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

(DESTRUCTION OF RECORD RULES, 1990)

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✓  
O.A/T.A No. 136/2007

R.A/C.P No.

✓  
E/P/M.A No. 47/2007

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SECTION OFFICER (Judl.)

Kalita  
08.10.17

CENTRAL ADMINISTRATIVE BOARD  
COMMUNAL BOARD

ORDERS SHEET

1. Original Application No. 136/07

2. Miscellaneous Petition No. \_\_\_\_\_

3. Contempt Petition No. \_\_\_\_\_

4. Review Application No. \_\_\_\_\_

Applicant (SI Bhola Nath Bora) vs Union of India & Ors

Advocate for the Applicant (S) Mr. L. 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 filed/C.F. for Rs. 50/-  
Deposited with IPO/BD  
No. 346/654174  
Dated 31.5.07

5.6.2007

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

Pan  
Dy. Registrar  
6.6.07

/bb/

Vice-Chairman

Petitioner's briefs  
for respondents  
one received with  
envelops.

17.7.2007

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

Vice-Chairman

/bb/

Pan  
7.6.07

~~granted four weeks time to file reply  
statement.~~

~~Post on 9.10.2007.~~

7-8-07

no reply f.w.

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.

W/s 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<sup>File</sup> at the time of hearing.

Call this matter on 04.12.07.

(Khushiram)  
Member(A)

(Manoranjan Mohanty)  
Vice-Chairman

lm

Notice & order along with MP 47/07 sent to D/Section for issuing to resp. nos. 1 to 4 by regd. A/D post.

13/11/07 - D/No-1336 to  
Dt 1339  
15/11/07.

① Service report awaited.

② W/s not filed.

3.12.07.

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

6/12

(Khushiram)  
Member(A)

(M.R.Mohanty)  
Vice-Chairman

Lm

6.12.07

W/S 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.

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.

8.1.08.

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-  
07-136/07

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.

(Khushiram)  
Member (A)

(M.R. Mohanty)  
Vice-Chairman

nkm

The case is ready  
for hearing.

22.5.08.

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

(Khushiram)  
(Member(A))

(M.R. Mohanty)  
Vice-Chairman

lm

Perused copy  
before Mr. B.K. Das  
Sr. Counsel  
04.06.08

11.6.08

Copy of the order  
sent to the D/Secy  
for filing in line to  
the court  
lm

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

7

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.



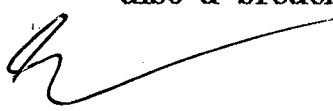
ORDERKHUSHIRAM (MEMBER-A)

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-I).
- (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

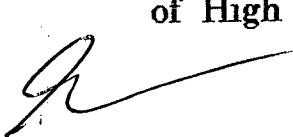




adversely. The Applicant had deposited the entire amount with the Respondents. It has also been stated that adequacy of the penalty is not a matter for the Tribunal to be adjudicated upon or interfere with. On the basis of proved charges in the enquiry report, the punishment has been awarded to the Applicant. 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.

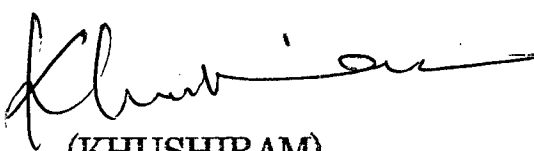
4. On the other hand Mr G.Baishya, learned Sr. Standing counsel appearing for the Respondents, contended that withdrawal of amount from the savings bank account of other depositors is just not a criminal offence, but the Applicant, having done, that has seriously affected the trust reposed on him amounting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

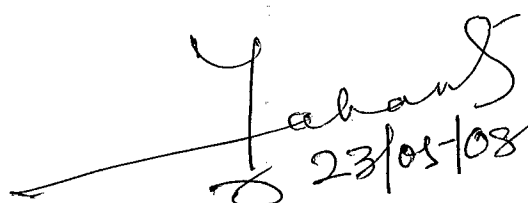


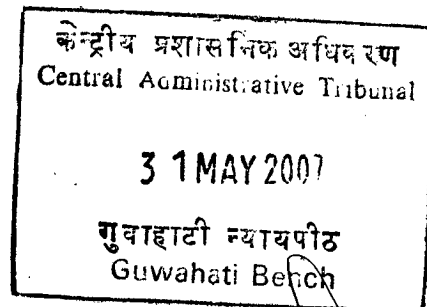
Shashikant S. Patil and another, (reported in (2000) 1 SCC 416), wherein (at para 16) the Hon'ble High Court held as under :-

"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

  
(MANORANJAN MOHANTY)  
VICE CHAIRMAN



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

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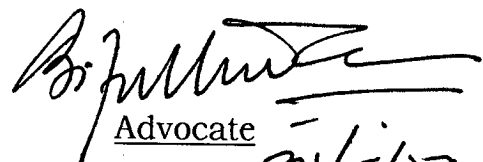
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<u>Sl. No.</u>	<u>Annexure</u>	<u>P a r t i c u l a r s</u>	<u>Page No.</u>
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Filed by :-

  
Advocate  
31/5/07

17

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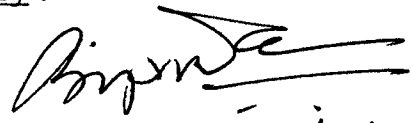
### SYNOPSIS

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 :-

*[Signature]*  
 31.5.07  
*[Signature]*

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

Shri Bholanath Borah

[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 Bole nam Borth

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 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.

Shri Bahadur Singh

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

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. GROUND 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.

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. : 3462654174  
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.



**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 Bhola nath Bora, EDA (under put off duty), Leda EDO  
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 Bhola nath 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 Bhola nath 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 Bhola nath 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 Bhola nath 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 represen-  
tation is received on his behalf from another person in respect  
of any matter dealt with in these proceedings it will be presumed  
that Shri Bhola nath Bora..... is aware of such  
representation and that it has been made at his instance and action  
will be taken against him for violation of Rule 17 of EDA  
Conduct and Service Rules 1964.....

6. The receipt of this memorandum may be acknowledged.

REGD /AD  
Shri Bhola nath Bora  
EDA (under put off duty)  
Leda EDO via  
Barbarua

(A.N. Seal)  
Supt. of Post Offices.  
Dibrugarh Divn; Dibrugarh-1.

