

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 22.6/2007.....

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15. Amendment Reply filed by the Applicant.....

16. Counter Reply.....

SECTION OFFICER (Judl.)

Seaher
09.10.17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERS SHEET

1. Original Application No. 226/07
2. Mise Petition No. /
3. Contempt Petition No. /
4. Review Application No. /

Applicant(s) Chidananda Saikia VS Union of India & Ors

Advocate for the Applicants:- Ms. D. Borgohain, Ms. M. Bora

Advocate for the Respondents:- Dr. C. Borthakur

Notes of the Registry	Date	Order of the Tribunal
This application is in form C.F. for Rs. 50/- is filed/ deposited vide I.P.U. No. 286926022	28.8.07.	Pass over for the day. Vice-Chairman
Dated... 20.8.07 Registrar Ran	29.8.07	The applicant was working as Group D employee in Jorhat Head Post Office as Night Guard for 12 days with effect from 3.2.1999 to 14.2.99 when the regular Night Guard was on leave. There was a theft occurred and a sum of Rs.6,12,675/- was found missing. The Post Master, Jorhat framed charges against the applicant. The applicant was found guilty of the charges. Accordingly he was removed from service. The applicant preferred an appeal against the punishment order or removal and the same was rejected. Aggrieved by the order of the respondents the applicant filed this application for his reinstatement.
Ran 27.8.07		

29.8.07 Heard Miss D. Borgohain, learned counsel for the applicant and Mr G. Baishya, learned Sr.C.G.S.C for the respondents.

Notice & order sent to D/section for issuing to resp. nos 1,3,4 by regd. A ID post another R-2 sent to received by hand.

*Cas 28/9/07. D/No-970 to 973
of - 10/10/07.*

Considering the issue involved O.A is admitted. Issue notice to the respondents. The counsel for the respondents is specifically directed to obtain instruction as to whether there was a police case registered against the applicant or not.

Post on 10.10.07 for order.

Vice-Chairman

pg

11.10.07 No written statement has been filed in this case, as yet.

Call this matter on 22.11.07; awaiting written statement.

Mr G. Baishya, learned Sr. Central Govt. standing counsel undertakes to file appearance memo in this case for record.

① Service report awaited.
② No bills filed.

Khushiram
(Khushiram)
Member(A)

Manoranjan Mohanty
(Manoranjan Mohanty)
Vice-Chairman

21.11.07.

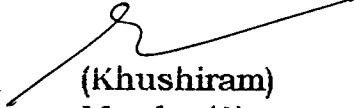
pg

22.11.2007. No written statement has been filed in this case. Mr.G. Baishya, learned Sr. Standing Counsel for the Union of India seeks more time to file written statement.

Call this matter on 03.01.2008 awaiting reply from the Respondents.

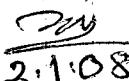
Notice duly served
on R-3.

12/11/07


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

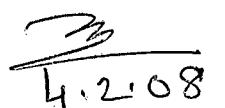
W/S not bled.


2.1.08.

03.01.2008 Mr. G. Baishya, learned Sr. Standing counsel for the Union of India seeks more time to file written statement.


Call this matter on 05.02.2008 awaiting written statement from the Respondents.

W/S not bled.


4.2.08.

Learned Sr. Standing counsel also undertakes to file disciplinary proceeding file(s) by the next date.


(Khushiram)
Member (A)

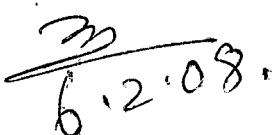

(M.R. Mohanty)
Vice-Chairman

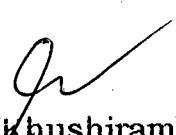
/bb/

05.02.2008 No written statement has been filed in this case as yet by the Respondents.

Call this matter on 11.3.2008 awaiting written statement from the Respondents.

Written statement
bled on behalf
of the respondents.

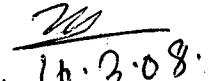

6.2.08.


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

W/S bled.

Lm


16.3.08.

11.03.2008

In this case counter and rejoinder have already filed. The case is otherwise ready for hearing.

12.3.08

Rejoinder filed by the Applicant undertaking given for Service.

Call this matter on 27.03.2008 for hearing; when the Respondents should cause production of ~~Deofl.~~ additional proceedings file and appeal file ^{try} to the learned Sr. Standing Counsel appearing for the Respondents department.

copy received,
order recd 11.3.08
on behalf of Mr
G. Basu & C. & S. C.

Bipasha Das
14.3.08

A copy of this order be handed over to Mr. G. Basu, learned Sr. Standing counsel appearing for the Respondents department.

Y
(M. R. Mohanty)
Vice-Chairman

27.03.2008

Call this matter on 23.05.2008.

The case is ready
for hearing.

26.3.08

nkm

Y
(M. R. Mohanty)
Vice-Chairman

23.05.2008

Call this matter on 16.06.2008.

The case is ready
for hearing.

22.5.08

lm

Y
(Khushiram
Member(A))

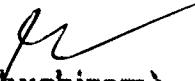
The case is ready
for hearing.

13.6.08

Y
(M. R. Mohanty)
Vice-Chairman

16.06.2008 Heard Ms D. Boragohain, learned Counsel appearing for the Applicant and Mr G. Baishya, learned Sr. Standing Counsel for the Union of India. Hearing concluded. Orders reserved.

Parties are given the liberty to put up their written arguments, if any, by 21.07.2008.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

7-7-08

nkm

*written Arguments
filed by the Applicant*

21.07.2008

Heard Ms.D.Buragohain, learned counsel for the Applicant and Mr.G.Baishya, learned Sr. C.G.S.C. for the Respondents.

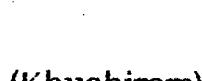
Hearing concluded. Judgment is reserved.

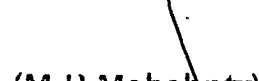

(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

/bb/

30.07.2008 Judgment pronounced in open Court.
Kept in separate sheets. Application is dismissed.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

lm

30.07.2008

~~Judgment pronounced in open Court~~

30.07.2008

Judgment pronounced in open Court.

Kept in separate sheets. Application is dismissed.

(Khushiram)
Member(A)

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30.07.2008

Judgment pronounced in open Court.

Kept in separate sheets. Application is dismissed.


(Khushiram)
Member(A)


(M.R. Mohabnty)
Vice-Chairman

lm

28.8.08

Copy of the
Order handed
over to the parties
for the purpose



20.1.09

Handed over
D/R No. 29/3
8.7.08



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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

O.A. No. 226 of 2007

DATE OF DECISION: 30.07.2008

Sri Chidananda Saikia

..... Applicant/s
Ms. D.Boragohain

..... Advocate for the
Applicant/s.

- Versus -

Union of India & Others

..... Respondent/s

Mr. G. Baishya, Sr. C.G.S.C.

..... Advocate for the
Respondents

CORAM

THE HON'BLE MR. MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR. KHUSHIRAM, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No


Vice Chairman/Member (A)

CA

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 226 of 2007

Date of Order: This, the 30th Day of July, 2008

THE HON'BLE SHRI MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE SHRI KHUSHIRAM, ADMINISTRATIVE MEMBER

Sri Chidananda Saikia
Son of Late Kanram Chutia
Village: Borbam Chungi
P.O: & Chungi, Via: Gotanagar
P.O: & District: Jorhat
Assam.

..... Applicant.

By Advocate Ms.D.Boragohain.

- Versus -

1. The Union of India
Represented by the Secretary
to the Government of India
Postal Department
Dak Tar Bhavan
Parliament Street
New Delhi-110 001.
2. Director
Postal Training Centre
Department of Posts
Guwahati-781001.
3. Superintendent of Post Offices
Sivsagar Division, Jorhat-1
Assam.
4. Post Master
Jorhat Head Office
Jorhat, Assam.

..... Respondents.

By Mr. G. Baishya, Sr. C.G.S.C.



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O R D E R
30.07.2008

KHUSHIRAM, MEMBER (A) :

The Applicant, a Group D employee of Jorhat Head Post Office, was ordered to work as Night Guard of said Post Office for 12 days w.e.f. 03.02.1999 to 14.02.1999 vide Postmaster/Jorhat's order dated 02.02.1999. According to the Applicant, on 15.02.1999, while opening the Post Office for cleaning and sweeping by the safaiwalas, he discovered the locks of the treasury room and also lock and hinge of the treasury strong room door of the Post Office to be in broken condition. He immediately reported the same to the Postmaster. The Postmaster, on inspection, found the embedded iron chest also in broken condition and found that a sum of Rs.6,12,675/- was missing. Applicant was taken into police custody for questioning on 15.02.1999. He was also proceeded against in a departmental enquiry. The Applicant was found responsible for the theft as he was the person on duty during the period in question. Having been found responsible for the theft and not attentive to his duties, the Applicant was removed from service vide order dated 01.04.2002. Applicant preferred an appeal on 03.05.2002 against the order of removal from service and the said appeal was rejected by the Appellate Authority confirming the order of the Disciplinary Authority vide its order dated 21.05.2007. Hence, this



O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking mainly the following reliefs:-

"8.1 That the Hon'ble Tribunal may be pleased to set aside/quash (i) Inquiry Report dated 11.12.2001 holding the applicant partly responsible for the theft (ii) order dated 1.4.2002 passed by the Respondent no.3 removing the applicant from service and (iii) Order dated 21.5.07 passed by the Respondent no.2 upholding the penalty of removal imposed on the applicant.

8.2 That the Respondent authorities be directed/commanded to reinstate the applicant in service."

2. Respondents have filed a written statement justifying the action taken against the Applicant. In the written statement Respondents stated that Applicant was initially directed to perform duties as Night Guard from 03.02.1999 to 14.02.1999 verbally which was confirmed by written order. Since 14.02.1999 was a Sunday, the Applicant's statement that theft occurred during day hours on that day when he was not on duty, he failed to report the same to the Postmaster when he resumed his duties as Night Guard in the evening at 5.30 P.M. ^{on} 14.02.1999. He had no reasonable explanation for the incident of burglary. The matter was reported to police also which registered a case No.62/1999 under Sections 457/383 of the IPC dated 15.02.1999. Negligence of the Applicant was proved in the departmental enquiry. Had the Applicant been more alert and devoted to his duties as

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Night Guard, the unexpected incident of theft resulting in loss of govt. money to the tune of Rs.6,12,675/- would not have happened.

3. The Applicant has filed a rejoinder reiterating the contentions made in the O.A. Learned counsel for the Applicant Ms. D.Bor~~g~~ohain also filed written arguments on behalf of the Applicant; wherein she argued that Enquiry Officer was biased against the Applicant; that the chargesheet served on the Applicant does not mention the exact date or most probable date of the theft/burglary which occurred in Jorhat HPO; that 13.02.1999 was Saturday and 14.02.1999 was Sunday and, since Saturday (13.02.1999) was a working day of the Post Office, the Applicant, while assuming night duty at 5.30 P.M. of that 13.02.1999, closed the office and at about 8 P.M. he went to the ASTC counter to deliver mail and was absent from the Post Office for about an hour and that if the theft occurred during that hour, the Applicant had no occasion to know about such theft/burglary (as he was not required to open the office for cleaning as the next day was Sunday) and that Applicant's duty does not extend during the day and it cannot be ruled out that the theft may have occurred during the day hours (of Sunday) also and that the incident having taken place was only noticed only on opening the Post Office in the morning of Monday; that during (14.02.1999) Sunday night, the Applicant did not hear any sound and since the time of occurrence (of

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the incident) is not known, Applicant cannot be held responsible for the same; that besides the Applicant, there was a Home Guard on duty and the Postmaster, who resides in the 1st floor of the Post Office building and, therefore, since none of them heard or noticed anything untoward, the Applicant cannot be held responsible for the incident. Finally it has been argued on behalf of the Applicant that the order of the Disciplinary Authority (in removing the Applicant from service) was passed without proper appreciation of evidence, background and circumstances. In support of her contentions, learned counsel for the Applicant cited following decisions:-

- (i) **State of A.P. vs. Rama Rao**, reported in **AIR 1963 SC 1723** wherein Apex Court held that findings recorded in a departmental enquiry can be characterized as perverse if it is shown that such findings are not supported by any evidence or record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence.
- (ii) **Nand Kishore Prasad vs State of Bihar**, reported in **(1978) 3 SCC 366**; wherein Apex Court held that mere suspicion cannot take the place of proof even in domestic enquiry.
- (iii) **Rajender Kumar Kindra vs. Delhi Admin** reported in **(1984) 4 SCC 635**; wherein the Apex Court laid down that where the findings of misconduct are based on no legal evidence and the findings are mere ipse dixit or based on conjectures and surmises, the finding can be rejected as perverse.
- (iv) **Kuldeep Singh vs. Commissioner of Police** reported in **(1999) 2 SCC 10**; wherein Hon'ble Supreme Court held that courts would not interfere with the findings of facts recorded at the domestic enquiry but if the findings of 'guilt' is based on no evidence, it would



be a perverse finding and would be amenable to judicial scrutiny.

(v) **Moni Shankar vs. Union of India & Another**, reported in (2008) 3 SCC 484 wherein the Apex Court held that "the departmental proceedings is a quasi judicial one. Although the provisions of the evidence Act are not applicable in the said proceedings, principles of natural justice are required to be complied with. The Courts exercising power of judicial review are entitled to consider whether relevant piece of evidence has been taken into consideration and irrelevant facts excluded therefrom, while proving misconduct against the employee. Inference on facts must be based on evidence which meet the requirements of legal principles. ... Doctrine of unreasonableness is giving way to the doctrine of probability. On certain aspects, even judicial review of facts is also permissible."

(vi) **A.I.Kalra vs. Project and Equipment Corporation of India** reported in (1984) 3 SCC 316

(vii) **State of Madras vs. A.R.Srinivasan**, reported in 1966 SC 1827 wherein the Apex Court held that in the disciplinary proceeding taken against the public servants, the technicalities of criminal law cannot be invoked, and the strict mode of proof prescribed by the Evidence Act may not be applied with equal rigour.

(viii) **B.C.Chaturvedi vs. Union of India & Ors.** reported in (1995) 6 SCC 749

(ix) **Colour-Chem Ltd. vs. Alaspurker & Ors.** reported in (1998) 3 SCC 92

(x) **U.P. State Road Transport Corporation & Ors. vs. Mahesh Kumar Mishra & Ors.** reported in (2000) 3 SCC 450

4. Mr.G.Baishya, learned Sr. Standing counsel for the Union of India also filed written argument on behalf of the Respondents. He argued that Applicant was on guard duty of the Post Office when the incident of theft

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occurred resulting in loss of Govt. money worth of Rs.6,12,675/- . He argued that if the theft had occurred during day hours when the Applicant was not on duty, he could have noticed the incident at 5 P.M. when he reported for duty and thus he could have escaped from the responsibility of the incident but if the same occurred at night hours obviously as a guard he was not attentive and was negligent of his duties. Therefore, he cannot escape from the responsibility and accordingly, he was found guilty and awarded the punishment of removal from service. He argued that the Disciplinary Authority has passed a speaking order and the Appellate Authority also in its order dated 20.05.2007 has minutely looked into the matter. At sub-para 6.(iv) the Appellate Authority observed as under:-

"6.(iv) Being Sunday on 14-2-1999, there was no mail exchange at S.S.T.C. and the Night Guard should have been on duty that night at Post Office itself without leaving the spot. Further, as deposed by the Defence Witness and the appellant, the boundary walls of the eastern and southern side of HPO Building were dismantled during that period and long grasses/flower garden made that side unvisible. The work of dismantling of the boundary walls made HPO Building very vulnerable to the miscreants. It means that the appellant is aware about the work which was going on eastern/southern side of HPO. Therefore he was expected to be more vigilant and alert in his Night Guard duties to ensure safety of building. Instead of performing his own duty sincerely, the appellant is depending on the police patrolling in the night and the staff of Office of the Supdt. Of Police on duty in police station."



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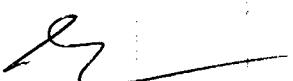
In support of his contention, learned Sr. Standing counsel for the Respondents relied on the following decisions of Supreme Court:-

- (i) **Tara Chand Vyas vs. Chairman & Disciplinary Authority and Others**, reported in (1997) 4 SCC 565; wherein the Apex Court held that Department Authorities are not like Civil Court and only the documentary evidence can be the basis of finding.
- (ii) **High Court of Judicature at Bombay through its Registrar vs. Udaysingh S/o Ganpatrao Naik Nimbalkar & Others** reported in (1997) 5 SCC 129; wherein Hon'ble Supreme Court has held that Disciplinary Proceeding is not a Criminal Trial and the "doctrine of proof" of beyond doubt has no application.
- (iii) **B.C. Chaturvedi vs. Union of India & Otehrs**, reported in (1995) 6 SCC 750 para 12 & 13; wherein the Apex Court held that in a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant and adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal.

He argued that in view of the aforesaid decisions and speaking orders passed by the Disciplinary Authority as well as the Appellate Authority there is no scope for interference by this Tribunal as there was neither procedural lacuna nor any perversity in arriving at the conclusion based on the facts and circumstances of the case.

5. We have heard the learned counsel for the both sides and have gone through the records placed before us.

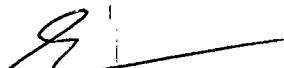
We have also gone through the decisions of the Apex Court



relied on by the rival parties. In the case of **Rama Rao** (supra) the Apex Court held as under:-

"in considering whether a public officer is guilty of the misconduct charged against the delinquent, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the court, does not apply and even if that rule is not applied, the High Court in a petition under Art. 226 of the Constitution is not competent to declare the order the authority holding a departmental enquiry invalid. ... The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be canvassed before the High Court in a proceeding for a writ under Art. 226 of the Constitution."

In the second cited case by the learned counsel for the Applicant i.e., **Nand Kishore Prasad** (supra) the Apex Court held that this was not a case of no evidence but of evidence which was not adequate enough to carry conviction at a criminal trial. The High Court was,

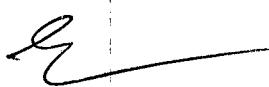


therefore, right in holding that the impugned orders did not suffer from an error of law which may warrant interference in proceedings under Article 226 of the Constitution.

The facts of the case of **Rajender Kumar Kindra** (supra) cited by the learned counsel for the Applicant are different from the facts of the instant case and hence the ruling is of limited application.

In the case of **Kuldeep Singh** (supra) relied by the Applicant's side Hon'ble Supreme Court held that finding of guilty although would not be normally interfered with, the court can interfere therewith if the same is based on no evidence or is such as could not be reached by an ordinary prudent man or is perverse or is made at the dictates of a superior authority. In this instant case, findings are based on facts as the theft took place during the watchmanship of the Applicant and thus he cannot escape from the responsibility of the incident of theft resulting in loss to Govt. money to the tune of Rs.6,12,675/-.

The facts of **Moni Shankar's** case (supra) relied on by the learned counsel for the Applicant are different from the facts of the case at hand. Since the facts are speaking for themselves and this Tribunal finds no reason to interfere with the decision of the authority as there is no perversity in arriving at the definite conclusion



holding the Applicant negligent and not devoted to his duties.

The dictum laid down in the case of **A.L.Kalra** (supra) is not applicable in the present case, the facts therein are totally different to the facts of the present case.

The case of **A.R.Srinivasan** (supra) relates to corruption and being different from the present case and hence the rulings given by the Apex Court therein has limited application in this case.

In the case of **B.C.Chaturvedi** (supra) relied on by the both side the Apex Court, at paragraph 12, held as under:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the



disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power to judicial review doest not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

In the case of **A.L.Alaspurker** (supra) Hon'ble Supreme Court held that if the punishment is shockingly disproportionate to the charges held proved against the employee, it will be open to the court to interfere. In the instant case, lack of devotion to duty and lack of alertness on the part of the Applicant resulted in burglary/theft causing loss of Rs.6.12.675/- to Govt. which cannot be held minor and thus punishment awarded to the Applicant is not disproportionate to the gravity of the offence.

The facts of the case of **U.P.State Road Transport Corporation & Others** (supra) are different from the facts of the case at hand and hence the dictum laid down in the cited case has no application in this case.

