

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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E.P/M.A No. 74/06 & 28/07

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SECTION OFFICER (Judl.)

Kali
08/11/17

FORM NO. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Org.App/ Misc.Petn/Cont.Petn/ Rev.Appl. 44/04

In O.A. _____

Name of the Applicant(S) Maheswar Biswas

Name of the Respondent(S) H.O.I. Goms

Advocate for the Applicant Baldev Singh

Counsel for the Railway/ C.G.S.C. Adv. M. L. Sharma

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

This application is in form
is filed/C.F. No. 10/-
deposited in _____

No. 119/378381

Dated 19.2.04

27.2.04

O.A. is disposed of at the
admission stage itself as per order
recorded separately.

[Signature]
Dy. Registrar

[Signature]
Member(A)

[Signature]
Member(J)

pg

Steps taken with
envelops.

[Signature]
25/2/04

[Signature]

17.5/04

Copy of the order has
been sent to the Dy. Sec.
for issuing the order to
the applicant as well as to
the R.C.G.S.C. for the records.

[Signature]
16/3

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./~~XXX~~ No. 1111 44 of 2004.

DATE OF DECISION 27.2.2004.

Shri Maheswar Biswas.....APPLICANT(S).

Mr. Bakdev Singh.....ADVOCATE FOR THE
APPLICANT(S).

-VERSUS-

~~XXXX~~ Union of India & Others.....RESPONDENT(S)

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

THE HON'BLE MR. ~~SHANKER~~ RAJU? JUDICIAL MEMBER.

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 Member (J).

1

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 44 of 2004.

Date of Order : This the 27th Day of February, 2004.

The Hon'ble Shri Shanker Raju, Judicial Member.

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

Shri Maheswar Biswas . . . Applicant.

By Advocate sri Baldev Singh.

- Versus -

Union of India & Ors.

. . Respondents.

By Sri A. Deb Roy, Sr.C.G.S.C.

O R D E R (ORAL)

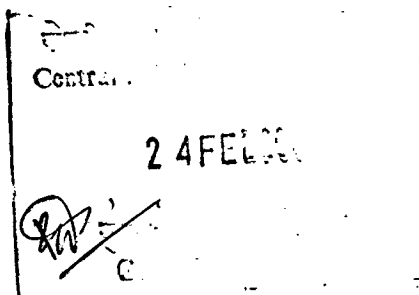
SHANKER RAJU, JUDICIAL MEMBER,

After hearing both the counsel at the admission stage the O.A. is disposed of by setting aside the 10.7.2001 passed on appeal as no merit of consideration has taken place. Applicant earlier filed O.A.157/2002 which was disposed of on 22.11.2002 directing the appellate authority to sympathetically consider the appeal. We find from the perusal of the appeal that the decision of the Tribunal has not at all been considered by the respondents. It is proper to leave the matter to the appellate authority under rule¹⁶ 27 of the CCS(CCA) Rules.

Accordingly O.A. 2 is partly allowed and the matter is remanded back to the appellate authority to take a decision within two weeks from the date of receipt copy of this order.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER


(SHANKER RAJU)
JUDICIAL MEMBER



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI.

Sri Maheswar Biswas ... Applicant

Vs

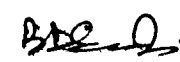
The Union of India & ors. .. Respondent.

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Annexure

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Filed by-


Advocate.

10

File by Maheswar Biswas
(Petitioner)
High Bench
Admitted

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the Central Administrative Tribunal, Guwahati Bench
GUWAHATI.

Synopsis of the Appeal.

Original Application No. 44 /2004
Sri Maheswar Biswas .. Applicant
Versus

The Union of India & Others Respondents.

Name of the Applicant & Address- Shri Maheswar Biswas,
S/o. late Nagar Biswas,
R/o. Farmarpar Kharikhana
P.O. - Kharikhana, PS-Lanka,
Dist-Nagaon, Assam.

Designation - Extra Departmental Branch
Post Master (EDBPM).

20.12.74 - The Applicant joined as peon/Mail O/S Lumding
at Kharikhana.

3.1.79 - The Applicant was upgraded as E.D.B.P.M. as
Kharikhana E.D.B.D. a/c with Lanka Sub post office.

9.3.2000 - The Applicant was placed under put off duty.

19.9.2000 - The applicant was served with a copy of Memorandum
/Articles of charge.

28.2.2001 - The applicant was dismissed vide order passed
by the Superintendent of Post-Office, Nagaon Divn.

10.7.2001 - Appeal petition filed by the applicant before
the Director, Postal Services, O/O PMG, Dibrugarh.

25.2.2002 - Representation submitted by the applicant to
expedite the appeal petition dated 10.7.2001.

21.5.2002 - Appeal filed before the Hon'ble CAT, Guwahati -
Bench being no. O/A 157/2002 .

22.12.2002 - Hon'ble CAT, Guwahati Bench disposed of the O/A
157/2002 directing the Director, Postal Services
Dibrugarh to dispose the appeal within 1 (one)
month.

17.10.2003 - The learned Director, Postal Services, Dibrugarh
rejected the appeal on the ground of time
passed appeal.

The Applicant preferred an appeal being No.O/A 157/02 before the Hon'ble Central Administrative Tribunal, Guwahati Bench which disposed of the O/A on 22.12.2002 with a direction that the Respondent shall dispose the pending appeal with 1(one) months from the date of receipt of the order.

The Appellate authority i.e. the Director , Postal Services , Dibrugarh dispose of the appeal on 17.10.2003 after long time on the ground of time based appeal petition.

The applicant furnished the Medical Certificate showing the cause of delay of appeal.

.....

File by

B.R. S.
A. W. C.