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ANNEXURE I

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

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.

<u>MO No</u>	<u>Date of issue</u>	<u>Value</u>	<u>Commission</u>
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 DO bag of the date of subsequently as required under the Rule 104(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 IO accounts of 9-7-96, on 9-7-96 when called for by the Asstt. Superintendent of POC(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 IO account of Lezai DO.

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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 MDA Conduct and Service Rules 1964.

#### ARTICLE -III

The said Sri Bora while working as MDA, Lezai received Delhi-94 VPP No:394 dtd, 19-6-96 valued for Rs.400/- addressed to Sri Sailen Das, PO Lezai through IO slip dt.27-6-96. But the particulars of the above VPP was not entered in the IO Journal of Lezai IO, 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 VPPO commission of the VPP. But the particulars of the delivery of the above VP article was not 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 MDA Conduct & Service Rules, 1964.

#### ARTICLE -IV

That the said Shri Bhola Nath Bora while functioning as MDA, Lezai IO accepted the deposits from the depositors of the following SB/RO and MSY 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.

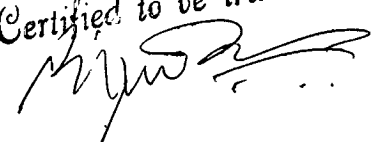
Certified to be true copy

*[Signature]*

Department of Posts

<u>A/c No:</u>	<u>Date of transaction</u> <u>(Deposits)</u>	<u>Amount</u>
1. 218860	26.04.96	Rs. 200/-
2. 219629	25.08.95	Rs. 50/-
	15.11.95	Rs. 120/-
	21.11.95	Rs. 50/-
3. 220093	03.09.93	Rs. 50/-
4. 220095	17.02.96	Rs. 400/-
	20.05.96	Rs. 200/-
5. 220546	27.12.95	Rs. 50/-
6. 220684	13.05.96	Rs. 500/-
	15.06.96	Rs. 200/-
7. 15299	08.04.96	Rs. 120/-
8. 15720	18.11.95	Rs. 120/- 50/-
	20.01.96	Rs. 50/-
	24.02.96	Rs. 50/-
	21.03.96	Rs. 50/-
	22.05.96	Rs. 50/-
	06.07.96	Rs. 400/- 50/-
		<del>Rs. 50/-</del>
9. 15752	09.04.96	Rs. 30/-
	05.06.96	Rs. 30/-
10. 15924	19.06.95	Rs. 600/-
	07.09.95	Rs. 600/-
	16.10.95	Rs. 200/-
	23.11.95	Rs. 200/-
	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. 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. 15983	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. 16187	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/-
	06.06.96	Rs. 300/-

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15. 16195	06.05.96	Rs. 200/-
16. 16196	06.05.96	Rs. 200/-
17. 16202	30.01.96	Rs. 100/-
	12.02.96	Rs. 100/-
18. 16203	30.01.96	Rs. 100/-
	12.02.96	Rs. 100/-
19. 7699	04.12.95	Rs. 28/-
	05.12.95	Rs. 12/-
	02.01.96	Rs. 28/-
	17.01.96	Rs. 32/-
	20.03.96	Rs. 44/-
	23.03.96	Rs. 20/-
	29.03.96	
20. 7931	25.11.95	Rs. 100/-
21. 7945	30.12.95	Rs. 244/-
22. 8150	04.12.95	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. 100/-
	09.03.96	Rs. 56/-
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. 120/-
	12.06.96	Rs. 100/-
32. 9825	18.11.95	Rs. 28/-
33. 8554	25.10.95	Rs. 40/-
34. 8227	26.03.95	Rs. 108/-

Further more a sum of Rs. 500/- has been shown as withdrawal in the IO a/c book and IO SJ Journal against the IO 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.

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*[Signature]*

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ANNEXURE -II

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

ARTICLE -I

The said Shri Bholanath Bora while functioning as EDA  
Lezai IO on 19-4-96 issued Lezai IO MO no:56 for Rs.500/- payable  
to Mrs. Tetery Devi, vill: Chalepur PO Hasenpur Mutiah via Barally  
Dist. Copalganj and remitted by Dular Chandra Mahate, Lezai Gaon  
PO Lezai. On the said date he also issued Lezai IO MO No:57  
for Rs.500/- payable to Mrs. Kalasiah Devi Salepur PO, Hasenpur  
Mutiah via Barally, Dist Copalganj, Bihar and remitted by  
Chandrika Mahate 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 IO MOs to the account  
office through the IO Bag 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 135(2) of Branch Office Rules.

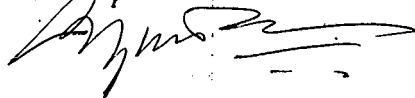
Thus it is alleged that by his above stated act, the  
said Shri Bora has failed to maintain absolute integrity and  
devotion to duty in violation of Rules 17 of EDA conduct and  
Service Rules, 1964.

ARTICLE II

The said Shri Bora while was working as EDA Lezai IO,  
on 09-7-96, the Asstt. Supdt. of POs, Dibrugarh Divn, Dibrugarh  
visited his office. The closing balance of Lezai IO account  
dated 8-7-96 as per Lezai IO a/c book was Rs.2250.85 comprising  
of cash and postage stamps and stationery. But the said Sri  
Bora failed to produce neither the cash nor postage stamps  
and stationery for inspection when called for by the Asstt.  
Supdt. of POs, Dibrugarh Dn, 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 IO account of Lezai IO 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.

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ARTICLE III

The said Shri Bora while <sup>working</sup> as EDA Lezai, received the Delhi.94 VPP No:394 dated 19-6-96 valued for Rs.400/- a/to Sri Sailendra Das PO:Lezai through Barbarua SO, DO slip dtd 27-6-96. But the particulars of the above stated VPP was not entered in the DO Journal of Lezai DO 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 VPP commission. But the particulars of the delivery of the above VPP article was not recorded in the DO Journal of Lezai DO 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 DO account of Lezai DO of the date or subsequently in any way as required under Rule 133(2) of Branch Office rule.

