

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

*Habib*  
08.10.17

CENTRAL COMMISSION FOR WORKERS  
COMMISSION FOR WOMEN

ORDER SHEET

1. Original Application No.

136/07

2. Mise Petition No.

3. Contempt Petition No.

4. Review Application No.

Applicant(s) Bholanath Barah vs. Union of India & Ors

Advocate for the Applicant(s) Mr. I. Bhuyan

Mr. B. K. Das

Advocate for the Respondent(s) Case

Notes of the Registry	Date	Order of the Tribunal
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This application is in form  
is like C.P. for Rs. 50/-  
deposited with IPO/BD

No. 346/654124

Dated 31.5.07

5.6.2007

Post the case on 16.7.2007 along  
with the M.P.

Dy. Registrar

/bb/

Vice-Chairman

Par 1.6.07

17.7.2007

Post the case on 16.8.2007. In the  
meantime Respondents are at liberty to file  
reply statement.

Petition is being  
for issuance of  
one received with  
envelope.

Vice-Chairman

/bb/

Par 1.6.07

granted four weeks time to file reply  
statement.

Post on 9.10.2007.

2-8-07

No reply filed.

b  
→

BK  
/bb/

Vice-Chairman

OA-136/07

10.9.2007

Mr.G.Baishya, learned Sr.C.G.S.C. is granted four weeks time to file reply statement.

Post on 9.10.2007.

WLS not filed.

8.10.07.

/bb/

09.10.07.1.

Vice-Chairman

Despite several adjournments, no reply to the Original Application nor objection to the Misc. Petition for condonation of delay has been filed.

Issue notice to the  
Respondents, on Both Original  
Application and on Misc Petition  
requiring them to file reply by  
04.12.07.

Send copies of this order to the Respondents alongwith the notices and free copies of this order be also handed over to Mr.G.Baishya, learned Sr. Standing Counsel appearing for the Central Government, who should ensure the production of Departmental Proceedings at the time of hearing.

Call this matter on 04.12.07.

① Service report  
Rcvd.

② WLS not filed.

3.12.07.

lm

(Khushiram)  
Member(A)

(Manoranjan Mohanty)  
Vice-Chairman

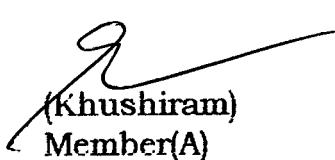
04.12.2007

Written Statement is undertaken to be filed in course of the day, after serving copy thereof on the learned counsel for the Applicant.

Call this matter on 09.01.2008 awaiting rejoinder, if any, from the Applicant.

*Notice duly served  
on R-2*

*Copy  
Served*

  
(Khushiram)  
Member(A)

  
(M.R. Mohanty)  
Vice-Chairman

Lm

6.12.07

*WPS filed by the  
Respondents; copy  
served.*



09.01.2008

In this case reply and rejoinder have already been filed by the parties.

Subject to legal pleas and question of limitation to be examined at the final hearing, this case is admitted.

*Rejoinder not  
filed.*

  
8.1.08.

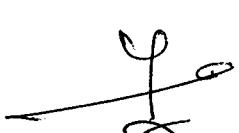
Call this matter on 20.02.2008 for hearing. Respondents should file departmental proceeding file of the Applicant at the time of hearing in this case.

22.1.08

*Rejoinder filed.  
Copy served.*

/bb/

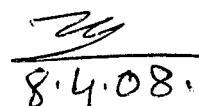
  
(Khushiram)  
Member (A)

  
(M.R. Mohanty)  
Vice-Chairman

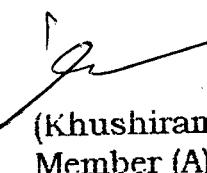
20.02.2008

Call this matter on 09.04.2008.

*The case is ready  
for hearing.*

  
8.4.08.

Lm

  
(Khushiram)  
Member (A)

4  
874-136/08

09.04.2008

Call this matter on 23.05.2008. Mr. G.

Baishya, learned Sr. Standing Counsel for the Union of India, shall cause production of the departmental file/records.

nkm

The case is ready  
for hearing.

22.5.08.

  
(Khushiram)  
Member (A)

  
(M.R. Mohanty)  
Vice-Chairman

23.05.2008

Heard Mr. B.K. Das, learned counsel appearing for the Applicant and Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Respondents.

Perused the materials placed on record.

Hearing is concluded.

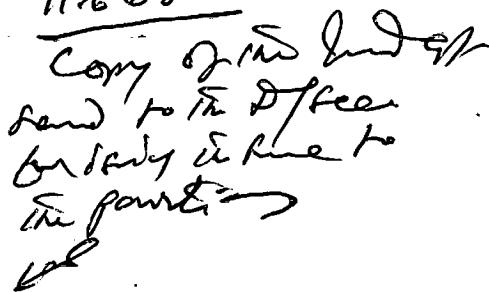
For the reasons recorded separately, the O.A. stands dismissed. No costs

lm

  
(Khushiram)  
(Member(A))

  
(M.R. Mohanty)  
Vice-Chairman

11.6.08

  
Copy of the letter of  
demand to the Office  
of the Secretary is sent to  
the parties.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 136 of 2007.

DATE OF DECISION : 23-05-2008

Shri Bholanath Borah

.....Applicant/s

By Advocate Mr U. Bhuyan, B.K.Das

.....Advocate for the  
Applicant/s

-Versus -

Union of India & Ors.

.....Respondent/s

Mrs. G. Baishya, Sr.C.G.S.C.,

.....Advocate for the  
Respondent/s

CORAM

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN  
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

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 136/2007.

Date of Order : This the 23rd Day of May, 2008.

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

Shri Bholanath Borah,  
Son of Late Boloram Borah,  
Resident of Lezai Bordoibamgaon,  
P.O. Lezai,  
P.S. Barbaruah,  
Dist. Dibrugarh (Assam)

.....Applicant

By Advocate Mr U. Bhuyan, B.K.Das

-Versus -

1. Union of India.

Through the Secretary to the Govt. of India,  
Ministry of Communications &  
Information Technology,  
Department of Posts, Dak Bhawan,  
Sansad Marg,  
New Delhi – 110 001.

2. Chief Postmaster General,

Assam Circle,  
Meghdoot Bhawan,  
Panbazar, Guwahati-781001.

3. Director,

Postal Training Centre,  
Red Cross Building,  
Uzanbazar, Guwahati-781001.

4. Superintendent of Post Offices,

Dibrugarh Division,  
Dibrugarh – 786001,  
Dist. Dibrugarh.

.....Respondents

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



## ORDER

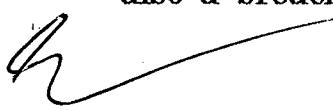
### KHUSHIRAM (MEMBER-A)

The Applicant, who was engaged as an Extra Departmental Agent (EDA), was charge sheeted and a Departmental Enquiry was held against him. On the basis of enquiry report dated 09.02.1999, the disciplinary authority imposed the punishment of 'removal from service' on the Applicant on 09.06.1999. It is stated that a criminal case filed against the Applicant and that has resulted in his acquittal. However, the order of the disciplinary authority was upheld by the appellate authority vide order dated 30.06.2004. The Applicant had earlier filed a suit in the Civil court at Dibrugarh which was dismissed on 10.07.2006. Thereafter, he has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 before this Tribunal seeking the following main reliefs.

- (i) to set aside and quash the appellate order dated 30.06.2004 passed by the Director, Postal Training Centre, Guwahati (annexure-D).
- (ii) To set aside and quash the order dated 09.06.1999 passed by the Superintendent of Post Offices, Dibrugarh Division, Dibrugarh (Annexure-F).

He has also filed Misc. Petition No.47/2007 for condonation of delay in filing the Original Application.

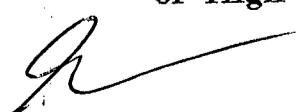
2. The Respondents have filed written statement stating that the Applicant was found to have misappropriated an amount of Rs.17,122.85/-; which was irregularly withdrawn from the Savings Bank Accounts of the beneficiaries. The misappropriation of Government money by a public servant is not only a criminal act but also a breach of trust which affects the good will of the department



adversely. The Applicant had deposited the entire amount with the Respondents. It has also been stated that adequacy of the penalty is not a matter for the Tribunal to be adjudicated upon or interfere with. On the basis of proved charges in the enquiry report, the punishment has been awarded to the Applicant. The Respondents have cited the case W.P.(C) 10537/2003; wherein the Hon'ble Gauhati High Court observed that acquittal in a criminal case cannot be a ground to set aside and free the petitioner from the charges leveled against him in the disciplinary proceedings regarding discipline.

3. We have heard Mr B.K.Das, learned counsel appearing for the applicant and Mr G. Baishya, learned Sr. Standing Counsel appearing for the Respondents. Learned counsel for the Applicant argued that quantum of punishment is disproportionate considering the fact that entire amount (alleged to have been misappropriated by him) has been deposited at the earliest. He also submitted that it might have been an error of judgment on the part of the Applicant; which should not be treated as a serious offence resulting in dismissal from service; especially when in the criminal case, an order of acquittal has been recorded in favour of the Applicant.

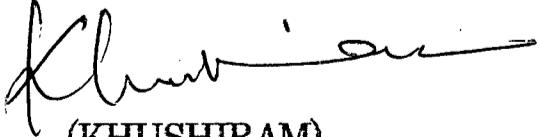
4. On the other hand Mr G.Baishya, learned Sr. Standing counsel appearing for the Respondents, contended that withdrawal of amount from the savings bank account of other depositors is just not a criminal offence, but the Applicant, having done, that has seriously affected the trust reposed on him amounting to serious mis-conduct and, therefore, punishment awarded is justified. He also cited the case of High Court of Judicature at Bombay through its Registrar vs.

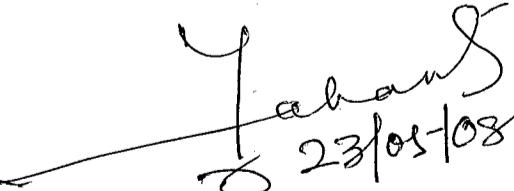


Shashikant S. Patil and another, (reported in (2000) 1 SCC 416), wherein (at para 16) the Hon'ble High Court held as under :-

"interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principle of natural justice or in violation of statutory regulation prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of this case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above."

5. We have gone through the materials placed before us and have considered the arguments advanced on behalf of the rival parties. We are of the considered opinion that Applicant, by misappropriating the amount of Rs. 17,122.85/- from different savings bank accounts, has committed a serious misconduct. The decision of the disciplinary authority, based on the facts proved in the enquiry, also upheld by the appellate authority was just. We do not find any reason to interfere with the decision of the Disciplinary Authority and that of the Appellate Authority (upholding the punishment awarded to the Applicant by the disciplinary authority) and in the circumstances, we find no merit in this case and the same is accordingly dismissed without any order as to costs. M.P.No.47/07, accordingly, stands disposed of.

  
 (KHUSHIRAM)  
 ADMINISTRATIVE MEMBER

  
 23/05/08  
 (MANORANJAN MOHANTY)  
 VICE CHAIRMAN

केन्द्रीय प्रशासनिक अधिदरण  
Central Administrative Tribunal

31 MAY 2007

गुवाहाटी न्यायपीठ  
Guwahati Bench

DISTRICT : DIBRUGARH

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GAUHATI BENCH :: GUWAHATI.

[An application u/s 19 of the Administrative Tribunals Act, 1985]

O.A. No. 136 /2007

Shri Bholanath Borah

Applicant

-Versus-

Union of India and Ors.

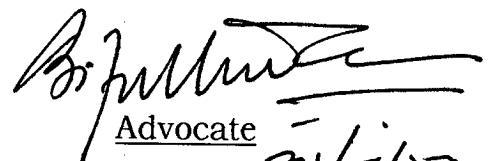
Respondents

- I N D E X -

<u>Sl. No.</u>	<u>Annexure</u>	<u>P a r t i c u l a r s</u>	<u>Page No.</u>
1		Application	1-10
2.		Verification	11
3.	A	Charge Memo dated 28-7-97	12-21(b)
4.	B	Order dated 5-7-97 appointing presenting officer	22
5.	C	Order dated 8-9-97 appointing inquiring officer.	23
6.	D	Inquiry report dated 9-2-99	24-35

<u>Sl. No.</u>	<u>Annexure</u>	<u>P a r t i c u l a r s</u>	<u>Page No.</u>
7.	E	Applicant's representation dated 5-4-99	36-37
8.	F	Order of punishment dated 9-6-99	38-41
9.	G	Applicant's appeal dated 6-8-99	42-43
10.	H	Judgment of Criminal Court dated 7-9-2000 acquitting the applicant.	44-48
11.	I	Appellate order dated 30-06-04 confirming the punishment imposed by the disciplinary authority.	49-52
12.	J	Judgment and decree of the Civil Court dated 10-07-2006 holding that it has no jurisdiction to entertain the suit filed by the applicant against the order of punishment.	53-63

Filed by :-

  
Advocate 31/5/07

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## SYNOPSIS

The applicant was an employee under the Respondents and at the relevant time, he was working as Extra Departmental Agent, (EDA).

Vide the charge memo dated 28-07-97, four charges were brought against the applicant. An inquiry was held pursuant to which inquiry report was submitted to the disciplinary authority, who agreeing with the findings of the Inquiry Officer imposed the punishment of removal from service upon the applicant. In the criminal case on the same set of charges, the applicant was given a clean and clear acquittal. In spite of that, the appellate authority vide his appellate order dated 30-06-2004 confirmed the order of the disciplinary authority.

On wrong legal advice, the applicant instituted a suit in the Civil Court at Dibrugarh against the order of removal from service. The learned Civil Court vide the judgment and decree dated 10-07-2006 dismissed the suit on the ground that it had no jurisdiction to entertain the same.

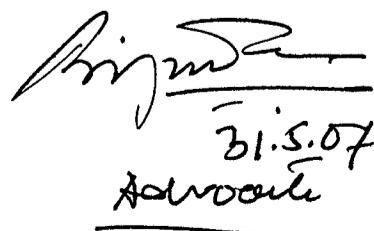
Hence, the instant application.

Filed by :-

  
Advocate 31/5/07

IV:- LIST OF DATES :-

1. 9-7-91 — The applicant entered service under the Respondents.
2. 28-7-97 — Charge memo issued against the applicant levelling four charges against him.
3. 4-9-97 — Applicant submitted written statement.
4. 8-9-97 — Inquiry Officer appointed
5. 9-2-99 — Inquiry report submitted.
6. 5-4-99 — Applicant submitted representation against inquiry report
7. 9-6-99 — Order passed by the disciplinary authority imposing the punishment of "removal from service" upon the applicant.
8. 6-8-99 — Applicant preferred appeal
9. 7-9-2000 — Applicant acquitted by the Criminal Court in respect of the same set of charges.
10. 2003 — Under wrong legal advice, applicant filed T.S. No.5/2003 before the Civil Court at Dibrugarh against the order of punishment.
11. 30-06-2004 — Order passed by the appellate authority confirming the punishment imposed by the disciplinary authority.
12. 10-07-2006 — Judgment passed by the Civil Court dismissing the suit of the applicant on the ground that it had no jurisdiction to try the same.

Filed by :-


31.5.07  
Advocate

Shri Bholanath Borah 15

DISTRICT : DIBRUGARH  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GAUHATI BENCH :: GUWAHATI

[An application under Section 19 of the Administrative Tribunals  
Act, 1985]

O.A. No. 136 of 2007

**I. Particulars of the applicant :-**

1. Shri Bholanath Borah,  
Son of Late Boloram Borah,  
Resident of Lezai Bordoibamgaon,  
P.O. - Lezai,  
P.S. - Barbaruah,  
District - Dibrugarh (Assam).

**II. Particulars of the Respondents :-**

1. Union of India,  
Through the Secretary to the Government of India,  
Ministry of Communications  
and Information Technology,  
Department of Posts,  
Dak Bhawan,  
Sansad Marg,  
**New Delhi - 110 001.**

Shri Bholanath Baruah

2. Chief Postmaster General,  
Assam Circle,  
Meghdoot Bhawan,  
**Panbazar, Guwahati - 781 001.**

3. Director,  
Postal Training Centre,  
Red Cross Building,  
Uzanbazar,  
**Guwahati - 781 001.**

4. Superintendent of Post Offices,  
Dibrugarh Division,  
Dibrugarh - 786 001,  
**District - Dibrugarh.**

**III. Particulars of the order against which the application is made :-**

The application is presented against the appellate order dated 30-06-2004 passed by the Respondent No.3 confirming the punishment order issued by the disciplinary authority.

**IV. Jurisdiction of the Tribunal :-**

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

**V. Limitation :-**

The present application is barred by limitation. As such, a separate application is being filed for condoning the delay in filing the present

**VI. Facts of the Case :-**

1. That the applicant is a citizen of India and a resident of Lezai Bordoibamgaon under P.S. - Barbaruah in the district of Dibrugarh (Assam). He is as such entitled to all the rights and privileges guaranteed to the citizens of India by the Constitution of India and the laws framed thereunder.
2. That the applicant joined service in the Department of Posts, Government of India under the Respondent No.4 on 9-7-1991. At the relevant time, he was serving as Extra Departmental Agent (EDA) in the Lezai ED Branch Office.
3. That the Respondent No.4 issued a memorandum dated 28-07-1997 proposing to hold an enquiry under Rule 8 of the EDA (Conduct and Service) Rules, 1964 in respect of four articles of charges annexed to the said memorandum as Annexure - I. The said memorandum was also accompanied by a statement of imputation or misbehaviour in support of the articles of charges framed against the applicant as well as a list of documents and a list of witnesses.