IN THE ~~XXXXXX~~ CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

Original Application no. 44 /2004

Shri Maheswar Biswas .. Applicant

Versus

The Union of India & Others. .. Respondents.

DETAILS OF THE APPLICANT :

1. NAME OF THE APPLICANT
AND ADDRESS.

- Shri Maheswar Biswas
S/o. Late Nagar Biswas,
R/O-Farmarpur, Kharikhowa
P.O.-Kharikhowa, P.S.-Lanka,
District -Nagaon, Assam.

2. DESIGNATION

3/4 Extra Department Branch
Post Master (EDBPM)

3. PARTICULARS OF THE
RESPONDENTS

- 1. The Union of India through
the Secretary,
Ministry of Communication
Govt. of India, New Delhi-11000
- 2. The Director of Postal
Services (H.W.) Assam Circle,
Guwahati.
- 3. The Post Master General
Dibrugarh Region, Dibrugarh.
- 4. The Superintendent of Post
Offices, Nagaon Division,
Nagaon.

PARTICULARS OF ORDER AGAINST
WHICH THE APPLICATION IS MADE :

1. Against the Appellate Order Memo No..Staff/2/25-5/01/RP dated 17.10.03 issued under the signature of Sri Rajinder Kashyap, DPS, Dibrugarh Region, Dibrugarh- 786001 rejecting the appeal dated 10.7.01 against the punishment order dated 28.2.01 issued by disciplinary and received by the Appellant on 7.3.01 and the appeal is submitted after 4 months from the date of receipt of punishment order.

2. JURISDICTION OF THE TRIBUNAL :

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

3. LIMITATION :

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

4. FACTS OF THE CASE :

4.1. That the applicant is a citizen of India and a permanent resident of Farmarpar, Kharikhana via - Lanka, P.S.-Lanka, Dist-Nagaon, Assam. The Petitioner passed H.S.L.C. Examination in the year 1974, he joined in service as Mail O/S Lumding on 20.12.74 at Kharikhana E.P.D.A. till 7.1.79 and during the period the applicant discharged his duties with utmost care, attention and sincerity. The applicant was upgraded as E.P.B.E.M as Kharikhana E.D.B.O. O/c with Lanka S.O. under Diphu H.O. since 03.01.79 and he was serving honestly and sincerely for more

.....3.

Sri Maheswar Biswas

than 20 years .The applicant was paid very poor salary and this was his only earning source for maintaining the family.With the income of the job as E.D.B.P.M., the applicant had to maintain the family.

- 4.2 - That the applicant begs to state that he was continuing his duty at Kharikhana E.D.B.O., he was charged vide ISPOS/Nagaon, Memo No.F6-02(C)/99-00 dated 19-09-2000 to held an enquiry against the applicant under Rule 8 EDAS(Conduct & Service) Rules 1964.In the Memo of Charges-there are three Articles of charges -

Article-1.

Relates to shortage in the D.O.Cash Balance of Rs.7,062.00 on 22-07-99.

Article -II.

Relates to Non Credit of Rs.100.00 being the value and Commission of B.O.M.O.No.08 dated- 06 07-98 for Rs. 2000.00.

Article III

Relates to Non credit of Rs.1,200.00 in S.B.Deposit on 29-01-99.

Total amount of Non credit as per Memo of charges was 10,352.00 only and the whole amount was subsequently credited to the Govt.by me.

Besides this , the applicant was further informed verbally that there was some non-credit in R/D a/Cs also amounting to Rs.10,250-00. But particulars of the R/D a/c against which non credit occurred were not furnished. Out of

Rs.10,250.00 the applicant have already deposited Rs.3,500.00 vide stay in Post Office Receipt No.96 dated 11.09.2000. On Rule -8 inquiry- in preliminary hearing the applicant pleaded guilty and admitted the charges brought against him in the Memo of charges and the applicant explained the circumstances in which the non credit of the amount occurred in the statement of defence and the written representation.

A copy of the Memorandum vide Memo no.F6-02(C)/99-00 dated 19.09-2000 drawing disciplinary proceeding is annexed as Annexure No.1.

A copy of the order dated 28.2.2001 awarding punishment to the applicant is annexed as Annexure No.2.

- 4.3 - That this applicant being aggrieved by and dissatisfied with the order dated 28-02-2001 (vide Annexure No.2) awarding punishment to the applicant preferred an appeal before the Director of Postal Services, Office of the Post Master General, Assam Region, Dibrugarh-786001. The learned Appellate Reviewing authority has ~~rejected~~/disposed of the appeal.

A copy of the appeal Petition dtd.10-7-2001 is annexed as Annexure-no-3. along with Rejection Order dated 17.10.03 (Ax-4) passed by the Director, Postal, Dibrugarh.

- 4.4 - That the applicant submits that services joining as EDBPM on 03-1-79 i.e. more than 20 years, he discharged his duties honestly and sincerely. There was no spot in his past service career. But suddenly the son of the applicant fell ill and

gradually it become serious. He could not give his son proper treatment for want of money. The applicant tried his best to lend money from money-lender but he could not manage it. Then he wanted to keep mortgage of his land and dwelling house the only property he possessed to save the life of the ailing son whose condition became bad to worse. But nobody wanted to keep mortgage of the applicant's land. As the applicant could not manage the money to render proper treatment to his son whose condition became worse, he was mentally disburbed. Finding no other alternative way to save the life of his son, he was overcome by the circumstances and did the mistake and incurred the Govt. money for rendering immediate proper treatment to his son to save his life though it was already delayed. It was expected that somehow the applicant would manage the money and made good to the Govt. in a short time on the other hand, the applicant's son could not recover and became blind.