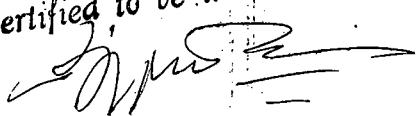
Thus it is alleged that by his above stated action, the said Shri Bora has failed to maintain absolute integrity and devotion to duty in violation of EDA Conduct and Service Rules, 1964.

ARTICLES IV

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

But the amount of deposits as accepted by the said Shri Bora was not included in the DO accounts on the date of transaction against each Accounts as required under Rule 133 of Rules for Branch Office. The transactions were not also entered in the DO Journal as required under Rule 132(f) of the above stated Rules.

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Said through  
24.6.97 KJ-24/157



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Department of Posts  
Minister of Post Offices

<u>A/c No:</u>	<u>Date of transaction</u> (Deposits)	<u>Amount</u>
1. 218860	26.04.96	Rs. 200/-
2. 219629	25.08.95	Rs. 50/-
	15.11.95	Rs. 120/-
	21.11.95	Rs. 50/-
3. 220093	03.09.93	Rs. 50/-
4. 220095	17.02.96	Rs. 400/-
	20.05.96	Rs. 200/-
5. 220546	27.12.95	Rs. 50/-
6. 220684 ✓	13.05.96	Rs. 500/-
	15.06.96	Rs. 200/-
7. 15299	03.04.96	Rs. 120/-
8. 15726	18.11.95	Rs. 120/-
	20.01.96	Rs. 120/-
	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. 400/-
	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	28.03.95	Rs. 200/-
	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. 15983	29.11.95	Rs. 300/-
	02.01.96	Rs. 300/-
	23.02.96	Rs. 50/-
	05.06.96	Rs. 50/-
13. 16057	06-05.95 //	Rs. 150/-
14. 16137	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/-
	06.06.96	Rs. 300/-

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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 12.02.96	Rs. 100/- Rs. 100/-
18.	16203	30.01.96 12.02.96	Rs. 100/- Rs. 100/-
19.	7699	12.02.95 04.02.95 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	04.12.96.95 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	17.10.95	Rs. 104/-
26.	8297	18.10.95	Rs. 76/-
27.	8460	06.02.95	Rs. 100/-
28.	8563	20.02.96 09.03.96	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 12.06.96	Rs. 100/- Rs. 100/-
32.	9825	18.11.95	Rs. 28/-
33.	8554	25.10.95	Rs. 40/-
34.	8227	26.08.95	Rs. 108/-

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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 IO 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 ~~was~~ 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.

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*[Signature]*

34

21(a)

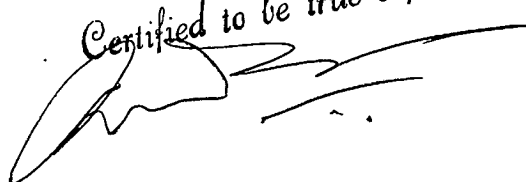
Annexure-III

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 Sailen 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 ~~02.12.95~~ 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) journal 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 copy*

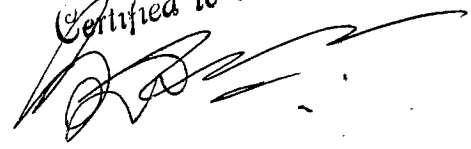


21(b)

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 ~~now~~ Division now Superintendent of post Darjeeling Division, Darjeeling Division.
2. Shri Sailen Das, PO Lezai Dist : Dibrugarh.

Certified to be true a.  


Annexure - B

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

Memo NOF-7/96-97.

Dated, Dibrugarh the 5.07.97

ORDER

Where as an inquiry under Rules 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.

Ragd.

2. Shri Bholanath Borah, EDA (Put off duty) Lezai B.O via. Barbarua 786007 for information.

Under  
Receipt

3. Shri Manikk 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 co.

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Annexure - C

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

Memo No. 7/96-97.

- Dated, Dibrugarh, 8.09.97.

Memo No. F7-2/96-97.

Datedt. Dibrugarh the 8.09.97

ORDER - For issuance of P&T E.D.A. Conduct

Whereas an inquiry under Rule 8 of the P&T EDA 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 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. Supdt. Of Post Offices, (H/Q), Dibrugarh as the Inquiring Authority to inquire into the charges framed against the said Shri Borah.

(4B. SEAL)

Superintendent of Post offices  
Dibrugarh Division, Dibrugarh-1.

Copy to :-

Under Receipt.

1. Shri Manik Sengupta, Asstt. Supdt. 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. He is requested to complete the enquiry within sixty days.

Under Receipt.

2. Shri Deepak Deb, IPOs (c&pg) Dibrugarh and presenting Officer for information and necessary action.

Regd.

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

- 4-5. Spare.

Superintendent of Post Offices  
Dibrugarh DN, Dibrugarh-1.

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## Inquiry Report.

500.00

25.00

500.00

25.00

In the case against Shri Bhola Nath Borah, EDA (put off duty) Lezai BO in account with Borparuah SO under of the Dibrugarh H.O. for induced the amount of value

1.1 Under SPOs Dibrugarh Division, Dibrugarh memo no: 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, prepared my inquiry report as under: - to maintain absolute in violation of Rule 17

2.0 Participation by the charges 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. Debvidya 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 on a fixed date of 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 SPS Sri B.N. Bora 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. Bora 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 through out the inquiry proceedings.

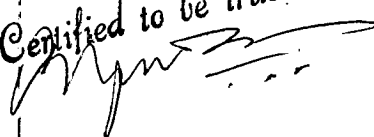
3.0 Article of charge and substance of imputation of misconduct or misbehaviour.

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 Bora while functioning as EDA-Lezai BO on 19-4-96 issued the following MOs from his office.

