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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 6/1/2004.....

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SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No:- 6/104

Misc Petition No: _____

Contempt Petition No: _____

Review Application No: _____

Name of the Applicant(s): Hanicharan Deka

Name of the Respondent(s): N.O.T. Sons

Advocate for the Applicant:- R.P. Sonoma, Mrs. T. Das.

Advocate for the Respondent:- CASE

Notes of the Registry	Date	Order of the Tribunal
Application filed but not in time Information Petition filed Fee not paid C.R. or Rs. 50/- deposited in A.P.C.B. No 19387735 Dated 6.1.04	13.1.2004	Heard Mrs. T. Das, learned counsel for the applicant. The O.A. is admitted, Issue notice to the parties. Fix it on 17.3.2004 for order.
<i>11c m. Register 9.1.04 P.M.</i>	bb	<i>K. D. Bhattacharya Member</i>
Steps taken alongwith envelops.	17.3.2004	Heard Mrs. T. Das, learned counsel for the applicant and also Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondent List on 22.4.2004 to enable the respondents to file written statement.

*Pl. comply order dated
13.1.04.*

13/1/04

13.1.04.

*WT
13/1/04*

Notice & order dt. 13/1/04
Sent to D/Section for
issuing to the respondent
Nos 1-4, D.No = 182 to 185.
Dt = 1/2/04.

mb

*K. D. Bhattacharya
Member (A)*

O.A. 6/2004 2

22.4.2004 Pass over.

KV Prahadan
Member (A)

mb

23.4.2004 None appears for the parties.
List on 3.5.2004.

KV Prahadan
Member (A)

mb

14.5.04 Adjourned for filing reply,
as requested by learned counsel
for the respondents.

List on 17.6.04 for orders.

KV Prahadan
Member (A)

SJ
Member (J)

bb

17.6.04

17.6.04

list on 23.7.04
for order.

By order

DR
23.7.2004 present : The Hon'ble Sri K.V. Sachidanand, Member (J).
The Hon'ble Sri K.V. Prahadan, Member (A).

When the matter came up for hearing
the learned counsel for the applicant
submitted that Inquiry Authority did not
prove the charge brought against the
applicant. The learned counsel for the
applicant also submitted that it is not
mandatory to dispose of the appeal.
On going through the aspects of the
matter, list the matter before the next
Division Bench. The respondents are
directed to produce the records of
Disciplinary Proceedings.

KV Prahadan
Member (A)

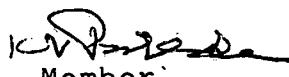
U
Member (J)

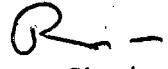
17.9.04

15.9.2004 Present: Hon'ble Justice Shri R.K. Batta,
Vice-Chairman

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

Heard Mrs T.D. Das, learned
counsel for the applicant and Mr A. Deb
Roy, learned Sr. C.G.S.C. Orders passed
separately.


K.V. Prahladan
Member


R.K. Batta
Vice-Chairman

nkm


K.V. Prahladan

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./XXX No. 6 of 2004

DATE OF DECISION 15.9.2004

Shri Haricharan DekaAPPLICANT(S)

Mr R.P. Sarma and Mrs T.D. DasADVOCATE FOR THE
APPLICANT(S).

-VERSUS -

Union of India and othersRESPONDENT(S)

Mr A. Deb Roy, Sr.C.G.S.C.ADVOCATE FOR THE
RESPONDENT(S).

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

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

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

Judgment delivered by Hon'ble Vice-Chairman

No.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.6 of 2004

Date of decision: This the 15th day of September 2004

The Hon'ble Justice Shri R.K. Batta, Vice-Chairman

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

Shri Haricharan Deka
S/o of Late Bhadreswar Deka
Resident of Village- Gandhibari,
District- Nalbari, Assam.Applicant

By Advocate Mr R.P. Sarma and Mrs T.D. Das.

- versus -

1. Union of India, represented by the
Cabinet Secretariat,
Department of Communication (Post),
Bikaneer House, Shahjahan Road,
New Delhi.

2. The Chief Post Master General,
Assam Circle, Guwahati.

3. The Director of Postal Services,
Assam Circle, Guwahati.

4. The Superintendent of Post Offices,
Nalbari-Barpeta Division,
Nalbari.Respondents

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

.....

O R D E R (ORAL)

BATTA. J. (VICE-CHAIRMAN)

Heard Mrs T.D. Das, learned counsel for the
applicant and Mr A. Deb Roy, learned Sr. C.G.S.C.

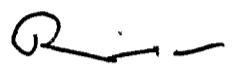
2. It is an admitted fact that an appeal has been
filed by the applicant against the impugned order dated
15.7.2003 of dismissal from service. The said appeal was
filed on 21.8.2003. In view of this, we are not inclined to
entertain this ^{application} appeal. The application is disposed of with



directions to the Appellate Authority, namely Director of Postal Service, Assam to dispose of the appeal within six months from the date of receipt of this order, in the event the appeal has not already been disposed of.

The application stands disposed of accordingly. No order as to costs.


(K. V. PRAHLADAN)
ADMINISTRATIVE MEMBER


(R. K. BATTA)
VICE-CHAIRMAN

nkm

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION NO. 6/04

In Between

Sri Haricharan Deka

..... Applicant

Vs

Union of India

represented by the

Cabinet Secretary, Deptt of

Communication (Post),

Bikaneer House Sahjahan Road,

New Delhi & Others

.... Respondents

List of dates/Synopsis

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02.	Written Statement submitted by the applicant ...	B	17 — 18
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04.	Written representation submitted by the applicant ...	D	21 — 22
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

An application Under Section 19 of the
Administrative Tribunal Act, 1985.

O.A. No. 6 /2004

IN THE MATTER OF :-

Sri Haricharan Deka
Son of Late Bhadreswar Deka
resident of vill. Gandhibari
District Nalbari, Assam.

.... APPLICANT

- Versus -

1. Union of India,

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

2. The Chief Post Master General,

Assam Circle, Guwahati-1.

3. The Director of Postal Services,

Assam Circle, Guwahati-1.

4. The Superintendent of Post Offices,

Nalbari-Barpeta Division,

Nalbari - 781 335

... RESPONDENTS ..

9
Filed by the petitioner/applicant
through Mr. Trish Dharm Deka.
Advocate

Details of Application :

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

The application is directed against the following Order :

(a) Order issued under Memo No. F1-02/A/Cash/01-02 dtd 15.7.2003 by the Superintendent of the Post Offices, Nalbari-Barpeta Division, Nalbari 781 335, 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 application is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation :

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

4. Facts of the Case :

4(1) That the applicant is a citizen of India and a permanent resident of village Gandhibari, District Nalbari, Assam and as such entitled to the rights and privileges guaranteed under the constitution of India and laws framed thereunder.

