistant as such no defence assistant was available to him during the inquiries.

3.0. Articles of charges and substances of imputation of misconduct or misbehaviour.

3.1. The following article of charges had been, framed against Md.Ahar Ali Sheikh, PA, Dhubri H.O. now on deputation at Salmara South S.O.

ARTICLE - I

Md.Ahar Ali Sheikh while functioning as SPM, Fekamari S.O.during the period from 5.5.94 to 20.3.99 retained excess cash which was reported by the Postmaster, Dhubri H.O. In pursuance of the report of Postmaster Dhubri H.O. the ASPOs, Goalpara visited Fekamari S.O. on 20.3.99. On physical verification cash and stamps balances Rs.44891.55(Rupees forty four thousand eight hundred ninety one and paise fifty five) only was found short and charged as UCP on 20.3.99 as Md.Ahar Ali Sheikh failed to make good the shortage on the same day. In his written statement dated 20.3.99 Md.Ahar Ali Sheikh admitted the shortage of cash and promised to make good the amount within 31.3.99. Accordingly he voluntarilly credited Rs.44891.55 as UCR vide Dhubri H.O. ACG-67 receipt No,42 dtd.26.3.99 which was incorporated in the cash account of Dhubri H.O. on the same day.

By doing the above acts Md.Ahar Ali Sheikh had violated the provision of Rule 217 of P & T Manual Volume V rule 58 of FHB Vol-I and rule 658 of P & T Mannual Volume VI part-III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of

Govt.servant violating rules 3(I)(i)(ii) and (iii) of CCS (conduct) Rules, 1964.

3.2. Substances of imputation of misconduct or misbehaviour.

In pursuance of the report of the Postmaster, Dhubri H.O. Regarding retention of excess cash by Md.Ahar Ali Sheikh SPM, Fekamari S.O. the ASPOs, Goalpara visited Fekamari S.O. on 20.3.99 on physical verification of cash and stamps balances a sum of Rs.44891.55(Rupees forty four thousand eight hundred ninety one and paise fifty five)only was found short and charged as UC Pon 20.3.99 as Md.Ahar Ali Sheikh failed to make good the shortage on the same day. In his written statement dated 20.3.99 Md.Ahar Ali Sheikh admitted the shortage of cash and promised to make good the amount within 31.3.99. Accordingly he voluntarily credited Rs.44891.55 as UCR vide Dhubri H.O. ACG-67 Receipt No.42 dated 26.3.99 which was incorporated in the cash account of Dhubri H.O. on the same day.

By doing the above acts Md.Ahar Ali Sheikh had violated the provisions of rule 217 of P. & T Manual volume V Rule 58 of FHB Vol-I and Rule 658 of P & T Manual Volume VI part III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of Govt.servant violating Rules 3(I)(i)(ii) and (iii) of CCS (Conduct) Rules 1964.

4.0. Case of the disciplinary authority -

Md. Ahar Ali Sheikh while functioning as SPM, Fekamari S.O. during the period from 5.5.94 to 20.3.99 retained excess cash which was reported by the Postmaster Dhubri H.O. In pursuance of the report of Postmaster, Dhubri H.O. the ASPOs, Goalpara visited Fekamari S.O. on 20.3.99. On physical verification of cash and stamps balances Rs.44891.55 (Rupees fortyfour thousand eight hundred ninety one and paise fifty five)only was short and the shortage was charged

as UCP on 20.3.99 as Md.Ahar Ali Sheikh failed to make good the said shortage amount on the same day. In his written statement dated 20.3.99 Md.Ahar Ali Sheikh admitted the shortage of cash and promised to make good the amount within 31.3.99. Accordingly he voluntarily credited Rs.44891.55 as UCR vide Dhubri H.O. ACC-67 receipt No. 42 dated 26.3.99 which was incorporated in the cash account of Dhubri H.O. on the same day.

By doing the above acts Md.Ahar Ali Sheikh had violated the provisions of rule 217 of P & T Manual volume V rule 58 of FHB Vol-I and rule 658 of P & T Manual volume VI part III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of Govt.servant violating rules 3(I)(i) (ii) and (iii) of CCS(Conduct) rules, 1964.

5.0. Case of the defendant.

The charged officer Md.Ahar Ali Sheikh pleaded guilty the charge levelled against him in the hearing of dtd.29.8.2000. He had given writing also wherein he admitted the charge.

6. Analysis and assessment of evidence.

The preliminary hearing was fixed on 4.7.2000. The charged officer attended the hearing along on the day. He neither admitted nor denied the charge on 4.7.2000 rather prayed for time till next hearing. Then next hearing was fixed on 2.8.2000. But due to sudden path Bandh hearing could not be held on 2.8.2000. Then next hearing was fixed on 29.8.2000. All attended the hearing when questioned the charged officer Md.Ahar Ali Sheikh admitted to have received the charge sheet and had understood the charge against him fully. And the charged officer Md.Ahar Ali Sheikh pleaded guilty for the charge levelled against him. He had given writing also where in he admitted the charge.

7.0. Findings.

On the basis of documentary and oral evidence adduced in the case before me and in view of the reasons

given above. I hold that charge against Md. Ahar Ali Sheikh PA, Dhubri H.O. now on deputation at Salmara South S.O. stands proved.

5. A copy of Inquiry Report submitted by the I.A. has been sent to Md. Ahar Ali Sheikh on 18.9.2000 for making representation if any, within 15(fifteen) days. The said Md. Ahar Ali Sheikh received the copy of IA's report on 22.9.2000 and submitted his representation dated 6.10.2000.. In his representation Md. Ahar Ali Stand as below:-

I have honour to inform you that the shortage of cash for a spelt of time was a fact and I am compelled to commit the same due to some unavoidable circumstances beyond my controll. However I made good the shortage within a week. The offence committed by me has been admitted before the I.A. and I do not like to represent any more in this regard.

I, therefore requested you would kindly excuse me for the first time I give assurance to you that I will never commit such type of mistake rest of my service life in future and thus oblige.

6. I have gone through the case and the report of the I.A. very carefully and found that Md. Ahar Ali Sheikh had unequivocally admitted the charges levelled against him. I also fully agreed with the finding of the Inquiry Authority. In his representation dtd. 6.10.2000 the said Md. Ahar Ali Sheikh admitted that he had committed the offence beyond his controll and made good the shortage within short spell of time. He also prayed for excuse for this time giving assurance not to commit such type of offence in future. But the nature of offence committed by Md. Ahar Ali is serious in nature and not excusable and pardonable. So he deserves punishment for his offence. However considering the length of

service rendered by the official in the department and in the light of his solemn assurance that he would not repeat such mistake in future. I am inclined to take a lenient view of his case and passed the following orders to meet the end of justice.

O R D E R

I Sri. B.K. Marak, Supdt. of post offices, Goalpara division, Dhubri therefore ordered that the pay of Sri. Ahar Ali Sheikh be reduced by one stage from Rs. 5375/- to Rs. 5250/- in the time scale of pay of Rs. 4500-125-7000 for a period of ~~2~~ 2 (two) years with effect from 1.3.2001. It is further directed that Shri. Ahar Ali Sheikh will earn increment of pay during the period of reduction and that on the expiry of this period, the reduction will not have effect of postponing his future increment of any.

Sd/-

(B. K. MARAK)

SUPERINTENDENT

Copy to:-

1. The Postmaster, Dhubri H.O. for information and taking necessary action.
2. Md. Ahar Ali Sheikh, SPM, Salmara South S.O.
3. CR Files.
- 4.-5 Punishment Registers
- 6-7. Office and Spare copy.

Sd/-

Supdt. of post offices
Goalpara Division,
Dhubri-783 301.

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DEPARTMENT OF POST: INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL: ASSAM CIRCLE
GUWAHATI - 781001

Annexure - 6

Memo No. Vig/6/4/95

Dated at Guwahati, the 20-3-2001

WHEREAS Shri (Md) Ahar Ali Sheikh, SPM, Salmara South, Goalpara Division was awarded with Punishment of reduction of pay by one stage from 5375/- to 5250/- in the scale of Rs. 4500-125-7000 for by the SPOs, Dhubri... (Disc. Authority) under memo No. F6-4/98-99 dated..23-2-2001.

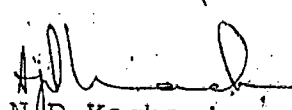
AND WHEREAS the undersigned in terms of Rule-29 of CCS(CCA) Rules, 1965/in terms of Rule-16 of EDA Conduct and Service Rules, 1964 proposes to revise and enhance the punishment of reduction of pay by one stage from Rs. 5375 to 5250 in the scale of Rs. 4500-125-7000 for Removal from service (revised punishment) under Rule-16/Rule-14 of CCS(CCA) Rules, 1965/under Rule-8 of EDA Conduct and Service Rules, 1964.

NOW THEREFORE, Shri (Md) Ahar Ali Sheikh (designation) SPM (office) Salmara South is hereby given an opportunity of making representation on the penalty proposed above. Any representation which he/she may wish to make against the penalty proposed will be considered by the undersigned. Such representation, if any, should be made in writing and submitted so as to reach the undersigned not later than 15 (fifteen) days from the date of receipt of this memorandum by Shri Ahar Ali Sheikh

The circumstances leading to the above proposal is given in enclosed Annexure-A to enable Shri Ahar Ali Sheikh (charged official) for submission of his/her defence for consideration.

The receipt of this memo should be acknowledged by Shri Ahar Ali Sheikh (charged official) by next available post.

Encl :- Annexure-A.


A.N.D. Kachari
Designation of Reviewing Authority. &
Director of Postal Services(HQ),
Assam Circle, Guwahati-781001

Regd/AD To
Shri/Smt. Ahar Ali Sheikh,
SPM, Salmara South,
Dist-Dhubri(Assam)

Copy to :-

1. The SPOs, Dhubri. (concerned Divl. Head).
..... Dn.
2. APMG (Staff) Appeal Section, C.O., Guwahati.
3. Spare.

R 29
Self -
Reviewing Authority.
Director of Postal Services(HQ)
Assam Circle, Guwahati-781001.

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A

ANNEXURE-A

Shri(Md)Ahar Ali Sheikh, SubPostmaster, Salmara South SO was awarded punishment of reduction of pay by 1(one) stage from Rs.5375/- to 5250/- in the scale of Rs.4500-125-7000 for 2(two) years without cumulative effect vide Supdt.of P.Os Dhubri Memo No.F6-4/98-99 dtd.23-2-2001 passed on finalisation of disciplinary proceeding under Rule-14 of CCS(CCA) Rules, 1965 on the basis of the charges framed against him as follows:-

Statement of article of charge

That the said Md.Ahar Ali Sheikh while functioning as SPM, Fekamari S.O. during the period 5-5-94 to 20-3-99 retained cash Rs.57,897.37 on 20-3-99 and failed to produce Rs.44,891.55 only when called upon on 20-3-99. Thus Md.Ahar Ali Sheikh violated Rule-217 of P&T Manual Vol-V, Rule 58 of FHB.Vol.I and Rule 658 of P&T.Man.Vol.VI part-III and thereby infringed the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS(Conduct) Rules, 1964.

Imputation of Misconduct or misbehaviour in support of the charge

That the said Md.Ahar Ali Sheikh while functioning as SPM, Fekamari SO during the period from 5-3-94 to 20-3-99 has been retaining excess cash which was reported by the Postmaster Dhubri HO. In pursuance of the report of the Postmaster, the ASPOs, Goalpara Sub-Division visited his office on 20-3-99 and after days transaction on physical verification of cash and stamps found Rs.13,005.82 as detailed below:-

| | |
|-------------|----------------|
| Cash | = Rs.1386.00 |
| Stamps | = Rs.7522.55 |
| Revenue | = Rs.357.85 |
| S/Stamps | = Rs.945.00 |
| CRF | = Rs.150.00 |
| B.O.balance | = Rs.2644.42 |
| Total | = Rs.13,005.82 |

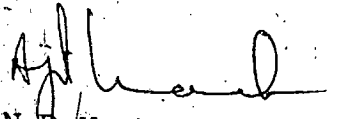
But as per S.O. Account dtd.20-3-99 the closing balance of the office was Rs.57,897.37. So the shortage of cash and stamps balance of Fekamari SO was found Rs.57,897.37-13,005.82)=Rs.44,891.55. An Inventory of cash and stamps was accordingly prepared by Md.Ahar Ali Sheikh in presence of ASPOs, Goalpara and other witnesses on 20-3-99 and the shortage amount of Rs.44,891.55 was charged as UCP on 20-3-99 in the daily account of Fekamari SO as Md.Ahar Ali Sheikh failed to make good the shortage on the same day. In his written statement dtd.20-3-99 Md.Ahar Ali Sheikh admitted the shortage of cash and promised to make good the amount within 31-3-99 and accordingly he voluntarilly credited Rs.44,891.55 as UCR vide Dhubri HO. ACG-67 receipt No.42 dtd.26-3-99 which was incorporated in the cash account of Dhubri HO on the same day. By doing the above acts Md.Ahar Ali Sheikh has violated the provision of Rule 217 of P&T.Man.Vol.V, Rule 58 of FHB Vol.I and Rule 658 of P&T Man.Vol.VI Part-III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of Govt.Servant violating Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS(Conduct) Rules, 1964.