Copies of the memorandum dated 28-07-1997 along with the annexures appended thereto are enclosed enclosed herewith and collectively marked as **Annexure - A**.

4. That the applicant submitted his written statement of defence dated 4-9-97 denying the charges levelled against him and requesting the disciplinary authority to exonerate him from the said charges.

5. That the Respondent No.4 decided to hold an enquiry against the applicant and for the said purpose appointed one Shri Dipak Deb as the presenting officer vide the order dated 5-7-97. The Respondent No.4 also appointed Shri Manik Sengupta, Assistant Superintendent of Post Offices (H/Q) Dibrugarh as the Inquiring authority to inquire into the charges framed against the applicant.

Copies of the aforesaid orders dated 5-7-1997 and 8-9-1997 are enclosed herewith and marked as **Annexures - B and C** respectively.

6. That the Inquiry Officer submitted his inquiry report dated 9-2-1999. The Inquiry Officer held that all the four charges framed against the applicant stood proved.

A copy of the said inquiry report dated 9-2-1999 is enclosed herewith and marked as **Annexure - D**.

7. That a copy of the said inquiry report was forwarded to the applicant on 10-03-1999 for submission of his representation, if any, against the inquiry report. The applicant submitted his representation dated 5-4-1999 before the disciplinary authority. The applicant requested the Respondent No.4 to exonerate him from the charges.

A copy of the said representation dated 05-04-1999 is enclosed herewith and marked as **Annexure - E**.

8. That the Respondent No 4 thereafter passed an order dated

19  
Barbaruah  
Srimi Bhutanam

9-6-1999 wherein he accepted the findings of the Inquiry Officer and concluded that the charges framed against the applicant stood proved. Exercising the power conferred upon him under Rule 7(ii) of the EDA (Conduct and Service) Rules, 1964, the Respondent No.4 awarded the punishment of "removal from service" upon the applicant with effect from the date on which he was put off from duty.

A copy of the said order dated 9-6-1999 is enclosed herewith and marked as **Annexure - F.**

9. That aggrieved by the aforesaid imposition of penalty, the applicant preferred an appeal before the appellate authority, that is, the Respondent No.3 on 6-8-1999.

A copy of the said appeal petition dated 06-08-1999 is enclosed herewith and marked as **Annexure - G.**

10. That it may be mentioned that the disciplinary authority had earlier lodged an ejahar against the applicant before the Barbaruah police station in respect of the same set of charges. On the basis of the same, Barbaruah P.S. Case No. 109/96 under section 409 IPC was registered. The matter was taken to trial (G R Case No.1685 of 1996) and at the conclusion of the trial the learned Sub Divisional Judicial Magistrate (Sadar), Dibrugarh vide the judgment dated 7-9-2000 held the accused not guilty u/s 409 IPC and acquitted the accused. It may be pertinent to mention herein that the point for determination in the said criminal case was as to whether the accused had from 9-7-91 to 9-7-96 misappropriated Government

money amounting to Rs.17,122.85 which is the amount covered by the four charges framed against the applicant.

A copy of the said judgment dated 7-9-2000 is enclosed herewith and marked as **Annexures - H.**

11. That the State did not challenge the aforesaid judgment dated 7-9-2000 before the higher forum and as such the said judgment of acquittal of the applicant has attained finality.
12. That the applicant under wrong legal advice instituted a civil suit in the Court of the learned Civil Judge (Junior Division) No.1, Dibrugarh for a declaration amongst others that his removal from service was illegal and that he is entitled to be reinstated in his post. The said suit was registered as T.S. No.5/2003.
13. That in the meanwhile, the appellate authority after inordinate delay of about 5 years passed an order dated 30-06-2004 confirming the punishment order issued by the disciplinary authority.

A copy of the said appellate order dated 30-06-2004 is enclosed herewith and marked as **Annexure - I.**

14. That T.S.No.5/2003 was finally disposed of by the learned Civil Court vide the judgment and decree dated 10-07-2006. By the said judgment, the learned Civil Court held that it had no jurisdiction to try the suit in view of the provisions of the Administrative Tribunals Act,1985.

A copy of the said judgment and decree dated 10-07-2006 is enclosed herewith and marked as **Annexure - J.**

15. That in view of the aforesaid and being highly aggrieved by the penalty of removal from service imposed on the applicant as confirmed by the appellate authority, the applicant has preferred the present application before this Hon Hon'ble Tribunal

**VII. G R O U N D S :-**

- 1] For both that the appellate authority failed to consider the appeal of the applicant with an open mind and mechanically dismissed the said appeal after an inordinate delay by confirming the order of the disciplinary authority.
2. For that the disciplinary as well as the appellate authority failed to consider the defence of the applicant in the correct perspective and the same has vitiated the order of penalty which has since merged with the appellate order.
3. For that in the criminal proceeding, the applicant was given a clean and clear acquittal by the Criminal Court on the same set of charges. The criminal court came to a clear conclusion that there is not an iota of evidence as regards dishonest misappropriation of money by the applicant. On the contrary, the Criminal Court observed that there is evidence of the entrusted money being returned back.

22  
Dini bhaban nra bhasak

4. For that the said acquittal of the applicant by the Criminal Court is a relevant factor which ought to have been taken into consideration by the appellate authority. The failure to do so has vitiated the impugned order.
5. For that the applicant in his representation dated 5-4-1999 clearly stated as to why the inquiry report should not be accepted. He also stated and pointed out the procedural irregularity in the inquiry proceedings. But the disciplinary authority in his order dated 9-6-1999 simply stated that "the charged official could not practically point out any material object lacunae against the inquiry report in his representation dated 5-4-1999".
6. For that the inquiry proceeding was vitiated by gross procedural irregularity. All the departmental witnesses were not examined and their previously obtained statements were relied upon. The Inquiry Officer also did not consider any statement of defence from the defence side. The inquiry was conducted in an one sided manner and in gross violation of the principles of natural justice. The same has vitiated the findings of the Inquiry Officer and the consequential order of punishment as confirmed by the appellate authority.
7. For that both the disciplinary as well as the appellate authority failed to take into consideration the fact that the amounts allegedly misappropriated by the applicant were returned back . This fact was taken note of by the learned Criminal Court. The failure to consider this aspect of the matter has vitiated the impugned order.
8. For that the punishment imposed on the applicant is extremely

harsh and disproportionate to the gravity of the alleged offence. The said punishment as confirmed reflects arbitrariness, unreasonableness and irrationality on the part of the disciplinary as well as the appellate authority. The same is shocking to the judicial conscience and offends Article 14 of the Constitution of India.

9. For that the applicant craves leave to urge such further grounds in support of the present application at the time of hearing which may be considered relevant and necessary.
10. For that in any view of the matter, the impugned order is wholly untenable in law as well as on facts and the same is as such liable to be appropriately interfered with by this Hon'ble Tribunal.

**VIII. Details of the remedies exhausted :-**

The applicant declares that he has exhausted all the remedies available to him and there is no other alternative remedy available to him.

**IX. Matter not previously filed or pending with any other Court :-**

No application or suit of the applicant in respect of the present subject matter is pending before any other court/tribunal.

**X. Reliefs sought :-**

Under the circumstances, the applicant therefore prays for the following reliefs :-

(i) to set aside and quash the appellate order dated 30-06-2004 passed by the Director, Postal Training Centre, Guwahati (**Annexure - I**);

(ii) to set aside and quash the order dated 9-6-1999 passed by the Superintendent of Post Offices, Dibrugarh Division, Dibrugarh (**Annexures F**);

(iii) pass any such order/orders as may be deemed fit and proper.

XI. **Interim order prayer for :-**

There is no interim prayer of the applicant.

XII. **Particulars of the Postal Order :-**

Postal Order No.	:	346654174
Date	:	31 -05-2007
Issuing Office	:	Guwahati GPO
Payable at	:	Guwahati GPO

XIII. **List of enclosures :-**

An index showing the particulars of documents is enclosed.

Shri Bhabla non present

**Verification**

I, Shri Bholanath Borah, son of Late Boloram Borah, aged about 44 years, by profession - presently unemployed, resident of Lezai Bordoibamgaon, P.O. - Lezai in the district of Dibrugarh (Assam), do hereby say that I am the applicant in this case. I am acquainted with the facts and circumstances of the case. I have verified the statements made in the original application. The statements made in Paragraphs I to XIII are true to my knowledge and that I have not suppressed any material fact.

I sign this verification this the 31<sup>st</sup> day of May, 2007 at Guwahati.

*Shri Bholanath Borah*

Guwahati, the 31<sup>st</sup> day of May, 2007.

Department of Posts  
O/O the Superintendent of Post Offices  
Dibrugarh Division Dibrugarh-1

\*\*\*\*\*

Memo No F7-2/96-97.....

Dated at Dibrugarh the 28-7-97.

MEMORANDUM

The undersigned propose to hold an enquiry against  
Shri Bholanath Bora, EDA (under put off duty), Lekai EDPO  
under Rule 8 of EDA Conduct and Service Rules 1964.

The substance of the imputation of misconduct or misbehaviour  
in respect of which inquiry is proposed to be held is set out  
in the enclosed statement of articles of charges (Annexure-I). A  
statement of the imputation of misconduct or misbehaviour in  
support of each article of charges is enclosed (Annexure II). A  
list of documents by which and a list of witnesses by whom the  
articles of charges are proposed to be sustained are enclosed  
also (Annexure-III and IV).

2. Shri Bholanath Bora..... is directed  
to submit within 10 (ten) days of the receipt of this memorandum  
his written statement of defence and also to state whether he  
desires to be heard in person.

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

4. Shri Bholanath Bora..... is further informed  
that if he does not submit his written statement of defence on  
or before the date specified in para 2 above or does not appear  
in person before the inquiring authority or otherwise fails or  
refuses to comply with the provision of Rule 8 of EDA Conduct  
and Service Rules 1964..... or the orders/directions issued  
in pursuance of the said rule, the inquiring authority may hold  
the enquiry against him ex parte.

5. Attention of Shri Bholanath Bora..... is  
invited to Rule 8 of EDA Conduct and Service 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 matter  
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 Bholanath Bora..... is aware of such  
representation had that it has been made at his instance and action  
will be taken against him for violation of Rule 17 of  
EDA Conduct and Service Rules 1964.

6. The receipt of this memorandum may be acknowledged.

REGD / AD  
Shri Bholanath Bora  
EDA (under put off duty)  
Lekai EDPO via Darbaria

(A. A. Bora)  
Supdt. of Post Offices  
Dibrugarh Divt; Dibrugarh-1.

*Certified to be true copy*

*Myra*

ANNEXURE I

Statement of articles of charges framed against Sri Bhola Nath Bora, EDA (under put off duty), Lezai DO in account with Barbarua BO.

ARTICLE I

That the said Sri Bhola Nath Bora while functioning as EDA Lezai DO during on 19-4-96 issued the following MOs from his Office.

MO No	Date of issue	Value	Commission
56	19-4-96	Rs.500/-	Rs.25/-
57	19-4-96	Rs.500/-	Rs.25/-

But neither he sent the money order forms (MO-8) to the Account Office through the BO bag of the date of subsequently as required under the Rule 101(3) of Branch Office Rules nor included the amount of value and commission of the above money orders in the Branch Office account of the date as required under the provision of Rule 133(2) of Branch Office Rules.

Thus it is alleged that by his above stated act, the said Sri Bora has failed to maintain absolute integrity and devotion to duty in violation of Rule 17 of EDA Conduct and Service Rules, 1964.

ARTICLE II

The said Sri Bora while working as EDA Lezai DO on 9-7-96 failed to produce the cash and stamps amounting to Rs.2250-05 being the cash and stamp balance of his office according to the BO accounts of 9-7-96, on 9-7-96 when called for by the Asstt. Commissioner of POS(O/D) Dibrugarh Divn. Dibrugarh for inspection violating the provision of note below the Rule 11(2) of Rules for Branch Office and the above amount was charged under account head UCP on 9-7-96 in the BO account of Lezai DO.

Certified to be true copy  
 Jyoti

Thus it is alleged that by his above stated action, the said Sri Bora has failed to maintain absolute integrity and devotion to duty of Rule 17 of EDA Conduct and Service Rules 1964.

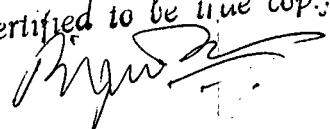
#### ARTICLE - III

The said Sri Bora while working as EDA, Lezai received Delhi-94 VPP No: 394 dtd, 19-6-96 valued for Rs.400/- addressed to Sri Sajen Das, TO Lezai through IO slip dt. 27-6-96. But the particulars of the above VPP was not entered in the IO Journal of Lezai DO, on receipt as required under Rule 128 of Rules for Branch Office. The above article was thereafter delivered on 2-7-96 realising a sum of Rs.420/- being the value and VPKO commission of the VPP. But the particulars of the delivery of the above VP article was not entered recorded in the IO journal as required under Rule 132 of the Rules for Branch Office. He also did not send the VP article receipt duly signed by the addressee in respect of above VPP to the account Office furnishing required particulars as required under rule 103(II) of Rules for Branch Office. Further the amount realised from the addressee of the VP article in question was not included in the IO account of the date or subsequently in any way as required under Rule 133(2) of Branch Office Rules.

Thus it is alleged that by his above stated act, the said Shri Bora has failed to maintain absolute integrity & devotion to duty in violation of Rule 17 of EDA Conduct & Service Rules, 1964.

#### ARTICLE - IV

That the said Shri Nihal Nath Bora while functioning as EDA, Lezai DO accepted the deposits from the depositors of the following SB/HI and NSY accounts, but the amount he received as deposits was not included in the IO accounts as required under Rule 133 of rules for Branch Office. The transaction were not also entered in the IO journal as required under Rule 132(f) of the above stated Rules.

Certified to be true copy  


## Department of Posts

<u>A/c No.:</u>	<u>Date of transaction (Deposito)</u>	<u>Amount</u>
1. 218860	26.04.96	Rs. 200/-
2. 219629	25.08.95 15.11.95 21.11.95	Rs. 50/- Rs. 120/- Rs. 50/-
3. 220093	03.09.93	Rs. 50/-
4. 220095	17.02.96 20.05.96	Rs. 100/- Rs. 200/-
5. 220546	27.12.95	Rs. 50/-
6. 220684	13.05.96 15.06.96	Rs. 500/- Rs. 200/-
7. 15299	08.04.96	Rs. 120/-
8. 15720	10.11.95 20.01.96 24.02.96 21.03.96 22.05.96 06.07.96	Rs. 120/- 50/- Rs. 50/- Rs. 50/- Rs. 50/- Rs. 50/- Rs. 400/- 50/- <del>Rs. 50/-</del>
9. 15752	09.04.96 05.06.96	Rs. 30/- Rs. 30/-
10. 15924	19.06.95 07.09.95 16.10.95 25.11.95 18.12.95 09.01.96 16.03.96 27.03.96 22.04.96 15.05.96 05.06.96	Rs. 600/- Rs. 600/- Rs. 200/- Rs. 200/- Rs. 200/- Rs. 200/- Rs. 200/- Rs. 200/- Rs. 200/- Rs. 200/- Rs. 200/-
11. 15976	28.08.95 28.09.95 26.10.95 29.11.95 30.12.95 30.01.96 30.03.96 30.04.96 27.05.96 28.06.96	Rs. 300/- Rs. 300/-
12. 15983	29.11.95 02.01.96 23.02.96 05.06.96	Rs. 50/- Rs. 50/- Rs. 50/- Rs. 150/-
13. 16057	06.05.95	Rs. 100/-
14. 16187	06.01.96 05.02.96 07.03.96 11.04.96 09.05.96 06.06.96	Rs. 300/- Rs. 300/- Rs. 300/- Rs. 300/- Rs. 300/- Rs. 300/-

Certified to be true to



- 16 -

15.	16195	06.05.96	Rs. 200/-
16.	16196	06.05.96	Rs. 200/-
17.	16202	30.01.96 12.02.96	Rs. 100/- Rs. 100/-
18.	16203	30.01.96 12.02.96	Rs. 100/- Rs. 100/-
19.	7699	04.12.95 05.12.95 02.01.96 17.01.96 20.03.96 23.03.96 29.03.96	Rs. 20/- Rs. 20/- Rs. 12/- Rs. 28/- Rs. 32/- Rs. 44/- Rs. 20/-
20.	7931	25.11.95	Rs. 100/-
21.	7945	30.12.95	Rs. 244/-
22.	8150	04.12.95 02.01.96 11.06.96	Rs. 12/- Rs. 44/- Rs. 18/-
23.	8289	18.10.95	Rs. 100/-
24.	8292	18.11.95	Rs. 100/-
25.	8296	17.10.95	Rs. 40/-
26.	8297	18.10.95	Rs. 104/-
27.	8460	06.02.95	Rs. 76/-
28.	8563	20.02.96 09.03.96	Rs. 100/- Rs. 100/- Rs. 56/-
29.	8606	10.10.95	Rs. 100/-
30.	8962	04.12.95 11.12.95 09.01.95	Rs. 32/- Rs. 20/- Rs. 20/-
31.	9604	18.01.96	Rs. 100/-
32.	9825	12.06.96	Rs. 100/-
33.	8554	18.11.95	Rs. 28/-
34.	8227	25.10.95 26.03.95	Rs. 40/- Rs. 108/-

Further more a sum of Rs. 500/- has been shown as withdrawal in the 10 a/c book and SB Journal against the SB account no: 219626 on 01-03-95. But the said withdrawal has not been entered in the pass book.