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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 or subsequently as required under the Rule 104(3) of Branch office Rules nor included the amount of value and commission of the above ~~xxxxxxx~~ money orders in the branch office account of the date as required under the provision of Rule 133(e) 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 Sailen 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 Local BO accepted the deposits from the depositors of the following SB/RO and SY 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. 212860	26-4-96	Rs 200/=
2. 215629	25-8-95	Rs 50/=
	15-11-95	Rs 120/=
	21-11-95	Rs 50/=
3. 220093	03-9-93	Rs 50/=
4. 220295	17-2-96	Rs 400/=
	20-5-96	Rs 200/=
5. 220546	27-12-95	Rs 50/=
6. 220634	13-5-96	Rs 500/=
	15-6-96	Rs 200/=
7. 15299	08-4-96	Rs 120/=
8. 15728	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/=
		Rs 50/=
9. 15752	09-04-96	Rs 30/=
	05-06-96	Rs 30/=
10. 15924	12-06-95	Rs 600/=
	07-09-95	Rs 600/=
	16-10-95	Rs 200/=
	25-11-95	Rs 200/=
	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/=
	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/=
	24-06-96	Rs 300/=
12. 15983	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/=
	02-06-96	Rs 300/=
15. 16195	06-05-96	Rs 200/=
16. 16196	06-05-96	Rs 200/=
17. 16202	30-01-96	Rs 100/=
	12-02-96	Rs 100/=
18. 16203	30-01-96	Rs 100/=
	12-02-96	Rs 100/=
19. 7699	04-02-95	Rs 20/=

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20.7931  
21.7945  
22.8150

23.8239  
24.8292  
25.8296  
26.8297  
27.8460  
28.8563

29.8606  
30.8962

31.9694

32.9825  
33.8554  
34.8227

05-12-95  
02-01-96  
17-01-96  
20-03-96  
23-03-96  
29-03-96  
25-11-95  
30-12-95  
04-12-96  
02-01-96  
11-06-96  
18-10-95  
18-11-95  
27-10-95  
18-10-95  
06-02-95  
20-02-96  
09-03-96  
10-01-95  
04-12-95  
11-12-95  
09-01-95  
12-01-96  
12-06-96  
18-11-95  
25-10-95  
26-08-95

Rs 20/=  
Rs 12/=  
Rs 28/=  
Rs 32/=  
Rs 44/=  
Rs 20/=  
Rs 100/=  
Rs 244/=  
Rs 12/=  
Rs 44/=  
Rs 8/=  
Rs 100/=  
Rs 40/=  
Rs 104/=  
Rs 76/=  
Rs 100/=  
Rs 100/=  
Rs 56/=  
Rs 100/=  
Rs 32/=  
Rs 20/=  
Rs 20/=  
Rs 100/=  
Rs 100/=  
Rs 20/=  
Rs 40/=  
Rs 103/=

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

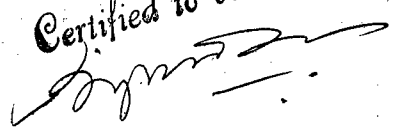
Thus it is alleged that the said Sri Bhola Nath Bora, by his above stated act has failed to maintain absolute integrity and devotion to duty in violation of Rule 17 of EDA conduct and service Rules 1964.

3.2 According to the statement of imputation of misconduct or misbehaviour Sri Bhola Nath Bora, EDA Lezai DO (now put off duty) failed to maintain absolute integrity and devotion to duty on the following :-

Article-1

While Shri Bora functioning as EDA Lezai BO received from Sri Dularchand Bahato of Lezai gaon PO:Lezai on 13-1-96 a sum of Rs 500/= plus commission of Rs 25/= for remittance by BO to Mrs Telari Devi, Vill- Chalepur PO:Hasanpur Muthiah via-Barally Dist: Gopalganj and on the same day Sri Bora

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... received Rs500/- and commission of Rs 25/- from Shri Chandrika Mahato of Lowaigion, 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 IO Rules.

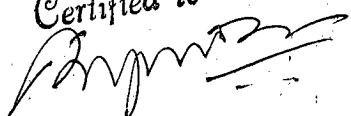
#### Article II

While Sri Bholanath Bora functioning as EDA Lezai on 9-7-96 the asstt.SPOs,Dibrugarh Division; Dibrugarh visited his (Sri Bora's) Office.The closing balance of Lezai IO account of dt 8-7-96 and per IO 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 ASPOs 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 Sailen Das duly realising the value and VPMO commission of Rs4201/-. 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 Bhola-nath Bora accepted deposits from depositors 934 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.

#### 4.1 Article I

Shri Bholanath Bora while functioning as BPM Lezai BO accepted Rs 1000/= + MO commission for Rs 50/= from Sri Dular chandra Mahato and Shri Charika Mahato of Lezaigaon PO: Lezai after remitting Rs 500/= each by money order from his office in the name of Mrs. Tetery Devi village: Chalepur PO: Hasenpur Mutiah and Mrs. Kalashia Devi salepur PO: Hasenpur Muthia via: Barielly Dist: Gopalganj Bihar respectively but neither the money order forms were sent to account office through BO bag of the date not 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-8) pertaining to Lezai MO No 57 dt 10-4-96 for Rs 500/=(S-2), B.O receipt book (MS-37(a) of Lezai BO for PO form 27-12-94 to 19-4-96 (S-3) and non credit of value of 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) Dibrugarh visited his office on 9-7-96 for inspection but the said Shri 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 BO received Delhi -94 VPP no 394 dt 19-6-96 value Rs 400/= a/to Shri Sailen Das PO: Lezai through Barbarua's 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 (Shri 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 VPP did not enter in the BO Journal (S-7) BO account (S-4) nor sent the signed receipt to the account office Barbarua SO. In support of the charge documentary evidence produced are Lezai BO Journal dtd from 4-12-96 to 28-8-96 (S-7).

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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 transactions 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 found SB Journal (S-9) BO (MSY) Journal (S-10 (i & ii)) BO RD Journal (S-11) and BO account book (S-4 and S-3).

Similarly, he shown withdrawal of Rs 500/- on 1-3-99 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.

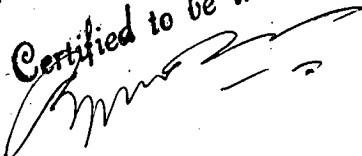
On hearing the concluding day of the hearing on 19-8-98 the PO was directed to submit his brief into the dis: to the undersigned within 15 days endorsing a copy of the same to the C.O. and C.O. was asked to submit his written brief within 15 days of receipt of the copy of the brief from the PO. Submitted 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 Spherical Journal RL 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.