In exercise of the power conferred upon by Rule 29 of CCS(CCA) Rules, 1965, the case was reviewed. It is seen that the official misappropriated Govt.money amounting more than Rupees forty thousand. It was very serious offence. The official displayed gross misconduct in betrayal of the trust bestowed on him as incharge of the office.

(Contd..P-2)

3. I therefore find that the punishment of reduction of pay by one stage for 2 years without cumulative effect awarded to the official by the SPOs, Dhubri is not commensurate with the gravity of the offence and misconduct displayed by him.

4. It is therefore proposed to enhance the punishment of reduction of pay described above to that of removal from service.


(A.N.D. Kachari)
Director of Postal Services (HQ)
Assam Circle, Guwahati-781001.

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Annexure - 7st

DEPARTMENT OF POSTS:INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL
ASSAM CIRCLE:GUWAHATI-781001

Memo No.Vig/6/4/95(Part)

Dated at Guwahati, the 3rd October,2001.

Sri (Md) Ahar Ali Sheikh, SPM, Salmara South was awarded punishment of reduction of pay by 1 (one) stage from 5375/- to 5250/- in the scale of pay Rs.4500-125-7000 for 2(two) years without cumulative effect vide Supdt of Post Offices, Dhubri Memo No.F6-4/98-99 dated 23.2.2001 on finalisation of disciplinary proceedings (de-novo) under Rule-14 of CCS (CCA) Rules, 1965 based on the charges framed against him as follows.

Article of Charges

" That the said Md. Ahar Ali Sheikh while functioning as SPM, Fekamari during the period from 5.5.94 to 20.3.99 retained cash of Rs.57,897.37 on 20.3.99 and failed to produce Rs.44,891.55 only when called upon on 20.3.99. Thus Md. Ahar Ali Sheikh violated Rule 217 of P&T Manual Vol.V, Rule 58 of FHB Vol.I and Rule 658 of P&T Manual Vol.VI, Part-III and thereby infringed the provision of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964".

Imputation of misconduct or misbehaviour in support of the charge.

" That the said Md Ahar Ali Sheikh while functioning as SPM, Fekamari SO during the period from 5.5.94 to 20.3.99 had been retaining excess cash which was reported by the Postmaster, Dhubri HO. In pursuance of the report of Postmaster, Dhubri, the ASPOs, Goalpara visited his office on 20.3.99 and after day's transactions on physical verification of cash and stamps was found Rs.13,005.82 as detailed below.

| | | |
|-------------|---|--------------|
| Cash | - | Rs.1386.00 |
| Stamps | - | Rs.7522.55 |
| Revenue | - | Rs. 357.85 |
| S/stamps | - | Rs. 945.00 |
| CRF | - | Rs. 150.00 |
| B.O.balance | - | Rs.2644.42 |
| Total | - | Rs.13,005.82 |

But as per SO account dated 20.3.99 the closing balance of the office was Rs.57,897.37. So the shortage of cash and stamps balance of Fekamari SO was found as Rs.57,897.37 - Rs.13,005.82 = Rs.44,891.55. An inventory of cash and stamps was accordingly prepared by Md. Ahar Ali Sheikh in presence of ASPOs Goalpara and other witnesses on 20.3.99 and the shortage amount of Rs.44,891.55 was charged as UCP on 20.3.99 in the daily account of Fekamari SO as Md. Ahar Ali Sheikh failed to make good the shortage on the same day. In his written statement dated 20.3.99, Md. Ahar Ali Sheikh admitted the shortage of cash and promised to make good the amount within 31.3.99 and accordingly he voluntarily credited Rs.44,891.55 as UCR vide Dhubri HO ACG-67 Receipt No.42 dated 26.3.99 which was incorporated in the cash account of the HO on the same day. By doing the above acts, Md Ahar Ali Sheikh has violated the provision of Rule 217 of P&T Manual Vol.V, Rule 58 of FHB Vol.I and Rule 658 of P&T Manual Vol.VI Part-III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of a govt. servant violating Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (CCA) Rules. 1964. In the departmental inquiry Md. Ahar Ali Sheikh admitted the charges and the Inquiry Authority reported the charges proved."

In exercise of the power conferred upon by Rule 29 of CCS (CCA) Rules, 1965, the order of punishment issued by the SPOs, Dhubri was reviewed and considered the punishment of reduction of pay by one stage from 5375/- to 5250/- in the pay scale of Rs.4500-125-7000 for two years without cumulative effect, to be not commensurate with the gravity of offence committed by the official. It was therefore proposed to enhance the said punishment to that of removal from service. A show cause notice was accordingly issued to the official vide this office memo of even number dated 20.3.2001 along with the proposal for enhancement of punishment as stated above. The official was directed to make representation if any against the proposal within 15 days from the date of receipt of the memorandum.

The official received the memorandum of proposal on 28.3.2001. Md. Ahar Ali Sheikh submitted his representation on 11.4.2001 which was received by this office on 18.4.2001. The representation was written in vernacular Assamese. The substance of the representation in English version is as under.

1. That the instance of shortage of cash at Fekamari PO on 20.3.99 was unfortunate and beyond his control.
2. That he made good of the shortage amount of cash within a short period i.e. on 26.3.99.
3. That the authority already punished him for the offence vide SPOs, Dhubri Memo No.F6-4/98-99 dated 6.9.99 on the basis of departmental inquiry and he preferred an appeal against that punishment to the Appellate Authority praying for exoneration.

4. That the SPOs, Dhubri initiated de-novo proceedings in pursuance of Cirde Office, Guwahati No.Staff/9-52/99 dated 15.2.2000 and he accepted the punishment under review humbly.
5. That there is none except him to earn livelihood in his family. In this circumstances removal him from service will cause great difficulties to his family consisting 9 members. There will be no alternative for him other than committing suicide.
6. That the education of his school and college going children is fully dependent of his earning. Removal him from service will ruin and end their academic pursuit.
7. That his wife is heart weak patient. She is required to be treated by heart specialist for which expenditure is wholly dependent on his limited salary.
8. In the last, Sri Ahar Ali Sheikh prays for exoneration from any kind of punishment considering the circumstances stated above so that he may complete the remaining 12 years of his service period and maintain his family."

I have gone through the representation of Md. Ahar Ali Sheikh very carefully and given due consideration of all aspects of the case. The SPM is personally responsible for correctly maintaining office accounts and accounting for cash and valuables of the office. In no circumstances the govt. cash should be utilised on private purposes. His representation that shortage of cash at Fekamari PO on 20.3.99 was unfortunate and beyond his control is not acceptable. He failed to discharge his duty by spending office cash thereby keeping shortage in cash balance to the tune of Rs.44,891.55. By this misconduct he violated the provisions of Rule 658 of P&T Manual Vol.VI Part-III. The fact that he credited the amount of shortage subsequently does not absolve him from irresponsible act and its consequences. His appeal against the punishment order, issued by the SPOs, Dhubri vide Memo No.F6-4/98-99 dated 6.9.99 was considered and set aside on the ground of procedural lapses with further direction for de-novo proceedings. The prayer for exoneration was not granted keeping in view the gravity of the offence. That his representation for not imposing the proposed enhanced punishment on the ground of his being the sole bread earner in the family, academic career and treatment of his wife does not deserve sympathy for the offence committed by him as an in-charge of the office.

In view of the discussion above, I do not accept the pleas of Md. Ahar Ali Sheikh who was guilty for breach of trust and acted in a manner of unbecoming of a govt. servant, displayed lack of devotion to duty and absolute integrity violating the Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964. Misappropriation of govt. money is a serious offence and therefore the punishment awarded by the Supdt of Post Offices, Goalpara Division, Dhubri is considered to be inadequate to the gravity of misconduct displayed by the official.

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ORDER

I Sri Subrat Das, Director of Postal Services (HQ), Assam Circle, Guwahati and the Reviewing Authority hereby order reduction of pay by two stages from Rs.5375/- to Rs.5125/- in the scale of pay Rs.4500 - 125 - 7000 for five years with cumulative effect. It is further directed that the official will not earn any increment of pay during the period of reduction and that on the expiry of this period, the reduction will have effect of postponing his future increment of pay. I think this will meet the ends of justice.

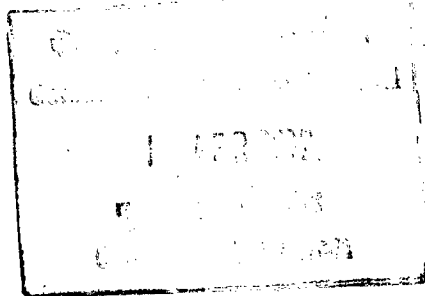
Sd/-
(Subrat Das)

Director of Postal Services [HQ]
Assam Circle, Guwahati - 781001

Copy to :-

1. Regd. Md. Ahar Ali Sheikh, SPM, Salmara South.
2. The Supdt of Post Offices, Goalpara Dn., Dhubri.
3. The Postmaster, Dhubri.
4. Staff/Appeal Section/C.O., Guwahati.
5. Spare. / CC

Subrat Das
Director of Postal Services [HQ]
Assam Circle, Guwahati-781001



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI.

*Union of India & Ors.
Respondents
Through: Mr. J. K. Choudhary
Adv. General Govt.
Standing Counsel
1/4/02*

IN THE MATTER OF :

O.A. NO. 477 OF 2001

Md. Ahar Ali Sheikh

..... Applicant.

- Vs -

Union of India & Ors.

..... Respondents.

Written Statement for and on behalf of
Respondents No. 1, 2 and 3.

I, S. Shyam, Asstt. Postmaster General (Staff)
in the office of the Chief Postmaster General, Assam Circle,
Guwahati, do hereby solemnly affirm and say as follows .

1. That I am the Asstt. Postmaster General (Staff)
in the office of the Chief Postmaster General, Assam Circle,
Guwahati and as such fully 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} ~~except~~ whatever is specifically admitted in the
written statement the other contentions and statements may
be deemed to have been denied. I am authorised to file this
written statement on behalf of all the respondents.

2. That at the outset I crave the Hon'ble Tribunal's
^{state the} leave to brief facts of the case as follows :-

The applicant was departmentally proceeded against under Rule-14 of CCS(CCA) Rules, 1965 vide memo No. F6-4/98-99 dated 10.6.99 of the ^{Supdt of} Post Offices, Dhubri (Respondent No.3) for his misconduct of misappropriating Government cash amounting to Rs. 44,891.55 while he was functioning as Sub-Postmaster of Pekamari Sub-Post Office during the period from 5.5.94 to 20.3.99.

The Disciplinary proceeding was decided by the Disciplinary authority (Respondent No.3) with imposition of punishment of reduction of pay of the applicant by 2(two) stages from Rs. 5175/- to Rs.4875/- in the scale of pay Rs. 4500-125-7000 for a period of 2(two) years w.e.f. 1.9.99 with cumulative effect vide order No. F6-4/98-99 dated 6.9.99.

Being aggrieved by the said punishment^{the} the applicant ~~she~~ submitted an appeal to the Director of Postal Services, Assam Circle, Guwahati/Appellate authority. The appeal was disposed by the Appellate authority with order of setting aside the Disciplinary order dated 6.9.99 on the ground of procedural lapse with instruction that the set aside order would not bar the Disciplinary authority to initiate denovo proceedings on the same charges vide order No. Staff/9-52/99 dated 15.2.2000.

