

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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PD-08/07/2015
SECTION OFFICER (JUDL.)

8/9/2015

8/9/2015

FORM NO. 4
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:
ORDERSHEET

1. ORIGINAL APPLICATION No : 143 / 2009
2. Transfer Application No : ----- / 2009 in O.A. No. -----
3. Misc. Petition No : ----- / 2009 in O.A. No. -----
4. Contempt Petition No : ----- / 2009 in O.A. No. -----
5. Review Application No : ----- / 2009 in O.A. No. -----
6. Execution Petition No : ----- / 2009 in O.A. No. -----

Applicant (S) : Sri Loknath Ray

Respondent (S) : Union of India & Ors.

Advocate for the : Mrs. S. Sarmah

{Applicant (S)} Mr. H.K. Das.

Advocate for the : -----

{Respondent (S)} C.G.S.C.

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed/C. F. for Rs. 50/- deposited vide IPO/BD No. <u>2964/0228</u> Dated <u>27.6.09</u></p> <p><u>28.7.09</u> Dy. Registrar</p> <p><u>4 (Four) copies of Application with envelopes received for issue notices to the Respondents No 2 to 4. Copy served.</u></p> <p><u>28/7/09</u> Copies of notices along with order dt. 29/7/09 sent to D/Sec. for issuing to resp. by regd. A/D post.</p> <p><u>3/8/09</u> D/No- <u>9137 to 9140</u> dt. <u>3/8/09</u></p>	<p>29.09.2009</p>	<p>Heard Mr.H.K.Das, learned counsel appearing for the Applicant and Mr.G.Baishya, learned Sr.Standing Counsel (to whom a copy of this O.A. has already been supplied) and perused the materials placed on records.</p> <p>Issue notice to the Respondents requiring them to file their written statement by 14.09.2009.</p> <p><u>(M.K.Chaturvedi)</u> Member(A)</p> <p><u>(M.R.Mohanty)</u> Vice-Chairman</p>

OA 143/09

M.P.68 of 09 in O.A. No.139 of 09

9.9.09

A/D Card from
RNo-3 received.

14.09.2009

Call this matter on 29.10.2009
along with O.A.No.139 of 2009.

lm

(M.K. Chaturvedi)
Member (A)

No W/s b'led.

11.9.09

14.09.2009

None appears for the
Applicant nor the Applicant is present.
Ms. U. P. Bharadwaz, Advocate,
representing the Respondents is present.

Call this matter on 22.10.2009 for
Admission.

lm

(M.K. Chaturvedi)
Member (A)

01/10/2009
A/D Card received
from Respelt No.1.

11/10/09

No W/s b'led.

22.10.09

22.10.2009 Learned counsel for the
Respondents seeks time to file reply.
Prayer allowed.

List on 24.11.2009.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/lm/

No W/s b'led.

23.11.09

24.11.2009

Enabling Respondents to file reply, as
requested by Mrs.M.Das, learned Sr.C.G.S.C.
case is adjourned to 17.12.2009.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/bb/

No W/s b'led.

16.12.09

17.12.2009 Mr. M. U. Ahmed, learned Addl.Standing Counsel seeks further time to file reply. Last and final opportunity is granted to the Respondents to file reply.

List the matter on 21.1.2010.

No w/s filed.

SM
20.1.2010

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/lm/

17.12.2009 Mr. M. U. Ahmed, learned Addl.Standing Counsel seeks further time to file reply. Last and final opportunity is granted to the Respondents to file reply.

List the matter on 21.1.2010.

3.2.2010

01.02.2010 of 10.2.2010

It is stated that reply will be filed during the course of the day and the same will be served on the Applicant. Rejoinder, if any, may be filed before the next date of hearing. List the matter on 10.2.2010.

W/s filed
by the Respondent
No. 3 (Advocate for the Applicant)
13/2/10 (A) 10.2.2010

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

Lm

No rejoinder filed.

SM
9.2.2010

10.2.2010

Mr.H.K.Das, learned counsel for the Applicant submits that written statement is yet to be served. Ms.Usha Das, learned counsel ^{assumed} ~~presumed~~ that copy of the written statement will be supplied to learned counsel for the Applicant to-day itself.

Admit. Subject to limitation and other legal pleas to be examined at the time of hearing.

List the matter for orders on 25.2.2010.

No rejoinder filed.

SM
24.2.2010

(Madan Kumar Chaturvedi)
Member (A)

/lm

-4-
O.A.143-09

25.02.2010

Enabling the Applicant to file
rejoinder, as prayed for, case is adjourned to
23.03.2010.

No rejoinder filed.

List for final hearing on 23.03.2010.

22.3.2010

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/bb/

23.03.2010

This being a Division Bench matter,
adjourned to 23.04.2010.

Rejoinder not filed.

22.4.2010

(Madan K. Chaturvedi)
Member (A)

/bb/

4.5.2010

*Rejoinder filed.
Copy served.*

23.04.2010

Matter could not be taken up due to
paucity of time. List on 12.05.2010.

4/5/2010

*The case is ready
for hearing.*

/bb/

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

12.05.2010

List before Division Bench on
28.05.2010 for hearing.

11.5.2010

(Madan Kumar Chaturvedi)
Member (A)

*The case is ready
for hearing.*

/pb/

28.05.2010

Heard both sides. Reserved for orders.

26.5.2010

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

Pg

03.06.2010

Judgment pronounced in open court, kept in separate sheets.

The O.A. is dismissed in terms of said order.

Received by

[Signature]
16/6/10

/PB/

[Signature]
(Madan Kumar Chaturvedi)
Member (A)

[Signature]
(Mukesh Kumar Gupta)
Member (J)

Received
[Signature]
15.7.10
for - no. 3

27.8.2010

Judgment / Original
order sent to the

A/S for issuance

the need of - No 2077

M-27-8-2010

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

.....

Original Application Nos. 143/2009.

DATE OF DECISION : 03-06 -2010.

Shri Loknath Ray

.....Applicant/s

Mr H.K. Das

.....Advocate for the
Applicant/s

-Versus -

Union of India & Ors.

.....Respondent/s

Mr M.U. Ahmed, Addl.C.G.S.C

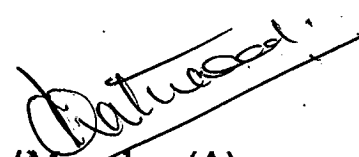
.....Advocate for the
Respondent/s

CORAM

THE HON'BLE MR MUKESH KUMAR GUPTA, MEMBER (J)

THE HON'BLE MR MADAN KUMAR CHATURVEDI, MEMBER(A)

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.


Member (J)/Member(A)

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI :**

O.A. No.143 of 2009

DATE OF DECISION : THIS IS THE 3RD DAY OF JUNE, 2010.

THE HON'BLE MR MUKESH KUMAR GUPTA, MEMBER (J)
THE HON'BLE MR MADAN KUMAR CHATURVEDI, MEMBER (A)

Sri Loknath Ray
Son of Ananda Mohan Ray
Resident of Kumargaon, Kochdoha
P.O.- Dakhin Bijni
District – Chirang, Assam.

....Applicant

By Advocate: Mr H.K. Das

-Versus-

1. Union of India
represented by the Secretary
to the Department of Posts
Government of India
Ministry of Communication and I.T.
New Delhi – 1.
2. The Director of Postal Services
(H.Q. and Marketing)
Assam Circle, Guwahati – 1.
3. The Superintendent of Post Offices
Goalpara Division
Goalpara, Dhubri – 783301, Assam.
4. The Inspector of Posts
Bongaigaon Sub Division
Bongaingaon, Assam.

... Respondents

By Advocate: Mr. M.U. Ahmed, Addl.C.G.S.C.

ORDER

MR MADAN KUMAR CHATURVEDI, MEMBER (A)

By this O.A. applicant makes a prayer to quash and set aside the penalty order and to issue direction to the respondents to



grant ex-gratia payment for the period of suspension along with all consequential benefits.

2. The applicant joined the service on 6.9.1989 as Extra Departmental Branch Post Master (EDBPM in short) in the Dakhin Bijni Branch Post Office. The said branch was working under the Superintendent of Goalpara Division, Dhubri. The applicant alleged that on 2000-01 he was suffering from serious psychiatric problem. On 4.10.2001 the SDI (P), Bongaigaon visited the Dakhin Bijni Branch Post Office and found the post office closed. Messenger was sent to the applicant to open the post office but he could not turn up. He again visited on the next date. The applicant sent the office keys and some memos for deposit with the EDDA. On 12.10.2001 the Inspector of Posts, Bongaigaon Sub Division issued an order by which the applicant was kept under put off duty pending disciplinary proceeding.. On 18.10.2001 Inspector of Posts Bongaigaon Sub-Division lodged an FIR before the Officer-in-charge, Bijni Police Station informing misappropriation of cash by the applicant in Dakhin Bijni Branch Post Office. Case was submitted on 28.2.2003 framing charge under Section 409 of the I.P.C. Charge sheet was submitted in the criminal case framing specific charge that applicant misappropriated Rs. 4722.45 and Rs. 6815.70 while serving as EDBPM in Dakhin Bijni Branch Post Office and did not deposit some documents of the post office.

3. During the pendency of the criminal case respondents issued memorandum of charge dated 5.6.2003 in a departmental proceeding framing 3 article of charges, which reads as under :




"Article I Charge states that while the petitioner was working as GDS BPM, Dakhin Bijni EDBO during the period from 20.7.1989 to 4.10.2001 remained unauthorized absent from duty w.e.f. 01.10.01 by keeping shortage of cash amounting of Rs.4722.45 (Rupees four thousand seven hundred twenty two and forty five paisa) only in his office cash balance. Thus the applicant violated the provision of Note below Rule _ II and Rule 177(3) of Rules for Branch office and failed to maintain absolute integrity and devotion to duty violating Rule 21 of the Department of Posts, GDS (Conduct & Employment) Rules, 2001.

Article II charge states that during the aforesaid period and while functioning in the aforesaid office, the petitioner accepted Rs. 1000/- on 30.11.2000, Rs. 500/- on 12.02.01, Rs.2000/- on 02.04.01 and Rs. 1700/- on 04.07.01 as deposit against SB A/c No.237021 but he did not credit the above amount to the Govt. account on their respective dates of credits or any subsequent dates. By doing the above acts the applicant violated Rule 131 (30) if Rules of Branch Offices and Rules 21 of DOP, GDS (Conduct & Employment) Rules 2001.

Article III charge states that Sri Roy while functioning as such accepted Rs. 400/- on 27.04.01, Rs. 200/- on 26.05.01 and Rs.600/- on 10.08.01 from the depositors of the RD Account No. 1703570 being the monthly installment of deposit for the month of March/01 to Aug/01 but failed to credit the amount to Govt. Account on those dates of deposits or on any subsequent dates. Thus the said Sri Roy violated Rule 144 of Rules of Branch Offices and Rule 21 of DOP GDS (Conduct & Employment) Rules 2001."

4. In his defence the applicant has stated that due to his sickness some lapses has occurred on his part. It was also stated that department has already recovered Rs. 22,874.90/- from the applicant against the amount of Rs. 10,922.45 indicated in the charge sheet and no ex gratia amount was paid to the applicant for the period of put off duty. It was submitted on behalf of the applicant that on 30.8.2004 the Sub-Divisional Judicial Magistrate, Bijni delivered the judgment granting acquittal to the applicant from the charge.



5. On 23.12.2004 the Enquiry Officer submitted his enquiry report holding the charges to be proved placing reliance on the statements of witnesses and materials available on record. It was alleged that the enquiry authority in gross violation of the 14(18) of the CCC (CCA) Rules, 1965 did not give any opportunity to the applicant to explain the circumstances as such serious prejudice was caused. It was stated that both the proceedings were based on same set of facts. Therefore, when the Court had already acquitted the applicant by rejecting the prosecution story, in such a situation finding recorded against the applicant in the disciplinary enquiry could not be sustained. Constitutional mandate was denied by denying the ex-gratia payment to the applicant during the period of put off. Vide order dated 14.06.2005 the disciplinary authority imposed the punishment of removal from service from the date of put off duty. According to learned counsel for applicant the order of the authority is cryptic and non speaking . No reason is recorded to support the finding.

6. Being aggrieved of the said order applicant submitted an appeal before the Chief Postmaster General, Assam Circle, Guwahati. The appellate authority issued the order dated 30.10.2006 confirming the order imposing penalty by the disciplinary authority. The ex-gratia payment to the applicant during the period of put off was also denied to the applicant.

7. Mr M.U.Ahmed, learned Addl. C.G.S.C appeared for the respondents. It was submitted that the applicant remained absent from duty unauthorisedly and misappropriated the Government cash/stamp

and punishment was awarded consequent upon the enquiry after providing adequate opportunity of being heard to the applicant and a reasoned order was passed. The appellate authority considering his appeal finalized the case on 30.10.2006 confirming the punishment awarded by the disciplinary authority. Applicant failed to render services properly and on detection of misdoing he tried to establish his innocence by concocting the story of his lapses.

9. Our attention was invited to proviso to rule 12(3) below Note-2 of GDS (Conduct & Employment) Rules 2001 a Sevak is not entitled to any compensation as ex-gratia who remained absent from duty unauthorizedly. Since the applicant remained absent from duty unauthorizedly he was not entitled to any ex-gratia during his put off duty period. It was further pointed out that criminal proceedings was based only one article of charge. But in the departmental proceeding 7 witnesses were examined and all the witnesses present gave evidence against the applicant. All the article of charges were proved. Hence the criminal and departmental proceedings were not based on same set of charges.

10. Mr H.K.Das, learned counsel for the applicant relied on the decision rendered in the case of Capt. M. Paul Anthony vs Bharat Gold Mines Ltd. and another, (1999) 3 SCC 679. In this case the Hon'ble Apex Court has held as under :

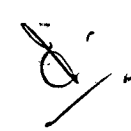
"There is a consensus of judicial opinion on a basic principle that proceedings in a criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common. Basis for

this proposition is that proceedings in a criminal case and departmental proceedings operate in distinct and different jurisdictional areas. In departmental proceedings, factors operating in the mind of the disciplinary authority may be many, such as enforcement of discipline, or to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt."

In the case of Balvantrai Ratilal Patel vs. State of Maharashtra, AIR 1968 SC 800 has held as under :

"The authority entitled to appoint the public servant is entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or statutory rule in that connection. If there is such a provision the payment during suspension will be in accordance herewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension."

11. We have examined all the factual details and considered the precedents relied upon. Applicant was negligent in performance of official duties. There was unauthorized absence and misappropriation of Government money. For this reason punishment was awarded. Learned counsel failed to give any mitigating circumstance for exonerating the applicant from the rigour of punishment. So far as the ex-gratia payment is concerned prescription of proviso to note 2 of Rule 12 is very clear that if a person remain absent unauthorisedly and subsequently put off duty he shall not be entitled to any compensation as ex-gratia payment. The applicant remained absent unauthorisedly



as such he is not entitled to get compensation as ex-gratia payment in terms of aforesaid rule. The O.A is bereft of any merit, as such we dismiss the same.

In the result O.A stands dismissed. No costs.



(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER

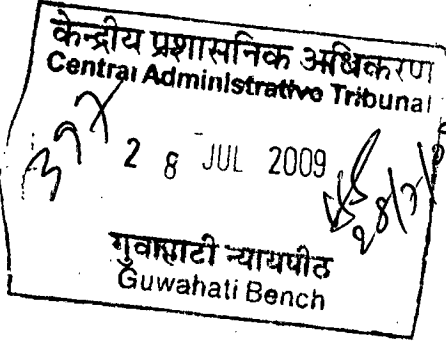


(MUKESH KUMAR GUPTA)
JUDICIAL MEMBER

/pg/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI



OA No. 143 of 2009

Sri Loknath Ray

...APPLICANT

- Vs -

Union of India & Ors.

...RESPONDENTS

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28 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

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Filed by

Hridip K. Das,
28.7.09.

Advocate

28 JUL 2009

গুৱাহাটী ন্যাযপীঠ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

OA No. 143 of 2008

Sri Loknath Ray

..APPLICANT

- Vs -

Union of India & Ors.