Thus it is alleged that, the said Sri. Bhola Nath Bora, by his above stated act, has failed to maintain absolute integrity and devotion to duty in violation of Rule-17 of EDA Conduct and Service Rules, 1964.

Certified to be true copy

*Amrit*

- 17 -

ANNEXURE - II

Statement of imputation or misbehaviour in support of the  
antecedent of charge framed against Shri Bholanath Bora, EDA  
(under put off duty), Lezai WO in account with Barbarua SO.

ARTICLE - I

The said Shri Bholanath Bora while functioning as EDA Lezai WO on 19-4-96 issued Lezai WO MO no: 56 for Rs.500/- payable to Mrs. Tetary Devi, vill: Chalapur PO Hasenpur Nutiah via Barailly Dist. Copalganj and remitted by Dular Chandra Mahate, Lezai Gaon PO Lezai. On the said date he also issued Lezai WO MO No: 57 for Rs.500/- payable to Mrs. Kalasiah Devi Salepur PO, Hasenpur Nutiah via Barailly, Dist. Copalganj, Bihar and remitted by Chanderika Mahato Lezaigaon PO Lezai via Barbarua Dist. Dibrugarh. He realised Rs.525/- from each remitter being the value and commission of each MO. But the said Shri Bora neither set the money order forms (MO-8) in respect of above WO MOs to the account office through the WO Regs of the date as required under the rule 104(3) of Branch Office Rule nor included the amount of value and commission of the above money orders in the Branch Office accounts of the date as required under the provision of rule 155(2) of Branch Office Rules.

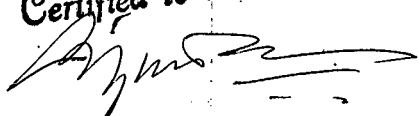
Thus it is alleged that by his above stated act, the said Shri Bora has failed to maintain absolute integrity and devotion to duty in violation of Rules 17 of EDA conduct and Service Rules, 1964.

ARTICLE - II

The said Shri Bora while was working at EDA Lezai WO, on 09-7-96, the Asstt. Supdt. of POs, Dibrugarh Divn, Dibrugarh visited his office. The closing balance of Lezai WO account dated 8-7-96 as per Lezai WO a/c book was Rs.2250.85 comprising of cash and postage stamps and stationery. But the said Shri Bora failed to stamp and produce neither the cash nor postage stamps and stationery for inspection when called for by the Asstt. Supdt. of POs, Dibrugarh Divn, in violation of the provision of note below the rule 11(2) of Rules for Branch Office. The said amount was charged under account head Unclassified payment in the WO account of Lezai WO dated 09-7-96.

Thus it is alleged that, the said Shri Bora by his above stated action has failed to maintain absolute integrity and devotion to duty in violation of Rule-17 of EDA conduct and Service Rules, 1964.

Certified to be true copy



ARTICLE III

*Sent to D.P.O. Bhubaneswar  
on 27-7-96*

The said Shri Bora while functioning as EDA Lezai, received the Delhi 94 VPP No: 394 dated 19-6-96 valued for Rs.400/- a/c to Sri Sailendra Das PO:Lezai through Barbarua BO, B/0 slip dtd 27-6-96. But the particulars of the above stated VPP was not entered in the BO Journal of Lezai BO on receipt by the said Shri Bora as required under Rule 128 of Rules for Branch Office. The said VPP was then delivered to the addressee on 02-7-96 realising a sum of Rs.420/- being the value and VPO commission. But the particulars of the delivery of the above VPP article was not recorded in the BO Journal of Lezai BO as required under Rule 132 of the Rules for Branch Office. He also did not send the VPP receipt duly signed by the addressee of the above stated VPP to the account office furnishing the required particulars as required under Rule 103(II) of Rules for Branch office. Further the amount realised from the addressee of the VPP in question was not included in the BO account of Lezai BO of the date or subsequently in any way as required under Rule 133(2) of Branch Office rule.

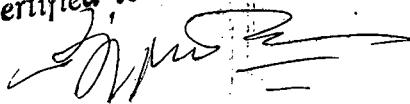
Thus it is alleged that by his above stated action, the said Shri Bora has failed to maintain absolute integrity and devotion to duty in violation of EDA Conduct and Service Rules, 1964.

ARTICLES IV

The said Sri Bhola Nath Bora while functioning as EDA Lezai BO accepted deposits from the depositors of the following SB/RD and NSY accounts stands open at Lezai BO. He returned the concerned passbooks of each depositor duly entering the transaction and impressing with BO date stamp there on as required.

But the amount of deposits as accepted by the said Shri Bora was not included in the BO account on the date of transaction against each accounts as required under Rule 103 of Rules for Branch Office. The transactions were not also entered in the BO Journal as required under Rule 132(f) of the above stated rules.

*Certified to be true copy*



Department of Posts  
Administrator of Post Offices

A/c No:

Date of transaction  
(Deposits)

Amount

			Amount
1.	218860	26.04.96	
2.	219629	25.08.95	Rs. 200/-
		15.11.95	Rs. 50/-
		21.11.95	Rs. 120/-
3.	220093	03.09.95	Rs. 50/-
4.	220095	17.02.96	Rs. 50/-
		20.05.96	Rs. 400/-
5.	220546	27.12.95	Rs. 200/-
6.	220684	13.05.96	Rs. 50/-
		15.06.96	Rs. 500/-
7.	15299	03.04.96	Rs. 200/-
8.	15728	18.11.95	Rs. 120/-
		20.01.96	Rs. 120/-
		24.02.96	50/-
		21.03.96	Rs. 50/-
		22.05.96	Rs. 50/-
		06.07.96	Rs. 100/-
9.	15752	09.04.96	50/-
		05.06.96	Rs. 50/-
10.	15924	19.06.95	Rs. 30/-
		07.09.95	Rs. 30/-
		16.10.95	Rs. 600/-
		25.11.95	Rs. 600/-
		18.12.95	Rs. 200/-
		09.01.96	Rs. 200/-
		16.03.96	Rs. 200/-
		27.03.96	Rs. 200/-
		22.04.96	Rs. 200/-
		15.05.96	Rs. 200/-
		05.06.96	Rs. 200/-
11.	15976	28.08.95	Rs. 200/-
		23.09.95	Rs. 300/-
		26.10.95	Rs. 300/-
		29.11.95	Rs. 300/-
		30.12.95	Rs. 300/-
		30.01.96	Rs. 300/-
		30.03.96	Rs. 300/-
		30.04.96	Rs. 300/-
		27.05.96	Rs. 300/-
		28.06.96	Rs. 300/-
12.	15983	29.11.95	Rs. 300/-
		02.01.96	Rs. 50/-
		23.02.96	Rs. 50/-
		05.06.96	Rs. 50/-
			Rs. 150/-
13.	16057	06-05.95	
14.	16187	06.01.96	Rs. 100/-
		05.02.96	Rs. 300/-
		07.03.96	Rs. 300/-
		11.04.96	Rs. 300/-
		09.05.96	Rs. 300/-
		10.06.96	Rs. 300/-

Certified to be true copy

20-

Department of Posts  
O/O the Superintendent of Post Offices

15.	16195	06.05.96	Rs. 200/-
16.	16196	06.05.96	Rs. 200/-
17.	16202	30.01.96	Rs. 200/-
		12.02.96	Rs. 100/-
18.	16203	30.01.96	Rs. 100/-
		12.02.96	Rs. 100/-
19.	7699	01.02.95	Rs. 30/-
		05.12.95	Rs. 30/-
		02.01.96	Rs. 12/-
		17.01.96	Rs. 20/-
		20.03.96	Rs. 32/-
		23.03.96	Rs. 44/-
		29.03.96	Rs. 20/-
20.	7931	25.11.95	Rs. 100/-
21.	7945	30.12.95	Rs. 244/-
22.	8150	04.12.96 95	Rs. 12/-
		02.01.96	Rs. 44/-
		11.06.96	Rs. 8/-
23.	8289	18.10.95	Rs. 100/-
24.	8292	18.11.95	Rs. 40/-
25.	8296	17.10.95	Rs. 104/-
26.	8297	18.10.95	Rs. 76/-
27.	8460	06.02.95	Rs. 100/-
28.	8563	20.02.96	Rs. 56/-
		09.03.96	Rs. 100/-
29.	8606	10.10.95	Rs. 100/-
30.	8962	04.12.95	Rs. 32/-
		11.12.95	Rs. 20/-
		09.01.95	Rs. 20/-
31.	9604	18.01.96	Rs. 100/-
32.	9825	12.06.96	Rs. 100/-
33.	8554	18.11.95	Rs. 28/-
34.	8227	25.10.95	Rs. 40/-
		26.08.95	Rs. 108/-

Certified to be true copy  
*M. M.*

Furthermore a sum of Rs.500/- has been shown as withdrawal as withdrawal on 01-3-95 against the SB a/c no. 219626 in the DO a/c book and BO:SB Journal. But the said transaction has not been entered in the passbook.

Thus it is alleged that, the said Sri Bora ~~must~~ by his above stated action has failed to maintain absolute integrity and devotion to duty in violation of Rule-17 of EDA Conduct and Service Rules, 1964.

*Myers*  
Certified to be true copy

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21(A)

Annexure-III

List of documents by which the articles of charge ~~xxx~~ framed against Shri Bhola Nath Bora EDA Lezai BO (under put off duty) are proposed to be sustained.

1. MO Form (MO.8) pertaining to Lezai BO MO No. 056 dt. 10.4.96 for Rs. 500/-
2. MO Form (MO 8) pertaining to Lezai BO MO No : 057 dt. 10.4.96
3. BO Receipt Book (MS 87a) of Lezai BO for the period from 27.12.94 to 19.4.96.
4. BO daily a/c of Lezai BO dated 19.4.96
5. BO account book (Pa 6 part I) of Lezai BO for the payment period from 01.01.96 to 18.7.96.
6. BO Slip dated 27.6.96 Lezai BO issued by the SPM Barbarua SO.
7. Written statement of dtd. 03.11.96 of Sri Saini Das, PO Lezai recorded by the ASPOS (O/d) Dibrugarh-
8. BO Journal of Lezai BO during the period from 04.12.95 to 29.8.96.
9. BO Account book (Pa-6 Pt.1) of Lezai BO for the period from ~~02.1.95~~ 02.1.95 to 31.12.95.
10. DO SB Journal of Lezai BO for the period from 10.9.90 to 27.6.96
11. Lezai BO (MSY) hournal for the period from 01.3.94 to 02.7.96 (in two books).
12. Lezai BO (RD) journal for the period from 16.8.90 to 13.6.96.
13. All the passbooks as mentioned in the Article IV of Annexure-I.

Contd...2.

*Certified to be true CO'*

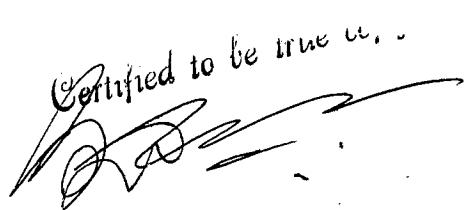
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31(b)

Annexure-IV

List of witnesses by whom the articles of charge framed against Shri Bholanath Bora, EDA Lezai BO (under put off duty).

1. Shri N.N. Mitra the then Asstt. Supdt. of Post Offices of POs, Dibrugarh ~~new~~ Division now Superintendent of post Darjeeling Division, Darjeeling Division.
2. Shri Sailen Das, PO Lezai Dist : Dibrugarh.

*(Certified to be true w.r.t.)*  


- 2 -

Annexure - B

OFFICE OF SUPDT. DEPARTMENT OF POST. INDIA  
OF POST OFFICES. DIBRUGARH DIVISION.  
DIBRUGARH-786001.

Memo NOR-7/96-97.

Dated. Dibrugarh the 5.07.97

ORDER

Whereas an inquiry under Rule 8 of P&T E.D.A. Conduct and Service Rules, 1964 is being held against Shri Bhola Nath Borah, EDA (Put off duty) Lezai B.O.

And whereas the undersigned considers that a Presenting Officer should be appointed to Present on behalf of the undersigned the case in support of the articles of charge.

Now therefore the undersigned in exercise of the powers conferred by the Rule, here by appoints Shri Deepak Deb, IPOs (C&PG), Dibrugarh as the Presenting Officer.

( A.B. SEAL. )

superintendent of Post Offices  
Dibrugarh Dvn. Dibrugarh. 786001.

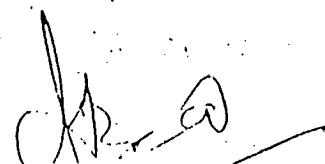
Copy to:-

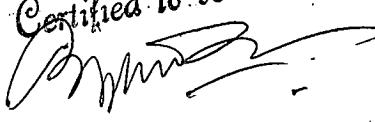
Under Receipt

1. Shri Deepak Deb IPOs (C&PG) Dibrugarh for information and necessary action. A copy of the charge sheet and a xerox copy of the defence statement are enclosed. He will please collect the listed documents from this office before the date of production.
2. Shri Bholanath Borah, EDA (Put off duty) Lezai B.O via. Barbarua 786007 for information.

Under Receipt

3. Shri Manik Sengupta, Asstt. Supdt. of POs (H/Q) Dibrugarh and Inquiring Authority for information.
- 4-5. Spare.

  
Supdt. of Post Offices  
Dibrugarh Dvn. Dibrugarh

*Certified to be true copy*  


DEPARTMENT OF POST. INDIA.  
OFFICE OF THE SUPDT. OF POST OFFICES. DIBRUGARH DIVISION.  
DIBRUGARH-786001.

File No. NO.C-7/96-97.

Memo No. F7-2/96-97.  
Datedt. Dibrugarh the 8.09.97

ORDER For Inquiry of P.T. E.D.A. Conduct  
and Service Rules 1964 being held against Shri Bhola  
Nath Borah (put off duty) Lezai B.O.

And whereas the Undersigned considers that an Inquiring  
Authority should be appointed to inquire into the charges  
framed against the Shri Borah.

Now therefore, the undersigned in exercise of the powers  
conferred by the said Rule, hereby appoints Shri Manik Sengupta  
Asstt. Supdtl. of Post Offices, (H.Q), Dibrugarh as the Inquiring  
Authority to inquire into the charges framed against the said  
Shri Borah.

Not / - 100% Office  
(44B. SEAL)

Superintendent of Post offices  
Dibrugarh Division, Dibrugarh-1.

Copy to :-

Under  
Receipt:

1. Shri Manik Sengupta, Asstt. Supdtl. of Post  
Offices (H.Q) Dibrugarh and Inquiring  
Authority for information and necessary  
action. A copy of the chargesheet and  
a xerox copy of the defence Statement are  
enclosed.

2. He is requested to complete the enquiry  
within sixty days.

2. Shri Deepak Deb, IPOS (A&PG) Dibrugarh  
and presenting Officer for information  
and necessary action.

3. Shri Bhola Nath Borah, EDA (Put off duty)  
Lezai B.O. via Barbarua SO. 786007.

4-5. Spare.

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*[Signature]*

Superintendent of Post Offices  
Dibrugarh DN. Dibrugarh-1.

## Inquiry Report.

500.00	Rs. 25.00
500.00	Rs. 25.00

In the case against Shri Bhola Nath Borah, EDA (put off from duty) Lezai BO in account with Borparui SO under one of the Dibrugarh H.O. orders under which he induced the amount of value

1.1 Under SPOs Dibrugarh Division, Dibrugarh memo nos F7-2/96-97 dt 8-9-97 I was appointed as Inquiring Authority to enquire into the charges framed against Shri Bhola Nath Borah. I have since completed my inquiry and on the basis of the documentary and oral evidences adduced before me, I prepared my Inquiry report as under:- to maintain absolute

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

The date for preliminary hearing was fixed on 20-10-97. P.O. in the case 'Sri D. Debvide' his letter no: A-1/CI/DR/97 dt 16-10-97 requested to defer the date of hearing on the ground of pre-occupation of other official duty. Therefore, the preliminary hearing was held on 3-11-97. Date for hearing into case from beginning to the date of conclusion fixed on 14-11-97 24-11-97, 1-12-97, 28-12-97, 8-1-98, 25-3-98, 17-4-98, 20-4-98, 15-5-98, 2-6-98, 22-6-98, 11-8-98 & 19-8-98.

But hearing held on 24-11-97, 23-12-97, 25-3-98, 22-6-98, 11-8-98 & 19-8-98.

Hearing on the remaining dates did not held due to different reasons based on written request from the P.O & C.O.

