

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Shahili
20/11/17

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: - 285 /03

Misc Petition No: _____

Contempt Petition No: _____

Review Application No: _____

Name of the Appellant(s): One Bishen Kalita

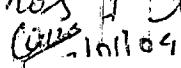
Name of the Respondent(s): Clerk 203

Advocate for the Appellant: - Mr. R.P. Samra
Mrs. T.D. Das

Advocate for the Respondent: -
Addl. C.G.S.C. A.K. Chaudhury

| Notes of the Registry | Date | Order of the Tribunal |
|--|------------|--|
| This application is filed but not in time. | 24.12.2003 | Present: The Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman. The Hon'ble Mr. K.V. Prahладan, Member (A). |
| Application filed but not in time. | | Mr. A.K. Chaudhury, learned Addl. C.G.S.C. appearing for the respondent has prayed time for filing written statement in this case. Let written statement be filed within six weeks. Two weeks for rejoinder, if any, after service upon the applicant. |
| Notice of appearance filed by the applicant Mrs. T.D. Das, Advocate. | | Let the matter appear on 19.2.2004. |
| Some notice to the Respondents as per court's order. | bb | K.V. Prahладan Member |


Vice-Chairman

Notice of order dt. 24/12/03,
Sent to D/Section for
arranging to the respondent
nos 1 to 4.


19.2.2004

List on 22.3.2004 to enable
the respondents to file reply.No. W.Ls has been
filed.2/2
19.3.04

mb

22.3.2004

Heard Mr. A.K. Chaudhury, learned Addl. C.G. for the respondents. None appears for the applicant.

The application is admitted, call for the records. Issue notice to the parties. Returnable by six weeks.

List on 10.5.2004 for orders.

7-5-04S/R awaited

b

mb

10.5.2004 Present: The Hon'ble Shri Mukesh Kumar Gupta, Member (J).

The Hon'ble Shri K.V. Prahladan, Administrative Member.

11.5.04W.Ls filed byRespondent Nos. 1, 2, 3 & 4.Oppn.

MR. A.K. Chaudhuri, learned Addl. C.G. S.C. files written statement on behalf of the respondents and stated that during the pendency of the present application since the appeal of the applicant against the impugned order, was pending and accordingly Appellate Authority passed the appellate order dated 21.4.2004 upholding the punishment imposed upon the applicant. In the circumstances, Mrs. T.D. Das, learned counsel for the applicant, seeks permission to amend the application. In the interest of justice, the prayer of the applicant is accepted and accordingly applicant may file amended application within four weeks from today. Adjourned for 11.6.2004.

Additional reply if any, to the amended application filed by the applicant, may be filed within next four weeks.

bb

Member (J)

11.6.2004

List on 16.6.2004 for
orders.

Written statement
has been filed by the
Respondents. No. 1.2-3-84.
D
Reproduced on 16.6.2004

K.V. Prahadan
Member (A)

mb

16.6.04 present : The Hon'ble Smt Bharati Ray, Judicial Member.

The Hon'ble Sri K.V.Prahadan, Admin. Member.

In view of the order passed in M.P.53/04 prayer for amendment of this application is allowed. Application is directed to file consolidated amended application within four weeks. Additional written statement, if any to be filed within four weeks thereafter.

List the matter before the next Division Bench.

A copy of the amended application be served on the learned counsel for the respondents.

K.V. Prahadan
Member (A)

J.
Member (J)

15.7.04

pg

23.7.04

Consolidated Petition
has been submitted
by the applicant.

Rej.

K.V. Prahadan
Member (A)

J.
Member (J)

26-8-04)

W.S. has been filed

pg

27.8.2004

present : The Hon'ble Sri D.C. Verma, Vice-Chairman (J).

The Hon'ble Sri K.V. Prahadan, Member (A).

Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents prays for time to file reply. prayer is allowed. List on 15.9.2004 for orders.

K.V. Prahadan
Member (A)

J.
Vice-Chairman

NO reply has been filed.

AS
16/9/04

15.9.04 Mrs T.D.Das, learned counsel for the applicant is present. Mr A.K.Choudhuri, learned Addl.C.G.S.C for the respondents states that additional written statement will be filed today with copy to learned counsel for the applicant.

16.9.04 Matter be listed for final hearing on 21.9.2004.

Additional W.P.S
filed by the Respondent
Nos 1, 2, 3 & 4.

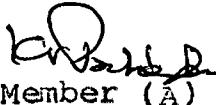

Member

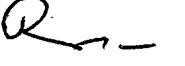

Vice-Chairman

16.9.04 pg
21.9.2004 At the request of Mrs.T.D.Das, learned counsel for the applicant, which is not objected by Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. stand over to 28.9.2004 for final hearing.


Written Statement has
been filed on behalf
of respondents 1, 2, 3 & 4.

20/9/04

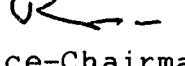

Member (A)


Vice-Chairman

bb

28.9.2004 Heard Mrs T.D. Das, learned counsel for the applicant and Mr A.K. Chaudhuri, learned Addl. C.G.S.C. List for judgment on 30.9.04.


Member


Vice-Chairman

nkm

30.9.2004

Heard learned counsel for the parties. Judgment delivered in open Court, kept in separate sheets.

The O.A. is dismissed in terms of the order. No costs.


Member (A)

bb


Vice-Chairman

1) SPR awaited
2) No reply (Rejoinder) has been
filed. 

10.11.04

Copy of the Judgment
has been sent to
the D/fee. for /Rejoinder
the same to the applicant
as well as to the
Addl.C.G.S.C. for the
Respondent.

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. /XXXX No. 285 of 2003.

DATE OF DECISION 30.9.2004.

..... Shri Bhupen Kalita APPLICANT(S)

..... Mr. R.P. Sarmah & Mrs. T.D. Das ADVOCATE FOR THE
APPLICANT(S).

VERSUS -

..... U.O.I. & Ors. RESPONDENT(S)

..... Mr. A.K. Chaudhuri, Addl.C.G.S.C. ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. JUSTICE R.K. BATTAL, VICE CHAIRMAN. *Q*

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ? *Ys*
2. To be referred to the Reporter or not ? *Ys*
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the judgment is to be circulated to the other Benches
Judgment delivered by Hon'ble Vice-Chairman.

No

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 285 of 2003.

Date of Order : This, the 30th Day of September, 2004.

THE HON'BLE MR. JUSTICE R. K. BATTA, VICE CHAIRMAN.

THE HON'BLE MR. K. V. PRAHLADAN, ADMINISTRATIVE MEMBER.

Shri Bhupen Kalita
S/o Late Golak Kalita
Resident of Vill. & P.O:- Sondha
Dist: Nalbari
Assam. Applicant.

By Advocates Mr.R.P.Sarmah & Ms.T.D.Das.

- Versus -

1. Union of India
Represented by the Cabinet Secretary
Department of Communication (Posts)
Bikaneer House, Sahjahan Road
New Delhi.
2. The Chief Post Master General
Assam Circle, Guwahati.
3. The Director of Postal Services (HQ)
Assam Circle, Guwahati-1.
4. The Superintendent of Post Office
Nalbari-Barpeta Division
Nalbari-781335. Respondents.

By Mr.A.K.Chaudhuri, Addl.C.G.S.C.

O R D E R (ORAL)

BATTA, J.(V.C.):

The applicant was appointed as Extra Departmental Branch Post Master (hereinafter referred to as EDBPM) on 18.6.1977. Departmental proceedings were initiated against the applicant vide memorandum dated 22.9.1999. Enquiry was conducted. Initially the Enquiry Officer wrongly interpreting the plea of the applicant,

Q 14
Contd./2

came to the conclusion that the charges were admitted and submitted enquiry report on 7.3.2000 with findings that the charges were proved. However, the Disciplinary Authority found that the admission of charges was not unequivocal and categorical and as such he remitted the matter back to the Enquiry Officer for fresh enquiry from the stage of the preliminary hearing. ~~Actually~~ ^{The} enquiry was conducted in which three witnesses were examined and reliance was placed on documents. The Enquiry Officer came to the conclusion that the charges were proved. The Disciplinary Authority issued show cause notice to the applicant alongwith the report of the Enquiry Officer and after considering his reply to show cause concurred with the findings of the Enquiry Officer and ordered removal of the applicant from service. The appeal filed by the applicant was rejected on 21.4.2004. This is how the applicant has approached this Tribunal.

2. Mrs.T.D.Das, learned Advocate for the applicant, submitted before us that even though some irregularities were committed by the applicant, yet the charges were not fully proved; ^{that} with some of the witnesses were not at all examined in the matter and taking into consideration the facts and consideration as also long service of the applicant, the punishment imposed on him is shockingly disproportionate to the charges and hence the same calls for interference of the Tribunal. Learned Advocate for the applicant has placed reliance on the judgments in Shyamal Bhattacharjee -vs- State of Tripura & Ors.

1998 (3) GLT 278, Chairman and Managing Director, United

Q

9

Commercial Bank and Others -vs- P.C.Kakkar (2003) 4 SCC 364 and
Samarendra Kishore Endow -vs- State Bank of India & Ors.
2004(1) GLT 449.

3. On the other hand, Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. for the respondents, contends before us that the scope of jurisdiction of Tribunal in such matters is limited and in this connection, he has drawn out attention to judgment in B.C.Caturvedi -vs- Union of India and Others (1996) 32 ATC 44. According to him, charges of misappropriation have been duly proved and misappropriation of public money being a grave matter, no interference whatsoever is called for in the penalty imposed on the applicant.

4. The applicant stood charged as under:-

" Article: I

That the said Sri Bhupen Kalita EDBPM, Sondha BO in A/C with Milanpur SO now under put off duty while he was working as such accepted the amounts of SB/RD deposits on different dates tendered by the respective depositors to credit the amounts of deposit into the SB a/c No.4401039 and R/D a/cs No.550913, 550666 and 550748. The said Sri Bhupen Kalita made necessary entries of the deposits in the concerned pass books with his dated initial against every entry and put BO date stamp impression on the space provided for. But the said Sri Bhupen Kalita failed to credit amounts of deposit into Govt. account and it was not reflected in the concerned BO daily a/c SB/RD journal and BO account book."

The applicant in his reply dated 8.10.1999 has stated that all the depositors were his kith and kins and they sent their books through their agents to him for filling

R

up the respective pay-in-slips without money. He made entries in their pass books and books after filling the pay-in-slips, but actually the amount was not given by the depositors to him. He further stated that he forgot to make entry in the BO journal and BO daily a/cs since he had not got money from them. He also stated that he had to spent a good amount of money for treatment of his wife. This plea, which was initially accepted by the Enquiry Officer as plea of admission of guilt, was not accepted by the Disciplinary Authority and the matter was remitted back for full fledged enquiry. In the enquiry three witnesses were examined including one of the depositors. The depositor P.W.3 Sri Anil Kalita stated in the enquiry that he had personally deposited the amount alongwith the pass book to the charged officer namely, the applicant, who returned the pass book to him after making entry of amount deposited therein. He also stated that he had deposited a sum of Rs.100/- on six different occasions in respect of which entries have been made in the pass book. Though other depositors, who had deposited the amount were not examined, yet the department placed reliance on the entries made in their pass books. The applicant failed to credit the deposited amount, though entries were made in the respective pass books by him under his initials and he had put the stamp and date thereon. But the applicant claimed that he had not received the money from the depositors. The same defence

that was put forwarded by him even before the Disciplinary Authority who found that the applicant had admitted correctness of the documents and entries therein. In view of the ~~non-admission~~ ^{non-examination of} of the other depositors, does not have any effect in the matter. The question is, whether the story put forwarded by the applicant in his defence can be accepted. The contention of the applicant that though he had made entries in the pass books he had not received the money cannot only be accepted, ^{and} but this is only a cock and bull story invented by him in order to save his skin somehow or the other. The Disciplinary Authority had, therefore, rightly discarded the defence taken by the applicant. Admittedly, the amount shown in the entries in the pass book of the depositors had not been credited to the Govt. exchequer, thereby the applicant had misappropriated the same. The Appellate Authority has also considered the mercy appeal filed by the applicant which was rejected. We see no reason whatsoever to ~~intervene~~ ^{here} with the findings of the Disciplinary Authority as also Appellate Authority. It has to be borne in mind that in such matters, the jurisdiction of the Tribunal is limited. In this connection, the Apex Court has laid down law in B.C.Chaturvedi -vs- Union of India & Others (supra) as under:-

" Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the

individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case."

We do not find that the case of the applicant requires
 any interference in the light of above law laid down by

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Contd-/7

the Apex Court.

5. The rulings, upon which reliance has been placed by learned Advocate for the applicant, do not help the applicant. In Shyamal Bhattacharjee -vs- State of Tripura & Ors (Supra), the petitioner therein had alleged bias against the Enquiry Officer in as much as the Enquiry Officer had taken pains to go to Ganganagar P.S. personally to bring the witnesses and examine them in the absence of the petitioner. It was, in view of the facts and circumstances of the said case, held that it was a gross violation of principles of natural justice. In Chairman and Managing Director, United Commercial Bank and Others -vs- P.C.Kakkar (supra), the principles relating to scope of judicial review in such matters has been reiterated and in the peculiar facts and circumstances of the case the Hon'ble Apex Court remitted the matter to High Court on the punishment aspect alone. In Samarendra Kishore Endow -vs- State Bank of India & Ors. (supra) also, the matter was remitted for considering the quantum of punishment.

6. The principle, which governs interference, are that Tribunal in exercise of review power cannot normally interfere with the punishment imposed by the Disciplinary Authority/Appellate Authority and also cannot normally substitute its own conclusion except where it shocks the judicial conscience or the punishment is shockingly disproportionate. The present case under consideration

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Contd./8

relates to misappropriation of public money and in the light of rampant corruption it is difficult to take a different view in respect of punishment of removal imposed on the applicant.

In view of above, we do not find any merit whatsoever in this application. The application is accordingly dismissed.

There shall be no order as to costs.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER


(R.K.BATTA)
VICE CHAIRMAN

BB

15 JUL 2004

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI
BENCH

CONSOLIDATED AMENDED APPLICATION NO.285/2003

IN BETWEEN

SRI BHUPEN KALITA

...APPLICANT

-VERSUS-

UNION OF INDIA & ORS

Represented by the Cabinet Secretary
Dept. of Communication (Posts)
Bikaneer House, Sahjahan Road, New Delhi.

...RESPONDENTS

List of dates/Synopsis

| Sl.No. | Particulars | Annexure | Page |
|--------|---|----------|---------|
| 1. | Applicant was appointed on 18.6.1977 | A | 14 |
| 2. | Applicant was charge sheeted on 22.9.99 | B | 15 - 20 |
| 3. | Applicant submitted W.S. dtd 8.10.99. | C | 21 - 23 |
| 4. | Enquiry report dt 13.6.03 is submitted to the Res No.4 | D | 24 - 29 |
| 5. | The applicant submitted representation dtd 12.7.03 | E | 30 - 35 |
| 6. | Respondent No. 3 issued the removal order dtd 8.9.03 against the applicant. | F | 36 - 45 |
| 7. | Applicant preferred an appeal before the Respondent No.2 on 6.11.03 | G | 46 - 48 |
| 8. | Appellate order dtd 21.4.2004 issued by the Respondent No.2 | H | 49 - 53 |

16

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH

(An Application under section 19 of the
Administrative Tribunal Act, 1985)

Consolidated Amended A.No.285/2003

Filed by the applicant
through - Mr. Tirthankar Baruah
Advocate

IN THE MATTER OF :

Sri Bhupen Kalita,

S/O Late Golak kalita,

Resident of Vill- Sondha,
P.O.Sondha, Dist.- Nalbari,
Assam.

.... Applicant.

-Versus-

1. Union of India Represented by the Cabinet Secretary, Department of Communication(Posts) Bikaneer House, Sahjahan Road, New Delhi.
2. The Chief Post Master General, Assam Circle, Guwahati.
3. The Director Postal Services (HQ), Assam Circle, Guwahati-1.
4. The Superintendent of Post Office, Nalbari- Barpeta Division, Nalbari-781335.

.... Respondents.

1/2

DETAILS OF APPLICATION:-

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

The application is directed against the following order:

(a) Order issued under Memo No. 9 Misc. 4/2000 dt.08.
09.2003 by the Director of postal Services (HQ)
Assam, Circle whereby the applicant was punished with
the punishment of Removal from service with immediate
effect.

2. JURIDICTION :

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

3. LIMITATION:

The applicant also declares that the subject matter of the applicant is within the limitation period as has been prescribed under Sec.21 of the Administrative Tribunal Act.1985.

4. FACT OF THE CASE:

(a) That the applicant is a Citizen of India and is a permanent resident of Sondha, Nalbari and as such entitled to the rights and privileges guaranteed under the Constitution of India and laws framed thereunder.

(b) That the applicant hails from a poor agriculturist family of Vill- Sondha, Nalbari district, Assam. He passed H.S.L.C examination in the year 1977 from Pathsala High School and due to financial hardship he couldn't prosecute his studies and searched for an employment. Accordingly, the applicant applied against an advertisement for the work of extra Departmental branch post-master(EDBPM) of Sondha, EDBO and after due process, the applicant was appointed as EDBPM dt.18.6.1977 on a monthly allowances of Rs.81.50 without A.T. & I.R.

In the said appointment letter it has been mentioned that the service and conduct of Sri Bhupen Kalita would be govern by P & TED Agencies service & conduct Rules 1964.

A copy of the appointment letter dt.18.06.1977 is filed hereto and marked as ANNEXURE -A.

(c) That the applicant while he was working as EDBPM Sondha B.O. was charge sheeted for his alleged failure of maintaining absolute integrity and acted in contravention of Rule 17 of EDA conduct & Service Rules 1964. The statement of article of charges framed against the applicant are follows: -

“That the said Sri Bhupen Kalita EDBPM, Sondha BO in a/c with Milanpur. So now under put off duty while he was working as such accepted the amounts of SB/RD deposits on different dates tendered by the respective depositors to credit

the amounts of SB/RD deposits on different dates tendered by the respective depositors to credit the amounts of deposit into the SB a/c No. 4401039 and RD a/c's No. 550913, 550666 and 550748. The said Sri Bhupen Kalita made necessary entries of the deposits in the concerned pass Books with his dated initial against every entry and put BO date stamp impression on the space provided for. But the said Bhupen Kalita failed to credit the amounts of deposit into Govt. account and it was reselected in the concerned BO daily a/c SB/RD journal and BO account book.

By the above act, the said Sri Bhupen Kalita violated Rule – 131 (3) and 174 (2) of the rules for branch offices sixth edition (2nd reprint) corrected upto 31-03-1982 and thereby he failed to maintain absolute integrity and devotion to duty in contranining Rule 17 of P & T EDA (Conduct & Service) Rules 1964".

A charge-memo No.F1 – 4/SB/98-99 dt. 22-09-1999 along with Article of charges, statement of imputation of misconduct etc. issued by the Respondent 4 was communicated to the applicant. The applicant was already put under suspension/put off from duty vide order No. F1-4/SB/A/98-99 dt. 20-01-1999.

A copy of charge-sheet memo No. F1-4/SB/98-99 dt. 22-09-1999 is annexed herewith as ANNEXURE- 'B'.

- (d) That on the aforesaid charges a disciplinary proceeding was initiated under Rule 8 if EDA Conduct & Service Rule, 1964 and Mr. T.D. Saha, SDI(P), Pathsala, was appointed as the Inquiry Officer to inquiry into the charges and submit report

vide the SPO's Memo No. F1-4/SB/A/98-99 dt. 11-11-1999. On examination of the enquiry report the findings of the I.O were considered unacceptable due to the fact that the charged official didn't expressly and categorically admitted the charges. Accordingly, the case was remitted to the I.O. back for inquiry afresh from the stage of the preliminary hearing and Sri L.K. Barman, ASP(HQ) O/o the SPO's, Nalbari was appointed as the place of Shri T.D. Saha vide the Memo No.F1-4/SB/A/98-99 dt. 14-05-2001.

- (e) That the applicant submitted a written brief dated 08-10-1999 contending inter-alia that the allegations labeled against him in the article of charges No.1 was unfounded and liable to be dropped, on the established fact that the applicant did nothing in contravention of Rule 17 of the EDA Conduct and Service Rules, 1964 and he all along mentioned absolute integrity.

Regarding the charge of violation of Rule 131 (3) and 174 (2) of Rules for branch offices it was contended that Rule 131 (3) & 174 (2) of Rule for branch offices hear the procedure for maintenance of Branch Office account and the items to be recorded in the account. However, it isn't clarified by the I.O. during the inquiry why the SDI(P) Nalbari collected an amount of Rs. 2,000/- only as recovery from the applicant on 23-06-1999 although in the annexure-11 of article of charge No.1, the uncredited amount comes to Rs. 5,500.00 in S.B./R.D. accounts.

A copy of the written brief submitted by the applicant dt. 08-10-1999 is annexed herewith as ANNEXURE- 'C'.

(f) That ultimately the departmental proceeding against the applicant ended and the enquiry officer submitted his report to the Respondent No. 3 and a copy of the same is sent to the applicant asking to submit a representation in writing if any against the findings of the I.O. within 15 days.

A copy of the Enquiry report dt. 13-06-2003 is annexed herewith as
ANNEXURE- 'D'.

(g) That the applicant begs to state that the charge and allegation framed against the applicant under the SPO's Nalbari memorandum No. F1-4/SB/A/98-99 dt. 22.09.1999 is without proper assessment of the fact. However, the applicant admitted in his representation dated 12-07-2003 that being an EDBPM, he had no knowledge of rule 8 proceedings and the technicalities to be adopted as per rules for defending himself in the hearing of the proceeding in the interest of reasonable opportunity and natural justice.

A copy of representation dt. 12-07-2003 is annexed herewith as
ANNEXURE - 'E'.

(h) That the applicant begs to state that without giving a single scope to be heard in person in the proposed inquiry, the enquiry officer submitted his report to the Respondent No.3 who as disciplinary authority vide order issued under Memo No. Im. Misc 4/2000 dt. 08-09-2003 held that the imputations of charge as framed against the applicant stand proved and gave punishment of "Removal" from service with immediate effect.

A copy of the removal order dt. 08-09-2003 is annexed herewith as ANNEXURE - 'F'.

(i) That therefore, your humble applicant preferred an appeal before the Respondent No. 2. the Chief Post Master General, Assam Circle, Guwahati on 06-11-2003 with a prayer to reconsider the whole fact on humanitarian ground but the appellate authority has remained silent till-date.

A copy of an appeal dt. 06-11-2003 is annexed herewith as ANNEXURE- 'G'.

(j) That the applicant submit that he wasn't held liable for any misappropriation of public money and charges purportedly proved against him don't entail the major punishment of removal from service.

(k) That the applicant has been serving as extra-Departmental Post Master Assistant of the postal department since 1977 in this office with full satisfaction to the authority. At this stage, such type of allegation against the applicant without proper assessment and having been punished with removal from service has been seriously effected his livelihood.

(l) That the applicant begs to state that the impugned action of the Respondents is violative of Art. 14, 19, 21 and 311 of the Constitution of India.

(m) That the applicant submits that there is no other alternative remedy and the relief sought herein if granted would be just, proper and adequate.