Keeping in view the observations in the Appellate order dated 15.2.2000 and considering the circumstances of the case, a denovo proceeding was initiated against the applicant on the same charges vide memo No. F6-4/98-99 dated 25.2.2000 of the Supdt. of Post offices Dhubri. The proceeding ended with imposition of penalty of reduction of pay by 1(one) stage

from Rs. 5375/- to Rs.5250/- in the pay scale of Rs. 4500-125-7000 w.e.f. 1.3.2001 for a period of 2(two) years without cumulative effect vide order No. F6-4/98-99 dated 23.2.2001 of the Disciplinary authority.

The Disciplinary order dated 23.2.2001 was reviewed by the Director of Postal Services, Assam Circle, Guwahati and the Reviewing authority and it was proposed to enhance the punishment imposed vide order dated 23.2.2001 to that of removal from service. A show cause notice was therefore issued to the applicant vide No. Vig/6/4/95 dated 20.3.2001. After considering the representation submitted by the applicant, the Reviewing authority passed an order enhancing the punishment vide order dated 23.2.2001 to that of reduction of pay Rs.4500-125-7000 for 5 years with cumulative effect vide order No. Vig/6/4/95 (Part) dated 3.10.2001.

3. That the respondents have no comments to the statements made in paragraphs 1, 2 and 3 of the application.

4. That the statements made in paragraph 4.1 are admitted as the same are based on the materials on record.

5. That with regard to the statements made in paragraph 4.2 of the application, the respondents beg to state that the applicant kept shortage of Rs. 44,891.55 on 20.3.99 in his office cash account which was detected by the Asstt. Superintendent of Post offices, Goalpara who verified cash and other balance of Fakamari P.O. on 20.3.99. The applicant could not produce or make good of the said amount on the day of the detection

of the shortage. He was relieved of the charge as Sub-Postmaster, Fekamari on the afternoon of 20.3.99 in the interest of service and proper investigation . Moreover, the applicant was due to be relieved from Fekamari P.O. on transfer already ordered by the competent authority on completion of his post/station tenure at Fekamari P.O.

His allegation that he was forcibly relieved from Fekamari P.O. is not correct. Immediate removal of the applicant from the charge of the office was necessary to prevent tampering of records since it was a single handed Post Office .

The applicant was proceeded against under Rule 14 of C.C.S. (CCA) Rules, 1965 for display of gross misconduct by his acts of misappropriating of Govt. cash to the tune of Rs. 44,891.55 vide Memo No. F6-4/98-99 dtd. 10.6.99. An enquiry was held by appointing Inquiry Officer who submitted his report on 23.8.99 with findings of the charges as proved. The Superintendent of Post Offices, Dhubri decided the case vide order dtd. 6.9.99 imposing penalty of reduction of pay by 2 (two) stages from Rs. 5125/- to Rs. 4875/- in the scale of pay Rs. 4500/- to Rs. 7000/- for a period of 2 (two) years with cumulative effect after taking into account of the findings of the I.O. and considering the circumstances of the case.

A Copy of Memo dtd. 10.6.99, order dtd. 6.9.99 and I.O.'s report dtd. 23.8.99 are annexed as Annexure-1,2 and 3 respectively.

6. That with regard to the statement made in the para 4.3 of the application, the respondents beg to state that the appeal of the applicant against the order dtd. 6.9.99 was disposed by the Appellate Authority vide order No. Staff/9-52/99

dated 15.2.2000 setting aside the said order of the Disciplinary authority on the ground of procedural lapses. However the appellate order did not bar the Disciplinary authority to initiate denovo proceeding against the applicant on the same charges.

A copy of the appellate order dated 15.2.2000 is annexed as Annexure -4.

7. That with regard to the statements made in para 4.4 of the application, the respondents beg to state that the denovo proceeding was finalised vide order No. F6-4/98-99 dated 23.2.2001.

A copy of the order dated 23.2.2001 is annexed as Annexure-5.

8. That with regard to the statements made in para 4.5 of the application, the respondents beg to state that the Director of Postal Services, Guwahati who is the reviewing authority reviewed the order dated 23.2.2001 in exercise of the power conferred by Rule-29 of CCS(CCA) rules, 1965 and proposed to enhance the punishment made by order dated 23.2.01 after considering it not to be commensurate with the gravity of offence committed by the applicant and accordingly issued a show cause notice to the applicant vide memo dated ~~23.2.2001~~ ~~after considering it not to be commensurate with~~ 20.3.2001 with a proposal to enhance the punishment to that of removal ^{from} service. The reviewing authority passed his order dated 3.10.2001 enhancing the punishment to reduction of pay by 2(two) stages from Rs. 5375/- to Rs. 5125/- in the scale of pay Rs.4500-125-7000/- for a period of 5 years with commu-

Cumulative effect after considering the representation of the applicant against the proposed enhancement of punishment.

A Copy of memo dtd. 20.3.01 and order dtd.

3.10.01 are enclosed as Annexure-6 and 7

9. That with regard to statement made in para 5.1 of the application, the respondents beg to state that The rule-29 of CCS (CCA) Rules, 1965 empowers for review of punishment order of subordinate disciplinary authorities by higher competent authority. The objective of the said rules is that the higher authority is to see whether the punishment order passed by subordinate authority is disproportionate (higher/lower) to the gravity of offence committed by the punished Govt. servant. In the instant case the Director of Postal Services, Guwahati being the reviewing authority exercise his power and passed the order dtd. 3.10.01 after considering the gravity of the offence committed by the applicant observing the procedure laid in rules.

10. That with regard to the statement made in para 5.II of the application, the respondents beg to state that the reviewing authority considered the circumstances of the case and found the penalty imposed by the Disciplinary authority not to be commensurate with gravity of the offence which call for deterreht and severe penalty. There was no error of law and facts as stated by the applicant in the action of the reviewing authority.

11. That with regard to the statements made in para 5.III of the application, the respondents beg to state that the applicant displayed gross misconduct by his act of misappropriating the government cash. The applicant having been placed in a ~~XXXXX~~ responsible official position was required to maintain the highest level of trust for safe custody of public money entrusted to him apart from keeping the account for the Govt. cah correctly. He not only committed breach of trust but also failed to maintain

absolute integrity and devotion to duty apart from acting in the manner of unbecoming of a government servant for which he deserved severe punishment. However the reviewing authority did not remove him from service as proposed taking a lenient view and order of punishment of lesser gravity was issued.

12. That with regard to the statements made in para 5.IV, of the application, the respondents beg to state that the applicant admitted his guilt during the enquiry. His prayer for exoneration from the charges had no merit in view of the nature of the offence committed by him.

13. That with regard to the statements made in para 5.V of the application, the respondents beg to state that the Disciplinary order dated 23.2.2001 was reviewed and notice of ~~propo~~ proposal for enhancement of punishment was issued on 20.3.2001 which was within the prescribed period of 6 months as per provision laid in Rule-29(1) of CCS(CCA) Rules 1965. Therefore the contention of the applicant is not correct and liable to be rejected.

14. That with regard to the statements made in para 5.VI, of the application, the respondents beg to state that the order of the reviewing authority was issued to have immediate effect prospectively. It is the executing authority concerned to execute the order immediately on receipt of the same. There is no infirmity in the order dated 3.10.2001.

15. That with regard to the statements made in para 5.VII of the application, the respondents beg to state that the contention of the applicant is not correct. The guidelines in

Govt. of India, MHA O.M. No.39/2/68-Ests(A) dated 14.5.68

provide that the reviewing authority need not set aside/cancel the order passed by the subordinate authority before issuing show cause notice on proposal for enhancement of punishment under review.

16. That with regard to the statements made in para 5.VIII of the application, the respondents beg to state that the enhanced punishment order dated 3.10.01 of the reviewing authority was in order and in accordance with the established rule and guidelines of the Government.

17. That with regard to the statements made in para 6 of the application, the respondents beg to state that the representation dated 11.4.2001 was submitted by the applicant in reply to show cause notice for enhancement of punishment. The same was considered while passing the review order dated 3.10.2001.

18. That the respondents have no comment to the statements made in paragraph 7 of the application.

19. That with regard to the statements made in para 8 & 9 of the application, the respondents beg to state that the applicant has no cause to be aggrieved by the order of the reviewing authority as the same was passed after considering his representation and taking all other aspects and circumstances of the case. The reviewing authority took lenient view and punished the applicant with penalty which is lesser than the proposed penalty of removal ~~from~~^{from} service. He was given every reasonable opportunity to defend his case in all stages

of disciplinary proceeding and review proceeding.

Under the facts stated above the applicant is not entitled to any relief or/and interim relief as prayed for. The application is liable to be dismissed as it has got no merit.

20. That the respondents have no comments to the statements made in paragraphs 10 and 11 of the application.

21. That the respondents beg to state that the applicant did not exhaust all the remedies available to *him* before approaching the Hon'ble Tribunal in as much as he did ^{not} prefer a Petition against the impugned order before the ~~appropriate~~ Authority. On this score alone the application is liable to be dismissed.

22. That the applicant is not entitled to any relief sought for in the application and the same is liable to be dismissed.

Verification.....

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

I, S. Shyam, Asstt. Postmaster General, in the Office of the Chief Postmaster General, Assam Circle, Guwahati, being authorised and competent to sign this verification do hereby solemnly affirm and state that the statements made in paragraphs 1, 3, 4, 10-12, 14 + 18 of the written statement are true to my knowledge, those made in paragraphs 2, 5-8, 13, 15 + 17 being matter of record are true to my information derived therefrom which I believe to be true and there made in the rest are humble submissions before the Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 26 day of March 2002, at Guwahati.

Samarendra Shyam

Deponent.
Asstt. Postmaster General (Staff)
For Chief Postmaster General
Assam Circle, Guwahati-781001

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Annexure I

65

APPENDIX - I
STANDARD FORM OF CHARGE SHEET
(Rule 14 of the C.C.S (CCA) Rules, 1965)

OFFICE OF THE SUPERINTENDENT OF POST OFFICES : GOALPARA DIVN. : DHUBRI

Memo No. FG-4/98-99

Dated at Dhubri the 10/6/99

MEMORANDUM

1. The undersigned proposes to hold an inquiry against Sri Md. Ahar Ali Sheikh under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. The substance of the imputations of mis-conduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement or articles of charge (Annexure I). A statement of the imputations of misconduct or mis-behaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexure III & IV).

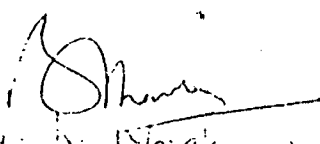
2. Sri Md. Ahar Ali Sheikh is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

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

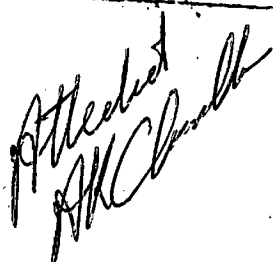
4. Sri Md. Ahar Ali Sheikh is further informed that if he does not submit his written statement of defence on or before the date specified in para. 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the C.C.S (CCA) Rules, 1965 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him *ex parte*.

5. Attention of Sri Md. Ahar Ali Sheikh is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government servant 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 Government. 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 Sri Md. Ahar Ali Sheikh is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the C.S. (Conduct) Rules, 1964.

The receipt of the Memorandum may be acknowledged.


(Md. K. K. K.)
Supt. of Post Offices
Goalpara Division : Dhubri - 783301

20. To, Sri Md. Ahar Ali Sheikh
Postal Assistant
Dhubri H. P. O.



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ANNEXURE-I

Statement of articles of charge framed against Md. Anar Ali Sheikh, Ex-SPM, Pekamari S.O. now PA, Dhubri H.O.

ARTICLE - I

That the said Md. Anar Ali Sheikh while functioning as SPM, Pekamari S.O. during the period 05.05.94 to 20.03.99 retained cash Rs. 57,897.37 on 20.3.99 and failed to produce Rs. 44,891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only when called upon on 20.3.99. Thus Md. Anar Ali Sheikh violated Rule 217 of P & T Manual Volume V, Rule 58 of FMB Vol-I and Rule-658 of P & T Manual Vol-VI Part-III and thereby attracted the provisions of Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964.

ANNEXURE-II

Statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against Md. Anar Ali Sheikh Ex-SPM, Pekamari S.O. now PA, Dhubri H.O.