Ampl-1  
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 23-12-97, the MO forms in relation with MOs mentioned above and the (S-3) have the co-r in with the issue of the MOs, on the basis of the entry in the MO forms, the BO receipt is prepared by the BPM, retaining the office copy as the office record. As the to Rule 104(3) the money orders should be placed further bag dt 22-6-93 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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-31- 47

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 & other stationeries before the inspecting officer. The Asstt. Supdt. of Post Office (O/D) Dibrugarh when called PK.

According to the provision of Rule 11(2) of Rule for Branch Post Office it is the responsibility of the EDBPM 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-EDBPM 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.

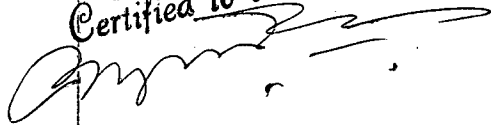
#### Article-III

The allegation against Sri B.N. Bora is that while Sri Bora working as EDBPM 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, prove 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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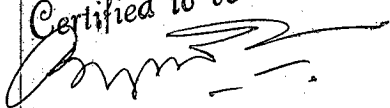
The BPM Sri Bora have correctly maintained the office record and these records have been produced in the case in support of the charge as exhibits (S-5, 6 and 7) dt. 23-12-97. In course of regular hearing these records were tabled before Sri B.N. Bora, the BPM Lezai Post Office and his defence assistant, 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 Sailen 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 Rs 400/= and its VPMO commission of Rs 20/= on 2-1-97. 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.	Date of transaction (Deposits)	Amount.
1. 218960	26-4-96	Rs 200/-
2. 219629	25-2-95	Rs 50/=
	15-11-95	Rs 120/=
	21-11-95	Rs 50/=
3. 220093	05-1-93	Rs 50/=
4. 220095	17-2-96	Rs 400/=
	20-5-96	Rs 200/=
5. 220546	27-12-95	Rs 50/=
6. 220684	13-5-96	Rs 500/=
	15-6-96	Rs 200/=
7. 15299	03-4-96	Rs 120/=
8. 15728	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/=
		Rs 50/=
9. 15752	02-04-96	Rs 30/=
10. 15924	03-06-96	Rs 30/=
	13-08-96	Rs 600/=
	17-09-96	Rs 600/=
	16-10-96	Rs 200/=
	25-11-96	Rs 200/=
	10-12-96	Rs 200/=
	02-01-97	Rs 200/=
	16-03-96	Rs 200/=
	27-04-96	Rs 200/=
	28-06-96	Rs 200/=
	15-07-96	Rs 200/=
	15-08-96	Rs 200/=

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11.15976

28-03-95  
28-07-95  
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/=

12.15935

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

13-10-95

Rs 100/=

24.8292

13-11-95

Rs 40/=

25.8296

27-10-95

Rs 104/=

26.8297

13-10-95

Rs 76/=

27.8460

06-02-95

Rs 100/=

28.8563

20-02-95  
09-03-95

Rs 100/=  
Rs 56/=

29.8506

10-01-95

Rs 100/=

30.8562

04-12-95  
11-12-95  
02-01-96

Rs 32/=  
Rs 20/=  
Rs 20/=

31.9604

16.01.96  
12.02.96

Rs 100/=  
Rs 100/=

32.9825

18.11.95

Rs 28/=

33.8554

29.10.95

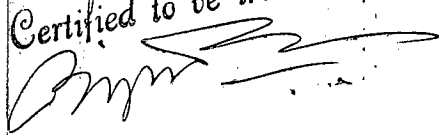
Rs 40/=

34.8227

26.03.95

Rs 103/=

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But the amounts he received as deposits were not included in the DO 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 DO account book and DO 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(i), S-10(ii), S-11, S-12(i) to S-12(xxxiv)) were tabled on 23-12-97 during regular 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 DO Journal are there.

The pass books of different types of savings scheme viz. SB/DO/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 mentioned. The deposits and MSY journal have not been included either in the DO, SB Journal / DO journal and MSY journal. DO 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 ED (Conduct) and service rules 1964 is evident and all the 4 (four) charges framed against Sri B.N. Bora EDA local (put off duty) stands proved.

(H. Sengupta)  
Inquiry Officer.

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5

Inquiry Report on the Departmental Enquiry held against  
Shri Bhola Nath Borah, Ex-BPM (put off duty) Lezai EDBO in  
Account with Borbaruah 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 Sailen 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-1 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 Supdt. of Post Offices  
Dibrugarh Division, Dibrugarh - 786001.  
Dated: DBR the 5th April '99.

Subj:- 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 I 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 & Commn. of two nos @ Rs. 1050/- only, I beg to state that the mistake was inadvertantly 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 Commn. i.e., failure to produce the cash & stamp balance of Rs. 2,250/- only, I beg to state that the charge is ill conceived. 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 allownce some time to bring 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 Commn. I beg to state that the V.P. article U/r 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 Burdan 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 brought aside.

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Lastly, I beg to point out, that in the 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 unitatarin 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.

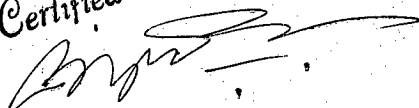
In view of the facts stated above I humbly pray to your magnanimity for exoneration in this matter for which act of your kindness. I shall remain ever grateful to you.

Yours faithfully,

sd/-

(Bholanath Borah)

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

Memo No. 17-2/96-97

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 104(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. 2,250.35 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 Sailen 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. 500/- 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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- 2 -

Thus it was alleged that, the said Shri Borah 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. *here*

The following records were submitted in support of the charges frame against the charged official Shri Borah and the records were marked as S-1, S-2 and so on to facilitated 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 Sailen 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-Assst.Suptd.of POs, Dibrugarh, now Suptd.of POs, Darjeeling Division, Darjeeling.
- 2. Shri Sailen Das, PO Lezai via Barbarua.

Shri M.Sengupta, Inquiring Authority hold 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]*

carefully:

I have gone through the following records and documents

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.2,250.35 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-3). But the article was delivered on 2.7.96 at reveals from the exhibit no.S-6 (written statement dated 3.11.96 of Shri Sailen 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 xxiv) 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 B.O.account books maintained by the charged official during the period (Ext.No.S-4 and S-3) in violation of Rule 133 of BO Rules.