- (n) That the applicant is failed bonafide and for ends of justice.
- (o) ~~Following may be added in para 4 of the O.A.~~
- (p) "That the respondents have appointed another person in the post from which the applicant is removed without disposing of the departmental appeal of the applicant dated 6-11-2003. That is to say, the appeal of the applicant (Annexure-F of the O.A.) Kept pending by the respondents in one hand and without passing any order thereon they appoint another person.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

- (1) For that action of the Respondents are malafide and illegal with a motive behind and as such the impugned order is liable to be set aside and quashed.
- (2) For that there is gross violation of the principles of natural justice as the disciplinary proceeding against the applicant took very long time for which his whole family has been suffering a lot.

It is stated here that the applicant was under suspension/put off from duty vide order dt.20.01.1999 and the charge sheet was issued by the Respondent No.4 almost after 9 months.

- (3) For that the enquiry officer testified only one depositor as witness of 4 depositor by oral evidence and O/s mails collected statements from the other depositors only for formality.

- (4) For that , the disciplinary authority as per Rule 9, Conduct & Service Rule 1964, ought to pass the final order within period to 45 days to 120 days.
- (5) For that by the impugned orders the authorities have sanctioned away the livelihood of the applicant in the most capricious manner without appreciating the material on record with proper prospective.
- (6) For that the impugned order cause great hardship and injustice to the applicant.
- (7) For that in any view of the matter the orders impugned are liable to be set aside and quashed.

6. DETAIL OF REMEDY EXHAUSTED:

That there is no other alternative and efficacious remedy available to the applicant except invoking the jurisdiction of this Hon'ble Court under Section 19 of the Administrative Tribunal Act, 1985.

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

The applicant further declares that they hasn't filed any application, writ petition or suit in respect of the subject matter of the instant application before any other Court authority or any other bench of this Hon'ble Tribunal nor any such, application, writ petition or suit is pending before any of them.

8. RELIEF PRAYED FOR :

Under the facts and circumstances stated above in this application the applicant prays for the following reliefs :

- (i) Setting aside order of 'Removal' from service issued by the Respondent No.3 under Memo No.F.
- (ii) Directing the Respondents to re-instate the applicant in the post of EDBPM Sondha EDBO and to pay the arrear and regular monthly emoluments.
- (iii) Costs of the case.

INTERIM ORDER:

9. Pending final decision of this application the applicant seeks issue of the interim order directing the Respondent not to fill up the post of EDBPM, Sondha B.P.O.

- (a) That the applicant on receipt of the written statement from the respondent could come to know that somebody is appointed in his post while the matter is subjudice before this Hon'ble Tribunal where in there is a prayer for not to fill up the post.

Copy of the appellate order dated 21.4.2004 is annexed herewith as ANNEXURE-H.

- (b) That the applicant begs to state that the appellate order passed on 21.4.2004 is a readymade one and passed without applying the judicious mind by respondent No.2 who fails to appreciate the real facts of the case and the

same is passed without taking into consideration and grounds of the appeal of the appellant. The said order is passed only to deprive the applicant from his right and to appoint some one else of this choice. The applicant had a blemish free service record of 22 years.

- (c) To set aside and quash the appellate order dated 21.4.2004 and to declare the same as void, illegal and unconstitutional.
- (d) To direct the respondents to allow the applicant to reinstate in service by recalling its appellate order dated 21.4.2004 and further direct them to pass a reasonable order after proper perusal of his appeal dated 5.11.2003.
- (e) Any other relief (s) to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper.

10. That the said order is passed without taking into consideration of the facts of the case and preferred to continue case with a Full Bench like as it is mentioned above.

11. That the said order is passed in the interest of public and for the better service of all concerned. If allowed to stand as it is, general public will be affected and it will be a bad precedent.

10. APPLICATION IS FILED THROUGH ADVOCATE:

11. PARTICULARS OF I.P.O.: 11G 387319

I.P.O. No.: 116387319

Date of Issue : 12.12.2003

Issued from: G.P.O. Guwahati

Payable at:

12. LIST OF ENCLOSURES:

As stated in Index.

VERIFICATION

I, Sri Bhupen Kalita, S/o Late Golok Kalita, R/o. Sondha, District Nalbari, aged about 43 years working as extra Departmental Post-Master, Sondha, Nalbari, Dist. Nalbari do hereby verify that the contents of paragraphs 1, 2, 4 (A to N), 7, 8 my personal knowledge and paragraphs 3, 5 (I to 7), 6 believed to be true on legal advice and I haven't suppressed any material facts.

Date:

Place: Guwahati



Signature

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INDIAN POSTS AND TELEGRAPHS DEPARTMENT
 OFFICE OF THE E SR. SUPERINTENDENT OF POST OFFICES.
 KAMRUP DIVISION :: GAUHATI : 781001.

Memo No; A/X-115/ EDPRIM Dated Gauhati the, 18-6-1977

Sri Bhupen Chandra Kalita son of Shri Golak Chandra Kalita of Village Sondha, P.O.Sondha under Nalbari P.S is provisionally appointed as EDPM/ Sondha E.D.B.O with effect from 1.5.77 ,A/N subject to satisfactory verification of character and antecedants on a monthly allowances of Rs.81.50 ~~Rsxx~~ paise(Rupees eighty one and fifty paise) only without A.I and I.R.

The conduct and service of Shri Bhupen Ch. Kalita will be governed by the posts and Telegraphs EDA (Conduct and Service) Rules 1964.

Sd/-
 Sr. Supdt. of Post Offices
 Kamrup Division, Gauhati-
 781001.

Copy to :-

1. The Postmaster, Borpeta P.O. for information and necessary action. He will kindly confirm whether security premia has been received from the official and fidelity is on record.
2. The I.P.Os Nalbari for information W.R.T his in letter No. dtd 9.6.77.
3. O/S mails Nalbari North Line.
4. Shri Bhupen Ch. Kalita EDPM Soncha, Nalbari.
5. EST File
6. Spare.

Sr. Supdt. of Post Offices.
 Kamrup Division, Guwahati-
 781001.

DEPARTMENT OF POSTS :: INDIA

OFFICE OF THE SUPDT OF POSTS OFFICES :: NALBARI BARPETA
DIVISION : NALBARI - 781335

Memo No. Fl-4/SB/AC/98-99 Dated at Nalbari the 22.9.99.

MEMORANDUM

1. The undersigned proposed to hold an inquiry against Shri Bhupen Kalita under rule 8 of P&T EDA (Conduct and Service) Rule, 1964. The substance of imputation of misconduct or misbehaviour is set out in the enclosed statement of articles of charges (Annexure-I). A statement of imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which and a list of witness by whom the articles of charge are proposed to be sustained are also enclosed (Annexure-III) & Annexure-IV).
2. Shri Bhupen Kalita 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, specially admit or deny each article of charge.
4. Shri Bhupen Kalita is further informed that if he does not submit his written statement of defence on or before the ~~inquiry~~ specified in para 2 above or does not appear in person before the inquiry authority or otherwise fails or refuse to comply with the provision of rule 8 of P & T EDA (Conduct & Service) Rule, 1964 or the orders/ directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him ex parte.

16-
3)

5. Attention of Shri Bhupen Kalita is invited to rule 25 of P & T EDA (Conduct & Service) Rule, 1964 under which no employee shall bring or attempt to bring any political or other out-side 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 other person in respect of any matter dealt within these proceedings, it will be presumed that Shri Bhupen Kalita 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 25 of P & T EDA (Conduct & Service) Rule 1964.

6. The receipt of the memorandum may be acknowledged.

Sd/-

Superintendent of Post Office
Nalbari Barpeta Division
Nalbari -781335.

To,

Regd AD. Shri Bhupen Kalita
EDBPM/Sondha BO (UPD)
Via- Milanpur SO.

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Statement of article of charge framed against Sri Bhupen Kalita EDBPM, Sondha BO in a/c with Milanpur SO now under put off duty under Rule -8 of P&T EDA(Conduct and Service) Rules, 1964.

Article : I

That the said Sri Bhupen Kalita EDBPM, Sondha BO in A/C with Milanpur SO now under put off duty while he was working as such accepted the amounts of SB/RD deposits on different dates tendered by the respective depositors to credit the amounts of deposit into the SB a/c No.4401039 and R/D a/cs No.550913,550666 and 550748. The said Sri Bhupen Kalita made necessary entries of the deposits in the concerned pass books with his dated initial against every entry and put BO date stamp impression on the space provided for, But the said Sri Bhupen Kalita failed to credit amounts of deposit into Govt. account and it was not reflected in the concerned BO daily a/c SB/RD journal and BO account book.

By the above act, the said Sri Bhupen Kalita violated Rule -131(3) and 174 (2) of the rules for branch offices sixth edition(2nd reprint) corrected upto 31-3-1982 and thereby he failed to maintain absolute integrity and devotion to duty in contravening Rule 17 of P&T EDA(conduct & Service) Rules, 1964.

ANNEXURE II

Statement of imputation of misconduct or misbehaviour in support of the article of charge framed against Sri Bhupen Kalita EDBPM, Sondha BO in a/c with Milanpur SO now under put off duty under Rule -8 of P& T EDA(Conduct and service) Rules 1964.

- 2 -

Article : I

That the said Sri Bhupen Kalita EDBPM, Sondha BO in a/c with Milanpur SO while was working as such accepted the deposits from the respective depositors who tendered the amount of deposits to credit into their SB/RD a/cs in respect of the following a/cs on the dates and amount shown against each account.

| <u>Sl. No.</u> | <u>Account No.</u> | <u>Name of depositor</u> | <u>Date of deposit</u> | <u>Amount of deposit which were not credited</u> |
|----------------|--------------------|--------------------------|------------------------|--|
| 1. | SB/4401039 | Sri Umesh Kalita | 04-08-98 | 4000/- |
| | | | 07-10-98 | 200/- |
| 2. | RD/550913 | Sri Nabanita Kalita | 11-11-98 | 100/- |
| | | | 11-11-98 | 100/- |
| | | | 11-11-98 | 100/- |
| 3. | RB/550666 | Sri Anil Kalita | 2-7-98 | 100/- |
| | | | 3-8-98 | 100/- |
| | | | 4-8-98 | 100/- |
| | | | 22-9-98 | 100/- |
| | | | 24-10-98 | 100/- |
| | | | 23-11-98 | 100/- |
| 4. | RD/ 550748 | Sri Debendra Barman | 13-11-98 | 200/- |
| | | | 13-12-98 | 200/- |

That said Sri Bhupen Kalita entered the above amounts of deposits in the concerned pass book duly putting his initial against the entries of deposit impression with BO date stamp against every entry and extract balance of the pass book, but he did not enter the above said entries in the BO daily a/cs SB/RD journal and BO a/cs book of the concerned

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dates and thus he failed to credit the amount into Govt. account.

By the above act, the said Sri Bhupen Kalita violated Rule 131(3) and 174 (2) of the rules for branch offices sixth edition (2ndprint) corrected upto 31-03-82 and thereby he failed to maintain absolute integrity and devotion to his duty in contravening Rule 17 of P& TEDA (conduct and service) Rules, 1964.

ANNEXURE - III

List of documents by which the article of charge framed against Sri Bhupen Kalita EDSPM, Sondha BO (now UPD) in a/c with Milanpur SO are proposed to be sustained.

Article I

1. Sondha BO SB pass book against a/c No. 4401039, RD pass book against No.550666, 550913 and 550748.
2. Sondha BO SB journal with entry from 9.10.91 to 14.12.98. = 1(one) book.
3. Sondha BO RD journal with entry from 1-2-97 to 30-12-98 = 1(one) book.
4. Sondha BO a/c book with entry from 1-11-97 to 30-1-99 = 1(one) book.
5. Sondha BO daily a/cs dtd 2-7-98, 3-8-98, 4-8-98., 22-9-98, 24-10-98, 11-11-98, 13-11-98, 23-11-98, 8-10-98.
6. Milanpur SO A/L/C in r/o SB a/c No.4401039, RD a/c No.550666, 550913 and 550748.
7. Nalbari HO A/L/C in r/o SB a/c No.4401039, RD-a/c No. 550666 and 550913.
8. Written statements of Sri Bhupen Kalita dtd. 24.3.99 obtained by SDI(P) Nalbari.

9. Written statements of Sri Lohit Kalita, Sri Debendra Barman, Sri Anil Kalita and Sri Umesh Kalita(all depositor).

ANNEXURE - IV

List of witnesses by whom the article of charge framed against Sri Bhupen Kalita EDBPM, songha (UPD) in a/c with Milanpur SG proposed to be sustained.

1. Md. N.H.Laskar, SDI(P) Nalbari (W).
2. Sri Dharma Kanta Kalita, O/S mails Nalbari.
3. Sri Girindra Ch.Kalita Offg. BPM, Sondha
4. Sri Lohit Kalita, Sri Debendra Barman, Sri Anil Kalita and Sri Umesh Kalita all depositors of village Sondha.

Sd/-

(G.G.Singha)
Superintendent of Post offices.

To,

The Supdt. of Post Offices, Nalbari-Barpeta,
Division, Nalbari.

Dated at Sondha, the 8th Oct.99.

Ref :- Your No.F-4/SB/Mis/98-99 of 22/9/99.

Sir,

With referance to your above cited letter , I beg to lay before you the foiblowing few lines for favout of your kind perusal and consideration so that I may kindly be exempted from the charge of Rule 131(3) and 174(2) of the rules for Bos 6th edition(2nd reprint) connected upto 31/3/92 and rule 17 of P & T Ed conduct and service rules 1964.

That Sir, I am said by your honour that I made necessary entries of the deposits in the concerning P/Book and Rd. Books with my initial against every entry and put the BO date -stamp impression at the space provided for and alleged that I failed to credit the amounts of deposits into Govt.

Accounts etc in respect of the A/cs as noted below:-

| <u>A/C No.</u> | <u>Name of Depositor</u> | <u>Amount</u> | <u>Dt. of deposit.</u> |
|----------------|--------------------------|---------------|------------------------|
| 1. SB/4401039 | Sri Umesh Kalita | Rs. 4,000/- | 4.8.98 |
| SB/4401039 | -do - | Rs. 200/- | 7.10.98 |
| 2. Rd/550915 | Sri Nab Kt. Kalita | Rs. 100/- | 11/11/98 |
| | | Rs. 100/- | 11/11/98 |
| | | Rs. 100/- | 11/11/98 |
| 3. Rd/550666 | Sri Anil Kalita | Rs. 100/- | 2/7/98 |
| | | Rs. 100/- | 3/8/98 |
| | | Rs. 100/- | 4/8/98 |
| | | Rs. 100/- | 22/9/98 |
| | | Rs. 100/- | 24/10/98 |
| | | Rs., 100/- | 23/11/98 |

4. Rd/ 550748 Sri Debendra Barman Rs. 200/- 18/11/98
xx Rs. 200/- 19/12/98

In this connection, I beg to state that no depositor in respect of P/Book or Rd A/Cs had attended my office bringing moneys by them selves or they did not fill up the pay in slips by them. All the depositors are my kith and kins and they sent their books through their agents to me for filling up the respective pay in slips without moneys. Sometimes the agents handed over the P/Book and Rd/ Books at my home also. I made the entries in their P/b and books after filling the pay in slips by me. The agents had kept the books at my office through I requested the depositors take delivery of their books from my office giving the respective moneys but they did not do and still today I have not got these amounts from them. Generally they had handed over their dues after the collection of the sali Rice crops from the cultivated field.

I had forgotton to make entry in the BO lournal and Bo daily A/Cs as I had not got moneys from them and still I have not got any amount from them.

My wife was suffering from high blood presure accompaning heart attack resulting I had to spend a ggod of moneys at Guwahati for Treatment on and on (from 1-8-98 to 15-12-98). My house hold affairs became like fishour of water. My mind went for the Treatment of my wife.

Furhter, I beg to state that there happened a devastitic blood in our area for 3 times. All of my paddy crops

had astray and 3 cows had been taken away the current of the blood resulting all the members of my family had to last which was known to the villagers.

Under the above facts, I can boldly say that I had not done any mistake willfully. So kindly consider my prayer sympathetically and kindly let us charge against me for which I shall be ever grateful to you.

Yours faithfully;

Sd/-

(Bhupen Kalita)

EDBPM, Sondha BO(UPD)

Via- Milanpur.

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Amexure 1
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(6)

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

No.INV/Misc-4/2000

Dated at Guwahati the 13.6.2003.

To

Sandha

Shri Bhupen Kalita, EDBPM, Sandha B.O.
(Now put off duty)
via - Milanpur S.O.
Dist. Nalbari(Assam)

Sub :- Disciplinary proceeding against Sri Bhupen Kalita, EDBPM, Sandha EDBO(Now put off duty)

The undersigned being the Disciplinary Authority in the case forwards herewith a copy of the enquiry report of the enquiry officer.

You are hereby asked to submit representation in writing if any, against the findings of the I.O. within 15 days of receipt of this communication to the undersigned.

If nothing is received from your end within the stipulated period, it will be presumed that you have nothing to represent and the case will be decided ex parte accordingly.

Enclo :- (As above)

N.C. Roy
(N.C. Roy)
Director of Postal Services(HQ)
O/O the Chief Postmaster General,
Assam Circle, Guwahati-781001.

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Inquiry Report on the inquiry held under Rule-8 of P&T, EDAs (conduct & services) Rules, 1964 against Sri Bhupen Kalita, EDBPM, Sandha BO in a/c with Milampur SO now under put off duty.

1. Introduction :- I was appointed as Inquiring Authority vide SPOs, Nalbari Memo No. F1-4/SB/A/98-99 dtd. 14-05-2001 to inquire into the charges framed against Sri Bhupen Kalita, EDBPM, Sandha BO in a/c with Milampur SO under SPOs, Nalbari Memo No. F1-4/SB/A/98-99. Sri Badal Das, SDI(P), Pathsala was appointed as Presenting Officer, to represent the case on behalf of the disciplinary authority. The charged official nominated Sri Narayan Chandra Mazumdar, Retd. Manager, PSD/Guahati and it was allowed after due consideration of his entitlement. Accordingly a preliminary hearing of the case was held on 31-07-2001 in Divisional Office, Nalbari where both the charged official, Sri Bhupen Kalita and the Presenting Officer, Sri Badal Das were present. The charged official pleaded not guilty and denied the charges in full leveled against him. As such it was decided to hold oral inquiry. Following were the dates of regular hearing of the case held in the O/O the Superintendent of Post Offices, Nalbari and the charged official and his defence assistant participated the inquiry in all dates.

Dates :- 31-07-01, 21-08-01, 19-09-01, 20-09-01, 18-10-01 & 13-11-01.

2. The article of charged framed against said Sri Bhupen Kalita was in brief as follows :

" That the said Sri Bhupen Kalita, EDBPM, Sandha BO in a/c with Milampur SO now under put off duty while he was working as such accepted the amount of SB/RD deposits on different dates tendered by the respective depositors to credit the amount of deposits into the SB a/c No. 4401039 and RD a/c No. 550913, 550666 and 550748. The said Sri Bhupen Kalita made necessary entries of the deposits in the concerned pass books with his dated initial against every entry and put BO date stamp impression on the space provided for. But the said Sri Bhupen Kalita failed to credit the amount of deposits into Govt. account and it was not reflected in the concerned BO daily a/cs, SB/RD journal and BO a/c Book.

✓ By the above act, the said Sri Bhupen Kalita violated Rule-131(3) and 174(2) of the rules for Branch Offices (sixth Edition, 2nd print) corrected upto 31-03-1982 and thereby he failed to maintain absolute integrity and devotion to duty in contravening Rule-17 of P&T, EDA(conduct & services) Rules, 1964."

3. The Presenting Officer produced the following listed documents as annexed in the Annexure-III of the charge sheet on 21-08-2001 and after examination of such documents by the charged official with the assistance of his defence assistant the documents were brought to the inquiry and these have been marked as hereunder :

- (1) Sandha BO SB pass book in r/o SB a/c No. 4401039, RD a/c No. 550666, 550913 & 550748 marked as Exh- S1(i), S1(ii), S1(iii) and S1(iv) respectively.
- (2) Sandha BO SB journal from 09-10-91 to 14-12-98 - Exh. S(2)
- (3) Sandha BO RD journal from 01-02-99 to 30-12-98 - Exh. S(3)
- (4) Sandha BO a/c book from 01-11-97 to 30-11-99 - Exh. S(4)
- (5) Sandha BO dairy a/cs dated 02-07-98, 03-08-98, 04-08-98, 22-09-98, 14-10-98, 11-11-98, 13-11-98, 23-11-98 & 07-10-98 - Exh. S.5(i) to S.5(ix) respectively.
- (6) Attested copy Milampur SO ledger copy in r/o SB a/c No. 4401039, RD a/cs No. 550666, 550913 & 550748 - Exh. S.6(i) to S.6(iv) respectively.
- (7) Attested copies of HO ledger in r/o SE a/c No. 4401039, RD a/c Nos. 550666 and 550913 - Exh. S.7(i) to S.7(iii)
- (8) Written statement of Sri Bhupen Kalita dtd. 24-03-99 - Exh. S.8
- (9) Written statements of S/Sri Lohit Kalita, Debendra Barman, Anil Kalita and Umesh Kalita. - Exh. S.9(i) to S.9(iv) respectively

Copy of the documents at Sl.8 and 9 above were provided in the request of the charged official. There was no request for any additional document or additional witness either from charge official or from prosecution side.

4. The disciplinary authority proposed the following witnesses to be produced as per the list of witnesses as annexed in Annexure-IV of the charge sheet.

1. Md. N.H. Laskar, SDI(P), Nalbari West Sub Dn.
2. Sri Dharma Kanta Kalita, O/S Mail, Nalbari
3. „ Girindra Ch. Kalita, Offig, BPM, Sandha BO
4. „ Lohit Kalita, vill & PO- Sandha }
5. „ Debendra Barman, -do- } all are depositors.
6. „ Anil Kalita, -do- }
7. „ Umesh Kalita, -do- }
- 8.

Out of the above witnesses, S/Sri Lohit Kalita, Debendra Barman and Umesh Kalita could not be produced by the prosecution inspite of allowing them three chances.

5. The summary outlines of the examination in chief of each prosecution witness and the result of cross examination are as under :

(i) PW-1, Sri Girindra Ch. Kalita the offig, BPM, Sandha BO in his examination in chief has stated that the O/S Mail recorded written statements of Sri Bhupen Kalita, the charged official and three other depositors namely Sri Lohit Kalita, Debendra Barman and Anil Kalita in his presence and he witnessed the statements which were furnished personally by themselves. The PW-1 confirmed in the single question of the Defence Asstt. that the written statements were written by the persons themselves.

(ii) PW-2 Sri Dharma Kanta Kalita, O/S Mails, Nalbari in his examination in -chief has categorically stated that during the absconding period of the charged official he had verified the past works of Sri Bhupen Kalita and found some deposits as mentioned in the Memo of charge and imputation thereof were not credited to Govt. account, while he contacted the concerned depositors, they had stated that non credited amount of deposits were made over by them to the charged official on different dates. The depositors in their written statements clearly stated that the amount of deposits in question were duly entered in their pass books by putting the initial of Sri Bhupen Kalita the BPM and affixing the date stamp impression of Sandha BO on the space provided for. The PW-2 when contacted the charged official on 24-03-99 had admitted the fact and assured him to credit the non-credited amount which the charged official had subsequently credited to Govt. The charged official in his written statement furnished on 24-03-99 in presence of the PW-2 admitted that the amount that were not credited to Govt. account was misappropriated due to his economic distress. The PW-2 was not crossed examined from Defence side on any point. On clarification sought from Inquiring Authority, the PW-2 confirmed that the amount of non-credited deposits were not entered in the required BO records like BO journal, BC daily accounts nor the amount accounted for in book of BO account of Sandha BO on the concerned dates.