- 4.5 That the applicant submits that somehow he made good the charged amount of Rs.10,352.00 and payed for sympathy and money to the authority to set aside the charged brought against him considering the circumstances under which it happened and to save his poor family from starving as this is the only job to maintain the family.

5.

.....6..

Sri Maheshwari Bhatnagar

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

1. For that the learned appellate authority passed the impugned order dated 17.10.03 vide Annexure no.3 rejecting the appeal dated 10.7.01 for the delay of 1 month in violation of Rules of Provisions of law and hence the impugned order is bad in law and liable to be set aside .
- II. For that the learned Appellate Authority has committed error of law and facts in condoning the delay of filing the appeal.
- III. For that the instant case is a case where offence committed is not deserving a major punishment as became the applicant has not committed as fraud and the Department has non sustained any loss. Whatever mistake is done by the applicant is not wilful intent manner. There is no mensrea in committing any offence under this position of facts, the Appellate Authority ought not to have taken such view which is too harsh and causing immense loss and suffering to the applicant. Hence, the impugned order dated 28.10.2001 and 17.10.03 bad in law and liable to be set aside and quashed.
- IV. For that the humble applicant in all his representation and during the enquiry admitted his mistake which was because of unavoidable circumstances and made good the shortage within a short spell of time and prayed for exoneration as first instance and the reviewing and Appellate authority ought to have considered his prayer of excuse.

Sri Maheswar Bisnia^{.....7.}

- V. For that the reviewing and Appellate Authority failed to dispose of the appeals within the period of six months which is violation of provisions of law under Rule 29(1) of CCS(CCA) Rules, 1965 read with Govt. of India instruction no.6 below the said Rules. The appeal was filed on 10.7.01 and the impugned order was passed on 17.10.03.
- VI. For that in the Memo of order it was observed as the charged ED Official has no other source of income, he has, therefore, lost his main source of income and finding no other alternative means to manage money for his sons treatment, he did the mistake and spent the government money for his sons immediate treatment to save his life with the hope that subsequently he would somehow manage the money and make good the amount to the Government. His son could not recover properly and became blind. The applicant has no other source of income except this of E.D.B.P.M.
- VII. For that the Appellate authority has not disposed of the appeal within 1(one) month in spite of the Hon'ble Tribunal's direction vide order dated - 22.11.2002 passed by the Hon'ble Division Bench, Central Administrative Tribunal, Guwahati Bench.
- VIII. For that in any view of the matter, the impugned order dated 28.2.2001 and dated 17.10.03 is not maintainable in law.

6. DETAILS OF REMEDIES EXHAUSTED:

The humble applicant preferred an appeal being No.O/A 157/2002 before the Hon'ble Constitutional Administrative Tribunal, Guwahati and which was disposed of with a direction that the Respondent/Appellate authority will dispose the pending appeal in accordance with the law with sympathetic consideration of the case of the applicant as early as possible preferably within 1(one)month from the date of receipt of the order .

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

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

8. RELIEF PRAYED FOR :

Under the above facts and circumstances as stated above, the humble applicant most respectfully prays for following relief -

i) That this Hon'ble Tribunal may kindly be pleased to set aside the impugned order dated 17.10.03 and 28.2.2001 and further be pleased to pass an order or quashing the order of dismissal dated- 28.2.2001 in the interest of justice.

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

9. INTERIM RELIEF PRAYED FOR :

In the interim applicant prayed for stay of the operation of the impugned dismissal order dated 28.2.01 vide Annexure No.2 in the interest of justice .

10. Details of Postal order

Postal Order No - 119378381
Date of Issue - 18.2.04
Issued from - G.P.O.
Payable to -

11. LIST OF PARTICULARS :

As per Index .

VERIFICATION....

Sri Maheswar Biswas

VERIFICATION

I, Shri Maheswar Biswas, son of late Nagar Biswas, resident of Farmarpar, P.O. Kharikhana via Lanka, P.S.-Lanka, Dist-Nagaon, Assam do hereby verify that the contents in paragraphs 1,2,3,4,5, 6,7,8,9,10 and 11 are true to the best of my knowledge and paragraphs 5,8,10 are believed to be true as legal advice and I have not suppressed any material facts.

And I sign this Verification on this the 16th day of February 2004 at Guwahati.

Shri Maheswar Biswas
signature of the Applicant.

Place : Guwahati

Date - 16.2.04

No.

F 6-02 (C)/99-00

Government of India
Department of Posts

Dated

12-09-2000

M E M O R A N D U M

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

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

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

4. Shri ~~Maheswar Biswas~~ is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person with the provisions of Rule of EDA's (Conduct & Service) Rules 1964 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him, ex parte.

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

6. The receipt of this memorandum may be acknowledged.

(A. K. Biswas)

Supdt. of Post Offices

Nagao-n Dn. Nagaon-782 001

Regd. AD

To

Maheswar Biswas

Shri

EDPT Kheruphan EDO (underpaid duty)

via Link 732446

Dist. Nagaon (As)

Copy to
true copy
Advocate

Statement of articles of charge framed against Sri Maheswar Biswas. Kharikhana EDBO in a/c with Lanka S.O. (under post off duty)

Article - I

That the said Sri Maheswar Biswas while working as EDBPM, Kharikhana EDBO during the period from 8.1.79 to 22.7.99 could not produce cash and stamps amounting to Rs. 7052.00 (Rs. seven thousand fifty two) only to the SDI of POs Hojai Sub Dn. on 22.07.99 for verification. According to B.O Account the cash and stamp balance of the BO at the close of 22.07.99 was Rs. 7365.00 (Rs. seven thousand three hundred sixty five) only but the EDBPM could produce only cash and stamps amounting to Rs. 313.00 (Rs. three hundred thirteen) only to the said SDI of POs for physical verification. Thus, the said Sri Maheswar Biswas EDBPM Kharikhana EDBO in a/c with Lanka S.O violated the provisions of Note below Rule-11 of Rules for Branch Offices and failed to maintain absolute integrity and devotion to duty as required under provision of Rule-17 of EDAs (Conduct & Service) Rules, 1964.