:- 3 :-

4(2) That the applicant hails from a very poor Agriculturist family of village Gandhibari, P.S. Tambulpur, Dist Na-lbari, Assam. He studied upto Vlass VIII and due to financial hardship he could not prosecute his further studies and searched for an employment. The applicant applied for the work of Extra-Departmental Branch Post-Master at Rangiya Sub-Division, Rangiya under the Supdt. of Post Offices, Nalbari-Barpeta Division, Nalbari. The applicant was found suitable for the work and an appointment order Memo No. AI/Gandhibari dtd Rangiya 23.4.86 was issued by the Inspector of Post Offices, Rangiya Sub-Division.

4(3) That the applicant while he was working as EDBPM, Gandhibari BO in a/c with Tambulpur SO was charge-sheeted for his alleged failure of maintaining absolute integrity and acted in contravention of Rule 17 of EDA Conduct and Service Rules, 1964. The Statements of article of charges framed against the applicant are as follows :-

" That the said Haricharan Deka, EDBPM Gandhibari BO in a/c with Tambulpur SO while he was working as BPM on 4.9.⁰¹ 02 could not produce Rs. 18659.00 included in the office cash and stamp balances for 19277.00 when O/S mails Sri Govind Das and Promad Das verified the cash and stamp balance of the BO on 4.9.⁰¹ 02. Thus the said Haricharan Deka

has violated Rule 11 read with Note below the rule of Rules for Branch Officers and thereby he failed to maintain absolute integrity and devotion to duty in contravening Rule 17 of P & T as (Conduct & Service)Rules, 1964.

In view of the above act of misconduct the said Haricharan Deka has displayed gross negligency to his duty and thereby he failed to maintain absolute integrity and devotion ^{to} his duty by in contravening the provision of Rule 17 of P & T EDAs (Conduct & Service) Rules 1964. "

A Charge Memo No. F1-02/A/Cash/01-02 dtd 22.2.2002 alongwith Article of Charges, statements of imputation of his misconduct etc, issued by the Respondent 4 was communicated to the applicant. The applicant was already put under suspension/put off from duty vide memo No. A1/Gandhibari dtd 06.09.2002 issued by SDI(P) Nalbari (E).

A copy of Memo No. F1-02/A/Cash 01-02 dtd 22.2.2003, article of charges and imputation of misconduct are filed hereto and marked as Annexure-A.

4(4) That on the aforesaid charges a disciplinary proceeding was initiated by the department under Rule-8 of EDA Conduct & Service Rules, 1964. Mr. L.K. Barman, Assistant Supdt of Post Offices, Nalbari-Barpeta

Sub-division was appointed as the Inquiry Officer and Sri Ratan Roy, SDI (P) Nalbari was appointed as Presiding Officer. The applicant with the help of his defence assistant submitted a written brief dtd 12.3.02, contending inter-alia that allegations levelled against him in the article of charge 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 maintained absolute integrity.

Regarding Rule 11 of Rules of branch offices bears the procedure for maintenance of the branch office accounts and the applicant always has been respecting the all provisions of Branch Offices Rule. However, it may be mentioned here that the whole amount was credited by the applicant within a month and as such question of his appropriation does not arise.

A copy of written statement dtd 12.3.02 is annexed herewith as
Annexure-B.

4(5) That the Inquiry Authority held the preliminary inquiry of the case on 10.4.2002. The applicant denied the charges and pleaded not guilty. After the preliminary inquiry, the regular hearing held on 29.4.02, ~~14~~ 13.6.02, 17.7.02 and 17.10.02 and ultimately the departmental proceeding against the applicant ended and the inquiry officer submitted his report to the Respondent No.4 with

:- 6 :-

a finding that the charges brought against the charged official (the applicant) is not proved fully for which the alleged violation of Rule 17 of EDA's (Conduct & Services) Rules 1964 is not attributed on him. But the Respondent No.4 communicated to the applicant with a copy of few points of I.A.'s conclusive report without awaiting the I.A.'s findings which the applicant is entitled under the law.

A copy of the points of disagreement with IA's conclusive report vide No. F1-02/A/Cash/01-02 dtd 17.6.03 issued by the Supdt of Post Offices, Nalbari, Barpeta Division, Nalbari is annexed herewith and marked as Annexure-C.

4(6) That the applicant as per direction of the Respondent No.4 submitted a written representation dated 3.7.2003 against the points of disagreement with I.A.'s conclusive report dtd 17.6.03 and it was contended here that he has not lost any govt. money and not violated Rule 11, the Rule of Rules for B.O. and has not failed to maintain absolute integrity and devotion to duty in contravening Rule 17 of P & T EDA's (Conduct & Service) Rule 1964.

A copy of the written representation dtd 3.7.03 is annexed herewith as Annexure-D.

4(7) That it is very unfortunate to the applicant that although the inquiry authority in the findings of the inquiry report stated that charges brought against the applicant is not proved, the Respondent No.4 who as disciplinary authority vide order issued under Memo No. F1-02/A/Cash/01-02 dtd 15.7.2003 held that the charges brought against Sri Haricharan Deka, the then BPM, Gandhibari BO has been proved beyond doubt and accordingly gave punishment of 'Removal' from service with immediate effect.

A copy of the Memo No. F1-02/A/Cash/01-02 dtd 15.7.2003 is annexed herewith and marked as Annexure-E.

4(8) That thereafter your humble applicant preferred an appeal before the Director of Postal Services, Assam Circle, Guwahati, 781 001 through the Supdt of Posts, Barpeta Division on 21.8.2003 with a prayer to consider his position from all points of realistic view and justice to be done by reversal of the orders of the Superintendent of POs, Nalbari-Barpeta Division. But the appellate authority has not taken any steps till today.

A copy of the appeal dtd 21.8.2003 to the Director of Postal Services (HQ) is annexed herewith and marked as Annexure-F.

4 (9) That the applicant submits that he was not held liable for any misappropriation of public money and the charges also not proved against him. In this circumstance, the major punishment of removal from service seems to be unjustified.

4 (10) That the applicant as an Extra Department Branch Post Master has been serving for a period of long 18 years in the postal department and by this time he attained 48 years of age and having been punished with removal from service his livelihood has been seriously affected by the disproportionate punishment.

4 (11) That the applicant begs to state that the impugned action of the respondents is violative of Article 14, 19, 21 and 311 of the Constitution of India.

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

4 (13) That the application is filed bonafide and for ends of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS :

5 (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.

5(2) For that the findings of the inquiry authority was that the charge brought against the charged official (the applicant) is not proved fully for which the alleged violation of Rule 17 of EDA's Conduct & Service Rules 1964 is not attributed on him and as such the impugned order is liable to be set aside and quashed.

5 (3) For that the quantum of punishment awarded to the applicant is very high and disproportionate as there is no misappropriation of money was proved against the applicant and as such the impugned order is liable to be set aside and quashed.