(iii) PW-3. Shri Anil Kalita the depositor of Sandha BO RD a/c No 550666 in his examination in -chief clearly admitted that he personally tendered the amount of deposits to Shri Bhupen Kalita BPM Sandha BC along with his pass book and the said Sri Kalita returned his pass book after being duly entered the amount of deposit on the dates concerned under his initial and by affixing the office stamp of Sandha BO. He also admitted that the BPM filled the Pay in slip almost in all occasion. The defence side simply ascertained the occupation of the PW-3 and whether received the amount subsequently.

PW-4 Sri N.H. Laskar, SDI(P), Nalbari West Sub Division stated that during verification of past works of the charged official he ascertained that the amount of deposits in most of the accounts mentioned in the charge sheet were not credited to Govt. account nor such deposits were reflected in the related branch office records on the concerned dates though the amounts of deposits were duly entered in depositor's pass books. In a cross question the PW-3 clarified that on examination of the BO SB journal and Sub Office records he confirmed the non credit of a sum of Rs. 4000/- deposited on 04-08-98 in Sandha BC SB a/c No. 4401039 though in his written statement the depositor Sri Umesh Kalita did not mention the amount categorically.

6. The Presenting Officer in his written arguments submitted on 24-11-2001 pleaded that as all the prosecution witnesses who were examined in the inquiry in their examination in chief have stated that the amount of deposits mentioned in the statement of imputation were duly made to Sri Bhupen Kalita who was functioning as BPM Sandha BO on the dates concerned and as such deposits were duly entered in the respective pass books, but not found accounted for in BO accounts of Sandha BO nor these have been entered in other BO records, the charge framed against Sri Kalita is established beyond any doubt. The PO further stressed that attendance of the remaining 3 (three) prosecution witnesses viz- Sri Umesh Kalita, Lohit Kalita and Debendra Barman was not insisted upon as the nature of irregularities are same. Moreover, the PW-2, Sri Dharma Kanta Kalita admitted that the written statement of the said witnesses were collected by him and the signature /contents were of their own.

7. The charged official in his written brief dated 19-12-2001 submitted that the brief furnished by the Presenting Officer is completely a photocopy of the charge sheet and the Presenting Officer failed to prove the charges. Prosecution also failed to produce three listed public witnesses even after adjournment thrice for which the written statements of these prosecution witnesses could not be authenticated to be true. Further in his brief the charged official pointed out that the only public witness Sri Anil Kalita during inquiry has stated that he did not prepare and place the pay-in-slip (SB-103) for the deposits and without such essential documents the transaction can not be termed as SB/RC deposits. The PW-1 also admitted receipt of his money in full. The charged official also denied his written statement (Exh.S.8) of his own as the prosecution did not prove it in the inquiry. He further denied receipt of the amount of deposits mentioned in the charges for which he did not enter them in BO account and BO journal. He even denied that he impressed the office date stamp against the entries of the deposits. He also highlighted that the office functioned in a public house free enterable to all. The charged official states that the amount involved was far below of his security money and nothing remains due either to the Govt. or to any public. He admitted that omission and commission can not be ruled out as the office was situated in a place worst effected by flood and insurgency. That he worked as BPM Sandha BO for a period of 21 years 8 months and 9 days from 01-05-77 till his date of put off in 20-01-99.

8. I have gone to the details of the charges framed against the charged official based on the statement of imputation of misconduct or misbehaviours, documentary and oral evidence produced and observed the demeanour of the witnesses examined and come to the conclusion that the following points will be the determining factors in finding out the facts in as much as the charges leveled against the charged official.

- (i) Whether the charged official functioned in the capacity as EDBPM, Sandha BC on the date of deposits of the non-credited amount in respect of the SB/RC accounts mentioned in the charges, imputation of misconduct or misbehaviours as well.
- (ii) Evidence(s) that may establish that the amount of deposits had been tendered to the charged official.

- (iii) Evidence(s) which can establish that the amount of such deposits have been credited to Govt account.
- (iv) Evidence(s) which will establish that the amount of deposits on the dates concerned were not reflected in the concerned records of the Branch Office as required under the provisions of the rules for Branch Post Offices.

9. My discussion on the analysis and assessment of the evidence (both documentary and oral) against each point of determination are as under :-

- (i) The prosecution though did not try at any stage the fact that the charged official was functioning as EDBPM, Sandha BO on the date of occurrence of the cases of non credits of the amount of deposits, the documentary evidences Exh. S.8 and S.9 the written statement of the charged official as well as the written statement of the depositor's concerned produced to the inquiry, secondly the depositions of the PW-1, PW-2 and PW-4 confirmed that the charged official worked in Sandha EDBO in the capacity as BPM On the dates of occurrence as such.
- (ii) The Disciplinary Authority produced the depositor's pass books (S-1(i), S-1(ii), S-1(iii) & S-1(iv) and their written statements 5-9(i) to (iv) and all the depositors of the involved SB/RD accounts were listed as the prosecution witness. Out of 4 (four) such witnesses, the PW-3 namely Sri Anil Kalita depositor of RD account No. 550666 was examined cross examined in the inquiry. From the documents (S-1) it transpires that there found the entries of the deposits duly initiated and authenticated by the impression of Sandha BO. The PW-3 in his examination in-chief has clearly stated that he had personally (except few occasion) deposited the amount of deposits to the charged official along with the pass book of his account no. 550666 and in turn the charged official returned the pass book after being entered the deposits in the same by authenticating such entries putting the initial of the charged official and affixing the date stamp impression.

The Presenting Officer argued in his written brief dtd. 24-11-01 that production of other three prosecution witnesses being the depositors of SB a/c no. 4401039 RD a/c no. 550913 & RD a/c no. 550748 was not insisted further considering the similar irregularities with the a/c no. 550666. Moreover, the PW-2 in his examination in-chief admitted that the written statements of such defaulting witness have been written and signed in his presence. The defence stressed on the point of non production of concerned pay-in-slip (SB-103) and opines that with a pay-in-slip no transaction can be called as SB/RD deposits. The contention of the defence in this score can not be accepted as they did not say anything in the oral inquiry nor they demanded for the document (SB-103) as additional documents to probe it in favour of them. The above objection raised by the defence in written brief in my opinion can be ruled out as this has been clarified in the examination of PW-2. Sri Dharma Kanta Kalita who has clearly stated that he had personally contacted the depositors who in turn had stated the amount of deposits were tendered to the charged official and these were duly entered in their pass books by putting initial of BPM. Sri Bhupen Kalita and affixing office date stamp in token having accepted the amount of deposits. The charged official in his written statement dtd. 28-03-99 obtained by PW-2 in presence of Sri Girindra Ch. Kalita (PW-1) had categorically admitted that he committed the irregularities in the accounts mentioned in the charge sheet and assured to credit the amount involved. The charged official in his brief has completely denied his written statement (S-8) and alleged that the prosecution failed to prove it during inquiry. In this score I find that the charged official is a literate person and he rendered a considerable period of service in the capacity as EDBPM Sandha BO. He had furnished the written statement dtd. 28-03-99 in presence of two independent witness particularly Sri Dharma Kanta Kalita, O/S man and Sri Girindra Ch. Kalita, EDC who were examined and crossed examined in the inquiry and from their examination it proved that (S-8) was duly written and signed personally by the charged official.

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As such denial of the charged official is completely ruled out. The purpose of the inquiry is mainly to have the opportunity by the charged official to prove that he is free from the charges leveled against him. As such it was the burden of the charged official to prove that his written statement (S-8) was not of his own.

From my above discussion relied on the evidences brought in the inquiry it is held that the concerned depositors tendered the amounts of deposits to the charged official on the concerned dates.

(iii) From the Exhs. S-4, i.e. the Branch Office account book and the Exh.-5(i) to 5(iv) the daily as it proves that the amount of deposits mentioned in charge sheet was not accounted for in the Govt account. The depositions of the PW-2 and PW-4 are also relied upon to establish it.

(iv) Examined the documents marked as S-2, S-3 and S-5 and found that there is no entry of the deposits mentioned in the memo of imputation of misbehaviours. The examination of the PW-2 and PW-4 has also confirmed that the deposits have not been reflected in the said B.O. records.

The charged official in his brief denied that the date stamp impressions on the pass-books were not made by him and he pleads that his office functioned in a public hall free enterable to all. I have gone through the rules in this behalf (Rule-11 of the rules for BOs) and find that the BPM is solely responsible for safe custody of stamp and seals of the office. As such simple denial can not make the charged official free of the responsibilities. In other words, the charged official admit in his brief by saying - "the office is situated in a worst place by flood and insurgency, so the omission and commission can not be ruled out."

Findings :- I find, after careful examination of documentary & oral evidences that have been produced before me and in view of the reasons derived after thread-bare discussion as narrated in the foregoing paras violation of the provision of rules-131(3) and 174(2) of the rules for Branch Offices Sixth Edition corrected upto 31-03-82 is attributable on the charged official and thereby it is proved beyond any reasonable doubt that the charged official failed to maintain absolute integrity and devotion to duty as required under Rule-17 of P&T EDAs(conduct & services) Rules, 1964. Thus, the charge leveled against said Sri Bhupen Kalita is proved.

Dated. Nalbari the 31st December, 2001

Signature
(L.K. BARMAN)
Inquiring Authority
& ASPCs(HQ)
O/o the Supdt. of Pos
Nalbari Barpeta Divn.
Nalbari-781335

10.

The Director of Postal Services (HQ)
Assam Circle, Guwahati, Meghdoot Bhawan,
Guwahati-781001.

Sub : Disciplinary proceeding against me under Rule-8 of
the EDA (conduct and service) Rules 1964-submission
of written representation.

Respected Sir,

I have the honour to refer to your communication No.
Inv/Misc-4/2000 dtd. 13.6.2003 where in I was directed to
submit my written representation against the report of the
inquiry officer enclosed to the above communication.

With due respect and submission, I beg to place
before your goodself the following text of my representation
on the subject noted above for favour of your kind perusal.
Over all study of the connected documents with your own
observation in the matter.

That sir, I being on ED BPM had no knowledge of
rule-8 proceedings and the technicalities to be adopted as
per rules for defending myself in the hearing of the
proceedings in the interest of reasonable opportunity and
natural justice. Incidentally, I nominated one defence
assistant in the case but unfortunately he could not
function to the extent I desired.

1. That sir, the charge and allegation framed against
me under the SPO's/ Nalbari memorandum No.FI-4/SB/A/98-99
dtd. 22-09-1999 does not indicate the period of my
incumbancy and apparently the same was not specific but
framed in a hurry without proper assessment of the fact. The
allegation and the charge indicate about non-credit of the

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amount of deposits on the due dates as shown in the S.B. and R.D. accounts but contrarily in sub-para (ii) of para 5 of the I.O.'s report, it was opin by the I.O. that the amounts not credited, were mis-appropriated by me which is not at all acceptable and I hold that this is an unfortunate affairs on my part to suffer a redundant remark against me by the I.O., I am thus led to think that the I.O. was not free from bias and vindictiveness.

2. That sir, the I.O. did not consider the point that in the preliminary hearing, I denied the charge and allegation which implied that my statement dtd. 24.03.1999 obtained by the O/S mails and shown as a listed document in the annexure, consequently stands denied. But my intension to be heard in person in the proposed inquiry was not fulfilled as I was not given a single scope to reply to any question the I.O.

3. That sir, my statement dtd. 24.03.1999 marked Ext-S8 was not my own because at that stage I had no stable mental condition after having been released from my abduction, whatever I wrote in my statement was as per vasion of the O/S mails.

The entire situation prevailed around my family was tense and penicky, but my controlling officer viz SPOS/Nalbari did not take any steps as a remedy on my report of kidneping.

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4. That sir, in the exercise of the proceedings I was not given reasonable opportunity for myself examination as witness either by my D.A. or by the I.O. as a matter of scope, for which my points and arguments in the matter remain suppressed. My written statement dtd. 24/03/1999 was also not tested and had it been done I could focus the truth. Secondly in the annexure-II of article of charge No. 1, the aggregate amount comprising of the uncredited individual deposits of concern dates, comes to Rs. 5300/- but the SDI (P) Nalbari West collected and deposited a sum of Rs. 2000/- (two thousand) only vide ACG-67 receipt No. 94 of book No. GH 5743 dtd. 23/6/1999 on account of non credited amounts in S.B./R.D. accounts. This was not clarified by the I.O. during enquiry. It is thus evident that the controlling authority i.e. SPOS/Nalbari brought allegation against me without proper study and assessment of what was the facts and what not.

It is a fact that the depositors of SR/RD accounts have no claims to be settled as yet in the matter. Hence by virtue, the allegation drawn against me is not sustainable in it's entirely.

5. That sir, the O/S mails collected statements from the depositor numbering 4(four) as a formality only but the statements S/S Umesh Kalita, Nabanita Kalita and Debendra Barman were not testified by oral evidence which tends to

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show that they had no claim over the amount of deposits shown in SB a/c No. 4401039, RD a/c numbers 550913 and 550748 respectively. Now it can be safely concluded that the respective amount of deposits were not tendered to me though their entries were made in the pass books by me inadvertently.

6. That sir, as regards non credit of the deposits, I beg to state that, the allegation of non credit of amounts in SB/RD accounts relates to the year 1998 and at this stage I have forgotten the whole facts and situations although the relative pass books were produced to me as exhibits of the proceedings. My DA also did not note down or obtained xerox copies of the pass books to be made available now for my preparation of representation. The Sandha B.O. is situated in a rural place where under some extenuating circumstances the respective entries under allegation might have been made in the SB/RD accounts without collecting the amounts from the depositors and pass books were returned accordingly to the parties. Had there been pay-in-slips duly filled and tendered by the depositors in respect of the individual deposits, I could detect my mistake at the close of the counter work, and in absence of above records the respective deposit did not find place in the BO SB/ RD journed, BO daily a/cs and B.O account Book.

7. It is a fact that during the period some adverse situations occurred in my family affairs for which my mental

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set up got unstable and it was likely that I, might commit some unintentional mistake in my performance.

7. That sir, I had no evil intension either to defraud the Department or the depositors by inviting troubles for me as my duty salary is only source of my family maintenance.

8. That sir, there is no further claim or complain by the depositors in the matter and that the allegation brought against me is the singular incidence in my long performance of 21 years of unblamish service in the Department.

That sir, during the period of my put off duty I suffered big set back socially, financially and in the line of education of my children besides during the period I could not maintain the minimum standard of living in the society. As my TRCA was not sufficient to maintain my domestic affairs including the education of my children.

That sir, I have no other source of income and at this age I am not find out any job or perform hard labour for revival of my family and I am fully dependent on the existing amount of my compensation.

Under circumstances and facts, and yourself being the Daniel of Judgement I fervently pray to your honour to be kind enough to consider the above points very sympathetically and on humanitarian ground by exonerating me

from the perview of charge and thereby lend me a scope for my survival in the society alongwith my family members.

For this blissful act of kind consideration I shall remain ever grateful .

Faithfully yours,

Bhupen Kalita

(Bhupen Kalita)

ED BPM, Sandha (U.P.D)

Date : 12-07-2003

**DEPARTMENT OF POSTS
OFFICE OF THE CHIEF POSTMASTER GENERAL
ASSAM CIRCLE: GUWAHATI:781001.**

NO. Inv. Misc-4/2000.

Dated the 8th Sept'2003.

It was proposed to take action against Shri Bhupen Kalita, GDS BPM (under put-off duty) of Sandha EDBO in a/c with Milanpur SO under Rule-8 of P&T EDAs (Conduct & Service) Rules, 1964 vide the SPOs Memo No. F1-4/SB/A/98-99 dated 22.9.99. The article of charges framed against Shri Kalita and the statement of imputation of misconduct or misbehaviour in support of the article of charges was communicated to Shri Kalita along with the said Memorandum.

2. The charges framed against the said Shri Kalita were as under.

"That the said Shri Bhupen Kalita EDBPM Sondha BO in a/c with Milanpur SO now under put-off duty while working as such accepted the amounts of SB/RD deposits on different dates tendered by the depositors to credit the amounts into their SB A/c No. 4401039, and RD a/c No. 550913, 550666 and 550748. The said Shri Bhupen Kalita made necessary entries of the deposits in the related Pass books with his dated initial against every entry and put the BO Date stamp impression on the space provided for. But the said Shri Bhupen Kalita failed to credit the amount of deposits into the Govt. account nor the same were entered in the SB/RD journal, BO Account Book as well as the BO Daily Account of the dates of deposits.

By the above act, the said Shri Bhupen Kalita violated Rule 131(3) and 174(2) of the Rules for Branch offices and thereby failed to maintain absolute integrity and devotion to duty contravening the Rule 17 of P&T EDA (Conduct & Service) rules, 1964."

3. The said Shri Bhupen Kalita submitted his written Statement of defence on 8.10.99. He did not either admit or deny, the charges specifically and clearly. As such, oral inquiry was ordered and Shri T. D. Saha, SDI(P), Pathsala was appointed as the Inquiry Officer to inquire into the charges and submit report vide the SPOs Memo No. F1-4/SB/A/98-99 dated 11.11.99.

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4. The Inquiry officer held the preliminary hearing of the case on 20.01.2000 at Milanpur PO. The charged Official appeared before the I.O. stated the facts and circumstances of the case without spelling out clearly whether he admitted or denied the charges. The I.O. concluded the hearing interpreting wrongly that the charged official admitted the charges and submitted his inquiry report on 7.3.2000 with findings of the charges as proved. On examination of the Inquiry report the findings of the I.O. were considered unacceptable due to the fact that the charged official did not expressly and categorically admitted the charges. Hence, the case was remitted to the I.O. back for inquiry afresh from the stage of the preliminary hearing. Shri L.K.Barman, ASP(HQ), O/o the SPOs, Nalbari was appointed as the I.O. in place of Shri T.D. Saha vide the Memo No.F1-4/SB/A/98-99 dated 14.5.01.

5. The I.O. held the preliminary inquiry afresh on 31.7.01. The charged official appeared before the I.O. and pleaded not guilty. As such, the I.O. held further detail inquiry on 21.8.01, 19.9.01, 20.9.01, 18.10.01 & 13.11.01. The charged official participated on all the dates of inquiry with his Defence Assistant and given all the reasonable opportunities to present and defend his case. The I.O. submitted his Inquiry report on 31.12.2001 with findings that the charges leveled against the said Shri Bhupen kalita are proved.

The report and the findings of the I.O. in brief are discussed Below:-

The documentary evidences marked as Ex-S/8 and S/9 i.e. the written statement of the C.O. and the depositor of RD A/C No.550666 (PW-3) and from the depositions of other witnesses (PW-1 and PW-2), there is no dispute that the charged official worked in the capacity of the BPM of Sandha BO on the dates of occurrence of SB/RD transactions mentioned in the charges. From the Pass Books marked as Exh.S/1(I) to S/1(iv), it transpires that the deposits mentioned in the charges were entered in the Pass books under initial by the charged official and impressed with Sandha BO Date stamp. The depositor of RD A/c No.550666 (PW-3) deposed that he personally deposited the amount of deposits along with the Pass Book to the C.O. who returned the Pass Book to him after making entry of the deposited amount therein. In his deposition Shri Dharma kanta kalita (PW-2) clarified that all other depositors of SB/RD a/cs mentioned in the charges stated before him that the amount of deposits was tendered by them to the charged official on the dates shown in the charges. The PW-2 also deposed that the written statement dtd. 24.3.99 (S/8) which was recorded by him was written and signed by the C.O. at his own.

From the BO A/c book (Ex-S/4) and the BO daily A/cs (exh-S/5(I) to S/5(iv), it is proved that the amount of deposits mentioned in the charges was not accounted for. The fact is also corroborated by the witnesses (PW-2 and PW-4) in their deposition. The documents marked as Exh-S/2, S/3 and S/5 prove that the deposits mentioned in the charges were not entered in those records. In view of the facts discussed above, the charges leveled against the said Shri Bhupen kalita are proved.

6. The SPOs, Nalbari who is the prescribed disciplinary authority in this case is not in position to decided the case and issue the order due to the fact that the charged official was initially appointed by the Sr. Supdt. of Post Offices (Group -A) who is higher in rank than the Supdt. of POs(Group -B), the present disciplinary authority. Therefore, the disciplinary case of the said Shri Bhupen kalita has been remitted to the undersigned for decision and order as per provisions in the rules.

7. The undersigned now being the Disciplinary authority accepted the IO's report and the findings tentatively and issued a show cause notice to the charged official along with a copy of the IO's report vide No. INV/Misc-4/2000 dtd. 13.6.03 directing him to submit representation in writing if any against the findings of the I.O. within 15 days of receipt of the notice. The charged official received the notice on 6.7.03 and submitted his representation on 12/7/03 . I have perused the representation of the charged official carefully. He has put forth the following points in the representation for consideration and to justify exoneration him of the charges.

- i) That, being an ED official, he had no knowledge of the technicalities in Rule-8 proceeding for which he could not defend himself in the hearings. His Defence Asstt. also unfortunately could not function to the extent he desired.
- ii). That, the charge sheet framed against him does not indicate the period of his incumbency and therefore not specific with regard to assessment of the fact.
- iii) That, the allegation about non-credit of the amounts of deposits in the charge sheet contradicts with the observation of the I.O in para 5(ii) of his Inquiry report in which the I.O. opined that the amounts were not credited but misappropriated by him which

is a redundant remark made by the I.O. out of biasness and vindictiveness towards him.

- iv) That, the I.O. did not consider the fact that his denial of the charges in the preliminary hearing implied that his statement dtd. 24.3.99 recorded by the O/S mails and listed in the charge sheet as a document in support of the charges was not sustainable.
- v) That, his desire to be heard in person was not fulfilled as he was not given a single scope to reply to any question of the I.O.
- vi) That, his statement dated 24.3.99(Exh-S/8) was not of his own because he had no stable mental condition at that stage after having been released from his abduction and whatever written therein was as per version of the O/S mails.
- vii) That, he was not given the opportunity to be examined himself as witness either by the DA or the I.O. for which he could not get the scope to testify his written statement dated 24.3.99 to focus the truth.
- viii) That the amount of non-credited deposits has been shown as Rs.5300/- in the statement of the imputation (Annexure-II). But the SDI(P), Nalbari collected an amount of Rs.2000/- only as recovery from him on 23/6/99. This was not clarified by the I.O. during the inquiry.
- ix) That the depositors of the SB/RD accounts mentioned in the charge sheet have not claims. Hence, the allegations against him is not maintainable.
- x) That the statements of S/Shri Umes kalita, Nabanita kalita and Debendra Barman recorded by the O/S Mails were not testified in the inquiry and thereby it could not be established the charges that the amount for deposit in SB A/c No.4401039, RD A/c 550913 and 550748 was tendered to him by the said depositors.

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- xii) That, under some extenuating circumstances, the deposits might have been entered in the Pass books without collecting the amount from the depositors, since no pay in slips were received against the deposits, the question of making entry in the BO SB/RD journal, BO Account book, BO Daily account did not arise.
- xiii) That he had no any evil intention to defraud the department. He might have committed the mistake on account his unstable and disturbed mind then prevailing due to adverse situation and trouble in his family for which he seeks sympathy and exoneration from the charges so that he can get a scope for his survival with his family members.