17-4-98 & 20-4-98 were fixed for examination of state witnesses, witness no 1 as per annexure IV A as PO attended but C.O. did not attend. The SPO Sri B.N. Borah intimated in writing on 21-4-98 that he did not receive any intimation as such. Considering the fact important complaint lodged to SPOs on 21-4-98 and 2-6-98 with request to ascertain and intimate safe delivery of the RLS mentioned in the complaints add to Sri B.N. Borah and Sri Sailen Das. But till conclusion of the hearing, no information what so ever received. That too have impact on delivery in finalisation of the case. In this case there were 2(two) state witnesses. The prosecution side failed to ensure attendance of the state witness for examination though sufficient times were extended for the same.

2.1 C.O. participated in the inquiry from the beginning to the end. He was assisted by Shri M. Choudhury, Retd. DPM Dibrugarh HO as defence assistance throughout the inquiry proceedings.

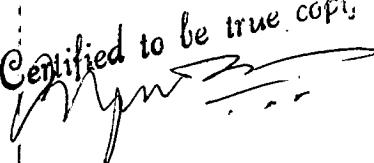
3.0 Article of charge and substance of imputation of misconduct or misbehaviour.

3.1 The following are the article of charge have been framed against Shri Bhola Nath Borah.

Article - I

That the said Shri Bhola Nath Borah while functioning as EDA-Lezai BO on 19-4-96 issued the following MOs from his office.

...2

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M.O No	Date of issue	Value	Commission-
56	19-4-96	Rs 500.00	Rs 25.00
57	19-4-96	Rs 500.00	Rs 25.00

But neither he sent the money orders forms (MO-8) to the Account office through the BO bag of the date nor subsequently as required under the Rule 104(3) of Branch office Rules nor included the amount of value and commission of the above ~~RECORDED~~ money orders in the branch office account of the date as required under the provision of Rule 133(a) of Branch office Rules.

Thus it is alleged that by his above stated act, the said Shri Bora has failed to maintain absolute integrity and devotion to duty in violation of Rule 17 of EDA conduct and service rules 1964.

#### Article II

The said Shri Bora while functioning as EDA Lezai BO on 9-7-96 failed to produce the cash and stamps amounting to Rs 2250.85 being the cash and stamp balances of his office according to the BO accounts of 8-7-96 on 9-7-96 when called for by the Asstt. Supdt. of POs(OD) Dibrugarh Divn, Dibrugarh for inspection violating the provisions of note below the Rule 11(2) of Rules for Branch office and the above amount was charged under account head UCP on 9-7-96 in the BO account of Lezai BO.

Thus it is alleged that by his above stated action the said Shri Bora failed to maintain absolute integrity and devotion to duty in violation of Rule 17 of EDA conduct and service Rules 1964.

#### Article III

The said Shri Bora while working as EDA, Lezai, received Delhi -94 VPP no:394 dt 19-6-96 valued for Rs 400/- addressed to Shri Saini Das, PO Lezai through BO slip dtd 27-6-96. But the particulars of the VPP was not entered in the BO journal of Lezai BO on receipt as required under Rules 128 of Rules for Branch office. The above article was thereafter delivered on 2-7-96 realising a sum of Rs 420/- being the value and VPMO commission of the VPP. But the particulars of the delivery of the above VP article was not recorded in the BO journal as required under Rule 132 of the Rules for branch office. He also did not sent the VP article receipt duly signed by the addressee in respect of above VPP to the account office furnishing required particulars as required under Rule 103(11) of Rules for Branch office. Further the amount realised from the addressee of the VP article in question was not included in the BO account of the date or subsequently in any way as required under Rule 133(2) of Branch office Rules.

Thus it is alleged that by his above stated act, the said Shri Bora has failed to maintain absolute integrity & devotion to duty in violation of Rule 17 of EDA conduct & service Rules 1964.

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That the said Shri Bhola Nath Bora while functioning as EDA Branch JO accepted the deposits from the depositors of the following SB/RD and JSY accounts but the amount he received as deposits was not included in the BO accounts as required under Rule 133 of Rules for Branch Office. The transactions were also not entered in the BO Journal as required under Rule 132(f) of the above stated Rules.

## Particulars of Accounts (34 nos)

A/c no	Date of transaction (Deposits)	Amount
1. 218860	26-4-96	Rs 200/-
2. 219629	25-8-95	Rs 50/-
	15-11-95	Rs 120/-
	21-11-95	Rs 50/-
3. 220093	03-9-95	Rs 50/-
4. 220095	17-2-96	Rs 400/-
	20-5-96	Rs 200/-
5. 220546	27-12-95	Rs 50/-
6. 220684	15-5-96	Rs 500/-
	15-6-96	Rs 200/-
7. 15299	08-4-96	Rs 120/-
8. 15720	18-11-95	Rs 120/-
	20-01-96	Rs 50/-
	24-02-96	Rs 50/-
	21-03-96	Rs 50/-
	22-05-96	Rs 50/-
	06-07-96	Rs 100/-
9. 15752	09-04-96	Rs 50/-
	05-06-96	Rs 30/-
10. 15924	19-06-95	Rs 600/-
	07-09-95	Rs 600/-
	16-10-95	Rs 200/-
	25-11-95	Rs 200/-
	16-12-95	Rs 200/-
	09-01-96	Rs 200/-
	16-03-96	Rs 200/-
	27-03-96	Rs 200/-
	22-04-96	Rs 200/-
	15-05-96	Rs 200/-
	15-06-96	Rs 200/-
11. 15976	28-08-95	Rs 300/-
	28-09-95	Rs 300/-
	26-10-95	Rs 300/-
	29-11-95	Rs 300/-
	30-12-95	Rs 300/-
	30-01-96	Rs 300/-
	30-03-96	Rs 300/-
	30-04-96	Rs 300/-
	27-05-96	Rs 300/-
	28-06-96	Rs 300/-
12. 15933	29-11-95	Rs 50/-
	02-01-96	Rs 50/-
	23-02-96	Rs 50/-
	05-06-96	Rs 150/-
13. 16057	06-05-95	Rs 100/-
14. 16107	06-01-96	Rs 300/-
	05-02-96	Rs 300/-
	07-03-96	Rs 300/-
	11-04-96	Rs 300/-
	09-05-96	Rs 300/-
	09-06-96	Rs 300/-
15. 16195	06-05-96	Rs 200/-
16. 16196	06-05-96	Rs 200/-
17. 16202	30-01-96	Rs 100/-
18. 16203	12-02-96	Rs 100/-
	30-01-96	Rs 100/-
	12-02-96	Rs 100/-
19. 7699	04-02-95	Rs 20/-

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*[Signature]*

05-12-95	Rs 20/-
02-01-96	Rs 12/-
17-01-96	Rs 28/-
20-03-96	Rs 32/-
23-03-96	Rs 44/-
29-03-96	Rs 20/-
25-11-95	Rs 100/-
30-12-95	Rs 244/-
04-12-96	Rs 12/-
02-01-96	Rs 44/-
11-06-96	Rs 8/-
18-10-95	Rs 100/-
18-11-95	Rs 40/-
27-10-95	Rs 104/-
18-10-95	Rs 76/-
06-02-95	Rs 100/-
20-02-96	Rs 100/-
09-03-96	Rs 56/-
10-01-95	Rs 100/-
04-12-95	Rs 32/-
11-12-95	Rs 20/-
09-01-95	Rs 20/-
18-01-96	Rs 100/-
12-06-96	Rs 100/-
18-11-95	Rs 20/-
25-10-95	Rs 40/-
26-08-95	Rs 103/-

Furthermore as sum of Rs 500/- has been shown as withdrawal in the PO a/c book as PO SB journal against the SB account no 219626 on 01-03-95. But the said withdrawal has not been entered in the pass book.

Thus it is alleged that the said Sri Bhola Nath Bora, by his above stated act has failed to maintain absolute integrity and devotion to duty in violation of Rule 17 of EDA conduct and service rules 1964.

3.2 According to the statement of imputation of misconduct or misbehaviour Sri Bhola Nath Bora, EDA Lezai PO received from Sri Dularahand Bahato of Lezai Gaon PO:Lezai on 13-12-96 a sum of Rs 500/- plus commission of Rs 25/- for remittance by PO to Mrs Teleri Devi, Vill- Chalepur PO:Hasenpur Muthiah via-Barally Dist: Gopalganj and on the same day Sri Bora

#### Article-1

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*[Signature]*

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... received Rs 500/- and commission of Rs 25/- from Shri Chandrika Mahato of Lowligon, PO Lezai via Barbarua, Dist: Dibrugarh for remittance by money order to Mrs Kalasiah Devi Salepur PO: Hasenpur Muttiah via Barailly Dist: Gopalganj Bihar. He (Shri Bora) issued the MOs under Lezai PO MO receipt no 56 and 57 dtd 19-4-96 but neither he (Sri Bora) sent the MO forms to the account office nor included the amount of the value and commission of the above said MOs to the Branch office Account of the date as required under Rule 104(3) and 133(2) of DO Rules.

#### Article II

While Sri Bholanath Bora functioning as EDA Lezai on 9-7-96 the asstt. SFO, Dibrugarh Division, Dibrugarh visited his (Sri Bora's) Office. The closing balance of Lezai IO account of dt 8-7-96 and per DO account book was Rs 2250.85 comprising cash and stamp and stationery but failed to produce the cash, stamps and stationery for inspection by the visiting ASFOs thereby the short found amount was charged under the head of accounts unclassified payment in the IO a/c dt 9-7-96.

#### Article-III

While working as such Sri Bora delivered the Delhi 94 VPP no: 394 dt 19/6/96 on 2-7-96 which was received by him on 27-6-96 duly entered through Barbarua IO slip dt 27-6-96 to the addressee of the VP article. Sri Saini Das duly realising the value and VPMO commission of Rs 4201/=. But neither he (Sri Bora) entered the VPP

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...in the BO Journal of Lezai BO in violation of Rule 128 of Rules for BO nor recorded the particulars of the delivery of the VPP in the office BO Journal nor even sent the signed receipt of the addressee of the above VPP as required under Rules 132 and 103(11) and 133(2) Rules for Branch Offices.

#### Article IV

While functioning as EDA Lezai B, the said Sri Bholanath Bora accepted deposits from depositors 34 SB/RD and MSY accounts mentioned above standing at Lezai BO. He returned the Pass Books to respective depositors duly entering the transactions and impressing with BO date stamp there on but the amount accepted by the said Shri Bora did not include in the BO accounts on the date of transaction against each account or in the BO SB Journal as required in Rules 133 & 132(2) of Rules for Branch office.

Further a sum of Rs 500/- shown as withdrawal on 1-3-95 against Lezai BO SB account no: 219626 in the BO SB Journal and BO account book but the said transaction has not been entered in the pass book thereby failed to maintain absolute integrity and devotion to duty in violation of rule 17 of EDA conduct and service rule 1964.

4.0 Case of the disciplinary authority.

#### Article I

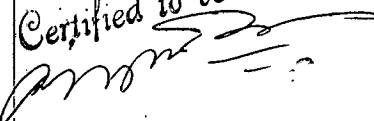
Shri Bholanath Bora while functioning as BPM Lezai BO accepted Rs 1000/- + 10% commission for Rs 50/- from Sri Dulal Chandra Mahato and Shri Charika Mahato of Lezaigaon PO: Lezai after remitting Rs 500/- each by money order remit from his office in the name of Mrs. Tetary Devi village: Chalepur PO: Hasenpur Mutiah and Mrs. Kalashia Devi salepur PO: Hasenpur Muthia via: Barielly Dist: Gopalganj Bihar respectively but neither the moneyorder forms were sent to account office through BO bag of the date nor included the value and commission of the MOs in the BO account book of the office. The booking of the MOs shown to be genuine from the MO form (MO-3) pertaining to Lezai MO No 056 dt 10-4-96 for Rs 500/-(S-1), MO form (MO-3) pertaining to Lezai MO No 57 dt 10-4-96 for Rs 500/-(S-2), BO receipt book (MS-87(a) of Lezai BO for PO form 27-12-94 to 19-4-96 (S-3) and non credit of value as comm by BO daily account of Lezai BO dt 19-4-96 (S-13) and BO Account book (Pa-6 Pt.I) of Lezai (S-4).

#### Article II

Shri Bholanath Bora while functioning as BPM Lezai BO ASPOs(OD) Vibhavirh visited his office on 9-7-96 for inspection but the said sri Bora failed to produce the balance of his office of Rs 2250/- .85 comprising of cash stamp and stationery in support of charge produced Lezai BO account book (Pa 6, Pt I)(S-4).

#### Article III

While Shri Bholanath Bora functioning as EDA Lezai PO received Delhi -94 VPP no 394 dt 19-6-96 valued Rs 400/- a/o Shri Nihil Das PO:Lezai through Barbarua slip dtd 27-6-96 (S-5) But he did not enter the particulars of the above stated articles in the BO Journal (S-7) and receipt. He (sri Bora) delivered the article realizing the value of the VPP Rs 400/- MO commission Rs 200/- delivered the addressee on 2-7-96 but the particulars of the book VPP did not enter in the BO journal (S-7) BO account book (S-4) nor sent the signed receipt to the account office Barbarua BO. In support of the charge documentary evidence produced are Lezai BO Journal dtd from 4-12-96 to 28-8-96

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and BO account book(PA6,Pt I) of Lezai BO dtd from 1-1-96 to 18-7-96(S-4)-

Annexure IV.

Shri B.N.Bora while functioning as EDBPM Lezai BO accepted deposits from the depositors of several SB/RD and MSY accounts stands open at Lezai BO details of a/cs mentioned in para 3 above .He returned the pass books of the concerning accounts to the respective account holders duly entering the transactins and impressing date stamp of the date in the pass book as required .But the amount so received by him(Sri Bora) did include in the amount in the concerning branch office ~~forward~~ SB Journal (S-9) BO(MSY) Journal(S-10(i& ii) BO RD Journal(S-11) and BO account book(S-4 and S-8) .

Similarly ,he shown withdrawal of Rs 500/- on 1-3-95 from SB account no 219626 against the account nom he (Sri Bora) made entries in the concerning BO SB Journal (S-9) and BO account book of Lezai POSB .But no entry of the withdrawals has been made in the pass book a/c no: 219626 In support of charge disciplinary authority produced BO SB/MSY/RD Journal(S-9,S-10(i& ii)/S-11) and BO account book(S-4 & S-3) .

5.0 Case of the defendant.

On hearing the concluding day of the hearing on 13-8-98 the PO was directed to submit his brief into the case to the undersigned within 15 days endorsing a copy of the same to the C.O and C.O was asked to submit his written brief within 15 days of receipt of the copy of the brief from the PO submitted his brief on 27-11-98.In the said brief below his signature the PO has noted in the form "Note that " copy of the written brief sent to Shri Bholanath Bora vide Divisional Office Special Journal NL No 7846 dt 27-11-98 "

The charged official has been given sufficient and reasonable opportunity to submit his written brief, but till writing of this report his brief in defence not received.

6.0 Analysis and assessment of evidence.

Ans 2 -  
The allegation is Sri B.N.Bora while functioning as BPM Lezai issued Lezai MO No 56 and 57 on 19-4-96 duly realising value of the money orders Rs 1000/- and money order commission for Rs 50/- from the remitters ,but neither accounted for the value and commission of the said MOs so booked ,in his office account nor sent MO forms to account office in violation of Rule 104(3) 133(a)of Rules for Branch offices cases.

The issue of money orders established fr the exhibits produced in course of hearing .The exhibits (S-1 & 2) dt 23-4-97, the MO forms in relation with MO Nos mentioned above and the (S-3) have the co-rr in with the issue of the MOs, on the basis of the entry in the MO forms, the BO receipt is prepared by the BPO/ding retaining the office copy as the office record .A the to Rule 104(3) the money orders should be placed in further bag dt 22-6-97 when prepared for account (S-13) of the Sri Bora did not include the value and commission of the MOs under the head cash received(S-4 dt 23-12-97)

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*M. Bora*

The PO in his argument has categorically narrated the same. In course of examination of the documents placed before the C.O. The C.O as well as his D.A scrutinised the documents (S-1, 2, 3, 4 & 13) carefully, minutely/fully satisfied they accepted the exhibits as genuine. Had there been any doubt, the objection on the score would have been received by Sri Bora. But neither Sri Bora nor his D.assistant Sri M. Choudhury raised any voice and therefore, there is no doubt that the documents relating to the issue of the MOs accepted to be genuine. Thus the issue of both the MOs established.

### Article II

The allegation against Sri Bora in this article of charge is that while functioning as BPM as Lezai BO on 9-7-96 he failed to produce the balance of his office account dt 8-7-96 to the tune of Rs 2250.85 comprising of cash, stamps & others stationeries before the inspecting officer. The Asstt. Suptd. of Post Office (O/D) Dibrugarh when called DK.

According to the provision of Rule 11(2) of Rule for Branch Post Office it is the responsibility of the ED BPM to produce the cash, stamps and valuables of the office for official verification as per the entries of the BO account book. The exhibits produced in support of the allegation (S-4 dt 23-12-97) clearly shows that the BPM shown the closing balance of the BO dt. 8-7-96 as Rs 2250.85. As per the provision of note below Rule 11(2) of Rules for Branch Offices he is supposed to produce the amount comprising of cash, stamps & other valuables equal to the closing balance of 8-7-96, the visiting inspecting officer for physical verification, but Sri Bora the BPM of Lezai Branch Post Office could not produce the same. The exhibits (S-4 dt 23-12-96) was placed before Sri Bora, the Ex-ED BPM and Sri M. Choudhury, the DA for inspection. Both Sri Bora and Sri Choudhury thoroughly inspected the document and being satisfied about the genuineness both of them put their individual dated signature on the body of the exhibit. This proves that there is no doubt about the failure of Sri Bora to produce the amount before the visiting officer for physical verification.