Article - II

The said Sri Maheswar Biswas during the aforesaid period accepted a sum of Rs. 2100.00 (Rs. two thousand one hundred) only from the remitter being the value and commission of Kharikhana BO MO No.08 dated 06.07.98 for Rs. 2000/- only payable to Sri Amarendra Chowhan P.O Ahirouli Dist Deoria (U.P) but this amount so accepted was not credited in the Branch Office Account on that day i.e 06.07.98 or subsequently by the EDBPM Kharikhana EDBO and the relevant MO form was also not sent to the Account Office for further disposal. Thus, Sri Biswas thereby violated the provisions of Rule 124 of the Rules for Branch Offices and also failed to maintain absolute integrity and devotion to duty as enjoined in the Rule 17 of EDAs (Conduct & Service) Rules, 1964.

Article-III

The said Sri Maheswar Biswas during the aforesaid period accepted a sum of Rs. 1200/- (Rs. one thousand two hundred) only on 29.1.99 as SB deposit/Kharikhana BO SB a/c No. 284571 in the name of Smt Sandhya Kharikap, made deposit entries in the pass book but the amount so accepted from the depositor was not credited in the Branch Office Account on the day of deposit or any subsequent date and thereby he violated the provision of Rules 132 (f) and 133(2) of the Rules for Branch Offices. By his above acts he also failed to maintain absolute integrity and devotion to duty as enjoined in the Rule 17 of EDAs conduct & service Rules, 1964.

Statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against Sri Maheswar Biswas EDBPM Kharikhana EDBO in a/c with Lanka S.O. (under post off duty)

Article - I

That Sri A Hye, SDI of POs Hojai Sub Dn. Hojai visited Kharikhana EDBO on 22.07.99 accompanied by the O/S Mails at 12.00 hrs and verified the cash and stamps of the BO at the closing hours. According to BO Account prepared the cash and stamp balances of the B.O as on 22.07.99 ought to have been as under :-

Cash	= Rs. 7510.00	0.68 = 6/10/99 = 2100/-	7052
P/stamp	= " 320.00	0.57 = 24/2/07 = 1200/-	3302
R/stamp	= " 140.00	0.56 = " = 4452	10352
Total	= Rs. 7970.00	0.14 = 20.9.99 = 26.00	
		0.18 = 6.10.99 = 2100/-	
		Cont'd on...2	
		0.18 = 6.10.99 = 2100/-	
		10,352	

Against

968 11.9.50
by Rs. 3500/-

But on physical counting by the SDI of POs Hojai Sub Dn the following amount of cash and stamps was only found available with the BPM.

Cash	=	Rs.	260.00
P/Stamp	=	"	43.00
R/Stamp	=	"	10.00
		Rs.	313.00

The SDI of POs, further found that RD final withdrawal voucher for Rs. 1741/- against RD A/C No. 301430 stated to be paid to the depositor after despatch of the day's account was available with the BPM.

The BPM also did not credit the amount of Rs. 1056/- realised on delivery of 7 (seven) VP articles in the B.O Account.

A revised Daily Account of the B.O was got prepared by the BPM taking into account all the above unaccounted items. The same is as under -

O/B	=	Rs. 7964.00	✓
Amt realised from			
Unpaid articles	=	" 86.00	✓
M.O issue (VP delivery)	=	" 1056.00	✓
		9106.00	✓
RD withdrawal	=	1741.00	
C/B	=	7365.00	✓

Thus there was a net ~~xxx~~ shortage of Rs. 7052.00 (Rs. 7365-313.00) which was charged as UCP in B.O Account on Kharikhana EDBO dated 22.07.99. The amount found short was stated to be spent for his personal purpose and Sri Biswas could not produce the amount on the date. It is, therefore, imputed that Sri Moheswar Biswas EDBPM Kharikhana EDBO in a/c with Lanka S.O by his above act violated the provisions of Note below Rule-11 of the Rules for Branch Offices. It is further imputed that Sri Moheswar Biswas failed to maintain absolute integrity and devotion to duty and violated the provisions of Rule 17 of EDAs (Conduct & Service) Rules, 1964.

Article - II

That the said Sri Moheswar Biswas while functioning as EDBPM Kharikhana EDBO for the period from 8.1.79 to 22.7.99 accepted a sum of Rs. 2100/- (Rs. two thousand one hundred) only from the remitter being the value and commission of Kharikhana BO MO No. 08 dated 06.07.98 for Rs. 2000/- (Rs. two thousand) only payable to Sri Amarendra Chowhan P.O Ahirouli Dist Deoria (UP) and remitted by Sri Siva Sankar Chowhan Vill Manduli P.O. Kharikhana via Lanka duly granting proper receipt to the remitter in form MS-87(a) in token of having received the amount, but this amount was not credited in the Branch Office Account on that day on 06.07.98 or any subsequent dates by the EDBPM Kharikhana EDBO and the relevant MO form was also not sent to the Account Office Lanka for re-issue of the B.O M.O accepted from the remitter at the time of issuing the money order. It is therefore, imputed that Sri Moheswar Biswas thereby violated the provision of Rule 124 of the Rules for Branch Offices and also failed to maintain absolute integrity and devotion to duty as enjoined in Rule 17 of EDAs (Conduct & Service) Rules, 1964.