ARTICLE - I

That the said Md. Anar Ali Sheikh while functioning as SPM, Pekamari S.O. during the period from 5.5.94 to 20.3.99 has been retaining excess cash which was reported by the Postmaster, Dhubri H.O. In pursuance of the report of Postmaster, Dhubri H.O., the ASPOs, Goalpara Sub-Division visited his office on 20.3.99 and after days transactions on physical verification of cash and stamps found Rs. 13,005.82 (Rupees thirteen thousand five and paise eighty two) only as detailed below :-

| | | |
|------------------|---|--------------------|
| Cash | = | Rs. 1300.00 |
| Stamps | = | Rs. 7522.55 |
| Revenue | = | Rs. 397.85 |
| S/Stamps | = | Rs. 945.80 |
| CRP | = | Rs. 139.62 |
| <u>Sub Total</u> | = | <u>Rs. 2044.82</u> |
| Total Rupees | = | Rs. 13005.82 |

But as per S.O. account dated 20.3.99 the closing balance of the office was Rs. 57,897.37. So the shortage of cash and stamps balance of Pekamari S.O. was found Rs. (57897.37 - 13005.82) = Rs. 44891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only. An inventory of cash and stamps was

Contd....2....

Accordingly prepared by Md. Ahar Ali Sheikh in presence of ASPOs, Coalpara and other witnesses on 20.3.99 and the shortage amount of Rs. 44891.55 was charged as UCR on 20.3.99 in the daily account of Fekamari S.O. as Md. Ahar Ali Sheikh failed to make good the shortage on the same day. In his written statement dated 20.3.99 Md. Ahar Ali admitted the shortage of cash and promised to make good the amount within 31.3.99 and accordingly he voluntarily credited Rs. 44891.55 as UCR vide Dhubri H.O. ACG-67 Receipt No. 42 dated 26.3.99 which was incorporated in the cash account of Dhubri H.O. on the same day.

By doing the above acts Md Ahar Ali Sheikh has violated the provisions of Rule 217 of P & T Manual Volume V Rule 58 of FMS Vol-I and Rule 558 of P & T Manual Volume VI part III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of Govt. servant violating Rules 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964.

ANNEXURE - III

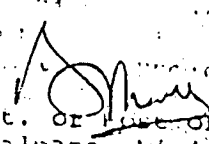
List of documents by which the articles of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. are proposed to be sustained.

1. Inventory of cash and stamps dated 20.3.99.
2. Written statement dated 20.3.99 of Md. Ahar Ali Sheikh, SPM, Fekamari.
3. Fekamari S.O. daily account, dated 20.3.99.
4. Fekamari S.O. Account book from 1.1.98 to 20.3.99.
5. Stamp balance-register of Fekamari S.O. from 15.12.98 to 20.3.99.
6. B.O. Summary of Fekamari S.O. from 10.6.98 to 20.3.99.

ANNEXURE - IV

List of witnesses by whom the articles of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. are proposed to be sustained.

1. Sri R. Biswas, ASPOs, Coalpara.
2. Sri Rajab Ali Mondal, PA, Coalpara S.O. now offg. SPM, Fekamari S.O.


 Supdt. of Police
 Coalpara Division
 Dhubri - 783301

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Annexure 2

DEPARTMENT OF POSTS
OFFICE OF THE SUPDT. OF POST OFFICES : GOALPARA DIVISION:::DHUBRI.

Memo No. F 6-4/98-99

Dated at Dhubri the 06.09.99.

In this office memo of even no. dated 10.6.99 it was proposed to hold enquiry under Rule-14 of CCS(CCA) Rules, 1965 against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. The article of charge and the statement of imputation of misconduct or misbehaviour on the basis of which the charges were framed against Md. Ahar Ali Sheikh was as follows :-

ANNEXURE - I

Statement of articles of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O.

ARTICLE - I

That the said Md. Ahar Ali Sheikh while functioning as SPM, Fekamari S.O. during the period 05.05.94 to 20.03.99 retained cash Rs. 57,897.37 on 20.3.99 and failed to produce Rs. 44,891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only when called upon on 20.3.99. Thus Md. Ahar Ali Sheikh violated Rule 217 of P & T Manual Volume V, Rule 58 of FHB Volume-I and Rule 658 of Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules 1964.

ANNEXURE - II

Statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O.

ARTICLE - I

That the said Md. Ahar Ali Sheikh while functioning as SPM, Fekamari S.O. during the period from 5.5.94 to 20.3.99 has been retaining excess cash which was reported by the Postmaster, Dhubri H.O. In pursuance of the report of Postmaster, Dhubri H.O, the ASPOs, Goalpara Sub-Division visited his office on 20.3.99 and after days transactions on physical verification of cash and stamps found Rs.13,005.82 (Rupees thirteen thousand five and paise eighty two) only as detailed below :-

| | |
|---------------|---------------|
| Cash | = Rs. 1386.00 |
| Stamps | = Rs. 7522.55 |
| Revenue | = Rs. 357.85 |
| S/ Stamps | = Rs. 945.00 |
| CRF | = Rs. 150.00 |
| B.Os balances | = Rs. 2644.42 |

Total Rupees = Rs.13005.82

But as per S.O. account dated 20.3.99 the closing balance of the office was Rs. 57,897.37. So the shortage of cash and stamps balance of Fekamari S.O. was found Rs. (57897.37 - 13005.82) = Rs. 44,891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only. An inventory of cash and stamps was accordingly prepared by Md. Ahar Ali Sheikh in presence of ASPOs, Goalpara and other witne-

Contd...2...

sses on 20.3.99 and the shortage amount of Rs.44891.55 was charged as UCP on 20.3.99 in the daily account of Fekamari S.O. as Md. Ahar Ali Sheikh failed to make good the shortage on the same day. In his written statement dated 20.3.99 Md. Ahar Ali Sheikh admitted the shortage of cash and promised to make good the amount within 31.3.99 and accordingly he voluntarily credited Rs. 44891.55 as UCR vide Dhubri H.O. ACG-67 Receipt No. 42 dated 26.3.99 which was incorporated in the cash account of Dhubri H.O. on the same day.

By doing the above acts Md. Ahar Ali Sheikh has violated the provisions of Rule 217 of P & T Manual Volume V Rule 58 of FHB Vol-I and Rule 658 of P & T Manual Volume VI part III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of Govt. servant violating Rules 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964.

ANNEXURE - III

List of documents by which the articles of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. are proposed to be sustained.

1. Inventory of cash and stamps dated 20.3.99.
2. Written statement dated 20.3.99 of Md. Ahar Ali Sheikh, SPM, Fekamari.
3. Fekamari S.O. daily account dated 20.3.99.
4. Fekamari S.O. Account book from 1.1.98 to 20.3.99.
5. Stamp balance register of Fekamari S.O. from 16.12.98 to 20.3.99.
6. B.O. Summary of Fekamari S.O. from 10.6.98 to 20.3.99.

ANNEXURE - IV

List of witnesses by whom the articles of charges framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. are proposed to be sustained.

1. Sri R. Biswas, ASPOs, Goalpara.
2. Sri Rajab Ali Mondal, PA, Goalpara S.O. now offg. SPM, Fekamari S.O.

(2) In the said memorandum Md. Ahar Ali Sheikh was asked to submit his written statement of defence within 10 (ten) days of the receipt of the memorandum. The said Md. Ahar Ali Sheikh received the Memo on 12.6.99 and submitted his defence statement dated 21.6.99 which was received by this office on 22.6.99. The defence statement of Md. Ahar Ali Sheikh dated 21.6.99 is reproduced below :-

While acknowledging receipt of your memo No. F 6-4/98-99 dated 10.6.99 I Sri Ahar Ali SK, Ex-SPM, Fekamari now PA, Dhubri H.O. beg to lay before you the following few lines for favour of your kind Sympathetic consideration.

1. That Sir, I have admitted all the charges framed against me unconditionally and I have not desired to heard in person.
2. That Sir, the shortage of cash was occurred due to some unavavoidable circumstances and I assure you that in future I shall guard myself against such happenings.

Contd....3....

I therefore request you would kindly excuse me for the first time and take action as deem fit which may save my livelihood and for this I beg to pray mercy from your kindness and oblige thereby

(3) In the aforesaid written statement though Md. Ahar Ali Sk admitted the charges it was decided to hold an oral enquiry and accordingly Sri T.K.Choudhury, ASPOs (HQ), Dhubri and Sri B.Sarmah, SDI(P), Dhubri were appointed as the Inquiry Authority and the Presenting Officer respectively vide this office memo of even no. dated 28.6.99 and directed to proceed the enquiry under the frame work of the CCS(CCA) Rules, 1965.

(4) Sri T.K.Choudhury, the Inquiry Authority conducted the oral enquiry holding hearing and extending full justice and opportunity to Md. Ahar Ali Sheikh. The Inquiry authority concluded the enquiry and submitted his finding in his report vide No. ASP/I.O/99 dated 23.8.99 in which he had brought out clear picture of the enquiry and held all the charges proved. The report of Inquiry officer referred to above is reproduced below :-

Enquiry report in the case against Md. Ahar Ali Sheikh, EX-SPM, Fekamari S.O. now PA, Dhubri H.O.

Under Sub-Rule (2) of the Rule-14 of CCS(CCA) Rules, 1965 the undersigned was appointed as the Inquiry Authority as per Memo No. F 6-4/98-99 dated 28.6.99 of the SPOs, Dhubri to enquire into the charges framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. vide the Supdt. of P.Os, Dhubri memo No. F 6-4/98-99.

2. Sri Badal Sarmah, SDI(P), Dhubri has been appointed as presenting officer in the case and he functioned as such.

3. The undersigned has completed the Inquiry and in exercise of powers conferred by Sub Rule (23) of Rule-14 of the CCS(CCA) Rules 1965 submitted the inquiry report as under.

4. The Disciplinary Authority framed the following charge sheet against Md. Ahar Ali Sheikh.

A N N E X U R E - I

Statement of article of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O.

A R T I C L E - I

That the said Md. Ahar Ali Sheikh while functioning as SPM, Fekamari S.O. during the period 05.05.94 to 20.3.99 retained cash Rs. 57,897.37 on 20.3.99 and failed to produce Rs.44,891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only when called upon on 20.3.99. Thus Md. Ahar Ali Sheikh violated Rule 217 of P&T Manual Volume V, Rule 58 of FHB Vol.I and Rule 658 of P&T Manual Volume VI part-III and thereby attracted the provision of Rule 3(1)(i) and (iii) of CCS (Conduct) Rules 1964.

A N N E X U R E - II

Statement of imputation of misconduct or misbehaviour in support of the article of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O.

Contd...4....

A R T I C L E - I

That the said Md. Ahar Ali Sheikh while functioning as SPM, Fekamari S.O. during the period from 5.5.94 to 20.3.99 has been retaining excess cash which was reported by the Postmaster, Dhubri H.O. In pursuance of the report of Postmaster, Dhubri H.O. the ASPOs, Goalpara Sub-Division visited his office on 20.3.99 and after days transactions on physical verification of cash and stamps found Rs. 13005.82 (Rupees thirteen thousand five and paise eighty two) only as detailed below.

| | |
|---------------|---------------|
| Cash | = Rs. 1386.00 |
| Stamps | = Rs. 7522.55 |
| Revenue | = Rs. 357.85 |
| S/Stamps | = Rs. 945.00 |
| CRF | = Rs. 150.00 |
| B.Os balances | = Rs. 2644.42 |
| <hr/> | |
| Total Rupees | = 13005.82 |

But as per S.O. account dated 20.3.99 the closing balance of the office was Rs. 57,897.37. So the shortage of cash and stamps balance of Fekamari S.O. was found Rs. (57897.37 - 13005.82) = Rs. 44,891.55 (Rupees fortyfour thousand eighty hundred ninety one and paise fiftyfive) only. An inventory of cash and stamps was accordingly prepared by Md. Ahar Ali Shekh in presence of ASPOs, Goalpara and other witnesses on 20.3.99 and the shortage amount of Rs. 44891.55 was charged as UCP on 20.3.99 in the daily account of Fekamari S.O. as Md. Ahar Ali Sheikh failed to make good the shortage on the same day. In his written statement dated 20.3.99 Md. Ahar Ali Sheikh admitted the shortage of cash and promised to make good the amount within 31.3.99 and accordingly he voluntarily credited Rs. 44891.55 as UCR vide Dhubri H.O. ACG-67 Receipt No. 42 dated 26.3.99 which was incorporated in the cash account of Dhubri H.O. on the same day.

By doing the above acts Md. Ahar Ali Sheikh has violated the provisions of Rule of P & T Manual Volume V Rule 58 of FHB Vol. I and Rule 658 of P & T Manual Volume VI part III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of Govt. servant violating 3(i)(i)(ii) and (iii) of CCS (Conduct) Rules 1964.