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In the cases of **Tara Chand Vyas** (supra) and **High Court of Judicature at Bombay through its Registrar** (supra) relied on by the learned Sr. Standing counsel for the Respondents the Apex Court held that Departmental Authorities are not like civil court and Disciplinary Proceeding is not a Criminal Trial and the doctrine of proof of beyond doubt has no application.

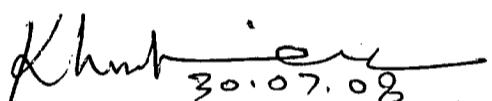
6. The Applicant was in-charge of the night duty and was responsible for guarding of the Post Office premises. In case the incident had taken place during day hours he could have noticed the same in the evening when he reported for night guard duty, he could have escaped from the responsibility of loss of Govt. money of Rs.6,12,675/- and if that incident occurred at night hours he was the person responsible for guarding the premises and properties of the Post Office as night guard. Obviously, he failed to be attentive in discharging his duties as night guard. Therefore, he cannot escape from the responsibility for the incident. The Disciplinary Authority has passed a speaking order based on the enquiry and Appellate Authority has also minutely examined the facts of the case and has passed a reasoned and speaking order. The Appellate Authority in its order dated 21.05.2007 has rightly held that the Applicant was aware about the work which was going on eastern/southern side of HPO and therefore, he was expected to be more vigilant and alert in his Night Guard



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duties to ensure safety of the HPO building. Obviously, Applicant failed to live up to the expectation and thus is responsible for the incident of theft/burglary in the HPO building.

7. In view of the above legal position and forgoing discussions, we are of the considered view that the Applicant has failed make out a case against the punishment imposed on him and, thus, this Tribunal finds no reason to interfere with the punishment (awarded to the Applicant by the Respondents) and this case is, accordingly, dismissed. No costs.


 30.07.08
 (KHUSHIRAM)
 MEMBER (A)


 30/07/08
 (MANORANJAN MOHANTY)
 VICE-CHAIRMAN

OA (2+4 sets) Central Admin. Trib. Guwahati by Ms. D.
Borgohain, Advocate on 27 AUG 2007
To be posted on 27 AUG 2007

DISTRICT : JORHAT

গুৱাহাটী নথিপত্ৰ
Guwahati Bench

Guwahati
24/8/07

IN THE CENTRAL ADMINISTRIVE TRIBUNAL GUWAHATI
BENCH;GUWAHATI.

ORIGINAL APPLICATION No.226 of 2007

IN THE MATTER OF:

Sri Chidananda Saikia,
...Applicant

-Versus-

1. The Union of India,

And ors.

Respondents.

INDEX

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Filed by

Dipika Borgohain
Advocate 24/8/07

Sri Chidananda Saikia

DISTRICT : JORHAT

IN THE CENTRAL ADMINISTRIVE TRIBUNAL GUWAHATI
BENCH;GUWAHATI.

ORIGINAL APPLICATION No.226 of 2007

IN THE MATTER OF:

Sri Chidananda Saikia,

...Applicant

-Versus-

1. The Union of India,
And ors.

Respondents.

SYNOPSIS

That the applicant , a Group-D employee of Jorhat Head Office (HPO) while working as Night Guard of the Jorhat HPO for 12 days with effect from 3.2.1999 to 14.2.99 vice the regular Night Guard who was on leave, ,there occurred a theft in the HPO and a sum of Rs.6,12,675.00 (Rupees Six Lacs, Twelve Thousand Six Hundred and Seventy Five)only was found missing. The Post Master , Jorhat framed charges against the applicant that the loss of Rs.6,12,675.00 took place while the applicant was on duty during the material period , thus he violated the provisions of Rule 3(1)(i)(ii) & (iii) of CCS (Conduct) Rules, 1964. An Inquiry Authority was appointed on 14.10.99 who after going through the depositions of the charged official, witnesses of prosecution side as well as of defence sides and after scrutiny of the listed documents as well as the charges brought against the applicant recorded his finding of the case on 11.12.2001, wherein lapses on the part of the Post Master was also

Sri Chidananda Saikia

observed. Therefore, the present applicant was held partly responsible for the case of theft.

The Disciplinary Authority (Respondent No.3) after going through the I.O's report recorded the grounds of disagreement and held that the charges against the applicant are proved beyond doubt. Thereafter order dated 1.4.2002 was passed removing the applicant from service with immediate effect. That as against the order dated 1.4.2002 passed by the Respondent No.3, the applicant preferred an appeal dated 3.5.2002 before the Respondent no.2. The Appellate Authority by order dated 20.5.2007 confirmed the penalty of removal of the applicant from service by the Disciplinary Authority.

The contention of the applicant is that all the authorities erred in law as well as in facts while arriving at their findings. Hence this Application before this Hon'ble Tribunal.

FILED BY

Dipak Bagharia

ADVPCATE *24/8/07*

Sri Charanlal Soekia

DISTRICT : JORHAT

IN THE CENTRAL ADMINISTRIVE TRIBUNAL GUWAHATI
BENCH;GUWAHATI.

ORIGINAL APPLICATION No. 226 of 2007

IN THE MATTER OF:

Sri Chidananda Saikia,

...Applicant

-Versus-

1. The Union of India,

And ors.

Respondents.

LIST OF DATES

<u>Sl.No.</u>	<u>Date</u>	<u>Particulars</u>
1.	2.2.99	Applicant ordered to work as Night Guard of Jorhat HPO for 12 days with effect from 03.02.1999 to 14.2.99 vide Postmaster , Jorhat Order dated 2.2.99 vice Md. Hussain Ali allowed to compassionate off for the period from 3.2.99 to 14.2.99.
2.	15.2.99	The applicant opens office at about 7.30 hours and discovers that lock of Treasury Room is broken and the door and embedded Iron chest are broken condition. The Post Master on being informed reached the spot and after counting the money in the iron chest concluded that a sum of Rs.6,12,675.00 in GC notes from the Iron chest of the Treasury Strong Room is missing.

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3. 1.9.99 Charge brought against Applicant vide PM Jorhat Memo No.H/2/Chidananda Saikia /99 .

4. 14.10.99 Inquiry officer appointed to inquire into the charges framed against applicant vide office Memo No. h.2/C.Saikai/99.

5. 11.12.2001 Vide Memo No. F4-14/98-99 Inquiry Officer after going through the depositions of all sides and examination of documents was of the opinion that the applicant is partly responsible for the case of theft /burglary.

6. 7.1.2007 The I.O's report sent to applicant to submit representation if any.

7. 2.9.2002 Applicant submits representation.

8. 7.3.2002 Disagreement note of Disciplinary authority sent to Applicant.

9. 1.4.2002 Vide memo No.F4-14/98-99 the applicant removed from service with immediate effect.

10. 3.5.2002 Applicant prefers appeal before the Appellate Authority .

11. 20.5.2007 Appellate authority confirms the penalty of removal of the applicant from service by the Disciplinary Authority.

12. 29.5.2007 Vide letter No.Staff/2/24-8/02/RP applicant forwarded the appellate authority's order.

Filed by

Dipak Barua

Advocate *24/8/07*

Sri Chida Manohar Barua

DISTRICT : JORHAT

IN THE CENTRAL ADMINISTRIVE TRIBUNAL GUWAHATI
BENCH;GUWAHATI.

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Filed by
Chidananda
Saikia
24/8/07

(CIVIL EXTRA-ORDINARY JURISDICTION)

IN THE MATTER OF:

Sri Chidananda Saikia,
Son of Late Kanram Chutia,
Village -Borbam Chungi,
P.O- Chungi,
Via-Gotanagar,
P.O-& District Jorhat,
Assam.

...Applicant

-Versus-

1. The Union of India,
Through the Secretary to the
Government of India, ~~Postal Department~~ ^{22/11/07}
Dak Tar Bhavan,
Parliament Street,
New Delhi-110 001.
2. Director ,
Postal Training Centre,
Department of Posts,
Guwahati-781 001
3. Superintendent of Post Offices,
Sivasagar Division, Jorhat, -1
Assam.

Sri ~~Sub Member~~ Reibeka

4. Post Master,
Jorhat Head Office,
Jorhat, Assam.

Respondents

DETAILS OF APPLICATION

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

This application is made challenging the following orders.

- (i) Inquiry Report dated 11.12.2001 submitted by Sri P P Baruah, Inquiry Officer and Inspector of Posts, Jorhat (South) Sub-Division Jorhat in respect of Rule 14 inquiry under CCS (CCA) rules, 1965 against the applicant holding that he was partly responsible for a theft of Rs.6,12,675.00 (Rupees Six Lakhs Twelve Thousand Six Hundred Seventy Five) only which occurred while he was on night duty in the Head Post Office, Jorhat.
- (ii) Order passed vide Memo No. F4-14/98-99 dated 1.4.2002 by the respondent no.3 removing the applicant from service with immediate effect.
- (iii) Order passed vide Memo No. staff 2/24-8/02 RP dated 21.5.07 by the Respondent No.2 upholding the penalty of removal imposed on the applicant.

Sri Chiribabu Sekhik

2. JURISDICTION OF THE TRIBUNAL:

The applicants declare that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION:

The applicants declare that the application is within the period of limitation under Section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE:

4.1 That the applicant is a citizen of India and permanent resident of the above mentioned address, as such he is entitled to all the rights and privileges as enshrined under Part -III of the Constitution of India and other laws of the land as applicable and amended from time to time.

4.2 That the applicant, a Group-D employee of Jorhat Head Office (H.P.O) was ordered to work as Night Guard of Jorhat HPO for 12 days with effect from 3.2.1999 to 14.2.99 vide Postmaster, Jorhat order dated 2.2.1999 , vice Md. Hussain Ali, allowed ~~compassionate~~ off for the period from 3.2.1999 to 14.2.1999.

Sei. *Shri. Biju Kumar Deula*

4.3 That in the morning of 15.2.1999 the applicant collected the keys of the office at about 7.30 AM from the residence of the Postmaster located on the first floor of the H.P.O. building for opening the post office to make room for cleaning and sweeping of the office by the safaiwallas . On opening the post office, the applicant discovered that the locks of the Treasury Room and also lock and hinge of the treasury strong room door are in broken condition. The applicant immediately returned to the residence of the Postmaster and reported what he saw to the Postmaster and the latter immediately rushed to the spot along with the applicant and the night guard . They entered inside the Strong Room and found the embedded Iron Chest also in broken condition. An empty Blue bag alongwith some old bundles of GC notes and some coins were lying beside the embedded iron chest. On counting the amount left behind in the iron chest of the strong room was found to be Rs.7218.00. It was thus concluded that a sum of Rs.6,12,675/- (six lacs, twelve thousand six hundred and seventy five only) was missing.

S. Chidambaram Selvai

4.4. That thereafter, the police was informed and the applicant was taken into police custody for questioning on 15.2.99 and then released the next day. Also the applicant was placed under suspension with immediate effect pending drawal of disciplinary proceedings by order passed vide Memo No. H2/C Saikia/99 dated 15.2.99. The Post Master, Jorhat vide Memo No. H2/ Chidananda Saikia /99 dated 1.9.99 framed charges against the applicant that the breaking of iron window grill, one lock of Treasury Room, 3 locks and 1 hinge of the Treasury strong room and also hooks and 2 locks of the embedded iron chest of the strong room and also loss of Rs.6,12,675.00 (Rs. Six lakhs twelve thousand six hundred and seventy five) took place while the applicant was on duty during the material period, thus he violated the provisions of Rule 3(1) (i) (ii) and (iii) of CCS (Conduct) Rules 1964. This charge was sought to be proved by the Postmaster, Jorhat H.P.O by the following documents and witnesses as noted in Annexure-III and IV of the said memo dated 1.9.99.

- 1) Order book of the Post Master, Jorhat H.P.O. dated 2.2.1999.
- 2) Md. Hussain Ali, now Night Guard, Divisional Office and
- 3) Shri Poona Ram Pachani, Asstt. PM Mails, Jorhat H.P.O.

The applicant denied the charges.

A copy of the Memo of charges dated 1.9.99 is annexed herewith and marked as Annexure-1.

4.5. That thereafter an Inquiry authority was appointed on 14.10.99 appointing Sri P P Baruah, SDI(P) Jorhat South Sub-Division as I.O. and Shri P K Dey, SDI(P) Jorhat North

Sri Chibe Nanda Saikia

Sub-Division as PO but Sri P K Dey the PO had since been transferred to other Division, the order of appointment of Inquiry authority was modified on 10.4.2001 appointing Sri Bijayananda Hazarika, SDI(P) Jorhat 'North Sub-Division as P.O. of the case .The Inquiry Officer submitted his report on 11.12.2001 to the Postmaster , Jorhat.

4.6 That the I.O. after going through the depositions of the charged official , witnesses of prosecution side as well as of defence sides the brief of arguments of the Presenting Officer and the charged official and after scrutiny of the listed documents as well as the charges brought against the charged official recorded his findings of the case as follows, wherein lapses on the part of the Post Master was also observed.

- (a) The Postmaster, Jorhat failed to issue a fresh order of extension of duty to the charged official on 13.2.99 and the latter was only verbally ordered by the Postmaster to continue from 13.12.99 to 14.2.99.
- (b) The charge sheet does not mention the exact date or most probable date of theft /burglary which occurred in Jorhat H.P.O.
- © It is ascertained that the Night Guard of Jorhat H.P.O. used to carry mails from Jorhat HPO to ASTC Bus station from 8PM to 9 PM on every working day during

Sri Chidambaram Sekar

their duty period. The charge official also carried the mail, so he could not guard the P.O. building in this particular hour. Again the theft might have occurred during day time also.

(d) As per the defence witness and the charged official the boundary walls of the eastern and southern side of the HPO building were dismantled during that period and long grasses/flower garden made visibility from one side to another unclear. Moreover the fencing fitted from the building to the Boundary walls made the Night Guard and the Home Guard unable to go near the HPO building from those sides. It is that side where the miscreants cut the window grills/screws of the window grill. The I.O could not check this as it was already replaced long before.

The lapse of not making arrangement of free and easy movement of the Night Guard i.e. the Charged Official (and Home Guards) to ~~patrol~~ round the HPO building is of HPO ~~postal~~ authority.

Moreover, one Home Guard was not on duty on 3.2.99 and 14.2.99 but no alternate arrangement to place /deploy person in his place was made by Postmaster, so pressure on charged official was more than other days. This is also one lapse of the Postmaster, Jorhat.

SAC - Shri Dinesh Kumar Saini

(e) The Night Guard i.e. the Charged Official was made to work 12 to 14 hours a day instead of 8(eight) hours a day like other employees.

(f) The Postmaster, Jorhat HPO was absent in his Government residence on 14th February, 1999.

(g) The breaking of the locks of the Iron-door of the Treasury Room, Strong Room, embedded iron Chest kept inside the strong room and hinges of the door of the strong Room and the Iron Chest must have caused some sound. The Postmaster's residence being located on the 1st floor of the HPO building just above the Treasury and Strong Room of the office, if he was present in his residence on 14.2.99 he might have heard any suspicious sound coming from breaking of locks , hinges etc.

The IO concluded that the charged official is not alone responsible for the theft committed on 13.2.99 or 14.2.99. The Home Guard is also responsible for it. The lapses on the part of the Postmaster is also responsible for it. Because as per Rule 3(2)(i) of the CCS (Conduct)Rules, 1964 as read, shown by the Presenting Officer reads as "Every Government Servant holding a supervisory

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post shall take all possible steps to ensure the integrity and devotion to duty of all Government servant for the time being under his control and authority" Therefore, the present applicant was held partly ~~not~~ responsible for this case of theft /burglary.

A copy of the Inquiry report is annexed herewith and marked as Annexure-2

4.7: That the applicant submitted a representation as against the I.O's report wherein he reiterated his earlier statement he was made to work for 12 days instead of 10 days by overwriting in the Postmaster, Jorhat HPO's order dated 2.2.1999 which according to him is a vast mystery .

Further , the applicant was of firm belief that the theft has occurred during the day hours of 14.2.99 which was a Sunday and beyond his duty hours.

4.8.: That the disciplinary authority disagreed with the I.O's report on several grounds as follows:

(i) That the IO in his finding simply narrated the depositions of all parties ~~present~~ without offering any comment from his side.

Sricliffe and Seiler

- (ii) The I.O blamed the Disciplinary authority for non mentioning ^{of} the exact date or most probable date of theft which is irrelevant.
- (iii) The I.O has tried to safeguard the charged official by saying that the theft might have occurred during day time or during 1(one) hour of his absence for mail carrying . This has got no relation with the charges brought against the applicant.
- (iv) The lapses attributed to the postal authority and the Post Master, Jorhat for difficulty of the night guard to guard all sides of the HO building is uncalled for.
- (v) The I.O. was biased towards the charged official while making observation that he was made to work 12 to 14 hrs a day instead of 8 hrs a day like other employees. This is objectionable.
- (vi) The I.O. holding the Postmaster, Jorhat HO partly responsible for the theft citing Rule 3(2)(i) of CCS(Conduct)Rules, 1964 is uncalled for.
- (vii) The I.O's report does not mention whether the charge framed against the charged official is proved or not.

Sri Chidambaram

- (viii) The I.O in his report does not discuss about the charges framed against the applicant and has come to a vague conclusion stating that he is partly responsible for the theft.
- (ix) That as regards the I.O's concern about overwriting made by the Postmaster in the order book, there is no link between the overwriting and the theft.
- (x) It has been established during Inquiry that the charged official performed his duty on the material dates of 13.2.99 and 14.2.99 and so the theft occurred during his duty period for which he was solely responsible.

4.9: That the applicant submitted his statement of defence as against the disagreement note of the Disciplinary Authority , on 19.3.2002 wherein he pointed out that the I.O.s report revealed the true fact of the case.

The applicant reiterated his earlier statement that he was ordered to work as Night Guard initially for 10(ten) days only with effect from 3.2.99 in place of Md Hussain Ali in absence of the latter, he had to continue his duty as Night Guard from 5 pm to 7.30 am

Sri Chidambaram Selvaraj

upto 14.2.99 in continuation to the order of the post master, Jorhat, dated 2.2.99 without break. He further stated that in addition to his duty as Night Guard he had to deliver mail at the ASTC Night Bus and that he always kept himself alert during duty hours and did not hear any sound. He also stated that the gate of the office remain closed during the night and that the boundary wall of the Post Office on the eastern side was in broken condition. Lastly, the IO's report revealed that he discharged his duty sincerely and the charge brought against him do not stand and he is not at all responsible for the theft. Thus he prayed or his exoneration form the charge leveled against him.

4.10: That the Disciplinary Authority (Respondent No.3 after going through the charges brought against the applicant found that the charges are justified as he violated the provisions of Rule, 3(1)(i)(ii) & (iii) of CCS (Conduct)Rules, 1964. After going through the I.O's report he observes that the report is not agreeable as the actual picture of the charges are not reflected on it. The report is concluded without offering any comment from his side. Some times the disciplinary authority is blamed which is uncalled for. It is observed that the charged official in his representation submitted against

Sri Chidambaram Selvam

the disagreement note of the Disciplinary Authority supports the points of the I.O. The applicant's representation is not convincing that he performed continuous duty from 5 pm to 7.30 am as Night Guard. Had he been devoted to his duty fully, such untoward incident would not have happened. As regards the statements made by the charged official that he had to exchange mail at ASTC Mail Bus from 8 PM to 8.30 PM the Disciplinary Authority points out that the incident took place on holiday, ^{are} Sunday on which no mails ^{are} due to be exchanged. Therefore the charges against the applicants are proved beyond doubt. Thereafter order was passed removing the applicant from service with immediate effect.