5(4) For that the whole fact and assessment of the evidence against the applicant is contradictory as in course of verification by the O/S mails (P.W. 1 and P.W.2) on 4.9.2001 the SDI(P) concerned was not physically attended the office and as such the action of the Respondents are illegal.

The inquiry officer stated in his inquiry report dtd 31.3.03 in para No. 7.0 "Assessment of evidences" - that "Both the prosecution witnesses (P.W. 1 and P.W.2) during cross question admitted that they did not charge the amount of shortage as unclassified payment in daily account. The inventory of cash-stamps found on verification (exh.3) which is considered to be vital to sustain the allegation, though shown to have obtained by SDI(P) concerned was not physically attended the office. The visiting O/S mails simply signed the said document with a remark that it was written in their presence. However, the P.W. 2 in his cross examination admitted to have written the inventory by him. In such a contradictory situation the Exh.3 cannot be relied upon".

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

5(6) For that the impugned order cause great hardship and injustice to the applicant.

5(7) For that in any view of the matter the impugned orders 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 COURTS:

The applicant further declares that they have not 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.

8(1) Setting aside order of 'Removal' from service issued by the Respondent No.4 under Memo No. F1-02/A/Cash/01-02 dtd 15.7.2003.

8(2) Directing the Departments to re-instate the applicant in the post of EDBPM, Tambulpur B.O. and to pay the arrear and regular monthly emoluments.

8(3) To pass any other order or orders as deem fit and proper by the Tribunal.

8(4) Costs of the case.

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Sree Hari Charan Deka.

:- 12 :-

9. APPLICATION IS FILED THROUGH ADVOCATE.

10. PARTICULARS OF I.P.O.

I.P.O. No. : 116387735

Date of issue : 6.1.84

Issued from : G.P.O. Guwahati

Payable at :

11. LIST OF ENCLOSURES :

As stated in Index.

... Verification....

VERIFICATION

I, Haricharan Deka, S/o Late Bha dreswar Deka, aged about 48 years, working as Extra Departmental Branch Post Master, Gandhibari BO in a/c with Tambulpur Sub-division, resident of village Gandhibari, Dist. Nalbari, Assam, do hereby verify that the contents of paragraphs1...2...4(1,2,3..4,5,6,7,8,9,10,11,12,13)....7,8..... are true to my personal knowledge and paragraphs ..3,4,5(1,2,3,4,5,6,7)....6..... are believed to be true on legal advice and I have not suppressed any material facts.

Sri Haricharan Deka.

Signature.

DEPARTMENT OF POSTS : INDIA
OFFICE OF THE SUPDT. OF POST OFFICES : NALBARI BARPETA DIVISION
NALBARI 781335

Memo No. F1-02/A/Cash/01-02 Dated at Nalwari 22-2-2002.....

M E M O R A N D U M

1. The under-signed proposed to hold an inquiry against Shri. Haricharan Deka..... under rule 8 of P&T EDA(Conduct and Service) Rule, 1964. The substance of imputation of misconduct or misbehavior is sent out in the enclosed statement of articles of charges(Annexure-I). A statement of imputations of misconduct or misbehavior 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. Haricharan Deka..... 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. Haricharan Deka..... is further informed that if he does not submit his written statement of defence on or before the specified in para 1 above or does not appear in person before the inquiry authority or other wise 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 Haricharan Deka..... 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 proceeding, it will be presumed that Shri Haricharan Deka..... 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.

Superintendent of Post Offices
Nalbari Barpeta Division
Nalbari-781335

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Regd/AD. Shri Haricharan Deka.....
B.P.M./Gandhibari LO(U.D)
Vill. Tukulpur LO.....

— 15 —
ANNEXURE-I

Statement of article of charges framed against Sri Haricharan Deka, EDBPM Gandhibari BO in a/c with Tambulpur SO now under put off duty

Article-I

That the said Sri Haricharan Deka, EDBPM Gandhibari BO in a/c with Tambulpur SO while was working as BPM on 4-9-01 could not produce Rs 18659.00 included in the office cash and stamps balances for Rs 19277.00 when O/S Mails Sri Govind Das and Promode Das verified the cash and stamps balance of the BO on 4-9-01. Thus the said Sri Haricharan Deka has violated Rule-11 read with Note below the rule of "Rules for Branch Offices" and thereby he failed to maintain absolute integrity and devotion to duty in contravening Rule-17 of P&T EDAs(conduct and services) Rules, 1964.

ANNEXURE-II

Statement of imputation of misconduct and misbehaviour in support of the article of charges framed against Sri Haricharan Deka, EDBPM Gandhibari BO in a/c with Tambulpur SO under Rule-8 of P&T EDAs(Conduct and services) Rule, 1964.

Article-I

That the said Sri Haricharan Deka, EDBPM Gandhibari BO in a/c with Tambulpur SO while working as BPM on 4-9-01 could not produce Rs 18659.00 out of cash balance of Rs 19277.00 when O/S Mails Sri Govind Das and Sri Promode Das verified the cash and stamps balances of the BO on 4-9-01. The details of cash and stamps balances were found as follows on 4-9-01.

<u>Closing balance dtd 4-9-01 Rs 19277.60</u>		<u>Cash/stamps found on physical verification</u>	
Cash	Rs 18706.60	Cash	Rs 700.60
P/Stamps	Rs 541.00	P/stamps	Rs 521.00
Revenue	Rs 30.00	Revenue	Rs 20.00
<hr/>		<hr/>	
Rs 19277.60		Rs 1241.60	

Thus cash found short (Rs 19277.60 – Rs 1241.60) Rs 18659.00

The said Sri Haricharan Deka admitted the shortage of cash in his written statement dtd 4-9-01 and assured to refund the shortage of cash to the Govt. within 30 days. However he credited the amount at Tambulpur SO on 10-9-01, 24-9-01 and 29-9-01.

In view of the above act of misconduct, the said Sri Haricharan Deka has displayed gross negligency to his duty and thereby he failed to maintain absolute integrity and devotion to his duty by in contravening the provision of Rule-17 of P&T EDAs(conduct and services) Rules, 1964.

ANNEXURE-III

List of documents by whom the articles of charge framed against Sri Haricharan Deka, EDBPM, Gandhibari BO in a/c with Tambulpur SO are proposed to be sustained.

Article-I

1. Gandhibari BO a/c book for 1-11-2000 to 4-9-2001 — E.I.
2. Gandhibari BO daily a/c dtd. 4-9-2001 E.I.

3. Cash/Stamps inventory dtd. 4-9-2001 obtained by the SDI(P), Nalbari (E). Ex 111
4. Written statement of Sri Haricharan Deka dtd. 4-9-2001 Ex 114

ANNEXURE- IV

List of witness by whom the article of charges framed against Sri Haricharan Deka, EDBPM, Gandhibari in a/c with Tambulpur SO proposed to be sustained.