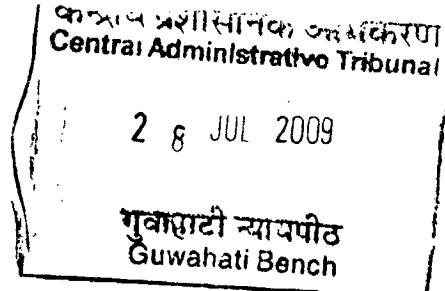
..RESPONDENTS

S Y N O P S I S

The applicant while was working as EDBPM in Dakhin Bijni Branch Post Office was served with an order dated 12.10.01 by which he was placed on "Put-off" duty w.e.f. 05.10.01 in contemplation of departmental proceeding. On 18.10.01 the Inspector of Posts, Bongaigaon Sub-Division lodged an FIR before the Officer in Charge, Bijni Police station informing misappropriation of cash by the applicant. The police registered a G.R. Case No. 209/01 and started investigation. The prosecution submitted the charge sheet in the G.R. Case on 28.02.03. Thereafter, the respondents causing serious prejudice to the defense of the applicant simultaneously started the departmental proceeding during the pendency of the criminal proceeding on the same set of facts and evidence without there being any iota of difference and issued the Memorandum of Charges dated 05.06.03 framing 3 (three) articles of charge.

On 30.08.04 the Learned Sub-Divisional Judicial Magistrate, Bijni delivered the judgment in the G.R. Case no. 209/01 granting acquittal to the applicant from the charge. The Learned Sub-Divisional Judicial Magistrate, Bijni after hearing the examination and cross-examination of witnesses and perusal of the documentary evidence which are similar to the evidence of the departmental proceeding, rejected the prosecution story and granted acquittal to the applicant.

On 23.12.04 the inquiry officer submitted the inquiry report holding the charges to be proved. The inquiry officer concluded the inquiry in gross violation of the statutory provisions of Rule 14 (18) of the CCS (CCA) Rules, 1965. Moreover, the ingredients of the charge sheet 28.02.03 in the criminal case and the ingredients of the memorandum of charge



dated 05.06.03 issued in the disciplinary proceeding are identical. It is stated that both the proceedings are based on same set of facts which are sought to be proved by the inquiry officer by the same witnesses. Therefore, when the Court had already, acquitted the applicant by rejecting the prosecution story, in such a situation, findings recorded against the applicant in the disciplinary enquiry could not be sustained.

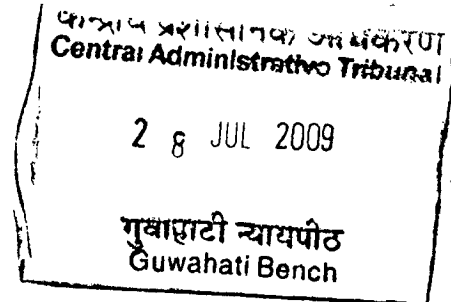
The entire inquiry procedure was initiated in gross violation of Article 14 and 21 of the Constitution of India. The respondents in gross violation of Article 21 did not grant *ex-gratia* to the applicant during the period of put-off and proceeded with the inquiry. The act of non-granting of *ex-gratia* by the respondents can easily be linked to slow-poisoning the applicant which will starve the applicant to death also causing prejudice to his defense. Therefore, the respondents by denying the *ex-gratia* as per Rules 12(3) GDS (Conduct and Employment Rules) 2001 during the period of put-off committed gross violation of the Article 21 of the Constitution of India. The law is well settled that violation of Article 14 and 21 vitiates the inquiry.

On 14.06.2005 the disciplinary authority imposed upon the applicant the punishment of removal from service from the date of put-off duty. The order of the disciplinary authority is cryptic, non-speaking and illegal because by the impugned order dated 14.06.05 the disciplinary authority has imposed the punishment of removal with retrospective effect which is contrary to The D.G., P. & T.'s Memo No. E.S.B. III-7/32, dated 10th June, 1933. Finally, the appellate authority confirmed the order of the disciplinary authority vide order dated 30.10.06.

Being aggrieved by the orders dated 14.06.05 and 30.10.06 of the disciplinary as well as the appellate authority the applicant has come before this Hon'ble Court for quashing and setting aside the aforesaid two orders being illegal and passed in gross violation of natural justice.

Hence the present original application.

Filed by
H. K. Das
28.7.09.
Advocate



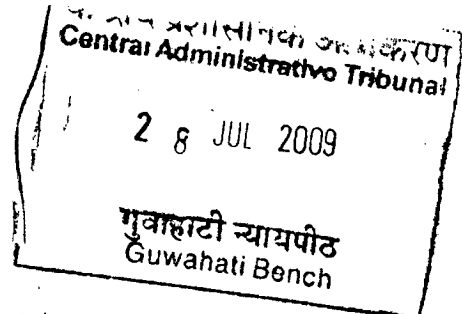
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

OA No. 143 of 2009

LIST OF DATES

- 06.09.89** The applicant joined the service as Extra Departmental Branch Post Master in the Dakhin Bijni Branch Post Office. **[Annexure- 1] [Page- 16]**.
- 04.10.01** The SDI (P), Bongaigaon visited the Dakhin Bijni Branch Post Office and found the post office closed. The applicant was unable to attend his duty due to his illness.
- 12.10.01** Order under memo No. A.2/L:ROY/F.D. issued by Inspector of Posts, Bongaigaon Sub-Division by which the applicant was placed under "put off" duty w.e.f. 05.10.01 pending disciplinary proceeding. **[Annexure- 4] [Page- 19]**.
- 18.10.01** Inspector of Posts, Bongaigaon Sub-Division lodged an FIR before the O.C., Bijni P. S. informing misappropriation of cash by the applicant and accordingly a G.R. Case No. 201/09 was registered in the Bijni P.S. **[Annexure- 5] [Page- 20]**
- 31.12.01** Medical Certificate issued indicating his illness and mental status. **[Annexure- 2] [Page- 17]**
- 28.02.03** The prosecution submitted the charge sheet framing specific charge that the applicant misappropriated Rs. 4722.45 and Rs. 6815.70 while serving as EDBPM in the Dakhin Bijni Post Office. **[Annexure- 6] [Page- 22]**
- 05.06.03** The respondents during the pendency of the criminal proceeding initiated the departmental proceeding and issued the Memorandum of Charge in the departmental proceeding with the same of facts and evidence basing on which the criminal proceeding was lodged. The charge framed in the criminal proceeding and the



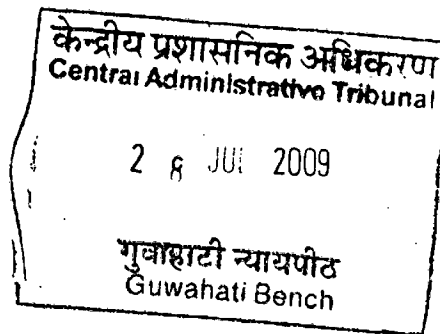
departmental proceedings are identical without there being any iota of difference. [Annexure- 7] [Page-27]

- 02.07.03 The applicant submitted the written statement of defense denying all the charges. The applicant also indicated that the respondents have already recovered Rs. 22,874.90/- from him against the amount of Rs. 10,922.45 indicated in the charge sheet and no ex gratia has been paid to the applicant for the period of put-off. [Annexure- 8] [Page-32]
- 22.09.03 The fitness certificate issued by the consultant Psychiatric. [Annexure- 3] [Page-18]
- 30.08.04 The Sub-Divisional Judicial Magistrate, Bijni delivered the judgment in the G.R. Case no. 209/01 granting acquittal to the applicant from the charge. [Annexure- 9] [Page-34]
- 23.12.04 The inquiry officer submitted the inquiry report holding all the 3 (three) charges to be proved. [Annexure- 10] [Page-42]
- 14.06.05 Order under Memo No. F6-2/2001/02 by the disciplinary authority imposed upon the applicant the punishment of removal from service from the date of put-off duty. The order of the disciplinary authority is illegal and bad in law because the order was passed giving retrospective effect. [Annexure- 11] [Page-61]
- 06.02.06 The applicant submitted the appeal to the Chief Postmaster General, Assam Circle. [Annexure- 12] [Page-77]
- 30.10.06 Appellate order confirming the order imposing penalty of the disciplinary authority. [Annexure- 13] [Page-83]
- 30.01.09 Order of the Hon'ble High Court disposing of the WP(C) No. 3240/07 granting liberty to the petitioner to approach the appropriate forum. [Annexure- 14] [Page-96]

Filed by

Hridip K. Das
28.2.09.

Advocate



Filed by:
The Applicant
Through
Hidip M. Das
Advocate
28.07.09

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI

OA No. 143 of 2009.

BETWEEN

Sri Loknath Ray,
Son of Ananda Mohan Ray,
Resident of Kumargaon, Kochdoha, P.O.
Dakhin Bijni,
District- Chirang, Assam.

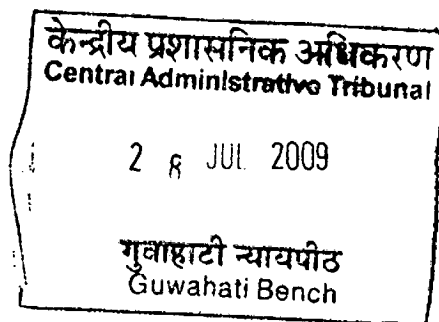
APPLICANT

-Versus-

1. Union of India,
Represented by the Secretary to the
Department of Posts, Government of
India, Ministry of Communication and
I.T., New Delhi-1
2. The Director of Postal Services
(H.Q. and Marketing), Assam Circle,
Guwahati-1.
3. The Superintendent of Post Offices,
Goalpara Division, Goalpara, Dhubri-
783301, Assam.
4. The Inspector of Posts, Bongaigaon
Sub Division, Bongaigaon, Assam.

RESPONDENTS

Lok Nath Ray.



DETAILS OF APPLICATION

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

The present application is made against the order under memo no. F6-2/2001-02 dated 14.06.2005 issued by the Superintendent of Post Offices, Goalpara Division, Dhubri, and order under memo no. Staff/9-63/2005 dated 30.10.06 issued by the Director of Postal Services (HQ & Marketing), Assam Circle, Guwahati- 1. (ANNEXURE: 11 and 13)

2. JURISDICTION OF THE TRIBUNAL:

The applicant further declares that the subject matter of the instant application is well within the jurisdiction of the Hon'ble Tribunal.

3. LIMITATION:

The applicant further declares that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE:

4.1 That the applicant is a citizen of India and a permanent resident of Bijni in the Chirang District of the State of Assam and as such he is entitled to all the rights and privileges as guaranteed under the Constitution of India.

4.2 That the applicant joined the service on 06.09.1989 as Extra Departmental Branch Post Master (herein after referred to as EDBPM) in the Dakhin Bijni Branch Post Office. The said branch was working under the Superintendence of Goalpara Division, Dhubri.

A copy of the appointment order dated 06.09.1989 in annexed herewith and marked as **Annexure- 1**.

4.3 That the applicant begs to state that during the year 2000-01 the applicant was suffering from serious psychiatric

Lok Nath Ray

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problem and at times it had resulted in serious nervous disorder. Since then for next 2 years due to the gravity of his disease the applicant had to suffer from break/loss in memory which made him suffer for entire life. The applicant had undergone treatment in the Bongaigaon C.H.C. in Psychiatric O.P.D under Dr. (Mrs.) Oli Chakraborty and to that effect a certificate dated 31.12.01 was issued indicating his illness and mental status. However, in the year 2003 the applicant recovered from the illness and the said doctor issued a fitness certificate indicating that the applicant is fit to resume duty.

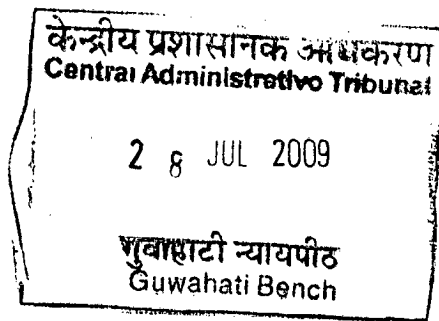
A copy of the medical certificate dated 31.12.01 and 22.09.03 is annexed herewith and marked as **ANNEXURE- 2 and 3.**

4.4 That the applicant begs to state that on 04.10.01 the SDI (P), Bongaigaon visited the Dakhin Bijni Branch Post Office and found the post office closed. The SDI (P) sent a messenger to the applicant to open the post office but due to the sickness the applicant could not turn up. On the very next day i.e. 05.10.01 he again visited the post office. The applicant sent the office keys and some memos for deposit with the EDDA expressing inability to attend due to his sickness. On 12.10.01 the Inspector of Posts, Bongaigaon Sub-Division issued an order under memo No. A.2/L:ROY/F.D. by which the applicant was placed under "put off" duty w.e.f. 05.10.01 pending disciplinary proceeding.

A copy of the order dated 12.10.01 is annexed herewith and marked as **ANNEXURE- 4.**

4.5 That the applicant begs to state that Rule 12(3) of the Gramin Dak sevaks (Conduct and Employment) Rules, 2001 provides for payment of *ex gratia* payment equal to 25% of Time Related Continuity Allowance together with admissible dearness allowance during the period of putt- off duty. However, the respondents in gross violation of Article 14 and 21 of the Constitution of India did not grant any *ex gratia* payment for the period in put off. It is stated due to not granting of the *ex gratia* payment the applicant had to suffer for his livelihood. The respondents therefore proceeded with the inquiry in gross violation of Article 21 of the Constitution of India and Rule 12(3) of the GDS

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(Conduct and Employment Rules) 2001. It is stated that the Rule 12(3) of the GDS (Conduct and Employment) Rules, 2001 clearly provides that *ex gratia* payment can only be denied to a Sevak after affording him an opportunity and by giving cogent reasons. However, in the instant case no opportunity was given to the applicant to place his say in the matter of *ex-gratia* payment causing gross violation of principles of natural justice and same has adversely affected his defense in the departmental proceeding. The relevant portion of the Rule 12(3) of the GDS (Conduct and Employment) Rules' 2001 is quoted below for ready reference:

"12. Put-off-duty

- (1)
- (2)
- (3) A Sevak shall be entitled per month for the period of put-off duty to an amount of compensation as *ex gratia* payment equal to 25% of his/her Time Related Continuity Allowance together with admissible Dearness Allowance:

Provided that where the period of put-off duty exceeds 90 days, the Appointing Authority or the authority to which the Appointing Authority or any other authority empowered in this behalf, as the case may be, who made the order of put-off duty shall be competent to vary the amount of compensation for any period subsequent to the period of first 90 days as follows:

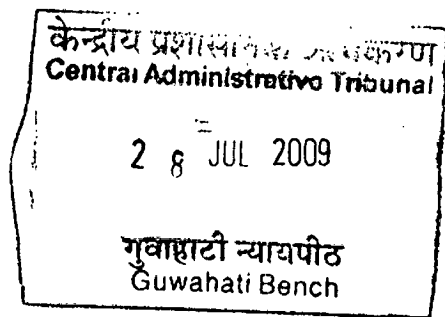
- (i)
- (ii)

Provided that a Sevak who has been absconding or remains absent unauthorizely and is subsequently put- off duty shall not be entitle to any compensation as *ex gratia* payment:

Provided further that in the event of a Sevak being exonerated, he shall be paid full admissible allowance for the period of put- off duty. In other cases, such allowances for the put-off duty can only be denied to a Sevak after affording him an opportunity and by giving cogent reasons.

(4)"

Lok Nath Ray



4.6 That on 18.10.01 the Inspector of Posts, Bongaigaon Sub-Division lodged an FIR before the Officer in Charge, Bijni Police station informing misappropriation of cash by the applicant in the Dakhin Bijni Branch Post Office.

A copy of the FIR dated 18.10.01 is annexed herewith and marked as **ANNEXURE- 5**.

4.7 That pursuant to the aforesaid FIR a G. R. Case no. 209/01 was registered in the Bijni Police Station and the charge sheet in the aforesaid G.R. Case was submitted on 28.02.03 framing charge under Section 409 of the I.P.C. It is stated that charge sheet was submitted in the criminal case framing specific charge that the applicant misappropriated Rs. 4722.45 and Rs. 6815.70 while serving as EDBPM in the Dakhin Bijni Post Office and did not deposit some documents of the Post office. The prosecution examined 5 (five) witnesses for proving the charge.

A copy of the Charge sheet dated 28.02.03 in the G.R. Case is annexed herewith and marked as **ANNEXURE- 6**.

4.8 That the applicant begs to state that during the pendency of the criminal case the respondents issued memorandum of charge dated 05.06.03 in the departmental proceeding framing 3(three) Article of charges.

Article I charge states that while the petitioner was working as GDS BPM, Dakhin Bijni EDBO during the period from 20.07.1989 to 04.10.2001 remained unauthorized absent from duty w.e.f. 01.10.01 by keeping shortage of cash amounting of Rs. 4722.45 (Rupees four thousand seven hundred twenty two and forty five paisa) only in his office cash balance. Thus the applicant violated the provision of Note below Rule- II and Rule 177(3) of Rules for Branch Office and failed to maintain absolute integrity and devotion to duty violating Rules 21 of the Department of Posts, GDS (Conduct & Employment) Rules, 2001.