8. I have perused the records of the proceeding and examined the exhibits very carefully to examine the points/arguments raised by the charged officials and record the observations as under:-

- i) The ED officials are governed by the P&T EDA (Conduct j& Service) Rules, 1964 and this condition is categorically mentioned in the appointment letter. The charged official can not take plea of his ignorance of the rules and seek leniency. As regards the Defence Assistants' inability to assist him up to desired level, the Disciplinary authority or the I.O. has nothing to do in it since the nomination and retention of the Defence Assistant is the prerogative of the charged official. Therefore, the plea of the charged official as stated in the para 7(i) above is not maintainable.
- ii) The charged official inspected the documents viz SB/RD pass book, BO account Book for the period from 1.11.9777 to 30.1.99, BO SB/RD journals for the period from 1.2.97 to 30.12.98 during the inquiry held on 21.8.01. He accepted the genuineness of the documents and the entries made by him therein. It speaks the truth that he was working as the BPM Sandha BO during the days/period of the SB/RD transactions mentioned in the charges. The IO in his report vide the Para 9(i) clarified that the documentary evidences produced in the inquiry confirmed the fact that the charged official worked as the BPM Sandha BO on the dates

mentioned in the charge sheet. Moreover the charged official himself has admitted in his written Brief that he worked as the BPM Sandha from 1.5.77 to 20.1.99. This settles the dispute over the incumbency in the post of BPM, Sandha. The absence of mention about the period of his incumbency in the charge sheet does not change the basic fact nor does it attract any procedural lapse. The contention of the charged official as stated in the para 7(ii) above is therefore not maintainable.

iii) In para 5(ii) of the Inquiry report, the I.O. observed that the charged official in his written statement dated 24.3.99 had admitted the non credit of the amount of SB/Rd deposits which were misappropriated by him due to economic distress. The IO's observation was based on the records and I do not consider it to be bias or vindictive towards the charged official. Therefore the argument of the charged officials as made in the para 7(iii) does not succeed.

iv) As the charged official denied the charges during the preliminary hearing held on 31.7.01, the I.O. held the detailed oral inquiry and heard in person. The I.O. arrived at his conclusion of the findings not merely on the basis of the written statement dtd. 24.3.99 (Exh.S/8) but on the basis of the evidences adduced by the oral and other documentary proofs. Hence the Charged official's statement dtd. 24.3.99 recorded by the O/S mail is not the deciding factor as thought to be by him and stated as in para 7(iv) above.

v) Perusal of the records of the proceeding does not show that the charged official was denied of the reasonable opportunity to defend himself at any stage of inquiry. The charged official on his own did not take the opportunity to submit his defence statement or requested the I.O. to examine himself in his own behalf as a witness of defence. Under this circumstances, the I.O. got no scope to examine the charged official. Therefore, I do not consider that the argument raised in the para 7(v) above has any ground to suggest that the inquiry was vitiated by procedural lapse.

vi) As per the depositions of Shri Dhama Kanta Kalita (PW-2) and Shri Girindra Ch. Kalita (PW-1) recorded by the I.O. on

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the day of the inquiry held on 20/9/01, the charged official has written his statement on 24.3.99 9Exh-S/8) himself and signed before the said PW-2 in presence of the PW-1. While cross examining the witnesses by the Charged official the contention to the fact that the version of the said statement was of the O/S Mail (PW-2) could not be established. It is hard to believe that the Charged Official would have signed the statement which was against him under any circumstances. I do not therefore consider the contention of the C.O. as in the Para 7(vi) above to be & acceptable.

vii) The contention of the charged official made in the para 7(vii) above is not maintainable for the reasons already discussed in the para (v) above.

viii) In the statement of imputations the amount of non credited deposits is shown as Rs.5500/- in 1 SB and 3 RD a/cs together, but not Rs.5300/- as stated by the C.O. The IO's job was to find out the fact whether the deposits shown against the said a/cs were credited to Govt. Account or not. The amount of Rs.2000/- recovered from the charged official on 23.6.99 was not the subject matter to be inquired into. So the I.O. did not go on this aspect and considered it necessary to clarify on this on his own. So the point raised as in the para 7(iii) above does not help the C.O to find fault in the I.O's report.

ix) The deposition of Shri Anil Kalita (PW-3) holder of Sandha BO RD A/c No.550666 testifies that the deposits of Rs. 600/- in his account made on six different dates were accepted by the charged official and entered in the relative pass book. But such deposits have not been found accounted for in the BO Account nor entered in the BO SB/RD journal. Similar modus operandi was also perpetrated in other 3 accounts mentioned in the charge sheet as revealed from the documents produced during the inquiry. The charges framed against the charged official were based on these facts. Settlement of claims of the depositors concerned is an administrative action and dealt with separately. This aspect has no relation with the facts of the charges. Hence, the contention of the charged official as in the para 7 (ix) above to the fact that the allegations against him are not

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maintainable in absence of the claims of the depositors can not be accepted.

x) The statements of the depositors of SB a/c No.4401039 and RD a/c No. 550913 and 550748 were recorded by the O/S mail Shri Dharma_Kanta_kalita who was examined as the PW-2. Though the depositors of the said a/cs were summoned to give evidence in the inquiry, they did not appear for which the statements signed by them on 25.3.99 and 5.4.99 (Exh.S/9(I) ,S/9(ii) & S/9(iv) could not be testified. However this does not negate the evidences adduced from the relative pass books which reflect the amount of deposits as mentioned in the charges but unaccounted for as per the BO Account Book, BO SB/RD journals (Exh-S/2,S/3 & S/4). This fact could not be refuted by the charged official. So, the assertion of the Charged official as made in the para 7(x) above has no force.

xi) The depositor of RD a/c No.550666(PW-3) while depositing before the I.O. stated that the charged official prepared the pay -in-slips for the deposits made in his account on his request and tendered the amount of deposit on the dates as entered in the pass book. Hence, it is hard to believe the contention of the CO that he might have entered the amount of deposit in the pass book without collecting the amount from the depositor and also he did not make the entries in the BO Account book, BO SB/RD journal due to non receipt of the pay in slips for the deposits. Such omission could have occurred once but not several occasions that too in the same accounts. Therefore, I do not find the argument/reasons given by the C.O. as in the para 7(xi) above acceptable.

xii) In the last the CO states that he might have committed the mistakes due to his disturbed mind then he was possessing due to troubles in his family and seeks sympathy and exoneration. The charged official while working as the BPM was responsible to account for the public money honestly and sincerely. In no circumstances, the public money can be misused or utilized other wise by the Govt. servant. The charged official not only failed to account for the SB/RD deposits accepted from the depositors, but also did not

maintain the records of the transactions in the BO SB/RD journal which speaks of his evil intention and lack of integrity I do not see that the grounds stated by the charged official in the para 7(xii) deserves consideration for sympathy in view of the nature of offence committed by him.

9. The pass books of SB A/c No.4401039 and RD a/c No. 550913, 550666 and 550748 produced and examined in the inquiry clearly show that the amount of deposits on the under mentioned dates was entered in those pass books by the charged official while he was functioning as the BPM of Sandha EDBO.

| A/C No. | Depositor | Date of deposit | Amount of deposit. |
|---------------|-----------------|---|--|
| 1. SB 4401039 | Umesh Kalita | 4.8.98 7.10.98 | 4000.00 200.00 4200.00 |
| 2. RD 550913 | Nabanita Kalita | 11.11.98 | 300.00 |
| 3. RD 550666 | Anil kalita | 2.7.98 3.8.98 4.8.98 22.9.98 24.10.98 23.11.98 | 100.00 100.00 100.00 100.00 100.00 100.00 600.00 |
| 4. RD 550478 | Debendra Barman | 13.11.98 13.12.98 | 200.00 200.00 400.00 |

The entries in the pass books (Exh.S/1(I) to S/1(iv) were authenticated under initial by the charged official and impressed with the BO date stamp. But those transactions were not accounted in the BO Account Book (Exh-S/4) nor corresponding entries were made in the BO SB/RD journal (Exh-S/2 & S/3) as required under Rule 131(3) & 174(2) of the Rules for BOs. The above amount of deposits were not evidently credited to the Govt. exchequer but misappropriated by the charged official. The oral evidences recorded by the IO corroborate the facts. The charged official could not disprove the evidences and refute the charges. I therefore fully agree with the findings of the I.O. and hold that the charges leveled against the said Shri Bhupen kalita are proved beyond reasonable doubt.

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10. Misappropriation of the Govt. money by the Govt. servant is a serious offence. The charged official by the said acts displayed lack of absolute integrity and devotion to duty and thereby violated the Rule 17 of P&T EDA(Conduct & Service) Rules,1964 which he was supposed to adhere being a Govt. servant entrusted with the duty of handling the Govt. money. No leniency is affordable in such grave offence.

In view of the observations made above and as a deterrent to others not to indulge in such crime, the case is disposed of with the orders as passed under.

O R D E R

I, Shri V. C. Roy, Director of Postal Services(HQ) Assam Circle, Guwahati hereby order that Shri Bhupen Kalita, EDBPM Sandha (under put off duty) be removed from service with immediate effect.



(V. C. Roy)

Director of Postal Services(HQ)
Assam Circle, Guwahati:781001.

To

**Shri Bhupen Kalita
EDBPM, Sandha (under put-off duty)
Via Milanpur SO (Nalbari)**

To,

The Chief PMG, Assam Circle, Guwahati.

Dated Sondha the 6/11/2003.

Respected Sir,

With due and humble submission the appellant begs to state that, the Sudt. of POS Nalbari - Baroeta Division, Nalbari under his memo No. F1-4/SB/A/98-98 dtd. 22/9/1999 (copy enclosed in annexure-I) proposed to take action against the appellant while he was working as ED Bpm of Sondha E.D. B.O. under Rule 8 of P & T EDAS (conduct and service) Rules 1964 with the charges framed against him on the basis of a statement of imputation which will be available in the enclosure-1 as mentioned above.

That sir, the disciplinary authority viz the DPS (HQ) Assam Circle, Guwahati who happened to be the disciplinary authority of the appellant, imposed upon the appellant the penalty of removal from service vide his memo No. Inv. Misc-4/2000 dtd. 8/9/2003 (copy enclosed as annexure-II).

That sir, the humble appellant was highly aggrieved on receipt of the order of penalty as it will adversely effect the morality as well as, the domestic management of the appellant who served the department as ED Bpm without any stigma or bad records since 1-5-77 to 20-11-99 and at this stage your appellant has no other source or opportunity to get a job for his survival.

Contd...2

In this connection a copy of defence statement dtd. 12/7/2003 submitted to the disciplinary authority is enclosed herewith for favour of your reconsideration of the points put forth in the same under your gracious and humanitarian observations.

It is pointed out that the aggregate amounts of non-credit of deposits in Sondha B.O. SB A/C No.2201039 and RD A/c No. 550913, 550666 and 550748 come to Rs. 5500/- (Five thousand five hundred) only and that the entire amounts of Rs. 5500/- was collected from me by the O/S mails/Nalbari subsequent to the assurance of the case. But unfortunately the fact of recovery of the entire amount remained suppressed in the allegation.

It is the humble contention of the appellant that the aforesaid amount remained withheld personally owing to some unavoidable and extenuating situation which were humbly explained in his defence statement, but the disciplinary authority did not consider this point sympathetically for providing a scope to the appellant and as such the penalty awarded is taken as harsh one. The appellant may be permitted to point out that although the original charge was for misappropriation in fact, it was a temporary withholding of the amount involved, which subsequently credited in full.

Contd....3

That sir, the case against the appellant took a longer course of time for which the appellant has been suffering a lot in maintenance of his family as well as the education of the minor children and at this stage the appellant has no other source or for the survival in the society.

In the above facts, it is humbly requested that the case of the appellant would be graciously judged by your goodself on humanitarian ground and on special consideration for the future of his minor children by retaining the appellant in the service for which all assurances of honest and better performance is given and that the appellant will remain ever grateful in future, and the effect of the penalty order dtd. 8/9/03 imposed by the DPS (HQ) may kindly be kept abeyance till disposal of this appeal.

Yours faithfully,
Bhupen Rabha

Copy to :

The DPS (HQ) Assam Circle, Guwahati for favour of information and requested kindly to stay his penalty order dtd. 8/9/03 till disposal of this appeal.

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

NO. STAFF/9-36/2003.

Dated the 21st April 2004.

Appellate Order

Shri Bhupen Kalita the appellant, EX-GDS BPM, Sondha EDBO in Nalbari Division was charge sheeted under Rule-8 of P&T EDA (Conduct & Service) Rules, 1964 vide the SPOs, Nalbari Memo No. F1-4/SD/A/98-99 dtd. 22.9.99 on the basis of the following allegations.

"That the appellant while working as EDBPM of Sondha EDBO failed to credit the amount of deposits accepted from the depositors of SB a/c No. 4401039, RD a/cs No. 550913, 550666 and 550 748 on different dates during 4.8.98 to 13.12.98, in the Govt. account apart from not recording these transactions in BO SB/RD journal book and BO account Book. Thereby the appellant violated Rule-131(3) and 174(2) of the Rules for Branch offices. It is alleged that by the said acts the appellant failed to maintain absolute integrity and devotion to duty in contravention of Rule 17 of P&T EDA (Conduct & Service) Rules, 1964".

2. The appellant in his written statement of defence dated 8.10.99 denied the charges. The Disc. authority therefore appointed an Inquiry Officer to enquire into the charges and submit report on findings. After concluding the oral inquiry the I.O. submitted his Inquiry Report on 31.12.2001 with findings of the charges being proved on evidences adduced during the inquiry. As the SPOs, Nalbari was not competent to take decision of the case on the ground that the appellant was appointed by the SSPOs, Guwahati (Group- A), the case was forwarded to the Circle Office, Guwahati for decision by the DPS, in terms of statutory provisions.

3. The DPS(HQ), O/o the Chief PMG, Assam Circle, Guwahati issued a show cause notice to the appellant vide No. INV/Misc-4/2000 dtd. 13/6/2003 supplying a copy of the IO's report along therewith with direction to submit representation if any against the report and findings of the

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within 15 days. The appellant submitted his representation on 17.4.2003. The Disc. authority considered his representation and decided the case on merit vide No. Inv/Misc-4/2000 dated 8.9.2003 issuing a order of removal of the appellant from Service . Being aggrieved, the appellant has preferred the present appeal dtd. 6.11.03.

4. There is no record to show on which date the appellant received the disc. order dated 8.9.03. The appeal was dated as 6.11.03 and received on 11.11.03. The appeal is obviously time-barred. However, I have decided to consider the appeal to meet the end of justice. The appellant has raised the following points and facts in his appeal and prayed for setting aside the punishment order.

- i) That the punishment order will adversely affect the morality as well as the domestic management of the appellant who has rendered service to the department as EDBPM from 1.5.77 to 20.11.99 without any stigma or bad records and at this stage the appellant has no other opportunity to get a job for his survival.
- ii) That a copy of the defence statement dtd. 12.7.03 is enclosed for favour of reconsideration of the points put forth therein on humanitarian ground.
- iii) That the entire amount of deposits of Rs.5500/- which was not credited in respect of Sondha BO SB A/c No.2201039 and RD A/cs No.550913,550666 and 550748 was recovered from the appellant subsequently by the O/S Mail, Nalbari. But this fact was suppressed in the charges brought against him.
- iv) That the appellant had to withhold the credit of the aforesaid amount due to some unavoidable and extenuating situation as explained in his defence statement. But the Disc. authority did not consider this point sympathetically and awarded a harsh penalty.
- v) That the charge leveled against the appellant was for misappropriation, but in fact it was case of temporary withholding of the amount involved, which was subsequently credited in full.

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vi) That the case against the appellant took long time for which the appellant had to suffer a lot in maintenance of his family as well as education of the minor children.

In the penalty-mate para of the appeal, the appellant prays for consideration of his case on humanitarian ground and considering the future of his school going children.

5. I have carefully considered the points raised in the appeal by the appellant taking into account the facts of the case, records of proceeding, I.O's findings and Disc. order and my views and observations are recorded below.

- i) The appellant could not disprove that he was not involved as primary offender to defalcate the amount of deposits in SB/RD accounts to the tune of Rs.5500/- as mentioned in the charge sheet. The documentary evidences go against him. Defalcation of Govt. Money while holding a responsible post in the Department/ Govt is breach of trust and a serious offence entailing exemplary punishment. The Disc. Authority took this in view while passing the Disc. order. The appellant's plea for leniency on his domestic ground of past good service can not be considered to be a strong ground to interfere with the Disc. order.
- ii) In his written representation dtd. 12/7/03 to the Disc. authority, the appellant while submitting against the findings of the I.O. raised that the charge sheet was not based on proper assessment of the facts, the I.O. was biased, the appellant was denied of reasonable opportunity to defend his case and some other points not relevant to the charge sheet. The Disc. authority discussed the whole points raised by the appellant in the Disc. order dtd. 8.9.2003 vide para 8(i) to 8(xii). I do not find any new facts and ground to differ with the views and observations of the Disc. authority.
- iii) I have considered the other points raised by the appellant as at para 4(iii) to 4(vi) above. The reasons put forth by the appellant do not sound convincing to dilute the offence committed by him. It has been proved that the appellant defalcated the amount of deposits of Rs.5500/- in a number of SB/RD accounts which was

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Copy to:

1-2)

The SPOs, Nalbari w.r.t. his No.F1/A&P/03-04 dated 11.12.03. The Copy of the order for the appellant is enclosed here. This may be delivered to the appellant under acknowledgement and forward the acknowledgement to CO for record.

3)

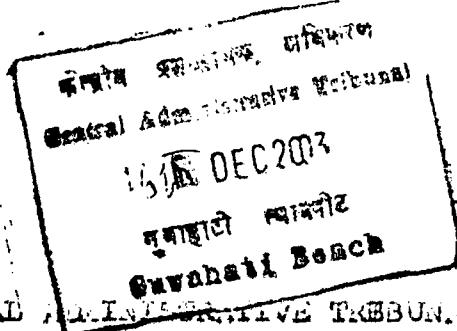
Appeal/Petition(Staff) Section, C.O. Guwahati.

4)

Office copy.

For Chief Postmaster General,
Assam Circle, Guwahati-781001.

24/12/03
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWALI BENCH



ORIGINAL APPLICATION NO. 285 2003

In between

Sri Bhupen Kalita applicant

Versus

Union of India

- represented by the Cabinet Secretary
Dept. of Communication(Posts)

Bikaneer House, Sahjahan Road, New Delhi
and others

..... Respondents.

LIST OF DATES/SYNOPSIS

| Sl. No. | Particulars | Annexure | page |
|---------|--|----------|---------|
| 01. | Applicant was appointed as <u>Asstt. on 18.6.07</u> | A | 15 |
| 02 | Applicant was charge sheeted on 22.9.99 | B | 16 - 18 |
| 03 | Applicant submitted W.S dt. 3.10.1999 | C | 19 - 20 |
| 04 | Enquiry report dt. 13.6.03 is submitted to the Respondent no. 4 | D | 21 - 26 |
| 05 | The applicant submitted representation dt. 12.7.03 | E | 27 - 32 |
| 06 | Respondent no. 4 issued the removal order dt. 8.9.03 against the applicant | F | 33 - 42 |
| 07 | Applicant preferred an appeal before the Respondent no. 2 | G | 43 - 45 |

Filed by

Ms. Tripti Dhar Das.
Advocate.

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

ORIGINAL APPLICATION No. /

In between

Sri Bhupen Kalita

-Versus-

Union of India

Represented by the Cabinet
Secretary dept. of
Communication (Posts)
Bikaneer House, Sahjahan
Road, New Delhi & Others.

List of Dates/Synopsis

| Sl. No. | Particulars | Annexure | Page No. |
|----------------|--------------------|-----------------|-----------------|
| 01 | Application | | 1 — 13 |
| 02 | Verification | | 14 |
| 03 | Annexure - 'A' | | 15 |
| 04 | Annexure - 'B' | | 16 — 18 |
| 05 | Annexure - 'C' | | 19 — 20 |
| 06 | Annexure - 'D' | | 21 — 26 |
| 07 | Annexure - 'E' | | 27 — 32 |
| 08 | Annexure - 'F' | | 33 — 42 |
| 09 | Annexure - 'G' | | 43 — 45 |

Filed by
Mrs. Tripti Dhara Das
Advocate.

Bhupen Kalita

XO

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH**

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

O. A. No. 285/03

Filed by the applicant
through Tripti Dhar Das
Ms. Advocate

IN THE MATTER OF :

Sri Bhupen Kalita

S/o. Late Golak Kalita,

Resident of Vill.- Sondha,

P.O.- Sondha,

Dist.- Nalbari, Assam.

..... Applicant.

-Versus-

1. Union of India

Represented by the Cabinet
Secretary,

Dept. of Communication (Posts)

Bikaneer House, Sahjahan
Road, New Delhi.

2. The Chief Post Master
General,

Assam Circle, Guwahati.

3. The Director Postal
Services (HQ)

Assam Circle, Guwahati-1.

Bhupen Kalita

4. The Superintendent of
Post Office,
Nalbari- Barpeta Division,
Nalbari-781335

..... Respondents.

DETAILS OF APPLICATION :-

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

The application is directed against the following order:

(a) Order issued under Memo No.9w.Misc.4/2000

dt. 08-09-2003 by the Director of Postal Services(HS)

Assam Circle

whereby the applicant was punished with the punishment of 'Removal' from service with immediate effect.

2. JURISDICTION:

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

3. LIMITATION:

The applicant also declares that the present application is within the limitation period as has been prescribed under Sec.21 of the Administrative Tribunal Act.1985.

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4. FACT OF THE CASE:

(A) That the applicant is a citizen of India and is a permanent resident of Sondha, Nalbari and as such entitled to the rights and privileges guaranteed under the Constitution of India and laws framed thereunder.

(B) That the applicant hails from a poor agriculturist family of vill. Sondha, Nalbari district, Assam. He passed H.S.L.C. examination in the year 1977 from Pathsala High School and due to financial hardship he couldn't prosecute his studies and searched for an employment. Accordingly, the applicant applied against an advertisement for the work of extra Departmental Branch Post-Master (EDBPM) of Sondha, EDBO and after a due process, the applicant was appointed as EDBMP at Sondha EDBO wide memo No. A/X-118/EDBPM dt. 18-06-1997 on a monthly allowances of Rs.81.30 without A.T. & I.R.

In the said appointment letter it has been mentioned that the service and conduct of Sri. Bhupen Kalita would be govern by P & TED Agents Service & conduct Rules 1964.

A copy of the appointment letter dt. 18-06-1977 is

Bhupen Kalita

filed hereto and marked as

ANNEXURE- 'A'.

(C) That the applicant while he was working as EDBPM Sondha B.O. was charge sheeted for his alleged failure of maintaining absolute integrity and acted in contravention of Rule 17 of EDA conduct & Service Rules 1964. The statement of article of charges framed against the applicant are as follows:-

"That the said Sri Bhupen Kalita EDBPM, Sondha BO in a/c with Milanpur. So now under put off duty while he was working as such accepted the amounts of SB/RD deposits on different dates tendered by the respective depositors to credit the amounts of SB/RD deposits on different dates tendered by the respective depositors to credit the amounts of deposit into the SB a/c No.4401039 and RD a/c's No.550913, 550666 and 550748. The said Sri Bhupen Kalita made necessary entries of the deposits in the concerned Pass Books with his dated initial against every entry and put BO date stamp impression on the space provided for. But the said Bhupen Kalita failed to credit the amounts of deposit into Govt. account and it was

Bhupen Kalita

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reselected in the concerned BO daily a/c
SB/RD journal and BO account book. *

By the above act, the said Sri Bhupen Kalita violated Rule-134(3) and 174(2) of the rules for branch offices sixth edition (2nd reprint) corrected upto 31-03-1982 and thereby he failed to maintain absolute integrity and devotion to duty in contranining Rule 17 of P & T EDA (Conduct & Service) Rules 1964.)