1. Sri P.N. Gayari, then SDI(P), Nalbari (E), now SDI(P), Nalbari (W).
2. Sri Govind Das, O/S Mails Nalbari (E)
3. Sri Promode Das, O/S Mails Nalbari (E)

N.Das
(N. DAS)
Supdt. of Post Offices
Nalbari Barpeta Division
Nalbari-781335

*Certified to be true copy,
Ms. T.P.D.M.
Advocate*

17-

To

The Supdt of Post Offices,
Nalbari Barpeta Dn, Nalbari.

Dated at Gandhibari the 12th March/02.

Sub:- Written statement of defence against Rule-8
case of Sri Haricharan Deka BPM Gandhibari BO
(UPD)

Ref:- Your office memorandum No.F1-02/A/Cash/01-02
dtd 22.2.02.

Sir,

Most respectfully I beg to submit my written statement against the articles of charge framed against me vide your office letter No.F1-02/A/Cash/01-02 dtd 22.2.02 for favour of your kind justice and kind consideration.

That Sir, I Sri Haricharan Deka was working as BPM Gandhibari BO under Tambulpur SO since 1986 and I beg to state that the amount of Rs. 18659/- (Eighteen thousand Six hundred fifty nine) and was not actually shortage of cash on 4.9.01 as and when O/S mail/Nalbari visited the BO as -

- (1) The BO was functioning in a public house which was 1½ miles distance from my own residence.
- (2) The area including Gandhibari BO under Tambulpur SO is covering by the extremists. They demand the money and threaten the public.
- (3) I was also not saved by the above action made by the extremists.
- (4) Generally I had kept the money in my own house for save custody.

Contd..

(5) I and EDDA/EDMC had not got the monthly allowances for three months i.e. June, July and August/01. We were waiting to receive the A/Roll for charging the said amount as Bills paid.

(6) The O/S mails did not give the chance to bring the money from my own house on 4.9.01. They advised me to credit the said amount later on i.e. in instalments.

That Sir, under the above circumstances I beg to state that I had deposited the said amount to the Govt a/c and I had not lost the Govt money. I do not admit the article of charges framed against me vide your office memi no. cited above.

Therefore I fervently request your honour kindly to consider my case at present, so that I may be allowed to rejoin in my duty for which act of your kindness I shall remain ever grateful to you.

Yours faithfully,

Sd/- Haricharan Deka
BPM Gandhibari BO (UPD).

Certified to be true copy.
Mr. T. D. Deka
Advocate

REGD/AD

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

To,

Sri Hari Charan Deka
EDBPM, Gandhibari BO(UPD)
Via Tambulpur SO

No : F1-02/A/Cash/01-02

Date :: 17-6-2003

Sub : Rule-8 inquiry against Sri Hari Charan Deka, EDBPM/Gandhibari BO(UPD) via Tambulpur SO - submission of written representation against the points of disagreement with I.A's conclusive report

The following are the points of disagreement with I. A's conclusive report. You are requested to submit your representation against the following points if desired, within 10 days of receipt of this letter failing which it will be presumed that you having nothing to represent and action will be taken accordingly.

1. Though the written statement of charged official is dictated one he signed the statement as true to the best of his knowledge and promised to credit the shortage amount within a month.
2. Though the shortage of cash was not charged as UCP properly in daily a/c of Gandhibari BO dtd 4-9-01 a note to this effect has been made by the O/S mails on the daily a/c and accordingly Tambulpur SO charged the amount as UCP.
3. The inventory was actually prepared by Sri Govinda Das O/S mails himself without giving the detailed particulars of notes etc but before signing it, he wrote the remarks "The inventory written before us." He has given the particulars of cash, stamp, revenue etc and correctly calculated the shortage of cash of the BO on 4-9-01 taking the CB of 3-9-01 and the transaction of 4-9-01.
4. The PW-2 i.e. Sri Govinda Das O/S mail disclosed before I.A. that the charged official was asked to bring the amount of shortage of cash from his residence though in I.A 's argument stated that the reasonable opportunity has not been given to the charged official.

5. Sri Hari Charan Deka, BPM Gandhibari, read up to class VIII in 1967 who is doing all kinds of business of the department. Therefore, his mere saying that his own statement was recorded on the dictation of O/S mails is not tenable. Further, Sri Deka signed in the inventory on 4-9-01 without objection. Had there been any dis-agreement, the charged official should have objected to sign in the inventory prepared by the O/S mails.

6. The deposition of defence witness Sri Sambar Madahi, Secretary, Gandhibari Gaon Panchayat that he was not aware of the shortage of cash in cash balance but put his signature as witness in the statement of the charged official is not acceptable being he is a responsible Govt. employee who is not supposed to sign without his full knowledge of contents of the statement. These are all makings and after thought statement.

Rev 1/6/03
(S. Das)
Superintendent of Post Offices
Nalbari Barpeta Division
Nalbari-781335

Certified to be true copy
M. T. P. Das, Advocate

To

The Supdt of Post Offices,
Nalbari Barpeta Dn, Nalbari.

Dated at Gandhibari the 3rd July 2003.

Sub:- Submission of written representation against the points of disagreement with IA's conclusive report.

Sir,

With due respect I beg to submit my written representation vide your letter No. F.1/02/A/Case/01-02 dtd 17.6.2003 against the points of disagreement with IA's conclusive report of Rule-8 inquiry against me, before you for favour of your kind consideration and kind justice.

1. The contents of the written statement was dictated by the O/S mails. That was true and I had objected to sign but he directed to credit the excess cash within a month and I had credited the said amount within period as he advised.

2. At the time of preparation of BO daily a/c dtd 4.9.01 made by me thr O/S mail did not direct to show the amount as UCP on the payment side against shortage as they stout.

3. At the time of preparation of inventory dtd 4.9.01 the O/S mail did not count the details particulars of notes etc. which were kept in my safe custody at my residence for payment bills which was subsequently paid vide SP/NBR letter No. LI-mails arrangement/BO/99-2002 dtd 26.3.2002.

4. It is true that the O/S mail did not give the reasonable opportunity to bring the amount from my residence as the office was functioning in a public house and PO and IO could not prove it at the time of enquiry.

5. Though I had read upto Class VIII in 1967 I do not know the all kind of Rule of the department. However, I know to obey the order and any direction of the superior authority of our department before putting my signature in the inventory on 4.9.01. I had objected to sign in the inventory. But the O/S mails had advised to sign on it which was disagreement with me.

6. Sri Sambar Madahi is a Govt employee it is true. In his deposition he disclosed that he did not know the actual internal fact of our department before I.O. and he disclosed that he did not know the actual internal fact of our department before I.O. and he disclosed that Sri Hari Charan Deka wanted to bring the shortage amount stated by the O/S mails from his house.

The O/S mails read the contents of the written statemebt before Shri Madahi and he was present at the time of my putting signature in the said statement. The O/S mails said to Sri Madahi to put his signature as witness to prove my signature only. Then Sri Madhahi had signed on the statement as I had signed there.