A copy of the order dated 1.4.2002 passed by the Respondent No.4 is annexed herewith and marked as Annexure-3

4.11 That as against the order dated 1.4.2002 passed by the Respondent No.3 the applicant preferred an appeal dated 3.5.2002 before the Respondent No.2. The appellate authority in its order dated 21.5.07 observed that 14.2.99 being a Sunday, there was no mail exchange at ASTC and the Night Guard should have been on duty that night at Post office itself without leaving the spot. Also he was aware about the

Sri Chidambaram Sevilal

dismantling of the boundary walls of the eastern and southern side of HPO building which made the building very vulnerable to the miscreants. The applicant was expected to be more vigilant and alert in his duties to ensure safety of building. It was further observed that the appellant instead of performing his own duty sincerely, is depending on police patrolling in the night and the staff of office of the Superintendent of Police on duty in police Station.

The appellate authority in conclusion observed that the applicant was arranged for Night Guard duty only for few days, and during this period this untoward incident of theft/burglary happened causing Rs.6,12,675/- loss to the Department. Therefore, the applicant was held responsible for laxity in his duties and hence violated the provision of Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964. Thus the appellate authority did not intervene in the Disciplinary Proceedings and confirmed the penalty of removal of the applicant from service by the Disciplinary Authority. This Order dated 21.5.07 was forwarded to the applicant along with letter dated 29.5.2007.

Copy of the letter dated 29.5.2007 along
Order dated 21.5.07 passed by the

S. Chander Nandar Sri W.C.

respondent no.2 is annexed herewith and marked as Annexure-4

5. GROUNDS FOR RELIEF

5.1 That the applicant submits that the Inquiry Officer, disciplinary authority as well as the Appellate authority erred in law as well as in facts.

5.2 That the applicant submits that it has not been proved that an amount of Rs.6,12,675.00 (Rupees Six Lacs, Twelve Thousand Six Hundred and Seventy Five) only was stolen from the Jorhat HPO. The Inquiry Officer, Disciplinary authority and the Appellate authority failed to ascertain and state as to whether the Jorhat HPO is allowed to have in its possession a sum of Rs.6,12,675.00 (Rupees Six Lacs, Twelve Thousand Six Hundred and Seventy Five)only as per the p & T Manul. This is a material omission on the part of the three authorities which could have the effect of shifting of liability.

5.3 That the applicant submits that the Inquiry Officer has rightly pointed out that the charge sheet issued by the Disciplinary authority fails to

Sri. Chirba Alen Ba Greikia

mention the exact date or most preferable date of the theft /burglary which occurred in Jorhat HPO. After consultation, checking of Postmaster's cash book, calender of 1999 it was ascertained that theft /burglary was committed in the night of 13.2.99 or 14.2.99. 13.2.99 was Saturday and 14.2.99 was Sunday. 13.2.99, Saturday was a working day and the applicant while assuming night duty at 5.30 pm closed the office. At 8 pm he went to the ASTC counter to deliver mail and was absent from the PO for about an hour. If the theft occurred during this hour, he had no occasion to know about such theft/burglary, as the next day was a Sunday and he was not required to open the office for clearing. The applicant's duty does not extend during the day it cannot be ruled out that the theft may have occurred during the day hours also. It was only when the applicant opened the office on Monday morning, the theft was discovered. It is pertinent to mention here that the key of the office remains with the Postmaster whose official residence is located above the Post office. In the night of 14.2.99, Sunday, the applicant is sure he did not hear any sound. Even the night guard on

Sri Chin be Almora Greibie

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duty claims he did not hear any sound of breaking. In view of what is stated above ascertaining the date of theft is necessary for fixing liability or punishing a person .

5.4 That the applicant begs to submit that the inquiry officer has rightly pointed out that there was a lapse on the part of the Postal authority of not making arrangement for free and easy movement of the night Guard to patrol round the HPO building. This was of utmost necessity considering the fact that boundary wall of the eastern and southern side of the HPO building were dismantled during that period and long grasses in that side made visibility from one side to another unclear.

5.5.1. That the disciplinary authority failed to take into consideration the fact that besides the applicant there was a Home-Guard on duty and the Post Master resided in the floor above the post office.

5.6 That the respondent authorities in complete violation of the Government of India's instruction issued as regards Departmental action and prosecution initiated Departmental action against the applicant and removed him from service .. As per Government of India M.H.A OM No.

Sri Chirba Venkue Greilice

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F.639/30/55-Est dated 7.6.1955 and No. 39/8/64
 Estt. (A) dated 4.9.1964 prosecution should be the general rule in all those cases which are found fit to be sent to Court after investigation and in which the offences are bribery, corruption or other criminal misconduct including loss of substantial public fund. In such cases, departmental action shall not precede prosecution. However in the case of the present application such a rule was given a go by and the police though informed was never inquired as to the progress in investigation of the theft. The disciplinary authority failed to appreciate the facts and law in its correct perspective and arrived at a finding against the applicant.

Copies of the OM dated 7.6.1955 , 4.9.1964 is annexed herewith and marked as Annexure - 5

5.7 That the applicant begs to submit that according to the revised instructions issued by the Government of India, prosecution should be the general rule in all those cases which are found fit to be sent to Court after investigation and in which the offences are bribery, corruption or other criminal misconduct involving loss of substantial funds .Further certain clarifications has been issued against number of references seeking clarification on

Sri Chandra Nanda Sehgal

certain points arising out of the revised instructions of the Ministry of Home Affairs. As per D.G. Posts & Telegraph (P& T) Letter it has been decided that so far as the P & T Department is concerned, a case involving loss of substantial public funds" referred to in the instruction would be a case in which the loss exceeds (1) Rs. 2000 in so far as departmental employees are concerned and (2) the amount of security deposit in case of extra departmental employees. Further, this letter states that in all cases which are considered fit for prosecution, according to criteria laid down in this letter, a report should be lodged with the police as soon as the case comes to notice and departmental enquires except to the extent permitted by the police. The question of taking departmental action in such cases would arise after either completion of police enquires or after the processes of prosecution in a Court of law have been completed. If, however, it is desired to conduct departmental enquires simultaneously with police enquires or to take departmental action wherever feasible before the case is taken up for prosecution by the police, the matter should be decided after consultation with police authorities. The respondent authorities without conforming to the revised instruction and the P & T Department's letter dated 13.6.1977 referred above removed the applicant without completion of police

Sri Chibe Alende Srihia

enquires or after the process of prosecution in a court of law have been completed.

A copy of the P & T department's letter dated 13.6.1977 is annexed herewith and marked as Annexure-5/6

- 5.7 That the applicant submits that it has been rightly pointed out by the Inquiry Officer that one Home Guard was not performing his duty on 13.2.99 and 14.2.99 but no alternative arrangements to place/ deploy person in his place was done by the Postmaster. So, the pressure of work on the Night Guard i.e. Charged Official (the applicant herein) and the one Home Guard was more than other days. This aspect should have been taken into consideration by the disciplinary Authority and the Appellate Authority.
- 5.8 That the applicant submits that the respondent authorities in complete violation of the prescribed procedure has in a most illegal and arbitrary manner removed him from service which is required to be interfered by this Hon'ble Court for the ends of justice.
- 5.9 That the applicant submits that prima facie he has a good case on merit, balance of convenience and irreparable loss in his favour and if the relief as prayed for herein is not granted by this Hon'ble Court the

Sri Chandra Mendas Srikrishna

applicants will be highly prejudiced, suffer irreparable loss and injury.

5.10 That the applicant demanded justice which have been denied to him.

6. DETAILS OF THE REMEDIES EXHAUSTED:

There is no remedy under the Rule and this Hon'ble Tribunal is the only forum for redressal of their grievances.

7. MATTER NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT:

That the applicant declare that he has not filed any other case in any Tribunal/Court or any forum against the illegal action of the respondent authorities.

8. RELIEF :

Under the above facts and circumstances of the case the applicant pray for the following reliefs:

8.1 That the Hon'ble Tribunal may be pleased to set aside /quash(i) Inquiry Report dated 11.12.2001 holding the applicant partly responsible for the theft (ii) order dated 1.4.2002 passed by the Respondent no.3 removing the applicant from service and (iii) Order dated 21.5.07 passed by the Respondent no.2 upholding the penalty of removal imposed on the applicant.

8.2 That the Respondent authorities be directed /commanded to reinstate the applicant in service.

*Sri Chidambaram
Sri Chidambaram*

8.3 That the Hon'ble Tribunal may be pleased to pass any other appropriate order(s) or direction as it deem fit and proper granting adequate relief to the applicant.

9. INTERIM RELIEF PRAYED FOR:

Under the above facts and circumstances of the case the applicants pray for the following relief:

9.1 That the Hon'ble Tribunal may be pleased to stay the (i) Inquiry Report dated 11.12.2001 holding the applicant partly responsible for the theft (ii) order dated 1.4.2002 passed by the Respondent no.3 removing the applicant from service and (iii) Order dated 21.5.07 passed by the Respondent no.2 upholding the penalty of removal imposed on the applicant.

9.2 That the Hon'ble Tribunal may be pleased to pass any appropriate order(s) or direction as it deem fit and proper granting adequate relief to the applicant.

10. That this application is filed through Advocae.

11. PARTICULARS OF THE POSTAL ORDER IPO NO. 286 926022

DATE

PAYABLE AT GUWAHATI GPO

12. LIST OF ENCLOSURES

AS IN INDEX

Gre Chiba Alande Greika

VERIFICATION

I, Sri Chidananda Saikia, Son of Late Kanram Chutia, Village- Borbam Chungi, P.O- Chungi, Via-Gotanagar, District- Jorhat, Assam is the applicant herein being well acquainted with the facts and circumstances of the case and state and verify that the statements made in paragraphs 1, 4, 7

of the application are true to my knowledge and in paragraphs 2, 3, 5, 6 are true to my legal advise and I have not suppressed any material facts.

And, I set my hand on this verification today, the 24^a day of August, 2007 at Guwahati.



SIGNATURE OF THE APPLICANT

OFFICE OF THE POSTMASTER: JORHAT HEAD POST OFFICE.

MEMO NO. H2/C. Sarker/99..... DATED AT JORHAT..... 1.9.99.

MEMORANDUM

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

02. Shri/Smt. Cidamanda Sarker is directed to submit within 10 days of the receipt of this MEMORANDUM a written statement of his defence and also of the state whether he desires to be heard in person.

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

04. Shri/Smt. Cidamanda Sarker is further informed if he/She does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiry authority or otherwise fails or refuses to comply with the provisions of Rule - 14 of the CCS(CCA) Rules, 1965, or the orders/ directions issued in pursuance of the said rule , the inquiry authority may hold the inquiry against him ex parte.

05. Attention of Shri/Smt. Cidamanda Sarker is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri/Smt. Cidamanda Sarker is aware of such representation and that it has been made at his instance and action will be taken against him for violation of Rule- 20 of the CCS (Conduct) Rules, 1964.

06. The receipt of the Memorandum may be acknowledged.

Okw
(R.K.CHANDA) 7-7
POSTMASTER
JORHAT H.O.

To Shri/Smt. Cidamanda Sarker

..... Night Guard, Tahat H.O.

now under suspension

P.O. Tahat -

copy

ANNEXURE - I

Statement of Articles of charges framed against Shri Cidananda Saikia, Group - D, Jorhat H.P.O., now under suspension.

ARTICLE - I

That said Shri Cidananda Saikia while functioning as night guard of Jorhat H.P.O. during the period from 03.02.1999 to 14.02.1999 violated the provision of Rule 3(1)(i)(ii) & (iii) of CCS(Conduct) Rules 1964.

ANNEXURE - II

Statement of imputation of misconduct in support of the articles of charge framed against Shri Cidananda Saikia, night Guard , Jorhat H.P.O., now under suspension.

ARTICLE - I

Shri Cidananda Saikia, Group- D, Jorhat H.P.O. was ordered to work as Night Guard of Jorhat H.P.O. for 12 days w.e.f 03.02.1999 to 14.02.1999 vide Postmaster, Jorhat order No. dtd. 02.02.1999, vice Md. Hussain Ali, allowed to avail compassionate off for the period from 03.02.1999 to 14.02..1999.

On 15.02.1999 morning Shri Cidananda Saikia, the night guard collected Keys of the Office at about 0730 hrs., from the residence of the Postmaster for opening the Post office to make room for cleaning & sweeping of the Office by the safaiwallas. Shri Cidananda Saikia, night guard returned immediately to the residence of the Postmaster and reported that the lock of the treasury room is in broken & door in open condition. The Postmaster rushed to the spot immediately along with Shri Cidananda Saikia, the night guard and found the locks of the Treasury Room and also lock & hinge of the treasury strong room door are in broken condition. Both of them entered inside the Strong Room and found the embedded iron Chest also in broken condition and the blue bag in which Cash of Rs. 6,19,893.00 was kept inside the iron chest was not there. Only the blue bag lying inside the iron chest without cash. On examination it is noticed that some old bundles of GC notes alongwith some coins are lying beside the embedded iron chest of the strong room. On subsequent counting the amount left behind by the miscreants was found to be Rs.7,218/. The miscreants therefore took away a sum of Rs.6,12,675/ in GC notes from the iron chest of the treasury strong room.

On further examination it is found that the miscreants entered the H.P.O. Building by breaking the iron window grill of eastern side of the Post Office building.

The breaking's of iron window Grill, one lock of the Treasury Room, 3 locks & one hinge of the treasury strong room and also hooks & 2 locks of embedded iron chest of the strong room and also loss of Rs. 6,12,675.00 (Rupees Six lakhs twelve thousands six hundred seventy five was took place while Shri Cidananda Saikia , night guard , Jorhat H.P.O was on duty during the material period.

ANNEXURE - III

List of documents by which the articles of charge framed against Shri Cidananda Saikia , night guard Jorhat H.P.O. are proposed to be sustained.

01. Order Book of the Postmaster Jorhat H.P.O. dtd. 02.02.1999.

ANNEXURE - IV

List of witnesses by whom the articles of charge framed against Shri Cidananda Saikia , are proposed to be sustained.

01. Md. Hussain Ali, now night guard , Divisional Office.
02. Shri Ponaram Pachani, Asstt. Postmaster Mails, Jorhat H.O.

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INQUIRY REPORT

OF THE INQUIRY OFFICER RELATING TO THE RULE 14
CCS(CCA) RULES 1965 CASE HELD AGAINST SHRI
CHIDANANDA SAIKIA NIGHT GUARD JORHAT HPO.

1. The undersigned was appointed as Inquiry Officer of this case to enquiry into the charges framed against Shri Chidananda Saikia , by the PM Jorhat HPO vide ho office Memo no. H2/C Saikia /99 of dated 14.10.99.

2. The Preliminary Hearing of the case was held on 14.2.2000. After that hearing of the case was held regularly except for sometime when the Presenting Officer of the case was changed. Shri P.K.Dey (SDIPS. Jorhat (North) Sub-Divn was the Ist P.O. and Srhi B.Hazarika SDIPO Jorhat (North) Sub Divn. Was appointed as the Presenting Officer of the case after transfer of Shri P K Dey vide D.C.Office memo No.FA-14/98-99 of dated 10.4.2001. The ew Presenting Officer was appointed by the Suptd of P.O Sibsagar Divn. Jorhat.1.

In the Preliminary Hearing

3. The charge brought against Shri Chidananda Saikia, Night Guard, Jorhat HPO vide PM Jorhat Memo No.H2/Chidananda Saikia /99 of dated 1999 was as under-

Article I of Annexure-II

" Shri Chidananda Saikia Group-D Jorhat HPO who was ordered to work as Night Guard of Jorhat HPO for 12 days with effect from 03.02.1999 to 14.02.99 vide Postmaster, Jorhat order No. dtd. 02.02.1999 vice Md. Hussain Ali allowed to compassionate off for the period from 03.02.1999

to 14.02.99.

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On 15.2.99 morning Shri Chidananda Saikia, the Night Guard collected the keys of the office at about 07..30 hours from the residence of the Postmaster for opening the Post office to make room for cleaning and sweeping of the office by the Safaiwallas. Shri Chidananda Saikia, Night Guard returned immediately to the residence of the Postmaster and reported that the lock of the Treasury Room is in broken and door is open condition. The Post Master rushed to the spot immediately along with Shri Chidananda Saikia , the night guard and found the locks of the Treasury Room and also lock and hinge of the treasury strong Room door are in broken conditions. Both of them entered inside the Strong Room and found the embedded Iron chest also in broken condition and the blue bag in which cash of Rs. 6,19,893.00 was kept inside the Iron Chest was not there. Only the blue bag lying inside the on Chest without cash. On examination, it is noticed that some old bundles of GC notes along with some coins are lying beside the embedded Iron Chest of the Strong Room. On subsequent counting, the amount left behind by the miscreants was found to be Rs.7218/-. The miscreants therefore took away a sum of Rs.6,12,675/- in G.C. notes from the Iron Chest of the Treasury Strong Room.

On further examination it is found that the miscreants entered the HPO building by breaking the iron window grill of eastern side of the Post Office building.

The breaking of iron window grill, one lock of Treasury Room, 3 locks and 1 hinge of the Treasury Strong Room and also hooks and 2 locks of the embedded iron chest of the strong room and also loss of Rs.6,12,675.00(Rupees six lakhs twelve thousand six hundred seventy five) was took place while Shri Chidananda, Saikia, Night Guard , Jorhat HPO was on duty during the material period."

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S. M. S.*

Thus Shri Chidananda, Saikia violated the provision of Rule 3(1)(i),(ii) & (iii) of CCS (Conduct) Rules, 1964 .

The above charge was sought to be proved by the PM Jorhat HPO by the following document and witnesses as noted in Annexure-III and IV of the said memo of dated 1.9.99.

- 1) Order Book of the PM Jorhat HPO of dtd. 02.02.1999.
- 2) Md. Hussain Ali, now Night Guard Divisional Office and
- 3) Shri Poona Ram Pachani Asstt. PM Mail, Jorhat HPO.

In the Preliminary Hearing held on 14.2.2000 the charge framed against Shri Chidananda, Saikia, Night Guard, Jorhat HPO were read out to the night guard and the meaning of the text of imputation of charges explained. The Presenting Officer was asked to clarify the words "material period" contained in the charge sheet and the clarified the words as "the period of during duty hours allotted to perform duty". The Presenting Officer also clarified/stated that the working hours of the Night Guard is from 5 PM to 5 AM (i.e. 1700 hours to 0500 hours.) next day .

The charged official denied the charges brought against him. He requested permission take help of a Defence Assistant to help him in the case. When he nominated Shri Mazidur Rahman APm Jorhat HPO as his Defence Assistant . His prayer was granted and Mazidur Rahman was approved to work as his Defence Assistant.

7. During inspection of the listed document there was only one hinted document which was Postmaster Order Book- the charged official has Strongly objected to the overwriting of

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dates in the order of the Postmaster Jorhat HPO of dated 2.2.99 wherein Sri Chidananda Saikia , group 'D' staff found HPO was ordered to work as Night Guard ,Jorhat HPO for 10/12 days vice Md. Hussain Ali granted off from of his duty . The charged official has also objected regarding the last sentence of the said order which reads as " Md M Ali will join on 15.2.99" The charged official has stated before the Inquiry Commissioner/Authority that the over writings in the figures of date 3.2.99 and 10 made 12 and 12.2.99 made 14.2.99 were also not there when he and others signed below that orders of the PM . He stated that the PM wrote it afterwards,

8. Both the Prosecution side and the defence side had not additional documents to produce before the IO .

9. Md. Hussain Ali, No.1 witness of the Prosecution side deposed before the IO that there was no overwriting of figures of dates in the order of the PM Jorhat of dtd. 2.2.99 at the time of his signing below it. He deposed when asked by the PO that he used to lay down in his bedding stretched at the backside varendha of the Jorhat HPO building near of the P.M's residence now and then at night.

He deposed that he had to buy mail bag from Jorhat HPO to ASTC Buss Jorhat to deposit mails to Guwahati. Usually left Office at 8 pm and returned after at about 9 pm.

He deposed that he had to close wire door of the HPO building except of Treasury Room daily in the evening.