### Article-III

The allegation against Sri B.N. Bora is that while Sri Bora working as ED BPM Lezai BO received Delhi-94 VPP no: 394 dt 19-6-96 valued Rs 400/- addressed to Sri Sailen Das, Lezai PO through Barbarua BO, BO slip dt 27-6-96. But Sri Bora did not enter the said VPP in the BO journal, Sri Bora delivered the VPP to the addressee on 2-7-96 realising a sum of Rs 420/- being the value and VPMO in the BO journal. He did not send the VPP receipt duly signed by the addressee to account office nor include of the amount realised from the addressee of the VPP in question in the BO account of Lezai BO, of the date or subsequently.

Rule 128 of Rules for Branch office says, the nos and other particulars of the VP article received for delivery from the account office should be entered in the BO journal. The exhibits S-5, S-6 and S-7 dt 23-12-96, proves receive of the article, delivery to the addressee and maintenance of the BO journal where no entry of the VP article has been made.

In Rule 132, 103(11) and 133(2) of Rules of Branch offices, it is mentioned that the receipt for VP article delivered should be entered in despatch side of the BO journal, Rule 103(11) of the said Rules is clear about the VP article receipt in r/o the delivered VP article should be sent to account office. and in Rule 133 of the said Rule it is categorically mentioned that the amount recovered from the addressees of the VP articles delivered should be included in item cash collected of BO account.

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*[Signature]*

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The BPM Sri Bora have correctly maintained the office record and these records have been produced in the case in support of the charge as exhibits (S-5, 6 and 7) dt. 23-12-97. In course of regular hearing these records were tabled before Sri B.N. Bora, the BPM Lezai Post Office and his defence assistant, Sri M. Choudhury. Both checked the documents thoroughly, and being satisfied with the genuineness of the records put their dated signature on the body of the exhibits. In these records it is seen that the entries required as per rule mentioned above in r/o the Delhi VPP no. 394 dt 19-6-96 for Rs 400/- have not been made by Sri Bora. The written statement of Sri Bajen Das (S-6 dt 23-12-97) accepted by Sri Bora as genuine where in it is categorically mentioned by Sri Das that the VPP in his name taken delivery duly paying Rs 420/- being the value of the VPP is 400/- and its VPMO commission of Rs 20/- on 2-3-97. Therefore the receive of the VPP delivered of the article to the actual addressee and non-credit of the value and commission has been established.

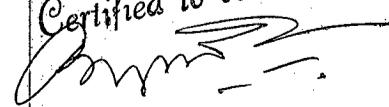
Article -IV

In article II on Annexure-II it is alleged that while Sri B.N. Bora working as EDA Lezai accepted deposits from the depositors of the following accounts.

A/c no.

A/c no.	Date of transaction (Deposits)	Amount.
1. 213860	26-4-96	
2. 213629	15-4-95 15-11-95 21-11-95	Rs 200/- Rs 50/- Rs 120/-
3. 220093	03-9-93	Rs 50/-
4. 220605	17-2-96	Rs 50/-
5. 220546	20-5-96	Rs 400/-
6. 220634	27-12-95	Rs 200/-
7. 15299	13-5-95 15-6-96	Rs 50/- Rs 500/-
8. 15728	09-4-96	Rs 200/-
9. 15752	18-11-95 20-01-96 24-02-96 21-03-96 22-05-96 06-07-96	Rs 120/- Rs 120/- Rs 50/- Rs 50/- Rs 50/- Rs 50/- Rs 100/- Rs 50/-
10. 15924	02-04-96 03-06-96	Rs 30/- Rs 30/-
	13-08-95 07-09-95 16-10-95 25-11-95 10-12-95 09-01-96 16-03-96 27-05-96 23-06-96 18-08-96 19-09-96	Rs 600/- Rs 600/- Rs 200/- Rs 200/- Rs 200/- Rs 200/- Rs 200/- Rs 200/- Rs 200/- Rs 200/- Rs 200/-

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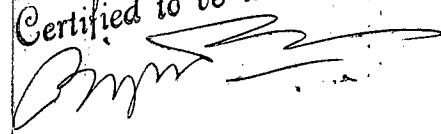


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11.15976	28-03-95 28-09-95 26-10-95 29-11-95 30-12-95 30-01-96 30-03-96 30-04-96 27-05-96 28-06-96	Rs 300/- Rs 300/- Rs 300/- Rs 300/- Rs 300/- Rs 300/- Rs 300/- Rs 300/- Rs 300/- Rs 300/-
12.15985	29-11-95 02-01-96 23-02-96 09-06-96	Rs 50/- Rs 50/- Rs 50/- Rs 150/-
13.16057	06-05-95	Rs 100/-
14.16187	06-01-96 05-02-96 07-03-96 11-04-96 09-05-96 09-06-96	Rs 300/- Rs 300/- Rs 300/- Rs 300/- Rs 300/- Rs 300/-
15.16195	06-05-96	Rs 200/-
16.16196	06-05-96	Rs 200/-
17.16202	30-01-96 12-02-96	Rs 100/- Rs 100/-
18.16203	30-01-96 12-02-96	Rs 100/- Rs 100/-
19. 7699	04-02-95 05-12-95 02-01-96 17-01-96 20-03-96 23-03-96 29-3-96	Rs 20/- Rs 20/- Rs 12/- Rs 28/- Rs 32/- Rs 44/- Rs 20/-
20.7931	25-11-95	Rs 100/-
21.7945	30-12-95	Rs 244/-
22.8150	04-12-96 02-01-96 11-06-96	Rs 12/- Rs 44/- Rs 8/-
23.8289	18-10-95	Rs 100/-
24.8292	18-11-95	Rs 40/-
25.8296	27-10-95	Rs 104/-
26.8297	18-10-95	Rs 76/-
27.8460	06-02-95	Rs 100/-
28.8563	20-02-95 09-03-95	Rs 100/- Rs 56/-
29.8566	10-01-95	Rs 100/-
30.8962	04-12-95 11-12-95 09-01-95	Rs 32/- Rs 20/- Rs 20/-
31.9604	16.01.95 12.06.95	Rs 100/- Rs 100/-
32.9825	18.11.95	Rs 28/-
33.8554	20.10.95	Rs 40/-
34.8227	26.08.95	Rs 103/-

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But the amounts he received as deposits were not included in the BO accounts in violation of Rule 133 and 132(f) of the Rules for Branch Offices.

A sum of Rs 500/- has been shown as withdrawal in the BO account book and BO SB Journal against Account no: 219626 on 1-3-95 but no entry of the said withdrawal has been made in the pass book.

In support of the charges different documents have been produced as exhibits (S-4, S-8, S-9, S-10(1), S-10(ii), S-11, S-12(i) to S-12(XXXIV) were tabled on 23-12-97 during regularly hearing before the C.O. Sri B.N. Bora and his defence assistant Sri M. Choudhury. Sri Bora agreed to have maintained the records on his own and admitted the documents to be genuine. Both Sri Bora and Sri Choudhury (DA) put their dated signature on the body of all the exhibits in token of the documents being genuine and the entries to those documents were made by him.

Rule 133 and 132(f) of Rules for Branch Offices quoted to be violated by Shri Bora. It is seen that in those Rule categorical mention of inclusion and entry of cash collection on saving bank deposits in the Branch Office account and BO Journal are there.

The pass books of different types of savings scheme viz. SB/RD/MSY account shows the deposits as mentioned above have been entered by Sri Bora under his dated signature and with clear impression of his office date stamp duly impressed by him against the entry of the deposits were as the amounts of deposits and MSY journal have not been included either in the BO, SB Journal / RD journal and MSY journal. BO account book of the relative dates. From this it is evident that the amount Sri Bora received from the respective depositors on different dates as mentioned against the account nos above have not been included in his office account book.

#### 7.0 Findings

7.1 On the basis of the documentary and oral evidence adduced in the case before me and in view on the reasons given above, I hold that the violation of Rule 17 of PCT BO (Conduct) and service) rules 1964 is evident and all the 4 (four) charges framed against Sri B.N. Bora BOA Local (put off duty) stands proved.

(M. Sengupta)  
Inquiry Officer.

AG  
g

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J.W.

Inquiry Report on the Departmental Enquiry held against  
Shri Bhola nath Borah, Ex-BPM(put off duty) Lezai EDDO in  
Account with Barbaruah SO.

List of exhibited documents.

- S-1 MO forms(MO 8)pertaining to Lezai PO ,MO no.056 dt 19-4-96.
- S-2 MO form (MO-8) pertaining to Lezai PO MO No 057 dt 19-4-96.
- S-3 BO receipt book(MS-87 a) of Lezai PO for the period from 27-12-94 to 19-4-96.
- S-4 BO account book(PA 6 part I) of Lezai-BO for the period from 01-01-96 to 18-07-96 .
- S-5 BO slip dt. 27-6-96 for Lezai BO/issued by SPM Barbaruah SO.
- S-6 written statement of Sri Sainlen Das,dt 3-11-96.
- S-7 BO Journal of Lezai BO for the period from 4-12-95 to 28-8-96.
- S-8 BO account book(Pa 6,pt I) of Lezai BO pd. from 2-1-95 to 31-12-95.
- S-9 BO Journal of Lezai BO period from 10-9-90 to 27-6-96.
- S-10(i & ii) Lezai BO(MSY) Journal period from 1-3-94 to 2-7-96(in two books).
- S-11 Lezai BO(RD) journal period from 16-8-90 to 13-6-96.
- S-12(i to xxxiv) 6(six nos of SB pass books,12(twelve) nos of RD pass books and 16(sixteen) nos of MSY pass books.
- S-13 Lezai BO daily account dt. 19-4-96.

Written brief of the presenting officer Sri D.Deb  
dated 19-11-98.

*Certified to be true copy*  
*[Signature]*

To,

The Superintendent of Post Office  
Dibrugarh Division, Dibrugarh - 786001.  
Dated: D.B.R. the 5th April 1999.

Sub:- Disciplinary Proceeding against Sri Bholanath Dora,  
B.P.M. (Put off duty) Lezai B.O.

Ref:- Your memo no. F-7 2/96-97 dtd. 10.3.99.

Sir,

With ref. to your memo cited above I have the honour to submit my representation hereunder for favour of your kind & sympathetic consideration. The same will apprise you that there was no intentional default or dishonesty on my part when worked in good faith in usual course of my duties. So, I pray your honour to have a lenient view in deciding the fate of this poor official who always worked with utmost devotion & dedication.

1. As regard charge no. 1, i.e., non credit of value & Commiss. of two m/s @ Rs. 1050/- only, I beg to state that the mistake was inadvertently through oversight, to the amount has been credited subsequently when the mistake came into light. So, this is an honest error & may be condoned.
2. As regards 2nd Commt. i.e., failure to produce the cash & stamp balance of Rs. 2,290/- only, I beg to state that the charge is ill. conceive. The amount was well secured in my possession which was kept in my home for safe custody since the office is not provided with any care taker or Night Chowkider to look after the valuables kept in deposit in the office overnight. I requested the Inspecting Officer to allow some time to being the amount from my home but he declined. However the amount has been subsequently credited to the govt. As such this charge is not tenable.
3. As per 3rd Commt. I beg to state that the V.P. article u/x could not be entered in the B.O. Journal through oversight & due to in position of extra load of work, when the discrepancy has been came in to light the amount has been credited to the Govt. This is nothing but an honest error & may be condoned.
4. As regards 4th charge, I beg to state that I was not given any training regarding S.B. Works, & due to imposition of extra burden of works upon me I could not maintain the accounts properly for which the irregularities might have been occurred. The amount left behind was however credited to the govt. subsequently when the irregularities come into light. As such this charge may perhaps be & beighed aside.

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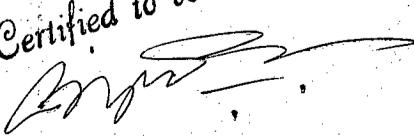

Lastly, I beg to point out, that in the ~~whole~~ enquiry proper procedure as enshrined in Art. 311 (1) & 311(2) have not been properly followed as such the enquiry is totally violated. The I.O has taken an unitatarian decision without hearing any statement of defence from the defence side tantamounts to be an arbitrary decision. So, I pleased myself fully innocent & non guilty of any charges mentioned in your memo u/r.

In view of the facts stated above I humbly pray to your magnanimity for exoneration in this matter for which act of your kindness. I shall remain ever grateful to you.

Yours faithfully,

Sd/-

(Bholanath Barak)

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DEPARTMENT OF POSTS : INDIA  
OFFICE OF THE SUPERINTENDENT OF POST OFFICES, DIBRUGARH DIVISION,  
DIBRUGARH-786001.

Memo No.17-2/26-97

Dated at Dibrugarh, the 9<sup>th</sup> June, 1999.

Shri Bhola Nath Borah, EDA (under put off duty) Lezai B.O. in account with Barbara S.O. under Dibrugarh H.O. was proceeded against Rule-8 of EDA conduct and service Rules, 1964 under this office memo of even no. dated 28.07.97.

The above memo was received by the said Shri Borah on 2.8.97 and he submitted his defence statement on 4.9.97 denying all the charges.

To inquire into the case, Shri Manik Sengupta, ASPOs(H/Q), Dibrugarh and Shri D. Deb, IPOs(C&PG), Dibrugarh were appointed as Inquiring Authority and Presenting Officer respectively vide this office memo of even no. dated 8.9.97.

The charges framed against the said Shri Borah in brief are as follows :

Shri Bora while functioning as EDA, Lezai B.O. issued Lezai B.O. Money Orders Nos. 56 and 57 on 19.04.96 realising Rs. 525/- each being the value and commission of each Money Order; but neither the money order forms were sent to the account office as required under the Rule 10(3) of Branch Office Rules nor included the amount of value and commission of the above money orders in the Branch Office account of the date as required under the provision of Rule 133(2) of Branch Office Rules.

Secondly, the said Shri Borah failed to produce the cash and stamps amounting to Rs. 2,250.85 being the cash and stamp balance of his office according to the B.O. accounts of 9.7.96 on 9.7.96 when called for by the Asstt. Superintendent of Post Offices(O/D), Dibrugarh Division, Dibrugarh for inspection violating the provision of note below the Rule 11(2) of Rules for Branch Office and the above amount was charged under account head UCP on 9.7.96 in the Branch Office account of Lezai B.O.

Thirdly, the said Shri Borah, delivered Delhi-94 VPP No.394 dated 19.06.96 valued for Rs.400/- addressed to Shri Saini Das, P.O. Lezai on 2.7.96 realising a sum of Rs.420/- being the value and VPMO commission in respect of above VPP. But the particulars of delivery of the above VPP article was required under Rule 132 of the Rules for Branch Office. He also did not credit the proceeds of VP article in question in the B.O. account book of Lezai B.O.

Finally, the said Shri Bora did not credit the amount of deposits in many SB/RD and MSY accounts in respect of several accounts stand open in his office and as accepted by him on several dates. Details of such accounts have been furnished in the charge sheet and repetition of the said huge list here is not necessary. The said Shri Borah allowed a withdrawal of Rs.560/- on 1.3.95 against SB Account No.219626. But the said withdrawal was not entered in the concerned pass book.

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Thus it was alleged that, the said Shri Borai by his above stated action failed to maintain absolute integrity and devotion to duty in violation of Rule 17 of EDA conduct and service Rules, 1964. <sup>here</sup>

The following records were submitted in support of the charges frame against the charged official Shri Borai and the records were marked as S.1., S.2 and so on to facilitate the enquiry :

- S-1. MO form(s)(MO-8) pertaining to Lezai P.O., MO No.056 dtd.19.4.96
- S-2. MO form(MO-8) pertaining to Lezai MO No.057 dtd.19.4.96.
- S-3. BO receipt book(MS-87) of Lezai PO for the period from 27.12.94 to 19.4.96.
- S-4. BO account book(Pa6 Part-I) of Lezai BO for the period from 1.1.96 to 18.7.96.
- S-5. BO slip dated 27.6.96 for Lezai BO issued by SPM, Barbarua S.O. -
- S-6. Written statement dtd.3.11.96 of Shri Saiten Das.
- S-7. BO Journal of Lezai BO for the period from 4.12.95 to 28.8.96.
- S-8. BO account book (Pa.6 Pt.I) of Lezai BO for the period from 2.1.95 to 31.12.95.
- S-9. BO Journal of Lezai BO for the period from 10.9.90 to 27.6.96.
- S-10. (i&ii) Lezai BO(MSY) journal period from 1.3.94 to 2.7.96 (in two books).
- S-11. Lezai BO(RD) journal for the period from 16.08.90 to 13.6.96.
- S-12. (i to xxiv) all the pass book involved in the case.
- S-13. Lezai BO daily account dtd.19.4.96.

And, the following witness were proposed to be examined in support of the charge :

1. Shri N.N.Mitra, Ex-Asslt.Suptd.of POs, Dibrugarh, now Suptd.of POs, Darjeeling Division, Darjeeling.
2. Shri Saiten Das, PO Lezai via Barbarua.