That Sir, I have not lost ~~XXXXXX~~ any Govt money and I have not violated Rule 11 read with note below the Rule of Rules for B.O. and have not failed to maintain absolute integrity and devotion to duty in contravening Rule 17 of P & T EDAs (Conduct and Service) Rule 1964 as I thought.

Therefore I fervently request your honour kindly to consider my case for this time and kindly to reinstate to my duty for which act of your kindness I shall remain ever grateful to you.

Yours faithfully,

Sd/- Sri Hari Charan Deka
ED BPM Gandhibari BO
in a/c with Tambulpur SO

*Certified to be true copy
Ms. T.D.D.
Advocate*

23

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

Memo No : F1-02/A/Cash/01-02

Date : 15-7-2003

In this office memo of even No dated 22-2-2002 Sri Haricharan Deka, BPM Gandhibari BO was informed that it is proposed to take action against him under Rule-8 of P&T EDA's(Conduct and Service) Rules, 1964 A statement of imputation of misconduct or misbehaviour along with the memorandum was also sent to him with direction to submit the written defence statement against the charge within 10 days from the date of receipt of the memo. The article of charges and statement of imputation of misconduct or misbehaviour was as under :

Article of charge

"That, the said Sri Haricharan Deka, EDBPM Gandhibari BO in a/c with Tambulpur SO while was working as BPM on 4-9-01 could not produce Rs 18659.00 included in the office cash and stamps balances for Rs 19277.00 when O/S Mails Sri Govinda Das and Promode Das verified the cash and stamps balance of the BO on 4-9-01. Thus the said Sri Haricharan Deka has violated Rule-11 read with Note below the rule of "Rules for Branch Offices" and, thereby he failed to maintain absolute integrity and devotion to duty in contravening Rule-17 of P&T EDAs(Conduct and Services) Rules, 1964.

ANNEXURE-II

Statement of imputation misconduct and misbehaviour

Article

That the said Sri Haricharan Deka, EDBPM Gandhibari BO in a/c with Tambulpur SO while working as BPM on 4-9-01 could not produce Rs 18659.00 out of cash balance of Rs 19277.00 when O/S Mails Sri Govinda Das and Sri Promode Das verified the cash and stamps balances of the BO on 4-9-01. The details of cash and stamps balances were found as follows on 4-9-01.

Closing balance dtd 4-9-01 Rs 19277.60
Details

Cash/stamps found on physical verification

Cash	Rs 18706.60
P/Stamps	Rs 541.00
Revenue	Rs 30.00

Cash	Rs 700.60
P/Stamps	Rs 521.00
Revenue	Rs 20.00

Rs 19277.60

Rs 1241.60

Thus cash found short (Rs 19277.60 – Rs 1241.60) Rs 18659.00

The said Sri Haricharan Deka admitted the shortage of cash in his written statement dtd 4-9-01 and assured to refund the shortage of cash to the Govt. within 30 days. However he credited the amount at Tambulpur SO on 10-9-01, 24-9-01 and 29-9-01.

In view of the above act of misconduct, the said Sri Haricharan Deka has displayed gross negligence to his duty and thereby he failed to maintain absolute integrity and devotion his duty by in contravening the provision of rule-17 of P&T EDAs(Conduct and Services) Rules, 1964."

3. The said Sri Hari Charan Deka received this office memo of even No dated 22-2-2002 in time and submitted his written statement dated 12-3-2002 denying the charges with a request to allow him to join in duty. So I.O and P.O were appointed to conduct an inquiry against him to express his view before the Inquiry Officer. Sri L.K. Barman ASPOs(HQ) O/O the SPOs, Nalbari and Sri Ratan Roy, SDI(P)/Nalbari (E) were appointed as I.O. and P.O. respectively.

4. That the I.A. hold the preliminary inquiry of the case on 10-4-2002. On preliminary hearing the charged official denied the charges and pleaded not guilty. The I.A. after preliminary inquiry held regular hearing on 29-4-02, 13-6-02, 17-7-02 and 17-10-02 and finally submitted his conclusive report on 31-3-03 with the findings that the charges brought against the charged official is not proved fully for which the alleged violation of Rule-17 of EDAs(Conduct & Services) Rules, 1964 is not attributable on him.

5. Under the provision of statutory rule, a copy of I.O's report was sent to the charged official on 2-4-2003 for representation against I.O's conclusive report. The charged official has submitted his written defense representation on 22-4-2003. His written defence representation runs as follows :

"With due respect I beg to submit my written representation against I.O's final report of Rule-8 inquiry against me before you for favour of your kind justice and favourable consideration.

That Sir, I, Sri Haricharan Deka was working as BPM Gandhibari BO in a/c with Tambulpur SO and the charge framed against me was as under

"That, the said Sri Haricharan Deka, EDBPM Gandhibari BO in a/c with Tambulpur SO while was working as BPM on 4-9-01 could not produce Rs 18659.00 included in the office cash and stamps balances for Rs 19277.00 when O/S Mails Sri Govinda Das and Promode Das verified the cash and stamps balance of the BO on 4-9-01. Thus the said Sri Haricharan Deka has violated Rule-11 read with Note below the rule of "Rules for Branch Offices" and thereby he failed to maintain absolute integrity and devotion to duty in contravening Rule-17 of P&T EDAs(Conduct and Services) Rules, 1964."

I beg to state that the O/S mails Sri Gobinda Das and Sri Promod Das were visited the BO on 4-9-01 and they alleged that the amount of Rs 18659.00 was short in the cash & stamp balance of the account which was mentioned in the charge sheet dtd 22-2-02. It is very regretted that the said amount was not actually short on 4-9-01 which were kept in my safe custody for payment of pay & allowances for 3 months which has been released by SP/NBR vide his letter No L1-mails management/BO/99-2002 dtd 26-3-2002 subsequently and for others liabilities. The O/S mails (both) did not properly checked and verified the cash & stamp balance on 4-9-01 and they did not give the opportunity to show the cash taking from the safe custody (my home) as the BO was functioning in a public house.

The Presenting Officer and the prosecution witness could not prove the charge framed against me during the course of inquiry made on examination and cross examination.

The written statement of my dtd 4-9-01 was not actually my own expression. It was dictated by the O/S mails Sri Govinda Das and it is also disclosed by the Defense witness in his deposition at the time of enquiry. All these things the I.O. has discussed in the assessment of evidence of his final report dtd 31-3-03 and the I.O.'s findings is as under " In view of the discussion above derived from the assessment of evidences I find that the charges brought against the charged official is not proved fully for which the alleged violation of Rule-17 of EDA(conduct & service) Rules , 1964 is not attributable on him."

That Sir, I have not lost the Govt. money and I have not violated Rule-11 read with note below the rule of Rules for Branch Offices and I have not failed to maintain absolute integrity and devotion to duty in contravening Rule-17 of P&T EDAs(*conduct and services*) Rules, 1964.