The other witness Sri Poonaram Pachani APO(mails) Jorhat of the Prosecution side had nothing to inform in the matter of theft . But he confirmed that the Night Guard on duty carried the mails from Jorhat HPO to ASTC Bus Station on those days daily i.e. from 3.2.99 to 13.2.99. 14.2.99 was Sunday. He confirmed that Shri Chidananda Saikia worked as

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Night Guard Jorhat HPO during the period from 12.2.99 to 15.2.99 morning during which theft was committed . He was certain that Shi Chidananda Saikia worked as Night Guards from 3.2.99 to 15.2.99 morning, because if the Night Guard intents absent from his duty the Postmaster informs him next day and in this period, no such information was received form the PM.

10. The prosecution side had no additional witness to prove their charges brought against the charged official.

But the defence side named one Ratan Saikia Ex Home Guard posted at Jorhat HPO for guarding the office from day when mishap caused from any miscreants as witness. Their prayer was granted.

11. Shri Ratan Saikia Ex Home Guard Jorhat HPO deposed that there was another Home Guard attached at Jorhat HPO like him named Sri Prabhat Das. They all three i.e. two Home Guards and one postal Night Guard- Shri Chidananda Saikia (and his predecessor) used to patrolled the Head Post office building together . During that period i.e. from 2.2.99 to 15.2.99 the work of dismantling of Pipe fitted walls of the campus of the Jorhat HPO building was on. Ground work was also going on. They patrolled the HPO building campus of the eastern side and the southern side (Piya Higher Secondary school side) through the order police patrol also carried out their regular police patrol also carried out their patrolling duty in those night near and inform of Jorht HPO etc.

He deposed that Prabhat Das, the other Home Guard was absent from his duty on 13.2.99 and 14.2.99. As such he and Chidananda Saikia performed their duties. The took rest by sitting in the Varenda of the HPO building. For a

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while during their duty. They did not see anything suspicious or hear any suspicious sound etc in the campus of the HPO building in the night of 13.2.99 and 14.2.99.

He further deposed that the Postmaster Shri Ramendra Kumar Chanda was absent in his departmental residence in the night of 14.2.99. He was present on 13.2.99 night in his residence.

He also deposed that there was high fencing from the Jorhat HPO building to the boundary wall of the office southern side and eastern side which they could not go to the campus of HPO building towards the vocational High School side and eastern side part. Moreover the ground of the flower garden of the inaccessible side was full of long grass for which one could not see from one side to other side wall.

12. Shri Chidananda Saikia , the charged official has deposed that the Postmaster, Sri RK Chanda was absent at his Govt. residence in the night of 14.2.99. He (R.K.Chanda) came to his office in the morning of 15.2.99 at about 7 am from his home. The charged official has deposed that he did not know whether the pm was present at his Govt. Residence in the night of 13.2.99 or not. He (C.O) was arrested by police on 15.2.99 morning. He did not see the window through which the miscreants entered the PO building.

13. The Presenting Officer of the prosecution side has argued that Sri Chidananda Saikia was working as Night Guard of Jorhat HPO vice Md. Hussail Ali w.e.f. 3.2.99 to 14.2.99 (from 3.2.99 to 14.2.99). On the other hand he argued that the prosecution witnesses Shri Poona Ram panchani, Md. Hussain Ali and the witness of the defence side

Shri Ratan Saikia have confirmed that Sri Chidananda Saikia

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performed duty of night Guard jorhat HPO for the period form 3.2.99 to the morning of 15.2.99. The burglary occurred during this period . The charged official had admitted that the burglary was committed during the period of duty allotted to him to perform but he could not tell whether the burglary was committed I n the night of 13.2.99 or of 14.2.99.

The Presenting Officer has argued that the charge official Shri Chidananda Saikia has deposed that he used to lay down his bedding near the staircase of the PMs residence located at the backside varendah of the HPO building . He charges that the charged official slept during his duty period for which act of his negligence of duty miscreants entered into the Jorhat HPO building during the night of 13.2.99 or 14.2.99 and took away the money. And so Shri Chidananda Saikia could not bring the incident of burglary to light in time and so the postal department had to suffer a loss of Rs.6,12,675/- and as such the charges framed against him is proved beyond doubt.

14. The charged official Shri Chidananda Saikia (and his D.A.Esst) counter argued and defended as that he (Chidananda Saikia)was ordered by the PM Jorhat HPO vide PM's order's dated 2.2.99 in PM's order book to work as Night Guard form 3.2.99 to 12.2.99 (10 days) in place of actual Night Guard Md. Hussain Ali for his compensatory off duty. So the overwriting alterations in the figures of dates and days in that said orders were done by he PM after occurrence of the theft/burglary on 13.2.99 or 14.2.99. As such the PM's order book containing the order of dtd. 2.2.99 listed documents cannot be considered as genuine.

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He also stated that he was verbally ordered by the PM to continue his duty of the Night Guard upto 14.2.1999.

The charged official has argued that he along with the Home Guards) patrolled the Jorhat HPO through the road surrounding it and they did not see any suspicious movement of any person near or around the HPO building nor they hear any suspicious sound on 13.2.99 and 14.2.99 nights on 13.2.99 or 14.2.99 . He performed his duty well . He argues that the burglars must have entered the HPO building by cutting the iron grill of the window of the eastern side during day time when they are not on duty. It may also happen during vacant period of his duty time.

He further defends the allegation of the PO of charging him to have slept during duty hours as that using a bed sheet for sitting for a while in the verandah can never be treated as bedding.

15. I have gone through the depositions of the charged official, witnesses of prosecution side as well as of defence side, the brief of arguments of the Presenting Officer and the charged official well. I have also checked the listed documents and scrutinized the document carefully as well as the charges brought against the charged official.

FINDING OF THE CASE FROM HEARING HELD:

(A) The charged official has deposed that the overwriting in the alterations of number of days made from 10 to 12 and 12.2.99 MADE 14.2.99 and the figure 3 of DTD 3.2.99 were not there in the orders of the PM on 2.2.299 in PM's order book when he signed below it. The --- M Ali will join on 15.2.99 also not there were made on or after 15.2.99.

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Availability of overwriting, alteration and corrections were also confirmed by the prosecution witness Md. Hussain Ali in his deposition.

Therefore it is confirmed that alteration were made later on and not on 2.2.99. However it cannot treated as not genuine as signed by the charged official because he stated that he was verbally ordered by the Postmaster to continue from 13.2.99 to 14.2.99. However the PM jorhat failed to issue a fresh order of extension of duty to the charged official on 13.2.99 (Saturday).

(B) The Disciplinary Authority who issued the charge sheet has not mentioned the exact date or most probable date of theft/burglary occurred in Jorhat HPO in the articles of charges. After consultation, checking of Postmaster Cash Book, Calender of 1999 it was ascertained that theft burglary was committed in the night of 13.2.99 or 14.2.99. 13.2.99 was Saturday and 14.2.99 was Sunday. Office was open on 13.2.99.

(C) It was that the Night Guard of Jorhat HPO used to carry mails form Jorhat HPO to ASTC Bus stop from 8 pm to 9 pm in every working day during the duty period ,Chidananda Saikia the charged official also carried the mails,

(D) The argument of the Presenting Officer to say that the charged official deposed that he used to lay down in his bedding layed out near the residence of the PM during the duty hours is an act of negligence but the deposition was actually made by Md. Hussain Ali and act by the charged official. So the argument is not considered.

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(F) As per the defence witness and the official that the boundary walls of the eastern and southern side of the HPO building were dismantled during that period and long grasses in that side/flower garden made visibility from one side to another unclear. Moreover the fencing fitted from the building to the boundary walls made the night guard and the Home Guard unable to go near the HPO building those sides. It is that side where the miscreants broke the window grill/screws of the window grills (This could not be checked by the IO as it is already replaced long before).

The work of dismantling of the boundary walls made the HPO building very vulnerable to the miscreants and the fencing and unclear flower garden also helped the miscreants to hide.

This lapse of not making arrangement of free and easy movement of the Night Guard i.e. charged official (and Home Guards) to patrol round the HPO building is of the HPO Postal Authority. Moreover one Home Guard was not performing his duty on 13.2.99 and 14.2.99 but no alternate arrangement to place /deploy person in his place was done by Postmaster. So the pressure of work on the night i.e. the charged official and the Home Guards was more than other days.

It is also one lapse of the then PM Jorhat .

(F) The Presenting Officer told in the hearing that the working hours of the Night Guard is from 17.00 hours to 05.00 hours of next day which is 12 (twelve) hours. The charged official -Shri Chidananda Saikia deposed that he had to work from 17.00 hours to 07.00 hours next day daily which to 14(fourteen)hours a day.

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The Presenting Officer could not show any rule regarding the working hours of a Night Guard and the nature of his duty to the satisfaction of the IO.

Making the Night Guard -Chidananda Saikia to work 12 to 14 hours a day instead of 8 (eight) hours a day like other employees of operative offices is found to be very surprising.

(G) It is ascertained from the depositions of the charged official witness of defence side that Postmaster, Jorhat HO was absent in his Govt. residence on the 14th February,1999.

(H) The miscreant broke the locks of the iron door of the Treasury Room, Strong Room , Iron chest kept inside the Strong Room and hinges of the door of the strong Room and the Iron chest.

This breaking must have caused some sound. Moreover it is found that the govt. residence of the postmaster is located on the Ist floor of the HPO building just above the Treasury and Strong Rom of the office. Therefore if the postmaster were present in his residence on 14.2.99 he might have heard any suspicious sound coming form braking of locks , hings etc.

(I) It is concluded that Shri Chidananda Saikia Night Guard ,Jorhat HPO -the charged official is not alone responsible for the theft committed on 13.2.99 or 14.2.99 , the Home Guard is also responsible for it . The lapses in the part of the Post master is also responsible for it. Because as per Rule 3(2)(i)

of the CC (conduct) Rules 1964 , as read when shown by the Presenting Officer which reads Every govt servant holding a supervisory post shall take all possible step to ensure the integrity and devotion to duty of all Government servant for the time being under his control and authority .

Therefore, Sri Chidananda Saikia Night Guard, Jorhat HPO is held partly responsible for this case of theft /burglary.

Sd/ P P Baruah

11.2.2001

Inquiry Officer

*Certified to be true
COPY of the Original
Shyam*

DEPARTMENT OF POSTS
OFFICE OF THE POSTMASTER: JORHAT H.P.O

From:
Postmaster
Jorhat H.P.O

To,
Sri Chidananda Saikia
The then Nightgaurd, Jorhat HO
S/O Late Kanram Chutia
Borbam Chungi, PO: Chungi
Via: Gotonga PO
PIN 785616

Memo No: 112 C, Saikia 92 dtd 07.01.2002

Sub: Departmental inquiry under Rule -14 CCS (CCA) Rules 1965 against Sri Chidananda Saikia in connection with Theft case at Jorhat H.P.O.

The inquiry report received from the Inquiry officer Sri P.P. Barua vide his letter no. A1-Inquiry Chidananda saikia dtd 11.12.2001, of the above case is sent herewith for your information. You are hereby requested to submit your representation if any on the above subject within 10 days on receipt of this letter for consideration by the undersigned. Your representation will be examined and appropriate action will be taken.

If you failed to submit any representation within the stipulated date, the case will be decided ex parte.

Enclos: As stated above.

Copy to be used
[Gopal Bora]
Postmaster [HSG-I]
Jorhat H.O-785001

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Copy of the Original
Signature*

INQUIRY REPORT

OF THE INQUIRY OFFICER RELATING TO THE RULE 14(2)(B)
CCS(CEA) RULES 1965, HELD AGAINST SHRI CHIDANANDA
SAIKIA, NIGHT GUARD, JORHAT H.P.O.

1. The undersigned was appointed as Inquiry Officer of this case to enquire into the charges framed against Shri Chidananda Saikia, by the P.M. Jorhat H.P.O. vide his office Memo. No. H-2/C/Saikia/99 of dated 14-10-99.

2. The Preliminary Hearing of the case was held on 14-2-2001. After that, hearing of the case was held regularly except for sometime when the Presenting Officer of the case was changed. Shri P. K. Dey (SDIPO, Jorhat (North) Sub-Div. was the 1st P.M. and Shri B. Hazarika SDIPO Jorhat (North) Sub-Div. was appointed as the Presenting Officer of the case after transfer of Shri P. K. Dey vide B.M.C. Office Memo. No. F-14/78/99 of dated 10-4-2001. The new Presenting Officer was appointed by the Subdtl. of P.O. Subsidiary Div. Jorhat-1.

For the Preliminary Hearing

3. The charge brought against Shri Chidananda Saikia, Night Guard, Jorhat H.P.O. vide P.M. Jorhat Memo No. H-2/Chidananda Saikia/99 of dated 14-10-99 was as under -

Article I of Annexure II

Shri Chidananda Saikia, Group-II, Jorhat H.P.O. was ordered to work as Night Guard of Jorhat P.O. for 12th days with effect from 03-02-1999 to 14-02-99 vide Proforma Jorhat Order No. dtd 02-02-1999, vide Md. Hussain Ali, allowed to compassionate off for the period from 03-02-1999 to 14-02-99.

On 15-2-99 morning Shri Chidananda Saikia, the Night Guard collected the keys of the office at about 07:30 hours from the Postmaster of the Postmaster for opening the Post office to make room for cleaning and sweeping of the office. Certified a ^{subj} official ^{copy} of the Office. Shri Chidananda Saikia, contd.

Night Guard, returned immediately to the residence of the Postmaster and reported that the lock of the Treasury Room is in broken and door is open condition, the Postmaster rushed to the spot immediately along with Shri Chidambardar Saini, the night guard and found the locks of the Treasury Room and also lock and hinge of the Treasury Room door are in broken condition, Strong Room door are in broken condition, Both of them ~~broken~~ entered inside the Strong Room and found the embedded Iron Chest also in broken condition and the blue bag also in broken condition and the blue bag in which cash of Rs. 6,19,893.00 was kept inside the green chest was not there. Only the ~~blue~~ blue bag lying inside the Iron Chest without cash. On examination, it is noticed that some old bundles of G.C. notes alongwith some coins are lying by the miscreants was found to be Rs. 7218/- The miscreants therefore took away a sum of Rs. 6,12,675/- in G.C. notes from the Iron Chest of the Treasury Strong Room.

On further examination, it is found that the miscreants entered the H.P.O. building by breaking the iron window grill of eastern side of the Post Office building.

The breaking of iron window grill, one lock of Treasury Room, 3 locks and 1 hinge of the Treasury Strong Room and also locks and 2 keys of the embedded Iron Chest of the Strong Room and also loss of Rs. 6,12,675/- (Rupees Six Lakh twelve thousand Six hundred Seventy five) was took place while Shri Chidambardar Saini, Night Guard in that office was on duty during the material period.

This Shri Chidambardar Saini violated the provisions of Rule 3(1)(ii)(iii) of C.S (Conduct) Rules 1964.

The above charge was sought to be proved by the P.M. for the H.P.O. by the following document and witness no. note ~~in~~ Annexure III and IV of the said memo. of date 1-7-99.

1) Order Book of the P.M. for the H.P.O. of date 02-02-1999.

2) Copy of the Original H. Hussain Ali, now Night Guard, Provincial Office and Copy of the Original from Ram Pachani Asst. P.M., Mails, for the H.P.O.

For the Preliminary Hearing held on 14.2.2000,
the charge found against the defendant Sri Sri,
Night Guard, for the ~~lascivious conduct~~ ^{whether he} was ~~lascivious conduct~~ read out to
the Court and the changes ~~brought~~ were read out to
the Court and the meaning of the
changes explained.
The statement of imputation of charges
and the statement of the Presenting Officer was asked to clarify.
The ~~the~~ Presenting Officer was asked to clarify
the words "morning period" contained in the
charge sheet and the words as
"the period of time during hours allotted to perform
duty. The Presenting Officer also clarified / stated
that the morning hours of the Night Guard is
from 11 P.M. to 5 A.M (i.e 1700 hrs to 0600 hrs) ^{next day}
Sri Sri is a 10th (Standard) student
and the charges

6. The charged official denied the charges brought against him. He requested permission to take help of a Defence Assistant to help him in this. He nominated Mr. Muzaffar Ali as his Defence Assistant. Mr. Muzaffar Ali is son of Haji Muzaffar Ali, Defence Assistant. His father was a retired and Muzaffar Ali was appointed to work as his Defence Assistant.

7. During inspection of listed document there was only one listed document which was Postmaster's Order Book — the charged official has strongly objected to the overwritings of dates in the order of the Postmaster, Format H.P.C. of dated 2-2-99 wherein Mr. Chidambaram Saikia was given 31-1-99. It is H.P.C. was ordered to work as night guard, format H.P.C. for 10/12 days vice Md. Hussain. All 7 stated off from his duty. The charged official also objected to the letter regarding the last sentence of the said order which reads as "The second P.M. Ali will join on 15-2-99". The charged official has stated before the Inquiry Commission/ Authority that the overwritings in the figures of date 3-2-99 and 10 made 12 and 12-2-99 made 14-2-99 were also not there when he wrote and others signed below the last order of the P.M. He stated that the P.M. wrote it after his.

8. Both the Prosecution Side and Defence Side called additional document to produce before the T.O. court.

*led to become
of the Original
copy*

8. Both the presentation slide and the original
and original document to produce before the T.O
exists.

The witness Mr. H. S. Srinivas A.G. No. 1, witness of the prosecution side deposed before the T.O. that there was no overkillings of figures of day, in the order of the P.M. Justice of the peace at the time of his signing below it.

He deposed when asked by the T.O. that he never had any mail or letters when worked in his office or stretched out to the door in his office or residence at the backside verandah of the residence building where the entrance of the house was there at night.

* He deposed that he had to bring from Government office to A.S.T.C. Bus Station daily the despatched mails to Government office to be despatched and returned after 8 P.M. and returned after 8 P.M.

He deposed that he had to close up the office at about 3 P.M.

He deposed that he had to close up the office daily in the evening. Shri Poonam Pachani A.P.M.L.M.P. witness of the prosecution side

The other witness of the prosecution side said nothing to inform in the matter of theft.

But he confirmed that the Night Guard on duty

carried the mails from Government office to A.S.T.C. Bus

Station on three days daily i.e. from 3-2-99

to 13-2-99. 14-2-99 was Sunday. He confirmed

that Shri Chidambra Saikia worked as Night

Guard, from 10 P.M. during the period from 12-2-99

to 15-2-99 morning during which theft was

committed. He was certain that Shri Chidambra

Saikia worked as Night Guard from 3-2-99 to

15-2-99 morning; because if the Night Guard

carries the mails from 10 P.M. to 10 A.M. the Postmaster

cannot get the post office duty, the period, no such

information was received from the P.M.

10) The prosecution side had no additional

information to prove their ~~the~~ charges brought

against the charged party.

11) The defense side, named ~~the~~ one

Mr. Ratan Saikia Ex-Home Guard

present at front door for guarding the office

from any miscreants or any disturbance from any

body. Their prayer was granted.

12) Shri Ratan Saikia, Ex-Home Guard, for

the report that there was another Home

Guard attached at front door like him named

Shri Prabhat Das. They all three - i.e. two Home

Guard

in the nights of 13-2-99 and 14-2-99
* He further deposed that the Postmaster
Shri Ranendra Kumar Chanda was absent
in his departmental residence in the nights
of 14-2-99. He was present on 13-2-99 night in his
residence.

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f. 4

He also deposed that there was ^{high} fencing from the front of the building to the boundary wall of the office ~~and the side of the building~~ ^{on the opposite side of the building} and the eastern side of the building. The side of the building facing the sea and the corner of the building to the easterly side and easterly towards the ver-floored high school tide and flower garden side of it. Moreover the ground of the flower garden of the accessible side was full of long grass for that one could not see from one side to the other side well.

12) Shri Chidambra Saikia, the charged official has deposed that the Postmaster, Shri R. K. Choudhury was present at his govt. residence in the night of 14-2-99. He (R.K. Choudhury) came to his office in the morning of 15-2-99 at about 7 AM from his home. The charged official has deposed that he did not know whether the P.M. was present at his govt. residence in the night of 13-2-99 or not. He (C.O) was arrested by Police on 15-2-99 morning He did not see the 1st witness through which the miscreants entered the P.O building.