Article II charge state that during the aforesaid period and while functioning in the aforesaid office, the petitioner accepted Rs. 1000/- on 30.11.2000, Rs. 500/- on 12.02.01, Rs.

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2000/- on 02.04.01 and Rs. 1700/- on 04.07.01 as deposit against SB A/c No. 237021 but he did not credit the above amount to the Govt. account on their respective dates of credits or any subsequent dates. By doing the above acts the applicant violated Rule 131 (30) of Rules of Branch Offices and Rules 21 of DOP, GDS (Conduct & Employment) Rules 2001.

Article III charge state that Sri Roy while functioning as such accepted Rs. 400/- on 27.04.01, Rs. 200/- on 26.05.01 and Rs. 600/- on 10.08.01 from the depositors of the RD Account No. 1703570 being the monthly installment of deposit for the month of March/01 to Aug/01 but failed to credit the amount to Govt. Account on those dates of deposits or on any subsequent dates. Thus the said Sri Roy violated Rule 144 of Rules of Branch Offices and Rules-21 of DOP GDS (Conduct & Employment) Rules 2001.

A copy of the memorandum of charge dated 05.06.03 is annexed herewith and marked as **ANNEXURE- 7.**

4.9 That the applicant submitted his written statement of defense dated 02.07.03 denying all the charges. The applicant also stated that due to his protracted mental sickness some lapses had occurred on his part and to that effect the applicant had submitted medical certificate which certifies his sickness. The applicant also stated that the department has already recovered Rs. 22,874.90/- from him against the amount of Rs. 10,922.45 indicated in the charge sheet and no ex gratia has been paid to the applicant for the period of put-off.

A copy of the written statement of defense dated 02.07.03 is annexed herewith and marked as **ANNEXURE- 8.**

4.10. That the applicant begs to state that on 30.08.04 the Sub-Divisional Judicial Magistrate, Bijni delivered the judgment in the G.R. Case no. 209/01 granting acquittal to the applicant from the charge. The Hon'ble Court upon hearing the entire examination and cross examination of witnesses and perusal of materials placed on record held that the prosecution failed to establish the case against the applicant.

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A copy of the judgment of the Sub-Divisional Judicial Magistrate, Bijni dated 30.08.04 is annexed herewith and marked as **ANNEXURE- 9**.

4.11 That on 23.12.04 the inquiry officer submitted the inquiry report holding the charges to be proved placing reliance on the statements of witnesses and materials available on record. However, the inquiry authority in gross violation of the rules 14(18) of the CCS (CCA) Rules, 1965 did not give any opportunity to the applicant to explain the circumstances appearing in the evidence against him.

A copy of the inquiry report dated 23.12.04 is annexed herewith and marked as **ANNEXURE- 10**.

4.12 That the applicant begs to state that the respondents causing serious prejudice to his defense proceeded with the criminal as well as the departmental proceeding simultaneously on the same set of facts and evidence without there being any iota of difference. The basic ingredients of the charge sheet 28.02.03 in the criminal case and the ingredients of the memorandum of charge dated 05.06.03 issued in the disciplinary proceeding are similar. It is further stated that both the proceedings are based on same set of facts which are sought to be proved by the inquiry officer by the same witnesses. Therefore, when the Court had already acquitted the applicant by rejecting the prosecution story, in such a situation, findings recorded against the applicant in the disciplinary enquiry could not be sustained.

4.13 That the applicant further begs to state that the respondents broke down the Constitutional mandate by denying the *ex-gratia* payment to the applicant during the period of put-off. The respondents denied the *ex-gratia* on the ground that the applicant was absconding whereas the record reveals that the applicant was never absconding. In both the proceedings the applicant duly participated. Hence there is no justification of denial of *ex-gratia* to the applicant during the period of put-off. The respondents have committed clear violation of Rule 12 (3) of the GDS (Conduct and Service) Rules, 2001. The law is very clear that on joining a Government service, a person does not

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mortgage or barter away his basic rights as human being, including his fundamental rights, in favor of the Government. The Government, only because it has the power to appoint does not become the master of the body and soul of the employee. The fundamental rights, including the right to life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee. The act of non-granting of ex-gratia by the respondents can easily be linked to slow-poisoning the applicant which will starve the applicant to death also causing prejudice to his defense. Therefore, the respondents by denying the ex-gratia as per Rules 12(3) during the period of put-off committed gross violation of the Article 21 of the Constitution of India.

4.14 That the applicant begs to state that vide order under Memo No. F6-2/2001/02 dated 14.06.2005 the disciplinary authority imposed upon the applicant the punishment of removal from service from the date of put-off duty. It is stated that the order of the disciplinary authority is cryptic and non speaking because the disciplinary authority failed to record any reason while confirming the views of the inquiry officer.

A copy of the order imposing penalty dated 14.06.05 of the disciplinary authority is annexed herewith and marked as **ANNEXURE- 11.**

4.15 That the applicant submitted an appeal dated 06.02.06 to the Chief Postmaster General, Assam Circle to set aside and quash the order imposing penalty dated 14.06.05 and reinstate him in his service.

A copy of the appeal dated 06.02.06 submitted by the applicant is annexed herewith and marked as **ANNEXURE- 12.**

4.16 That the appellate authority issued the order dated 30.10.2006 confirming the order imposing penalty of the disciplinary authority. It is stated that the appellate authority while disposing of the appeal failed to take into consideration relevant facts and took into consideration irrelevant things and came to the conclusion of the guilt of the applicant on conjecture and surmises. The appellate authority failed in

Lok Nath Ray.

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totality to justify the fact of not granting of ex-gratia payment to the applicant during the period of put-off. The appellate authority stated that the applicant was absconding, hence not entitled to any ex-gratia, whereas on the other hand the disciplinary authority admitted the sickness of the applicant. It is stated that observation of the appellate authority regarding the applicant being absconding from duty since 01.10.2001 is totally false and baseless. The applicant duly participated in the criminal proceeding along with the departmental proceeding and was examined in the departmental proceeding. Therefore, there is no question of the applicant being absconding. Hence, the respondents without there being any valid ground denied the payment of ex-gratia to the applicant in clear violation of Article 14 and 21 of the Constitution of India.

A copy of the order of the appellate authority dated 30.10.2006 is annexed herewith and marked as **ANNEXURE- 13.**

4.17 That the order imposing penalty dated 14.06.05 does not disclose any reason as to how the charges against the applicant have been proved. The impugned orders are cryptic, brief and it ex-facie showed non consideration of relevant details in the proceeding. The order imposing penalty only gives the details of the charges while holding the charges to be proved with out furnishing any cogent reason. Hence, the impugned order imposing penalty is a non-speaking order and not sustainable in law.

4.18 That the applicant having the bonafide belief that jurisdiction of the department of posts lies before the Hon'ble Gauhati High Court approached the Hon'ble Court by way of filing WP(C) No. 3240/07. The Hon'ble High Court vide order dated 30.01.09 held that the jurisdiction of the department of posts lies before the Central Administrative Tribunal as a Court of first instance and disposed of the writ petition granting liberty to the petitioner to approach the Tribunal. The Hon'ble High Court also stated that the delay, if any, in pursuing the matter before the Hon'ble Court may be condoned by the Tribunal. Therefore, the applicant prays before this Hon'ble Tribunal to condone the delay, if any, which has caused due to the bonafide

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mistake of the applicant and hear the case on merit for ends of justice.

A copy of the order dated 30.01.09 passed in WP(C) No. 3240/07 is annexed herewith and marked as **ANNEXURE- 14.**

4.19 That the applicant files this application bonafide for securing the ends of justice.

5. GROUNDS FOR RELIEF(S) WITH LEGAL PROVISIONS:

5.1 Because **Rule 12(3) of the Gramin Dak sevaks (Conduct and Employment) Rules, 2001** provides for payment of *ex gratia* payment equal 25% of Time Related Continuity Allowance together with admissible dearness allowance during the period of putt- off duty. However, the respondents in gross violation of Article 14 and 21 of the Constitution of India did not grant any *ex gratia* payment for the period in put off. The law is very clear that on joining a Government service, a person does not mortgage or barter away his basic rights as human being, including his fundamental rights, in favor of the Government. The Government, only because it has the power to appoint does not become the master of the body and soul of the employee. The fundamental rights, including the right to life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee. The act of non-granting of *ex-gratia* by the respondents can easily be linked to slow-poisoning the applicant which will starve the applicant to death. Therefore, the respondents by denying the *ex-gratia* as per Rules 12(3) during the period of put-off and inquiry have committed gross violation of the Article 14 and 21 of the Constitution of India. Hence, on this ground alone the entire inquiry is vitiated and the impugned order imposing penalty is required to be set aside and quashed.

5.2 Because respondents causing serious prejudice to the defense of the applicant proceeded with the criminal as well as the departmental proceeding on the same facts and evidence without there being any iota of difference. It is stated that both the proceedings are based on same set of facts which are sought to be

Lok Nath Ray.

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proved by the inquiry officer by the same witnesses. Therefore, when the Court had already acquitted the applicant by rejecting the prosecution story, in such a situation, findings recorded against the applicant in the disciplinary enquiry could not be sustained. Hence, the findings of the Inquiry officer as well as the disciplinary authority are based on no evidence and perverse and liable to be set aside and quashed.

5.3 Because the Inquiry Officer while holding the charges to be proved failed to adhere to the provisions of Rules 14(18) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965. No opportunity was given to the applicant to explain the circumstances appearing against him in the evidence. Therefore, the disciplinary proceeding has been initiated in gross violation of principles of natural justice and the findings of the Inquiry Officer are perverse being based on no evidence and the entire departmental proceeding vitiated for violation of natural justice. Hence, the entire enquiry procedure smacks of malice and vendetta and as such liable to be interfered with by this Hon'ble Tribunal and the order imposing penalty of the disciplinary authority is cryptic, brief and it ex-facie shows non consideration of relevant details and liable to be set aside and quashed.

5.4 Because the impugned order of penalty is a non speaking order as it does not disclose any reason as to how the charges against the applicant have been proved. The impugned order therefore, is arbitrary being passed in total non application of mind.

5.5 Because the disciplinary authority in the present case did not apply its independent mind and was guided by the cryptic and sketchy report of the Inquiry Officer. Since the mind of the disciplinary as well as appellate authority was made up, it failed to consider the relevant evidence available on record and relied on irrelevant aspects and thus made a serious error of law and fact in holding the applicant guilty of the charges and imposing upon him major penalty.

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5.6 Because the inquiry officer as well as the disciplinary authority failed to take into consideration the aspect of protracted mental sickness of the applicant for which he had to loss his memory for a specified period. Hence, both the inquiry officer and the disciplinary authority came to the conclusion of guilt of the applicant on conjecture and surmises without taking into consideration relevant facts.

5.7 Because the order of the disciplinary authority imposing the punishment of removal from service from the date of put-off is grossly illegal and arbitrary. The respondents have committed serious illegality by imposing the penalty of removal from service giving retrospective effect. **The D.G., P. & T.'s Memo No. E.S.B. III-7/32, dated 10th June, 1933** very clearly states that whenever orders of dismissal/removal are passed on a Government Servant, consequent on his desertion or conviction in a Court of law or for any other reason, the orders should be made effective only from the date of issue of the orders and not from an earlier date. Hence, on this ground alone the order of the disciplinary authority imposing the punishment of removal from service is illegal and liable to be set aside and quashed.

5.8 Because by applying the test of preponderance of probability no reasonable person can arrive at a finding that the applicant is guilty of all the charges. Hence the order of the disciplinary as well as appellate authority holding the applicant to be guilty of both the article of charges is unreasonable and not liable to be sustained.

5.9 Because from the sequence of events it is clear that the order imposing penalty has been passed with the sole purpose to harass the applicant and make his service life miserable. The disciplinary authority was predetermined and the entire enquiry process was an empty formality. Hence on this ground alone the order of penalty is liable to be quashed.

The applicant craves leave of the Hon'ble Court to advance more grounds both legal and factual at the time of hearing of this case.

Lok Nath Ray

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Guwahati Bench

6. DETAILS OF THE REMEDIES EXHAUSTED :

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

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:

The applicant further declares that he has not filed any application, writ petition or suit regarding the grievances in respect of which this application is made, before any other court or any other bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEF(S) SOUGHT FOR :

8.1 To quash and set aside the order imposing penalty under memo no. F6-2/2001-02 dated 14.06.2005 issued by the Superintendent of Post Offices, Goalpara Division, Dhubri and order under memo no. Staff/9-63/2005 dated 30.10.06 issued by the Director of Postal Services (HQ & Marketing), Assam Circle, Guwahati- 1 and grant all the consequential service benefits including arrear salary, seniority etc.

8.2 To direct the respondents to grant the ex-gratia payment for the period of suspension along with all consequential benefits.

8.3 Cost of the application.

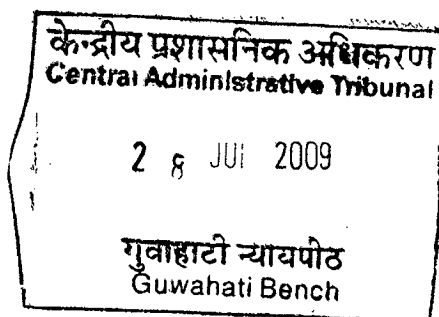
8.4 pass any such order/orders as Your Lordships may deem fit and proper.

9. INTERIM ORDER PAYED FOR :

At this stage the applicant does not pray for any interim order.

10. The application is filed through Advocates.

Lok Nath Ray



11. PARTICULARS OF THE IPO:

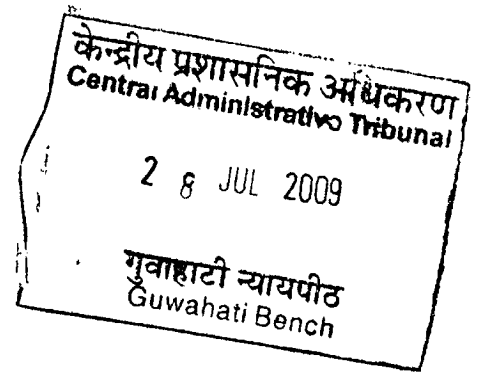
(I)	IPO No.	:	396 410228
(II)	Date of Issue	:	27.06.09
(III)	Issued from	:	G.P.O.
(IV)	Payable at	:	Guwahati

12. LIST OF ENCLOSURES:

As stated in the Index.

...Verification

Lok Nath Ray.



VERIFICATION

I, Sri Loknath Ray, aged about 45 years, son of late Ananda Mohan Ray, resident of Kumargaon, Kachdoha, P.O- Dakhin Bijni, District- Chirang, Assam, do hereby solemnly affirm and verify that the statements made in the accompanying application in paragraphs 4.1, 4.5, 4.12, 4.13, & 4.17 are true to my knowledge, those made in paragraphs 4.2, 4.4, 4.6-4.11, 4.14, 4.15, 4.16 & 4.18 being matters of records are true to my information derived there from and the grounds urged are as per legal advice. I have not suppressed any material fact.

And I sign this verification on this the 27th day of July, 2009 at Guwahati.

Lok Nath Ray

APPLICANT

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ANNEXURE-1

DEPARTMENT OF POSTS::: INDIA.

OFFICE OF THE SUPERINTENDENT OF POST OFFICES, GOALPARA DIVN.,
::: DHUBRI--- 783 301:::

LETTER OF APPOINTMENT .

Memo No. B 3/155/ Dakhin Bijni Dated at Dhubri the 6.9.89.

Shri/ Shrimati Loknath Roy
whose date of birth is 1-9-62 is hereby appointed as Extra
Departmental Branch Postmaster, Dakhin Bijni EDBO with effect
from 20.7.89 (F/N) subject to satisfactory verification of his/
her character and antecedents. He should be paid such allowances
as admissible from time to time.

2. Shri/ Shrimati Loknath Roy
should clearly understand that his appointment as EDBPM, Dakhin Bijni
EDBO shall be in nature of a contract liable to be
terminated by him or by the undersigned by notifying the others in
writing and that he / she shall also be governed by the Posts &
Telegraphs Extra Departmental Agents (Conduct & Service) Rules, 1964
as amended from time to time.

3. If these conditions are accepted to him / her, he/
she shall communicate his / her acceptance in the proforma enclosed
herewith.

Sd/-
superintendent.

Copy forwarded to:-

1. Shri/ Shrimati Loknath Roy
EDBPM, Dakhin Bijni via Bijni SO
He/ She will please return the
enclosed acknowledgement early duly signed by him/
her. by Regd. Post.