Shri M.Sengupta, Inquiring Authority held preliminary hearing on 3.11.97 and concluded the enquiry on 19.8.98 after having hearing on various date and submitted his enquiry report on 9.2.99 vide his letter no. AS-1/97-98 dated 9.2.99.

A copy of the above enquiry report was forwarded to the charged official on 10.3.99 vide this office letter of even no. dated 10.3.99 for submission of any representation against the enquiry report.

The charged official submitted his representation dated 5.4.99 which has been received here on 13.4.99 only.

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*[Signature]*

I have gone through the following records and documents carefully:

1. This office memo of even no. dated 28.7.97.
2. Defence statement of the charged official as stated above.
3. Report of the Inquiring Authority as stated above.
4. Written brief of the Presenting Officer.
5. All the documents produced as exhibits and statements of the witness recorded during enquiry.
6. Written statement dated 5.4.99 of the charged official.

The charged official Shri Borah took part in the enquiry from the first to last alongwith his defence counsel and availed all opportunities to defend himself.

Regarding the charge of non-credit of value and commission of Lezai MO No.56 and 57 on 11.9.96 and non sending of M.O.form(MO-8) to the account office in violation of Rule 104(3) and 133(a) of Rules for Branch Offices, after examining all the facts and documents exhibited during enquiry, it may be safely concluded that the charge stands proved.

Secondly, regarding the charge of shortage of cash and stamp amounting to Rs.2,250.85 as deduce in the Article No.II of the charge sheet, it is clear from the exhibits examined during enquiry and that there was a shortage of fund in the office on 9.7.96 and the charged official failed to produce the above stated amount for inspection on 9.7.96 as required under Rule-11(2) of BO Rules. And subsequently the amount was charged as unclassified payment towards adjustment of the day's account. Had the amount was with the charged official as claimed in the representation dated 5.4.99, definitely who would not charge the amount as UCP. Thus the charge under this article stands proved.

Thirdly, regarding the charge of non-credit of the proceeds of Delhi-94 VPP No.394 dated 19.06.96 valued for Rs.400/-, on examination of the BO slip dated 27.06.96 (Ext.No.S-5) it is seen that the article that the article was actually consigned to Lezai BO duly invoiced in the BO slip. But the receipt of the article has not been entered in the BO journal of the period (Ext.No.S-8). But the article was delivered on 2.7.96 at revals from the exhibit no.S-6 (written statement dated 3.11.96 of Shri Saini Das, addressee of the article) realising the value and VP MO commission of the article. But on examination of the BO account book for the period (Ext.No.S-9) it is found that the amount has not been credited into the Govt. account in any way is violation of Rule 133(2) of BO rules. Thus the charge under article no.III against the official stands proved.

Regarding the charge of non-credit of deposits in several accounts, all the relevant exhibits submitted have been examined. On examination of the concerned pass books (Ext.No.S-12)(i to xxxiv) it is seen that, the deposits as stated in the charge sheet were entered in the pass book and thus it is proved that the charged official accepted the deposits. But these transactions do not find place in the respective BO journals maintained during the period in violation of the Rule 132(2) of BO Rules. The amount of deposits so collected were not also incorporated in the BO account books maintained by the charged official during the period (Ext.No.S-4 and S-8) in violation of Rule 133 of BO Rules.

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Thus the allegation made in the article No.IV of the charge sheet against the charged official stands proved.

From the deliberations made in the forgoing para and examining all relevant records, documents produced before the enquiry and the deliberation recorded in course of enquiry, I accept the findings of the Inquiring Authority and conclude that the charge framed against the said Shri Bora stand proved.

The charged official could not practically point out any material object lacunae against the enquiry report in his representation dated 5.4.99.

In view of the above stated facts and circumstances and after going through carefully all the relevant records and documents, carefully deliberating all the points, I Shri A. B. Seal, Superintendent of Post Offices, Dibrugarh Division, Dibrugarh, 1964, exercising the power conferred upon me under Rule 7(ii) of EDA(Conduct and Service) Rules, award the said Shri Bora with the punishment of "removal from service" with effect from the date on which the official was put off from duty.

(A. B. Seal)

Supdt. of Post Offices,

Dibrugarh Divn, Dibrugarh-786001.

Copy to:

Regd/11

- 1) Shri Bholanath Bora, Ex-EDA, Lezai B.O. via-Barbarua.
- 2) The Sub-divisional Inspector of Post Offices, Dibrugarh Sub-division, Dibrugarh.
- 3) The Estt. Branch, Divisional Office, Dibrugarh.
- 4) The Punishment Register.
- 5) The Postmaster, Dibrugarh H.P.O., Dibrugarh.
- 6-7) Spares.

Supdt. of Post Offices,  
Dibrugarh Divn, Dibrugarh-786001.

*(Certified to be true copy)*  
*[Signature]*

To,

The Director, Postal Services,  
Assam Circle  
Guwahati P.O.  
Assam.

( Through the SPOS DR Divn., Dibrugarh )  
Dated DBR the 6th. Aug'99.

SUB : Appeal against the order of Removal from  
Service vide SPOS DR Dv. order No.  
F-7/2/96-97 dtd. 10.3.99 Case of Shri  
Bholanath Borah, Ex. BPM ( Put off duty )  
Lezai B.O. under Dibrugarh H.P.O.

REF : SPOS DR Dv order No.F7-2/96-97 dtd. 9.6.99.

Respected Sir,

Being highly aggrieved with the above said order of Removal from service by the SPS DR. Dn. I have the honour to submit this appeal before your honour on the following grounds amongst others for favour of your kind & justifiable action.

1. That the case in brief is that while I was working as B.P.M. Lezai B.O. from 9.7.91 to 9.7.96 during my incumbency, I have been charged by the SPS DR Dn. for have omission & Commission & have been proceeded under Rule '8' ED Service & Conduct Rule 1964 & a Departmental enquiry was under Art 311(1) & (2) has been conducted against me, which was ended with the aforesaid punishment.
2. That the punishment order & had as the I.O. has given his decision without hearing any statement of Defence from the side of the Charges official in flagrant violation of the Principal of Natural justice. The entire inquiry is therefore vitiated.
3. The Inquiry authority deduct take into consideration the situation, Circumstances, under which the irregularities occurred. Had it been taken into consideration such a heavy punishment of 'Removal from Service' would not have been befallen upon my head.
4. The punishment is too heavy in comparison with the offence committed besides the govt is not sustaining any financial loss in this instant case.
5. That Sir I am untrained official, besides the SPOS has converted my office i.e. Lezai B.O. into a transit office & imposed an extra burden of works as many as four B.Os upon me.

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*By [Signature]*

6. That on impoison such extra load of work upon me I could not maintained accountal work Properly for which some discrepancyion & irregularities occurred.

7. That the order is highly prejudicial & totally destryed all incoutive of my life. So, this is highly injust & unfair & injurious.

8. That the inquiry conducted is full of looplois & incoesent caunae. That all the Departmental witnessas as mentioned in the charge sheet have not been examined before the enquiry & the previously obtained statements, have been relied upon, which is perhaps not admissible & against the principle of 'Natural justice'.

9. That from a pension study of the entire case it may kindly be deduced that the disciplinary authority is highly apethatic & beious upon me & was event upon to punish me in any way as such the verdict of the punishment authority is void ~~abominatio~~.

In view of the facts stated above, I humble appeal to your honour to kindly consider the case in the light of the above facts and set aside the punishment order appealed against, & more order of my reinstatement with retrospective effect i.e. from the date of my Putoff duty, for which act of your kindness, I shall remain ever grateful to you.

Yours faithfully,

Bhola Nath Bora,

Sd/- Bhola Nath Bora,  
Ex ED BPM Lezni B.O. (Via. Barba  
(Now put off duty )

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Annexure-H

12.9.2000 27.11.2000 1.12.2000 8.12.2000 8.12.2000

In the Court of Sub Divisional

Judicial Magistrate (Sadar Dibrugarh

Copy of the Judgment

In Case No. GR 1685/96

Borboruah P.S. Case No. 109/96

State

-Vs-

Sri Bholanath Borah .... Accused.

U/S 409 I.P.C.

IN THE COURT OF S.D.J.M.(SADAR), DIBRUGARH

Present - Shri J.P. Chakraborty

Judgment in G.R. 1685/96.

State

-Vs-

Bholanath Bora .... Accused.

U/S 409 I.P.C.

Date of Hearing - 21.11.98

23.2.99

26.5.99

21.6.99

1.9.2000

Date of argument - 4.9.2000

Date of Judgment - 7.9.2000.

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*[Signature]*

JUDGMENT

- 1) The case was instituted upon an ejahar lodged before the O/C, Barbarua P.S. by one Sri N.N. Mitra, Asstt. Supdt. of Post Officer, Dibrugarh Division, to the effect that the accused person, the Branch Post Master of Lezai Post Office, misappropriated money amounting to Rs. 17,122.85, from 9.7.91 to 9.7.96.
- 2) On receipt of the ejahar, the O/C Borborua P.S registered Borbarua P.S. Case No. 109/96 u/s 409 IPC and charge sheeted the accused u/s 409 IPC on completion of investigation.
- 3) The accused appeared in the court and copy u/s 207 Cr.P.C. was furnished to him. The case being that of warrant procedure, formal charge u/s 409 IPC was framed against the accused. Particulars of the offence u/s 409 IPC on being explained, the accused pleaded not guilty and claimed to be tried.
- 4) Prosecution examined as money as 7(seven) witness in its bid to bring home the guilt of the accused. The witnesses were cross examined by the defence. Statement of the accused was recorded u/s 313 Cr.P.C. The plea of the defence was denial. The defence did not adduce ~~any~~ evidence.

POINT FOR DETERMINATION

Whether the accused persons, Branch Post Master of the Lezai Branch Post office, from 9.7.91 to 9.7.96 misappropriated Govt. money amounting to Rs. 17,122.85 during the aforesaid period ?

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*Copy*  
*[Signature]*

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DECISION AND REASONS

5) None of the prosecution witnesses would implicate the accused persons with the alleged offence of misappropriation. Most of the witnesses, who deposited their money with the lezai Branch Post office, stated in their deposition that they got back. None of the prosecution witnesses stated that the accused dishonestly misappropriated the money.

6) In order to establish a charge u/s 409 IPC the prosecution must prove that -

- (i) The accused, being a public servant, was entrusted with property in question.
- (ii) He committed criminal breach of trust in respect of the property i.e. he misappropriated the property or converted the property to his own use dishonestly.

7) In the instant case, the fact of entrustment is that but there is not an iota of evidence as regards dishonest misappropriation of the money. In fact, that is evidence of returning back of the entrusted money to the customers. So, the main ingredient i.e. dishonest intention to misappropriate the money, has not been established by the prosecution.

8) In view of the above, I find that prosecution has cut a sorry figure in bringing home the guilt of the

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accused u/s 409 I.P.C. beyond all reasonable doubts.

9) I therefore hold the accused not guilty u/s 409 I.P.C. The accused is acquitted and set at liberty forthwith.

Given under my hand and seal this 7th day of September, 2000.

Sd/- J.P. Chakraborty,

7.9.2000

Sub Division Judicial

Magistrate(Sadar)

Dibrugarh.

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*[Signature]*

48-

Annexure - I

64

Department of Posts  
O/o Director Postal Training Centre,  
Uzan Bazar, Red Cross Building,  
Guwahati-781001.

No. Staff/2/25-13/99/RP

Dated : 30.6.04

### APPELLATE ORDER

It was proposed by the SPOs, Dibrugarh to hold an enquiry against Shri Bhola Nath Borah, EDBPM, Lezai EDBO (under put off duty) under Rules 8 of EDAS Conduct and Service Rules, 1964 vide memo no. F7-2/96-97 dated 28-7-97 by the SPOs Dibrugarh Division, Dibrugarh (the Disciplinary Authority). The charges framed against Shri Borah (hereinafter called appellant) and sought to be enquired into were as follows;

#### Article I

That the appellant while functioning as EDA Lezai EDBO issued Lezai B.O. MOs nos. 56 and 57 on 19-4-96 realizing Rs. 525/- each being the value and commission of each Money Order but neither the Money Order forms were sent to the Account Office as required under rule 104(3) of Branch office rules nor included the amount of value and commission of the above MOs in the Branch Office Account of the date as required under the provision of Rule 133(2) of Branch Office rules. Thereby violated the provision of Rule 17 of EDA Conduct and Service Rules, 1964.

#### Article II

That the appellant failed to produce the Cash and Stamps amounting to Rs. 2250.85 being cash and stamp balance of his office according to the BO accounts of 9-7-96 on 9-7-96 when called for by the ASPOs of post offices (O/D) Dibrugarh Division, Dibrugarh for inspection violating the provision of note below Rule 11(2) of Rules for Branch office and the above amount was charged under account head "UCP" on 9-7-96 in the Branch Office account of Lezai B.O. Thus it was alleged that the appellant failed to maintain absolute integrity and devotion to duty as prescribed in Rule 17 of EDA Conduct and Service Rules, 1964.

#### Article III

That the appellant delivered Delhi-94 VPP NO. 394 dated 19-6-96 valued for Rs. 400/- addressed to Shri Sailen Das, P.O. Lezai and VP MO commission in respect of above VPP. But the particulars of delivery of the above VPP article was not recorded in the BO Journal as required under Rule 132 of the Rules for

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Signature

Branch offices. He also did not sent the VP article receipt duly signed by the addressee in respect of above VPP to the account office furnishing required particulars as required under rule 103(ii) of Rules for branch office. He also did not credit the proceeds of VP article in question in the BO a/c both of Lezai BO as required under rule 133(2) of Branch office Rules.

#### Article IV

That the appellant did not credit the amount of deposits in as many as 34 SB/RD/MSY accounts in respect of accounts stand opened in his office as accepted by him from the respective depositors on several dates as required under Rule 133 of rules for branch offices and the transactions were also not entered in the BO journal as required under Rule 132(f) of Rules of Branch offices. The said Borah allowed a withdrawal of Rs. 500/- on 1-3-95 against SB a/c no. 219626 and entered in the B.O. SB Journal but the said withdrawal was not entered in the respective pass book. Therefore, it was alleged that while doing so the appellant failed to maintain absolute integrity and devotion to duty in violation of Rule 17 of EDA conduct and service rules, 1964.

2. The appellant was allowed 10 days time from the date of receipt of the charge sheet to submit his representation if any. The appellant received the same on 2-8-97 and vide his representation dated 11-8-97 which was received at O/o SPOs Dibrugarh on 13-8-97 requested to allow him to inspect the documents for preparation of his defense. The SPOS, Dibrugarh appointed Shri Manik Sengupta, ASPOs (HQ) as Inquiry Officer who held preliminary hearing on 3-11-97 and concluded hearing on 19-8-98 and submitted his inquiry report on 9-2-99 to the disciplinary authority. The Inquiring authority proved all charges framed against the appellant. A copy of the inquiry report was forwarded to the appellant on 10-3-99 for submission of representation against the Inquiry Report.

3. The appellant submitted his representation to Disciplinary Authority on 5-4-99 which was received by the disciplinary authority on 13-4-99. In his representation the appellant did not put forward any evidence or point out any inherent lacuna in the inquiry. The SPOs, Dibrugarh Division, Dibrugarh disciplinary authority then recorded his findings and imposed a penalty of "Removal from service" with effect from the date on which the official was put off from duty vide memo no. F7-2/96-97 dated 9-6-99 under Rule 8 of EDA conduct and Service Rules, 1964.

4. The present appeal dated 17.8.99 is against the punishment order dated 9.6.99 which was received by the appellant on 17.6.99 as per the Check list prepared by SPO, Dibrugarh Division, Dibrugarh. The appeal is preferred well in time and I am considering the appeal. The appellant has assailed the punishment order on following grounds;

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*PMR*

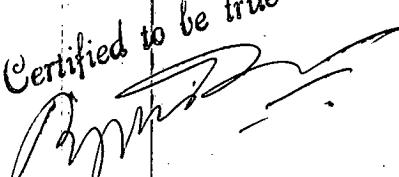
- 4.1. that the punishment order was issued on the IO's decision without hearing any statement of defence from the charged official in flagrant violation of the principle of natural justice.
- 4.2. that circumstances under which the irregularities were occurred were not taken into consideration by the Inquiry authority and the punishment is too heavy in comparison with the offence as the govt. has not sustained any financial loss.
- 4.3. that he is an untrained official and consequent on conversion of the office into a transit office being 4 B.O.s with it extra burden has fallen upon him and due to such extra load some irregularities/discrepancies in accounts occurred.
- 4.4. that inquiry conducted is full of loopholes and all the departmental witnesses have not been examined before the inquiry authority and statements obtained prior to the enquiry. This is against the principle of natural justice.
- 4.5. that the disciplinary authority was apathetic and bias upon the appellant as such the verdict of the disciplinary authority is void ab initio.

5. The Appellant received the Disciplinary order awarded to him on 17.6.99 and submitted his appeal against the order on 16.8.99 which was received by the disciplinary authority on 20.8.99. As per Rule 10 of ED Service Rules the appellant is allowed 90 days to submit his representation/appeal against the punishment order of the Disciplinary authority which the appellant followed in his case and the appeal considered.