Therefore I fervently request your honour kindly to consider my case and kindly to reinstate to my duty for which act of your kindness I shall remain ever grateful to you."

The following points of disagreement with I.O.'s report was communicated to the charged official vide this office letter No F1-02/A/Cash/01-02 dated 17-6-2003 .

1. Though the written statement of charged official is dictated one he signed the statement as true to the best of his knowledge and promised to credit the shortage amount within a month.
2. Though the shortage of cash was not charged as UCP properly in daily a/c of Gandhibari BO dtd 4-9-01 a note to this effect has been made by the O/S mails on the daily a/c and accordingly Tambulpur SO charged the amount as UCP.
3. The inventory was actually prepared by Sri Govinda Das O/S mails himself without giving the detailed particulars of notes etc but before signing it, he wrote the remarks " The inventory written before us". He has given the particulars of cash, stamp, revenue etc and correctly calculated the shortage of cash of the BO on 4-9-01 taking the CB of 3-9-01 and the transaction of 4-9-01.
4. The PW-2 i.e. Sri Govinda Das O/S mail disclosed before I.A. that the charged official was asked to bring the amount of shortage of cash from his residence though in I.A.'s argument stated that the reasonable opportunity has been given to the charged official.
5. Sri Hari Charan Deka, BPM Gandhibari, read up to class VIII in 1967 who is doing all kinds of business of the department. Therefore, his mere saying that his own statement was recorded on the dictation of O/S mails is not tenable. Further, Sri Deka signed in the inventory on 4-9-01 without objection. Had there been any dis-agreement, the charged official should have objected to sign in the inventory prepared by the O/S mails.
6. The deposition of defence witness Sri Sambar Madahi, Secretary, Gandhibari Gaon Panchayat that he was not aware of the shortage of cash in cash balance but put his signature as witness in the statement of the charged official is not acceptable being he is a responsible Govt. employee who is not supposed to sign without his full knowledge of contents of the statement. There are all makings and after thought statement.

The charged official submitted his written representation against the points of disagreement with I.O's report on 3-7-2003. His written representation runs as follows :

"With due respect I beg to submit my written representation vide your letter No F1/02/A/Cash/01-02 dated 17-6-2003 against the points of disagreement with I.A's conclusive report of Rule-8 inquiry against me, before you, for favour of your kind consideration and kind justice.

1. The contents of the written statement was dictated by the O/S mails that was true and I had objected to sign but he directed to credit the excess cash within a month and I had credited the said amount with period as he advised.

2. At the time of preparation of BO daily a/c dtd 4-9-01 made by me the O/S mails did not directed to show the amount as UCP on the payment side against shortage as they stated.

3. At the time of preparation of inventory dtd 4-9-01 the O/S mail did not count the details particulars of notes etc which were kept in my safe custody at my residence for payment bills which was subsequently paid vide SP/NBN letter No L1-mails arrangement/BO/99-2002 dated 26-3-2002.

4. It is true that the O/S mail did not give the reasonable opportunity to bring the amount from residence as the office was functioning in a public house and PO and IO could not prove it at the time of enquiry

5. Though I had read upto class VIII in 1967 I do not know the all kind of Rule of the department. However, I know to obey the order and any direction of the superior authority of our department before putting my signature in the inventory on 4-9-01 I had objected to sign in the inventory. But the O/S mails had advised to sign on which was disagreement with me.

6. Sri Sambar Madahi is a Govt. employee it is true. In his deposition he disclosed that he did not know the actual internal fact of our department before I.O and he disclosed that Sri Hari Charan Deka wanted to bring the shortage amount stated by the O/S mails from his home.

The O/S mails read the contents of the written statement before Sri Madahi and he was present at the time of my putting signature on the said statement. The O/S mails said to Sri Madahi to put his signature as witness to prove my signature only. Then Sri Madahi had signed on the statement as I had signed there in the said statement.

That Sir, I have not lost any Govt. money and I have not violated Rule 11 read with note below t the Rules of Rules for BO and have not failed to maintain absolute integrity and devotion to duty in contravening Rule-17 of P&T EDAs (Conduct and Service) Rules, 1964 as I thought.

Therefore I fervently request your honour kindly to consider my case for this time and kindly to reinstate to my duty for which act of your kindness I shall remain ever grateful to you."

OBSERVATION

I have gone through the Rule-8 charge sheet framed against Sri Haricharan Deka, the relevant records of the case, his defence representations very carefully and minutely and observed as follows :-

The main charge was that Sri Haricharan Deka, BPM, Gandhibari BO could not produce required cash and stamps before Sri Govinda Das and Promode Das both O/S mails on 4-9-01, although they have allowed sufficient time, even ready to stay overnight if the said BPM could produce the shortage amount of Rs 18,659.00. Moreover, if the amount was kept in his residence, that could have been deposited by him on the next day. But he deposited the money by installments on 10-9-01, 24-9-01 and 29-9-01 only. Therefore, there is no truth in his saying in the representation that the money was kept in his residence. By the above it is proved beyond doubt that the said BPM expended the Govt money for his own cause keeping shortage in Govt. cash balance, which is a glaring proof of misappropriation of Govt. money. The I.A's findings also could not deny the above basic facts.

Therefore the charges brought against Sri Haricharan Deka, then BPM, Gandhibari BO has been proved beyond doubt. I, therefore, issue the following order to meet the end of justice.

ORDER

I, Sri S. Das, Supdt. of Post Offices, Nalbari Barpeta Division Nalbari, do hereby order that Sri Haricharan Deka, the BPM, Gandhibari BO (now on put off duty) in a/c with Tambulpur SO be removed from service with immediate effect.

SD/-

(S. Das)

Superintendent of Post Offices
Nalbari Barpeta Division
Nalbari-781335

Copy to :

1. The Chief Postmaster General, Assam Circle, Guwahati for favour of information.
2. The Postmaster Nalbari HO for information and n/a.
3. Sri Haricharan Deka, then BPM Gandhibari BO via Tambulpur SO for information.
4. The SDI(P) Nalbari(E) Sub Division, Nalbari for information.
5. The punishment register.
6. The Estt. Branch
7. PF.
8. OC.

SD/- 17/10/03
Superintendent of Post Offices
Nalbari Barpeta Division
Nalbari-781335

*Certified to be true copy
T. D. Das
Advocate*

- 28 -

F

To

The Director of Postal Services (HQ)
Office of the Chief Post Master General,
Assam Circle, Meghdoott Bhawan,
Gauhati - 781 001.

Through the Supdt of Post Offices
Nalbari Barpeta Division, Nalbari-781 335

Dated at Gandhibari the 21st Aug/2003.

Sub:- Humble appeal of Sri Haricharan Deka
Ex ED BPM Gandhibari BO in a/c with
Tambulpur SO.

Most respectfully it is appealed to your
gooself to consider the case of your applicant.