A N N E X U R E - III

List of documents by which the article of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. are proposed to be sustained.

1. Inventory of cash and stamps dated 20.3.99.
2. Written statement dated 20.3.99 of Md. Ahar Ali Sheikh, SPM, Fekamari.
3. Fekamari S.O. daily account dated 20.3.99
4. Fekamari S.O. Account book from 1.1.98 to 20.3.99.
5. Stamp balance register of Fekamari S.O. from 16.12.98 to 20.3.99.
6. B.O. Sumary of Fekamari S.O. from 10.6.98 to 20.3.99.

Contd....5....

A N N E X U R E - I V

List of witnesses by whom the articles of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. are proposed to be sustained.

1. Sri R. Biswas, ASPOs, Goalpara.
2. Sri Rajob Ali Mondal, PA, Goalpara S.O. Now Offg.SPM, Fekamari S.O.

(5) A notice for preliminary hearing was served on 5.7.99 to the charged official and all other concerned fixing the date on 15.7.99 at 1100 hours at Dhubri H.O.(I.B), but due to medical leave of the charged official the hearing could not be held on the schedule date. A second notice of preliminary hearing was issued on 20.7.99 fixing date of hearing on 30.7.99 at 1100 hours and venue at O/O the SDI(P), Dhubri to all concerned but due to sudden illness of the presenting officer no hearing was held on 30.7.99. At the convenience of the charged official and the presenting officer another notice for preliminary hearing was issued on 3.8.99 fixing date on 4.8.99 at 1100 hours and venue at the O/O the SDI(P), Dhubri. Accordingly the charged official appeared before me on 4.8.99. He did not however inform the particulars of any official nominating to act his DA nor brought any one with him to act as DA, while appearing for preliminary hearing. The Disciplinary authority was represented by Sri B. Sarmah, SDI(P), Dhubri as presenting officer.

6. The charged official admitted the receipt of memo of charge sheet issued under SPOs, Dhubri Memo No. F 6-4/98-99 dated 10.6.99. On enquiry whether the contents and meaning of the charge sheet was understood or not. The charged official replied in affirmative.

7. The charged official was then asked to say whether he admits or denies the charges and to desire for detailed enquiry. In reply he stated that the charges framed are admitted by him totally and he does not desire for any further detailed enquiry in this regard. A written deposition admitting the charges by the charged official was obtained and ordered to be treated as silent documents of the preliminary enquiry.

8. In view of clear and categorical admittance of the charges by the charged official it was ordered not to proceed further enquiry and conclude the enquiry and submit my report as per provision of sub rule (9) and (10) or Rule-14 of CCS(CCA) Rules 1965.

F I N D I N G S

The charged official was given reasonable opportunity to defend against him. He had admitted the charges unequivocally and did not desire to have any further detailed enquiry. This establishes the fact that the charges are true and sustainable and the charged official has nothing to defend or refute the charges.

The case is, therefore, returned to the disciplinary authority with findings that the charges framed against Md. Ahar Ali Sheikh stand proved without shadow of any doubt.

(5) A copy of Inquiry report submitted by the I.A. has not been furnished to the charged official for submission of his defence statement in view of his clear admission of all charges brought against him in his written statement of defence dated 21.6.99 received on 22.6.99 received on and also his admission of all charge levelled against him before Inquiry authority who held preliminary Inquiry on 4.8.99.

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I have gone through the inquiry report submitted by the Inquiry Authority on 23.8.99 and convinced that Md. Ahar Ali Sheikh, EX-SPM, Fekamari S.O. now PA, Dhubri H.O. and the charged official in the case was extended full justice and opportunities to refute and defend the charges levelled against him. I have no shadow of doubt that the charged official has fully realised the offence he had committed and as such he was no longer ~~interested in the case~~ willing to defend the charge unnecessarily and did not therefore desire to have further detailed Inquiry. The offence committed by said Sri Ahar Ali Sheikh was of gravious nature reflecting clearly his doubtful integrity and moral guilty. He is therefore deserved severe punishment. However, considering his clear confession of guilt committed by him and the length of service rendered by the official in the department and also with a view to giving him last opportunity for rectification, I am inclined to take a lenient view of his case and award the following punishment to meet the end of justice.

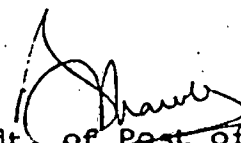
O R D E R

I Sri B.K.Marak, Supdt. of Post offices, Goalpara Division, Dhubri is therefore ordered that the pay of Sri Ahar Ali Sheikh be reduced by (2) two stages from Rs. 5125/- to Rs. 4875/- in the time - Scale of pay of Rs. 4500-125-7000 for a period of (2) two years with effect from 01.09.1999. It is further directed that Sri Ahar Ali Sheikh will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay.

Sd/-
(B. K. MARAK)
S U P E R I N T E N D E N T

Copy to :-

1. ✓ Md. Ahar Ali Sheikh, PA, Dhubri H.O.
2. The Postmaster, Dhubri H.O. for information and taking necessary action.
- 3-4. Punishment register.
5. CR file of the official.
6. Personal file of the official.
- 7-8. Office and spare.


Supdt. of Post offices
Goalpara Division
Dhubri - 783301

Attended
AK Chandra

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Annexure-11 3

Enquiry Report in the case against Md. Ahar Ali Sheikh, Ex-SPM,
Fekamari S.O. now PA, Dhubri H.O.

Under Sub-Rule (2) of the Rule -14 of CCS(CCA) Rules, 1965 the undersigned was appointed as the Inquiry Authority as per Memo No. F6-4/98-99 dated 28.6.99 of the SPOs, Dhubri to enquire into the charges framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. vide the Supdt of POs, Dhubri Memo No. F6-4/98-99.

2. Shri Badal Sarmah, SDI(P), Dhubri has been appointed as presenting officer in the case and he functioned as such.

3. The undersigned has completed the Inquiry and in exercise of powers conferred by Sub Rule(23) of Rule-14 of the CCS(CCA) Rules, 1965 submitted the inquiry report as under

4. The Disciplinary Authority framed the following charge sheet against Md Ahar Ali Sheikh.

ANNEXURE-I.

Statement of article of charge framed against Md. Ahar Ali Sheikh Ex-SPM, Fekamari S.O. now at PA, Dhubri H.O.

ARTICLE -I.

That the said Md. Ahar Ali Sheikh while functioning as SPM, Fekamari S.O. during the period 05.05.94 to 20.03.99 retained cash Rs 57,897.37 on 20.3.99 and failed to produce Rs 44,891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only when called upon on 20.3.99. Thus Md. Ahar Ali Sheikh violated Rule 217 of P&T Manual Volume V, Rule 58 of FHB Vol. I and Rule -658 of P&T Manual Vol. VI Part -III and thereby attracted the provision of Rule 3(I)(i) (ii) and (iii) of CCS(Conduct) Rules 1964.

ANNEXURE-II

Statement of imputation of misconduct or misbehaviour in support of the article of charge framed against Md. Ahar Ali Sheikh Ex-SPM, Fekamari S.O. now PA, Dhubri H.O.

ARTICLE -I

That the said Md. Ahar Ali Sheikh while functioning as SPM, Fekamari S.O. ~~xxxx~~ during the /eriod from 5.5.94 to 20.3.99 has been retaining excess cash which was reported by the Postmaster, Dhubri H.O. In pursuance of the report of Postmaster, Dhubri H.O. the ASPOs, Goalpara Sub Division visited his office on 20.3.99 and after days transactions on physical verification of cash and stamps found Rs 13,005.82 (Rupees thirteen thousand five and paise eighty two) only as detailed below.

| | |
|----------------|-------------|
| Cash | Rs 1386.00 |
| Stamps | Rs 7522.55 |
| Revenue | Rs 357.85 |
| S/Stamps | Rs 945.00 |
| CRR | Rs 150.00 |
| B.Os balances. | Rs 2644.42. |

Total Rupees Rs 13005.82.

But as per S.O. account dated 20.3.99 the closing balance of the office was Rs 57,897.37. So the shortage of cash and stamps balance of Fekamari S.O. was found Rs (57897.37-13005.82) =44891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only. An inventory of cash and stamps was ~~xxxxxxxxxx~~ accordingly prepared by Md. Ahar Ali Sheikh in presence of ASPOs, Goalpara and other witnesses on 20.3.99 and the shortage amount of Rs 44891.55 was charged as UCP on 20.3.99 in the daily account of Fekamari S.O. as Md. Ahar Ali Sheikh failed to make good the shortage on the same day. In his written statement dated 20.3.99

contd...2....

Md. Ahar Ali admitted the shortage of cash and promised to make good the amount within 31.3.99 and accordingly he voluntarily credited Rs. 44891.55 as UCR vide Dhubri H.O. ACG-67 Receipt No. 42 dated 26.3.99 which was incorporated in the cash account of Dhubri H.O. on the same day.

By doing the above acts Md. Ahar Ali Sheikh has violated the provisions of Rule of P&T Manual Volume V Rule 58 of FHB Vol. I and Rule 658 of P&T Manual Volume VI Part III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of Govt servant violating 3(I)(i)(ii) and (iii) of CCS (Conduct) Rules 1964.

ANNEXURE-III.

Disciplinary authority has decided to act against Md. Ahar Ali.

List of documents by which the articles of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. are proposed to be sustained.

1. Inventory of cash and stamps dated 20.3.99.
2. Written statement dated 20.3.99 of Md. Ahar Ali Sheikh, SPM, Fekamari.
3. Fekamari S.O. daily account dated 20.3.99.
4. Fekamari S.O. Account book from 1.1.98 to 20.3.99
5. Stamp balance register of Fekamari S.O. from 16.12.98 to 20.3.99.
6. B.O. summary of Fekamari S.O. from 10.6.98 to 20.3.99.

ANNEXURE-IV

List of witnesses by whom the articles of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri H.O. are proposed to be sustained.

1. Sri R. Biswas, ASPOs, Goalpara.
2. Sri Rajob Ali Mandal, PA, Goalpara S.O. now offg SPM, Fekamari S.O.

5. A notice for preliminary hearing was served on 5.7.99 to the charged official and all other concerned fixing the date on 15.7.99 at 1100 hours at Dhubri H.O.

(1B) But due to medical leave of the charged official the hearing could not be held on the schedule date. A second notice for preliminary hearing was issued on 20.7.99 fixing date of hearing on 30.7.99 at 1100 hours and venue at O/O the SDI(P)/Dhubri to all concerned but due to sudden illness of the presenting officer no hearing was held on 30.7.99. At the convenience of the charged official and the presenting officer another notice for preliminary hearing was issued on 3.8.99 fixing date on 4.8.99 at 1100 hours and venue at the O/O the SDI(P), Dhubri. Accordingly the charged official appeared before me on 4.8.99. He did not however inform the particulars of any official nominating to act as DA nor brought any one with him to act as DA while appearing for preliminary hearing. The Disciplinary authority was represented by Shri B. Sarmah, SDI(P) Dhubri as presenting officer.

6. The charged official admitted the receipt of memo of charge sheet issued under SPOs, Dhubri Memo No. F6-4/98-99 dtd 10.6.99. On enquiry whether the contents and meaning of the charge sheet was understood or not. The charged official replied in affirmative.

7. The charged official was then asked to say whether he admits or denies the charges and to desire for detailed enquiry. In reply he stated that the charges framed are admitted by him totally and he does not desire for any further detailed enquiry in this regard. A written deposition admitting the charges by the charged official was obtained and ordered to be treated as salient documents of the preliminary enquiry.

(8) In view of clear and categorical admittance of the charges by the charged official it was ordered not to

contd...3....

.....(3).....

proceed further enquiry and conclude the enquiry and submit my report as per provision of sub rule (9) and (10) of Rule-14 of CCS(CCA) Rules, 1965.

FINDINGS.

The charged official was given reasonable opportunity to defend against him. He had admitted the charges unequivocally and did not desire to have any further detailed enquiry. This establishes the fact that the charges are true and sustainable and the charged official has nothing to defend or refute the charges.

The case is, therefore, returned to the disciplinary authority with findings that the charges framed against Md. Ahar Ali Sheikh stand proved without shadow of any doubt.

Date :- 23/8/99

(T . K . Choudhury)
Inquiry Authority and
Asstt. Supdt of POs(HQ)
Goalpara Division, Dhubri.