Article - III

That the said Sri Maheswar Biswas while functioning as EDBPM Kharikhana EDBO during the period from 8.1.79 to 22.7.99 had duly accepted a sum of Rs. 1200/- (Rs. one thousand two hundred) only from the depositor on 29.1.99 against Kharikhana

Cont'd on....3

EDBO SB a/c no. 284571 in the name of Smt Sandhya Kharikap made entry of the deposit in the relative pass book under his initial and with the BO date stamp impression of the respective date of deposit. But the said Sri Maheswar Biswas did not make entry of the deposit in Kharikhana Branch Office journal and did not credit the said deposit in the Kharikhana Branch Office Account in the date of deposit or subsequently. It is, therefore, imputed that the said Sri Maheswar Biswas violated the provisions of Rules 132 (f) and 133(2) of the Rules for Branch Offices.

It is further imputed that by his above acts, he failed to maintain absolute integrity and devotion to duty as enjoined in the Rule 17 of EDAs (Conduct & Service) Rules, 1964.

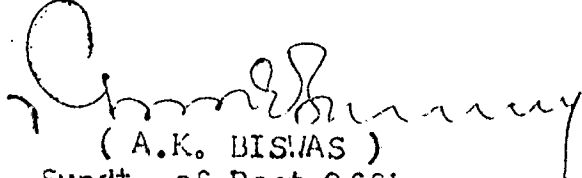
Annexure - III

List of documents by which the articles of charge framed against Sri Maheswar Biswas EDBPM Kharikhana EDBO in a/c with Lanka S.O. (under put off duty) are proposed to be sustained.

1. ~~Kharikhana~~ B.O. Account Book of Kharikhana BO for the concerned period.
2. B.O Journal of Kharikhana BO for the concerned period.
3. B.O. SB journal of Kharikhana BO for the concerned period.
4. M.O Receipt Book of Kharikhana BO for the concerned period.
5. Written statement of Sri Maheswar Biswas EDBPM Kharikhana B.O dated 22.7.99.
6. Kharikhana BO SB pass book of a/c No. 284571 in the name of Smt Sandhya Kharikap.

List of witnesses by whom the articles of charge framed against Sri Maheswar Biswas EDBPM Kharikhana EDBO in a/c with Lanka S.O are proposed to be sustained.

1. Sri A. Hye, SDI of POs, Hojai Sub Dn. Hojai-782435.


(A.K. BISWAS)
Supdt. of Post Offices
Nagaon-Dn. Nagaon-782001

15

Annexure-2

20

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

Memo No. F6-02(C)/99-00 dated at Nagaon, the 28.02.2001

1. Tead the following :-

- 1) This office memo No. F6-02(C)/99-00 dated 19.09.2000.
- 2) The written statement of defence dated 30.09.00 submitted by Sri Maheswar Biswas, EDBPM Kharikhana EDBO in a/c with Lanka S.O.
- 3) The Inquiry Report of the Inquiring Authority vide his letter no. A-1/Inquiry/Rule-8/3 dated 06.12.00.
- 4) The written representation dated 10.01.2001 submitted by Sri Maheswar Biswas EDBPM (under put off duty) in a/c with Lanka S.O.

2. Sri Maheswar Biswas EDBPM, Kharikhana EDBO (under put off duty) in account with Lanka S.O. was proceeded under Rule-8 of EDAs (Conduct and Service) Rules, 1964 vide this office memo No. F6-02(C)/99-00 dated 19.09.2000. The articles of charge, the statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against the said Sri Maheswar Biswas, the list of documents by which and the list of witnesses by whom the articles of charge proposed to be sustained were annexed as Annexure I, II, III & IV.

3. The articles of charge framed against Shri Maheswar Biswas are as under :-

Article - I

That the said Sri Maheswar Biswas while working as EDBPM, Kharikhana EDBO during the period from 8.1.79 to 22.7.99 could not produce cash and stamps amounting to Rs. 7052.00 (Rs. seven thousand fifty two) only to the SDI of POs Hojai Sub Dn. on 22.07.99 for verification. According to B.O Account the cash and stamp balance of the B.O at the close of 22.07.99 was Rs. 7365.00 (Rs. seven thousand three hundred sixty five) only but the EDBPM could produce only cash and stamps amounting to Rs. 313.00 (Rs. three hundred thirteen) only to the said SDI of POs for physical verification. Thus, the said Sri Maheswar Biswas EDBPM Kharikhana EDBO in a/c with Lanka S.O violated the provisions of Note below Rule 11 of Rules for Branch Offices and failed to maintain absolute integrity and devotion to duty as required under provision of Rule-17 of EDAs (Conduct & Service) Rules, 1964.

Article - II

The said Sri Maheswar Biswas during the aforesaid period accepted a sum of Rs. 2100.00 (Rs. two thousand one hundred) only from the remitter being the value and commission of Kharikhana BO MO No. 08 dated 06.07.98 for Rs. 2000/- only payable to Sri Amarendra Chowhan P.O Ahirouli Dist Deoria (U.P) but this amount so accepted was not credited in the Branch Office Account on that day i.e. 06.07.98 or subsequently by the EDBPM Kharikhana EDBO and the relevant MO form was also not sent to the Account Office for further disposal. Thus, Sri Biswas thereby violated the provisions of Rule 124 of the Rules for Branch Offices and also failed to maintain absolute integrity and devotion to duty as enjoined in the Rule 17 of EDAs (Conduct & Service) Rules, 1964.