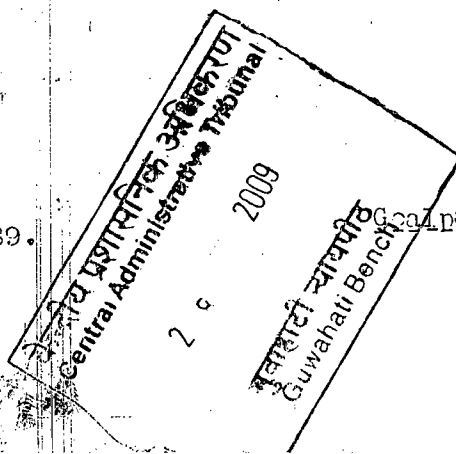
2. The Postmaster, Dhubri H.O./ ~~Tura H.O.~~ for information
and necessary action.

3. The Sub- Divisional Inspector (P), ~~Dhubri~~ Goalpara/
~~Kokrajhar~~ Bongaigaon Sub- dvn. for information.

Attested

Has,
Advocate

/ G. A. / 24189.



Supdt. of Post Offices,
Goalpara Division, Dhubri-783 301.

Dr. (Mrs) Oli Roy Chakraborty,

M.B.B.S., M.D. (Psychiatry)

(নানসিক বোগ বিশেষজ্ঞা)

Regd. No. 9570 (AMC)

M. G. Road, Abhayapuri, Bongaigaon,

ANNEXURE -2

Consulting Hours:

4.30 p.m. to 7.30 p.m.


Phone: 81777 & 1620

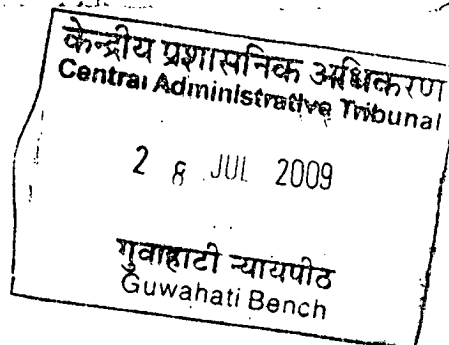
Date— 31/12/01

To whom it may concern

Certified That, Mr. Loknath Roy, aged approx. 28 yrs, male, S/O Ananda Mahan Roy of Vill Kumargaon had been examined by me at Bongaigaon C.H.C. in psychiatric O.P.D. bearing the Regd. No. 68/01 (Psy) on 29/10/01. After careful examination of his mental status and considering the history of his illness I found him suffering from Nervous Disorder for last several months and since then he is under my treatment.

Attested
Has
Advocate


31/12/01
Dr. Oli Roy Chakraborty
M.D. (Psychiatry)
Regd. No. 9570 (AMC)



ANNEXURE - 3

To whom it may concern

Mr. Loknath Ray, aged approximately 40 yrs (forty years), male, S/O Ananda Mohan Ray of Vill. Kumargaon has been examined by me at S.M.K. Civil Hospital, Nalbari in psy. O.P.D bearing the Regd. No- 20728/03 On 22/9/03. After careful examination of his mental status and physical health I found him fit to resume his duty from to day onwards.

Signature of the pt.

Sri Loknath Ray.

Dr.

22/9/03
Dr. Raj Chakraborty

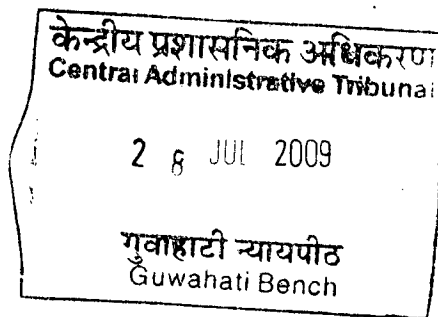
M. D. (Psychiatry)

Medical & Health Officer-I

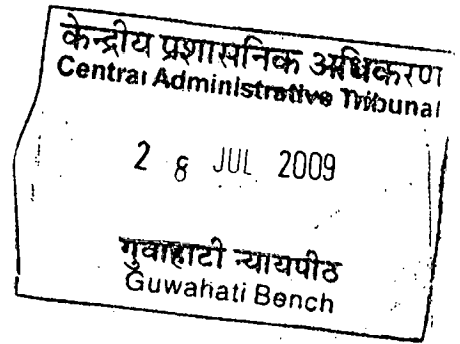
S.M.K. Civil Hospital

Nalbari, Assam

Attested
H. M.
Advocate



Department of Post: India.
O/O Inspector of Posts,
Bongaigaon Sub-Division.
Bongaigaon, Assam - 783330.



Memo No. A.2/L: ROY/F.D. dtd. At Bongaigaon the 12.10.2001.

ORDER

Whereas a disciplinary proceeding against Shri Loknath Roy, GDS BPM, Dakhin Bijni F.D.B.O. in account with Bijni S.O. is pending.

Now, therefore, the undersigned in exercise of the powers conferred by Rule 12(1) of the department of Post, Gramin Dak Sevaks (Conduct and Employment) Rules 2001, placed the said Shri Loknath Roy under "put-off" duty with effect from 05.10.2001.

This order is issued in supersession of this office order memo of even no. dtd. 5-10-01.

Sd/-

(J.KARMAKAR)

Inspector of Posts.

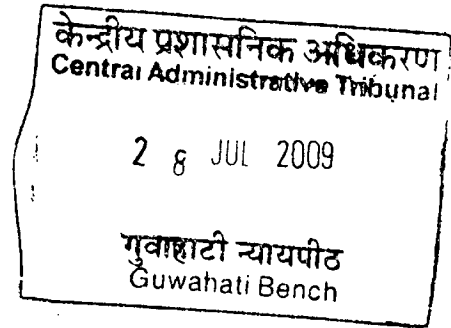
Copy to:-

- 1) Shri Loknath Roy, GDS BPM, dakhin Bijni EDBO (now under put-off duty)
- 2) The Supdt. of P.Os, Dhubri for f/o inform nation and taking necessary action.
- 3) The Post Master Dhubri H.O. for information.
- 4) The BPM Bijni SO.
- 5) D/S (M) Sri H.K.Choudhury/ He is hereby ordered to hold the charge of D/GDS BPM/Bijni B.O. until further order.
- 6) O./C and Store

Attested
HKS
Advocate

Copy of Ejahar.

Department of Post, India.



From: -

Inspector of Post,
Bongaigaon Sub.Divn, Bongaigaon,
Assam-783330

To

The Officer incharge,
Bijni Police Station,
P.O. Bijni, Dist. Bongaigaon.

No. A-2/L Ray/ED/ dtd. At Bongaigaon the 18.X.2001.

Sub: - Misappropriation of cash by Sri Loknath Ray, extra departmental Branch Post Master Dakhin Bijni Branch Post Office in account with Bijni sub Post office.

Sir,

I beg to report that Sri Laknath Ray extra departmental Branch Post Master functioning as edhpr Dakhin FDBO misappropriated Govt. cash to the tune of Rs. 4722.45 (Rs Four thousand seven hundred twenty two paise forty five) only on 5.10.2001, the case was detected by the undersigned on 5.10.2001, chased the amount to the Govt. account as V.C.P. (unclassified payment) another same day.

In course of further verification of the office it has been detected that the said Sri Laknath Ray misappropriated S.B. I.R.D. deposit note against cash account as below -

Sl.No. account No. Name and address of the Depositor : amount misappropriated.

1. 237027

Durga Ram Ray,
Gossaigaon P/Bijni.

5117:50

Attested

H. M.

Advocate

28 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

2.	237052	Abhijit Bihari Dangaigaon.	
3.	237115	Pomik Basumaary Nadia Pafal	100.00
4.	237128	Joy Prakash Ouary	200.00
5.	237135	Depali Basumatary	1200.00
			6815.70

It may in charge

6. Bara B2- Guh. VDP No. 10549 DT. 1.9.01. Rs. 179.00

It may further report that the said Sri Laknath Ray kept the following office record with him and despite he did not produce the office document to the undersigned or to the present Post Master of the office.

Name of the record

1. SL Branch Office account book.
2. Branch office S.B. Journal (Saving Book)
3. Branch office Recurring deposit journal.
4. Branch office journal.

It is therefore requested you would kindly take suitable action against Sri Laknath Ray, extra departmental Br post master Dakhin Bijni EDBO under the appropriate section of law and favour this office by intimating the number, date section under which the case is registered.

Yours faithfully,

Sd/- J. Karmakar

Inspector of Posts, Bongaigaon.
Sub Division BNGIN Assam

19
~~21~~ - 22 -
783330.

केन्द्रीय प्रशासनिक अधिकार
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Guwahati Bench

Copy to:

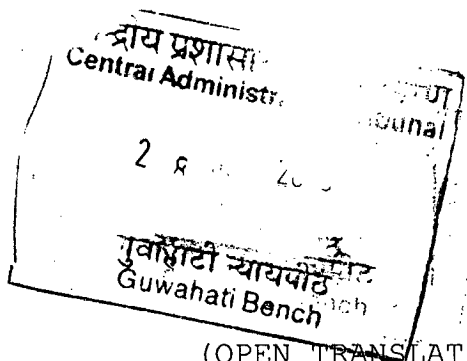
The Supdt. of Post Office, Goalpara Division,
Dhubri for F/O kind information and taking n/a.

Sd/- Inspector of Posts,
Bongaigaon, Sub Division
BNGN Assam-783330.

Received and registered vide Bijni P.S. Case
No. 134/2001 U/S 409 I.P.C.

Sd/- Inspector of Posts,
Bongaigaon, Sub Division
BNGN Assam-783330.

-0-



-22-

ANNEXURE - 6

(OPEN TRANSLATION FROM ASSAMESE TO ENGLISH)

CHARGE SHEET

Charge Memo No. 25/2003 dated 28.02.03

The brief description of the charge is as under:

On 18.10.2001 the complainant Sri Joydev Karmakar, son of Mahendra Karmakar, SDIP, BNGN, Palpara, North Bongaigaon lodged an FIR informing that the Branch Postmaster of the South Bijni post office Sri Loknath Roy misappropriated Rs. 4722.45 from post office and Rs. 6815.70 from post office accounts book and did not hand over some documents of post office. Accordingly a case was registered and investigation was done.

During the course of investigation we inspected the place of incident. In the investigation taking the evidence of the witnesses and examination of the documents of the post office the accused Sri Loknath Ray, son of Sri Ananda Mohan Ray, village-Kochdoha, Kumargaon, P.S. - Bijni, District- Bongaigaon has been found guilty under section 409 I.P.C. in the case. Therefore this charge sheet has been submitted for the accused to face the charges before the Hon'ble Court.

I pray to call upon the below mentioned witnesses to ascertain the truth.

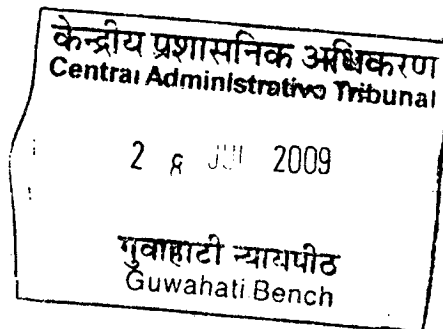
1. Sri Harendra Kr. Choudhury, son of late Manik Choudhury, Village- Pathsala (Santipur), P.S. - Patacharkuchi.
2. Sri Harkeswar Sutradhar, son of late KALicharan Sutradhar, Vill- Bongaigaon, P.S. - Bijni.
3. Sri Rajani Kanta Sutradhar, son of Sri Lila Ram Sutradhar, Vill- Gerukabari, P.S. - Bijni.
4. Sri Joydev Karmakar, Inspector of posts, Bongaigaon, Sub-Division, Bongaigaon.
5. Sri Manabendra Das, I.O. Bijni P.S.

sd/-

Illigible

28.02.03

Attested
H.S.
Advocate



---X---

STATEMENT OF WITNESS Sri Harendra Kr. Choudhury (56), SON OF LATE MANIK CH. CHOUDHURY OF PATHSALA (SANTIPUR), P.S- PATACHRAKUCHI, DIST- BARPETA, ASSAM.

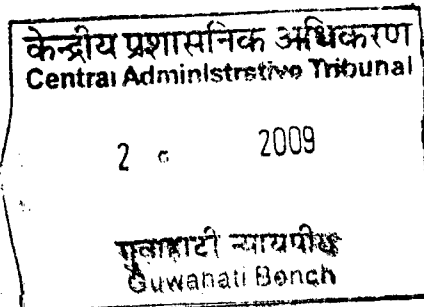
On being asked I stated my name and address mentioned above are true. My age is around 58 years. I am working as Branch Post Master in the South Bijni Post Office. Sri Loknath Ray was the earlier post master. Loknath Ray lives in Kachdoha. Loknath Ray during his tenure misappropriated money from the post office pass book and the post of the post office were kept in the house of Loknath Ray and now inspector inspected on 05.10.2001. The passbook against which the misappropriation was done has been mentioned in the pass book. Loknath Ray is now unauthorizedly absent and is under suspension. Earlier the important documents and the pass books also lying in his house. I do filed work in the Bongaigaon post office and I am temporarily posted at South Bijni post office. That is all.

---X---

STATEMENT OF SRI HARKESWAR SUTRADHAR (51) s/o late Kalicharan Sutradhar of village- Bongaigaon, P.S- Bijni, Dist- Bongaigaon.

On being asked I state my name and address mentioned above are true. I am 51 years of age. I am the peon in the South Bijni post office and Sri Loknath Roy of Kachdoha village was the post master of Kachdoha village. On 05.10.2001, when the Inspector of Posts inspected the post office, the fact of misappropriation of money came into light. Loknath Ray is now unauthorizedly absent and is under suspension. The important documents and the pass books are also lying in his house. Earlier also the important documents were kept in the house of Sri Loknath Ray. Now the documents are in the post office. So far my knowledge goes Sri Loknath Ray misappropriate money from 2 (two) or 3 (three) pass book. That is all.

----X----



-25-

18

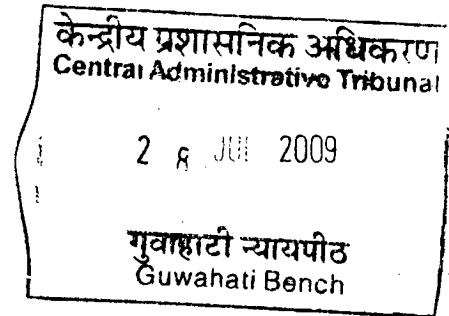
STATEMENT OF ASSISTANT SRI RANJAN KANTA SUTRADHAR (40), S/O Sri Lila Ram Sutradhar, resident of Jurukabari, P.S- Bijni, District- Bongaigaon.

On being asked I state my name and address mentioned above are true. I am 42 years old and presently working as Mail Career. Sri Loknath Ray while was working in the South Bijni post office, on 04.10.01 the postal inspector inspected the office, the fact of misappropriating of money by Sri Loknath Ray came into light. Sri Loknath Ray misappropriate money from 3/4 pass books. How much amount was misappropriate I do not know. So far my knowledge goes the documents and pas book were kept in the house of Sri Ray and til today those are I the house of Sri Ray. Now Sri Loknath Ray is under suspension. That is all.

---X---

STATEMENT OF COMPLAINANT SRI Joydev Karmakar, s/o Sri Mohrendra Karmakar, resident of Patil Paru, North Bongaigaon, P.S- Bongaigaon.

On being asked I state my name and address mentioned above are true. I am 38 years of age. I am serving as Inspector of Posts in the office of the Bongaigaon Sub- Divisional Inspector of Posts. On 05.10.2001 I came to the South Bijni post office for inspection of records. When I came to the Post Office the postmaster Loknath Ray was not present and I opened the post office through the peon with the keys being sent by Loknath Ray in the presence of the local people. The records were inspected in the presence of the local people and the peon. I found 5 nos. of pass book in the post office. On being compared those pass book with the ledger book of the Bijni post office, I found that Loknath Ray Swindled money. A Few days back Loknath Ray deposited the passbooks kept in his house along with the other documents. On receipt of complain of non payment of money order and keeping the post office closed some time, I was sent by the Divisional Office, Dhubri for inspection. When I inspected the post office the aforesaid above incident came to notice.



SEIZURE LIST

Ref. Bijni P.S. Case No. 134/2001.

I, S.I., M.Das of Bijni P.S. do hereby seize the following decrypted pass on being produced by Sri Joydev Karmakar, SDIP, Bongaigaon in connection with above noted case in presence of the following sign witnesses.