13) The Presenting Officer of the prosecution side

13) The Presenting Officer of the prosecution side has argued that Shri Chidananda Salkie was working as Night Guard of Forest H.P.O. since Md. Hussain Ali W.E.F. 3-2-99 to the morning of 15-2-99, 14-2-99 (from 3-2-99 to 14-2-99). On the other hand the defence side argued that the prosecution witness Shri Pora Ramji Pachani, Md. Hussain Ali and the witness of the defence side - Shri Ratan Salkie have confirmed that Shri Chidananda Salkie never formed duty of night Guard of Forest H.P.O. for the period from 3-2-99 to the morning of 15-2-99. The burglary occurred during this period. The charged official had admitted that the burglary was committed during the period of duty allotted to him to perform but he could not tell whether the burglary was committed to be or not. The original official in the night of 13-2-99 on 14-2-99

The Presiding Officer has argued that the charged official Shri Chidananda Srikir has ~~not~~ used to lay down his beddings near the entrance of the PM's residence located at the backside. Whereas of the H.P.O. building the charges that the charged official slept during his duty period for which set of his negligence of duty miscreants entered into the said H.P.O. buildings. And so Shri Chidananda Srikir could not bring the incident of trying to light in time and so the police department had to suffer a loss of Rs 6,12,675/- and as such the charges framed against him is proved beyond doubt.

14) The charged officer Shri Chidambra
Siva (of his S. Acit) counter-argued ~~that~~
and defended as that he (Chidambra
Siva) was ordered by the P.M., Forest HQ
and P.M.C. order refd 2-2-99 in P.M.C. order
to work as Night Guard from 3-2-99 to 12-2-99
(10 days) in place of actual Night Guard-MC.
Huzair Ali ~~for~~ his compensatory off-duty, ~~for~~ the
overwritings ^{alterations} in the figure of date and days
in that ~~final~~ orders
After occurrence of
13-2-99 over 14-2-99, As such the ~~the~~ P.M.C.
Order Book containing the orders of refd 2-2-99
was considered as genuine.

* He also stated that he was verbally ordered by the PM to continue ~~as~~ his duty on flight 747 up to 14.2.1999.

The changed officer has agreed
that he along with the Headguard(?) patrolled the
area carrying H. 1010 & 11 P.C. through the road
area and that they did not see any
abnormal movement of any person near or
around the H.P.C building nor they heard
any unusual sound. The policeman has duty to
see that the bangle must have been
original to the building by cutting the iron grill of

the winds of the eastern side ~~of~~ during
the time when they are on duty. It may
also happen during recent period of his duty
time.

Mr. Justice defends the allegation of the P.O. that he failed to have left during duty hours at the going down of a bed-street for setting up as fast as possible a bed in the wall, which can never be tested as bedding.

15. I have gone through the depositions of the charged official, witnesses of prosecution side as well as of defence side, the brief of agreements of the Prosecuting Officer and the charged official well. I have also checked the listed Document and scrutinised the document carefully as well as the charges brought against the charged official.

FINDINGS OF THE CASE FROM HEARING HELD

(A) The charged official has deposed that the
overwriting is the alterations of number of days made
from 10 to 12 and 12-2-99 made 14-2-99 and the figure
3 of the 3-2-99 were not there on the order of
the PM on 2-2-99 when he signed below it. The
S. J. A. will join on 15-2-99 who also not
had the overwriting made on or after 15-2-99.
This is the overwriting and the overwritings and

It is to be noted that in the given letter, the Postmaster has mentioned that the alterations were also confirmed by the postmaster in his deposition. Therefore it is confirmed that alterations were made to the letter and sent on 2-2-99. However it cannot be stated that the letter is genuine as signed by the true changed official; because he stated that the original ~~mark~~ mark was initially marked by the Postmaster to continue to 13-2-99, to 14-2-99. However, the P.M. failed to issue a fresh order of extension of duty to the changed official on 13-2-99 (Saturday).

(B) The Disciplinary Authority who issued the direction that not mentioned the exact date or most probably date of theft/burglary occurred in formal H.P.O in the notice of charges. After consultation, checking of Govt. Bank calendar of 1999 it was ascertained that burglary was committed on the night of 13-2-99.

13-2-99 was Saturday and 14-2-99 was Sunday. Office was open on 13-2-99. So ~~that was~~ ~~was~~ committed

(c) It was also found that the Night Guards from 11PM to 3AM used to carry mails from former HPO to HPO. This started from 8PM to 9PM in every 10 min. long during the duty period, which was causing damage to the walls, mail, etc. The damage caused to the walls, mail, etc, the (as well as ^{in the particular hour} former HPO) could not guard the P.M. building during the entire period of the duty. The miscreants may also cut the window grill during this period. Office used to chance to enter into the building and go out. It may also happen during day time.

(D) The argument of the Presiding Officer is that he charged of and deplored that the guard is day dream in his bedding room. He also said that the negligence of the P.M. during the duty, least in an act of negligence, but the deposition was actually made by Mr. Hossain Afzal, and not by the charged officer. So, the argument is not considered.

(E) As per the defence witness and the C.O. of the HPO building, where dismantled ~~the~~ ^{the} boundary walls of the eastern and southern side of the HPO building were dismantled ~~the~~ ^{the} during the night, and long glasses in that side ~~the~~ ^{the} made the visibility from one side to another unclear. Moreover, the fencing filled from the building to the boundary walls made the Night Guard and the ~~the~~ ^{the} guard unable to go near the HPO building. It is that side where the miscreants cut the window grill/screws of the window grill. The ~~the~~ ^{the} guard could not be blamed if the HPO is a ~~the~~ ^{the} already replaced by the ~~the~~ ^{the} guard.

The ~~the~~ ^{the} work of dismantling of the boundary walls made the HPO building very vulnerable to the miscreants and the fencing and unclear ~~the~~ ^{the} potential flower gardens also helped the miscreants.

Certified to be the original. This lapse of not making arrangement for free and easy movement of the Night Guards by the charged officials (i.e. Home Guards) to protect the HPO building is of B & HPO Police Authority. Moreover, One Home Guard was not performing his duty on 13-2-99 & 14-2-99 but no alternate was to place/depot prison in his place. This alone by the fact, so the pressure of work on the Night Guard is the Presiding Officer & the Home Guard was not there after days.

It is also the one lapse of time that first

(F) The Presiding Officer told ~~that~~ ⁱⁿ the hearing the working hours of the Night Guard is from 17:00 hours to 05:00 hours of next day - which is 12 (twelve) hours. The charged official - Sri Chidambaram Sankar defended that he had to work from 17:00 hours to 07:00 hours next day daily - which is 14 hours a day. ~~any~~ ^{they} could not show any

(pointed) hours a day. The Presiding Officer could not show any rule regarding the working hours of a Night Guard and the nature of his duty to other satisfaction of the I.O.

Satisfaction of the I.O.
Making the Night Guard - chained
to work towards 12 to 14 hours a day instead of 8
(eight) hours a day like ~~the~~ other employees
of operative offices is found to be very surprising
~~the~~ (organisation/amount) is obtained from the depositions of

It is ascertained from the deposition of the charged officer ~~the~~ witness of defence side that Postmaster, fort no. was absent in his ~~goat~~ residence on the ~~13th Feb/1929~~ 14th February 1929. 2 o'clock of the ~~noon~~

(H) The miscreant broke the locks of the ~~door~~
iron door of the Treasury Room, Strong Room,
Embossed Iron Chest kept inside the Strong Room and the
hinges of ~~the~~ the door of the Strong Room and the
iron chest. It has caused some

This breaking must have caused some sound. Moreover it is found that the Postmaster is located on the 1st floor of the H.P.C building just above the Teaching Room of the office. If the Postmaster were present in his residence on 14-2-79 he might have heard any suspicious sound coming from breaking of locks, his next door neighbour said that this Chidambaram

(I) It is concluded that the Home Guards are not responsible for the theft committed on 13-2-39 & 14-2-39; The Home Guard is also responsible for the loss in the part of the Post Office. Because as per C.G.C. (Conduct) Rules 1964, as read with C.G.C. (2)(1), it is not shown by the Presenting Officer that Every staff holding a supervisory post shall take care

possible step to ensure the integrity and
safeguard the safety of all Government servant
for the time being under his control
and authority.

The ^{High} ~~High~~ Shri Chikendrananda Sastry,
Nagarik Guard, ~~Joint H.P.O~~ is held partly
responsible for the nose of ~~the~~ ^{High} ~~High~~ Shri Chikendrananda Sastry,
is held partly
theft/burglary.

P. P. Basu

11/12/2007

Inquiry Officer

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[Signature]

DEPARTMENT OF POSTS : INDIA
OFFICE OF THE SUPDT OF POST OFFICES SIVASAGAR DIVN JORHAT
***** 785001 *****

Memo no. - F4-14/98-99

Dated at Jorhat the 1-4-2002.

It was proposed to take disciplinary action against Sri Chidananda Saikia, Night Guard, Jorhat H.O. (Now under suspension) vide Postmaster, Jorhat memo no. H2/Chidananda Saikia/99 dtd. 1-9-99 under Rule-14 of CCS(CCA) Rules, 1965 . A statement of imputation of misconduct on which action was proposed to be taken was also enclosed and was also directed to make representation as he may wish to make against the proposal. The basic charges contained in that statement of imputation of misconduct were as follows .

"Sri Chidananda Saikia, Group 'D', Jorhat H.P.O. was ordered to work as Night Guard of Jorhat H.P.O. for 12 days with effect from 03-02-1999 to 14-02-99 vide Postmaster, Jorhat order No. dtd. 02-02-1999 vice Md. Hussain Ali, allowed to compassionate off for the period from 03-02-1999 to 14-02-99 .

On 15-2-99 morning Shri Chidananda Saikia, the Night Guard collected the keys of the office at about 07.30 hours from the residence of the Postmaster for opening the Post office to make room for cleaning and sweeping of the office by the Safaiwallas. Shri Chidananda Saikia, Night Guard, returned immediately to the residence of the Postmaster and reported that the lock of the Treasury Room is in broken and door in open condition. The Postmaster rushed to the spot immediately along with Shri Chidananda Saikia, the Night guard and found the locks of the Treasury Room and also lock and hinge of the treasury Strong Room door are in broken condition. Both of them entered inside the strong Room and found the embedded Iron chest also in broken condition and the blue bag in which cash of Rs. 6,19,893.00 was kept inside the Iron chest was not there. Only the blue bag lying inside the Iron chest without cash. On examination, it is noticed that some old bundles of G.C. notes alongwith some coins are lying beside the embedded Iron chest of the strong Room. On subsequent counting, the amount left behind by the miscreants was found to be Rs. 7218/- The ~~miscreants~~ miscreants therefore took away a sum of Rs. 6,12,675/- in G.C. notes from the Iron chest of the Treasury Strong Room.

On further examination it is found that the miscreants entered the H.P.O. building by breaking the iron window grill of eastern side of the Post office building.

The breaking of iron window grill, one lock of Treasury Room, 3 locks and 1 hinge of the Treasury Strong Room and also hooks and 2 locks of the embedded Iron chest of the strong room and also loss of Rs. 6,12,675.00 (Rs. Six lakhs twelve thousand six hundred seventy five) was took place while Shri Chidananda Saikia, Night Guard, Jorhat H.P.O. was on duty during the material period.

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Thus, Shri Chidananda Saikia violated the provisions of Rule 3(I)(i)(ii) & (iii) of CCS(Conduct) Rules, 1964.

4. The above charge was sought to be proved by the P.M. Jorhat H.P.O. by the following document and witnesses as noted in Annexure III and IV of the said memo of dated 1-9-99.

1) Order Book of the P.M. Jorhat H.P.O. of dtd. 02-02-1999.

2) Md. Hussain Ali, now Night Guard, Divisional office and

3) Shri Poona Ram Pachani, Asstt. P.M. Mails, Jorhat H.P.O. "

As Sri Saikia denied the charges, an Inquiry authority was appointed on 14-10-99 appointing ~~SxxPxxRxxBxxRxxRxx~~ Sri P.P. Baruah, SDI(P) Jorhat South Sub-Dn. as I.O. and Sri P.K. Dey, SDI(P) Jorhat North Sub-Dn. as P.O. but Sri P.K. Dey the P.O. had since been transferred to other Division, the order of appointment of Inquiry authority was modified on 10-4-2001 appointing Sri Bijayananda Hazarika, SDI(P) Jorhat 'North' Sub-Dn. as P.O. of the case. The Inquiry officer submitted his report on 11-12-2001 to the Postmaster, Jorhat as under -

1. "The undersigned was appointed as Inquiry Officer of this case to enquire into the charges framed against Shri Chidananda Saikia, by the PM, Jorhat H.P.O. vide his office memo no. H-2/C.Saikia/99 of dated 14-10-99.

2. The Preliminary Hearing of the case was held on 14-2-2000. After that, hearing of the case was held regularly except for some time when the Presenting Officer of the case was changed. Shri P.K. Dey SDIPOs, Jorhat(North) Sub-Dvn. was the 1st P.O. and Shri B. Hazarika, SDIPOs, Jorhat(North) Sub-Dvn. was appointed as the Presenting Officer of the case, after transfer of Shri P.K. Dey vide Divl. office memo no. F4-14/98-99 of dated 10-4-2001. The new Presenting Officer was appointed by the Supdt. of POs, Sivasagar Divn. Jorhat-1.

3. The charge brought against Shri Chidananda Saikia, Night Guard, Jorhat H.P.O. vide P.M. Jorhat Memo no. H2/Chidananda Saikia/99 of dated 1-9-99 was as under !

Article I of Annexure II

" Shri Chidananda Saikia, Group 'D', Jorhat H.P.O. was ordered to work as Night Guard of Jorhat H.P.O. for 12 days with effect from 03-02-1999 to 14-02-99 vide Postmaster, Jorhat order No. dtd. 02-02-1999, vice Md. Hussain Ali, allowed to compassionate off for the period from 03-02-1999 to 14-02-99 .

On 15-2-99 morning Shri Chidananda Saikia, the Night Guard collected the keys of the office at about 07.30 hours from the residence of the Postmaster for opening the Post office to make room for cleaning and sweeping of the office by the Safaiwallas. Shri Chidananda Saikia, Night Guard, returned immediately to the residence of the Postmaster and reported that the lock of the Treasury Room is in broken and door in open condition. The Postmaster rushed to the spot immediately along with Shri Chidananda Saikia the night guard and found the locks of the Treasury Room and also lock and hinge of the treasury Strong Room door are in broken condition. Both of them entered inside the strong Room and found the embedded Iron chest also in broken condition and the blue bag in which cash of Rs. 6,19,893.00 was kept inside the Iron chest was not there. Only the blue bag lying inside the Iron chest without cash. On examination, it is noticed that some old bundles of G.C. notes alongwith some coins

are lying beside the embedded Iron chest of the Strong Room. On subsequent counting, the amount left behind by the miscreants was found to be Rs. 7218/- . The miscreants therefore took away a sum of Rs. 6,12,675/- in G.C. notes from the Iron chest of the Treasury Strong Room .

On further examination it is found that ~~xx~~ the miscreants entered the H.P.O. building by breaking the iron window grill of eastern side of the post office building .

The breaking of iron window grill, one lock of Treasury Room, 3 locks and 1 hinge of the Treasury Strong Room and also hooks and 2 locks of the embedded Iron chest of the Strong room and also loss of Rs. 6,12,675.00 (Rupees Six lakhs twelve thousand six hundred seventy five) only was took place while Shri Chidananda Saikia, Night Guard, Jorhat H.P.O. was on duty during the material period".

Thus Shri Chidananda Saikia violated the provisions of Rule 3(1)(i)(ii) & (iii) of CCS(Conduct) Rules, 1964 .

4. The above charge was sought to be proved by the P.M. Jorhat H.P.O. by the following document and witnesses as noted in Annexure III and IV of the said memo of dated 1-9-99 .

- 1) Order Book of the P.M., Jorhat H.P.O. of dtd. 02-02-1999 .
- 2) Md. Hussain Ali, now Night Guard, Divisional office and
- 3) Shri Poona Ram Pachani, Asstt. P.M. Mails, Jorhat H.P.O.

5. In the Preliminary Hearing held on 14-2-2000, the charges framed against Shri Chidananda Saikia, Night Guard, Jorhat H.P.O. were read out to the charged official and the meaning of the text of the statement of imputation of charges explained. The Presenting Officer was asked to clarify the words "material period" contained in the charge-sheet and he clarified the ~~xxx~~ words as the period of duty hours allotted to perform duty. The Presenting Officer also clarified/stated that the working hours of a Night Guard is from 5 p.m. to 5a.m. (i.e. 1700 hours to 0500 hours) next day .

6. The charged official denied the charges brought against him. He requested permission to take help of a Defence Assistant to help him in his case. Lateron, he nominated Shri Mazidur Rahman, APM, Jorhat H.O. as his Defence Assistant. His prayer was granted and Mazidur Rahman was approved to work as his Defence Assistant .

7. During inspection of listed document - there was only one listed document which was Postmaster's Order Book - the charged official has strongly objected to the overwritings of dates in the orders of the Postmaster, Jorhat H.P.O. of dated 2-2-99 wherein Shri Chidananda Saikia, Group'D' staff Jorhat H.P.O. was ordered to work as Night Guard, Jorhat H.P.O. for 10/12 days vice Md. Hussain Ali granted off from his duty. The charged official has also objected regarding the last sentence of the said order which reads as "and M. Ali will join on 15-2-99" . The charged official has stated before the Inquiry Commission/Authority that the overwritings in the figures of dates 3-2-99 and 10 made 12 and 12-2-99 made 14-2-99 were also not there when he and others signed below that orders of the P.M. He stated that the P.M. wrote it afterwards .

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8. Both the prosecution side and Defence side had not additional document to produce before the I.O. 60

9. Md. Hussain Ali, No. 1 witness of the prosecution side ~~deposited~~ before the I.O. that there was no overwriting of figures of dates in the order of the P.M. Jorhat of dtdd. 2-2-99 at the time of his signing below it. On cross examination he deposed when asked by the P.O. that he used to lay down in his bedding stretched at the backside varandah of the Jorhat H.P.O. ~~xxx~~ building and near the satirecase of the PM's residence now and then at night .

* He deposed that he had to carry mail bag from Jorhat H.P.O. to ASTC Bus Station, Jorhat to despatch mails to Guwahati. He usually left office at 8 p.m. and returned after one hour at about 9 p.m.

He deposed that he had to close windows, doors of the H.P.O. building except of Treasury Room daily in the evening.

The other witness Shri Poonaram Pachani, APM(Mails) Jorhat H.P.O. of the Prosecution Side had nothing to inform in the matter of theft . But he confirmed that the Night Guard on duty carried the mails from Jorhat H.P.O. to ASTC Bus Station on those days daily, i.e. from 3-2-99 to 13-2-99. 14-2-99 was Sunday , He confirmed that Shri Chidananda Saikia worked as Night Guard, Jorhat H.P.O. during the period from 12-2-99 to 15-2-99 morning during which theft was committed. He is certain that Shri Chidananda Saikia worked as Night Guard from 3-2-99 to 15-2-99 morning, because if the Night Guard remains absent from his duty, the Postmaster informs him next day and in this period, ~~now~~ such information was received from the P.M.

10. The prosecution side had no additional witness to prove their charges brought against the charged official .

But the Defence side named one Shri Ratan Saikia, Ex-Home Guard posted at Jorhat H.P.O. for guarding the office from any mishap caused from any miscreant - as their witness . Their prayer was granted .

11. Shri Ratan Saikia, Ex-Home Guard, Jorhat H.P.O. deposed that there was another Home Guard attached at Jorhat H.P.O. like him named Shri Prabhat Das. They all three - i.e. two Home Guards and one Postal Night Guard - Shri Chidananda Saikia (and his predecessors) used to patrol the Head Post office building together. During that period i.e. from 2-2-99 to 15-2-99 the work of ~~sixteen~~ dismantling of pipe-fitted walls of the campus of the Jorhat H.P.O. building was going on. Ground work was also going on. They patroled the H.P.O. building campus of the eastern side and the ~~south~~ ^{other} side ("Boy's Higher Secondary School side) through the roads . Police patrol also carried out their regular patrolling duty in those night near the Jorhat H.P. etc.