A charge-memo No.F1-4/SB/98-99 dt. 22-09-1999 along with Article of charges, statement of imputation of misconduct etc. issued by thye Respondent 4 was communicated to the applicant. The applicant was already put under suspension/put off from duty vide order No. F1-4/SB/A/98-99 dt. 20-01-1999.

A copy of charge-sheet memo No.F1-4/SB/98-99 dt.22-09-1999 is annexed herewith as ANNEXURE- 'B'.

(D) That on the aforesaid charges a disciplinary proceeding was initiated under Rule 8 of EDA Conduct & Service Rule, 1964 and Mr. T.D. Saha, SDI(P), Pathsala, was appointed as the

Bhupen Kalita

Inquiry Officer to inquire into the charges and submit report vide the SPO's Memo No.F1-4/SB/A/98-99 dt. 11-11-1999. On examination of the enquiry report the findings of the I.O. were considered unacceptable due to the fact that the charged official didn't expressly and categorically admitted the charges. Accordingly, the case was remitted to the I.O. back for inquiry afresh from the stage of the preliminary hearing and Sri L.K. Barman, ASP(HQ) O/o the SPO's, Nalbari was appointed as the place of Shri T.D. Saha vide the Memo No.F1-4/SB/A/98-99 dt.14-05-2001

(E) That the applicant submitted a written brief dated 08-10-1999 contending ^{the} _{inter-alia} that the allegations labeled against him in the article of charges No.1 was unfounded and liable to be dropped, on the established fact that the applicant did nothing in contravention of Rule 17 of the EDA Conduct and Service Rules, 1964 and he all along mentioned absolute integrity.

Regarding the charge of violation of Rule 131(3) and 174(2) of Rules for branch offices it was contended that Rule 131(3) & 174(2) of Rule for branch offices bear the

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procedure for maintenance of Branch Office account and the items to be recorded in the account. However, it isn't clarified by the I.O. during the inquiry why the SDI(P) Nalbari collected an amount of Rs.2,000/- only as recovery from the applicant on 23-06-1999 although in the annexure-11 of article of charge No.1, the uncredited amount comes to Rs.5,500.00 in S.B./R.D. accounts.

A copy of the written brief submitted by the applicant dt. 08-10-1999 is annexed herewith as **ANNEXURE- 'C'**.

(F) That ultimately the departmental proceeding against the applicant ended and the enquiry officer submitted his report to the Respondent No.4 and a copy of the same is sent to the applicant asking to submit a representation in writing if any against the findings of the I.O. within 15 days.

A copy of the Enquiry report dt. 13-06-2003 is annexed herewith as **ANNEXURE- 'D'**.

Bhupen Kalita

(G) That the applicant begs to state that the charge and allegation framed against the applicant under the SPO's Nalbari memorandum No.F1-4/SB/A/98-99 dt.22-09-1999 is without proper assessment of the fact. However, the applicant admitted in his representation dt. 12-07-2003 that being an EDBPM, he had no knowledge of rule 8 proceedings and the technicalities to be adopted as per rules for defending himself in the hearing of the proceeding in the interest of reasonable opportunity and natural justice.

A copy of representation dt. 12-07-2003 is annexed herewith as ANNEXURE- 'E'.

(H) That the applicant begs to state that without giving a single scope to be heard in person in the proposed inquiry, the enquiry officer submitted his report to the Respondent No.3 who as disciplinary authority vide order issued under Memo No.Imw. Misc 4/2000 dt. 08-09-2003 held that the imputations of charge as framed against the applicant stand proved and gave punishment of "Removal" from service with immediate effect.

Bhupen Kalita

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A copy of the removal order dt. 08-09-2003 is annexed herewith as

ANNEXURE- 'F'.

(I) That thereafter, your humble applicant preferred an appeal before the Respondent No. 2, the Chief Post Master General, Assam Circle, Guwahati on 06-11-2003 with a prayer to reconsider the whole fact on humanitarian ground but the appellate authority has remained silent till-date.

A copy of an appeal dt. 06-11-2003 is annexed herewith as **ANNEXURE- 'G'**.

(J) That the applicant submits that he wasn't held liable for any misappropriation of public money and charges purportedly proved against him don't entail the major punishment of removal from service.

(K) That the applicant has been serving as extra-Departmental Assistant of the postal department since 1977 in this office with full satisfaction to the authority. At this stage, such type of allegation against the applicant without proper assessment and

Bhupen Kalita

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having been punished with removal from service has been seriously effected his livelihood.

- (L) That the applicant begs to state that the impugned action of the Respondents is violative of Art.14, 19, 21 and 311 of the Constitution of India.
- (M) That the applicant submits that there is no other alternative remedy and the relief sought herein if granted would be just, proper and adequate.
- (N) That the applicant is filed bonafide and for ends of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

- (1) For that the action of the Respondents are malafide and illegal with a motive behind and as such the impugned order is liable to be set aside and quashed.
- (2) For that there is gross violation of the principles of natural justice as the disciplinary proceeding against the applicant took very long time for which his whole family has been suffering a lot.

It is stated here that the applicant was under suspension/put off from duty vide

Bhupen Raylied

order dt. 20-01-1999 and the charge-sheet was issued by the Respondent No.4 almost after 9 months.

(3) For that the enquiry officer testified only ^{as witness} one ~~one~~ depositor, out of 4 depositor by oral evidence and O/s mails collected statements from the other depositors only for ~~family~~ formality.

(4) For that, the disciplinary authority as per Rule 9, Conduct & Service Rule 1964, ought to pass the final order within period ~~from~~ 45 days to 120 days.

(5) For that by the impugned orders the authorities have sanctioned away the livelihood of the applicant in the most capricious manner without appreciating the material on record with proper prospective.

(6) For that the impugned order cause great hardship and injustice to the applicant.

(7) For that in any view of the matter the orders impugned are liable to be set aside and quashed.

6. DETAIL OF REMEDY EXHAUSTED:
That there is no other alternative and efficacious remedy available to the applicant except invoking

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the jurisdiction of this Hon'ble Court under Section 19 of the Administrative Tribunal Act, 1985.

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

The applicant further declares that they hasn't filed any application, writ petition or suit in respect of the subject matter of the instant application before any other Court authority or any other bench of this Hon'ble Tribunal nor any such, application, writ petition or suit is pending before any of them.

8. RELIEF PRAYED FOR:

Under the facts and circumstances stated above in this application the applicant prays for the following reliefs:

- i) Setting aside order of 'Removal' from service issued by the Respondent No.4 under Memo No.F.
- ii) Directing the Respondents to re-instate the applicant in the post of E.O.BPM at Sandha E.D.B.O and to pay the arrear and regular monthly emoluments.
- iii) Costs of the case.

Shukrem Khatua

9. INTERIM ORDER:—

9. Pending final decision of this application the applicant seeks issue of the interim order directing the Respondent not to fill up the post of EDBPM, Sondha B.P.O.

10. APPLICATION IS FILED THROUGH ADVOCATE:

11. PARTICULARS OF I.P.O.:

I.P.O. No.: 116387319

Date of Issue: 12/12/2003

Issued from: G.P.O. Guwahati.

Payable at:

12. LIST OF ENCLOSURES:

As stated in Index.

Bhupen Borkak

VERIFICATION

I, Sri Bhupen Kalita, S/o. Late Golok Kalita, R/o. Sondha, District Nalbari, aged about 43 years working as extra Departmental Post-Master, Sondha, Nalbari, Dist. Nalbari do hereby verify that the contents of paragraphs 1, 2, 4 (A to H), 7, 8 my personal knowledge and paragraphs 3, 5 (A to Z), 6 — Believed to be true on legal advice and I haven't suppressed any material facts.

Date:

Place: Guwahati

Bhupen Kalita

Signature

INDIAN POSTS AND TELEGRAPH DEPARTMENT.
OFFICE OF THE SR. SUPERINTENDENT OF POST OFFICES.
KALGUP DIVISION: GAUHATI :781001.

Memo No:- A/x-115/EDP&FM Dated Gauhati the, 18-6-1970

Shri. Bhupen Chandra Kalita son of Shri/late.....
Chandran Kalita.....of village
Bardha underp.s is provisionally
appointed as EDBPM/E.D.B.O with effect from
1-5-77.....E.A.R, A/N subject to satisfactory verification
of character and ntecedants on a monthly allowance of Rs. 81.75/-
(Rupees eighty one rupees
paise.....without L.I and I.R.

The conduct and service of Shri. Bhupen Ch. Kalita
will be governed by the posts and Telegraphs EDA (Conduct and
Service) Rules 1964.

Ed/-
Sr. Supdt. of Post Offices.
Kamrup Division, Gauhati -
781001.

Copy to: -15 The Postmaster, Gauhati/Barpeta H.O for information and necessary action. He will kindly confirm whether security promissory note has been received from the official and fidelity is on record.

① 2. The I.P.Os Gauhati /West/East/ Nalbari/ Barpeta/ Rangia
 for information w.r.t his letter no. A.D. 1988-89
 dtd. 26.6.88
 3. O/S mails. Nalbari N.D.W. Line
 4. Shri. Bhupen Chakraborty, S.D.B.P.I. Sardha, Bo
 5. EST file. (Nalbari)
 6. Sparc. 66/

Sr. Supdt. of Post Offices.
Kamrup Division, Gauhati -
City 781001.

A. K.

T. D. D₁₃

DEPARTMENT OF POSTS : INDIA

OFFICE OF THE SUPDT. OF POST OFFICES : NALBARI BARPETA DIVISION

NALBARI-781535

Supt. of Post Office

Nalbari Barpeta District

Memo No. F1-4/SB/NAK/99 Dated at Nalbari 22-9-99

MEMORANDUM

1. The under-signed proposed to hold an inquiry against Shri Bhupen Kalita..... under rule 8 of P&T EDA (Conduct and Service) Rule, 1964. The substance of imputation of misconduct or misbehaviour is set out in the enclosed statement of articles of charges (Annexure-I). A statement of imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which and a list of witness by whom the articles of charge are proposed to be sustained are also enclosed (Annexure-III) & Annexure-IV).
2. Shri Bhupen Kalita..... 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, specially admit or denied each article of charge.
4. Shri Bhupen Kalita..... is further informed that if he does not submit his written statement of defence on or before the specified in para 2 above or does not appear in person before the inquiry authority or otherwise fails or refuse to comply with the provision of Rule 8 of P&T EDA (Conduct & Service) Rule, 1964 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 Shri Bhupen Kalita..... is invited to rule 25 of P&T EDA (Conduct & Service) Rule, 1964 under which no employee shall bring or attempt to bring any political or other 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 other person in respect of any matter dealt within these proceeding, it will be presumed that Shri Bhupen Kalita..... 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 25 of P&T EDA (Conduct & Service) Rule 1964.
6. The receipt of the memorandum may be acknowledged.

श्री अधिकारी नलबारी बरपेता
Superintendent of Post Offices
Nalbari Barpeta Division

Nalbari-781535

Nalbari Barpeta District

To,

Regd/AD: Shri Bhupen Kalita..... Nalbari-781535En Bpon/Scdha Bv (Up)ma. McNamara Sc...

T.D.P.

Statement of article of charge framed against Sri Bhupen Kalita EDBPM, Sondha BO in a/c with Milanpur SO now under put off duty under Rule-8 of P&T EDA (Conduct and service) Rules, 1964.

Article : I

That the said Sri Bhupen Kalita EDBPM, Sondha BO in a/c with Milanpur SO now under put off duty while he was working as such accepted the amounts of SB/RD deposits on different dates tendered by the respective depositors to credit the amounts of deposit into the SB a/c No. 4401039 and RD a/cs No. 550913, 550666 and 550748. The said Sri Bhupen kalita made necessary entries of the deposits in the concerned pass books with his dated initial against every entry and put BO date stamp impression on the space provided for. But the said Sri Bhupen kalita failed to credit the amounts of deposit into Govt. account and it was not reflected in the concerned BO daily a/c SB/RD journal and BO account book.

By the above act, the said Sri Bhupen Kalita violated Rule-131(3) and 174 (2) of the rules for branch offices sixth edition(2nd reprint) corrected upto 31-03-1982 and thereby he failed to maintain absolute integrity and devotion to duty in contravening Rule 17 of P&T EDA (conduct & service) Rules, 1964.

ANNEXURE II

Statement of imputation of misconduct or misbehaviour in support of the article of charge framed against Sri Bhupen Kalita EDBPM, Sondha BO in a/c with Milanpur SO now under put off duty under Rule-8 of P&T EDA (conduct and service) Rules, 1964.

Article : I

That the said Sri Bhupen kalita EDBPM, Sondha BO in a/c with Milanpur SO while was working as such accepted the deposits from the respective depositors who tendered the amount of deposits to credit into their SB/RD a/cs in respect of the following a/cs on the dates and amount shown against each account:

| Sl.No. | Account No. | Name of the depositor | Date of deposit | Amount of deposit which were not credited |
|--------|-------------|-------------------------|-----------------|---|
| 1. | SB/4401039 | Sri Umesh Kalita | 04-08-98 | 4000.00 |
| | | | 07-10-98 | 200.00 |
| 2. | RD/550913 | Sri Nabanita Kalita | 11-11-98 | 100.00 |
| | | | 11-11-98 | 100.00 |
| 3. | RD/550666 | Sri Anil Kalita | 11-11-98 | 100.00 |
| | | | 02-07-98 | 100.00 |
| 4. | RD/550748 | Sri Sri Debendra Barman | 03-08-98 | 100.00 |
| | | | 04-08-98 | 100.00 |
| | | | 22-09-98 | 100.00 |
| | | | 24-10-98 | 100.00 |
| | | | 23-11-98 | 100.00 |
| | | | 13-11-98 | 200.00 |
| | | | 13-12-98 | 200.00 |

500.00

The said Sri Bhupen Kalita entered the above amounts of deposit in the concerned pass book duly putting his initial against the entries of deposit impression with BO date stamp against every entry and extracted balance of the pass book, but he did not enter the above said entries in the BO daily a/cs SB/RD journal and BO a/cs book of the concerned dates and thus he failed to credit the amount into Govt account.

By the above act, the said Sri Bhupen Kalita violated Rule 131(3) and 174 (2) of the rules for branch offices sixth edition (2nd reprint) corrected upto 31-03-82 and thereby he failed to maintain absolute integrity and devotion to his duty in contravening Rule-17 of P&T EDA (conduct & service) Rules, 1964.

ANNEXURE- III

List of documents by which the article of charge framed against Sri Bhupen Kalita EDBPM, Sondha BO (now UPD) in a/c with Milanpur SO are proposed to be sustained.

Article : I

1. Sondha BO SB pass book against a/c no. 4401039, RD pass book against no. 550666, 550913 and 550748.
2. Sondha BO SB journal with entry from 09-10-97 to 14-12-98 = 1 (one) book.
3. Sondha BO RD journal with entry from 01-02-97 to 30-12-98 = 1 (one) book.
4. Sondha BO a/c book with entry from 01-11-97 to 30-01-99 = 1 (one) book.
5. Sondha BO daily a/cs dtd. 02-07-98, 03-08-98, 04-08-98, 22-09-98, 24-10-98, 11-11-98, 13-11-98, 23-11-98 & 07-10-98.
6. Milanpur SO A/L/C in r/o SB a/c no 4401039, RD a/c no. 550666, 550913 and 550748.
7. Nalbari HO A/L/C in r/o SB a/c no. 4401039, RD a/c no. 550666 and 550913.
8. Written statements of Sri Bhupen Kalita dtd. 24-03-99 obtained by SDI(P) Nalbari.
9. Written statements of Sri Lohit Kalita, Sri Debendra Barman, Sri Anil Kalita and Sri Umesh Kalita (all depositor).

ANNEXURE- IV

List of witnesses by whom the article of charge framed against Sri Bhupen Kalita EDBPM, Sondha (UPD) in a/c with Milanpur SO proposed to be sustained.

1. Md. N.H. Laskar, SDI(P) Nalbari (W).
2. Sri Dharma kanta Kalita, O/S mails Nalbari.
3. Sri Girindra Ch. Kalita, Offg. BPM, Sondha.
4. Sri Lohit Kalita, Sri Debendra Barman, Sri Anil Kalita and Sri Umesh Kalita all depositors of village Sondha.

(G.G.SINGHA)
Superintendent of Post Offices

TO,

-19-

8/8

The Supdt. of Post offices, Nalbari-Barpeta,
Division, Nalbari.

Dated at Sondha, the 8th Oct/99.

Ref:- Your No. F-4/SB/Mis/98-99 of 22/9/99.

Sir,

With reference to your above cited letter, I beg to lay before you the following few lines for favour of your kind perusal and consideration so that I may kindly be exempted from the charge of rule-131(3) and 174(2) of the rules for 6th edition (2nd reprint) connected upto 31/3/92 and rule 17 of P & P&T Ad conduct and service rules 1964.

That sir, I am said by your honour that I made all necessary entries of the deposits in the concerning P/Book and Rd. books with my initial against every entry and put the DD date-stamp impression at the space provided for and alleged that I failed to credit the amounts of deposits into govt Accounts etc in respect of the a/cs as noted below:-

| <u>A/C No.</u> | <u>Name of Depositor</u> | <u>Amount</u> | <u>Dt. of deposit</u> |
|----------------|--------------------------|---------------|-----------------------|
| 1. SB/4401039 | Sri Umesh Kalita | Rs. 4,000/- | 4/8/98 |
| SB/4401039 | -do- | Rs. 200/- | 7/10/98 |
| 2. Rd/550915 | Sri Naba Kt. Kalita | Rs. 100/- | 11/11/98 |
| | | Rs. 100/- | 11/11/98 |
| | | Rs. 100/- | 11/11/98 |
| 3. Dr/550666 | Sri Anil Kalita | Rs. 100/- | 2/7/98 |
| | | Rs. 100/- | 3/8/98 |
| | | Rs. 100/- | 4/8/98 |
| | | Rs. 100/- | 22/9/98 |
| | | Rs. 100/- | 24/10/98 |
| | | Rs. 100/- | 23/11/98 |
| 4. Rd/550748 | Sri Debendra Banman | Rs. 200/- | 18-11-98 |
| | | Rs. 200/- | 19-12-98 |

contd-2/-

T. D. Das

In this connection, I beg to state that no depositor in respect of P/Book or Rd A/Cs had attended my office bringing moneys by them selves or they did not fill up the pay in slips by them. All the depositors are my kith and kins and they sent their books through their agents to me for filling up the respective pay in slips without moneys. Sometimes the agents handed over the P/Book and Rd/Books at my home also. I made the entries in their p/b and books after filling the pay in slips by me. The agents had kept the books at my office through I requested the depositors take delivery of their books from my office giving the respective moneys but they did not do and still to-day I have not got these amounts from them. Generally they had handed over their dues after the collection of the sali Rice crops from the cultivated field.

I had for gotten to make entry in the Bojournal and Bo daily A/Cs as I had not got moneys from them and still I have not got any amount from them.

My wife was suffering from high-blood pressure accompanying heart attack resulting I had to spend a good of moneys at Gauhati for treatment on and on (from 1-8-93 to 15-12-98. My house hold affairs became like fishour of water. My mind went for the treatment of my wife.

Further, I beg to state that there happened a devastating blood in our area for 3 times. All of my paddy crops had astray and 3 cows had been taken away the current of the blood resulting all the members of my family had to last which was known to the villagers.

Under the above facts, I can truly say that I had not done any mistake willfully. So kindly consider my prayer sympathetically and kindly let the charge against me for which I shall be ever grateful to you.

Yours faithfully,

Bhupen Kalita

(Sri Bhupen Kalita)

EDBPM, Soncha BO (UPD)

Via- Milanpur.

Date

8/10/99

21

20

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

No. INV/Misc-4/2000

Dated at Guwahati the 13.6.2003.

To

Sandha

Shri Bhupen Kalita, EDBPM, Sandha B.O.
 (Now put off duty)
 via - Milanpur S.O.
 Dist. Nalbari(Assam)

Sub :- Disciplinary proceeding against Sri Bhupen Kalita, EDBPM, Sandha EDBO (Now put off duty)

The undersigned being the Disciplinary Authority in the case forwards herewith a copy of the enquiry report of the enquiry officer.

You are hereby asked to submit representation in writing if any, against the findings of the I.O. within 15 days of receipt of this communication to the undersigned.

If nothing is received from your end within the stipulated period, it will be presumed that you have nothing to represent and the case will be decided ex parte accordingly.

Enclo :- (As above)


 (V.C. Roy)
 Director of Postal Services(HQ)
 O/O the Chief Postmaster General,
 Assam Circle, Guwahati-781001.

T. D. D.

Inquiry Report on the inquiry held under Rule-8 of P&T, EDAs (conduct & services) Rules, 1964 against Sri Bhupen Kalita, EDBPM, Sandha BO in a/c with Milanpur SO now under put off duty.

1. Introduction :- I was appointed as Inquiring Authority vide SPOs, Nalbari Memo No. F1-4/SB/A/98-99 dtd. 14-05-2001 to inquire into the charges framed against Sri Bhupen Kalita, EDBPM, Sandha BO in a/c with Milanpur SO under SPOs, Nalbari Memo No. F1-4/SB/A/98-99. Sri Badal Das, SDI(P), Pathsala was appointed as Presenting Officer, to represent the case on behalf of the disciplinary authority. The charged official nominated Sri Narayan Chandra Mazumdar, Retd. Manager, PSD/Guwahati and it was allowed after due consideration of his entitlement. Accordingly a preliminary hearing of the case was held on 31-07-2001 in Divisional Office, Nalbari where both the charged official, Sri Bhupen Kalita and the Presenting Officer, Sri Badal Das were present. The charged official pleaded not guilty and denied the charges in full leveled against him. As such it was decided to hold oral inquiry. Following were the dates of regular hearing of the case held in the O/O the Superintendent of Post Offices, Nalbari and the charged official and his defence assistant participated the inquiry in all dates.

Dates :- 31-07-01, 21-08-01, 19-09-01, 20-09-01, 18-10-01 & 13-11-01.

2. The article of charged framed against said Sri Bhupen Kalita was in brief as follows :

" That the said Sri Bhupen Kalita, EDBPM, Sandha BO in a/c with Milanpur SO now under put off duty while he was working as such accepted the amount of SB/RD deposits on different dates tendered by the respective depositors to credit the amount of deposits into the SB a/c No. 4401039 and RD a/c No. 550913, 550666 and 550748. The said Sri Bhupen Kalita made necessary entries of the deposits in the concerned pass books with his dated initial against every entry and put BO date stamp impression on the space provided for. But the said Sri Bhupen Kalita failed to credit the amount of deposits into Govt. account and it was not reflected in the concerned BO daily a/cs, SB/RD journal and BO a/c Book.