DESCRIPTION OF SEIZED PASS AND OTHER DOCUMENTS:

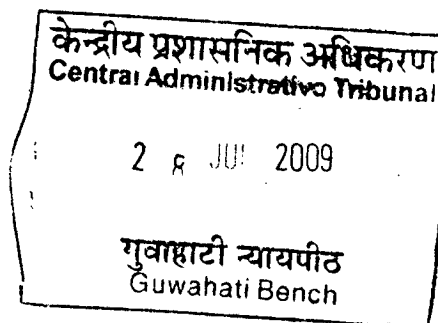
1. One pass book of Depali Basumatary vide A/C No. 237135. Date of last transaction 28.05.01. Total amount Rs. 2050/-.
2. One pass book of Sri Durga Ram Ray vide A/C/ No. 237021. Date of last transaction 40.07.01. Total amount Rs. 6700/-.
3. One pass book of Abhijan Bibi vide A/C No. 234052. Date of last transaction 27.01.01. Total amount Rs. 3151/-.
4. One pass book of Sri Danik Basumatary vide A/C No. 237115. Date of last transaction 16.02.01. Total amount Rs. 420/-.
5. One account book of Dakhin Bijni Post Office from 01.06.01 to 30.10.01 for all kind transaction.
6. One daily account book of Dakhin Bijni B.O. from 1st January'2000 to 31.05.2001.
7. One daily account book of Dakhin Bijni B.O. from 01.06.01 to 03.10.01.
8. One SB/RD journal book from 05.08.1996 to 13.08.01.

Sign of witnesses

1. sd/- Joydev Karmakar, SDIP/B
2. sd/- Jibesh Ch. Narzary,
Bijni Post Office.

Seize by me

Sd/- illegible.



SEIZURE LIST

I, S.I. M.Das, Bijni P.S. by seized the following description pass book on being produced by Sri Harendra Choudhury. O/S Mail, Bongaigaon Sub-Division in connection with above noted case in presence of the following sign witnesses.

DESCRIPTION OF SEIZED PASS BOOK

1. One original pass book vide A/C No. 237128 in the name of Sri Prakash Owary, vill- Dangaigaon.

SIGN OF WITNESSES:

1. Sd/-

Harendra Choudhury.

Seize by me

sd/-

Illegible

DEPARTMENT OF POSTS, INDIA
OFFICE OF THE SUPERINTENDENT OF POST OFFICES GOALPARA DIVISION, DHUBRI.

No. F6-2/2001-2002.

Dated at Dhubri the 5-01-2003.

MEMORANDUM

The undersigned proposes to hold an inquiry against Shri Loknath Roy GDS BPM Dakshin Beguni 20130 Under Rule-10 of DOP GDS (Conduct & Employment) Rules, 2001. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure - I). A statement of the imputations of misconduct or misbehaviour in support of each articles of charge 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 also enclosed (Annexure - III) & IV).

2. Shri Loknath Roy is directed to submit with in 10 days of the receipt of this memorandum, a written statement of his defence and also to state whether he desires to be heard in person.

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

4. Shri Loknath Roy 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 inquiry authority or otherwise fails or refuses to comply with provisions of Rule-10 of DOP GDS (Conduct & employment) Rules, 2001 or the orders/directions issued in pursuance of the said Rule, the inquiring authority may hold the inquiry against him ex parte.

5. Attention of Shri Loknath Roy is invited to Rule-29 of DOP GDS (Conduct & Employment) Rules, 2001 under which no Govt. Servant shall bring or attempt to bring any political or outside influence to bear upon any Superior authority to further his interest in respect of matter pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri Loknath Roy is aware of such a representation and that has been made at his instance and action will be taken against him for violation of Rule-29 of GDS (Conduct & Employment) Rules, 2001.

6. The receipt of this memorandum may be acknowledged.

Shri Loknath Roy
GDS BPM Dakshin Beguni 20130
Via Beguni S.O. (Now under Art of duty)

Attested

Hns
Advocate

(Signature)
Supdt. of Post Offices
Goalpara Division, Dh
Dhubri - 783301.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

2 8 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

ANNEXURE - I

Statement of article of charge framed against Shri Loknath Roy, GDSBPM, Dakhin Bijni EDRO in account with Bijni S.O. (Now under put off duty).

ARTICLE - I

That Shri Loknath Roy while working as GDSBPM, Dakhin Bijni EDRO during the period from 20.7.89 to 04.10.2001 remained unauthorised absent from duty w.e.f. 1.10.2001 by keeping shortage of cash amounting to Rs. 4722.45 (Rupees Four thousand seven hundred twenty two and paise forty five) only in his office cash balance. Thus the said Sri Roy violated the provision of Note below Rule-11 and rule -177(3) of Rules for Branch Offices and failed to maintain absolute integrity and devotion to duty violating Rule-21 Department of Posts, GDS (Conduct & Employment) Rules, 2001.

ARTICLE - II

That during the aforesaid period and while functioning in the aforesaid office, the said Sri Loknath Roy accepted Rs. 1000 on 30.11.2000, Rs. 500/- on 12.2.01, Rs. 2000/- on 2.4.2001 and Rs. 1700/- on 4.7.2001 as deposit against SB a/c No. 237021 but he did not credit the said above amount to the Govt. account on their respective dates of credits or any subsequent dates. By doing the above acts the said Shri Roy violated Rule 131(3) of Rules for Branch Offices and Rule-21 of DOP, GDS (Conduct & employment) Rules, 2001.

ARTICLE - III

That the said Shri Roy while functioning as such accepted Rs. 400/- on 27.4.01 Rs. 200/- on 26.5.01 and Rs. 600/- on 10.8.01 from the depositor of SB account No. 1703570 being the monthly instalment of deposit for month of March/01 to Aug/01 but failed to credit the amount to Govt. account on those dates of deposits or on any subsequent dates. Thus the said Shri Roy violated Rule 144 of Rules for Branch Offices and Rule -21 of DOP GDS (Conduct & Employment) Rules, 2001.

ANNEXURE - II

Statement of imputation of misconduct or misbehaviour in support of the article of charges framed against Shri Loknath Roy, GDSBPM, Dakhin Bijni EDRO (now under put off duty).

ARTICLE - I

SPM, Bijni S.O. vide his error No. 35 dtd 17.9.01 reported this office that Sri Loknath Roy, GDSBPM Dakhin Bijni B.O. remained unauthorised absent from duty w.e.f. 15.9.01 and also kept excess cash without any liability. On receipt of the above information, the concerned SDI(P)/Bongaigaon was directed to enquire the case on 21.9.01 and accordingly the SDI(P)/Bongaigaon proceeded to Dakhin Bijni B.O. on 4.10.01 and found the office closed. He called for the BPM through EDDA/EDMC Shri H. Sutrachar but the BPM did not turn up to 15.00 hours. On next day 5.10.01 the SDI(P) again proceeded to Dakhin Bijni B.O. and found that the said EDDA cum-EDMC attended the B.O. with 20 Nos of M.Os received for payment and with the office keys.

Contd...2/-

Central Administrative Tribunal

2009

Dakshin Bijni

The SDI(P)/Bongaigaon opened the office in presence of witnesses and verified the cash and stamps as per B.O. account book in presence of BDA- cum-EMIC of the office and other witnesses and found as follows :-

According to account office closing balance of the B.O. dated 1.10.01 was

Cash	=	4446.00
Postage stamps	=	580.00
Revenue	=	35.00
Total	=	5061.00

But on physical verification of cash and stamps the SDI(P)/Bongaigaon found the following.

Cash	=	4.35
Postage stamps	=	288.00
Revenue	=	47.00
Total	=	339.35

So the shortage of cash and stamp balance of the B.O. was found as Rs. 5061.00 - 339.35 = Rs. 4722.45. An inventory of shortage of cash and stamps was accordingly prepared by the SDI(P)/Bongaigaon on 5.10.01 in presence of witnesses and the shortage amount Rs. 4722.45 was charged as UCP on 5.10.01 at the B.O. being 2.10.01 being holding and 2.10.01 and 4.10.01 the B.O. did not functioned. *halway*

By doing the above acts the said Sri Loknath Roy violated the provision of Note below Rule-11 and Rule 177(3) of the Rules for Branch Offices and failed to maintain absolute integrity and devotion to duty as enjoined in Rule-21 of DOP GDS (Conduct & Employment) Rules, 2001.

ARTICLE - II

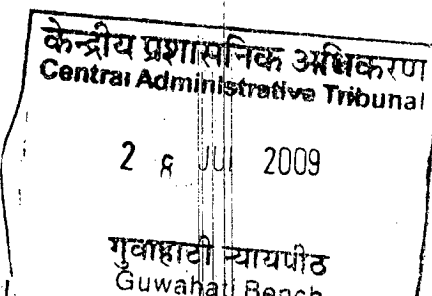
That the said Shri Loknath Roy while working as GDS-NPM Dakshin Bijni SDMO accepted the following amount tendered by the depositor Sri Durga Ram Roy of the SA account No. 237021 on the date mentioned below for deposit in his account.

Sl. No.	Account No.	Name and address of the depositor.	Date of deposit	Amount of deposit.
1.	237021	Durga Ram Roy Vill-Gossigaon P.O-B/Bijni	30.11.2000 12.02.2001 02.04.2001 04.07.2001	Rs. 1000.00 Rs. 500.00 Rs. 2000.00 Rs. 1700.00
			Total	Rs. 5200.00

The said Shri Roy entered the above transactions as deposit in the SA pass book on the date of deposit, the above entries were authenticated by him by impressing office date stamps and by putting his signature. But the said Shri Roy failed to credit the above deposited amount to Govt. account reflecting through B.O. account book on their respective date or any subsequent dates. *reflecting*

By doing the above acts the said Shri Loknath Roy violated Rule 131(1) of Rules for Branch Offices and failed to maintain absolute integrity and devotion to duty as enjoined in Rule 21 of DOP GDS (Conduct & Employment) Rules, 2001.

Cont.dr...3/-.....



ARTICLE - XII

Shri Loknath Roy while working as UDSM Baidin Baidi NO from 20.7.99 to 04.10.2001 received Rs. 1200.00 from the depositor or Smt. Manomati Ouary of RD account No. 1703570 being the monthly instalments of deposit as detailed below.

<u>Sl. No.</u>	<u>Account Number</u>	<u>Name and address of the depositor</u>	<u>Date of deposit</u>	<u>Amount</u>
1.	1703570	Manomati Ouary W/o Bipak Kr. Masumtary Vill-Dangalgaoon P.O. Dakhin Bijni	27.04.01 26.05.01 10.8.01	Rs. 400.00 Rs. 200.00 Rs. 600.00
		Total		Rs. 1200.00

The said Sri Roy entered the above monthly deposits in the RD Pass Book and authenticated the entries by impressing office date stamps and his initial but he failed to credit the above deposited amount to Govt. account reflecting through B.O. account book and B.O. RD Journal violating the provision of Rules 144 of the Rules for Branch Offices. By doing so the said Sri Roy failed to maintain absolute integrity and devotion to duties violating Rules 21 of DOPGAS (Conduct & Employment) Rules, 2001.

ANNEXURE - III

List of documents by which the articles of charges framed against Shri Loknath Roy are proposed to be sustained.

- (1) Inventory dtd 5.10.01 and Joint inventory prepared from witnesses dtd 5.10.01.
- (2) B.O. daily account of Dakhin Bijni B.O. dtd 5.10.01, 12.2.01, 2.4.01, 4.7.01, 27.4.01, 26.5.01 and 10.8.01.
- (3) B.O. a/c book of Dakhin Bijni B.O. dtd 5.10.01, 4.7.01, and 10.8.01 (covering a/c book for the period from 5.10.01 to 21.11.01 and 1.6.01 to 3.10.01).
- (4) B.O. Summary of Bijni S.O. dtd 8.10.01 (covering period from 29.9.01 to 8-12-01) dtd 30.11.00 (covering period from 5.9.00 to 19.1.2001) dtd 12.2.01, 2.4.01 and 27.4.01 (covering period from 20.1.01 to 26.5.01), dtd 26.5.01 and 4.7.01 (covering period from 20.5.01 to 26.7.01) and dtd 10.8.01 (covering period from 27.7.01 to 28.9.01).
- (5) SH Pass Book No. 237021 of Dakhin Bijni B.O. in the n/o Sri Durga Ram Roy.
- (6) RD Pass Book no. 1703570 of Dakhin Bijni B.O. in the n/o Smt. Manomati Ouary.
- (7) Statement of Sri Durga Ram Roy dtd 5.12.2001 depositor of SH a/c No. 237021.
- (8) Statement of Smt. Manomati Ouary dtd 23.3.02 depositor of RD a/c No. 1703570.
- (9) SH Journal of Dakhin Bijni B.O. dtd 13.11.2000, 12.2.2001, 2.04.01 and 4.7.01 (covering period from 5-8-96 to 13-8-01).
- (10) RD Journal of Dakhin Bijni B.O. dtd 27.4.01, 26.5.01, and 10.8.01 (journal not maintained from 1.6.01).

Contd....4/-....

केन्द्रीय प्रशासनिक अधिकरण
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- (11) H.O. Journal of Dakshin Bijni H.O. dtd 30.11.00 (covering period 17.11.00 to 15.1.01) dtd 18.2.01, 2.4.01 and 27.4.01 (covering period from 16.1.01 to 3.5.01) dtd 26.5.01 and 4.7.01 (covering period 3.5.01 to 9.8.01) and dtd 10.8.01 (covering period from 10.8.01 to 1.10.01)

ANNEXURE - IV

List of witnesses by whom the article of charges framed against Shri Loknath Roy are proposed to be sustained.

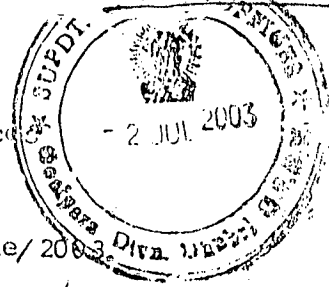
- (1) Shri Joydev Karmakar, SDI(P), Nongaiagon. *retired*
- (2) Shri H.K. Choudhury, O/S Mails Nongaiagon. (Now retired).
- (3) Shri Harkeswar Sutradhar MDDA cum EIMC Dakshin Bijni SO.
- (4) Shri Durga Ram Roy, Depositor of SB a/c No. 237021.
- (5) Smt. Mananati Chary, Depositor of RD a/c No. 1703570.
- (6) Sri Minush Ch. Musahary, Dakshin Bijni H.O. via-Bijni SO.
- (7) Shri Hari Prasad Roy, Vill Dangaigaon P.O. Dakshin Bijni. Via- Bijni S.O.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

28 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

To
The Superintendent of Post Office
Goalpara Division,
Dhubri - 783301.



Dated the 28th June/2003.

Subject : Written statement of defence against the charges brought against the undersigned.

Reference: Memo No. F6-2/2001-2002 dtd. 5.6.2003.

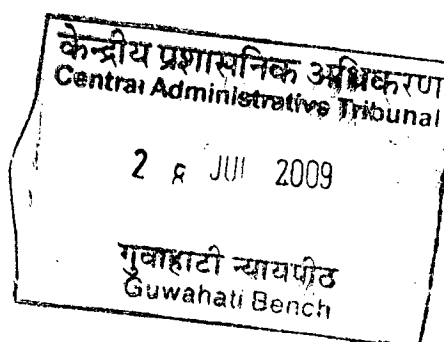
Respected Sir,

With reference to the Office Memorandum dated 5-6-2003 enclosing therewith Articles of charges, list of documents by which the charges are sought to be sustained and the list of witnesses, has been received by the undersigned only on. 19-6-03.

Now, before I attempt to reply to the articles of charges, I beg to be permitted to lay a few lines for your kind perusal and for appreciating the circumstances in their proper perspectives that led to the unfortunate happenings for which I have been charged with.

1. That Sir, from the middle of 2000 I have been suffering from protracted mental disease and at times my illness became so acute that I even forgot everything and oftener than not I lost my memory temporarily. From 1st of October, 2001 I was completely out of my head and for a few days I did not know where I was and what was I doing these days. I even fail to recognise my near and dear ones. The Medical Certificate issued by my attending physician dated 31.12.2001 will testify the truth of my above statement. Non-receipt of my monthly salary from July, August and September, 2001 and the yearly bonus put me into an extremely financial hardship to maintain my dependent family and that added to my mental strain resulting in aggravation of my mental equilibrium which was already disturbed.

Attested
H. N.
Advocate



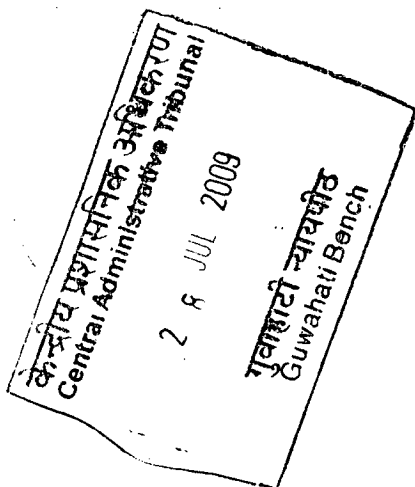
2. That Sir, I have a somewhat large family to maintain. The family consists of my old parents, my wife and four minor children. Your honour can well imagine how difficult it is to maintain such a large family with the meagre income from my salary, and that also stopped from July, 2001. All this has added to my mental condition which was already very weak.