He deposed that Prabhat Das, the other Home Guard was absent from his duty on 13-2-99 and 14-2-99. As such, he and Chidananda Saikia performed their duties. They took rest by sitting in the varandahs of the H.P.O. building for a while during their duty. They did not see anything suspicious or hear any suspicious sound etc in the campus of the H.P.O. building in the night of 13-2-99 and 14-2-99 .

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* He further deposed that the Postmaster Shri Ramendra Kumar Chanda was absent in his departmental residence in the night of 14-2-99. He was present on 13-2-99 night in the his residence.

He also deposed that there was high fencing from the Jorhat H.P.O. building to the boundary wall of the office of southern side and eastern side for which they could not go to the campus of the P.O. building towards the vocational High School side and eastern side part. Moreover the ground of the flower garden of inaccessible side was full of long grass for which one could not see from one side to the otherside wall.

12) Shri Chidananda Saikia, the charged official has deposed that the Postmaster, Shri R.K. Chanda was absent at his Govt. residence in the night of 14-2-99. He (R.K.Chanda) came to his office in the morning of 15-2-99 at about 7 a.m. from his home. The charged official has deposed that he did not know whether the P.M. was present at his Govt. residence in the night of 13-2-99 or not. He (C.O. was arrested by Police on 15-2-99 morning. He did not see the window through which the miscreants entered the P.O. building.

13) The Presenting Officer of the prosecution side has argued that Shri Chidananda Saikia was working as Night Guard of Jorhat H.P.O. vice Md. Hussain Ali w.e.f. 3-2-99 to 14-2-99 (from 3-2-99 to 14-2-99). On the other hand he argued that the prosecution witnesses Shri R Poona Ram Pachani, Md. Hussain Ali and the witness of the Defence side- Shri Ratan Saikia have confirmed that Shri Chidananda Saikia performed duty of Night Guard, Jorhat H.P.O. for the period from 3-2-99 to the morning of 15-2-99. The burglary occurred during this period. The charged official had admitted that the burglary was committed during the period of duty allotted to him to perform but he could not tell whether the burglary was committed in the night of 13-2-99 or of 14-2-99.

The Presenting Officer has argued that the charged official Shri Chidananda Saikia has deposed that he used to lay down his beddings near the satirecase of the PM's residence located at the backside varandah of the H.P.O. building. He charges that the charged official slept during his duty period for which act of his negligence of duty miscreants entered into the Jorhat H.P.O. building during the night of 13-2-99 or 14-2-99 and took away the money. And so, Shri Chidananda Saikia could not bring the incident of burglary to light in time and so the postal department had to suffer a loss of Rs.6,12,675/- and as such the charges framed against him is proved beyond doubt.

14) The charged official Shri Chidananda Saikia (and his D.Asstt) counter-argued and defended as that he (Chidananda Saikia) was ordered by the P.M. Jorhat H.P.O. vide P.M's orders of dtd. 2-2-99 in PM's Order Book to work as Night Guard from 3-2-99 to 12-2-99 (10 days) in place of actual Night Guard - Md.Hussain Ali for his compensatory off duty. So the overwrittings alterations in the figures of dates and days in that said orders were done by the P.M. after occurrence of the theft/burglary on 13-2-99 or on 14-2-99. As such the PM's Order Book containing the orders of dtd. 2-2-99 as ~~xxxxxx~~ listed document cannot be considered as genuine.

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* He also stated that he was verbally ordered by the P.M. to continue his duty as Night Guard upto 14-2-1999.

The charged official has argued that he alongwith the Homeguard (s) patrolled the Jorhat H.P.O. through the road surrounding it and they did not see any suspicious movement of any person near or around the H.P.O. building nor they hear any suspicious sound on 13-2-99 and 14-2-99 night. He performed his duty well. He argues that the burglars must have entered the H.P.O. building by cutting the iron grill of the window of the eastern side during day time when they are not on duty. It may also happen during vacant period of his duty time.

He further defends the allegation of the P.O. of charging him to have slept during duty hours as that using a bedsheet for sitting for a while in the verandah can never be treated as bedding.

15) I have gone through the depositions of the charged official, witnesses of prosecution side as well as of defence side, the brief of arguments of the Presenting Officer and the charged official well. I have also checked the listed Document and scrutinised the document carefully as well as the charges brought against the charged official.

FINDINGS OF THE CASE FROM HEARINGS HELD

(A) The charged official has deposed that the overwritings i.e. the alterations of number of days made from 10 to 12 and 12-2-99 made 14-2-99 and the figure 3 of dtd. 3-2-99 were not there in the orders of the P.M. on 2-2-99 in PM's Order Book when he signed below it. The sentence M. Ali will join on 15-2-99 was also not there. These were noted on or after 15-2-99.

~~Connections~~ Non-availability of overwritings and alterations, ~~connections~~ were also confirmed by the prosecution witness Md. Hussain Ali in his deposition.

Therefore, it is confirmed that alterations were made later on and not on 2-2-99. However, it cannot be treated as not genuine as argued by the charged official; because he stated that he was verbally ordered by the Postmaster to continue from 13-2-99 to 14-2-99. However the P.M., Jorhat failed to issue a fresh order of extension of duty to the charged official, on 13-2-99 (Saturday).

(B) The Disciplinary Authority who issued the charge sheet has not mentioned the exact date or most probable date of theft/burglary occurred in Jorhat H.P.O. in the articles of charges. After consultation, checking of Postmaster's Cash Book, calendar of 1999 it was ascertained that theft/burglary was committed in the night of 13-2-99 or 14-2-99. 13-2-99 was Saturday and 14-2-99 was Sunday. Office was open on 13-2-99.

(C) It is ascertained that ~~xxx~~ the Night Guards of Jorhat H.P.O. used to carry mails from Jorhat HPO to ASTC Bus Station from 8 p.m. to 9 p.m. in every working day during their duty period, Chidananda Saikia, the charged official also carried the mails.

So, he (as well as other former N/Gs) could not guard the P.O. building in this particular hour during the entire period of his duty. The miscreants may also cut the window grill during this period of unguarded time and wait for chance to enter into the building through it. It may also happen during day time.

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(D) The argument of the Presenting Officer to say that the charged official deposed that he used to lay down in his bedding layed out near the residence of the P.M. during his duty hours is an act of negligence ; but this deposition was actually made by Md. Hussain Ali and not by the charged official. So, the argument is not considered . 83

(E) *Unclar* As per the defence witness and the C.Official the boundary walls of the eastern and southern side of the HPO building were dismanted during that period and long grasses in that side/flower garden made visibility from one side to another ~~under~~. Moreover the fencing fitted from the building to the boundary walls made the Night Guard and the Home Guard unable to go near the HPO building of those sides . It is that side where the miscreants cut the window grills/screws of the window grills (This could not be checked by the I.O. as it is already replated long before).

The work of dismanted of the boundary walls made the H.P.O. building very vulnerable to the miscreants and the fencing and unclear frontside flower garden also helped the miscreants to hide.

This lapse of not making arrangement of free and easy movement of the Night Guard i.e. the charged official (and Home Guards) to patrol round the H.P.O. building is of H.P.O. Postal Authority.

Moreover one Home Guard was not performing his duty on 13-2-99 and 14-2-99 but no alternate arrangement to place/ deploy person in his place was done by the Postmaster. So, the presuse of work on the Night Guard ~~is~~ *is* the charged official and the one Home Guard was more than other days.

It is also one lapse of the PM, Jorhat .

(F) The Presenting Officer told in the hearing that the working hours ~~is~~ of the Night Guard is from 17.00 hours to 05.00 hours of next day - which is 12(Twelve) hours. The charged official Shri Chidananda Saikia deposed that he had to work from 1700 hours to 07.00 hours next day daily - which is 14 (Fourteen) hours a day.

The Presenting Officer could not show any rule regarding the working hours of a Night Guard and the nature of his (N.G's) duty to the satisfaction of the I.O.

Making the Night Guard - Chidananda Saikia to work 12 to 14 hours a day instead of 8(eight) hours a day like other employees of operative offices is found to be very surprising .

(G) It is ascertained from the depositions of the charged official, witness of defence side the Postmaster, Jorhat HO was absent in his Govt. residence on the 14th February/1999 .

(H) The miscreant broke the locks of the iron-door of the Treasury Room, Strong Room, Embaded Iron chest kept inside the Strong Room and hinges of the door of the Strong Room and the Iron chest .

This breaking must have caused some sound . Morover, it is found that the Govt. residence of the Postmaster is located on the 1st floor of the HPO building just above the Treasury and Strong Room of the office. Therefore, if the Postmaster were present in his residence on 14-2-99 he might have heard any suspicious sound coming from breaking of locks, hinges etc .

(I, It is concluded that Shri Chidananda Saikia, Night Guard, Jorhat HPO - the charged official is not alone responsible for the theft committed on 13-2-99 or 14-2-99. The Home Guard is also responsible for it. The lapses in the part of the Postmaster is also responsible for it. Because as per Rule-3(2)(i) of the CCS(Conduct) Rules 1964, as read, when shown by the Presenting Officer which reads as "Every Govt. servant & holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government servant for the time being under his control and authority".

Therefore, Shri Chidananda Saikia, Night Guard, Jorhat HPO is held partly responsible for this case of theft/burglary.

The I.O's report was sent to Shri Chidananda Saikia on 7-1-2002 for submitting his representation if any. The official prayed for extension of time and subsequently he submitted representation on 29-1-2002. His representation goes as under -

"With reference to your above I beg to submit the following representation for favour of your kind and sympathetic consideration and to have due justice.

Sir, I Sri Chidananda Saikia, Group 'D' official of the Jorhat H.P.O. (The then Night Guard) now under suspension was ordered to work as Night Guard initially for 10 days & w.e.f. 3-2-99 to 12-2-1999 vide Postmaster, Jorhat H.P.O. order No. dtd. 2-2-1999 subsequently the date 12-2-1999 made overwriting from 12-2-1999 to 14-2-1999 and 10 days overwrote to 12 days in the Postmaster order book stand good. Therefore, there may be much reasons to believe in that there may be vast mystery & for overwriting, the date and No. of days in the order book, and the inquiry Officer instead of taking this into consideration has tried his best level to cut a sorry figure in my service life.

Sir, further I beg to state that I sincerely performed my duties as a watchman to guard the HPO building at night alongwith the Home guard provided for the purpose. So, I am in firm conviction that the theft case have been occurred during the day hours of 14-2-1999 which was Sunday and beyond my duty hours. The window in where the iron grills were broken is parallel to the floor of the HPO building and not at all possible to visible at night. So, the theft case was not detected on the night of 14-2-1999. Moreover the window is eastern side and very near to Govt. road in where police patrolling duties were prevailed all round the night and on the western side of the HPO building there is the office of the Superintendent of Police where night guards were available and were on duty. So, the theft case was not occurred at night hours.

Under the above circumstances may I pray to your honour kindly to consider the case in the realbar and to exempt me from the charge levelled against me and lead me to live in peace alongwith the members of my unhappy family in such a hard days and for this act of your kindness I am in duty bound shall remain every pray.

Sir, the representation is given in the name of God with sound health and sound mind.

With kind regards, "

In the meantime the Reasons for disagreement of finding on the Inquiry report submitted by the I.O. Sri P.P. Baruah was sent to Sri Chidananda Saikia on 7-3-2002 for submission of representation on it if any which was as follows.

Reasons for disagreement of finding of the Inquiry Report dtd. 11-12-2001 submitted by Sri P.P. Baruah, Inquiry Officer and Inspector Posts, Jorhat(South) Sub-division, Jorhat in respect of Rule-14 inquiry under CCS(CCA) Rules, 1965 against Shri Chidananda Saikia, then Night Guard, Jorhat H.P.O. (Now under suspension)

(1) In his findings of the case, Sri P.P. Baruah, I.O. simply narrated the ~~any~~ depositions made by different prosecution and defence witnesses as well as by the P.O. and the charged official, without offering any comments from his side.

(2) Sri P.P. Baruah, I.O. also blamed the Disciplinary Authority for non-mentioning the exact date or most probable date of theft which is irrelevant.

(3) Sri P.P. Baruah, I.O. tried to safeguard the charged official by saying that the theft might have been occurred during day time or during 1(One) hour of his absence for mail carrying. This has got no relation with the charges brought against Sri Chidananda Saikia.

(4) Sri P.P. Baruah, I.O. made long narration regarding the difficulty of the night guards and Home Guards to guard the surroundings of Jorhat H.O. building, due to long grasses, flower garden, barrier fencing etc, which have got no relevancy with the charges. For the above he made the Postal authority and the PM, Jorhat ~~any~~ responsible, which is uncalled for.

(5) Sri P.P. Baruah, I.O. made some unfounded remarks in his Inquiry report like - "making the Night Guard - Chidananda Saikia to work 12 to 14 hrs on a day instead of 8 hrs a day like other employees of operative offices is found to be very surprising. This shows his biasness towards the charged official, which should not have done by a I.O. Therefore it is quite objectionable.

(6) Sri P.P. Baruah, I.O. instead of discussing the lapse or otherwise of the charged official, made the Postmaster, Jorhat H.O. partly responsible for the theft citing Rule 3(2)(i) of CCS(Conduct) Rules, 1964, which was totally uncalled for. Thus Sri Baruah chargesheeting the Disc ~~any~~ authority and others in his Inquiry report insted of discussiong the authenticity or otherwise of the charges framed against Sri Chidananda Saikia, N.G.

(7) Lastly Sri P.P. Baruah, I.O. did not mention whether the charges framed against Sri Chidananda Saikia, Night Guard were proved or not proved. He has concluded his report saying - "Sri Chidananda Saikia, N.G. Jorhat HO is held partly responsible for the case of theft/burglary". which is a vague term without any meaning.

(8) Sri P.P. Baruah, I.O. was entrusted to inquiry into the charges framed against Sri Chidananda Saikia, then Night guard, Jorhat H.O. and to state clarely whether the charges were proved or not proved. But in his Inquiry report he did not discuss about the charges and came to a vague conclusion stating that Sri Chidananda Saikia, night Guard, Jorhat HO was partly responsible for the theft.

(9) During the entire Inquiry, Sri P.P. Baruah, I.O. found very much concern about the overwritting made by the Postmaster in the order book. But from the record it is seen that the overwritting was made with proper initial by the Postmaster and the revised order stated to have been communicated verbally to Sri Chidananda Saikia, N.G., which was sufficient. Therefore, there is no link between the overwrittings and the theft.

(10) It has clearly been established during Inquiry that Sri Chidananda Saikia, N.G. Jorhat H.O. performed his duty on the material dates of 13-2-99 and 14-2-99 and so the theft was occurred during his duty period for which he was solely responsible .

For the above reasons, I do not agree with the findings of the Inquiry report dtd. 11-12-2001 submitted by Sri P.P. Varuah, I.O. and Inspector Posts, Jorhat(South).

The said "Reasons for disagreement" was received by Sri Chidananda Saikia, Night Guard, Jorhat H.O. (Now under suspension) and submitted his statement of defence on 19-3-2002 which is reading as under -

"Respectfully, I have the honour to state that I have received your above said letter on 13-3-2002. I have gone through the inquiry report of the Inquiry Officer, Sri P.P. Baruah and the points raised by you. From the inquiry report, it has been revealed that the Inquiry enquired the actual fact of the case and pointed out the true fact of the case .

That Sir, I was ordered to work as Night Guard of Jorhat Post Office by the Postmaster for 10(Ten) ~~xx~~ days only with effect from 3-2-99 in place of Md. Hussain Ali by the Postmaster vide his order dtd. 2-2-99. In absence of Md. Hussain Ali, Night Guard, I had to continue my duty as Night Guard from 5 P.M. to 7.30 A.M. upto 14-2-99 in continuation to the order of the Postmaster, Jorhat, dtd. 2-2-99, without break .

That Sir, in addition to my duty as Night Guard, I had to collect the mails (Dak) from the APM at 8 P.M. for & delivery at the ASTC Night Bus at 8.30 P.M.

That Sir, I had to remain at the ASTC office for delivery of ~~xx~~ the mails sometimes due to late arrival of ASTC Mail Bus .

That Sir, in course of discharging my duty as Night Guard, I had to keep myself alert by moving around the office building during duty hours and did not hear any sound .

That Sir, the gate of the office remain closed during the night .

That Sir, the boundary wall of the Post Office of the eastern side was in broken condition.

From the inquiry report of the Inquiry Officer, it has been revealed that I discharged my duty sincerely and the charges brought against me do not stand and I am not at all responsible in the case .

Under the above circumstances, may I pray to your honour kindly to consider the case in threalbar and to exempt me from the charge levelled against me and lead me to live in peace along with the members of my unhappy family in such a hard day and for this act of your kindness, I am duty bound shall remain ever pray .

Sir, the representation is given in the name of God with sound health and sound mind .

With kind regards."

OBSERVATION AND FINDINGS

I have gone very carefully through the charges brought against Sri Chidananda Saikia and found that the charges are justified as he violated the provisions of Rule 3(1)(i)(ii) & (iii) of CCS(Conduct)Rules, 1964 .

I have also gone through the IO's report very minutely and observed that the report is not agreeable as the actual picture of the charges are not reflected on it. The report is concluded without offering any comment from his side. Some times he is blaming the Disc authority which is uncalled for. Therefore Reasons for disagreement was served to the accused official on 7-3-2002 and the charged official submitted representation. Where in he supported the points of the I.O. The para -2 of his representation is not at all convincing that he performed continuous duty from 5 P.M. to 7.30 A.M. as Night Guard. Had he been devoted to his duty fully, such untoward incident would not have been happened. He stated in para 3 of his representation that he had to exchange mails at ASTC Mail Bus from 8 P.M. to 8.30 P.M., but the incident took place on ~~xxkxx~~ holiday/Sunday on which no mails due to be exchanged. Therefore the charges brought against Sri Chidananda Saikia vide PM, Jorhat memo no. H2/C.Saikia/99 dtd. 1-9-99 are proved beyond doubt .

XXXXXX

O R D E R

I Sri S. Das, Supdt. of Post Offices, Sivasagar Division, Jorhat hereby order that Sri Chidananda Saikia, Night Guard, Jorhat H.O. (now under ~~xx~~ suspension) be removed from service with immediate effect .

Sd/-

(S. Das)
Supdt. of Post Offices
Sivasagar Division Jorhat.

Copy to -

1. Registered

1. Sri Chidananda Saikia, Ex-Night Guard, Jorhat H.O. (now under suspension) for information .
2. The Postmaster, Jorhat HO for information.
3. The Postmaster General, Dibrugarh Region, Dibrugarh for favour ~~x~~ of information .
4. The PF of the official.
5. The CR file of the official.
6. The DA(P) Kolkata through the PM, Jorhat.
7. o/c

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16/10/02
Supdt. of Post Offices
Sivasagar Division Jorhat.

DEPARTMENT OF POST : INDIA
O/O THE POSTMASTER GENERAL
DIBRUGARH REGION, DIBRUGARH.

To,

Sri Chidananda Saikia
Ex Gr. D
Jorhat H.O.

regd/
RD

No : Staff/2/24-8/02/RP

Dated at Dibrugarh, 29/5/07.

Sub: Appeal preferred by Sri Chidananda Saikia, Ex Gr. D, Jorhat HO.

Ref: Your Appeal dated 3/5/2002.

Your Appeal dated 3/5/2002 is finalized by the Appellate Authority on 21/5/07. One copy of Appellate Order, i.e. Staff/2/24-8/RP dated 21/5/07 is forwarded herewith for favour of your kind information.

Enccl: A/A

Assistant Director (Staff)
O/O the Postmaster General,
Dibrugarh Region, Dibrugarh.

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DEPARTMENT OF POSTS
OFFICE OF THE DIRECTOR POSTAL TRAINING CENTRE
GUWAHATI - 781001

Memo No. Staff/2/24-8/02/RP

Dated 21st May'07.