Signature
Signature

- 29 - Annexure 4
~~Ax-4~~

Department of Post Govt of India
Office of the Chief Postmasters General Assam Circle Guwahati

Memo no. Staff/9-52/99

Dated 15/2/2000

This is an appeal submitted by Md Ahar Ali Sheikh PA Dhubri H/O dated 13/10/99 against the punishment order issued by Suptd of POs vide his memo F6-4/98-99 dated 6/9/99. I, the undersigned and the appellate authority, have gone through the appeal and the related papers very carefully and my findings are given below.

The appellant was proceeded against under Rule-14 of CCS(CCA) Rules 1965. After conducting the proceedings the disciplinary authority awarded the punishment of reduction of pay by two stages from Rs 5125 to Rs 4875 for a period of two years with the further instruction that the appellant will not earn increment of pay during the period of reduction and that on expiry of these period the reduction will have the effect of postponing his future increments of pay.

Only one Article of Charge was framed against the appellant and this was as follows.

That the said Md Ahar Ali Sheikh while functioning as SPM Fekamari SO during the period 05.05.94 to 20.03.99 retained cash Rs 57897.37 on 20.3.99 and failed produce Rs 44891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only when called upon on 20.3.99. Thus Md Ahar Ali Sheikh violated Rule 217 of P & T Manual Volume V, Rule 58 of FHB Vol-I and Rule 658 of P&T Manual Vol-VI Part III and thereby attracted the provisions of Rule 3(1) (i)(ii)(iii) of CCS(Conduct) Rules 1964.

In the paras 2 and 3 of his appeal the appellant makes mention of his request for his retention at Fekamari SO and the circumstances under which he was relieved from the post. I find no relevance of these facts to the case in hand. From what has been stated in para 4 it can be concluded that there was actually shortage of cash in the SO on 20/3/99. Para 5 does not require any comment.

In para 7 he admits that he had committed an offence. But he feels that it was not a serious offence and that he committed no fraud as there was no loss to the Department. Moreover he mentions that as the case was not reported to the police the charge of misappropriation is not justified. I have carefully considered the view of the appellant. The fact remains that on 20/3/99 the closing balance of Fekamari SO was Rs 57897.37p. As SPM it was the responsibility of the appellant to ensure that this amount was available in the office on 20/3/99. But it was not found so and only an amount of Rs 13005.82p was available on that day. The fact that he made good the shortage subsequently is a different matter. This does not make his offence of keeping less cash in the office any lighter. Further whether the case was reported to the police or not is not relevant. Disciplinary proceedings have been drawn up for violation of Departmental Rules and procedures.

In para 8 he accepts that he had admitted the charge framed against by the disciplinary authority.

In para 9 he appeals that Inquiry Authority's report was not furnished to him and that the Disciplinary authority passed the punishment order without giving him any opportunity to submit representation against the finding of the Inquiry Authority.

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- 24 -

It is seen that the disciplinary authority did not give the IA's report to the appellant because he had admitted all the charges in the preliminary hearing during the inquiry. This is irregular and violation of natural justice. When it was decided to constitute an inquiry under the provision of Rule 14 of CCS(CCA) Rules 1965 and the Inquiry Authority had duly submitted his inquiry report it was binding on the disciplinary authority to supply the Inquiry Report to the appellant as his decision was based on that.

Thus without considering the other paras of the appeal I conclude that principle of natural justice has been violated in this case.

Therefore I, the undersigned and the appellate authority, uphold a part of the appeal and order that the punishment awarded to Md. Ahar Ali Sheikh by Suptd. of POs Goalpara Division, Dhubri vide his memo no F6-4/98-99 dated 06.09.99 be set aside. However this will not bar the disciplinary authority in initiating de-novo proceeding on the same charges.

A. N. D. Kachari
(A. N. D. Kachari)
DPS Guwahati

begd Copies to

1. Md Ahar Ali Sheikh PA Dhubri HO with respect to his appeal dated 13/10/99.
2. Suptd of POs Dhubri w.r.t his letter no.F6-4/98-99 dated 29.11.99
3. Do
4. Postmaster Dhubri HO Dhubri for necessary action
5. O/C
6. Spare

A. N. D. Kachari
(A. N. D. Kachari)
DPS Guwahati

Attested
A. N. D. Kachari

OFFICE OF THE SUPDT. OF POST OFFICES, GOALPARA DIV. DHUBRI. 29

Memo No. F6-4/96-99

Dated at Dhubri the 23.02.2001

In this office Memo of even No. dated 25.02.2000 it was proposed to hold de-novo Inquiry under Rule-14 of CCS(CCA) Rules, 1965 against Md. Ahar Ali Sheikh, Ex-SPM, Pekomari S.O. now SPM, Salmara South S.O. The article of charge and the statement of imputation of misconduct or misbehaviour on the basis of which the charges were framed against Md. Ahar Ali Sheikh was as follows:-

A ANNEXURE - I

Statement of articles of charges framed against Md. Ahar Ali Sheikh, Ex-SPM, Pekomari S.O. now PA, Dhubri H.O.

ARTICLE - I.

That the said Md. Ahar Ali Sheikh while functioning as SPM, Pekomari S.O. during the period of 5.5.94 to 20.3.99 retained cash Rs. 57,897.37 on 20.3.99 and failed to produce Rs. 44,891.55 (Rupees fourty four thousand eight hundred ninety one and paise fifty five) only when called upon on 20.3.99. Thus Md. Ahar Ali Sheikh violated Rule 217 of P & T Manual Volume- V Rule 56 of FHB Vol. I and Rule 558 of P & T Manual Vol- VI part - III and thereby attracted the provisions of Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964.

ANNEXURE- II

Statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Pekomari S.O. now P.A, Dhubri H.O.

ARTICLE - I

That the said Md. Ahar Ali Sheikh while functioning as SPM, Pekomari S.O. during the period from 5.5.94 to 20.3.99 has been retaining excess cash which was reported by the Post Master, Dhubri H.O. In pursuance of the report of Post Master, Dhubri H.O. the ASPOs, Goalpara Sub-Division visited his office on 20.3.99 and after days

transactions of physical verification of cash and stamps found Rs. 13,005.82 (Rupees thirteen thousand five and paise eighty two) only as detailed below:-

| | |
|--------------|---------------|
| Cash | - Rs. 1306.00 |
| Stamps | - Rs. 7522.55 |
| Revenue | - Rs. 357.86 |
| S/Stamps | - Rs. 945.00 |
| GRF | - Rs. 180.00 |
| B.O.- | |
| balance | - Rs. 2644.42 |
| Total Rupees | - 13005.82 |

But as per S.O. account dated 20.3.99 the closing balance of the office was Rs. 57,897.37. So the shortage of cash and stamps balance of Fekamari S.O. was found (Rs. 57897.37 - 13005.82) = Rs. 44891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only. An inventory of cash and stamp was accordingly prepared by Md. Ahar Ali Sheikh in presence of ASPOs, Goalpara and other witnesses on 20.3.99 and the shortage amount of Rs. 44891.55 was charged as UCP on 20.3.99 in the daily account of Fekamari S.O. as Md. Ahar Ali Sheikh failed to make good the shortage on the same day. In his written statement dtd. 20.3.99 Md. Ahar Ali Sheikh admitted the shortage of cash and promised to make good the amount within 31.3.99 and accordingly he voluntarily credited Rs. 44891.55 as UCR vide Dhubri H.O. ACO-67 Receipt No. 42 dated 26.3.99 which was incorporated in the cash account of Dhubri H.O. on the same day.

By doing the above acts Md. Ahar Ali Sheikh has violated the provisions of Rule 217 of P & T Manual Volume V Rule 58 of PHS Vol-I and Rule 658 of P & T Manual Volume VI Part-III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of Govt. servant violating Rules 3(1)(i)(ii) and (iii) of CCS (conduct) Rules, 1964.

ANNEXURE - III.

List of documents by which the articles of charge framed against Md. Ahar Ali Sheikh, Ex. SPN, Fekamari S.O. now P.A Dhubri H.O. are proposed to be sustained.

- 28-27
- 3 -
1. Inventory of cash and stamps dated 20.3.99
 2. Written statement dated 20.3.99 of Md. Ahar Ali Sheikh, GPM, Fekamari, S.O.
 3. Fekamari S.O. daily account dated 20.3.99
 4. Fekamari S.O. Account book from 1.1.98 to 20.3.99
 5. Stamp balance register of Fekamari S.O. from 16.12.98 to 20.3.99.
 6. B.O. Summary of Fekamari S.O. from 10.6.98 to 20.3.99.

ANNEXURE - IV

List of witnesses by whom the articles of charge framed against Md. Ahar Ali Sheikh, Ex-SPM, Fekamari S.O. now PA, Dhubri HoQ are proposed to be sustained.

1. Sri R. Biswas, ASPOs, Goalpara,
2. Sri Rajab Ali Mondal, PA, Goalpara S.O. now offg. GDI(P), Kokrajhar.

(2) In the sa-id Memorandum Md. Ahar Ali Sheikh was asked to submit his written statement of defence within 10(ten) days from the date of receipt of the Memorandum. The said Md. Ahar Ali Sheikh acknowledged receipt of the memo on 3.3.2000 and prayed for extension of 15 days more to submit his defence statement. Accordingly the extension of time to submit his defence as prayed by Md. Ahar Ali Sheikh was granted. The said Md. Ahar Ali Sheikh submitted his defence statement dated 28.3.2000 in Assamese which was received by this office on 31.3.2000. The defence statement dttd. 28.3.2000 of Sri Ali written in Assamese is translated in English which is as under:-

" With due respect and humble submission, I beg to state that I made an appeal to the Hon'ble DPS, Guwahati to reconsider the major punishment with heavy financial loss imposed upon me vide your Memo No. F6-4/98-99

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dttd.6.9.99. Accordingly on the basis of my prayer the Hon'ble DPS, Guwahati has sent a memo under No.Staff/9-52/9982 dated 15.2.2000 to you for reconsideration. Under the above circumstances I am neither admitting nor denying the charges levelled against me.

So I pray to your honour to be kind enough not to initiate the de-novo enquiry against me and excuse me for this time. This is my humble appeal to you."

(3) On due consideration of the above defence statement of Md.Ahar Ali Sheikh it was decided to hold an oral Inquiry and accordingly Sri R.C.Rabha, ASPOs, Goalpara and Sri A.J.Sarkar, SDI(P), Dhubri were appointed as the Inquiry Authority and the Presenting Officer vide this office Memo of even no.dtd.2.6.2000 and 1.6.2000 respectively and directed to proceed the Inquiry under the frame work of the CCS(CCA) Rules, 1965.

(4) Sri R.C. Rabha, the Inquiry Authority conduct the oral enquiry holding hearing and extending full justice opportunity to Md.Ahar Ali Sheikh. The Inquiry Authority conducted the Inquiry and submitted his finding in his report vide No.ASP/Rule-14/2/2000 dated 12.9.2000 in which he brought out clear picture of the inquiry and held all the charges proved. The report of the I.A. referred to above is reproduced below:-

INQUIRY REPORT.

In the case against Md.Ahar Ali Sheikh, PA, Dhubri H.O.now on deputation at Salmara South S.O.

1.1 Under Sub-Rule(2) of rule-14 of CCS(CCA) rules 1965 I was appointed by the Supdt. of post offices, Goalpara Division, Dhubri, as the Inquiry Authority to Inquire the De-novo inquiry into the charge framed against Md.Ahar Ali Sheikh, PA, Dhubri H.O. now on deputation at Salmara South S.O. vide his no. F6-4/99-99 dttd.2.6.2000.

I have since completed the inquiry and on the basis of documentary and oral evidences adduced before me, prepared by inquiry report as follows.

2.0. Participation by the charged officer in the inquiry and the defence assistant available to him.

2.1. The charged officer participated in the inquiry from beginning to the end. The charged officer did not prefer any defence assistant as such no defence assistant was available to him during the inquiries.

3.0. Articles of charges and substances of imputation of misconduct or misbehaviour.

3.1. The following article of charges had been framed against Md.Ahar Ali Sheikh, PA, Dhubri H.O. now on deputation at Salmara South S.O.