3. That Sir, with regard to charge No.1, that I unauthorisedly absent from duty w.e.f. 1.10. 2001, I would only reiterate what I have already stated in para 1 above. During this period I was completely out of my head and even to-day I cannot recollect where I was and what was I doing those days. I would only request you to appreciate my mental condition and realise that my absence from duty was not intentional but it was beyond me to explain. In such circumstances it cannot be construed that I intentionally violated any service rules.

4. That Sir, regarding charge No.2, that during the period from 30.11.200 to 4.7.2001, although I received certain amounts deposited against A/c No.237021 but I did not credit the said amounts into the above account. As already stated above, during the aforesaid period my brain did not function properly and I forgot many things. I have no defence against this lapse but it was due to my mental disequilibrium, and it was never intentional. The said amount has already been refunded by me.

5. That Sir, with regard to charge No.3, that during the period from 27.4.01 to 10.8.01 I accepted certain amounts against Account No.1703570 but did not credit the amounts to the account concerned, I would only

..3.

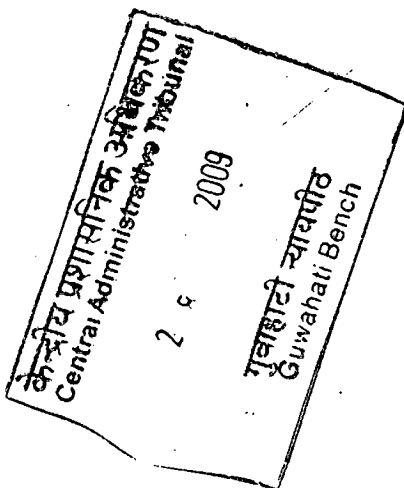


reiterate what I have already stated in the foregoing paragraph. During the period in question I lost my mental equilibrium and could not remember many things. My failure to credit the amounts into the relevant account was not intentional; I just forgot to credit the amounts into the account.

In this connection I would like to say that in my Sub-Post Office there are fifty odd accounts but only in the two accounts there were discrepancies. There is no personal enmity with the two account holders nor had I any evil intention to deceive them. It just happened because of my unmindfulness and mental imbalance. The amount in question has since been realised from me. If I had any evil intention, I would not have paid the amounts without raising any question.

I would also point out here that as per the Charge Sheet issued to me, an amount of Rs.10,922.45P was found to be short in the accounts, but you have already realised an amount of Rs.22,874.90P in three instalments. In the first instalment you have realised an amount of Rs.15,000 on 11.1.2002 vide Chalan No. 111715/042, second instalment amounting to Rs.6,350.00 on 9.7.2002 vide Chalan No.269781/053 and third instalment of Rs.1,524.90P on 26.2.2003. Thus nearly Rs.12,000 more has been realised from me than the amount shown in the Article of charges which must be refunded to me.

That Sir, by your order dated 12.10.2001 I have been put off duty with effect from 5.10.2001. But prior to placing me "Off duty" my monthly salary for the months of July, August and September, 2001 have not been paid to me, besides the annual bonus and these



amounts remain to be paid to me, in addition to the excess amount realised from me.

That Sir, I have not yet fully recovered from my mental ailment and I have been under the treatment of a registered practitioner, whose certificate is enclosed for your kind perusal, though I am fairly on the road to complete recovery.

I, therefore, hope and pray that your honour would find the explanation given above reasonable and cogent and you would be graciously pleased to withdraw my "put off duty" order, allow me to rejoin my duties, and also pay me my outstanding salary, bonus and the excess amount realised from me and thus save distressed family from utter ruination.

An immediate action is solicited.

And for this act of your kindness I shall remain ever grateful to you.

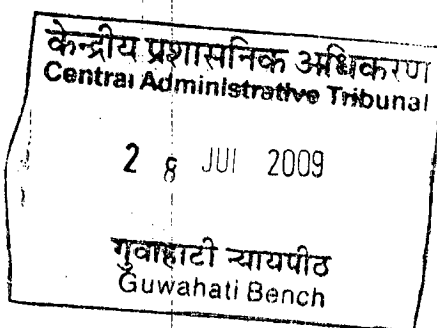
Yours faithfully,

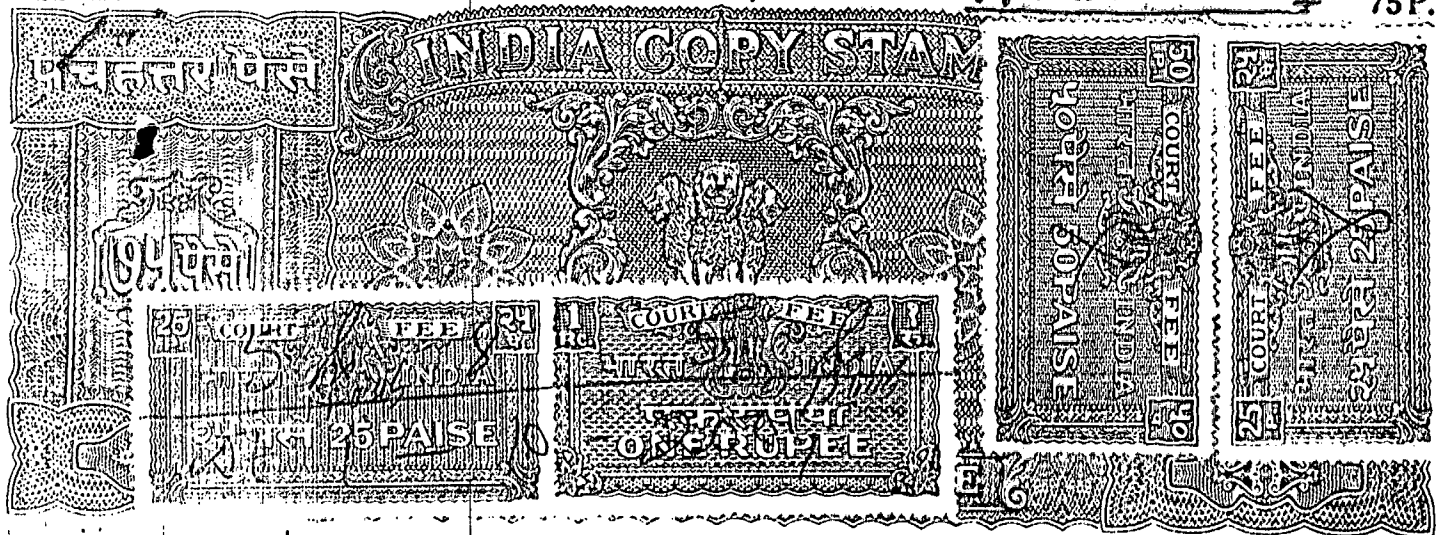
✓ Sri Lok Nath Roy

(Loknath Roy, GDS BPM Dakshin
Bijni EDO)

Enclo: Copy of M.C.

...





प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
13/9/04	1-10-04	1-10-04	1-10-04	1-10-04

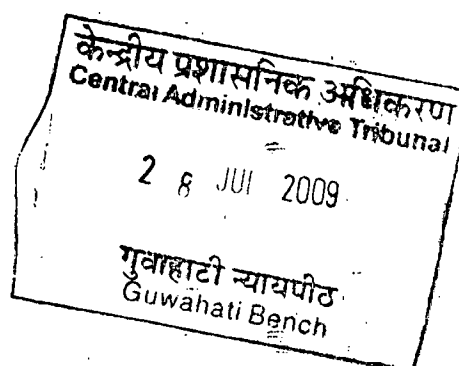
In the court of the Sub Divisional Judicial Magistrate : Bijnir.
G.R. Case No. 209/01.
State -Vs- Shri Laknath Ray.
U/s. 406 IPC.

COPY OF ORDERDATEORDERSIGNATURE

30.8.04. Accd. is present. Judgment is ready & prepared in separate sheets. Prosecution fails to proved the case U/s. 409 IPC against the accd. Loknath Rai. Hence, accused is acquitted from the charge levelled against him. Judgment delivered at open court. Case disposed of on contest.

Attested
H. An
Advocate

Sd/-Mrs L. Baruah.
Sub Divisional Judicial
Magistrate, Bijnir.



the requisite number of stamps and folios.	requisite stamps and folios.	was ready for delivery.	copy to the applicant.
1/10/04	1/10/04	1/10/04	1/10/04

(2)

In the Court of the Sub-Divisional Judicial Magistrate : Bijni.
G.R. Case No. 209/01.
State - Vs - Sri Laknath Ray. = 38 -
U/s. 409 IPC.

In The Court of The S.D.J.M. Bijni, Bongaigaon Dist.

Case No - G.R. 209/01.

U/s. 409 IPC

State

VS.

Sri Laknath Ray.



Present - Md. Naidul Islam, Ad. A.P.P. for the State.

Mrs Rakshak Ch. Das. Ad. Advocate for the case.

Date of Evidence - 29.5.04, 19.6.04.

Date of argument - 23.8.04.

Date of Judgment - 30.8.04.

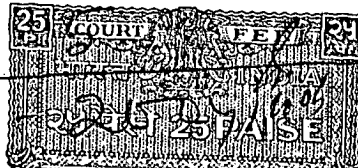
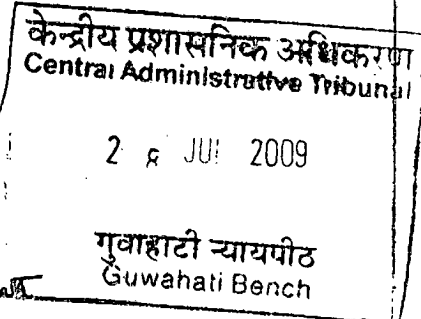
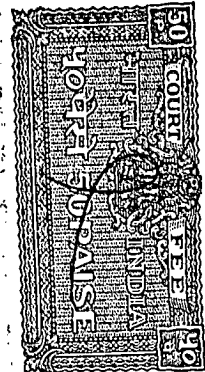
JUDGMENT

The prosecution case in brief is that a/cd. Sri Laknath Ray Extra Departmental Br. Post Master while functioning as an EDDPM Dhalin Bijni EDBO misappropriated Govt. Cash of Rs. 4722.45 (Rs. Four thousand seven hundred twenty two & forty five) only on 5.10.01. The same amount also misappropriated S.B/R.D. deposit account of seven five depositors. Hence the case.

Sub-Divisional Judicial Magistrate, Bijni

An estate being lodged by the Govt. Sri T. Karanika, Inspector of Posts, Bongaigaon, Sub-Div. where-upon police registered a case & took-up investigation. On completion of the investigation police submitted a charge-sheet U/s. 409 IPC. against the a/cd. Sri Laknath Ray.

On appearance, requisited copies were furnished to



to the record. upon perusal of the papers furnished
 N/s. 409 173 G.P.C. Officer read over to the record which
 he pleaded not guilty & claimed to be tried. After having
 heard from both sides charge - N/s. 409 173 framed against
 the a/cd.

To prove the case prosecution has examined three
 witnesses. The statement of the accused was recorded N/s. 313
 G.P.C. The plea of defence is complete denial & has not
 adduce evidence for his defence.

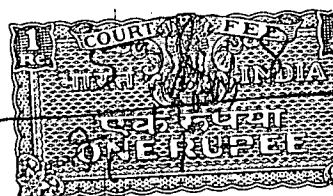
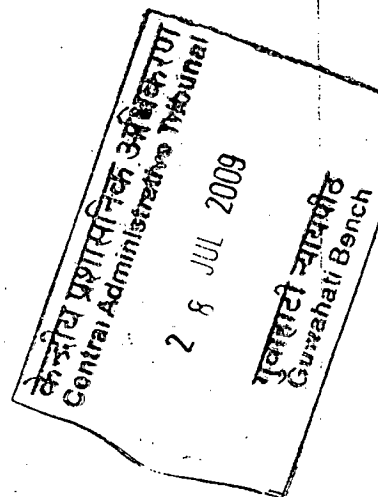
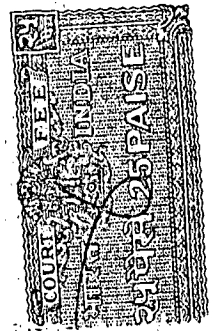
I have heard argument from both sides & gone
 through the entire record.

Points for determination:—

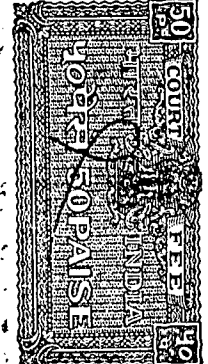
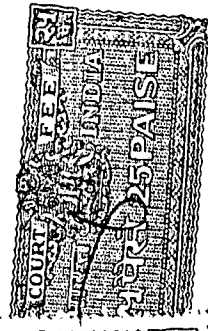
- ① Whether the accused misappropriated the Govt money
 from post-office thereby he committed criminal breach
 of trust as he is a Govt servant?

Decision with reasons:— To prove the case prosecution
 has examined three witnesses including the Complainant. P.W. I
 the Complainant. He stated on 5.10.07 he inspected the
 Shakti Biji's Post Office Branch & he saw that the post-office
 was closed by lock & key. He stated, he met peon Hombkar Sa-
 tandar & said him to bring called post Master. But he did not
 come & send the key of the office lock with 20000 money-
 order taken. When public came to know his presence may
 persons came & demanded their arrear money, then through the
 peon he opened the office door, brought money from sub-
 post office & according to money order taken he gave money
 to the public. After investigation he noticed that Rs. 4,722
 45 paise was short & he informed the Superintendent. He stated
 on next day again he came & collected pass books, after
 full enquiry he noticed Rs. 6,815.70 paise misappropriated by the
 a/cd. From one V.P. a/cd. he took Rs. 1791- but not
 deposited. P.W. I stated as order of Supt. of post office

Sub-Divisional Magistrate,
 Bijnor



he lodged an affidavit against the a/cd. Afterwards accused person handed over Account book, other documents & police lodged them him. Again he took zimmar. Exbt 2 is his affidavit, Exbt (1) is his signature. He identified Exbt-2, Exbt 3, Exbt 3(1). He submitted his inspection report to Supt. of post office. A/cd. is now under suspension. In his cross-examination he stated he did not filed the 'order' of the Supt. of post office relating filing this case. Also he stated he did not informed to the a/cd. for his inspection & not ~~informed~~ ^{informed} him to present in the post-office. Public Dinesh Mohanani, Hariprasad Ray, Deban Das, Shrihar V. Rai, Leela Rai, Atul Ch. Bhattacharya & others were present. He stated no right clerkship for was appointed for the right duty. He stated he completed his investigation on 5/6-10-01 & lodged affidavit on 12.10.01 & did not mentioned in his affidavit for his delay. He denied the suggestion that his inspection was wrong & without any prior information to the a/cd. he implicated him falsely. He admitted that they have departmental auditor & he has no knowledge whether his enquiry report was examined by the auditor or not. He stated in his cross that he specifically ~~he~~ did not mentioned the sum of Rs. 2 from whom & from which date the a/cd. misappropriated the money. He again denied the suggestion that a/cd. did not misappropriated any money & he himself misappropriated the money & implicated the a/cd. He stated he did not give enquiry report to the police. P.W. 2 is Honeshwar Bhattacharya. He stated on 5.10.01 he was working as a peon at Bhakim Bijai gram Post office (branch). At that time the a/cd. was post-master. As usually he came to the office on that day & was waiting at the side the office as the door of the office was closed. While he was waiting, Post-Inspect Jaydev Surmash Choudhary & heard him to called Post Master

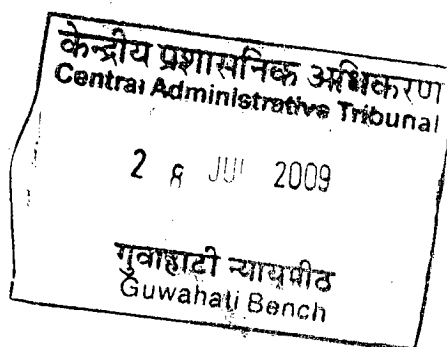
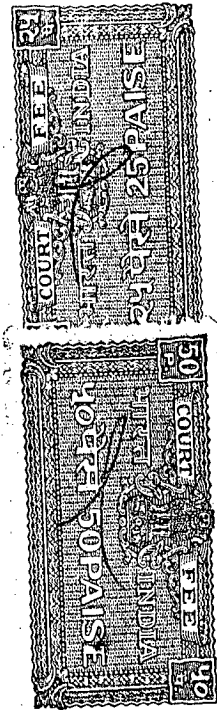


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Guwahati Bench

Sub-Divisional Judge
Magistrate, Dibrugarh

But he not come & gave him key & Money-order receipt. He opened the door before public & inspector head office employee Homan chandhury to bring money from head office. Inspector come to their office two times. Police never asked anything about the incident. In his cross-examination he stated in the absence of Mohan Inspector brought money & what he was doing he did not know. P.W. 3 stated on 5.10.01 he was working at Garuhband Post office & on return from office he entered the Shakhin Bazar Post office as he saw many people & heard Inspector come for an enquiry about misappropriation of money-order money. In his cross-examination he stated he has no knowledge about the case.