Cont'd on.....2

*Copy to be
from copy
ADP
Adm*

In the charge ~~memo~~ ² there are three articles of charge. ^N
 The Article-I relates to shortage in the L.A. cash balance for Rs. 7052.00 on 28.7.99. Article-II relates to noncredit of the value and commission of L.A. No. 09

The said Sri Maheswar Biswas during the aforesaid period accepted a sum of Rs. 1200/- (Rs. one thousand two hundred) only on 29.1.99 as SB deposit against Kharikhana B.O SB a/c No. 284571 on the name of Smt Sandhya Kharikap, made deposit entries in the pass book but the amount so accepted from the depositor was not credited in the Branch Office Account on the day of deposit or any subsequent date and thereby he violated the provision of Rules 132 (f) and 133 (2) of the Rules for Branch Offices. By his above acts he also failed to maintain absolute integrity and devotion to duty as enjoined in the Rule 17 of EDAs conduct & service Rules, 1964.

4. Sri Maheswar Biswas was given an opportunity to submit a written statement of his defence within 10 (ten) days of receipt of the said charge memo dated 19.09.2000. Sri Maheswar Biswas submitted his written statement of defence dated 30.9.2000 which was received by this office on 04.10.2000.

5. Sri K.M. Nath, SDIPOs Nagaon (West) Sub Dn. Nagaon and Sri J.K. Nath, C.I Divl Office Nagaon were appointed as Inquiry Authority and Presenting Officer respectively vide this office memo of even no. dated 18.10.2000.

6. The Inquiry Authority submitted his Inquiry Report on 19.12.2000.

7. The said Sri Maheswar Biswas was given a copy of the report to submit his representation, if any, vide this office letter of even no. dated 20/22.12.2000 and he submitted his written representation dated 10.01.2001, which was received by this office on 15.01.2001.

8. Observations and Findings

8.1 The undersigned has gone through the Inquiry report and the charged official's written statement of defence dated 30.09.2000 and written representation dated 10.01.2001 very carefully. At preliminary hearing held on 29.11.2000, the charged ED official admitted the charge framed against him. The Inquiry Authority in his findings held that on the basis of the admission of the charge by the charged ED official, the charge framed against him stood proved.

8.2 In his written representation dated 10.01.2001 against the Inquiry Report, the charged ED official admitted the charge framed against him and represented the following :-

* i) He had been working as EDBPM Kharikhana w.e.f 8.1.79 honestly and sincerely. The income derived from his job as EDBPM is his only earning source for maintenance of his poor family. Finding no other alternative means to manage money for his son's treatment, he did the mistake and spent the Govt money for his son's immediate treatment to save his life with the hope that subsequently he would somehow manage the money and make good the amount to the Govt. His son could not recover properly and became blind.

ii) In Rule-8 inquiry case (preliminary hearing), he confessed his guilt.

iii) He has no other source of income except income from the job of EDBPM. He requested for to consider his case sympathetically on this ground considering the circumstances in which he had to spend the Govt money.

Cont'd on....3

13/8/98 17 8

3 In the charge memo there are three articles of charge. The Article-I relates to shortage in the B.O cash balance for Rs. 7052.00 on 22.7.99. The Article-II relates to noncredit of Rs. 2100.00 being the value and commission of B.O MO No. 08 dated 06.07.98 for Rs. 2000.00 and Article-III relates to non-credit of deposit of Rs. 1200.00 on 29.1.99, which was accepted from the depositor Smt Sandhya Kharikap to deposit in her a/c no. 284571. So, his misdemeanour was not for a particular day but on the different dates. After issue of this office charge memo dated 19.09.2000, non-credit of RD deposits amounting Rs. 10,250/- during aforesaid period of his incumbency has come to notice and the depositors have preferred their claims for this non credited amounts. There are likely more noncredits. So, he continued and repeated his misdemeanour. His plea for spending the Govt money is not acceptable.

8.4 As the charged ED official has no other source of income, he has, therefore, lost his main source of income and he should be adjudged as incurring a disqualification to continue as EDBPM. There must be absolute insistence on the adequate source of income of EDBPM and the allowances paid for his work as EDBPM is nothing but just supplementary to his income. The charged ED official disqualifies himself to continue as EDBPM.

Considering the gravity of offence committed and the past record of his service, the undersigned is left with no other option to conclude that Sri Maheswar Biswas is unlikely to rectify himself and given an opportunity is likely to repeat such misdemeanour. The undersigned deems Sri Maheswar Biswas unfit to continue in service.

ORDER

The undersigned, Shri A.K. Biswas, Supdt. of Post Offices, Nagaon Division, Nagaon and Disciplinary Authority hereby orders that Shri Maheswar Biswas, EDBPM, Kharikhana EDB.O. (under put off duty) is 'Dismissed' from service with immediate effect.

The order is issued and prayed for consideration.

(A.K. BISWAS)
Supdt. of Post Offices
Nagaon Dn. Nagaon-782001

Copy to :-

- Regd
1. Shri Maheswar Biswas, EDBPM, Kharikhana EDB.O. (under put off duty) via Lanka S.O. for information.
 2. The Postmaster, Diphu H.O. for infn & n/action.
 - 3-4. The Postmaster General (C&I)/(Staff), Assam Region, Guwahati-781001.
 - 5-6. The Estt/Plg branch, Divl Office, Nagaon.
 7. The Staff Branch, Divl Office, Nagaon.
 8. The SDI(P), Hojai Sub Div, Hojai.
 - 9-10. O.C./Spare.

Supdt. of Post Offices
Nagaon Dn. Nagaon-782001

Contd. 2.

To

The Director, Postal Services,
Office of the Postmaster General,
Assam Region,
DIBRUGARH - 786001.

Through the Superintendent of Post Offices,
Nagaon Division, Nagaon. 782001.

Dated : Nagaon, the 10th July, 2001.

SUB : APPEAL AGAINST THE ORDER OF DISMISSAL VIDE MEMO
NO : FG-02(c)/99-00, DATED 28/02/2001.