✓ By the above act, the said Sri Bhupen Kalita violated Rule-131(3) and 174(2) of the rules for Branch Offices (sixth Edition, 2nd print) corrected upto 31-03-1982 and thereby he failed to maintain absolute integrity and devotion to duty in contravening Rule-17 of P&T, EDAs (conduct & services) Rules, 1964."

3. The Presenting Officer produced the following listed documents as annexed in the Annexure-III of the charge sheet on 21-08-2001 and after examination of such documents by the charged official with the assistance of his defence assistant the documents were brought to the inquiry and these have been marked as hereunder :

- (1) Sandha BO SB pass book in r/o SB a/c No. 4401039, RD a/c No. 550666, 550913 & 550748 marked as Exhts- S1(i), S1(ii), S1(iii) and S1(iv) respectively.
- (2) Sandha BO SB journal from 09-10-91 to 14-12-98 - Exht. S(2)
- (3) Sandha BO RD journal from 01-01-99 to 30-12-98 - Exht. S(3)
- (4) Sandha BO a/c book from 01-11-97 to 30-11-99 - Exht. S(4)
- (5) Sandha BO daily a/cs dated 02-07-98, 03-08-98, 04-08-98, 22-09-98, 24-10-98, 11-11-98, 13-11-98, 13-11-98 & 07-12-98 - Exht. S.5(i) to S.5(ix) respectively
- (6) Attested copy Milanpur SO ledger copy in r/o SB a/c No. 4401039, RD a/cs No. 550666, 550913 & 550748 - Exhts S.6(i) to S.6(iv) respectively.
- (7) Attested copies of HO ledger in r/o SE a/c No. 4401039, RD a/c Nos. 550666 and 550913 - Exht. S.7(i) to S.7(iii)
- (8) Written statement of Sri Bhupen Kalita on 24-03-99 - Exht. S.8
- (9) Written statements of S/Sri Lohit Kalita, Debendra Barman, Anil Kalita and Umesh Kalita - Exht. S.9(i) to S.9(iv) respectively

Master copy of the documents u/s 8 and 9 above were provided at the request of the charged official. There was no request for any additional document or additional witness either from charge official or from prosecution side.

4. The disciplinary authority proposed the following witnesses to be produced as per the list of witnesses as annexed in Annexure-IV of the charge sheet.

1. Md. N.H. Laskar, SDI(P), Nalbari West Sub Dn.
2. Sri Dharma Kanta Kalita, O/S Mail, Nalbari
3. .. Girindra Ch. Kalita, Offig BPM, Sandha BO
4. .. Lohit Kalita, vill & PO- Sandha }
5. .. Debendra Barman, -do- } all are depositors.
6. .. Anil Kalita, -do- }
7. .. Umesh Kalita, -do- }
- 8.

Out of the above witnesses, S/Sri Lohit Kalita, Debendra Barman and Umesh Kalita could not be produced by the prosecution inspite of allowing them three chances.

5. The summary outlines of the examination in chief of each prosecution witness and the result of cross examination are as under :

(i) PW-1, Sri Girindra Ch. Kalita the offig, BPM, Sandha BO in his examination in chief has stated that the O/S Mail recorded written statements of Sri Bhupen Kalita, the charged official and three other depositors namely Sri Lohit Kalita, Debendra Barman and Anil Kalita in his presence and he witnessed the statements which were furnished personally by themselves. The PW-1 confirmed in the single question of the Defence Asstt. that the written statements were written by the persons themselves.

(ii) PW-2 Sri Dharma Kanta Kalita, O/S Mails, Nalbari in his examination in -chief has categorically stated that during the absconding period of the charged official he had verified the past works of Sri Bhupen Kalita and found some deposits as mentioned in the Memo of charge and imputation thereof were not credited to Govt. account while he contacted the concerned depositors, they had stated that non credited amount of deposits were made over by them to the charged official on different dates. The depositors in their written statements clearly stated that the amount of deposits in question were duly entered in their pass books by putting the initial of Sri Bhupen Kalita the BPM and affixing the date stamp impression of Sandha BO on the space provided for. The PW-2 when contacted the charged official on 24-03-99 had admitted the fact and assured him to credit the non-credited amount which the charged official had subsequently credited to Govt. The charged official in his written statement furnished on 24-03-99 in presence of the PW-2 admitted that the amount that were not credited to Govt. account was misappropriated due to his economic distress. The PW-2 was not crossed examined from Defence side on any point. On clarification sought from Inquiring Authority, the PW-2 confirmed that the amount of non-credited deposits were not entered in the required BO records like BO journal BC daily accounts nor the amount accounted for in book of BO account of Sandha BO on the concerned dates.

(iii) PW-3. Shri Anil Kalita, the depositor of Sandha BO RD ac No 550666 in his examination in -chief clearly admitted that he personally tendered the amount of deposits to Shri Bhupen Kalita BPM Sandha BC along with his pass book and the said Shri Kalita returned his pass book after being duly entered the amount of deposit on the dates concerned under his initial and by affixing the office stamp of Sandha BO. He also admitted that the BPM filled the pay in slip almost in all occasion. The defence side simply ascertained the occupation of the PW-3 and whether received the amount subsequently.

PW-4 Sri N.H. Laskar, SDI(P), Nalbari West Sub Division stated that during verification of past works of the charged official he ascertained that the amount of deposits in no of the accounts mentioned in the charge sheet were not credited to Govt. account nor such deposits were reflected in the related branch office records on the concerned dates though the amount of deposits were duly entered in depositor's pass books. In a cross question the PW-3 clarified that on examination of the BO SB journal and Sub Office records he confirmed the non credit of a sum of Rs. 4000/- deposited on 04-08-98 in Sandha BC SB a/c No. 4401039 though in his written statement the depositor Sri Umesh Kalita did not mention the amount categorically.

6. The Presenting Officer in his written arguments submitted on 24-11-2001 pleaded that as all the prosecution witnesses who were examined in the inquiry in their examination in-chief have stated that the amount of deposits mentioned in the statement of imputation were duly made to Sri Bhupen Kalita who was functioning as BPM Sandha BO on the dates concerned and as such deposits were duly entered in the respective pass books, but not found accounted for in BO accounts of Sandha BO nor these have been entered in other BO records, the charge framed against Sri Kalita is established beyond any doubt. The PO further stressed that attendance of the remaining 3 (three) prosecution witnesses viz- Sri Umesh Kalita, Lohit Kalita and Debendra Barman was not insisted upon as the nature of irregularities are same. Moreover, the PW-2, Sri Dharma Kanta Kalita admitted that the written statement of the said witnesses were collected by him and the signature/contents were of their own.

7. The charged official in his written brief dated 19-12-2001 submitted that the brief furnished by the Presenting Officer is completely a photocopy of the charge sheet and the Presenting Officer failed to prove the charges. Prosecution also failed to produce three listed public witnesses even after adjournment thrice for which the written statements of these prosecution witnesses could not be authenticated to be true. Further in his brief the charge official pointed out that the only public witness Sri Anil Kalita during inquiry has stated that he did not prepare and place the pay-in-slip (SB-103) for the deposits and without such essential documents the transaction can not be termed as SB/RD deposits. The PW-1 also admitted receipt of his money in full. The charged official also denied his written statement (Exh.S.8) of his own as the prosecution did not prove it in the inquiry. He further denied receipt of the amount of deposits mentioned in the charges for which he did not enter them in BO account and BO journal. He even denied that he impressed the office date stamp against the entries of the deposits. He also highlighted that the office functioned in a public house free characterize to all. The charged official states that the amount involved was far below of his security money and nothing remains due either to the Govt. or to any public. He admitted that omission and commission can not be ruled out as the office was situated in a place worst effected by flood and insurgency. That he worked as BPM Sandha BO for a period of 21 years 8 months and 9 days from 01-05-77 till his date of put off in 20-01-99.

8. I have gone to the details of the charges framed against the charged official based on the statement of imputation of misconduct or misbehaviours, documentary and oral evidence produced and observed the demeanour of the witnesses examined and come to the conclusion that the following points will be the determining factors in finding out the facts in as much as the charges leveled against the charged official.

- i) Whether the charged official functioned in the capacity as BPM, Sandha BC on the date of deposits of the non-credited amount in respect of the SB/RD accounts mentioned in the charges imputation of misconduct or misbehaviours as well.
- ii) Evidence(s) that may establish that the amount of deposits had been tendered to the charged official.

(iii) Evidence(s) which can establish that the amount of such deposits have been credited to Govt account.

(iv) Evidence(s) which will establish that the amount of deposits on the dates concerned were not reflected in the concerned records of the Branch Office as required under the provisions of the rules for Branch Post Offices.

9. My discussion on the analysis and assessment of the evidence (both documentary and oral) against each point of determination are as under :-

(i) The prosecution though did not try at any stage the fact that the charged official was functioning as EDBPM, Sandha BO on the date of occurrence of the cases of non credits of the amount of deposits, the documentary evidences Exh. S.8 and S.9 the written statement of the charged official as well as the written statement of the depositor's concerned produced to the inquiry, ~~secondly the~~ depositions of the PW-1, PW-2 and PW-4 confirmed that the charged official worked in Sandha EDBO in the capacity as BPM On the dates of occurrence as such.

(ii) The Disciplinary Authority produced the depositor's pass books (S-1(i), S-1(ii), S-1(iii) & S-1(iv) and their written statements 5-9(i) to (iv) and all the depositors of the involved SB/RD accounts were listed as the prosecution witness. Out of 4 (four) such witnesses, the PW-3 namely Sri Anil Kalita depositor of RD account No. 550666 was examined cross examined in the inquiry. From the documents (S-1) it transpires that there found the entries of the deposits duly initiated and authenticated by the impression of Sandha BO. The PW-3 in his examination in-chief has clearly stated that he had personally (except few occasion) deposited the amount of deposits to the charged official along with the pass book of his account no. 550666 and in turn the charged official returned the pass book after being entered the deposits in the same by authenticating such entries putting the initial of the charged official and affixing the date stamp impression.

The Presenting Officer argued in his written brief dtd. 24-11-01 that production of other three prosecution witnesses being the depositors of SB a/c no. 4401039 RD a/c no. 550913 & RD a/c no. 550748 was not insisted further considering the similar irregularities with the a/c no. 550666. Moreover, the PW-2 in his examination in-chief admitted that the written statements of such defaulting witness have been written and signed in his presence. The defence stressed on the point of non production of concerned pay-in-slip (SB-103) and opines that with a pay-in-slip no transaction can be called as SB/RD deposits. The contention of the defence in this score can not be accepted as they did not say anything in the oral inquiry nor they demanded for the document (SB-103) as additional documents to probe it in favour of them. The above objection raised by the defence in written brief in my opinion can be ruled out as this has been clarified in the examination of PW-2. Sri Dharma Kanta Kalita who has clearly stated that he had personally contacted the depositors who in turn had stated the amount of deposits were tendered to the charged official and these were duly entered in their pass books by putting initial of BPM. Sri Bhrupen Kalita and affixing office date stamp in token having accepted the amount of deposits. The charged official in his written statement dtd. 28-03-99 obtained by PW-2 in presence of Sri Girindra Ch. Kalita (PW-1) had categorically admitted that he committed the irregularities in the accounts mentioned in the charge sheet and assured to credit the amount involved. The charged official in his brief has completely denied his written statement (S-8) and alleged that the prosecution failed to prove it during inquiry. In this score I find that the charged official is a literate person and he rendered a considerable period of service in the capacity as EDBPM Sandha BO. He had furnished the written statement dtd. 28-03-99 in presence of two independent witness particularly Sri Dharma Kanta Kalita, O/S male and Sri Girindra Ch. Kalita, EDC who were examined and crossed examined in the inquiry and from their examination it proved that (S-8) was duly written and signed personally by the charged official.

As such denial of the charged official is completely ruled out. The purpose of the inquiry is mainly to have the opportunity by the charged official to prove that he is free from the charges leveled against him. As such it was the burden of the charged official to prove that his written statement (S-8) was not of his own.

From my above discussion relied on the evidences brought in the inquiry it is held that the concerned depositors tendered the amounts of deposits to the charged official on the concerned dates.

(iii) From the Exhts. S-4, i.e. the Branch Office account book and the Exht.-5(i) to 5(iv) the daily as it proves that the amount of deposits mentioned in charge sheet was not accounted for in the Govt account. The depositions of the PW-2 and PW-4 are also relied upon to establish it.

(iv) Examined the documents marked as S-2, S-3 and S-5 and found that there is no entry of the deposits mentioned in the memo of imputation of misbehaviours. The examination of the PW-2 and PW-4 has also confirmed that the deposits have not been reflected in the said B.O. records.

The charged official in his brief denied that the date stamp impressions on the pass books were not made by him and he pleads that his office functioned in a public hall free enterable to all. I have gone through the rules in this behalf (Rule-11 of the rules for BOs) and find that the BPM is solely responsible for safe custody of stamp and seals of the office. As such simple denial can not make the charged official free of the responsibilities. In other words, the charged official admit in his brief by saying "the office is situated in a worst place by flood and insurgency, so the omission and commission can not be ruled out."

Findings :- I find, after careful examination of documentary & oral evidences that have been produced before me and in view of the reasons derived after threadbare discussion as narrated in the foregoing paras violation of the provision of rules-131(3) and 174(2) of the rules for Branch Offices Sixth Edition corrected upto 31-03-82 is attributable on the charged official and thereby it is proved beyond any reasonable doubt that the charged official failed to maintain absolute integrity and devotion to duty as required under Rule-17 of P&T EDAS(conduct & services) Rules, 1964. Thus, the charge leveled against said Sri Bhrupen Kalita is proved.

Dated. Nalbari the 31st December, 2001

(L.K. BARMAN)
Inquiring Authority
& ASPOs(HQ)
C/o the Supdt. of Pos
Nalbari Barpeta Divn.
Nalbari-781335

To,

The Director of Postal Services (HQ)
Assam Circle, Guwahati, Meghdoot Bhawan,
Guwahati-781001.

Sub : Disciplinary proceeding against me under Rule-8 of
the EDA (conduct and service) Rules 1964-submission
of written representation.

Respected Sir,

I have the honour to refer to your communication No.
Inv/Misc-4/2000 dtd. 13.6.2003 where in I was directed to
submit my written representation against the report of the
inquiry officer enclosed to the above communication.

With due respect and submission, I beg to place
before your goodself the following text of my representation
on the subject noted above for favour of your kind perusal,
over all study of the connected documents with your own
observation in the matter.

That sir, I being on ED BPM had no knowledge of
rule-8, proceedings and the technicalities to be adopted as
per rules for defending myself in the hearing of the
proceedings in the interest of reasonable opportunity and
natural justice. Incidentally, I nominated one defence
assistant in the case but unfortunately he could not
function to the extent I desired.

1. That sir, the charge and allegation framed against
me under the SPO's/ Nalbari memorandum No.FI-4/SB/A/98-99
dtd. 22-09-1999 does not indicate the period of my
incumbancy and apparently the same was not specific but
framed in a hurry without proper assessment of the fact. The
allegation and the charge indicate about non-credit of the

Contd...2

T.D.Pas.

amount of deposits on the due dates as shown in the S.B. and R.D. accounts but contrarily in sub-para (ii) of para 5 of the I.O.'s report, it was opin by the I.O. that the amounts not credited, were mis-appropriated by me which is not at all acceptable and I hold that this is an unfortunate affairs on my part to suffer a redundant remark against me by the I.O., I am thus led to think that the I.O. was not free from bias and vindictiveness.

2. That sir, the I.O. did not consider the point that in the preliminary hearing, I denied the charge and allegation which implied that my statement dtd. 24.03.1999 obtained by the O/S mails and shown as a listed document in the annexure, consequently stands denied. But my intension to be heard in person in the proposed inquiry was not fulfilled as I was not given a single scope to reply to any question ^{of} the I.O.

3. That sir, my statement dtd. 24.03.1999 marked Ext-S8 was not my own because at that stage I had no stable mental condition after having been released from my abduction, whatever I wrote in my statement was as per vasion of the O/S mails.

The entire situation prevailed around my family was tense and penicky, but my controlling officer viz SPOS/Nalbari did not take any steps as a remedy on my report of kidneping.

Contd....3

4. That sir, in the exercise of the proceedings I was not given reasonable opportunity for myself examination as witness either by my D.A. or by the I.O. as a matter of scope, for which my points and arguments in the matter remain suppressed. My written statement dtd. 24/03/1999 was also not tested and had it been done I could focus the truth. Secondly in the annexure-II of article of charge No. 1, the aggregate amount comprising of the uncredited individual deposits of concern dates, comes to Rs. 5300/- but the SDI (P) Nalbari West collected and deposited a sum of Rs. 2000/- (two thousand) only vide ACG-67 receipt No. 94 of book No. GH 5743 dtd. 23/6/1999 on account of non credited amounts in S.B./R.D. accounts. This was not clarified by the I.O. during enquiry. It is thus evident that the controlling authority i.e. SPOS/Nalbari brought allegation against me without proper study and assessment of what was the facts and what not.

It is a fact that the depositors of SR/RD accounts have no claims to be settled as yet in the matter. Hence by virtue, the allegation drawn against me is not sustainable in its entirely.

5. That sir, the O/S mails collected statements from the depositor numbering 4(four) as a formality only but the statements S/S Umesh Kalita, Nabanita Kalita and Debendra Barman were not testified by oral evidence which tends to

Contd....4

show that they had no claim over the amount of deposits shown in SB a/c No. 4401039, RD a/c numbers 550913 and 550748 respectively. Now it can be safely concluded that the respective amount of deposits were not tendered to me though their entries were made in the pass books by me inadvertently.

6. That sir, as regards non credit of the deposits, I beg to state that, the allegation of non credit of amounts in SB/RD accounts relates to the year 1998 and at this stage I have forgotten the whole facts and situations although the relative pass books were produced to me as exhibits of the proceedings. My DA also did not note down or obtained xerox copies of the pass books to be made available now for my preparation of representation. The Sandha B.O. is situated in a rural place where under some extenuating circumstances the respective entries under allegation might have been made in the SB/RD accounts without collecting the amounts from the depositors and pass books were returned accordingly to the parties. Had there been pay-in-slips duly filled and tendered by the depositors in respect of the individual deposits, I could detect my mistake at the close of the counter work, and in absence of above records the respective deposit did not find place in the BO SB/ RD journal, BO daily a/cs and B.O account Book.

It is a fact that during the period some adverse situations occurred in my family affairs for which my mental

Contd....5

set up got unstable and it was likely that I, might commit some unintentional mistake in my performance.

7. That sir, I had no evil intention either to defraud the Department or the depositors by inviting troubles for me as my duty salary is only source of my family maintenance.

8. That sir, there is no further claim or complain by the depositors in the matter and that the allegation brought against me is the singular incidence in my long performance of 21 years of unblamish service in the Department.

That sir, during the period of my put off duty I suffered big set back socially, financially and in the line of education of my children besides during the period I could not maintain the minimum standard of living in the society. As my TRCA was not sufficient to maintain my domestic affairs including the education of my children.

That sir, I have no other source of income and at this age I am not find out any job or perform hard labour for revival of my family and I am fully dependent on the existing amount of my compensation.

Under circumstances and facts, and yourself being the Danial of Judgement I fervently pray to your honour to be kind enough to consider the above points very sympathetically and on humanitarian ground by exonerating me

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from the perview of charge and thereby lend me a scope for my survival in the society alongwith my family members.

For this blissful act of kind consideration I shall remain ever grateful.

Faithfully yours,

Bhupen Kalita

(Bhupen Kalita)

ED BPM, Sandha (U.P.D)

Date : 12-07-2003

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

NO. Inv. Misc-4/2000.

Dated the 8th Sept'2003.

It was proposed to take action against Shri Bhupen Kalita, GDS BPM (under put-off duty) of Sandha EDBO in a/c with Milanpur SO under Rule-8 of P&T EDAs (Conduct & Service) Rules, 1964 vide the SPOs Nalbari Memo No.F1-4/SB/A/98-99 dated 22.9.99. The article of charges framed against Shri Kalita and the statement of imputation of misconduct or misbehaviour in support of the article of charges was communicated to Shri Kalita along with the said Memorandum.

2. The charges framed against the said Shri Kalita were as under.

"That the said Shri Bhupen Kalita EDBPM Sondha BO in a/c with Milanpur SO now under put-off duty while working as such accepted the amounts of SB/RD deposits on different dates tendered by the depositors to credit the amounts into their SB A/c No. 4401039, and RD a/c No. 550913, 550666 and 550748. The said Shri Bhupen Kalita made necessary entries of the deposits in the related Pass books with his dated initial against every entry and put the BO Date stamp impression on the space provided for. But the said Shri Bhupen Kalita failed to credit the amount of deposits into the Govt. account nor the same were entered in the SB/RD journal, BO Account Book as well as the BO Daily Account of the dates of deposits.

By the above act, the said Shri Bhupen Kalita violated Rule 131(3) and 174(2) of the Rules for Branch offices and thereby failed to maintain absolute integrity and devotion to duty contravening the Rule 17 of P&T EDA (Conduct & Service) rules, 1964."

3. The said Shri Bhupen Kalita submitted his written Statement of defence on 8.10.99. He did not either admit or deny, the charges specifically and clearly. As such, oral inquiry was ordered and Shri T. D. Saha, SDI(P), Pathsala was appointed as the Inquiry Officer to inquire into the charges and submit report vide the SPOs Memo No. F1-4/SB/A/98-99 dated 11.11.99.

RECORDED AND APPROVED

T. D. Saha
Inquiry Officer

4. The Inquiry officer held the preliminary hearing of the case on 20.01.2000 at Milanpur PO. The charged Official appeared before the I.O. stated the facts and circumstances of the case without spelling out clearly whether he admitted or denied the charges. The I.O. concluded the hearing interpreting wrongly that the charged official admitted the charges and submitted his inquiry report on 7.3.2000 with findings of the charges as proved. On examination of the Inquiry report the findings of the I.O. were considered unacceptable due to the fact that the charged official did not expressly and categorically admitted the charges. Hence, the case was remitted to the I.O. back for inquiry afresh from the stage of the preliminary hearing. Shri L.K.Barman, ASP(HQ), O/o the SPOs, Nalbari was appointed as the I.O. in place of Shri T.D. Saha vide the Memo No.F1-4/SB/A/98-99 dated 14.5.01.

5. The I.O. held the preliminary inquiry afresh on 31.7.01. The charged official appeared before the I.O. and pleaded not guilty. As such, the I.O. held further detail inquiry on 21.8.01, 19.9.01, 20.9.01, 18.10.01 & 13.11.01. The charged official participated on all the dates of inquiry with his Defence Assistant and given all the reasonable opportunities to present and defend his case. The I.O. submitted his Inquiry report on 31.12.2001 with findings that the charges leveled against the said Shri Bhupen kalita are proved.

The report and the findings of the I.O. in brief are discussed
Below:-

The documentary evidences marked as Ex-S/8 and S/9 i.e. the written statement of the C.O. and the depositor of RD A/C No.550666 (PW-3) and from the depositions of other witnesses (PW-1 and PW-2), there is no dispute that the charged official worked in the capacity of the BPM of Sandha BO on the dates of occurrence of SB/RD transactions mentioned in the charges. From the Pass Books marked as Exh.S/1(I) to S/1(iv), it transpires that the deposits mentioned in the charges were entered in the Pass books under initial by the charged official and impressed with Sandha BO Date stamp. The depositor of RD A/c No.550666 (PW-3) deposed that he personally deposited the amount of deposits along with the Pass Book to the C.O. who returned the Pass Book to him after making entry of the deposited amount therein. In his deposition Shri Dharma kanta kalita (PW-2) clarified that all other depositors of SB/RD a/cs mentioned in the charges stated before him that the amount of deposits was tendered by them to the charged official on the dates shown in the charges. The PW-2 also deposed that the written statement dtd. 24.3.99 (S/8) which was recorded by him was written and signed by the C.O. at his own.