That your unfortunate appellant was worked as
ED BPM Gandhibari BO in a/c with Tambulpur SO since 1986.

That your appellant was charge sheeted by the
Supdt of POs Nalbari Barpeta Dn vide his memi No. F1-02/A/
cash/01/02 dtd 22.2.02 under Rule 8 of P & T EDAS
(Conduct and service) Rules 1964 enclosing a statement of
imputation of misconduct of misbehaviour alongwith the
memorandum (copy enclosed herewith) with direction to
submit written defence within 10 (ten) days from the
date of receipt of the memo said above.

That your unfortunate appellant denied the
charges in toto, and then the Supdt of Pos Nalbari Dn
appointed a commission of enquiry with Sri L.K. Barman
ASPOs (HQ) Nalbari Dn as enquiry authority.

That the inquiry authority after preliminary
inquiry on 10.4.02 held regular inquiry on ~~28~~ 29.04.02,
13.06.02, 17.07.02 and 17.10.02 and finally submitted his
report on 31.03.03 with findings that the charges brought

:- 2 :-

against the undersigned are not proved, for which violation of Rule 17 of EDA (Conduct & Service) Rule 1964 cannot be attributed on the undersigned (copy of the IOs report is enclosed herewith).

That Supdt of POs Nalbari Barpeta Dn has passed his order vide his memo No. Fi-02/A/cash/01-02 dtd 15.7.03 to remove the undersigned from the service as and when not a single paise is due to the Govt, or Rule 17 of EDAS (Conduct & Service) Rules 1964 was not a-tribulated.

That your unfortunate appellant has no other source of income, and at this stage he shall not find any job, elsewhere for his survival, and your unfortunate appellant considers the removal from service as death penalty to him to other ~~other~~ members of his family.

The logic brought forward in the removal order is not hibb, but the main charge of the charge ~~sheet~~ sheet which was turned down as not proved by the enquiry authority.

That the Department took unblemish service from the appellant for a period of long 18 years, and when he is old and cannot work hard, his removal order is issued to make him a street begger.

The place where unfortunate appellant worked was a hot bed of militancy, and it well admitted by the Govt. A good number of extremist groups are always active and thus omissions or commissions cannot be ruled out. One cannot expect to work in a cool mood but your appellant worked so many years without any loss of Govt money. And he faced no public complains during of long 18 years service.

30 -

:- 3 :-

That your unfortunate appellant begs to approach you through this humble appeal in the cherished hope that it would be considered from all points of realistic view and justice be done to him by the reversal of the orders of the Supdt of POs Nalbari Barpeta Dn Nalbari and for this act of your kindness your unfortunate appellant as in duty bound will every pray, and remain ever grateful to you.

Date : Gandhibari
the 21st Aug/03.

Hari Charkan Deka
Ex ED BPM Gandhibari.

Advance copy :

21/8/03

The Director of Postal Services (HQ)
office of the Chief PMG, Assam Circle,
Guwahati for his kind justice.

Hari Charan Deka
Ex ED BPM Gandhibari.

9/11/04

17-6-04
X
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI

File No. 58
Date 17/6/01
S. No. 207
Sr. C. G. S. C.
A. T. Guwahati Bench

O.A. NO. 6 OF 2004

Shri Haricharan Deka.

.... Applicant

- VS -

Union of India & Ors.

.... Respondents.

In the matter of :

Written Statement submitted by
the respondents.

The respondents beg to submit a
brief history of the case which
may be treated as a part of the
written statement.

(BRIEF HISTORY OF THE CASE)

The case was regarding shortage of cash in BO
balance of Gandhibari BO in a/c with Tambulpur SO amounting
to Rs. 18,659/- out of total cash balance of Rs. 19,277/-
detected by the O/S mails, Nalbari(E) while he verified the
cash and stamp balance of the BO on 4.9.01 during his visit
of the BO. Shri Haricharan Deka, EDBPM, Gandhibari BO
misused the post office cash and kept the said amount short
in balance.

The amount of shortage was charged as UCP on 4.9.01
and it was subsequently recovered from Shri Haricharan
Deka in instalments of Rs. 4000/- Rs. 8400/-, Rs. 6259/- and
got credited at Tambulpur SO on 10.9.01, 24.9.01 and
29.9.01 respectively.

Contd.....

-2-

For the above act of misconduct Shri Haricharan Deka was placed on put off duty with immediate effect vide SDI(P)/Nalbari(E) memo No. A1/Gandhibari dated 6.9.01 which was ratified by SPOs/Nalbari vide memo No. F1-02/A/Cash/01-02 dated 13.9.01. Charge sheet was issued against Shri Haricharan Deka vide memo No. F1-02/A/Cash/01-02 dated 22.2.2002. Shri Haricharan Deka received the memo dated 22.2.2002 and submitted his representation denying the charge on 12.3.02. In order to enquire into the charges under Rule-8, Shri L.K. Barman, then ASPOs(HQ) Nalbari and now ASPOs, O/o the CPMG, Guwahati and Shri Ratan Roy, then SDI(P)/Nalbari(E) and now PA/Divisional Office Nalbari were appointed as I.A. and P.O. respectively vide memo No. F1-02/A/Cash/01-02 dated 26.3.02. Since then the I.A. heard the case on many dates and submitted his final conclusive report on 31.3.03. A copy of the P.Os report was sent to charged official with reason for dis-agreement with the findings of the I.A. on certain points for submission of his defence representation against the same on 2.4.03. The charged official submitted his defence representation on 22.4.03. The disciplinary authority finalized his disciplinary case awarding penalty of removal him from service issued vide SPOs/Nalbari memo No F1-02/A/Cash/01-02 dated 15.7.2003.

PARAWISE COMMENTS :

1. That with regard to paras 1, 2, 3, 4(1), 4(2), 4(3) and 4(4), of the application the respondents beg to offer no comments.

Contd.....

-3-

2. That with regard to the statement made in para 4(5) of the application the respondents beg to state that the disciplinary authority may disagree with the findings of the Inquiring Authority. He may finalise the disciplinary case accordingly to his own decision as per provision of Rule 15(2) of CCS(CCA) Rules, 1965. The Inquiry Officer's report together with reasons for disagreement with the findings of the Inquiring Authority were sent to Shri Deka asking him to submit written representation, if he so desires, as per provision of the said Rules. The Inquiry Authority's conclusive report was submitted to the Disciplinary Authority on 31.3.03 as mentioned by the Applicant himself in the description of Annexure-C of the O.A. and therefore there is no point of submitting conclusive report by the I.A. again in that stage of proceeding.

3. That with regard to the statement made in para 4(6), of the application the respondents beg to state that the points raised by the applicant in his written representation dated 3.7.03 are not true as he was found solely responsible for misappropriation of Government money to the tune of Rs. 18,659/- which could not be produced by him before the verifying officials on 4.9.01, although they have allowed sufficient time, even ready to stay over night, to give the applicant opportunity to produce the shortage amount. The amount was recovered from the applicant in instalments on 10.9.01, 24.9.01 and 29.9.01 which is the proof of his misappropriation. Had he not misappropriated the above amount, he could have produced the shortage money on the same day or next

Contd.....

day. Therefore, his statement is not based on facts.