Sir,

I have the honour to prefer an appeal against the Order, vide Memo No : FG-02(c)/99-00, dated 28/02/2001, issued by the Superintendent of Post Offices, Nagaon Division, Nagaon, for favour of your kind consideration and favourable orders. I could not prefer the appeal in prescribed time as I fell ill on receipt of the above order. Now, I have since recovered from illness and I prefer the appeal against the above noted punishment order and prayed for consideration for its acceptance.

That Sir, I was working as E.D. B.P.M at Kharikhana, EDBO a/c with Lanka S.O., under Diphu H.O., since 03/01/79, i.e. more than 20 years. During this period, I was working honestly and sincerely. This was my only earning source for maintaining my poor family. With the income of my Job as E.D. B.P.M., I, somehow maintained my family.

I was charged vide SPOs/Nagaon memo No : FG-02(c)/99-00, dated 19/09/2000 to hold an enquiry against me under Rule 8 EDN's (Conduct & Service) Rules 1964. In the Memo of Charges - there are three articles of charges :-

Article I.

relates to shortage in the B.O Cash Balance of Rs. 7,002'00 on 22/07/99.

Contd..... 2.

Confidential
True copy
B.S.D.
A. S. S.

Article II.

Relates to non-credit of Rs. 2,100'00, being the value and commission of B.O.M.O No : 03, dated 06/07/93 for Rs. 2,000'00

Article III.

Relates to Non-credit of Rs. 1,200'00 in S.B Deposit on 29/01/99.

Total amount of non-credit, as per Memo of charges, was Rs. 10,352'00 only and the whole amount was subsequently credited to the Govt. by me.

Besides this, I was further informed verbally that there were some non-credits in R/D a/cs also amounting to Rs. 10,250'00. But particulars of the R/D a/cs against which non-credits occurred were not furnished. Out of Rs. 10,250'00, I have already deposited Rs. 3,500'00 vide Hajai Post Office Receipt No : 96, dated 11/09/00.

On rule-8 inquiry - in preliminary hearing, I, pleaded guilty and admitted the charges brought against me in the memo of charges and I explained the circumstances in which the non-credits of the amount ^{occurred} accrued in the statement of defence and the written representation.

That Sir, since my joining as E.D B.P.M on 03/01/79 i.e., more than 20 years, I, discharged my duties honestly and sincerely. There was no spot in my service life. But suddenly my son fell ill and gradually it became serious. I could not give him proper treatment for want of money. I tried my best to lend money from Money-Lender but I could not manage it. Then I wanted to keep mortgage of my land and dwelling house, the only property I have, to save the life of my son whose condition became bad to worse. But no body wanted to keep mortgage of my house and land. As I could not manage the money to render proper treatment to my son whose condition became worse, I was mentally

Contd..... 3.

- : (3) : -

disturbed. Finding no other alternative way to save the life of my son, I was overcome by the circumstances and did the mistake and incurred the Govt. money for rendering immediate proper treatment to my son to save his life though it was already delayed. It was hoping that somehow I managed to get the money and made good to the Govt. in a short period of time. But alas my son could not recover properly and he became blind.

Somehow I made good the charged amount of Rs. 10,352'00 and prayed for sympathy and mercy to the authority to exonerate the charges brought against me considering the circumstances under which it happened and to save my poor family from starving as this is my only job to maintain the family.

In the Memo of order, it was mentioned as _____
 "As the charged E.D Official has no other source of income, he has therefore lost his main source of income and he should be adjudged as incurring a disqualification to continue as ED BPM. There must be absolute insistence. On the adequate source of income of E.D B.P.M and the allowances paid for his work as EDBPM is nothing but just supplementary to his income. The charged ED Official disqualifies himself to continue as ED BPM."

The job of ED BPM was my main source of income and it was not my supplementary income. I was disqualified to continue as ED BPM as my main source of income was lost. If it is so, my whole family will die in starving. I have actually no other source of income except the job of ED BPM. For the check of humanity, I, prayed for, to save my poor family in starving. Considering the fate of my son who became blind.

It was come to notice to the authority that there were non-credit of A/D deposits amounting Rs. 10,250'00. I was informed to credit the amount verbally. No particulars of such non-credits were furnished. Out of the above amount, I have already deposited Rs. 3,500'00. As, at present I have no job, I am in

Contd..... 4.

- : (4) : -

hardship and I could not make good the balance amount. The balance amount may be recovered from my allowances in instalments if I am given a chance considering my pecuniary conditions.

In the memo of order, it was suspected that if I was allowed to continue as ED BPM., I, might repeat my misdemeanour. But presumption for future occurrence is not always to be true. This was my first guilty in my long service life. It happened under some un-avoidable circumstances for which I, beg to apology. I, promise to assure you that such thing will never happen in future.

Therefore, with profound apologies, I, beg for your mercy and to pray your honour to set aside the punishment order of dismissal and save me and my poor family in starving, for which act of kindness I shall remain ever grateful to you.

Yours faithfully,

(MAHESWAR BISWAS)
Ex. B.P.M., Khatikhana B.O.,
Via Lanka S.O.

Copy in advance to :-

The Director, Postal Services,
Office of the Postmaster General, Assam Region,
Dibrugarh - 786001, for favour of information and necessary
action.

(MAHESWAR BISWAS)

22 Annexure-4 3
Department of Posts
O/o Postmaster General, Dibrugarh Region,
Dibrugarh -786001.

Memo No. Staff/2/25-5/01/RP

Dated : 17.10.03.

APPELLATE ORDER

A Charge Sheet under Rule 8 of EDA(Conduct and Service) Rules 1964 was issued to Shri Maheshwar Biswas, former ED BPM, Kharikhanna EDBO under Lanka SO in Nagaon division (hereinafter referred as appellant) vide disciplinary authority memo No. F6-02@/99-00 dated 19.9.00. The statement of Article of Charges in Annexure-I, Statement of Imputation of misconduct and misbehavior on each article of charge in Annexure-II, List of documents in by which the article of charge and the list of witness by whom the articles of charge was proposed to be sustained was furnished to the appellant.