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From the BO A/c book (Ex-S/4) and the BO daily A/cs (exh-S/5(I) to S/5(iv), it is proved that the amount of deposits mentioned in the charges was not accounted for. The fact is also corroborated by the witnesses (PW-2 and PW-4) in their deposition. The documents marked as Exh-S/2,S/3 and S/5 prove that the deposits mentioned in the charges were not entered in those records. In view of the facts discussed above, the charges leveled against the said Shri Bhupen kalita are proved.

6. The SPOs, Nalbari who is the prescribed disciplinary authority in this case is not in position to decided the case and issue the order due to the fact that the charged official was initially appointed by the Sr. Supdt. of Post Offices (Group -A) who is higher in rank than the Supdt. of POs(Group -B), the present disciplinary authority. Therefore, the disciplinary case of the said Shri Bhupen kalita has been remitted to the undersigned for decision and order as per provisions in the rules.

7. The undersigned now being the Disciplinary authority accepted the IO's report and the findings tentatively and issued a show cause notice to the charged official along with a copy of the IO's report vide No. INV/Misc-4/2000 dtd. 13.6.03 directing him to submit representation in writing if any against the findings of the I.O. within 15 days of receipt of the notice. The charged official received the notice on 6.7.03 and submitted his representation on 12/7/03 . I have perused the representation of the charged official carefully. He has put forth the following points in the representation for consideration and to justify exoneration him of the charges.

- i) That, being an ED official, he had no knowledge of the technicalities in Rule-8 proceeding for which he could not defend himself in the hearings. His Defence Asstt. also unfortunately could not function to the extent he desired.
- ii) That, the charge sheet framed against him does not indicate the period of his incumbency and therefore not specific with regard to assessment of the fact.
- iii) That, the allegation about non-credit of the amounts of deposits in the charge sheet contradicts with the observation of the I.O in para 5(ii) of his Inquiry report in which the I.O. opined that the amounts were not credited but misappropriated by him which

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is a redundant remark made by the I.O. out of biasness and vindictiveness towards him.

- iv) That, the I.O. did not consider the fact that his denial of the charges in the preliminary hearing implied that his statement dtd. 24.3.99 recorded by the o/S mails and listed in the charge sheet as a document in support of the charges was not sustainable.
- v) That, his desire to be heard in person was not fulfilled as he was not given a single scope to reply to any question of the I.O.
- vi) That, his statement dated 24.3.99(Exh-S/8) was not of his own because he had no stable mental condition at that stage after having been released from his abduction and whatever written therein was as per version of the O/S mails.
- vii) That, he was not given the opportunity to be examined himself as witness either by the DA or the I.O. for which he could not get the scope to testify his written statement dated 24.3.99 to focus the truth.
- viii) That the amount of non-credited deposits has been shown as Rs.5300/- in the statement of the imputation (Annexure-II). But the SDI(P), Nalbari collected an amount of Rs.2000/- only as recovery from him on 23/6/99. This was not clarified by the I.O. during the inquiry.
- ix) That the depositors of the SB/RD accounts mentioned in the charge sheet have not claims. Hence, the allegations against him is not maintainable.
- x) That the statements of S/Shri Umes kalita, Nabanita kalita and Debendra Barman recorded by the O/S Mails were not testified in the inquiry and thereby it could not be established the charges that the amount for deposit in SB A/c No.4401039, RD A/c 550913 and 550748 was tendered to him by the said depositors.

- xi) That, under some extenuating circumstances, the deposits might have been entered in the Pass books without collecting the amount from the depositors, since no pay in slips were received against the deposits, the question of making entry in the BO SB/RD journal, BO Account book, BO Daily account did not arise.
- xii) That he had no any evil intention to defraud the department. He might have committed the mistake on account his unstable and disturbed mind then prevailing due to adverse situation and trouble in his family for which he seeks sympathy and exoneration from the charges so that he can get a scope for his survival with his family members.

8. I have perused the records of the proceeding and examined the exhibits very carefully to examine the points/arguments raised by the charged officials and record the observations as under:-

- i) The ED officials are governed by the P&T EDA (Conduct j& Service) Rules, 1964 and this condition is categorically mentioned in the appointment letter. The charged official can not take plea of his ignorance of the rules and seek leniency. As regards the Defence Assistants' inability to assist him up to desired level , the Disciplinary authority or the I.O. has nothing to do in it since the nomination and retention of the Defence Assistant is the prerogative of the charged official. Therefore, the plea of the charged official as stated in the para 7(i) above is not maintainable.
- ii) The charged official inspected the documents viz SB/RD pass book, BO account Book for the period from 1.11.9777 to 30.1.99, BO SB/RD journals for the period from 1.2.97 to 30.12.98 during the inquiry held on 21.8.01. He accepted the genuineness of the documents and the entries made by him therein. It speaks the truth that he was working as the BPM Sandha BO during the days/period of the SB/RD transactions mentioned in the charges. The IO in his report vide the Para 9(i) clarified that the documentary evidences produced in the inquiry confirmed the fact that the charged official worked as the BPM Sandha BO on the dates

mentioned in the charge sheet. Moreover the charged official himself has admitted in his written Brief that he worked as the BPM Sandha from 1.5.77 to 20.1.99. This settles the dispute over the incumbency in the post of BPM, Sandha. The absence of mention about the period of his incumbency in the charge sheet does not change the basic fact nor does it attract any procedural lapse. The contention of the charged official as stated in the para 7(ii) above is therefore not maintainable.

- iii) In para 5(ii) of the Inquiry report, the I.O. observed that the charged official in his written statement dated 24.3.99 had admitted the non credit of the amount of SB/Rd deposits which were misappropriated by him due to economic distress. The IO's observation was based on the records and I do not consider it to be bias or vindictive towards the charged official. Therefore the argument of the charged officials as made in the para 7(iii) does not succeed.
- iv) As the charged official denied the charges during the preliminary hearing held on 31.7.01, the I.O. held the detailed oral inquiry and heard in person. The I.O. arrived at his conclusion of the findings not merely on the basis of the written statement dtd. 24.3.99 (Exh.S/8) but on the basis of the evidences adduced by the oral and other documentary proofs. Hence the Charged official's statement dtd. 24.3.99 recorded by the O/S mail is not the deciding factor as thought to be by him and stated as in para 7(iv) above.
- v) Perusal of the records of the proceeding does not show that the charged official was denied of the reasonable opportunity to defend himself at any stage of inquiry. The charged official on his own did not take the opportunity to submit his defence statement or requested the I.O. to examine himself in his own behalf as a witness of defence. Under this circumstances, the I.O. got no scope to examine the charged official. Therefore, I do not consider that the argument raised in the para 7(v) above has any ground to suggest that the inquiry was vitiated by procedural lapse.
- vi) As per the depositions of Shri Dhama Kanta Kalita (PW-2) and Shri Girindra Ch. Kalita (PW-1) recorded by the I.O. on

the day of the inquiry held on 20/9/01, the charged official has written his statement on 24.3.99 9Exh-S/8) himself and signed before the said PW-2 in presence of the PW-1. While cross examining the witnesses by the Charged official the contention to the fact that the version of the said statement was of the O/S Mail (PW-2) could not be established. It is hard to believe that the Charged Official would have signed the statement which was against him under any circumstances. I do not therefore consider the contention of the C.O. as in the Para 7(vi) above to be & acceptable.

- vii) The contention of the charged official made in the para 7(vii) above is not maintainable for the reasons already discussed in the para (v) above.
- viii) In the statement of imputations the amount of non credited deposits is shown as Rs.5500/- in 1 SB and 3 RD a/cs together, but not Rs.5300/- as stated by the C.O. The IO's job was to find out the fact whether the deposits shown against the said a/cs were credited to Govt. Account or not. The amount of Rs.2000/- recovered from the charged official on 23.6.99 was not the subject matter to be inquired into. So the I.O. did not go on this aspect and considered it necessary to clarify on this on his own. So the point raised as in the para 7(iii) above does not help the C.O to find fault in the I.O's report.
- ix) The deposition of Shri Anil Kalita (PW-3) holder of Sandha BO RD A/c No.550666 testifies that the deposits of Rs. 600/- in his account made on six different dates were accepted by the charged official and entered in the relative pass book. But such deposits have not been found accounted for in the BO Account nor entered in the BO SB/RD journal. Similar modus operandi was also perpetrated in other 3 accounts mentioned in the charge sheet as revealed from the documents produced during the inquiry. The charges framed against the charged official were based on these facts. Settlement of claims of the depositors concerned is an administrative action and dealt with separately. This aspect has no relation with the facts of the charges. Hence, the contention of the charged official as in the para 7 (ix) above to the fact that the allegations against him are not

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maintainable in absence of the claims of the depositors can not be accepted.

- x) The statements of the depositors of SB a/c No.4401039 and RD a/c No. 550913 and 550748 were recorded by the O/S mail Shri Dharma Kanta kalita who was examined as the PW-2. Though the depositors of the said a/cs were summoned to give evidence in the inquiry, they did not appear for which the statements signed by them on 25.3.99 and 5.4.99 (Exh.S/9(I) ,S/9(ii) & S/9(iv) could not be testified. However this does not negate the evidences adduced from the relative pass books which reflect the amount of deposits as mentioned in the charges but unaccounted for as per the BO Account Book, BO SB/RD journals (Exh-S/2,S/3 & S/4). This fact could not be refuted by the charged official. So, the assertion of the Charged official as made in the para 7(x) above has no force.
- xi) The depositor of RD a/c No.550666(PW-3) while depositing before the I.O. stated that the charged official prepared the pay -in-slips for the deposits made in his account on his request and tendered the amount of deposit on the dates as entered in the pass book. Hence, it is hard to believe the contention of the CO that he might have entered the amount of deposit in the pass book without collecting the amount from the depositor and also he did not make the entries in the BO Account book, BO SB/RD journal due to non receipt of the pay in slips for the deposits. Such omission could have occurred once but not several occasions that too in the same accounts. Therefore, I do not find the argument/reasons given by the C.O. as in the para 7(xi) above acceptable.
- xii) In the last the CO states that he might have committed the mistakes due to his disturbed mind then he was possessing due to troubles in his family and seeks sympathy and exoneration. The charged official while working as the BPM was responsible to account for the public money honestly and sincerely. In no circumstances, the public money can be misused or utilized other wise by the Govt. servant. The charged official not only failed to account for the SB/RD deposits accepted from the depositors, but also did not

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maintain the records of the transactions in the BO SB/RD journal which speaks of his evil intention and lack of integrity. I do not see that the grounds stated by the charged official in the para 7(xii) deserves consideration for sympathy in view of the nature of offence committed by him.

9. The pass books of SB A/c No.4401039 and RD a/c No. 550913, 550666 and 550748 produced and examined in the inquiry clearly show that the amount of deposits on the under mentioned dates was entered in those pass books by the charged official while he was functioning as the BPM of Sandha EDBO.

| A/C No. | Depositor | Date of deposit | Amount of deposit. |
|---------------|-----------------|---|---|
| 1. SB 4401039 | Umesh Kalita | 4.8.98 7.10.98 | 4000.00 <u>200.00</u> 4200.00 |
| 2. RD 550913 | Nabanita Kalita | 11.11.98 | 300.00 |
| 3. RD 550666 | Anil Kalita | 2.7.98 3.8.98 4.8.98 22.9.98 24.10.98 23.11.98 | 100.00 100.00 100.00 100.00 100.00 <u>100.00</u> 600.00 |
| 4. RD 550478 | Debendra Barman | 13.11.98 13.12.98 | 200.00 <u>200.00</u> 400.00 |

The entries in the pass books (Exh.S/1(I) to S/1(iv) were authenticated under initial by the charged official and impressed with the BO date stamp. But those transactions were not accounted in the BO Account Book (Exh-S/4) nor corresponding entries were made in the BO SB/RD journal (Exh-S/2 & S/3) as required under Rule 131(3) & 174(2) of the Rules for BOs. The above amount of deposits were not evidently credited to the Govt. exchequer but misappropriated by the charged official. The oral evidences recorded by the IO corroborate the facts. The charged official could not disprove the evidences and refute the charges. I therefore fully agree with the findings of the I.O. and hold that the charges leveled against the said Shri Bhupen Kalita are proved beyond reasonable doubt.

10. Misappropriation of the Govt. money by the Govt. servant is a serious offence. The charged official by the said acts displayed lack of absolute integrity and devotion to duty and thereby violated the Rule 17 of P&T EDA(Conduct & Service) Rules,1964 which he was supposed to adhere being a Govt. servant entrusted with the duty of handling the Govt. money. No leniency is affordable in such grave offence.

In view of the observations made above and as a deterrent to others not to indulge in such crime, the case is disposed of with the orders as passed under.

O R D E R

I, Shri V. C. Roy, Director of Postal Services(HQ) Assam Circle, Guwahati hereby order that Shri Bhupen Kalita, EDBPM Sandha (under put off duty) be removed from service with immediate effect.



(V. C. Roy)

Director of Postal Services(HQ)
Assam Circle, Guwahati:781001.

✓ To

**Shri Bhupen Kalita
EDBPM, Sandha (under put-off duty)
Via Milanpur SO (Nalbari)**

Annexure Cc

(X)

Annexure - G

POST

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To,

The Chief PMG, Assam Circle, Guwahati.

Dated Sondha the 6/11/2003.

Respected Sir,

With due and humble submission the appeallant begs to state that, the Supdt. of POS Nalbari - Barpeta Division, Nalbari under his memo No. Fl-4/SB/A/98-98 dtd. 22/9/1999 (copy enclosed in annexure-I) proposed to take action against the appeallant while he was working as ED Bpm of Sondha E.D. B.O. under Rule 8 of P & T EDAS (conduct and service) Rules 1964 with the charges framed against him on the basis of a statement of imputation which will be available in the enclosure-1 as mentioned above.

That sir, the disciplinary authority viz the DPS (HQ) Assam Circle, Guwahati who happened to the disciplinary authority of the appeallant, imposed upon the appealant the penalty of removal from service vide his memo No. Inv. Misc-4/2000 dtd. 8/9/2003 (copy enclosed as annexure-II).

That sir, the humble appeallant was highly aggrieved on receipt of the order of penalty as it will adversely effect the morality as well as, the domestic management of the appeallant who served the department as ED Bpm without any stigma or bad records since 1-5-77 to 20-11-99 and at this stage your appeallant has no other source or opportunity to get a job for his survival.

Contd...2

T.D. Das.

In this connection a copy of defence statement dtd. 12/7/2003 submitted to the disciplinary authority is enclosed herewith for favour of your reconsideration of the points put forth in the same under your gracious and humanitarian observations.

It is pointed out that the aggregate amounts of non-credit of deposits in Sondha B.O. SB A/C No. 2201039 and RD A/c No. 550913, 550666 and 550748 come to Rs. 5500/- (Five thousand five hundred) only and that the entire amounts of Rs. 5500/- was collected from me by the O/S mails/Nalbari subsequent to the assurance of the case. But unfortunately the fact of recovery of the entire amount remained suppressed in the allegation.

It is the humble contention of the appellant that the aforesaid amount remained withheld personally owing to some unavoidable and extenuating situation which were humbly explained in his defence statement, but the disciplinary authority did not consider this point sympathetically for providing a scope to the appellant and as such the penalty awarded is taken as harsh one. The appellant may be permitted to point out that although the original charge was for misappropriation in fact, it was a temporary withholding of the amount involved, which subsequently credited in full.

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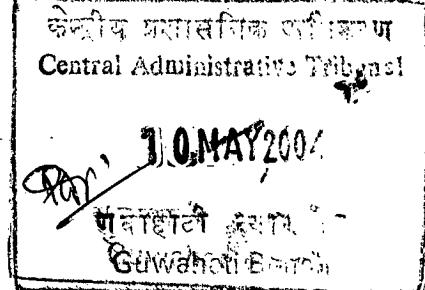
That sir, the case against the appellant took a longer course of time for which, the appellant has been suffering a lot in maintenance of his family as well as the education of the minor children and at this stage the appellant has no other source or for the survival in the society.

In the above facts, it is humbly requested that the case of the appellant would be graciously judged by your goodself on humanitarian ground and on special consideration for the future of his minor children by retaining the appellant in the service for which all assurances of honest and better performance is given and that the appellant will remain ever grateful in future, and the effect of the penalty order dtd. 8/9/03 imposed by the DPS (HQ) may kindly be kept abeyance till disposal of this appeal.

Yours faithfully,
Bhupen Kalita

Copy to :

The DPS *HQ) Assam Circle, Guwahati for favour of information and requested kindly to stay his penalty order dtd. 8/9/03 till disposal of this appeal.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI.

In the matter of :-

OA No. 285 of 2003.

Sri Bhupen Kalita-----Applicant

-Versus-

Union of India & others.

-----Respondents.

WRITTEN STATEMENT FOR AND ON BEHALF

OF RESPONDENTS Nos. 1, 2, 3, & 4.

I, Sukleswar Das, Superintendent of Post Offices, Nalbari - Barpeta Division, Nalbari do hereby solemnly affirm and say as follows:-

1. That I am the Superintendent of Post Offices, Nalbari-Barpeta Division, Nalbari 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 whatever is specifically admitted in this written statement the other contentions and statement may be deemed to have been denied. I am authorized to

Union of India & others
through:-
Bhupen Kalita
Stamp Seal
Guwahati
10/5/04

Adm. Central Govt. Standing Comm.

C. A.
Guwahati

file the written statement on behalf of all the respondents.

2. That the respondents beg to place the brief history of the case:-

That while the applicant was working as BPM/Sondha BO he misappropriated SB/RD money amounting to Rs.5500 against 1(one) SB and 3(three) RD accounts.

On receipt of information from reliable source about unauthorized absence from duty of the BPM Sondha BO w.e.f 16.12.98 the SDI(P)/Nalbari(W) was directed verbally to inquire into the matter in details and to submit his report .The SDI(P)/Nalbari(W) visited the BO on 24.12.98 and found the BPM absent from duty since 16.12.98.The SDI(P)/Nalbari(W) started verification of cash/Stamp balance of the office including Past Work Verification of the BPM.A sum of Rs.122.51 was found short in the cash balance of the BO on 16.12.98.The amount of shortage was charged as UCP on 24.12.98.In course of verification, the misappropriation of above RD/SB money came to light.Final withdrawal amount of Rs.1666.80 i/r/o Sondha BO RD account No. 550574 and amount of Rs.1666.80 i/r/o Sondha BO RD account No. 550575 were fraudulently withdrawn by the applicant on

SKM

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(3)

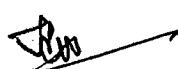
2.12.98 and 7.12.98 respectively. Later on when the case was detected the defrauded amount were paid to the depositors on 4.7.99 and 23.3.99 respectively.

The applicant applied very simple tactics to commit the frauds. He accepted the deposits and credited the amount in the respective Pass Books but the depositors were not accounted for in other Govt. account.

A sum of Rs.5500.00 excluding intt & panel intt. On the defrauded amount was recovered from the BPM (applicant) Rs.692.70 being the amount of intt.& Panel intt. On the defrauded amount and Rs.122.51 being the amount of shortage in cash balance of the BO was also recovered from arrear pay and allowances due to the official(applicant).

The case was reported to the Police on 20.1.99 but no action have been taken by Police authority.

For the above lapses a Charge sheet under Rule-8 of EDA(Conduct & Service)Rules,1964 was framed and issued on 22.9.99 against the official.Sri T.D.Saha then SDI(P)/Pathsala and Sri B.K.Sarma CI/Divisional Office ,Nalbari were appointed as IO/PO respectively on 11.11.99 to hold oral inquiry of the case.Later Sri L.K.Barman,ASPO's(HQ),Nalbari was appointed as IO on



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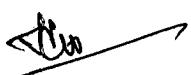
(4)

14.5.2001 while Sri T.D. Saha's conclusive inquiry report was considered as incomplete and defective one to inquire into the charge a fresh from the inquiry stage against the applicant to render reasonable opportunity and safe guard the constitutional guarantee to the charged official and to keep the balance of natural justice equally. The IO fixed the date of preliminary hearing of the case on 19.6.2001. The I.O. submitted his final conclusive report on 31.12.2001. On receipt of I.O. 's conclusive report a copy of the same was sent to the charged official on 18.2.2002 for submitting his written defence statement if any against the I.O.'s final report. The charged official submitted his written defence representation on 4.3.2002.

Since the SPOs/Nalbari is lower in the rank than the appointing authority of the above ED official the whole disciplinary proceedings of the official sent to the Director of Postal Services(HQ), Assam Circle, Guwahati for final decision.

Accordingly the Director of Postal Services(HQ), Guwahati disposed the case awarding punishment of removal him from the service vide CO's Gh No. INV-4/2000 dated 8.9.2003. (Annexure F of the OA).

Contd.. P/5



(5)

3. That with regard to the statements made in paragraph 1(a) of the application, the respondents beg to state that the order of removal of the Applicant under memo No. INV-4/2000 dated 8.9.2003 was issued by the Director of Postal Services (HQ) Assam Circle, Guwahati-1 (respondent-3) and not by the Supdt. of Po's, Nalbari-Barpeta Division, Nalbari (respondent-4).

4. That the respondents have no comments to the statements made in paragraph 2, 3, 4(A), 4(B), 4(C) & 4(D) of the application.

5. That with regard to the statements made in paragraph 4(c) of the application, the respondents beg to state that regarding collection of amount of Rs.2,000.00 by the SDI(P), Nalbari, the said amount was recovered from the applicant and credited to the Govt account on 23.6.99 being the partial recoupment of defrauded amount. It is to be mentioned that the entire amount of misappropriation was recovered from the applicant at later stage and got credited to Govt. account.

6. That with regards to the statements made in paragraph 4(F) of the application, the respondents beg to state that as the officer issuing chargesheet was

(6)

lower in rank than the appointing authority of the applicant, the case was forwarded to the Director of Postal Services for decision. The Director of Postal Services (respondent-3) sent the copy of I.O.s report to the applicant asking to submit a representation within 15 days . It was not sent by respondent No.4 as it reveals from ANNEXURE-'D' of the O.A.

7. That with regard to the statements made in paragraph4(G) of the application, the respondent beg to state that the charges were framed against the Applicant on the basis of the documentary evidence. The representation dated 12.7.03(ANNEXURE-'E' of the OA) submitted by the Applicant was perused by the Director of Postal Services carefully and expressed his observation and findings in Para 7 & 8 of Annexure-E of the OA.

8. That with regard to the statements made in Paragraph4(H) of the application , the respondents beg to sate that ample scope was provided to the Applicant during the oral inquiry under Rule-8 of P&T EDAs (Conduct and service) Rules ,1964 which was of same nature of Rule-14 of CCS(CCA) Rules,1965.I.O. and P.O. was appointed as per Rule, the IO instituted regular hearings as per Rule and submitted his conclusive

See

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(7)

report declaring all the charges against the applicant proved. Thereby the applicant has been provided reasonable opportunity to defend himself and therefore there was no breach of natural justice, the applicant was removed from service by the order of Respondent no.3 and not by Respondent No.4 (ANNEXURE- 'E' of the OA). Thus the Applicant has misrepresented the facts before the Hon'ble Tribunal.