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*[Signature]*



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, exercising the power conferred upon me under Rule 7(ii) of EDA(Conduct and Service) Rules, 1964, 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.

Copy to:

Regd/AD

- 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.

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*[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 Dn 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 SPOs. 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 incumbence, I have been charges by the SPOs DR Dn. for have omission & Commission & have been proceeded under Rule 'B' 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 hherefore 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 comparism 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 of as many as four B.Os upon me.

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6. That on imposition such extra load of work upon me I could not maintain accountal work properly for which some discrepancy & irregularities occurred.

7. That the order is highly prejudicial & totally destroyed all incentive of my life. So, this is highly unjust & unfair & injurious.

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

9. That from a <sup>penal</sup> pension study of the entire case it may kindly be deduced that the disciplinary authority is highly apathetic & biased upon me & was event upon to punish me in any way as such the verdict of the punishment authority is void <sup>ab initio</sup>.

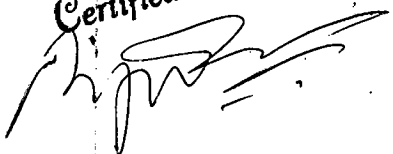
In view of the facts stated above, I humbly appeal to your honour to kindly consider the case in the light of the above facts and set aside the punishment order, appealed against, & more order of my reinstatement with retrospective effect i.e. from the date of my Put off duty, for which act of your kindness,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

Yours faithfully,

Bhola Nath Bora,

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

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Annexure-H

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12.9.2000      27.11.2000      1.12.2000      8.12.2000      8.12.2000  
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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]*

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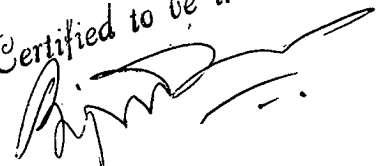
J U D G M E N T

- 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 many as 7 (seven) witnesses 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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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~~ 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 put 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.

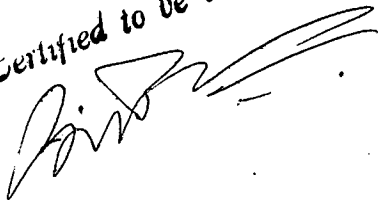
Sd/- J.P. Chakraborty,

7.9.2000

Sub Division Judicial

Magistrate(Sadar)

Dibrugarh.

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Annexure-I

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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.

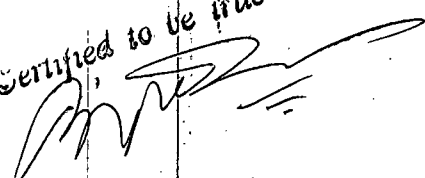
#### Article II

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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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

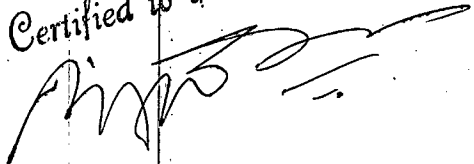
That the appellant did not credit the amount of deposits in as many as 34 SB/RD/MSY accounts in respect of accounts stand opened in his office as accepted by him from the respective depositors on several dates as require under Rule 133 of rules for branch offices and the transactions were also not entered 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 hold 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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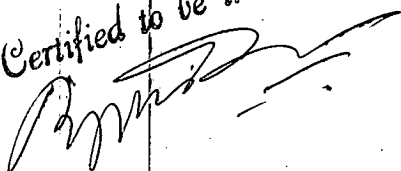
- 4.1. that the punishment order was issued on the IO's decision without hearing any statement of defence from the charged official in flagrant violation of the principle of natural justice.
- 4.2. that circumstances under which the irregularities were occurred were not taken into consideration by the 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 its 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 biased 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.

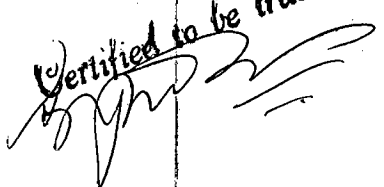
6. I have gone through all the records i.e., Inquiry report, Punishment Order of the disciplinary authority, Appeal of the appellant and other relevant records in this case. I found that

- 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.

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- 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.

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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

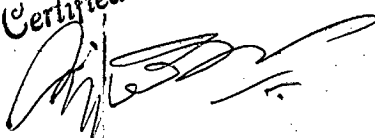
I Shri Rajinder Kashyap, Director PTC, Guwahati do hereby **CONFIRM** the punishment order issued by the Disciplinary Authority in this case.

- Sel -  
(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.

myf -  
3.7.6/ans  
Director, PTC  
Guwahati - 781 001

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Annexure-J

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10.7.06      31.7.06      31.7.06      22.8.06      22.8.06  
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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.

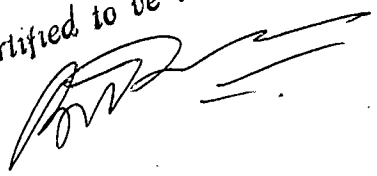
Defendant/Opp. party, advocate Mr. J.C. Dutta.

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

J U D G M E N T

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

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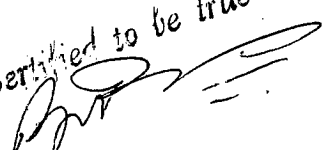
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- 34 -

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 not 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 fair 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.

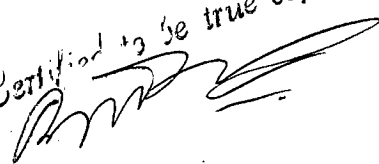
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the defendant's case is that the suit of the plaintiff is bad for non joinder of necessary party. This court (Civil Court) is without jurisdiction to try this suit. The plaintiff was duly trained up. There was no excessive work load at lezai branch post office. The enquiry officer could not held 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 mis-appropriated 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 ?
- 5) The plaintiff side examined one witness namely, Bhola Nath Borah P.W.1.
- 6) The defendant also examined one witness namely Dipak Deb D.W. 1.

Contd...4.

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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 matter 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 ~~xxxxx~~ suit.

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

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

Contd...5.

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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 ceremonies.

Explanation 2 - For the purpose of this Sec, it is material whether or not any fee 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.