2. The appellant was given 10 days time from the date of receipt of memorandum to submit his written statement of defense if any and also state whether he desires to be heard in person. He was also informed that an Inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny the article of charge. The appellant submitted his defense statement on 11.10.00.

3. The disciplinary authority appointed Inquiry Officer to inquire into the charges framed against the appellant. The Inquiry Officer submitted his report on 19.12.00. A copy of I.Os report was given to the appellant on 20-22.12.00 and he submitted his written representation dated 10.1.01 which was received by the disc. authority on 15.1.01.

4. The disciplinary authority after gone through the Inquiry Report and other records issued punishment of dismissal from service vide memo. no. F6-02(c)/99-00 dated 28.2.2001. The punishment order was received by the appellant on 7.3.01 as per the check list furnished by the disciplinary authority.

5. The present appeal dated 10.7.01 is against the punishment order dated 28.2.01 issued by disciplinary authority and received by the appellant on 7.3.01. This appeal is submitted after 4 months from the date of receipt of punishment order. I have carefully gone through the official's representation submitted through this appeal. There has not been any convincing reason given by the appellant for delayed submission of appeal. The appellant though stated that he was sick but has failed to produce any evidence along with his appeal to prove that he was really so sick that he could not submit his appeal within stipulated time of three months as per Rule 11 of EDA Conduct and Service Rules, 1964 which is considered reasonable time for submission of appeal by EDAs. I do not feel any reason or cause to interfere with the decision of disciplinary authority. Therefore, I issue following order in this case;

*Confid to be
done by
[Signature]
[Signature]*

ORDER

I, Rajinder Kashyap, DPS, Dibrugarh Region, Dibrugarh-786001 in exercise of power conferred in EDA Conduct and Service Rules 1964 hereby "REJECT" this time barred appeal case with the hope that this will meet end of justice.

WV
21/01/03
(Rajinder Kashyap)
DPS, Dibrugarh Region,
Dibrugarh-786001.

Copy to:-

1. Shri Maheshwar Biswas, Ex-BPM, Kharikhana EDBO, in account with Lanka SO, Nagaon Division, Nagaon.
- 2-3. Shri H Ahmed, SPO, Nagaon Division, Nagaon. A copy of the appellate order shall be delivered to the appellant under clear receipt and a copy of receipt should be sent to AD(Staff), O/o PMG, Dibrugarh Region, Dibrugarh within a week positively.
- 4-5. Office Copy / Spare.
6. PA to DPS, Dibrugarh.

SL No. 10
Annexure-535

24

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.157 of 2002

Date of decision: This the 22nd day of November 2002

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

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

Shri Maheswar Biswas,
Resident of Farmarpar, Kharikhowa,
P.O.- Kharikhana, P.S.- Lanka,
District- Nagaon, Assam.
By Advocate Mr B.D. Singh.

.....Applicant

- versus -

1. The Union of India, through the
Secretary,
Ministry of Communication,
Government of India,
New Delhi.
2. The Director of Postal Services,
(H.W.), Assam Circle,
Guwahati.
3. The Superintendent of Post Offices,
Nagaon Division,
Nagaon.

.....Respondents

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



.....

O R D E R (ORAL)

CHOWDHURY. J. (V.C.)

The applicant first joined in service as Mail O/S Lumding on 20.12.1974 at Kharikhana E.P.D.A. till 7.1.1979. He was upgraded as E.P.B.P.M. at Kharikhana E.D.B.O. Thereafter, while he was serving as such, a disciplinary enquiry was conducted for the alleged misconduct committed by him. A departmental enquiry was held and on conclusion of the departmental enquiry the

applicant was found guilty and accordingly he was dismissed from service vide order dated 28.2.2001. The applicant had preferred an appeal against the penalty imposed as far back as 10.7.2001. Since the appeal was not disposed of in time, the applicant finally moved this O.A. assailing the legitimacy of the action of the respondents.

2. The respondents submitted their written statement and in the written statement they have stated that till the filing of the written statement on 29.7.2002 the appeal submitted by the applicant was not disposed of.

3. None appears for the applicant. We have, however, heard Mr A. Deb Roy, learned Sr. C.G.S.C. appearing on the behalf of the respondents. We do not find any justification for not disposing of the appeal. Since the appeal has not been disposed of as yet we direct the respondents to dispose of the same in accordance with the law with sympathetic consideration of the case of the applicant as early as possible, preferably within 1 (one) month from the date of receipt of the order.

4. The application is accordingly disposed of. No order as to costs.



Sd/ VICE CHAIRMAN
Sd/ MEMBER (Adm)

Certified to be true Copy

प्रमाणित प्रतिलिपि

[Signature]
11/2/04

Section Officer (J)

C.A.T. GUWAHATI BENCH

Guwahati-781005

[Signature]
11/2

TO Whom it may concern

37

This is to certify that Sri Maheswar Biswas
Age - 47 yrs in S/O Sri Nagar Biswas an inhabitant
of village - Parmapur, P.O. Karikhang, P.S. Larka
Dist - Nagaon. Assam was under my treatment for
Infective hepatitis from 1.3.01 to 2.4.01.

He was advised to take
Complete bed rest for 3 (Three) months i.e. from
10.4.01 to 9.7.01 for the above illness.

Handwritten signature
2.12.03

Medical Officer - I
Nagaon State Dispensary
Nagaon, Assam

Handwritten signature
12.11.03

Medical Officer - I
Nagaon State Dispensary
Nagaon, Assam