Appeal dated 03-05-2002 was received from Sri Chidananda Saikia Ex Gr. 'D', Jorhat HO, against the Memo No.F4-14/98-99 dated 01-04-2002 from the Supdt. of PO's, Sivasagar Division, Jorhat.

(2) Statement of articles of charges framed in article -1 of Annexure-I is as followed -

That said Shri Chidananda Saikia while functioning as Night Guard of Jorhat HPO during the period from 03-02-99 to 14-02-99 violated the provision of Rule 3 (1) (i) (ii) & (iii) of CCS (Conduct) Rules 1964.

Statement of imputation of misconduct and misbehaviour in support of the articles of charge framed in articles of charge framed in article-I of Annexure-II is as followed -

Sri Chidananda Saikia, Group D, Jorhat HPO was ordered to work as Night Guard of Jorhat HPO for 12 (twelve) days w.e.f. 03-02-1999 vide Postmaster, Jorhat order No. Dated 02-02-1999 vice Md. Hussain Ali allowed to avail compassionate off, for the period for the period from 03-02-1999 to 14-02-1999.

On 15-02-1999 morning Sri Chidananda Saikia the Night Guard collected keys of the office at about 0730 hrs. from the residence of the Postmaster for opening the Post Office to make room for cleaning and sweeping of the office by the Safaiwallas. Sri Chidananda Saikia , Night Guard returned immediately to the residence of the Postmaster and reported that the lock of the treasury room is in broken condition & door in open condition. The Postmaster rushed to the spot immediately along with Sri Chidananda Saikia, the Night Guard and found the locks of the treasury room & also lock & hinge of the treasury strong room are in broken condition. Both of them entered inside the strong room and found the embedded iron chest also in broken condition and the blue bag in which cash of Rs. 619893.00 was kept inside the iron chest was not there. Only the blue bag lying inside the iron chest without cash. On examination it is noticed that some old bundles of G.C. notes along with some coins are lying inside the iron chest of the strong room. On subsequent counting the amount left behind by the miscreants was found to be Rs.7218/. The miscreants therefore took away Rs.612675.00 in G.C. notes from the iron chest of the treasury strong room.

On further examination it is found that the miscreants entered the HPO building by breaking the iron window grill of eastern side of the post office building.

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The breakings of iron window grill, one lock of the treasury room, 3 locks & one hinge of the Treasury Strong Room and also hooks & 2 locks of embedded iron chest of the strong room and also loss of Rs. 612675.00 (Rupees six lakhs twelve thousand six hundred seventy five) took place while Sri Chidananda Saikia, Night Guard, Jorhat HPO was on duty during the material period. Thus Sri Chidananda Saikia violated the provision of Rule 3 (1) (i) (ii) & (iii) of CCS (Conduct) Rules 1964.

List of documents by which and list of witnesses by whom the articles of charges framed were proposed to be sustained in Annexure III & Annexure IV are –

- (a) Order Book of the Postmaster, Jorhat HPO dtd. 02-02-1999
- (b) Md. Hussain Ali, new Night Guard, Divl. Office.
- (c) Sri Ponaram Pachani, Asstt. Postmaster, Mails, Jorhat HPO

3. The appellant was given 10 (ten) days time from the date of the receipt of the charge sheet to submit written statement of his defence and also to state whether he desires to be heard in person. He was also informed that an enquiry would be held only in respect of those articles of charges as are not admitted. He should therefore specifically admit or deny each article of charge. The appellant submitted his written defence denying the charges to the Disciplinary Authority.

The Disciplinary Authority appointed Sri P.P. Baruah, SDIPOs, Jorhat (s) Sub Division as Inquiry Officer to inquire into the charges framed against the appellant vide Memo No.H-2/C. Saikia/99 dtd 14-10-99 and Sri P Dey, SDIPOs, Jorhat (N) Sub Division as presenting officer vide Memo No.H-2/C. Saikia/99 dtd.14-10-99 and Sri P. Dey, SDIPOs Jorhat (N) Sub Division as Presenting Officer vide Memo No.H-2/C. Saikia/99 dtd. 14-10-99. The inquiry officer submitted his inquiry report on 11-12-2001 to the Disciplinary Authority. A copy of I.Os report was sent to the appellant vide Postmaster Jorhat letter no.H-2/C. Saikia/99 dtd.7-01-2002 for submission of his written representation if any, within 10 (ten) days of receipt, which was received by the appellant on 08-01-2002. The appellant, vide letter dated 18-01-2002 prayed for allowing further time upto 01-02-2002 for submission of his representation & subsequently submitted his written representation on 29-01-2002.

(4) The Supdt. of Post Offices disagreed with I.O.s Inquiry Report and forwarded copy of Inquiry Report disagreeing with it on 7.3.2002. The appellant was asked to submit his representation, if any within 10 days. He submitted his representation on 19.3.2002.

The Supdt of Post Offices, Sivasagar Division, Jorhat (Disciplinary Authority) after going through the inquiry report, officials representation and related records then recorded his findings and awarded the appellant with the penalty of Removal from service with immediate effect vide memo no. F4-14/98-99 dated 01-04-2002.

Continued to be contd
contd
contd

5. I have perused appeal of the appellant with all relevant records.

In para 1 of the appeal the appellant stated that he was a group 'D' worker of Jorhat HPO. He was removed from work by an order issued from the O/o Supdt of Post Offices. He is a loyal poor worker of the Department and charges against him were not true.

In para 2 and 3, the appellant requested to intervene on the decision of removal of him from the post by the Supdt of Post Offices, Sivasagar Dn. Jorhat and to go through the proceedings and issue directives to withdraw the removal order.

6. After examining whole case proceedings through the related records, I being the Appellate Authority found that -

- (i) Shri Chidananda Saikia, Group 'D' of Jorhat HO was brought on duty by Postmaster, Jorhat HO, for 10 days initially, followed by 2 more days extention, in place of regular Night Guard during the period from 3-2-1999 to 14-2-1999.
- (ii) He was continuing his duty as Night Guard from 5 P.M. to 7.30 A.M. including mail exchange at A.S.T.C., Jorhat for 1 hour during 8 PM to 9 P.M. on working day's.
- (iii) As per the Inquiry Report of I.O., Shri Chidananda Saikia was hold partly responsible for the theft/burglary case at Jorhat HO dt.13/14-2-1999. Therefore, Disciplinary Authority disagreed with I.O.'s report and communicated points of disagreement to Shri Saikia.
- (iv) Being Sunday on 14-2-1999, there was no mail exchange at A.S.T.C. and the Night Guard should have been on duty that night at Post Office itself without leaving the spot. Further, as deposed by the Defence Witness and the appellant, the boundary walls of the eastern and southern side of HPO Building were dismantled during that period and long grasses/flower garden made that side unvisible. The work of dismantling of the boundary walls made HPO Building very vulnerable to the miscreants. It means that the appellant is aware about the work which was going on eastern/southern side of HPO. Therefore he was expected to be more vigilant and alert in his Night Guard duties to ensure safety of building. Instead of performing his own duty sincerely, the appellant is depending on the police patrolling in the night and the staff of Office of the Supdt. of Police on duty in police station.

*Certified to be true
Copy of the Original
Signature*

(v) Inquiry Officer, brought many extraneous points in his inquiry report, instead of concrete conclusion relating to charges brought against the appellant, which were not agreeable to Disciplinary Authority and he has communicated his objections to the appellant.

(vi) The appellant was arranged for Night Guard duty only for few days, and during this period this untoward incident of theft/burglary happened at Jorhat HO, causing Rs. 612675/- loss to the Department. Therefore, the appellant is held responsible for laxity in his duties. Hence, he was considered to have violated the provisions of Rule 3 (1) (i) (ii) and (iii) of CCS (Conduct) Rules 1964.

In the circumstances explained above, there is no scope for me to intervene in the Disciplinary Proceedings and the penalty of removal ordered by Disciplinary Authority vide Memo No. F4-14/98-99 dated 01-04-2002 is hereby confirmed.

Shobha Madhale
(Shobha Madhale)
Director
Postal Training Centre
Guwahati-781001

Copy to :-

Regd/AD ✓

1. Sri Chidananda Saikia, Ex-Night Guard, Jorhat HO..
2. The Supdt of Post Offices Sivasagar Dn. Jorhat. A copy of the appellate order shall be delivered to the appellant under clear receipt and copy of the receipt sent Asstt. Director (Staff), O/o the Postmaster General, Dibrugarh Region, Dibrugarh.
3. CR File of the official.
4. Service Book of the official.
5. PA to Director, Postal Training Centre, Guwahati .
6. O/c & Spare.

*Certified to be the
Copy of the Original
Shobha*

G.I., M.H.A., O.M. No.F.6 39/30/55- Ests; dated 7th June, 1955 and no. 39/8/864-Est(A)dt. 4.9.1964.

(i) Precede Departmental Action- The following procedure should normally be adopted in cases of alleged criminal misconduct of Government servant.

(ii) As soon as sufficient evidence is available for the purpose in the course of investigation in cases of misconduct whether such investigation is conducted departmentally or through the police (including the special police establishment), action should be taken forthwith. It has been decided that prosecution should be the general rule in all those cases which are found fit to be sent to Court after investigation and in which the offences are of bribery, corruption or other criminal misconduct involving loss of substantial public funds . In such cases, departmental action should not precede prosecution. In other cases involving less serious offences or involving malpractices of a departmental nature, departmental action only should be taken and the question of prosecution should generally not arise. Whenever, however, there is unresolved difference of opinion between the Central Bureau of Investigation and the Administrative Authority concerned as to whether prosecution in Court or Departmental actions should be resorted to in the first instance the matter should be referred to the Central Vigilance Commission for advise.

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Shyam*

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(iii) Before initiating criminal proceedings advice on evidence should be obtained from Government counsel, and in more important cases from the Attorney-General or the solicitor General. Where the conduct of an officer discloses a grave offence of a criminal nature, criminal prosecution should be the rule and not the exception. Where competent authority is satisfied that there is no criminal case which can be reasonably sustained against such officer, criminal prosecution should not, of course, be resorted to; but prosecution should not be availed merely on the ground that the case might lead to an acquittal.

*Copy of the Original
Signed*
Certified to be true

(D.G.P & T Letter no. 6/67/64 -Disc dated 13.6.1977)

(2) Classification of types of cases- According to the revised instructions prosecution should be the general rule in all those cases which are found fit to be sent to court after investigation and in which the offences are bribery, corruption or other criminal misconduct involving loss of substantial funds. In other cases involving less serious offences or malpractices, a departmental action only is to be taken and the question of prosecution should not generally arise. A number of references have however, been received in the Directorate seeking clarification on certain points arising out of the revised instruction of the MHA The following clarifications therefore, issued for guidance:-

(i) It has been decided that so far as the P & T Department is concerned a case involving "loss of substantial public funds" referred to in the loss exceeds (1) Rs.2,000 in so far as departmental employees are concerned and (2) the amount of security deposits in the case of extra departmental employees. However in respect of extra -departmental employees, even in cases involving loss not exceeding the amount of security deposits the discretion to exclude prosecution should be exercised only if the loss has been made good and if there are extenuating circumstances like length of service to justify the exercise of the discretion. Cases involving extra departmental employees shall invariably be reported to police if the loss exceeds the amount of security deposit furnished by them.

As the extra-departmental employees are not full time Central Government employees their cases, when a prosecution seems possible and desirable, should be reported to the local police. However, if the loss involved, is considerable i.e. more than Rs.2000 and the case is of importance, the matter may be reported to CBI immediately the offence is detected to facilitate successful investigation. In all cases which are considered fit for prosecution according to the criteria laid down in the preceeding

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sub-paragraph, a report should be lodged with the police as soon as the case comes to notice and departmental enquires except to the extent permitted by the police. The question of taking departmental action in all such cases would arise after either completion of police enquires or after the process of prosecution in a court of law have been completed. If, however, it is desired to conduct departmental enquires simultaneously with police enquires or to take departmental action wherever feasible before the case is taken up for prosecution by the police, the matter should be decided after consultation with the police authorities.

(ii) With regard to a case in which the loss to the Government is (1) Rs.2000 or less in the case of departmental employees and (2) equal to the amount of security deposit or less in the case of an extra departmental employee, departmental action only may be taken and the question of prosecution should not generally arise. In these cases, action to finalize departmental action should be taken without delay in the first instance and thereafter the advisability of reporting the case to the police for purposes of prosecution if still thought necessary, may be considered. There will, however, be no objection to information being lodged immediately with the police as soon as the preliminary departmental enquires have been completed where the nature of the case or the other circumstances, e.g. case of theft and highway robbery, attacks on employees of the department, the advantages of an immediate house search, the likelihood of the accused absconding etc require the case to be reported immediately to the police.

(iii) In cases where there is a difference of opinion between the police authorities and the Divisional Officers as to the course of action to be taken the matter may be referred to the Circle Officer which will settle it in consultation with the Inspector-General of Police.

*Certified to be true
Copy of the Original*

(1v) Where the case is reported to the Special Police Establishment and in case of difference of opinion it is not possible to reach a settlement on the points of difference after a local discussion either at the Divisional Offices level or at the Circle Level, the question could be referred to the Directorate for discussion with the CBI.

*Certified to be true
Copy of the Original
[Signature]*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH AT GUWAHATI

O.A. No. 226 OF 2007

Sri Chidananda Saikia

...Applicant

-Versus-

Union of India & Ors.

...Respondents

INDEX OF THE WRITTEN STATEMENT

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

O.A. NO. 226 OF 2007

Sri Chidananda Saikia

.....Applicant

-Versus-

Union of India & Ors.

..... Respondents

The written statement filed on behalf of the Respondents above named-

WRITTEN STATEMENT OF THE RESPONDENTS

MOST RESPECTFULLY SHEWETH:

1. That with regard to the statement made in paragraph 1 of the instant application the Respondents beg to state that those are matters of record and the respondents do not admit anything which is not borne out of record.
2. That with regard to the statement made in paragraph 2 and 3 of the instant application the Respondents have no comment.

Contd., P/-

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Bundles of Post Offices
Sivasagar
Jorhat
Bundles of Post Offices
Sivasagar
Jorhat

3. That with regard to the statement made in paragraph 4.1 of the instant application the Respondents have no comment.

4. That with regard to the statement made in paragraph 4.2 of the instant application the Respondents beg to state that it is true that the applicant was ordered to work as night guard from 3.2.99 to 14.2.99 by the Postmaster, Jorhat HPO.

5. That with regard to the statement made in paragraph 4.3 of the instant application the Respondents beg to state that the incident took place at Jorhat HPO wherein a sum of Rs. 6,12,675/- was missing from the chest of the strong room and the applicant was working as Night Guard.

6. That with regard to the statement made in paragraph 4.4 of the instant application the Respondents beg to state that the action of police was fully justified as they immediately taken the applicant into their custody and action taken by Postmaster, Jorhat on 15.2.99 was consonance with the arrest of the applicant by the police.

7. That with regard to the statement made in paragraph 4.5 of the instant application the Respondents

मुमुक्षु विभाग
General Branch

Post Office
Sarkar, Bawali
Bawali Division
Jorhat-785001

beg to state that the action narrated in the para is true and the same are matter of records.

8. That with regard to the statement made in paragraph 4.6 of the instant application the Respondents beg to state that those are matter of record and the respondents do not admit anything which is not borne out of record.

9. That with regard to the statement made in paragraph 4.7 of the instant application the Respondents beg to state that the applicant admits that the postmaster initially directed him to perform duty as night guard from 13.2.99 to 14.2.99 verbally, finally which was confirmed as written order, there is no mystery.

The respondent further begs to state that if the applicant has a firm belief the theft has occurred during day norms of 14.2.99 which was a Sunday and beyond his duty hours, why he has failed to report the matter to the postmaster before resuming duty as night guard in the night of 14.2.99.

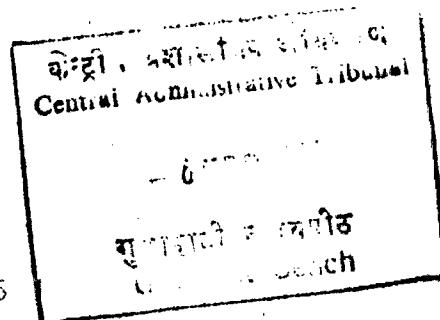
10. That with regard to the statement made in paragraph 4.8(I) are matter of records and the respondents does not admit anything which is not borne out of record.

II. That with regard to the statement made in paragraph 4.9 of the instant application the Respondents beg to state that the report of the I.O. was not impartial but a bias. Through he clearly states that the applicant is partly responsible for the case of theft/burglary. That the applicants exonerated from the charges levelled against him can not be acceded due to charges are framed in accordance with CCS(CCA) Rules, 1965 and it involves loss of Govt. money Rs.6,12,675/-.

12. That with regard to the statement made in paragraph 4.10 of the instant application the Respondents beg to state that the order passed by the Disciplinary Authority of removing the applicant from Service with immediate effect is well in accordance with the rules and law and the law laid down by the court.

13. That with regard to the statement made in paragraph 4.11 of the instant application the Respondents beg to state that those are matter of record and the action of the Appellate Authority against the applicant is in order and in accordance with the rules.

14. That with regard to the statement made in paragraph 5.1 of the instant application the Respondents beg to state that allegation is baseless.



15. That with regard to the statement made in paragraph 5.2 of the instant application the Respondents beg to state that the HPO can retain cash as per requirement with the help of night guard and security guards. Hence the allegation of non removing the cash of Rs.6,12,675/- before the incident is baseless but comes out his negligence to duty and Lack of devotion to duty.

16. That with regard to the statement made in paragraph 5.3 of the instant application the Respondents beg to state that the applicant being a night guard, a responsible official of Jorhat H.O., he could not deny his responsibility. That to state as innocent by Sri Chidananda Saikia is nugatory and tries to camouflage himself.

17. That with regard to the statement made in paragraph 5.4 of the instant application the Respondents beg to state that the allegation is totally baseless because ~~He~~ never raised such question during the time of his duty.

18. That with regard to the statement made in paragraph 5.5 of the instant application the Respondents beg to state that disciplinary authority has the power to take into consideration for postmaster and night guard only. The Home guard is controlled by his disciplinary authority not by the postal authority.

Contd., P/-

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104
Divas
Case No. 6/2001
Jorhat

19. That with regard to the statement made in paragraph 5.6 of the instant application the Respondents beg to state that the violation of the Government of India's instruction as regards departmental action prosecution initiated departmental action against the applicant is not to be complied with because as soon as the happening of the incident police was informed immediately vide Jorhat Police station case No. 62/99 u/s 457/383 IPC dtd. 15.2.99 the police authority started enquiry immediately and forwarded the case to the Hon'ble CJM court Jorhat vide case No. GR 131/99. The police authority has informed that the case is true but no clue vide the officer incharge, Jorhat P.S. report dtd. 24.10.01. After that Departmental action was initiated and he had been removed from service on 1.4.2002.

Copies of the reports are annexed herewith as
Annexure - I & II.

20. That with regard to the statement made in paragraph 5.7 of the instant application the Respondents beg to state that the Disciplinary authority acted in accordance with above intention finally the CJM Court, Jorhat has passed judgment vide No. 195/2000 dtd. 10.5.2006. Through some Randip Das was arrested and sent to court of law, he was discharged due to want of evidence.

Contd.: P/-

21. That with regard to the statement made in paragraph 5.7(a) of the instant application the Respondents beg to state that the charged official performed duty as night guard without any allegation on 13.2.99 evening and then on 14.2.99. He alleged only after the incident was occurred that one home guard was absent.

22. That with regard to the statement made in paragraph 5.8 of the instant application the Respondents beg to state that respondents imposed the penalty of removing in accordance with departmental rule as deemed fit and violation of prescribed procedure does not arise.

23. That with regard to the statement made in paragraph 5.9 of the instant application the Respondents beg to state that the negligence of his duty the department has to lose an amount of Rs.6,12,675/- (six lakhs twelve thousand six hundred seventy five) only due to the theft. Had he been more alert and devoted to his duty as night guard this unexpected incident would have not happened. The applicant received the penalty as he would have as for measure for measure.