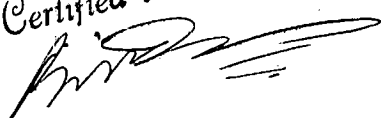
Now let me see Sec. 14 of Central Administrative Tribunal Act (Rule and orders) which provide.

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

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

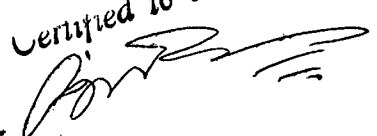
(b) all service matters concerning

- (i) a member of any 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 connection with the affairs of the Union or of any state or of any local or other authority within the territory of India, or as the case may be, of any Corporation (or Society) owned or controlled by Government, as respects -

- (i) .....
- (ii) .....
- (iii) .....
- (iv) disciplinary matters;

Contd...7.

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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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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 disclussion 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 expressely barred by the Administrative Tribunal Act, is nothing but a renundant.

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 noc ost.
3. Let decree be prepared accordingly.

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

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

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10.7.06	31.7.06	31.7.06	22.8.06	22.8.06
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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 Iezai Bordoibam Gaon, Mouza - Larua

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

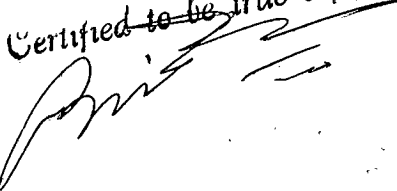
by occupation un-employed at present by religion -  
Hindu.

- 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 manage-  
ment 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

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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~~ 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 re instated 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, Iezai 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-investtated 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.

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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

Nil

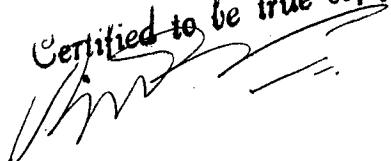
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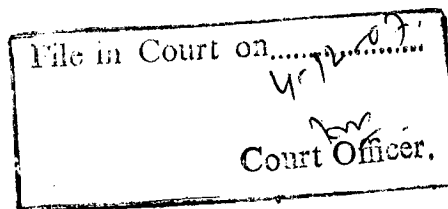
Defendant

Nil

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

Sd/- N. Borah,  
20.7.06

*Certified to be true copy*  




Filed by

Abdur Rashid

अधिकारी डाक घर  
डिब्रुगढ़ मंडल, डिब्रुगढ़ - 786001  
Superintendent of Post Offices  
Dibrugarh Dn., Dibrugarh-786001

Through  
04.12.07  
Sr. Clerk

BEFORE THE CENTRAL ADMINISTRATION TRIBUNAL  
KAMRUP AT GUWAHATI

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 :

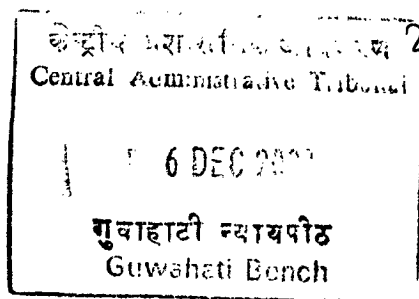
WRITTEN STATEMENT OF THE RESPONDENTS

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 beg 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

Contd....p/





*Abdur Raquib*  
अधिक्षक डाक घर  
डिब्रुगढ़ मंडल, डिब्रुगढ़ - 786001  
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

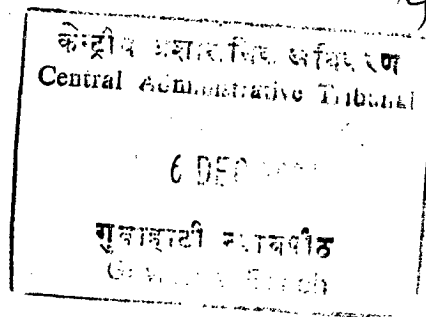
गुवाहाटी न्यायपीठ  
Guwahati Bench

*Abdur Razvi*  
अधिशक्त डाक घर  
डिब्रुगढ़ मंडल, डिब्रुगढ़ - 786001  
Superintendent of Post Offices  
Dibrugarh Dn., 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 separate and totally independent of each other.



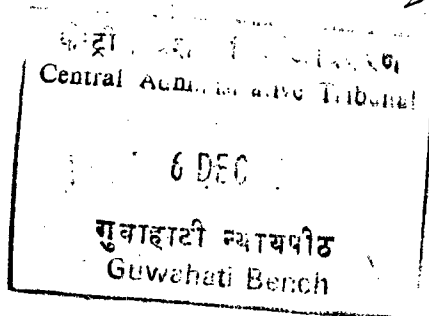
*Abdur Razzaq*  
अफ़िसर हाउस  
डिब्रुगढ़ मंडल, डिब्रुगढ़ - 786001  
Superintendent of Post Offices  
Dibrugarh Dn., Dibrugarh-786001

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.

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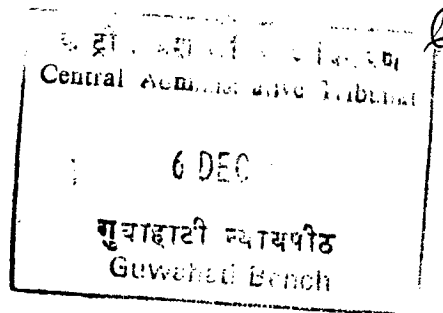
Abdur Raqib

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অধীক্ষক ডাক ঘর  
ডিব্রুগড় মডেল, ডিব্রুগড় - 786001  
Superintendent of Post Offices  
Dibrugarh Dn., 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.

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*Abdur Razvi*

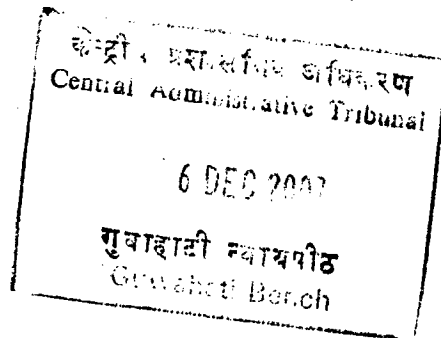
অধীক্ষক ডাক ঘর  
ডিব্ৰুগড় মণ্ডল, ডিব্ৰুগড় - 786001  
Superintendent of Post Offices  
Dibrugarh Dn., Dibrugarh-786001

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.