6. I have gone through all the records i.e., Inquiry report, Punishment Order of the disciplinary authority, Appeal of the appellant and other relevant records in this case. I found that

- 6.1. that a copy of Inquiry Officers Report was sent on 10.3.99 and the appellant offered his comments on Inquiry Officer's report which was received in the O/o SPOs, Dibrugarh on 13.4.99, therefore, it is not correct on the part of appellant that punishment order was issued without his statement of defense.
- 6.2. that the Inquiry Officer conducted the inquiry fairly and giving him full opportunity to defend. The appellant did not bring any allegation on any point during the course of enquiry. The assessment of the Inquiry Officer was made after taking all facts into consideration and the I.O's report is quite descriptive.

*Certified to be true copy*



6.3. that the appellant is duty bound to make sure that whatever transaction he is making at BO on behalf of Government of India are taken into account on the same day as per established in BO Rules. By not bring the amount collected on various transactions he is not only breaching the trust of customers and also misappropriating the Govt. money. These facts were proved during the course of inquiry beyond any doubt. Repaying the defrauded money does not lessen the gravity of charge. It is pertinent to say here that the appellant has doubtful integrity and has no devotion to duty.

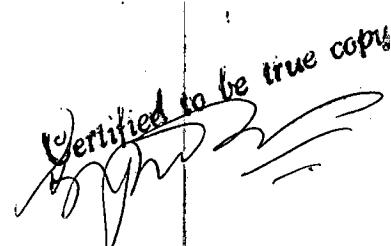
6.4. that the EDBPMs are imparted with first hand knowledge during opening of the BO and the plea that the appellant is not trained is not acceptable. He should have made request to the authority before if more guidance/training was required for his performance as BPM. The appellant committed fraud during the period 19.6.95 to 6.7.96. Workload study i.e., income and cost review of Lezai BO of the period emphasize that there was no increase in the volume of work of Lezai BO during the period. As per yearly review the BO was running on heavy loss and percentage of income to cost was approximately 82%. From the yearly review it is clear that there was a decrease in the volume of work to a great extent. As per time factor formula 6 Minutes 48 seconds (six minutes forty eight seconds) are required (per working day) for receiving and dispatching of bags of another (4) BOs. So no extra ordinary-load of works was imposed on the appellant due to conversion of Lezai BO into a transit office.

6.5. that the principles of Natural justice were fully protected during enquiry as the Inquiry Officer conducted the enquiry fairly giving him full opportunity to defend. He took all the advantages by participating in the inquiry.

7. The examination of the disciplinary case records, proceeding of inquiry, the assessment of evidence and findings of Inquiry Report have been examined in detail in this case. I am of the firm view that the inquiry has been done in just and fair manner. The appellant has been provided sufficient opportunity to defend himself during enquiry.

8. In wake of aforesaid discussion in detail on various issues pertaining to this case, I do not agree with the point of defense taken by the appellant in his appeal. I held appellant responsible for misappropriating the government money by not accounting for the same on the date of transaction in government account and using the same for his personal purposes. He is responsible for gross violation of his powers as BPM and lacks devotion to duty and integrity.

*Verified to be true copy*



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The appellant has scant respect for Rules, Procedures and system prescribed for functioning of Branch Post Offices. I strongly condemn these acts and attitude of appellant towards work and do not intend to interfere with the order of disciplinary authority in this case. In wake of position explained above I issue following order in this case;

**ORDER**

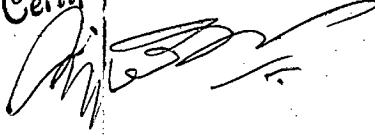
I Shri Rajinder Kashyap, Director PTC, Guwahati do hereby **CONFIRM** the punishment order issued by the Disciplinary Authority in this case.

(Rajinder Kashyap)  
Director  
Postal Training Centre  
Guwahati – 781 001

Copy to :-

1. Shri Bholanath Borah, Ex EDBPM Lezai EDBO via Barbarua SO Dist. Dibrugarh.
- 2-3/ The Supdt. Of Post Offices, Dibrugarh Division, Dibrugarh. A copy of order shall be delivered to the appellant under clear receipt and a copy of receipt sent to AD(Staff) O/o the PMG, Dibrugarh within a week positively.
- 4-5. Office Copy / Spare .
6. PA to Director, PTC/Guwahati.

Director, PTC  
Guwahati – 781 001

Certified to be true copy  


10.7.06 31.7.06 31.7.06 22.8.06 22.8.06

High Court Form No. (J) 2

Heading of Judgment on original Suit

District - Dibrugarh

In the Court of the Civil Judge No.1 Junior

Division at Dibrugarh

Present - Sri J. Borah, M.A., B.Ed, LL.B.,  
Civil Judge No. 1 (Junior Division)  
Dibrugarh.

10th July, 2006 day the

T.S. No. 5/03

1. Bholanath Borah ..... Plaintiff.

- Vs -

2. The Post Master General,

Assam Region, Guwahati

and six other's ..... Defendant

This suit coming on this day 26.6.2006 in  
the presence plaintiff/petitioner, advocate Mr. S. Seal.

Defendant/Opp. party, advocate Mr. T.C. Dutta.

And having stood for consideration to this  
day the Court delivered the following  
Judgment.

JUDGMENT

1. This T.S. 5/03 is for declaration.

*[Signature]*  
Certified to be true copy

Contd...2.

2. The plaintiff's case averred in the plaint is that the plaintiff was appointed as the Post master at Lezai Branch of Post office, Dibrugarh with effect from 9.7.1991. The plaintiff worked at his best ability and rendered his service accordingly. The work load at Lezai branch was excessive and the plaintiff was n't trained up accordingly. During his service tenure at Lezai the plaintiff was charged by the defendant for failing to maintain integrity and he was served under office memo dated 28.7.1997. Thereafter the plaintiff was terminated from his service with effect from 9.7.96. Before termination of the plaintiff, an enquiry was held against the plaintiff and it was done by the defendant No. 4, Director of Postal service, Assam Circle and Manik Sengupta, Assistant Superintendent of Post office. The inquiry was not held on date fixed. On the basis of the said enquiry, the plaintiff was terminated from his service. The defendant also lodged an ejahar against the plaintiff and the said case was chargesheeted against the plaintiff and it was tried in the court of the Sub Divisional Judicial Magistrate's Court where the plaintiff was acquitted. The enquiry held by the defendant against the plaintiff was not fare and proper. The dismissal order of the plaintiff was illegal, hence this suit for declaration of the said dismissal order of the plaintiff from his service to be illegal.

3. The defendants appeared in the suit filed written statement and contested the same. The gist of

Contd...3.

*Certified to be true cop.*  
*[Signature]*

the defendant's case is that the suit of the plaintiff is bad for non joinder of necessary party. This court (Civil Court) is without jurisdiction to try this suit. The plaintiff was duly trained up. There was no excessive work load at lezai branch post office. The enquiry officer could not hold the inquiry on due date. The defendants did not terminate the service of the plaintiff merely on the basis of the inquiry, but after consideration of the grave by of the charges against the plaintiff. The plaintiff mis appropriated the Government money he misappropriated during his tenure. The suit of the plaintiff is false and baseless. Hence the suit of the plaintiff is liable to be dismissed.

4. On consideration of the pleadings the following issues are framed -

- 1) Whether the suit is maintainable in law and facts ?
- 2) Whether the dismissal of the plaintiff from his service was in due process of law ?
- 3) Whether the plaintiff is entitled to decree as prayed for ?
- 4) The plaintiff side examined one witness namely, Bhola Nath Borah P.W.1.
- 5) The defendant also examined one witness namely Dipak Deb D.W. 1.

Contd...4.

*(Certified to be true copy.)*  
*[Signature]*

- 4 -

7) I have heard argument for both sides.

Discussion, decision and reason there of :-

8) Issue No. 1.

Whether the suit is maintainable in law and fact.

The defendants have stated in the written statement that the suit is not maintainable as this court has no jurisdiction to try this suit. The defendants have all stated that the mater is service matter and the matter is to be decided by Central Administrative Tribunal.

The perusal of the pleadings it appears that the plaintiff has stated that his service was terminated by an unfair and improper inquiry. The plaintiff has also stated that the inquiry was not held on due date.

In such a position let me see at first whether this Civil court has jurisdiction to try this ~~exempt~~ suit.

Sec. 9 of C.P.C. provides :-

" The courts shall (subject to the provisions herein after contained) have jurisdiction to try all suits of a Civil nature except of suit of which the cognizance is either expressly or impliedly barred.

*Certified to be true copy*  
*M. B. B.*

Contd...5.

Explanation 1 - As suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on decision of a question as to religious rites or ceremonies.

Explanation 2 - For the purpose of this Sec, it is material whether or not any fees are attached to the office referred to in explanation 1 or whether or not such office is attached to a particular place.

From the bare perusal of the Sec. 9 of CPC it appears that the suit which is not barred expressly or impliedly barred the Civil court can exercise its jurisdiction.

Now let me see Sec. 14 of Central Administrative Tribunal Act (Rules and orders) which provide.

14(1) Save as otherwise expressly provided in this, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme court) in relation to -

(a) recruitment and matters concerning matters recruitment to any all India service or to any civil service of the Union or a Civil post under the Union or to a post connected

Contd...6.

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*[Signature]*

with defence or in the defence service,  
being, in either case, a post filed by a  
civilian.

(b) all service matters concerning

(i) a member of abey all India service, or  
(ii) a person (not being a member of an all  
India service or a person referred to  
in clause (c)) appointed to any civil  
post under the Union, or 'service  
matters' is defined in Sec 3(4) of the  
Administrative Tribunal Act -

'Service matters', in relation to a  
person, means all matter relating to  
the condition of his service in connec-  
tion with the affrirs of the Union  
or of any state or of any local or  
other authority within the urritory  
of India, or as the case may be, of  
any corporation (or Society) owned  
or controlled by Government, as  
pects -

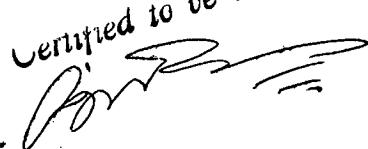
(i) .....

(ii) .....

(iii) .....

(iv) disciplinary matters;

Contd... 7.

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95

Here in this case instant the defendant has stated in the written statement that he was charged for his integrity and the same was inquired by the department and he was terminated from the service as a disciplinary action. P.W. 1 Bholanath Borah has also stated that in his evidence he was charged for his integrity and after inquiry, his service was terminated. So from the evidence of P.W 1, the defendant it is clear that his (defendant's) service was terminated as a result of disciplinary action against him.

D.W. 1 Dipan Deb has also stated in his evidence that the plaintiff misappropriated Government money and he was charged for his integrity and inquiry was held and on the basis his service as a disciplinary action.

Sec 9 of C.P.C. clearly provides that the court shall have all jurisdiction to try all suit of a civil nature except suit of which the cognizance is either expressly or impliedly banned. Sec. 14(1)(a)(b) of the Administrative Tribunal Act clearly bars the civil court to try the suit relating to all matter relating to the condition of service of Central Government which includes disciplinary action (Sec 3(9)(iv)). So while there a express bar to entertain a suit, this court will have no jurisdiction to try such suits.

In view of all, I come into conclusion that this court is without jurisdiction to try the suit, and the suit is not maintainable in law and facts and the issue is

Contd...8.

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*Prin*

decided against the defendant.

9) Issue No. 2

Whether the dismissal of the plaintiff from his service was in due process of law ?

From the discussion in the issue No. 1 and decision thereof, it appears that this court is without jurisdiction to try this suit. So to decide a question relating to the service matters of Central Government, which is expressly barred by the Administrative Tribunal Act, is nothing but a redundant.

10) Issue No. 3

Whether plaintiff is entitled is decree as prayed for ?

From the discussion and the decision of the issue No.1, it appears that the plaintiff is not entitled to any decree as prayed for.

11. In view of above discussion in the issue No.1 and 3, it appears that the suit of the plaintiff is not proved. Accordingly the suit of the plaintiff is dismissed.

O R D E R

1. The suit of the plaintiff is dismissed.
2. The suit is disposed of on contest with no cost.
3. Let decree be prepared accordingly.

Given under my hand and seal of this court on this 10th July, 2006.

*Borah*  
Certified to be true cop.

Sd/- J. Borah,  
Civil Judge No.1,  
(Jr. Divn) Dibrugarh.

10.7.06 31.7.06 31.7.06 22.8.06 22.8.06

High Court Form No. (J) 25

Decree in original Suit

(Order 20, Rules 6 and 7, Code of Civil Procedure)

District - Dibrugarh

In the Court of Munsiff No.1 Dibrugarh

T. Suit No. 5/2003 of 19

Sri Bholanath Borah

S/O Late Baloram Borah,

Resident of Lezai Bordoibam Gaon, Mouza - Larua

P.S. Barbaruah, P.O. Lezai, Dist. Dibrugarh,

by occupation un-employed at present by religion - Hindu.

- Vs -

- 1) Post master General, Assam region Guwahati-I an employee of Postal Department, Govt. of India settled with the responsibility of maintaining the post offices of the Assam, Region.
- 2) The Superintendent of Post offices, Dibrugarh Division an officer of the postal Department of India, directly responsible for the management of Post offices in the Dibrugarh Div.
- 3) The Assistant Superintendent of Post Offices, Dib. Div. Dibrugarh are officer of the Postal Department Govt. of India, directly responsible

Contd...2

*Certified to be true copy*  
*Print Name*

for the management of the post offices in Dib. Division together with the Superintendent of Post offices, Dib.

- 4) Director of Postal Services, Assam Circle.
- 5) Sri Manik Sengupta Assistant Superintendent of Post offices (H.Q.) Dibrugarh, an enquiring authority.
- 6) Sri Dipak Deb, Inspector of Post offices (C & P.G.) Dibrugarh. Present officer of the domestic officer held against plaintiff.

.... Defendant(s)

Claim for - declaration that the dismissal of the plaintiff from his post is illegal and the plaintiff is entitled to be reinstated in his post with all the benefits.

Suit is valued at Rs. 100.00

Court fee paid Rs. 22.00.

The Plaintiff prays for -

- 1) Declaration that the dismissal of the plaintiff from the post of Branch Post master, lezai Branch post office on the basis of findings of the enquiry officer and in view of the judgment and order passed by the ld. court of S.D.J.M. Dib. is illegal and untenable in law and the plaintiff is entitled to be re-investigated in his post with all the benefits that the post carries.
- 2) Any other relief or reliefs that the plaintiff may be deemed to be entitled to law and equity of the case.
- 3) Cost of the suit.

*(Signature)*  
Certified to be true CO.

Contd...3.

This suit coming on this day for final disposal before Sri J. Borah, Munsiff No.1, in the presence of

Sri S. Seal, Advocate - for the plaintiff and of

Sri J.C. Dutta, Advocate for the Defendant it is ordered that the suit of the plaintiff is dismissed.

The suit is disposed of on contest with no cost.

Given under my hand and the seal of this court, this 10th day of July, 2006.

Sd/- J. Borah,  
Civil Judge No.1,  
(Jr. Divn) Dibrugarh

Sd/- N. Bora,  
20.7.06

Cost of Suit

Plaintiff

---

Defendant

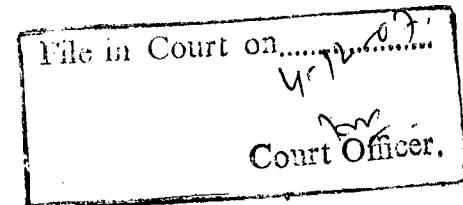
Nil

Nil

Sd/- J. Borah,  
Civil Judge No.1,  
(Jr. Divn) Dibrugarh,

Sd/- N. Borah,  
20.7.06

*Certified to be true copy*



BEFORE THE CENTRAL ADMINISTRATION TRIBUNAL  
KAMRUP AT GUWAHATI

Filed by

Abul Bara Rasheed  
অবুল বারা রশেদ  
Post Officer, পোস্ট অফিস  
Superintendent of Post Offices  
Dibrugarh Dist., Dibrugarh-786001  
04.12.07

Guwahati  
through Gramana Prakash  
Sri C.G.S.C

O.A No.136 of 2007

Sri Bholanath Bara.

..... Applicant.

-VS-

Union of India & Ors.

..... Respondents.

The written statement filed by the  
respondents above named :

WRITTEN STATEMENT OF THE RESPONDENTS

MOST RESPECTFULLY SHEWETH :

1. That with regards to the statements made in paragraph I to III of the instant application the respondents have no comment.
2. That with regards to the statement made in paragraph IV & V of the instant application the respondents have no comment.
3. That with regards to the statement made in paragraph VI.1 to VI.12 of the instant application the respondents begs to state that these are within the specific knowledge of the applicants and some of the paras are matter of records have no comment and the

6 DEC 2001

गुवाहाटी न्यायपाठ  
Guwahati Bench

Abdur Razzak  
अधिकारी न्यायपाठ  
Superintendent of Post Offices  
Dibrugarh Dn., Dibrugarh-786001

respondents do not admit any thing which are not borne out of records.

4. That with regards to the statement made in paragraph VI.13 of the instant application the respondents begs to state that there was no inordinate delay in finalization process of the appeal case in vie of the fact that in the year 2001, the Regional office was given a new establishment at Dibrugarh. As such there was dissolution of works. As a result, the correspondence process took a longer time. Moreover, at that time there was a good number of appeal cases pending at Regional Office Dibrugarh.