24. That with regard to the statement made in paragraph 5.10 of the instant application the Respondents beg to state that the demand is not justified.

Further the respondents beg to state that the grounds set forth by the applicant in the instant application are not good grounds and also not tenable in the eye of law and as such the same is liable to be dismissed.

25. That with regard to the statement made in paragraph 7 & 8 of the instant application the Respondents beg to state that the respondents have no comment.

26. That with regard to the statement made in paragraph 9 of the instant application the Respondents beg to state that the claim of the applicant is illegal and illfounded and therefore the instant applicant is not entitled to get any interim relief.

27. That the respondents submit that the instant application has no merit and as such the same is liable to be dismissed.

- 655B/2007

गुवाहाटी न्यायपीठ
Guwahati Bench

107

VERIFICATION

I, Sri. Sandip Dey, Pukkayalha, s/o Late. D.C. Dey, Pukkayalha
 aged about 50 years, R/o ... Jorhat, H.P.O. Campus.....
 District Jorhat..... and competent officer of the
 answering respondents, do hereby verify that the state-
 ment made in paras 1-18, 20-27 are true
 to my knowledge and those made in paras 19
 being matters of record are true to my information
 derived therefrom which I believe to be true and the
 rests are my humble submission before this Hon'ble
 Tribunal and I have not suppressed any material
 fact.

And I sign this verification on this 4th day
 of February 2008 at Guwahati.

Signature
 Dated: 4/2/2008
 Comt. of Post Offices
 शिवसागर मण्डल
 Biswasagar Division
 Jorhat-785001

The Officer in charge
Jorhat Police Station
P. O. Jorhat

Dtd. at Jorhat the 20-12-2001
A.D. 2001
Theft case at Jorhat Head Post Office in the night of
14-2-99. Jorhat Police station case no. 62/99 u/s
17/283 I.P.C.

previous reference from your end.

This is regarding theft occurred in the night of
14-2-99 at Jorhat Head Post Office and taken away cash
Rs. 14675/- M. Six Lakhs twelve thousand six hundred seventy five.
The case was registered under no. 62/99 u/s 457/383 I.P.C
and informed by the Postmaster Inspector contacted Sadar Thana
Jorhat P.S. Our Public Relation Inspector contacted Sadar Thana
Jorhat P.S. on the 31-1-01 that the case was under investigation. But
since then nothing is heard about the case and as such you
are requested to communicate further the development of the said
case for onward disposal to the higher authority.

(S. DMS)

Supdt. of Post Offices
Sibsagar Divn, Jorhat-1

Copy to :
The SDIPOS, Jorhat (south) who will kindly contact the
P/C, Jorhat P.S regarding the above cited police case
and intimated the present working position of the case
to this office.

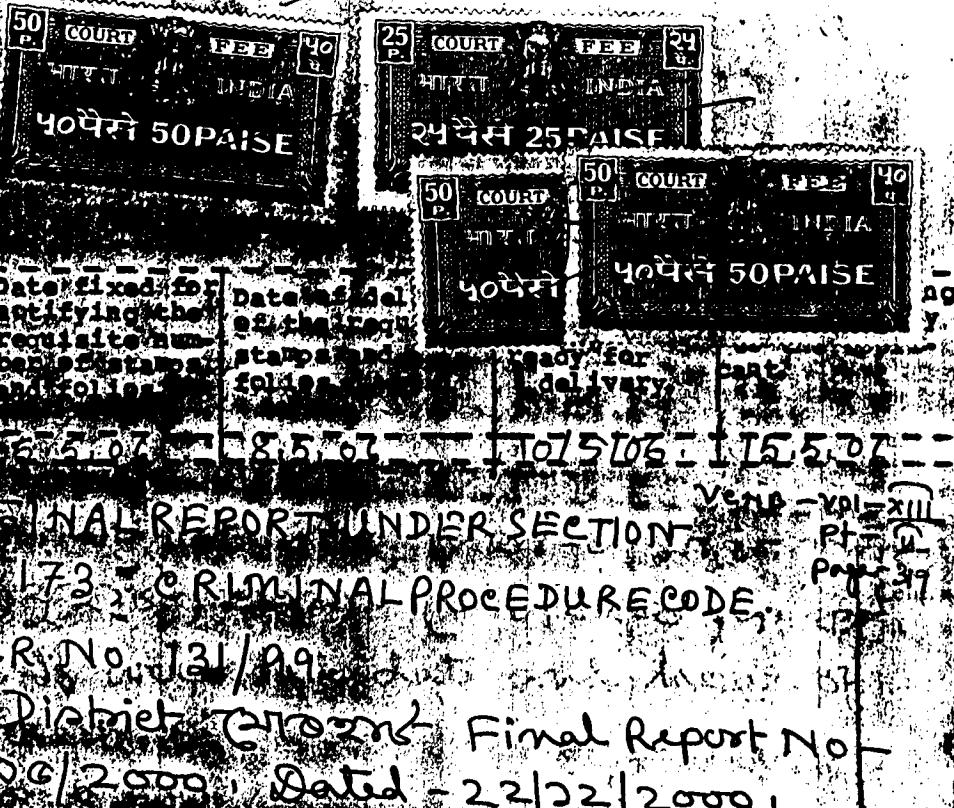
S/d

Supdt. of Post Offices.
Sibsagar Divn, Jorhat-1

S/o

I beg to report that the case has
already been submitted to the Tinal 20mn
F.A. No - 195 dt 22-12-01 as the case is true but
the same is not yet Jorhat court. However
the same of your kind
submitted 2nd

Chakrabarty
Other In-charge
JORHAT P. O.
24/12/01



G.R. No. 131/99

District Court Final Report No -
2001/2000, Dated - 22/2/2001.

Police Station (S03-202) on first
information No. 55722 dated 20/2/2011.
Name and address of informant
and of the person aggrieved if
the informant is not such person.

R. K. Chanda

Post Master

Stead Post office, Joshat.

5. Nature of charge or information 2

ଶ୍ରୀ ମହାତ୍ମା ଗାଁରୀ, ପ୍ରେସ୍ରେସ୍ - ୪୫୭/୩୮୦

descriptions and the value of

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Name and address of accused

persons, if any. 4.

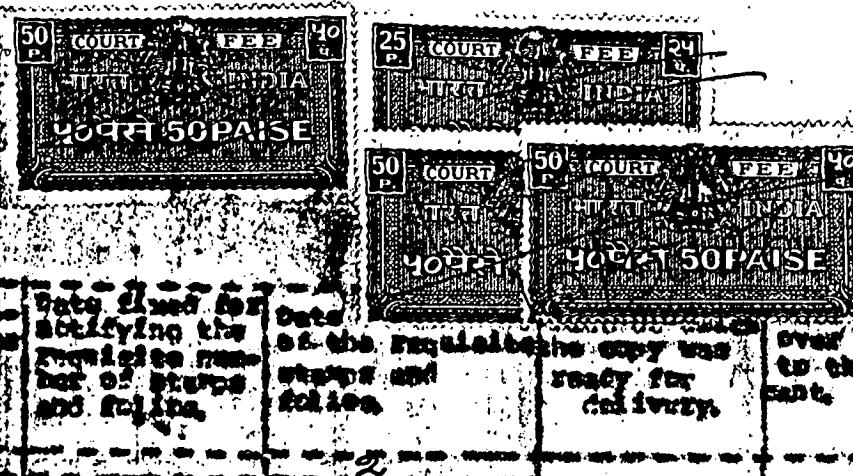
P-T-O. *purple*

P.T.O. *Postscriptum*

Mr. & Mrs.
 John
 & Irene

Crust,

ପ୍ରମାଣିତ ହେଲାମୁଣ୍ଡିଲ୍



ଆମ୍ବାଦିପିଲ୍ ନାମ, ମିଶ୍ର-ବ୍ କାମାନ ନାମ,
କାନ୍ତାର୍ଥୀ-; ୨୫୮୮- କ୍ଷେତ୍ରବିହାରୀ, ପାଇଁ ୨୫୯୧

If arrested date and hour of arrest: 5

28-8-నవ

Date and hour of release and whether on bail or recognizance 6

Property (including weapons)
found, with particulars of where,
when, and by whom found,
and whether forwarded to magistrate.

7

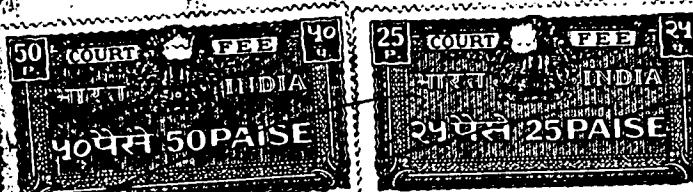
Seizure list enclosed herewith.

MR. NO. 41/99, 42/99, 44/99, 45/99,
46/99, 43/99.

Brief description of information action taken by police with result, and reasons for not proceeding further with investigation.

(Note here whether purport of:

P-T-O.



61/1
Court of Session
Bench

Date fixed for notifying the plaintiff that the copy was ready for delivery	Date of delivery Date of which of the requisite copy was stamps and ready for delivery	Date of making over the copy to the applic- ant
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The report has been communicated
to the informant) 8

Post ट्रॉफ्युक्स- नक्षु विश्व बन्द एवं ट्रॉफ्युक्स

Head post office व- Post master R.K.
Chandek इ- एक्स्प्रेस नियंत्रण द्वारा

दिनांक २३/२/९९ ईं अविहृत
कर्तव्य द्वारा अविहृत द्वारा Post
office व- strong room वा तामा-
लाली- ०४४- अविहृत अविहृत अविहृत
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D.C.T.

Classified and Confidential

31/8/1943

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Date of delivery of the requisite number of stamps and labels.	Date of which the copy was ready for delivery.	Date of mailing over the copy to the court.
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ଓଲିଙ୍ଗ୍ରେ-ଚାରିୟେ- ତମାଙ୍ଗେ

ପୋଟ୍ ପତଙ୍ଗ ଗୋଲା ପାତ୍ର ମୁଖ୍ୟ

Post Master ଏବଂ ମୁଖ୍ୟ- ମିଶ୍ର । Post
Master କଥି ମୁଖ୍ୟ ଅଳାତ ମୁଖ୍ୟ

ମିଶ୍ର, କୁରୁତ୍ତି ପ୍ରମତ୍ତି ବାହିକର- ମିଶ୍ରଙ୍କ

ବଦ୍ଦ କୋଡ଼ି- କିତିବାହ- ମୋହାର୍ଜୁ ଚାରିୟେ

ବମ୍ବ- ୩୪୨ ତମାଙ୍ଗେ କୋଡ଼ି- ପାତ୍ର ଶ୍ରୀତ ଶ୍ରୀତ

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ଶ୍ରୀତ କଥି- କିତିବାହ ମୋହାର୍ଜୁ

ଶ୍ରୀତ କଥି- ମଧ୍ୟ ପାତ୍ର ଚେଷ୍ଟା

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ମାମ୍ବ- ଅଦ୍ଦତ ଅଳାତ କୁରୁତ୍ତି କଥି

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ଦିଲ୍ଲୀ ଗୋଲା ଅଳାତ ମଧ୍ୟ ହିମ

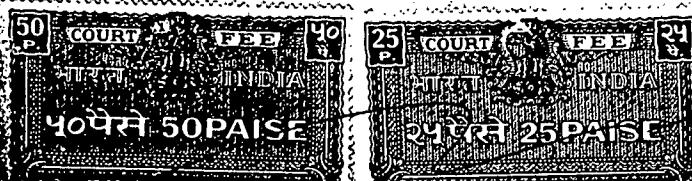
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Date fixed for serving the process on the defendant	Date of delivery of the requisite copy to the defendant	Date of making over the copy to the applica- nt
Requisites number of stamps and police	Requisites number of stamps and police	Requisites number of stamps and police

ଦେବ୍ୟ ମାତ୍ରା - ମୋହନ୍ କାନ୍ତାର୍ଜିତ୍

ମୁଦ୍ରାର୍ଥ ତବଳା କ୍ଷେତ୍ର ବିଭାଗ ମାମକ

ପ୍ରେସ୍ରୁଟ୍ସ ଜୀବି- ମୋହନ୍ କାନ୍ତାର୍ଜିତ୍

କୁଳ୍ପ କୁଳ୍ପ ମାତ୍ରା ପ୍ରେସ୍ରୁଟ୍ସ

ଅମ୍ବାଜିଲ୍ - କୁଳ୍ପ ମାତ୍ରା ପ୍ରେସ୍ରୁଟ୍ସ

ମାମକ ମୁଦ୍ରାର୍ଥ ବାବ୍ୟ ଅମ୍ବାଜିଲ୍

ଅପ୍ରମାନ୍ତ ପରିବାରକୁଳାନ୍ତ ମିଟିତ

ଦେବ୍ୟ ମାତ୍ରା କ୍ଷେତ୍ର ମୁକ୍ତ ଶେଷ ମୁକ୍ତ ମାତ୍ରା

୧, ୨୧୮ କୁଳ୍ପ ମାତ୍ରା କୁଳ୍ପ କୁଳ୍ପ

କୁଳ୍ପ ମାତ୍ରା କୁଳ୍ପ ମାତ୍ରା କୁଳ୍ପ

Central P. 1234567890

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Date fixed for notifying the requisite number of stamps and folio.	Date of delivery of the requisite stamps and folios.	Date of which the copy was ready for delivery.	Date of making over the copy to the applic- ant.
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२४/ श्री दिल्ली ए-वार्क्स

ବିଜ୍ଞାନ

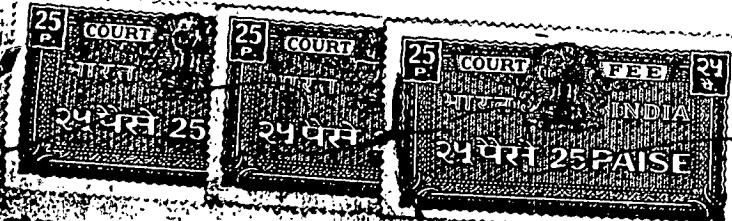
22/22/2000

22/52/2000

Forwarded to the Chief Judicial
Magistrate, Jorhat. The case is
free u/s 457/380 I.P.C, but evi-
-dence is insufficient against the
arrested accd. person. Six nos
of seizure list enclosed herewith.

Self-Illegible

O/C Jashat P.S. - 23.12.
Inspector,



Date fixed for Date of delivery Date of which Date of notifying the of the requisite the copy was making ready for cover the delivery of copy to the police.

Seer & forwarded for put up.

SD/- Illegible. P.I.
26.12.2000

Prosecuting Inspector
Jorhat Court
Jorhat Assam.

F.R. is Seer and accepted,
arrested accd. person is dis-
charged from this case.

SD/- S. Dey.

4.5.06

C. J. M. Jorhat.

CERTIFIED TO BE TRUE COPY

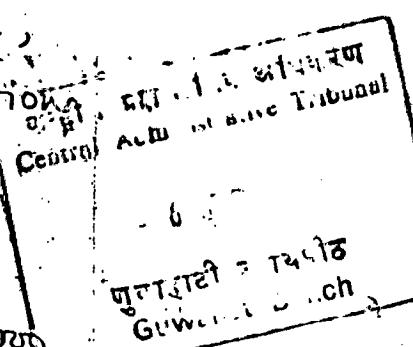
Amritsar Ramal
10/5/06

Head Assistant,

Office of the Chief Judicial Magistrate

JORHAT

1. Copied by 10.5.06
 2. Read Over by 10.5.06
 3. Compared by 10.5.06



File in Court on 11.3.08
Court Officer

IN THE CENTRAL ADMINISTRATIVE
AT GUWAHATI

AL GUWAHATI BENCH

O.A.NO. 226 OF 2007

Sri Chidananda Saikia

...Applicant

-Vs-

Union of India & ors

...Respondents

A rejoinder filed on behalf of the
applicant.

MOST RESPECTFULLY SHEWETH:

1. That a copy of the written statement filed by the Respondents has been served upon my advocate. I have gone through the same and understood the contents thereof.
2. That the applicant respectfully begs to reiterate the statements made in the original application and save what are matters of record and save what is stated hereinafter all other statements made in the written statements are denied by the applicant and the respondents are put to the strictest proof thereof.
3. That with regard to the statements made in paragraphs 6 and 20 of the written statement the applicant begs to state that the final report No. 195/2000 dated 22.12.2000

Filed by
Applicant
through
Dipak
Saikia
11/3/08

Ex-Officio
Court Officer

Court Officer.

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enclosed along with the written statement discloses that the applicant is not an accused in the case registered. (GR case No. 131/99) in connection with the incidents of theft of Rs.6,12,614.00 from the Jorhat HPO . One Mr. Ranadip Das was arrested in connection with the above case but he was discharged by the Chief Judicial Magistrate, Jorhat due to insufficient evidence against him.

4. That with regard to the statements made in paragraph 9 of the written statement the applicant begs to state that as already stated in the original application, the applicant assumed duty as night guard of Jorhat HPO in the evening of 13.2.99 which was a Saturday. After closing the entrance door to the office he handed over the keys to the post master who resided in the floor above the office. The applicant after completion of night duty left for home in the morning of 14.2.299 after informing the post master. 14.2.99 being a Sunday the office was not opened for cleaning etc. The applicant again resumed night duty in the evening of 14.2.99. As there was no occasion for the applicant to open the office before resuming night duty the applicant could not have known if someone had broken the iron chest of the treasury room. It was only in the morning of 15.2.99 when the applicant collected the keys of the office at about 7.30 am from the residents of the post master and opened the post office for cleaning and sweeping of the office by the

Sri Ch. Sanjiv Rekha

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safaiwalas that he discovered that the locks of the treasury room and lock hinges of the treasury strong room door are in broken condition. This was immediately reported to the post master who rushed to the office and on entering the strong room also found the embedded iron chest in broken condition and a sum of Rs. 6,12,675.00 was missing. Therefore, in the face of the above facts even if the theft had occurred during the day hours of 14.2.99 there was no chance of the applicant having discovered the theft not to speak of reporting the same.

5. That with regard to the statements made in paragraph 15 of the written statement the applicant begs to respectfully state that the Post and Telegram Manual contains instruction for fixing the maximum cash balance that the post office should ever be allowed to have in its possession. The object of fixing maximum cash balances for post office is to avoid as far as possible, the retention of unnecessarily large sums of money in scattered post offices by keeping the balances as low as possible consistently with the proper working of the offices.

6. That with regard to the statements made in paragraph 19 of the written statement the applicant begs to respectfully reiterate what has been stated in the original application that the respondents in violation of

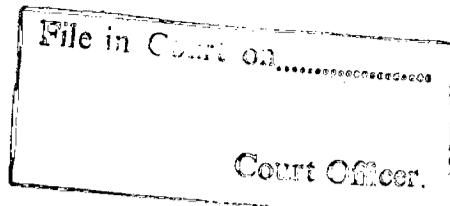
Sri Chander Lal Deo Sehgal

File in
Court Officer.	

Government of India's instructions issued as regards departmental action and prosecution initiated departmental action against the applicant and removed him from service. Annexure-I to the written statements filed by the respondents reveals that the final report in GR Case No. 131/99 was submitted on 22.12.2001. However records reveal that enquiry proceedings were simultaneously carried on and finally the enquiry officer submitted report on 11.12.2001.

7. ^{this} That rejoinder petition is filed bonafide and in the interest of justice.

S. Balachander S. Balachander



VERIFICATIION

I, Sri Chidananda Saikia, Son of Late Kanram Chutia, ~~aged about 35 years~~, resident of village Borbam Chungi, Post Office-Chungi via Gotanagar, District Jorhat, Assam is the applicant herein being well acquainted with the facts and circumstances of the case state and verify that the statements made in paragraphs 1, 4, 6 (part) of this application are true to my knowledge and those made in paragraphs 3, 5, 6 (part) are true to records which I believe to be true and rest are my humble submissions before this Hon'ble Tribunal.

I have not suppressed any materials facts.

And I set my hand on this verification today the 10th day of March, 2008 at Guwahati.

Sri Chidananda Saikia
DEPONENT