9. That with regards to the statements made in paragraph 4(I) of the application, the respondent beg to state that the Appeal preferred by the Applicant has been examined by the appropriate Appellate authority and decided on 21.4.04. There is no cause for approaching the Hon'ble Tribunal before taking any decision of the said Appeal. (A copy of the Appellate order No. Staff/9-36/2003 dated 21.4.04 is enclosed as Annexure-I).

10. That with regard to the statements made in paragraph 4(J) of the application, the respondent beg to state that the misappropriation of public money by the applicant was proved beyond doubt during Regular Rule-8 inquiry. Moreover, crediting the misappropriated amount later by the Applicant is the solitary evidence of misappropriation on his part.



Contd.. SP/8

(8)

11. That with regard to the statements made in paragraph 4(K) of the application, the respondent beg to state that the misappropriation of Govt. Money by the Govt. Servant is a serious offence .The Applicant by the said Acts displayed lack of absolute integrity and devotion to duty and thereby violated the Rule 17 of P&T EDA (Conduct and Service)Rules,1964,which he was supposed to adhere being a Govt. Servant entrusted with the duty of handling the Govt. Money.No leniency is affordable in such grave offence.

12. That with regard to the statements made in paragraph 4(L)of the application, the respondent beg to state that the punishment awarded for such grave offence affording reasonable opportunity cannot attract the provision of Article 14,19,21 and 311 of the Constitution of India.

13. That with regard to the statements made in paragraph 4(M) of the application ,the respondent beg to state that the applicant did not wait for the decision of his Department Appellate Authority and therefore his Application before the Hon'ble Tribunal is not tenable.

14. That with regard to the statements made in paragraph 4(M) of the application ,the respondent beg

Contd.. P/9

(9)

to state that the application is filed with misleading facts as stated above and therefore not sustainable in the eye of law.

15. That with regard to the statements made in paragraph 5(1) of the application ,the respondent beg to state that the Departmental action was just and fair and there is no lacuna in it.

16. That with regard to the statements made in paragraph 5(2) of the application ,the respondent beg to state that the delay in instituting the proceedings was due to delay in verification of all past work of the Applicant right from his date of appointment to the date of detection of the fraud i.e. for long 22 years of service .This was mandatory before drawing up the Disc- proceeding against the applicant.

17. That with regard to the statements made in paragraph 5(3) of the application ,the respondent beg to state that although the IO testified one witness , sufficient documentary evidence were produced during inquiry to substantiate the charges.

18. That with regard to the statements made in paragraph 5(4) of the application ,the respondent beg to state that the period of 45 to 120 days are

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Contd.. P/10

(10)

flexible and not rigid as per the said Rules. The proceeding may prolong for various factors.

19. That with regard to the statements made in paragraph 5(5) of the application, the respondent beg to state that the punishment of removal was quite justified in view of the gravity of the offence committed by the Applicant and as leniency in such case may encourage the other Govt. servant to commit such crime further.

20. That with regard to the statements made in paragraph 5(6) of the application, the respondent beg to state that the order of removal from service is quite reasonable to meet the end of justice.

21. That with regard to the statements made in paragraph 5(7) of the application, the respondent beg to state that the order is bonafide and not liable to be quashed.

22. That with regard to the statements made in paragraph 6 of the application, the respondent beg to state that the applicant has not exhausted the Departmental channel of remedy and therefore it is quite unjustified to approach the Honourable Tribunal before having any decision from the Department.

Contd.. P/11

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(11)

23. That with regard to the statements made in paragraph 7 of the application ,the respondent beg to state that the applicant is misleading the Hon'ble Tribunal by false statement as his Departmental Appeal was pending for decision.

24. That with regard to the statements made in paragraph 8(i) of the application ,the respondent beg to state that the removal order was issued by respondent No.3 and not by respondent No.4 as it is evident from ANNEXURE-'F' of the DA.

25. That with regard to the statements made in paragraph 8(ii) of the application ,the respondent beg to state that the question of reinstatement of the Applicant in the post of EDBPM at Sondha BO does not arise as he was removed from service after following Departmental procedure.

26. That with regard to the statements made in paragraph 8(iii) of the application ,the respondent beg to state that no cost is payable for such misleading case.

27. That with regard to the statements made in paragraph 8(iv) of the application ,the respondent beg to state that as the post of EDBPM ,Sondha BO cannot

SLB

Contd.. P/12

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(12)

be kept vacant for uncertain period, it was filled up permanently after observing Departmental formalities.

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

VERIFICATION

I, Sukleswar Das, presently working as Superintendent of Post Offices, Nalbari-Barpeta Division, Nalbari being duly authorized and competent to sign this verification do hereby solemnly affirm and state that the statements made in paragraphs of the application are true to my knowledge and belief, these made in paragraphs being matter of record are true to my information derived there from and those made in the rest are humble submission before the Hon'ble Tribunal. I have not suppressed any material facts.

AND I sign this verification on this the 7th day of *MAY, 2004.*

Sukleswar Das.
DEPONENT
Supdt. of Post Offices
Nalbari-Barpeta Division
Nalbari - 781335

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ANNEXURE - I

13

**DEPARTMENT OF POSTS
OFFICE OF THE CHIEF POSTMASTER GENERAL
ASSAM CIRCLE: GUWAHATI:781001.**

NO. STAFF/9-36/2003.

Dated the 21st April' 2004.

Appellate Order

Shri Bhupen Kalita the appellant, EX-GDS BPM, Sondha EDBO in Nalbari Division was charge sheeted under Rule-8 of P&T EDA (Conduct & Service) Rules, 1964 vide the SPOs, Nalbari Memo No. F1-4/SB/A/98-99 dtd. 22.9.99 on the basis of the following allegations.

"That the appellant while working as EDBPM of Sondha EDBO failed to credit the amount of deposits accepted from the depositors of SB a/c No. 4401039, RD a/cs No. 550913, 550666 and 550 748 on different dates during 4.8.98 to 13.12.98, in the Govt. account apart from not recording these transactions in BO SB/RD journal book and BO account Book. Thereby the appellant violated Rule-131(3) and 174(2) of the Rules for Branch offices. It is alleged that by the said acts the appellant failed to maintain absolute integrity and devotion to duty in contravention of Rule 17 of P&T EDA (Conduct & Service) Rules, 1964".

2. The appellant in his written statement of defence dated 8.10.99 denied the charges. The Disc. authority therefore appointed an Inquiry Officer to enquire into the charges and submit report on findings. After concluding the oral inquiry the I.O. submitted his Inquiry Report on 31.12.2001 with findings of the charges being proved on evidences adduced during the inquiry. As the SPOs, Nalbari was not competent to take decision of the case on the ground that the appellant was appointed by the SSPOs, Guwahati (Group- A), the case was forwarded to the Circle Office,

I.O. within 15 days. The appellant submitted his representation on 17.4.2003. The Disc. authority considered his representation and decided the case on merit vide No. Inv/Misc-4/2000 dated 8.9.2003 issuing a order of removal of the appellant from Service. Being aggrieved, the appellant has preferred the present appeal dtd. 6.11.03.

4. There is no record to show on which date the appellant received the disc. order dated 8.9.03. The appeal was dated as 6.11.03 and received on 11.11.03. The appeal is obviously time-barred. However, I have decided to consider the appeal to meet the end of justice. The appellant has raised the following points and facts in his appeal and prayed for setting aside the punishment order.

- i) That the punishment order will adversely affect the morality as well as the domestic management of the appellant who has rendered service to the department as EDBPM from 1.5.77 to 20.11.99 without any stigma or bad records and at this stage the appellant has no other opportunity to get a job for his survival.
- ii) That a copy of the defence statement dtd. 12.7.03 is enclosed for favour of reconsideration of the points put forth therein on humanitarian ground.
- iii) That the entire amount of deposits of Rs.5500/- which was not credited in respect of Sondha BC SB A/c No.2201039 and RD A/cs No.550913,550666 and 550748 was recovered from the appellant subsequently by the O/S Mail, Nalbari. But this fact was suppressed in the charges brought against him.
- iv) That the appellant had to withhold the credit of the aforesaid amount due to some unavoidable and extenuating situation as explained in his defence statement. But

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vi) That the case against the appellant took long time for which the appellant had to suffer a lot in maintenance of his family as well as education of the minor children.

In the penalty-mate para of the appeal, the appellant prays for consideration of his case on humanitarian ground and considering the future of his school going children.

5. I have carefully considered the points raised in the appeal by the appellant taking into account the facts of the case, records of proceeding, IO's findings and Disc. order and my views and observations are recorded below.

i) The appellant could not disprove that he was not involved as primary offender to defalcate the amount of deposits in SB/RD accounts to the tune of Rs.5500/- as mentioned in the charge sheet. The documentary evidences go against him. Defalcation of Govt. Money while holding a responsible post in the Department/Govt is breach of trust and a serious offence entailing exemplary punishment. The Disc. Authority took this in view while passing the Disc. order. The appellant's plea for leniency on his domestic ground or past good service can not be considered to be a strong ground to interfere with the Disc. order.

ii) In his written representation dtd. 12/7/03 to the Disc. authority, the appellant while submitting against the findings of the I.O. raised that the charge sheet was not based on proper assessment of the facts, the I.O. was biased, the appellant was denied of reasonable opportunity to defend his case and some other points not relevant to the charge sheet. The Disc. authority discussed the whole points raised by the appellant in the Disc. order dtd. 8.9.2003 vide para 8(i) to 8(xii). I do

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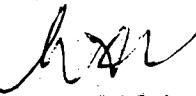
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later recovered from the appellant by the O/S Mail, Nalbari. Recovery of the defalcated Govt. money from the appellant does not absolve the guilty of the appellant. The proceeding was prolonged due to observation of the statutory requirement. This can not be a ground to confer leniency to the appellant. I do not also find any extenuating circumstances in the case as the appellant has sought to explain. Such official with lack of integrity is not desirable to continue in service.

6. In view of the discussions made above and considering the facts and evidences against the appellant, I do not find any merit/ground in the appeal to interfere with the Disc. order dtd. 8.9.03 and dispose the appeal with order as under.

O R D E R

I Shri S. K. Das, Chief Postmaster General, Assam Circle, Guwahati in exercise of the powers conferred by Rule-18 of the DOP, GDS. (Conduct & Employment) Rules 2001 do hereby reject the appeal dtd. 6.11.2003 of Shri Bhupen Kalita, Ex-GDS BPM, Sandha EDBO and confirm the punishment awarded by the DPS(HQ), O/o the Chief PMG, Assam Circle, Guwahati vide No. INV/Misc-4/2000 dated 8/9/2003.



(S. K. DAS)

Chief Postmaster General,
Assam Circle, Guwahati: 781001.

To

Shri Bhupen Kalita,
Ex-GDS BPM, Sandha
Melianguri (Nalbari)

Attested
AK Choudhury
Addl. G. G. S. O.

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Copy to:

- 1-2) The SPOs, Nalbari w.r.t. his No.F1/A&P/03-04 dated 11.12.03. The Copy of the order for the appellant is enclosed here. This may be delivered to the appellant under acknowledgement and forward the acknowledgement to CO for record.
- 3) Appeal/Petition(Staff) Section, C.O. Guwahati.
- 4) Office copy.

For Chief Postmaster General,
Assam Circle, Guwahati:781001.

1. 4 SEP 200

স্ট্ৰিটেজ
Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

In the matter of :-

O.A. No.285 of 2003

Shri. Bhupen Kalita ...Applicant

-Versus-

Union of India & Ors. ..Respondent

ADDITIONAL WRITTEN STATEMENTS FOR AND ON BEHALF
OF THE RESPONDENTS NOS.1,2,3 & 4.

1. That I am the Superintendent of Post Offices, Nalbari - Barpeta Division, Nalbari and as such fully acquainted with the facts and circumstances of the case. I have gone through a copy of ammended application and have understood the contents thereof. Save and except whatever is specifically admitted in this Additional written statement the other contentions and statement may be deemed to have been denied. I am authorised to file the ^{additional} written statement on behalf of all the respondents.
2. That with regard to the ammended paragraph 4 of the ammended O.A. the respondents beg to state that the post of EOBPM Sondha BO was filled up on permanent measure with effect from 12-5-99 to avoid stop-gap arrangement frequently by calling application from Employment Exchange and outside by issuing provisional appointment order as per Rule (ANNEXURE-A) as it is not possible to ascertain the period by which the Departmental/ judicial proceedings are likely to be finalized, against the Applicant. The fact that no permanent appointment was made against the post can be evident from ANNEXURE-A enclosed.
3. That with regard to the ammended paragraph 9(A) of the ammended O.A. the respondent, the provisional appointment order was issued as per para 15(iii) of ~~Madrasik~~ Method of recruitment of service Rules for Postal ED Staff and therefore the apprehension of the applicant is not correct. A copy of para 15(iii) of Method of recruitment of service Rules for Postal ED staff is annexed as ANNEXURE-B.

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Sukleswar Das
(S. DAS)
Supt. OF POST OFFICES
NALBARI-BARPETA DIVISION
NALBARI - Ph. 220491

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Guwahati

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Addl. Central Govt. Standing Order/3

4. ~~amended~~ ¹⁵ That with regard to the amended paragraph 9(B) of the O.A., the respondents beg to state that the Appellate Court has found the facts and evidences of the case very clear and any extenuating circumstances in the case is sought to explain and therefore rejected the application and confirmed the punishment. There is no relation between the Appeal of the applicant and confirm the punishment. The provisional appointment order made by the respondent. The provisional appointment order was not regularized by issuing permanent appointment order later.

5. That with regard to the amended paragraph 9(C) of the O.A., the respondents, the Appellate order is legal and valid as it was issued as per Departmental procedure.

6. That with regard to the amended paragraph 9(D) of the O.A., the question of re-instatement of the applicant does not arise as by his re-instatement the Deptt. will face wide public criticism for allowing the fraudulent person to come back in his original place of duty and there is no guarantee that the applicant will not commit such misappropriation in future.

7. That with regard to the amended paragraph 9(E) of the O.A., no any relief is payable to the applicant as the application is liable to be dismissed with costs.

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

VERIFICATION

I, Sukleswar Das, presently working as Superintendent of Post Offices, Nalbari-Barpeta Division, Nalbari being duly authorised and competent to sign this verification do hereby solemnly affirm and state that the statements made in paragraphs 1 - 7 of the application are true to my knowledge and belief, those made in paragraphs 2 - 6 being matter of record are true to my information derived there from and those made in the rest are humble submission before the Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 27th day of Aug. 2004

Sukleswar Das
Deponent
(S. DAS)

Supdt. OF POST OFFICES
NALBARI-BARPETA DIVISION
NALBARI - Ph. 220491

4 ANNEXURE-A

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DEPARTMENT OF POSTS: INDIA
Office of the Superintendent of Post Offices
Nalbari-Barpeta Division
NALBARI-781335

No. A/X-58/EDA Dated at Nalbari the 21/04/99.

Whereas Sri Bhupen Kalita EDBPM, Sondha in a/c. with Milanpur SO has been put off from duty; pending finalisation of disciplinary proceedings and judicial proceedings against him and the need has arisen to engage a person to look after the work of EDBPM, Sondha, the undersigned has decided to make a provisional appointment to the said post.

2. The provisional appointment is tenable till the disciplinary proceedings against Sri Bhupen Kalita are finally disposed of and he has exhausted all channels of departmental and judicial appeals and petition etc. and in case it is finally decided not to take Sri Bhupen Kalita back into service till regular appointment is made.

3. Sri Madhabi Kalita, D/o Sri Maheswar Kalita, Vill. and Post Office Sondha via. Milanpur, Dist. Nalbari is offered the provisional appointment to the post of EDBPM. Sri Madhabi Kalita should clearly understand that if ever it is decided to take Sri Bhupen Kalita back into service, the provisional appointment will be terminated without notice.

4. The Superintendent of Post Offices, Nalbari-Barpeta Division, Nalbari reserves the right to terminate the provisional appointment any time before the period mentioned in para 2 above without notice and without assigning any reason.

5. Sri Madhabi Kalita, shall be governed by the Extra-Departmental Agents (Conduct and service) Rules, 1964 and all other rules and orders applicable to Extra-Departmental Agents.

6. In case the above conditions are acceptable to Sri Madhabi Kalita, she should sign the duplicate copy of this memo and return the same to the undersigned immediately.

Attested
P.K. Chakraborty
3/5/99

Superintendent of Post Offices
Nalbari-Barpeta Division
NALBARI-781335

Copy to:

- 1-2. Sri Madhabi Kalita D/o Sri Maheswar Kalita, Vill. and Post Office- Sondha via. Milanpur, for information.
3. The Postmaster, Nalbari HO for necessary action.
4. The SP1, Milanpur.
5. The SDI(P) Nalbari(N).
6. O/C.

Superintendent of Post Offices
Nalbari-Barpeta Division
NALBARI-781335

(14) **Appointment of EDBPM by Inspectors.**—With a view to ensuring quick administration, it has been decided that where there is no contest for the post of EDBPM, the Inspector of Post Offices can make the appointment in anticipation of the formal approval of the Superintendent of Post Offices. The formal orders in this connection will be issued by the competent Appointing Authority, namely, the Divisional Superintendent. In other cases, where there are rival claimants, the Inspector of Post Offices would be required to obtain the prior approval of the Divisional Superintendent before appointing any person as EDBPM.

[D.G., P. & T., Letter No. 18/3/62-Disc., dated the 30th January, 1965.]

(15) **Provisional appointment of ED Agents.**—It has come to the notice of this office that provisional appointments made to ED posts are being allowed to continue for indefinite periods and when regular appointments are made, the provisionally appointed persons do not readily hand over the charge. The following instructions are issued in this regard:—

- (i) As far as possible, provisional appointments should be avoided. Provisional appointments should not be made to fill the vacancies caused by the retirement of ED Agents. In such cases, the Appointing Authority should take action well in time before the retirement of the incumbent ED Agent, to select a suitable successor.
- (ii) Wherever possible, provisional appointments should be made only for specific periods. The appointed person should be given to understand that the appointment will be terminated on expiry of the specified period and that he will have no claim for regular appointment. Where a new Post Office is opened or where a new post is created or where an ED Agent dies while in service or resigns from his post and it is not possible to make regular appointment immediately, a provisional appointment should be made for a specific period. The offer for appointment should be in the form annexed (Annexure-A).
- (iii) Where an ED Agent is put off duty pending departmental or judicial proceedings against him and it is not possible to ascertain the period by which the departmental/judicial proceedings are likely to be finalized, a provisional appointment may be made, in the form annexed (Annexure-B). It should be made clear to the provisionally appointed person that if ever it is decided to reinstate the previous incumbent, the provisional appointment will be terminated and that he shall have no claim to any appointment.

Even in cases where an appointment is made to fill the vacancy caused by the dismissal/removal of an ED Agent and the dismissed/removed employee has not exhausted all channels of appeal, the appointment should only be provisional. The offer for appointment should be in the form annexed (Annexure-B).

2. Efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years' continuous approved service. In such cases, their names should be included in the waiting list of ED Agents discharged from service, prescribed in D.G., P. & T., Letter No. 43-4/77-Pen., dated 23-2-1979.

3. These instructions may be brought to the notice of all Appointing Authorities.

[D.G., P. & T., Letter No. 43-4/77-Pen., dated the 18th May, 1979 and Cir. No. 19-34/99-ED & Trg., dated the 30th December, 1999.]

ANNEXURE - A
[*in Duplicate*]

Whereas the post of Extra-Departmental (*Name of Post and Office of duty*) has become vacant/has been newly created and it is not possible to make regular appointment to the said post immediately the (*Appointing Authority*) has decided to make provisional appointment to the said post for a period of (*period*) from to or till regular appointment is made, whichever period is shorter.

2. Shri (*Name and address of the selected person*) is offered the provisional appointment. He should clearly understand that the provisional appointment will be terminated when regular appointment is made and he shall have no claim for appointment to any post.

3. The (*Appointing Authority*) also reserves the right to terminate the provisional appointment at any time before the period mentioned in Para. 1 above without notice and without assigning any reason.

4. Shri will be governed by the Extra-Departmental Agents (Conduct and Service) Rules, 1964, as amended from time to time and all other rules and orders applicable to Extra-Departmental Agents.

5. In case the above conditions are acceptable to Shri (*Name of the selected candidate*) he should sign the duplicate copy of this memo and return the same to the undersigned immediately.

Appointing Authority

To

Shri

.....

ANNEXURE - B
[*in Duplicate*]

Whereas Shri (*Name and Designation of the ED Agent who has been put off duty/removed/dismissed*) has been put off duty pending finalization of disciplinary proceedings and judicial proceedings against him has been

removed/dismissed from service and the need has arisen to engage a person to look after the work of (Name of Post,) the undersigned (Appointing Authority) has decided to make a provisional appointment to the said post.

2. The provisional appointment is tenable till the disciplinary proceedings against Shri are finally disposed of and he has exhausted all channels of departmental and judicial appeals and petition, etc. (this clause may be deleted if the vacancy was caused by the dismissal/removal of an EDA) and in case it is finally decided not to take Shri (name of the ED Agent who has been put off/removed/dismissed) back into service till regular appointment is made.

3. Shri (name and address of the selected candidate) is offered the provisional appointment to the post of (name of post). Shri (name of the selected candidate) should clearly understand that if ever it is decided to take Shri (name of the ED Agent who has been put off/removed, dismissed) back into service, the provisional appointment will be terminated without notice.

4. The (Appointing Authority) reserves the right to terminate the provisional appointment any time before the period mentioned in Para. 2 above without notice and without assigning any reason.

5. Shri (name of the selected candidate) shall be governed by the Extra-Departmental Agents (Conduct and Service) Rules, 1964, and all other rules and orders applicable to Extra-Departmental Agents.

6. In case the above conditions are acceptable to Shri (name of the selected candidate), he should sign the duplicate copy of this memo and return the same to the undersigned immediately.

Appointing Authority

To

Shri

Attested
J. K. Chellu
Addl. C. G. S. O.

CLARIFICATION.—It has now been decided that provisional appointment of EDAs which are expected to continue for a long period should be made in the light of instructions contained in Letter No. 45-22/71-SPB.I/Pen., dated 4-9-1982 (Sl. No. 16). However, it should be made clear to the Employment Exchange and the selected candidate that his appointment is purely on provisional basis and liable to be terminated whatever the length of the service may be, in case it is ordered to reinstate the regular incumbent and the appointment letter may be issued in the respective forms as prescribed in the above instruction.

[D.G., Posts, Letter No. 41-286/87-PE-II, dated the 14th December, 1987.]

(16) Recruitment of ED Agents through Employment Exchange.—The question of recruitment of ED Agents through Employment Exchange has been under consideration of the Government for some time past.

To,

Shri R.P. Sharma / Mr. T. Das
Advocate,
Central Administrative Tribunal,
Guwahati.

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Re. : O.A. NO. 285 of 2003

Bhupen Kalita
-vs-

Union of India & Ors.

Sir,

Please take notice that the Respondents have
additional
filed written statement in the above case. A copy of
the same is enclosed herewith.

Please acknowledge receipt.

Yours faithfully,

A K Choudhury
Addl. C.G.S.C.

15/9/09

Received copy

T. D. Das
Advocate

-600-