4. That with regard to the statement made in para 4(7), of the application the respondents beg to state that the Disciplinary authority is not bound to accept the findings of the Inquiring Authority, when there is a scope of dis-agreement with his findings.

5. That with regard to the statement made in para 4(8), of the application, the respondents beg to state that the Appeal preferred by the Applicant is still under process with the Director of Postal Services, Assam Circle, Guwahati-781001. Therefore, the applicant has got no legal stand to file any application before the Hon'ble Central Administrative Tribunal. It will be bad in law, if his application is decided before finalisation of his Appeal case as the applicant has not completed the available Departmental channels for redressal of his grievances, if any.

6. That with regard to the statement made in para 4(9), of the application the respondents beg to state that the misappropriation of Government money by the applicant has been proved beyond doubt, which is clear from para 4(4) of the OA that the entire amount of misappropriation was recovered from him in instalments at Tambulpur SO on 10.9.01, 24.9.01 and 29.9.01. For such serious offence he was found unsuitable for retention in Government job and therefore removed from service.

-5-

A copy of the credit certificate issued by Postmaster, Nalbari HO dated 11.12.01 showing the amounts credited by Shri Haricharan Deka, BPM Gandhibari BO is annexed herewith and marked as Annexure- A.

7. That with regard to the statement made in para 4(10) of the application, the respondents beg to state that the punishment awarded was quite justified and commensurate as he failed to maintain absolute integrity and devotion to duty as enjoined in Rule 17 of P&T EDA (Conduct and Service) Rules, 1964.

8. That with regard to the statement made in para 4(11), of the application the respondents beg to state that the order of removal is in no way violation of article 14, 19, 21 and 311 of the Constitution of India. All reasonable opportunity was provided to the applicant to defend his case.

9. That with regard to the statement made in para 4(12), of the application, the respondents beg to state that the applicant is misleading the Hon'ble CAT by saying that he has got no alternative remedy. The Appeal preferred by him is yet to be decided and this was his alternative remedy.

10. That with regard to the statement made in para 4(13), of the application, the respondents beg to offer no comments.

11. That with regard to the statement made in para 5(1), of the application, the respondents beg to state that the order of removal of the applicant from service

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was quite reasonable in view of his gross misconduct of misappropriation of Government money.

12. That with regard to the statement made in para 5(2), of the application, the respondents beg to state that the violation of Rule-17 of EDA (Conduct and Service) Rules, 1964 by the applicant has been proved beyond doubt as per oral and documentary evidence and therefore the removal order was quite justified.

13. That with regard to the statement made in para 5(3), of the application, the respondents beg to state that the said punishment of removal was very much appropriate in view of his gross misconduct.

14. That with regard to the statement made in para 5(4), of the application, the respondents beg to state that O/S mails are Govt. officials, who are empowered to verify cash and stamp balance of the post offices visited by them. The said O/S mails made a note of shortage of cash in the BO account of Gandhibari BO on 4.9.01 correctly. The applicant made a written statement, promising to credit the shortage amount within a month and later the amount was recovered from him in instalments.

Copy of the BO account book of Gandhibari BO covering the date 4.9.01 with remarks of shortage is annexed herewith and marked as Annexure- B.

Contd.....

Copy of the written statement of Shri Haricharan Deka, BPM, Gandhibari BO dated 4.9.01 is annexed herewith and marked as Annexure -C.

15. That with regard to the statement made in para 5(5), of the application, the respondents beg to state that the applicant was removed from service due to serious offence which has been proved on the basis of material evidence on record and in doing so the Department cannot consider the economic condition of the applicant.

16. That with regard to the statement made in para 5(6), of the application, the respondents beg to state that the order was issued to meet the end of justice.

17. That with regard to the statement made in para 5(7), of the application, the respondents beg to state that the order is valid, which is not liable to be quashed.

18. That with regard to the statement made in para 6, of the application, the respondents beg to state that the applicant's appeal still pending and under process and therefore there is no justification to approach the Hon'ble Tribunal without getting the result of the appeal from the Department.

19. That with regard to the statement made in para 7, of the application, the respondents beg to state that the Departmental appeal is still pending for decision. Therefore, his application is liable to be rejected.

-8-

20. That with regard to the statement made in para 8(1), of the application, the respondents beg to state that the order of removal from service was issued after observing all Departmental formalities and therefore not liable to be set aside.

21. That with regard to the statement made in para 8(2), of the application, the respondents beg to state that the question of re-instatement of the applicant in his original post does not arise as another person has already been appointed to that post as per Rules of the Department.

22. That with regard to the statement made in para 8(3), of the application, the respondents beg to state that the Hon'ble Tribunal may dismiss his application as it bears no truth.

23. That with regard to the statement made in para 8(4), of the application, the respondents beg to state that the question of payment of costs of the case does not arise in view of the above.

Verification

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VERIFICATION

I, S. Das, Superintendent of Post Offices,
Nalbari Barpeta Division, Nalbari, being authorised
do hereby solemnly affirm and declare that the
statement made in paragraphs 1, 2, 5, 7, 8, 9, 11 to 13, 15 to 23 are
true to my knowledge and those made in paragraphs
6 and 14 are true to my information and
I have not suppressed any material fact.

And I sign this verification on this 16th
^{June}
day of May, 2004.

Sukheswar Das.
Declarant

(10)

ANNEXURE-A

ANNEXURE-A

Dept. of Posts, India

400

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u/l

Credit Certificate

Credit Certificate in re/ unclassified receipts in
 c/w shortage of cash at Gandhi B.O in
 a/c with Tamlapur S.O. and credited by
 Sri Hari Charan Deka, BPM, Gandhi B.O.

Office of Credit	SO Date	HO Date	Amt. of Credit
Tamlapur	10-09-01	14-09-01	4000.00
Tamlapur	24-09-01	29-09-01	8400.00
Tamlapur	29-09-01	06-10-01	6259.00

No: A1/UCR Sch dtd- at Nalbari the 11.12.01.

Copy to the SPOS, Nalbari for S/o kind
 information and n/a with reference
 to letter no. F1-02/A/cash/01-02 dtd. 17.10.01.

01-12-01
 Post Master (HS-11)
 Nalbari-131335

१/३/२०१ — १०००
१/३/२०१ — १०००
१/३/२०१ — १०००

भारतीय डाक विभाग / Department of Posts, India

ANNEXURE - E
Department of Posts, India

- - - ANNEX-

**भारतीय
DEPARTMENT OF**
..... 19 के लिये
e Account (Part-II)

माह.....May..... 19 के लिये
Branch Office Account (Part-II)

प्राप्तियाँ/RECEIPT