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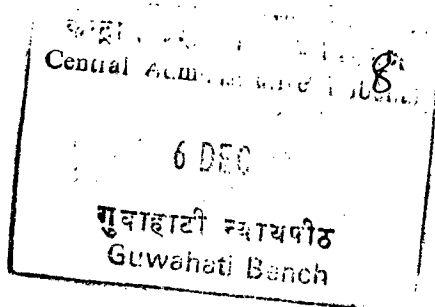
*Abdur Razique*

अधिकांक डाक घर  
डिब्रुगढ़ 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

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Abdur Rashid  
अधिक्षक डाक घर  
डिब्रुगढ़ मंडल, डिब्रुगढ़ - 786001  
Superintendent of Post Offices  
Dibrugarh Dn., Dibrugarh-786001

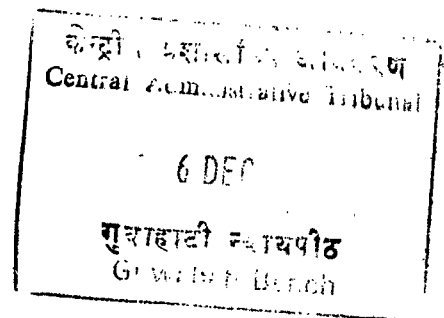
case cannot be a ground to set aside and free the petitioner from the charges levelled against him in the disciplinary proceedings regarding discipline in the public administration is concerned, discipline is the sine quo non for a public officer.

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.

Abdur Rashid  
अधिक्षक डाक घर  
डिब्रुगढ़ मंडल, डिब्रुगढ़ - 786001  
Superintendent of Post Offices  
Dibrugarh Dn., Dibrugarh-786001



## VERIFICATION

I, Abdur Rashid Super 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.

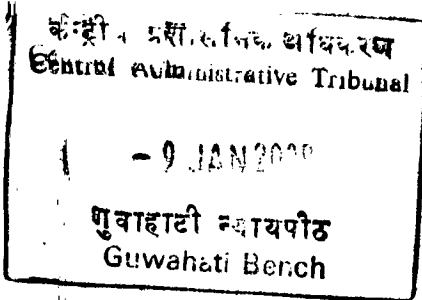
And I sign this verification on this the 21st  
day of November 2007 at Cumanaati

Abdur Rashid,

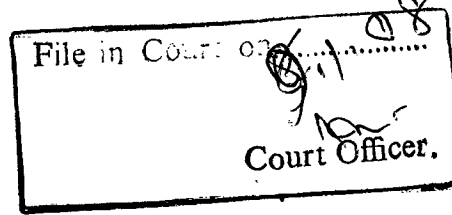
Signature

विष्णुनाथ मंडल, डिब्रुगढ़ - 786 001  
Superintendent of Post Offices  
Dibrugarh Do., Dibrugarh - 786 001





District; - Dibrugarh (Assam)



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

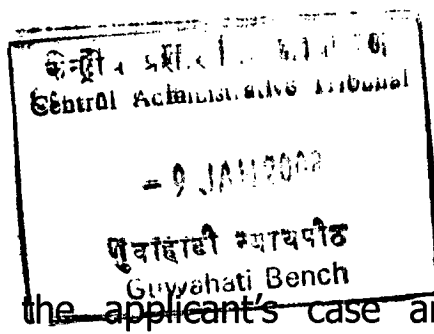
Filed by:-

Shri Bhola Borah  
Applicant 89  
Mouja Borah  
Hawane 9.1.08

Shri Bhulanath Borah

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. Pendency 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



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File in Court on.....  
Court Officer.

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

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

Smt. Phulavati Borah 9

File in Court on.....
Court Officer

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.

केन्द्रीय प्रशासनिक अपील Central Administrative Tribunal
गुवाहाटी न्यायपीठ Guwahati Bench

Shri Phul Chakrabarty  
92

Shri Bhulanath

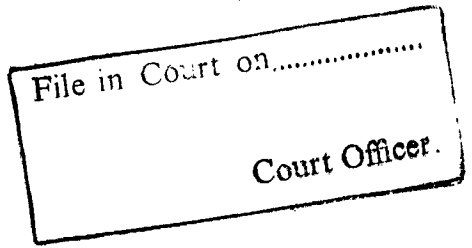
10. That with regard to the statements made in paragraph 10 of the written statement, the applicant states the he had not received any letter dated 27.11.1998 calling upon his defense. As a result, he could not response to the said letter. For that, it can not be hold that the applicant admitted the 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 the 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 infront 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.

केन्द्रीय प्रशासनिक अपिचरण  
Central Administrative Tribunal

- 9 JAN 2000

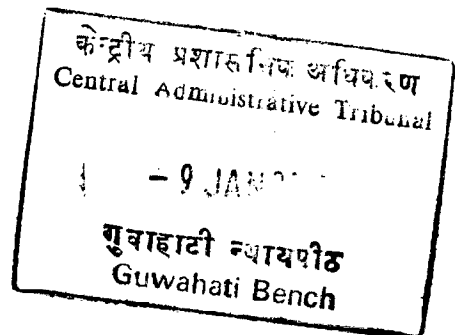
गुवाहाटी न्यायपीठ  
Guwahati Bench

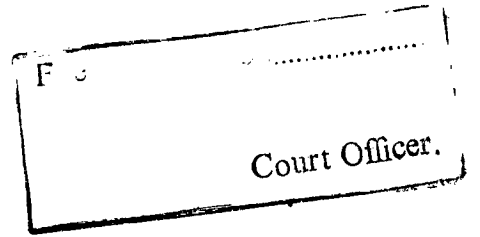


Shri Thakur Nathank  
94

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.

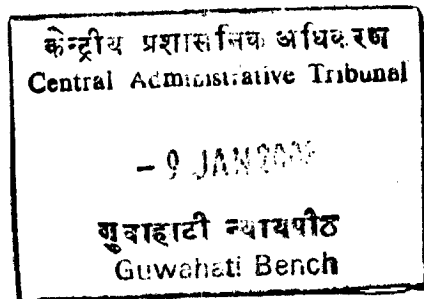




**-VERIFICATION-**

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.



*Shri Bholanath Borah*

Signature.