The above are the evidence available on record. In this case P.W. 1 is the sole witness. In his evidence it is clear that he did not produce the 'order' of the Supt. of post office where he was entrusted to enquiring the post office of Shakhin Bazar Branch, Post office. He also stated in his enquiry, accd. person was absent. He again submit that they have their own departmental auditor. P.W. 2 & P.W. 3 are stated they have no knowledge about the case. From the evidence of P.W. 1 I find he did not follow the proper procedure in his enquiry. Police seized the documents from P.W. 1 not from the accd. Nor exhibited the Supt. order to inspect ^{P.W. 1} is fatal to the prosecution case. I/O is also not examined. I/O's examination is necessary of this case. The evidence of P.W. 2 & 3 are meaningless as P.W. 2 was present during investigation but he has no knowledge about the case & on the other hand P.W. 3 was only present to satisfy the public. From the above discussion I do not think that prosecution has able to prove its case up to 409106 against the accused person.



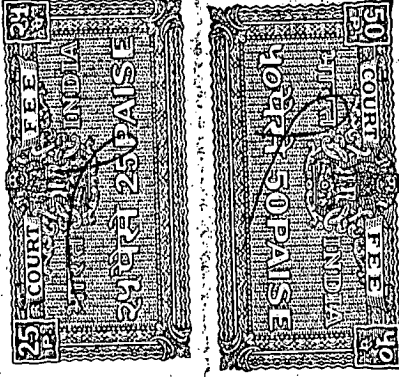
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(6)

As prosecution has failed to prove the case against the accused, Sri Lakshmi Roy, he is acquitted from the charge levelled against him & set him at liberty forthwith.

Judgment given under my hand & the seal of this Court on 30.8.04.

S. D. S. M.
Sub-Divisional Judicial
Magistrate, Dibrugarh.



केन्द्रीय प्रशासनिक अधिकरण
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Guwahati Bench

Copy

Department of Posts, India.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

2 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Inquiry Report of Rule 10 Case framed against Shri Loknath Roy, GDSBPM, Dakhin Bijni B.O. in a/w Bijni S.O. (now under Put off duty) under Rule 10 of DOP-GDS (Conduct and Employment) Rules 2001.

The undersigned Shri G.C.Das, Asstt. Supdt. of Pos.(HQ) Goalpara Divn, Dhubri had been appointed as Inquiry Authority to enquire into the charges leveled against Shri Loknath Roy, G.D.S. BPM(NOW UNDER Put off duty) Dakhin Bijni B.O. in a/w Bijni S.O. vide SPOS, Goalpara Division, Memo No. F6-2/2001-2002 dt. 13.8.03.

2. Shri R.K. Farid, the GDIPOS, Kokrajhar, Sub-Division had been selected as Presenting Officer of this case vide SPOS, Goalpara Divn, Dhubri memo no. F6-2/2001-2002 dt. 13.8.03. Accordingly Mr. Farid acted as Presenting Officer with his full co-operation.

3. Shri Adyanath Mahanta. APM SB) of Dhubri H.O. had been proposed by the Charged Officer as his Defence Assistant which was accepted by the undersigned with due permission from the controlling authority of Shri A.N. Mahanta vide SPOS, Goalpara Divn. Dhubri and accordingly he has been acted as Defence Assistant in the case.

4. Article of charges framed against Shri Loknath Roy, GDS-BPM, Dakhin Bijni B.O. were that -

Attested
H. N.
Advocate

While he was working as GDS-BPM Dakhin Bijni B.O. in a/w Bijni S.O. during the period from 20.7.89 to 04.10.2001 remained unauthorised absent from duty WEF 1-10-2001 by keeping shortage of cash amounting to Rs. 4722.45 (Rupees four thousand seven hundred twenty two and paise forty five only) in his Office Cash balance. Then the said Shri Roy violated the Provision of note below Rule-11 and Rule - 177(3) of Rules for B.O.S and failed to maintain absolute integrity and devotion to duty violating Rule-21- Department of Post, GDS (Conduct and Employment) Rules-2001.

28 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

That Shri Loknath Roy while working as GDS BPM Dakhin Bijni B. O., the said Shri Roy accepted Rs. 1000/- on 30.11.2000, Rs. 500/- on 12.2.2001, Rs. 2000/- on 2.4.2001 and Rs. 17000/- on 4.7.2001, as deposits against D/B, SB a/c No. 237021, but he did not credit the above amount to the govt. account on their respective dates of credits or any subsequent dates. By doing the above acts the said Shri Roy violated Rule 131(3) of Rule for Branch Offices and Rule-21d of DOP-GDS (Conduct and Employment) Rules-2001.

That the said Shri Loknath Roy GDS-BPM accepted Rs. 400/- on 27.4.01, Rs. 200/- on 26.5.01, and Rs. 600/- on 10.8.01 from the depositor of RD a/c No. 1703570 being the monthly instalments of deposits for the m/ March/2001 to August/2001, but failed to credit the amount to govt. account on those dates of deposits or on any subsequent dates. Thus the said Shri Roy violated Rule-144 of Rules for Branch office, and Rule-21 of DOP-GDS (Conduct and Employment) Rules, 2001.

The statement of imputation of misconduct or misbehaviour in support of the article of charges framed against Shri Loknath Roy GDS-BPM D/Bijni B.O. (now under Put off duty).

Article - I

The SPM Bijni B.O. vide his Erro no. 35 dt. 17.9.01 reported this office that Shri Loknath Roy, charged officer & GDS BPM, D.Bijni B.O. remained unauthorised absent from duty WEF 15.9.01 and also kept excess cash without any liabilities. On receipt of the above information, the concerned SDIPOS, Bongaigaon Sub-Division was directed to enquire the case on 21.9.01 & accordingly the SDIP Bongaigaon proceed to D/ Bijni B.O. on 4.10.01 and found the office closed. He called for the BPM through EDDA/EDME Shri .Sutradhar, but the BPM did not turned dup to 15.00 hours on the next day on 5.10.01, the SDIP Bongaigaon again proceeded to D/Bijni B.O. and found that the said EDDA/EDME attended the B.O. with 20 nos of mos received for payment and with the office keys.

The SDIP/Bongaigaon opened the office in presence of witnesses and verified the cash and stamps as per B.O. account book in presence of EDDA/EDME of the office and other witnesses and found as follows: -

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Central Administrative Tribunal

28 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

According to account office-closing balance of the B.O. dt. 1.10.01 was

- (i) Cash Rs. 4446.80
- (ii) P/S " 580.00
- (iii) R/S " 35.00

Total Rs. 5061.80

But on physical verification of cash and stamps the SDIP Bongaigaon found the following -

- (i) Cash Rs., 04.35
- (ii) P/S " 288.00
- (iii) R/S Rs, 47.00

Total Rs. 339.35

So the shortage of cash and stamps balance of the B.O. was found as Rs.5061.80-3390.35 = Rs. 4722.45. An inventory of shortage of cash and stamps was accordingly prepared by the SDIP Bongaigaon on 5.10.01 in presence of witnesses and the shortage amount Rs. 4722.45 was charged as wp on 5.10.01 at he B.O., being 2.10.01 holiday and 3.10.01 and 4.10.01 the B.O. did not function.

By doing the above acts, the said Shri Roy violated the provision of note below Rule-11 and Rule 177(3) the Rules for Branch Offices and failed to maintained absolute integrity and devotion to duty as enjoined in Rule - 21 of DOP-GDS (Conduct and Employment) Erules-2001.

Article - II

That Shri Loknath Roy while working as GDS-BPM D/Bijni B.O. accepted the following amounts tendered by the depositor Shri Durga Ram Roy of the S.B. a/c No. 237021. On the dates mentioned below - for deposit in his account.

Sl.No. A/c No.

Name & add of

D/O Deposits Amount of deposits

Depositors.

-45-46-

1.	237021	Durga Ram Roy	30.11.2000	Rs.1000.00
		Vill.Gossaigaon	12.2.01	Rs. 500.00
		P.O. D/Bijni	02.04.01	Rs.2000.00
			04.07.01	Rs.1700.00
<hr/>				
				Rs.5200.00

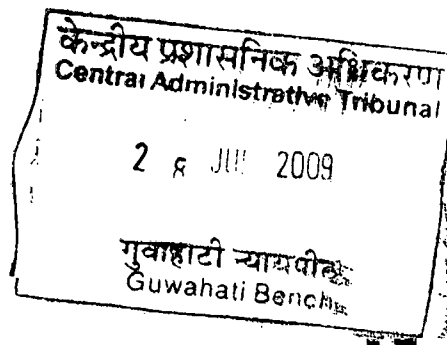
The said Seri Roy entered the above transactions as deposit in the SB Pass book on the date of deposit and the above entries were authenticated by him by impressing office date stamps and by putting his signatures. But the said Shri Roy failed to credit the above deposited amount to govt. account reflecting through B.O. accounts book on their respective dates or any subsequent dates.

By doing the above acts the said Shri Roy violate Rule - 131(1) of Rules for Branch Offices and failed to maintain absolute integrity and devotion to duty as enjoined in Rule-21 of DOP GDS (Conduct and Employment) Rules 2001.

Article - III

Shri Loknath Eroy while functioning as GDS-BPM Dakhin Bijni B.O. from 20.7.89 to 04.10.01, received Rs. 1200/- from the depositor Smti Manomati Ovary of RD a/c N. 1703570 being the monthly instalments of deposits as detailed below -

<u>Sl.No. A/c No.</u>	<u>Name & add of Depositors.</u>	<u>D/O Deposits</u>	<u>Amount of deposits</u>
1.	1703570	Manomati Ovary	27.04.01 Rs. 400.00
		W/o Dipak Kr.Basu	26.05.01 " 200.00
		Nataraj Dongaigaon	10.08.01 " 600.00
		P.O. D/Bijni, B.O.	<hr/>
			Total Rs.1200.00



8/3/09 - 47 -

The said Shri Roy entered the above monthly deposits in the RD pass book and authenticated the entries by impressing office date stamps and his initials, but he fails to credit above deposited amount to govt. account reflecting through B.O. account book and B.O. R.D. journal violating the provision of Rule 144 of the Rules for Branch Offices. By doing so, the said Shri Roy failed to maintain absolute integrity and devotion to duty violating Rules-21 of DOP-GDS (Conduct and Employment) Rules-2001.

Annexure - III

List of documents by which the articles of charges framed against Shri Loknath Roy are proposed to be sustained -

- (1) Inventory dt. 5.10.01, and joint inventory reared from witnesses dt. 5.10.01.
- (2) B.O.daily acct. of D/Bijni B.O. dt. 15.10.01, 12.2.01, 2.4.01, 04.7.01, 29.4.01, 26.5.01, and 10.8.01.
- (3) B.O. a/c book of D/Bijni B.O. dt. 5.10.01, 4.7.01 and 10.8.01 (covering a/c book for the period from 5.10.01 to 21.11.01 and 1.6.01 to 3.10.01).
- (4) B.O. Summary of Bijni S.O. dt. 8.10.01 (covering period from 29.9.01 to 8.12.01) dt. 30.11.00 (covering period from 5.9.00 to 19.1.2001) dt. 12.2.01, and 27.4.01 (covering period from 20.1.01 to 26.5.01, dt. 26.5.01 and 4.7.01 (covering period from 28.5.01 to 26.7.01) and dt. 19.8.01 (covering period from 27.7.01 to 28.9.01).
- (5) SB Passbook no.237021 of D/Bijni B.O. in the n/o Shri Durga Roy.
- (6) RD Passbook no. 1703570 of D/Bijni B.O. in the n/o Smti Manomati Ovary.
- (7) Statement of Shri Durga Ram Roy dt. 5.12.01 depositor of SB a/c No. 237021.
- (8) Statement of Smti Manomati Ovary dt. 23.3.02, depositor of RD a/c No.1703570.
- (9) SB Journal of D/Bijni B.O. dt. 13.11.2000, 12.2.01, 2.4.01, and 4.7.01, (covering period from 5.8.96 to 13.8.01.
- (10) RD Journal of D/Bijni B.O. dt. 27.4.01, 26.5.01, and 10.8.01 (Journal not maintained from 1.6.01.)
- (11) B.O. journal of D/Bijni BO dt. 30.11.00. (covering period from 17.11.00 to 15.1.01), dt. 12.2.01, 2.4.01 and 27.4.01 (covering period from 5.5.01 to 9.1.01) and dt. 10.8.01 (covering period from 10.8.01 to 1.10.01.)

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Annexure – IV

List of witnesses by whom the article of charges framed against Shri Loknath Roy are proposed to be sustained.

- (I) Shri Jaydeb Karmakar, GDIP Bongaigaon.
- (II) " H.K.Choudhury – OS mail Bngn(Now on retirement)
- (III) " H.Sutradhar, EDDA(C) EDMe – D/Bijni B.O.
- (IV) " Durga Ram Roy, Depositor of SB a/c No. 237021.
- (V) Smti Manomati Owary, " " RD A/c No. 1703570.
- (VI) Shri Dibnesh Ch. Mushahary – Vill & P.O. D/Bijni.
- (VII) " H.P.Roy, Vill. Dongaigaon.

5. The Presenting Officer stated during inquiry that, he has o additional witness and documents to be examined.

6. The charged officer was proposed the following document to be examined in his favour, which were also enclosed to the Disciplinary Authority along with the written statement of defence d. 28.6.03. As there was relevancy with the written statement of defence submitted and received by the undersigned from the Disciplinary authority following certificate (medical) have been accepted by the undersigned as documents of the charged officer.

- (1) Unfit medical certificate of Shri Loknath Roy Charged officer dt. 31.10.01 issued by Dr. Oli Roy Choudhury of Abhayapuri Hospital, in the district of Bongaigaon.
- (2) Fir medical certificate of Shri Loknath Roy, Charged Officer dt. 22.9.03, issued by the Dr. Oli Roy Choudhury of Nalbari Civil Hospital, Nalbari.

7. Preliminary and regular hearings were held on the following dates –

- 7 ~~48~~ - 49 -
- (a) Preliminary hearing held at Bijni S.O. on 17.09.03.
(b) Regular hearings held at Bijni on 30.09.03, 14.10.03, 12.12.03, 15.12.03, 03.01.04, 05.05.04 and 26.5.04.

Analysis of hearing

8. Preliminary hearing:-

Preliminary hearing was held at Bijni S.O. on 17.09.03. The charged officer stated that he had received the charge sheet issued by the Supdt. of Post offices. Goalpara Division, Dhubri vide his memo No. F6-2/2001-02 dt. 5.6.03 and he understood the contents of the charge sheet. However, the contents of the charge sheet had been explained by the Presenting Officer to Shri Loknath Roy charged officer. But Shri Roy Charged officer pleaded not guilty and did not admit the charges brought against him.

The charged officer proposed the name of Shri Adyanath Mahanta APM-SB-II of Dhubri H.O. as his Defence Assistant that had been allowed by the undersigned after taking permission from the competent authority.

The enquiry was adjourned for that day fixing the next date on 30.9.03 for exhibition of listed documents. The Presenting Officer was asked to produce all listed documents on the next date i.e. on 30.9.03 for exhibition.

9. Regular hearings: Dated 30.09.03.

On 30.09.03 (regular hearing) the Presenting Officer produced the following listed documents in favour of the Disciplinary Authority. All the documents (listed documents) were marked as "exhibits" as under -

- (I) Inventory prepared at D/Bijni B.O. and signed
By the SDO(P) Bngn dt. 05.10.01 = Exp - 1.
- (II) Inventory (Joint) prepared at D/Bijni B.O. dt. 05.10.01
signed by the SDIP/Bngn and O/S Mails, EDDBA of
D/Bijni BO in presence of a few local public = Exp. 1(A)
- (III) D/Bijni B.O. d/a dt. 05.10.01 = Exp. 2.