ARTICLE - I

Md.Ahar Ali Sheikh while functioning as SPM, Fokamari S.O.during the period from 8.5.94 to 20.3.99 retained excess cash which was reported by the Postmaster, Dhubri H.O. In pursuance of the report of Postmaster Dhubri H.O. the ASPOs, Goalpara visited Fokamari S.O. on 20.3.99. On physical verification cash and stamps balances Rs.44891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only was found short and charged as UCP on 20.3.99 as Md.Ahar Ali Sheikh failed to make good the shortage on the same day. In his written statement dated 20.3.99 Md.Ahar Ali Sheikh admitted the shortage of cash and promised to make good the amount within 31.3.99. Accordingly he voluntarily credited Rs.44891.55 as UCR vide Dhubri H.O. ACG-57 receipt No.42 dtd.26.3.99 which was incorporated in the cash account of Dhubri H.O. on the same day.

By doing the above acts Md.Ahar Ali Sheikh had violated the provision of Rule 217 of P & T Manual Volume V rule 58 of FHB Vol-I and rule 658 of P & T Manual Volume VI part-III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of

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Govt. servant violating rules 3(I)(i)(ii) and (iii) of CCS (conduct) Rules, 1964.

3.2. Substances of imputation of misconduct or misbehaviour.

In pursuance of the report of the Postmaster, Dhubri H.O. Regarding retention of excess cash by Md. Ahar Ali Sheikh SPN, Fekamari S.O. the ASPOs, Goalpara visited Fekamari S.O. on 20.3.99 on physical verification of cash and stamps balances a sum of Rs. 44891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only was found short and charged as UCP on 20.3.99 as Md. Ahar Ali Sheikh failed to make good the shortage on the same day. In his written statement dated 20.3.99 Md. Ahar Ali Sheikh admitted the shortage of cash and promised to make good the amount within 31.3.99. Accordingly he voluntarily credited Rs. 44891.55 as UCR vide Dhubri H.O. ACO-67 Receipt No. 42 dated 26.3.99 which was incorporated in the cash account of Dhubri H.O. on the same day.

By doing the above acts Md. Ahar Ali Sheikh had violated the provisions of rule 217 of P & T Manual volume V Rule 68 of FHB Vol-I and Rule 658 of P & T Manual Volume VI part III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of Govt. servant violating Rules 3(I)(i)(ii) and (iii) of CCS (Conduct) Rules 1964.

4.0. Case of the disciplinary authority -

Md. Ahar Ali Sheikh while functioning as SPN, Fekamari S.O. during the period from 5.5.94 to 20.3.99 retained excess cash which was reported by the Postmaster Dhubri H.O. In pursuance of the report of Postmaster, Dhubri H.O. the ASPOs, Goalpara visited Fekamari S.O. on 20.3.99. On physical verification of cash and stamps balances Rs. 44891.55 (Rupees forty four thousand eight hundred ninety one and paise fifty five) only was short and the shortage was charged

- 37 -
- 2 -

as UCP on 20.3.99 as Md. Ahar Ali Sheikh failed to make good the said shortage amount on the same day. In his written statement dated 20.3.99 Md. Ahar Ali Sheikh admitted the shortage of cash and promised to make good the amount within 31.3.99. Accordingly he voluntarily credited Rs. 44891.55 as UCR vide Dhubri R.O. ACC-57 receipt No. 42 dated 26.3.99 which was incorporated in the cash account of Dhubri R.O. on the same day.

By doing the above acts Md. Ahar Ali Sheikh had violated the provisions of rule 217 of P & T Manual volume V rule 88 of PMS Vol-I and rule 638 of P & T Manual volume VI part XII and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of Govt. servant violating rules 3(1)(i) (ii) and (iii) of CCS(Conduct) rules, 1964.

5.0. Case of the defendant.

The charged officer Md. Ahar Ali Sheikh pleaded guilty to the charge levelled against him in the hearing of dt. 29.8.2000. He had given writing also wherein he admitted the charge.

6. Analysis and assessment of evidence.

The preliminary hearing was fixed on 4.7.2000. The charged officer attended the hearing alone on the day. He neither admitted nor denied the charge on 4.7.2000 rather prayed for time till next hearing. Then next hearing was fixed on 2.8.2000. But due to sudden path Bandh hearing could not be held on 2.8.2000. Then next hearing was fixed on 29.8.2000. All attended the hearing when questioned the charged officer Md. Ahar Ali Sheikh admitted to have received the charge sheet and had understood the charge against him fully. And the charged officer Md. Ahar Ali Sheikh pleaded guilty for the charge levelled against him. He had given writing also where in he admitted the charge.

7.0. Findings.

On the basis of documentary and oral evidence adduced in the case before me and in view of the reasons

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given above. I hold that charge against Md. Ahar Ali Sheikh PA, Dhubri H.O. now on deputation at Salmara South S.O. stands proved. 86

5. A copy of Inquiry Report submitted by the I.A. has been sent to Md. Ahar Ali Sheikh on 18.9.2000 for making representation if any, within 15(fifteen) days. The said Md. Ahar Ali Sheikh received the copy of IA's report on 22.9.2000 and submitted his representation dated 6.10.2000.. In his representation Md. Ahar Ali Stand as follows:-

I have honour to inform you that the shortage of cash for a spelt of time was a fact and I am compelled to commit the same due to some unavoidable circumstances beyond my controll. However I made good the shortage within a week. The offence committed by me has been admitted before the I.A. and I do not like to represent any more in this regard.

I, therefore requested you would kindly excuse me for the first time I give assurance to you that I will never commit such type of mistake rest of my service life in future and thus oblige.

6. I have gone through the case and the report of the I.A. very carefully and found that Md. Ahar Ali Sheikh had unequivocally admitted the charges levelled against him. I also fully agreed with the finding of the Inquiry Authority. In his representation dtd. 6.10.2000 the said Md. Ahar Ali Sheikh admitted that he had committed the offence beyond his controll and made good the shortage within short spell of time. He also prayed for excuse for this time giving assurance not to commit such type of offence in future. But the nature of offence committed by Md. Ahar Ali is serious in nature and not excusable and pardonable. So he deserves punishment for his offence. However considering the length of

service rendered by the official in the department and in the light of his solemn assurance that he would not repeat such mistake in future. I am inclined to take a lenient view of his case and passed the following orders to meet the end of justice.

ORDER

I Sri. B.K. Marak, Supdt. of post offices, Goalpara division, Dhubri therefore ordered that the pay of Sri. Ahar Ali Sheikh be reduced by one stage from Rs. 5375/- to Rs. 5280/- in the time scale of pay of Rs. 4500-125-7000 for a period of 2 (two) years with effect from 1.3.2001. It is further directed that Shri. Ahar Ali Sheikh will earn increment of pay during the period of reduction and that on the expiry of this period, the reduction will not have effect of postponing his future increment of any.

Sd/-

(B. K. MARAK)

SUPERINTENDENT

Copy to:-

1. The Postmaster, Dhubri H.O. for information and taking necessary action.
2. Md. Ahar Ali Sheikh, GPM, Salmara South S.O.
3. CR Files.
- 4.-5 Punishment Registers
- 6-7. Office and Spare copy.

Sd/-

Supdt. of post offices
Goalpara Division,
Dhubri-783 301.

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Annexure 6
AX-6

Memo No. Vig/6/4/95
Dated at Guwahati, the 20-3-2001

WHEREAS Shri (Md) Ahar Ali Sheikh, SPM, Salmara South, Goalpara Division was awarded with Punishment of reduction of pay by one stage from 5375/- to 5250/- in the scale of Rs. 4500-125-7000 for by the SPOs, Dhubri (Disc. Authority) under memo No. F6-4/98-99 dated 23-2-2001.

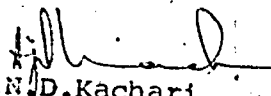
AND WHEREAS the undersigned in terms of Rule-29 of CCS(CCA) Rules, 1965/in-terms of Rule-16 of EDA-Conduct and Service Rules, 1964 proposes to revise and enhance the punishment of reduction of pay by one stage from Rs. 5375 to 5250 in the scale of Rs. 4500-125-7000 for Removal from service (revised punishment) under Rule-16/Rule-14 of CCS(CCA) Rules, 1965/under Rule-8 of EDA-Conduct and Service Rules, 1964.

NOW THEREFORE, Shri (Md) Ahar Ali Sheikh (designation) SPM (office) Salmara South is hereby given an opportunity of making representation on the penalty proposed above. Any representation which he/she may wish to make against the penalty proposed will be considered by the undersigned. Such representation, if any, should be made in writing and submitted so as to reach the undersigned not later than 15(fifteen) days from the date of receipt of this memorandum by Shri Ahar Ali Sheikh

The circumstances leading to the above proposal is given in enclosed Annexure-A to enable Shri Ahar Ali Sheikh (charged official) for submission of his/her defence for consideration.

The receipt of this memo should be acknowledged by Shri Ahar Ali Sheikh (charged official) by next available post.

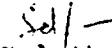
Encl :- Annexure-A.


(A.N.D. Kachari)
Designation of Reviewing Authority. &
Director of Postal Services(HQ),
Assam Circle, Guwahati-781001

Shri/Smt. Ahar Ali Sheikh,
SPM, Salmara South,
Dist-Dhubri(Assam).....

Copy to :-

1. The SPOs, Dhubri. (concerned Divl. Head).
..... Dn.
2. APMG(Staff) Appeal Section, C.O., Guwahati.
3. Spare.


Reviewing Authority.
Director of Postal Services(HQ)
Assam Circle, Guwahati-781001.

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ANNEXURE-A

Shri(Md)Ahar Ali Sheikh, SubPostmaster, Salmara South SO was awarded punishment of reduction of pay by 1(one) stage from Rs.5375/- to 5250/- in the scale of Rs.4500-125-7000 for 2(two) years without cumulative effect vide Supdt. of P.O. Dhubri Memo No.F6-4/98-99 dtd.23-2-2001 passed on finalisation of disciplinary proceeding under Rule-14 of CCS(CCA) Rules, 1965 on the basis of the charges framed against him as follows:-

Statement of article of charge

That the said Md.Ahar Ali Sheikh while functioning as SPM, Fekamari S.O. during the period 5-5-94 to 20-3-99 retained cash Rs.57,897.37 on 20-3-99 and failed to produce Rs.44,891.55 only when called upon on 20-3-99. Thus Md.Ahar Ali Sheikh violated Rule-217 of P&T Manual Vol-V, Rule 58 of FHB Vol.I and Rule 658 of P&T Man.Vol.VI part-III and thereby infringed the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS(Conduct) Rules, 1964.

Imputationx of Misconduct or misbehaviour in support of the charge

That the said Md.Ahar Ali Sheikh while functioning as SPM, Fekamari SO during the period from 5-3-94 to 20-3-99 has been retaining excess cash which was reported by the Postmaster Dhubri HO. In pursuance of the report of the Postmaster, the ASPOs, Goalpara Sub-Division visited his office on 20-3-99 and after days transaction on physical verification of cash and stamps found Rs.13,005.82 as detailed below:-

| | |
|-------------|----------------|
| Cash | = Rs.1386.00 |
| Stamps | = Rs.7522.55 |
| Revenue | = Rs.357.85 |
| S/Stamps | = Rs.945.00 |
| CRF | = Rs.150.00 |
| B.C.balance | = Rs.2644.42 |
| Total | = Rs.13,005.82 |

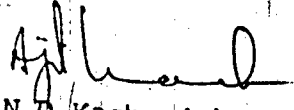
But as per S.O. Account dtd.20-3-99 the closing balance of the office was Rs.57,897.37. So the shortage of cash and stamps balance of Fekamari SO was found Rs.57,897.37-13,005.82)=Rs.44,891.55. An Inventory of cash and stamps was accordingly prepared by Md.Ahar Ali Sheikh in presence of ASPOs, Goalpara and other witnesses on 20-3-99 and the shortage amount of Rs.44,891.55 was charged as UCP on 20-3-99 in the daily account of Fekamari SO as Md.Ahar Ali Sheikh failed to make good the shortage on the same day. In his written statement dtd.20-3-99 Md.Ahar Ali Sheikh admitted the shortage of cash and promised to make good the amount within 31-3-99 and accordingly he voluntarily credited Rs.44,891.55 as UCR vide Dhubri HO ACG-67 receipt No.42 dtd.26-3-99 which was incorporated in the cash account of Dhubri HO on the same day. By doing the above acts Md.Ahar Ali Sheikh has violated the provision of Rule 217 of P&T Man.Vol.V, Rule 58 of FHB Vol.I and Rule 658 of P&T Man.Vol.VI Part-III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of Govt.Servant violating Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS(Conduct) Rules, 1964.