5. That with regards to the statement made in paragraph VI.14 & VI.15 of the instant application the respondents have no comment.

6. That with regards to the statement made in paragraph VII.1 of the instant application the respondents begs to state that the Appellate Authority, while deciding an appeal case, strictly follows the Department Rules and procedures. The Appellate Authority considers the case with an open mind without any prejudice to the appellant.

7. That with regards to the statement made in paragraph VII.2 of the instant application the respondents begs to state that the disciplinary authority rightly considered the defence of the applicant which was submitted vide his representation/defence dated 05/04/99 wherein he admitted all the charges brought against him. To prove himself innocent the applicant simply stated

6 DEC 2001

गुवाहाटी न्यायालय  
Gauhati Bench

Abdul Rehman  
अब्दुल रहमान  
Post Box No. 786001  
Dibrugarh Dt., Dibrugarh-786001

the words like honest error, through oversight etc. are not at all convincing as per the document and records maintained by him during his incumbency.

8. That with regards to the statement made in paragraph VII.3 of the instant application the respondents begs to state that the court has examined and considered the criminal aspect and passed the order/decision. The Department has enquired about the departmental lapses done by the applicant and accordingly final order was passed by the disciplinary authority. The Department has no concern about the criminal aspect. Similarly the Criminal Court has followed the same principle and remained silent on the Departmental proceedings instituted against the applicant.

9. That with regards to the statement made in paragraph VII.4 of instant application the respondents beg to state that in deciding an appeal case, the Appellate Authority considers the case from the viewpoint of Departmental Rules and Procedures, Moreover the Criminal Court acquitted the applicant on the ground that none of the Prosecution witness could implicate the accused person with the alleged offence of misappropriation of the money. This ground of the court left the Departmental Rules and Procedures untouched. Under these circumstances, it is not necessary that the decision of the Appellate Authority would have to be synonymous with that of the Criminal Court. Moreover the procedure of criminal court and the procedure of a departmental proceeding is completely operate and totally independent of each other.

6 DEC 1999

गुवाहाटी न्यायालय  
Guwahati Bench

Abulsoo Rashed

27 अक्टूबर 1999  
नियुक्ति नं. 786001  
Superintendent of Post Offices  
Dibrugarh Dn., Dibrugarh-786001

10. That with regards to the statement made in paragraph VII.5 of the instant application the respondents begs to state that the applicant in his representation dated 05/04/99 stated that the I.O. report should not be accepted on grounds of violation of Article 311(1) and 311(2) of Constitution of India is utterly baseless. The applicant was removed from service by the Superintendent of Posts, who is also the appointing authority of the applicant. The applicant was removed from service not by I.O. himself or any other authority subordinate to the appointing authority. Further, by servicing a copy of the I.O. report to the applicant for giving his statement in his defence, the respondent gave the applicant reasonable opportunity to defend himself. Again, the written of the P.O. of the case was also served to, the applicant vide Divisional Office, Dibrugarh Special Journal Registered Letter No. 7846 dated 27/11/98 for submitting his defence if any, which the applicant failed to act upon and submit defence which cannot be a ground for claiming vitiation of Article 311(2) as claimed by the applicant.

On the contrary, non submission of any defence statement by the applicant may be considered as follows:-

- a) the applicant had admitted the charge, or
- b) the applicant had nothing to state in his defence and/or
- c) the applicant deliberately tried to mislead the I.O. /P.O. by remaining silent.

6 DEC

गुवाहाटी न्यायपीठ  
Guwahati Bench

Abolition Request

84

পৰিবেশক কাৰ্য দফত  
ডিব্ৰুগড়, কেন্দ্ৰীয় - ৭৮৬০০১  
Superintendent of Post Offices  
Dibrugarh Dist., Dibrugarh-786001

Further, the I.O. conducted the enquiry in accordance with the rules and submitted the report correctly by following the prescribed Departmental procedure and norms without resorting to any deviation or arbitrary acts.

11. That with regards to the statement made in paragraph VII.6 of the instant application the respondents begs to reiterate the statement made in the last paragraph and further state that he inquiry proceeding claimed to have been vitiated is not true. Further, Sri N.N. Mitra, the then Deputy Superintendent, Jalpaiguri and Sri Sailen Das were the two witnesses of the state. The applicant did not adduce any defence witness although he was given reasonable opportunity to intimate, if he had one, during the pendency of the hearing. The State witnesses were to be examined by P.O. on 17/4/98 along with the applicant. However, the applicant failed to appear on the fixed date of hearing/ Since the Witness No.1 hailed from a far off place and could not be spared by his superior authorities frequently. Hence, the I.O. decided to rely upon documentary evidence and the previously obtained statement of the witnesses. Moreover, the applicant could not be considered as prejudice due to the non-presentation of the State witness because he should be concerned about the proper presentation of the defence witness only. Since the explanation submitted by the witness is deemed to remain the same at all given times, therefore relying upon their previous statements is not against the principles of natural justice.

6 DEC

গুৱাহাটী প্রাথমিক  
Guwahati Branch

পুরো রেসিডেন্স

অধিকার স্থান, দিব্রুগুড় - ৭৮৬০০১

85  
Superintendent of Post Offices  
Dibrugarh Dist., Dibrugarh-786001

12. That with regards to the statement made in paragraph VII.7 of the instant application the respondents begs to state that both the disciplinary as well as the appellate authority pronounced their decision after taking due note of the fact that misappropriated money was returned by the applicant. However, the act of returning the hold too much weightage considering the seriousness and gravity of offence committed by the applicant. Defalcation of Govt. money by a public servant is not only a breach of trust but it is also affects the goodwill of the Department adversely.

Further, the fact that as per Article 20(2) proceeding and findings of Departmental enquiry may not be in communion with any judicial proceedings instituted simultaneously/parallelly and may be independent of each other, Hence, there is no failure on the part of the respondent in this respect.

13. That with regards to the statement made in paragraph VII.8 of the instant application the respondents begs to state that the punishment imposed on the applicant by the disciplinary authority is awarded only after examining all the pros and cons of the case, taking into account all the facts for and against the applicant. Hence it is not irrational or arbitrary. The punishment order has even been upheld by the appellate authority into toto only due to its rational and non arbitrary approach. The principles of natural justice have been adhered to at all times during the case by both the disciplinary and the appellate authority.

केंद्रीय प्रशासनिक अधिकार अधिकार  
Central Administrative Tribunal

6 DEC 2007

गुवाहाटी न्यायालय  
Gauhati Bench

Abdus Raziq

आधिकारिक दाक दर  
हिन्दूगढ़ मंडल, डिब्रुगढ़ - 786001  
Superintendent of Post Offices  
Dibrugarh Dn., Dibrugarh-786001

14. That with regards to the statement made in paragraph VII.9 of the instant application the respondents have no comment.

15. That with regards to the statement made in paragraph VII.10 of the instant application the respondents begs to state that since the power to impose penalty upon a delinquent official is conferred on the competent authority by an Act or the Rules made under the proviso to Article 309 of the Constitution. There has been an enquiry consistent with the Rules and in accordance with the principles of natural justice as in the instant case, what punishment would meet the end of justice is exclusively within the domain and jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed upon the proving of misconduct, as in the instant case, the Hon'ble Tribunal may not substitute its own discretion for that of the authority. The adequacy of a bonafide penalty is certainly not a matter for the Hon'ble Tribunal to interfere with. The Tribunal also may not interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter. [Govt. of India, Department of Personnel and Training, O.M. No. 11012/1/90-Esstt.(A) dated 28/2/99. The respondent further begs to state that in similarly situated case the Hon'ble Gauhati High Court passed an order dismissing the petition of the petitioner in W.P.(C) 10537/03. The Hon'ble Gauhati High Court in its order dated 03/11/06 observed that acquittal in a criminal

6 DEC

গুৱাহাটী চৰায়ণী  
Guwahati Bench

*Abdeor Rasheed*

পৰিষেক শ্ৰেণী

সুপ্ৰিম কোৰ্ট, পৰিষেক - ৭৮৬০০১  
Superintendent of Post Offices  
Dibrugarh Dn., Dibrugarh-786001

case cannot be a ground to set aside and free the petitioner from the charges levelled against him in the disciplinary proceedings regarding discipline in the public administration is concerned, discipline is the sine quo non for a public officer.

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

16. That with regards to the statement made in paragraph VIII, IX, X and XI the respondent have no comment.

17. That the respondents submit that the instant application has no merit and also not admissible in the eye of law and as such the instant application is liable to be dismissed.

*Abdeor Rasheed*  
আধিকার টাক ঘর  
ডিবুগৱ মণ্ডল, ডিবুগৱ-786001  
Superintendent of Post Offices  
Dibrugarh Dn., Dibrugarh-786001

6 DEC

गुराहाटी न्यायालय  
Gauhati Bench

## VERIFICATION

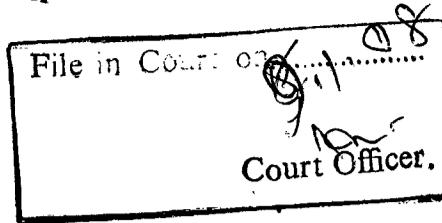
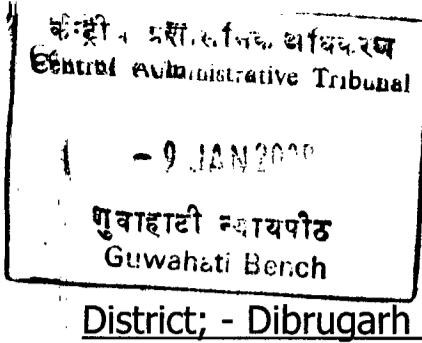
I, Abdeo Rashed Superintendent of Post Offices  
Dibrugarh Division Dibrugarh being duly authorized and  
competent to sign this verification, do hereby solemnly affirm and  
verify that the statements made in Paras 1 To 17 are  
true to my knowledge, belief and information and those made in  
Paras X are derived from the records/facts  
etc., and the rest are humble submissions before the Hon'ble Court  
and I have not suppressed any material facts.

And I sign this verification on this the 21st  
day of November 2007 at Cheenani

Abdeo Rashed,

Signature

बंधीलक दाक घर  
दिखागढ मेल, दिखागढ - 786 001  
Superintendent of Post Offices  
Dibrugarh Do., Dibrugarh - 786 001



## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## GUWAHATI BENCH: AT GUWAHATI

[An application under section 19 of the Administrative Tribunals

Act, 1985]

O.A. No. 136/2006

**Shri Bhola Borah**

.....Applicant

-VERSUA-

## Union of India & Ors

## .....Respondents

A rejoinder by the applicant to the states made in the written statement filed by the respondents.

1. That a copy of the written statement filed by the respondents was served on the counsel for the applicant. The applicant has gone through the said written statement and understood the contents thereof. The present rejoinder

Shri Shiva Nath Barak  
Applicant No.  
Munir Bismillah Khan 9.1.08  
filed by:-  
als

Guwahati Bench  
Court Officer's Name \_\_\_\_\_  
Date \_\_\_\_\_  
- 9 JAN 1999  
गुवाहाटी न्यायपीठ  
Guwahati Bench

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File in Court on.....

Court Officer.

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Shri Bhulabohm Deka

is being filed opposing the statements made in the said written statement.

2. That save and except those statements which are specifically admitted herein and the rest of the statements are regarded to be not admitted and denied by the applicant.
3. That with regard to the statements made in paragraphs 1, 2 and 3 of the written statement, the applicant reiterates the statements made in paragraphs I, II, III, IV, V, VI.1 and VI.12 of the original application.
4. That with regard to the statements made in paragraph 4 of the written statement, the applicant states the facts have not been correctly placed. The applicant filed appeal dated 6.8.1999 against the order of removal dated 10.3.1999 before the appellate authority, the Director, postal Services, Assam circle, Guwahati. Disposal of the applicant's appeal at Guwahati(Respondent No.3) is no way connected with the of new establishment at Dibrugarh. Pendancy of other appeal may not be a good ground for taking long 5 years to dispose of the applicant's appeal. The applicant states that from the very beginning, the Respondents had neglected

- 9 JAN 2012

গুৱাহাটী মাধ্যমিক  
Guwahati Bench

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File in Court on.....

Court Officer.

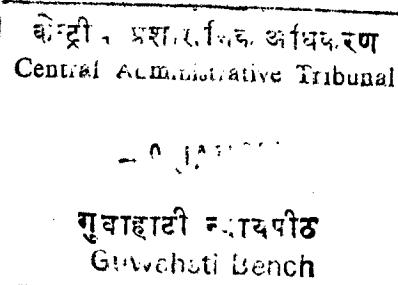
the applicant's case and mechanically disposed of his appeal.

Shri Bhulabalanath Baruah  
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5. That with regard to the statements made in paragraph 5 of the written statement, the applicant reiterates and reaffirms the statements made in paragraphs VI.4 & VI.15 of the original application.
  
6. That the applicant stoutly denies the statements made in paragraph 6 of the written statement. He states that after 5 years, the Appellate authority had decided the case of the applicant very mechanically without any explanation for such delay in disposing the appeal and arbitrarily dismissed the same. The appellate authority failed to consider the fact that the applicant kept the amount in question with him for safety and proper security since there was no good infrastructure in the office of the Dibrugarh branch at the relevant time. On being insisted by the Department, the amount was duly returned with proper account. The authority further failed to appreciate the fact the applicant was not given any formal training of his job. The applicant was the only EDA at Dibrugarh at the relevant time to run the said branch at Dibrugarh. The appellate authority failed to appreciate the fact that the applicant had minor mistake

and imposition of penalty of removal from service is too harsh and was disproportionate.

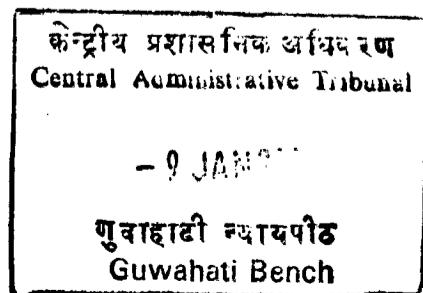
7. That the applicant has not admitted the statements made in paragraph 7 of the written statement. The applicant pleaded not guilty to the charges leveled against him. Therefore, the Departmental inquiry was initiated against the applicant.
8. That the applicant denies the statements made in paragraph 8 of the written statement. Resemblance of factual aspect may be taken in to consideration while passing the subsequent orders after the disposal of the criminal case.
9. That the applicant denies the statements made in paragraphs 9 of the written statement. The findings/admitted facts in a parallel criminal proceeding may have the bearing on the subsequent decision. The finding of the criminal court is that the ingredients i.e., dishonest intention to misappropriate the money has not been established against the applicant.



Shri Phularkhowli

10. That with regard to the statements made in paragraph 10 of the written statement, the applicant states that he had not received any letter dated 27.11.1998 calling upon his defense. As a result, he could not respond to the said letter. For that, it can not be held that the applicant admitted the charges leveled against him. Arrival of such findings against the applicant in the disciplinary proceeding was bias. Therefore, the disciplinary proceeding was arbitrary and violative of Article 311 (2) of the Constitution of India.

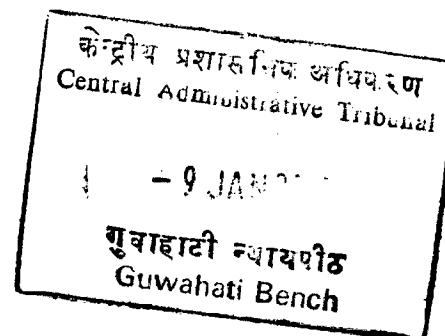
11. That with regard to the statements made in paragraph 11 of the written statement, the applicant states that he was all along present before the I.O. who kept on propounding the appointed dates of his own. It is the admission of the Respondents that the I.O. relied upon the previously recorded statements of the witness. Admittedly, the witnesses were not examined in front of the applicant and thereby he was denied the opportunity of cross examination of the witnesses. Therefore, the inquiry was vitiated by bias and arbitrariness which caused prejudice to the rights of the applicant.



Shri Prakash Nath

12. That the applicant does not admit the statements made in paragraphs 12, 13, 15 and 17 of the written statement. The applicant states that the punishment imposed by the disciplinary as well as the Appellate authority is harsh and disproportionate so far the peculiar facts and circumstances of the case. In any case, the applicant is entitled to the benefits of judgment and order rendered by the Hon'ble Gauhati High Court reported in 2007(3) GLT 832.

13. That the with regard to the statements made in paragraphs 14 and 16, the applicant reiterates the statements made in paragraphs VII.9, VIII, IX, X and XI of the original application.



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Court Officer.

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**-VERIFICATION-**

I, Shri Bholanath Borah, son of late Boloram Borah, aged about 45 years, by profession-presently unemployed, resident of Lezai Bordoibamgaon, P.O.- Lezai in the district of Dibrugarh (Assam), do hereby say that I am the applicant in O.A. No. 136/2007. I have verified the statements made in the present rejoinder. The statements made in paragraphs 1 to 13 are true to my knowledge and the rests are my respectful submissions and I have not suppressed any material facts about the case before this Hon'ble tribunal.

I set my hand to this verification on this the 9<sup>th</sup> day of January, 2008 at Guwahati.



Signature.