In exercise of the power conferred upon by Rule 29 of CCS(CCA) Rules, 1965, the case was reviewed. It is seen that the official misappropriated Govt.money amounting more than Rupees forty thousand. It was very serious offence. The official displayed gross misconduct in betrayal of the trust bestowed on him as incharge of the office.

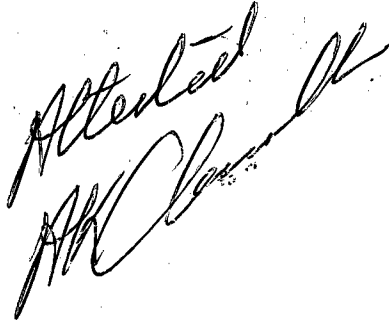
(Contd..P-2)

3. I therefore find that the punishment of reduction of pay by one stage for 2 years without cumulative effect awarded to the official by the SPOs, Dhubri is not commensurate with the gravity of the offence and misconduct displayed by him.

4. It is therefore proposed to enhance the punishment of reduction of pay described above to that of removal from service.


(A.N.D. Kachari)
Director of Postal Services (HQ),
Assam Circle, Guwahati-781001.

RECEIVED


A.K. Choudhury

- 3037 Annexure 7
Ax-791

DEPARTMENT OF POSTS:INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL
ASSAM CIRCLE:GUWAHATI-781001

Memo No.Vig/6/4/95(Part)

Dated at Guwahati, the 3rd October,2001.

Sri (Md) Ahar Ali Sheikh, SPM, Salmara South was awarded punishment of reduction of pay by 1 (one) stage from 5375/- to 5250/- in the scale of pay Rs.4500-125-7000 for 2(two) years without cumulative effect vide Supdt of Post Offices, Dhubri Memo No.F6-4/98-99 dated 23.2.2001 on finalisation of disciplinary proceedings (de-novo) under Rule-14 of CCS (CCA) Rules, 1965 based on the charges framed against him as follows.

Article of Charges

* That the said Md. Ahar Ali Sheikh while functioning as SPM, Fekamari during the period from 5.5.94 to 20.3.99 retained cash of Rs.57,897.37 on 20.3.99 and failed to produce Rs.44,891.55 only when called upon on 20.3.99. Thus Md. Ahar Ali Sheikh violated Rule 217 of P&T Manual Vol.V, Rule 58 of FHB Vol.I and Rule 658 of P&T Manual Vol.VI, Part-III and thereby infringed the provision of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964".

Imputation of misconduct or misbehaviour in support of the charge

* That the said Md Ahar Ali Sheikh while functioning as SPM, Fekamari SO during the period from 5.5.94 to 20.3.99 had been retaining excess cash which was reported by the Postmaster, Dhubri HO. In pursuance of the report of Postmaster, Dhubri, the ASPOs, Goalpara visited his office on 20.3.99 and after day's transactions on physical verification of cash and stamps was found Rs.13,005.82 as detailed below.

| | | |
|-------------|---|--------------|
| Cash | - | Rs.1386.00 |
| Stamps | - | Rs.7522.55 |
| Revenue | - | Rs. 357.85 |
| S/stamps | - | Rs. 945.00 |
| CRF | - | Rs. 150.00 |
| B.O.balance | - | Rs.2644.42 |
| Total | - | Rs.13,005.82 |

But as per SO account dated 20.3.99 the closing balance of the office was Rs.57,897.37. So the shortage of cash and stamps balance of Fekamari SO was found as Rs.57,897.37 - Rs.13,005.82 = Rs.44,891.55. An inventory of cash and stamps was accordingly prepared by Md. Ahar Ali Sheikh in presence of ASPOs Goalpara and other witnesses on 20.3.99 and the shortage amount of Rs.44,891.55 was charged as UCP on 20.3.99 in the daily account of Fekamari SO as Md. Ahar Ali Sheikh failed to make good the shortage on the same day. In his written statement dated 20.3.99, Md. Ahar Ali Sheikh admitted the shortage of cash and promised to make good the amount within 31.3.99 and accordingly he voluntarily credited Rs.44,891.55 as UCR vide Dhubri HO ACG-67 Receipt No.42 dated 26.3.99 which was incorporated in the cash account of the HO on the same day. By doing the above acts, Md Ahar Ali Sheikh has violated the provision of Rule 217 of P&T Manual Vol.V, Rule 58 of FHB Vol.I and Rule 658 of P&T Manual Vol.VI Part-III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of a govt. servant violating Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (CCA) Rules. 1964. In the departmental inquiry Md. Ahar Ali Sheikh admitted the charges and the Inquiry Authority reported the charges proved."

In exercise of the power conferred upon by Rule 29 of CCS (CCA) Rules, 1965, the order of punishment issued by the SPOs, Dhubri was reviewed and considered the punishment of reduction of pay by one stage from 5375/- to 5250/- In the pay scale of Rs.4500-125-7000 for two years without cumulative effect, to be not commensurate with the gravity of offence committed by the official. It was therefore proposed to enhance the said punishment to that of removal from service. A show cause notice was accordingly issued to the official vide this office memo of even number dated 20.3.2001 along with the proposal for enhancement of punishment as stated above. The official was directed to make representation if any against the proposal within 15 days from the date of receipt of the memorandum.

The official received the memorandum of proposal on 28.3.2001. Md. Ahar Ali Sheikh submitted his representation on 11.4.2001 which was received by this office on 18.4.2001. The representation was written in vernacular Assamese. The substance of the representation in English version is as under.

1. That the instance of shortage of cash at Fekamari PO on 20.3.99 was unfortunate and beyond his control.
2. That he made good of the shortage amount of cash within a short period i.e. on 26.3.99.
3. That the authority already punished him for the offence vide SPOs, Dhubri Memo No.F6-4/98-99 dated 6.9.99 on the basis of departmental inquiry and he preferred an appeal against that punishment to the Appellate Authority praying for exoneration.

4. That the SPOs, Dhubri initiated de-novo proceedings in pursuance of Cirde Office, Guwahati No.Staff/9-52/99 dated 15.2.2000 and he accepted the punishment under review humbly.
5. That there is none except him to earn livelihood in his family. In this circumstances removal him from service will cause great difficulties to his family consisting 9 members. There will be no alternative for him other than committing suicide.
6. That the education of his school and college going children is fully dependent of his earning. Removal him from service will ruin and end their academic pursuit.
7. That his wife is heart weak patient. She is required to be treated by heart specialist for which expenditure is wholly dependent on his limited salary.
8. In the last, Sri Ahar Ali Sheikh prays for exoneration from any kind of punishment considering the circumstances stated above so that he may complete the remaining 12 years of his service period and maintain his family."

I have gone through the representation of Md. Ahar Ali Sheikh very carefully and given due consideration of all aspects of the case. The SPM is personally responsible for correctly maintaining office accounts and accounting for cash and valuables of the office. In no circumstances the govt. cash should be utilised on private purposes. His representation that shortage of cash at Fekamari PO on 20.3.99 was unfortunate and beyond his control is not acceptable. He failed to discharge his duty by spending office cash thereby keeping shortage in cash balance to the tune of Rs.44,891.55. By this misconduct he violated the provisions of Rule 658 of P&T Manual Vol.VI Part-III. The fact that he credited the amount of shortage subsequently does not absolve him from irresponsible act and its consequences. His appeal against the punishment order issued by the SPOs, Dhubri vide Memo No.F6-4/98-99 dated 6.9.99 was considered and set aside on the ground of procedural lapses with further direction for de-novo proceedings. The prayer for exoneration was not granted keeping in view the gravity of the offence. That his representation for not imposing the proposed enhanced punishment on the ground of his being the sole bread earner in the family, academic career and treatment of his wife does not deserve sympathy for the offence committed by him as an In-charge of the office.

In view of the discussion above, I do not accept the pleas of Md. Ahar Ali Sheikh who was guilty for breach of trust and acted in a manner of unbecoming of a govt. servant, displayed lack of devotion to duty and absolute integrity violating the Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964. Misappropriation of govt. money is a serious offence and therefore the punishment awarded by the Supdt of Post Offices, Goalpara Division, Dhubri is considered to be inadequate to the gravity of misconduct displayed by the official.

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ORDER

I Sri Subrat Das, Director of Postal Services (HQ), Assam Circle, Guwahati and the Reviewing Authority hereby order reduction of pay by two stages from Rs.5375/- to Rs.5125/- in the scale of pay Rs.4500 - 125 - 7000 for five years with cumulative effect. It is further directed that the official will not earn any increment of pay during the period of reduction and that on the expiry of this period, the reduction will have effect of postponing his future increment of pay. I think this will meet the ends of justice.

Sd/-
(Subrat Das)
Director of Postal Services [HQ]
Assam Circle, Guwahati - 781001

Copy to :-

1. ✓ Regd. Md. Ahar Ali Sheikh, SPM, Salmara South.
2. The Supdt of Post Offices, Goalpara Dn., Dhubri.
3. The Postmaster, Dhubri.
4. Staff/Appeal Section, C.O., Guwahati.
5. Spare. / CC

Sd/-
Director of Postal Services [HQ]
Assam Circle, Guwahati-781001

Attested
AK Choudhary

3 MAY 2002

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI

Filed by the Petitioner
through
Abdul Matlib
Advocate
13.05.02

IN THE MATTER OF:

O.A. NO.477 OF 2001

MD. Ahar Ali Sk

-----Applicant

-Vs-

Union of India

-----Respondent.

The counter Statement by the Applicant to the W/S filed on
behalf of the Respondent No. 1, 2 & 3

I, Md. Ahar Ali Sheikh, Sub-Post Master, Fekamari Sub-Post
Office under S.P. Dhubri do hereby solemnly declare and
affirmed as follows:-

1. That the learned Reviewing Authority enhanced
punishment to the applicant a low paid Govt. Servant of
the Department violating the following Rules:-

- (i) As per Rule 29(2)(i) of CCS, (CCA) Rules, 1965
(Swamy's Compilation ,corrected upto 1-11-87) No
proceeding for revision shall be commenced until
after -(i) The expiry of the period of
limitation for an appeal.
- (ii) As per Rule 25 of CCS(CCA) Rules 1965 (Swamy's
compilation corrected upto 1-11-87) period of
limitation of appeal is forty five day's from

the date on which a copy of the order is delivered to the appellant.

The learnt disciplinary authority (i.e. SPO's Dhubri) punished the applicant vide their Memo No.F 6-4/98-99 dated 23-2-01. As per rule 25 of CCS (CCA) Rules, 1965, the applicant has every right to make appeal against the order of Disciplinary Authority to the Appellate Authority within 45 days and during the period there is no right of the reviewing authority to review the case. But the learnt Reviewing Authority reviewed the case on 20-3-2001 violating the Rule 29(2)(i) of CCS(CCA) Rules, 1965. The learnt reviewing authority has no knowledge of rules to review a case which results huge monetary loss of the applicant. The review is whimsical, grudgeful and arbitrary.

2. That the Reviewing authority failed to dispose of the proposal of review within the period of six months as per provision of Rule 29(1)(V) of CCS(CCA) Rules, 1965 and Govt. of India's instruction No. 6 below the said Rules of Swamy's Compilation corrected upto 1-11-87. The review proposal was made on 20-3-2001 and as per said Rules, the reviewing authority ought to have disposed of the case before 20-9-01, but the learnt reviewing authority disposed of the case only on 3-10-01 violating the aforesaid Rules.
3. That as per Govt. of India's Instruction No. 15 below rules -11 of CCS(CCA) Rules, 1965 (Swamy's Compilation,

corrected upto 1-3-1983) which is rearranged under No. 19 below Rule -11 of CCS (CCA) Rules, 1965, corrected on 1-11-87 the penalty of reduction should indicate the date from which it will take effect. But in the order of Reviewing authority failed to mention the same. The operative portion of the order of the Reviewing Authority was not warded as per rules.

4. That the applicant is entitled to get relief as prayed for.

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

I, Md. Ahar Ali Sheik, S/O Late Panu Mahmud Sheik, resident of village Indira Gandhi Road, Ward No. 13, P.O. AMCO Road, P.S. & District - Dhubri, Assam presently as SPM Sub-Post Office, Fekamari, do hereby verify that the contents in paragraph 1 to 4 of this counter statement are true to my knowledge and believed to be true as legal advice.

And I sign this verification on this ^{13th} day of May, 2002, at Guwahati.

Place : Guwahati

Date:

Md. Ahar Ali Sheik

Signature of the Applicant