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(IV)	"	"	dt. 12.2.01	=	Exp. 2(A)
(V)	"	"	dt. 02.4.01	=	Exp- 2(B)
(VI)	"	"	dt. 04.07.01	=	Exp- 2(C)
(VII)	"	"	dt. 27.04.01	=	Exp - 2(D)
(VIII)	"	"	dt. 26.05.01	=	Exp- 2(E)
(IX)	"	"	dt. 10.08.01	=	Exp- 2(F)

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(X)	"	"	"	B.O. Acctt. Book	dt.5.10.01	=	Exp- 3
(XI)	"	"	"	"	dt. 04.7.01	=	Exp-3(A)
(XII)	"	"	"	"	dt.10.08.01	=	Exp- 3(B)
(XIII)	"	"	"	S.O. Summary of Bidjni S.O.	dt.08.10.01	=	Exp- 4
(XIV)	"	"	"	"	dt.30.11.00	=	Exp- 4(A)
(XV)	"	"	"	"	dt. 12.2.01	=	Exp - 4(B)
(XVI)	"	"	"	"	dt.2.4.01	=	Exp - 4(C)
(XVII)	"	"	"	"	dt. 27.4.01	=	Exp - 4(D)
(XVIII)	"	"	"	"	dt. 26.5.01	=	Exp - 4 (E)
(XIX)	"	"	"	"	dt. 04.7.01	=	Exp - 4(F)
(XX)	"	"	"	"	dt. 10.8.01	=	Exp - 4(G)
(XXI)	"	"	"	D/Bijni SB Passbook No. 23702		=	Exp - 5
(XXII)	"	"	"	RD Passbook No. 1703570		=	Exp - 6.
(XXIII)	"	"	"	W/S of Shri Durga Ram Roy	dt.5.12.01	=	Exp - 7
(XXIV)	"	"	"	Smti Manamati Owary	dt.23.3.02	=	Exp - 8
(XXV)	"	"	"	D/Bijni BO. SB journal	dt. 13.11.00	=	Exp - 9.
(XXVI)	"	"	"	"	dt. 12.2.01	=	Exp - 9(A)
(XXVII)	"	"	"	"	dt. 2.4.01	=	Exp - 9 (B)
(XXVIII)	"	"	"	"	dt. 4.7.01	=	Exp - 9(C)
(XXIX)	"	"	"	RD	dt.27.4.01	=	Exp - 10.
(XXX)	"	"	"	"	dt. 26.5.01	=	Exp - 10(A)
(XXXI)	"	"	"	"	dt.10.8.01	=	Exp - 10(B)
(XXXII)	"	"	"	D/Bijni B.O. journal	dt. 30.11.00	=	Exp - 11.
(XXXIII)	"	"	"	"	dt.12.2.01	=	Exp - 11(A)
(XXXIV)	"	"	"	"	dt. 2.4.01	=	Exp - 11(B)
(XXXV)	"	"	"	"	dt. 27.4.01	=	Exp - 11(C)
(XXXVI)	"	"	"	"	dt. 26.5.01	=	Exp - 11(D)
(XXXVII)	"	"	"	"	dt. 4.9.01	=	Exp - 11(E)

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(XXXVIII) " " " dt. 10.8.01 = Exp - 11(F)

(d) The charged officer inspected all the above listed documents and signed them as his own office, but he have not signed on the following listed documents/Exhibits on the plea that there are no entries on the (SB/RD journals) dates mentioned in the charge sheet, which should be entered by the Charged officer himself as per rules.

Particulars of exhibit and not signed by the charged officer on te d/o inspection on 30.9.03 and for which the charged officer himself is responsible for non-entries of SB/RD transactions in his SB/RD journal.

- | | | | |
|-------|-----------|---|---------------------------------|
| (I) | Exp- 9 |) | D/Bijni SB journal dt. 27.4.01, |
| (II) | Exp-9(A) |) | 26.5.01, and 10.8.01. |
| (III) | Exp-9(B) |) | |
| (IV) | Exp- 9(C) |) | |

9. Photo copies of all listed documents have been supplied to the charged officer as desired on d/o hearing i.e, 30.09.03.

During inspection of listed documents on 30.9.03 the Presenting Officer regarding suffering from mental disease from the middle of 2000 and loosing his memory temporarily upto 10.8.2001 (as stated by the charged officer vide his defence statement dt. 28.6.03. The charged officer replied that at present (on 30.9.03) he had cured fully and he recovered his memory. The enquiry was closed for 30.9.03. The P.O. and C.O. were asked to submit addl. Documents/witnesses if any to the I.O. showing relevancy.

10. The next regular hearing was held on 14.10.03 without progress due to absence of Shri Loknath Roy, charged officer.

11. The next hearing was held on 12.12.03 but no progress due to absence of Shri A.N.Mahanta Defence Assistant of the charged officer.

12. Another regular hearing was held on 15.12.03 at Bijni sub-Post Office on which PW-1 (Shri J.Karmakar SOI(P) Bongaigaon) and PW-3 (Shri H.Sutradhar EDDA(C)

EDMC D/Bijni, B.O. were examined, cross-examined and re-examined by the Presenting Officer/Defence Assistant including I.A.

On examination of PW-1 (SDI (P) Bngn), it was revealed that, being the SDI(P) Bongaigaon Sub-Division, he visited Dakhin Bijni B.O. along with the O/S mail on 04-10-01 and he found the office closed as well as absent of the BPM 9Charged Officer) during the working hours. Shri H. Sutradhar PW-3 had been sent to the house of the BPM/Charged Officer for calling him to the office on 04.10.01, but the PW-3 on returning from the house of the charged officer reported to the SDI Bongaigaon that the charged officer was not willing to appear before the PW-1 on 4.10.01. Then the SDI(P) Bongaigaon awaiting up to 1500 hrs for the BPM (C.O>) and then returned to his head quarter.

Further the PW-1 stated - during enquiry that he also visited D/Bijni B.O. on 05.10.01 and it was found that the B.O. was opened at 1030 hrs but the B.P.M. was found absent on that date also, though P.W.-1 first stated that the B.P.M. was found in the office, on re-examination by the P.O. the P.W.-1 clarified that, the B.P.M. was actually found absent on 05.10.01 also as a result of which, the PW-1 compelled to send the P.W.-3 to collect key of the office from the residence of the B.P.M.

As per statement of the PW-3, he visited the residence of the (BPM) Charged officer on 05.10.01 and collected he key of the office including 20(twenty) numbers of unpaid money orders and handed over to the SDI (P) Bongaigaon. It is also stated by the PW-1 (S.O.I (P) Bongaigaon that almost all the payees were pressing hard for arrangement of payment of their M.Os. However, the P.W.-1 stated in reply of a question of the Presenting Officer during enquiry on 15.12.03 that, he verified cash and stamp balance of the office in presence of the P.W-2, W-3 and a few local publics (Payees of pending MOs) and found shortage of cash of Rs. 4722.45 on 05.10.01. The shortage amount was charged as ucp to adjust the amount in the B.O. account book/B.O. daily account of 05.10.01. Further, it was shown in Exp-1 (inventory dt. 05.10.01). It is also stated by the PW-1 that 2.10.01 was holiday and on 3.10.01 & 4.10.01 did not function the B.O. due to absent of the charged officer (BPM).

Further the P.W. 1 stated in reply of a question of the P.O. that, he also detected some irregularities in SB/RD transactions as below. The PW-1 stated that the charged officer accepted Rs. 5200/- during the Pd. from 30.11.00 to 4.7.2001 from the D/Bijni SB

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a/c holder Shri Durga Ram Roy as a SB deposit for depositing in the D/Bijni SB A/c No. 237021 and authenticated the entire deposits by the C.O. but failed to credit the amount to the govt. account by the C.O. Moreover the charged officer accepted Rs. 1200/- as monthly deposit for the Pd from 29.4.01 to 10.8.01 in O/O D/Bijni RD a/c No.1703570 from Smti Manamati Ouary and the amount were entered on three dates by the C.O. but he failed to credit the above amount to the govt. account by the charged officer.

Further the PW-1 (SDIP Bongaigaon) confirmed his signature put on Exp-1, exp-1(A), Exp-7 and exp-8 and also confirmed that the charged officer was physically and mentally sound health as he found and observed at the time of his visits.

In the cross-examination, the D.A. put a question to the P.W.1 regarding the presence of the charged officer in the office on 5.10.01 against which the PW-1 replied as "Perhaps it is Correct, in a confused manner, but the fact had been cleared by the P.O. through another question on re-examination of PW-1 as the C.O. was not present on 5.10.01.

Further, the D.A. asked PW-1 vide his question no.2, that the inventory Exp- 1 & 1(a) dt. 5.10.01 was prepared PW-1 himself but in reply the PW-1 cleared it as not prepared by himself, & it was prepared by the PW-2 (O/S mail Bngn).

In another question the D.A.raised an objection that there was no signature of the charged officer on the Exdp-1 and Exp-1 (A) why the PW-1 cleared the point as the C.O. perhaps not present on 5.10.01 at the time of preparation of Exp-1 & Exp-1 (A).

In another question the D.A. want to know that whether the P.w.1 taking any help from the Police on 5.10.01 to brig the C.O. to the office. The P.W-1 replied as negative.

On re-examination by P.O. the P.W.-1 cleared that he compelled to open the B.O. in presence of the local public as huge numbers of payees of the pending m.os were pressing hard for opening of the P.O. without the help of police.

In another question the D.A. went to know from the P.W.-1 that whether the opening of the office without help of police was as per rules of the department.P.W.-1 replied as affirmative and he could not specify any rules. Lastly the D.A.put a question to

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the PW-1 regarding the possibility of misappropriation of shortage amount of Rs. 4722.45 by the PW-1 along with other deptl. staff. The PW-1 denied the fact straightly.

At last the undersigned put a question to the PW-1 to clarify the fact that whether the PW-1 verified the office cash & stamp balance on 5.10.01 & found shortage of Rs. 4722.45. The reply of the PW-1 was affirmative.

On 15.12.03, PW-3 H. Sutradhar, EDDA(C) EDMC of D/Bijni B.O. was examined in his deposition PW-3 it was revealed that the PW-1 along with two O/S mails were visited D/Bijni B.O. on 11-10-01 and found the B.O. was closed. Then the PW-1 directed PW-1 to call for the charged officer from his residence. But the charged officer expressed his unwillingness to attend the office due to his illness. Again on 5.10.01 the PW-1 visited D/Bijni B.O. along with the two O/S mails and found that the PW-3 (EDDA(C) EDMC of D/Bijni B.O.) was present in the B.O. but the charged officer was absent and PW-3 collected the office key and 20(twenty) nos. of unpaid m.os. from the residence of the C.O. The PW-3 then confirmed the signature put on Ex-1 as his own and also confirmed the signature and contents of the Exp-1 (A).

On cross-examination by the D.A. the PW-3 stated that the charged officer was present in the office duties regularly except a few days including 5.10.01 and he run the office works smoothly. More-over, the PW-3 stated that the signature of the local public have not collected forcefully but they signed on the Exp-1(A) according to their own wish.

13. Another date of enquiry was held on 03.01.04 at the same venue. On 3.1.04 PW-2, PW-4 and PW-7 were examined and recorded their statements as under --

The charged officer produced two documents on 3.1.04 viz. (1) unfit medical certificate of Shri Loknath Roy, C.O. dt. 31.12.01 issued by Dr.Oli Roy choudhury, Abhayapuri Hospital, Dist. Bongaigaon. (2) Fit certificate of Shri L.Roy C.O. dt. 22.9.03 issued by the same Doctor from Nalbari Civil Hospital, which were marked as Exb-1 and Exb-2 respectively.

On examination of PW-2 (H.K.Choudhury, O/S mails Bongaigaon) it was revealed that during his service period the PW-2 visited D/Bijni B.O. along with PW-1 (SIDIP Bongaigaon) in c/w enquiry against Shri Loknath Roy, charged officer. It also also

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stated that he prepared an inventory (Exp-1, Exp.1 (A)) of cash and stamp dt. 5.10.01 and the contents therein as well as the signature put by him (PW-2) were confirmed as his own.

In a question the presenting Officer asked PW-2 that, whether he observed any mental unsoundness of Shri L.Roy. C.O. while he (PW-2) visited in the D/Bijni B.O. as official tour during the period from 20.7.89 to 4.10.01 and also on 5.10.01. The reply of the PW-2 was negative.

At the time of cross-examination by the DA. It was revealed that, the PW-2 was working as O/S mails Bongaigaon before the joining of the charged officer as B.P.M., D/Bijni and he visited the B.O. almost once in every month and found discrepancies in cash and stamp balance, but he did not reported the fact to the authority.

At the time of re-examination by the P.O. the PW-2 also stated that he was present at the time of opening of the cash box on 5.10.01 and he was stand as eye witness including PW-1 and other local public.

Further the PW-2 stated during enquiry that the C.O. did not cooperated with him at the time of enquiry dt. 5.10.01 which can be construed that only for this reason the signature of the C.O. could not be obtained on the inventory dt. 5.10.01.

On examination of Shri Durga Ram Roy, PW-4 and the depositor of D/Bijni SB a/c No. 237021, it be becomes clear that the charged officer (Loknath Roy) collected Rs. 1000/- on 30.11.2000, Rs. 500/- on 12.2.01, Rs. 2000/- on 2.4.01 and Rs. 1700/- on 4.7.01 in person from PW-4 as SB deposits and entered the above amounts in the Passbook of PW-4, put his initials impressing d/s of the office but he (C.O.) failed to credit the above amount to the govt. account. It is also stated by the PW-4 that the charged officer was found in sound mind on the above dates i.e. at the time of acceptance of the above amount. Finally the PW-4 confirmed his signatures available on the Exp-7 as his own.

On examination of PW-7 he stated that he was present at the D/Bijni B.O. on 5.10.01 at the time of preparing Exp-1/ Exp-1(A). It is also stated by him that the contents of the Exp-1 and Exp-1(A) are genuine. He confirmed his signature available on the Exp-1(A) as his own.

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Result of enquiry dt. 5.5.04 at the same venue.

On 5.5.04 PW-5, Shri Manamati Ouary the depositor of D.Bijni B.O. RD a/c No. 1703570 was examined, cross examined and re-examined and recorded her statement as under:-

PW-5 stated that she opened a RD account at D/Bijni B.O. bearing a/c No. 1703570 and deposited Rs. 400/- on 27.4.01, Rs. 200/- on 26.5.01, Rs. 600/- on 10.8.01. The above mentioned amounts were accepted by Shri Loknath Roy, charged officer on the above dates and entered the said deposits in the Passbook, put his signature with official date stamps. Further PW-5 admitted her written statement dt. 23.3.02 (Exp-8) and confirmed the contents and signature of the Exp-8.

On cross-examination by the D.A. the PW-5 replied that she did not lodge any complaint to any authority about her monthly deposits as she was not aware about the non-credit by the C.O. She also examined the Exp-6 (D/Bijni RD Pass-book) and confirmed as her own. She also stated that she had no any enmity with the charged officer.

Finally the undersigned cleared it from the PW-5 that she handed over all the above amounts to the charged officer Sri Loknath Roy as R.D. deposits.

The PW-6 was present on 5.5.04, but the Presiding Officer did not examine him as he felt not necessary.

Further the charged officer has been given an opportunity to examine himself as his witness, but he expressed his unwillingness to examine himself as his own witness.

5. Another enquiry was held on 26.5.04.

On 26.5.04 the charged officer produced original unfit medical certificate Exp-1 and original fit medical certificate - Exp-2 as he was submitted photo copies of these certificates on 3.1.04 as his defence documents. On examination by both the medical certificate with the photocopies were found agree with the original medical certificate.

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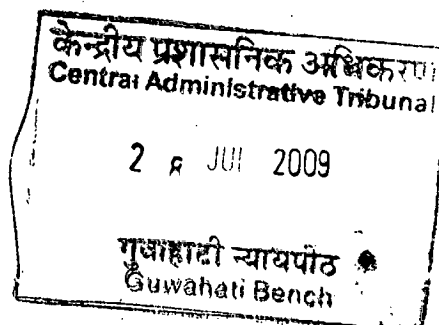
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The Presenting Officer put a question to the charged officer regarding suffering of nervous disorder since last several months of 2001, but the C.O. did not applied for leave due to his illness. In reply the C.O. stated that he could not exactly explain the period from which he was suffering from the said disease prior to the period mentioned in the Exd-1, but he agreed with the contents of the ExD-1, i.e. he suffered from nervous disorder from the last several months of Dec/2001, which was noted by the issuing Doctor. Further another important question was asked by the P.O. regarding some monetary embezzlements were occurred in the year 2000, but as per Exd-1 (unfit medical certificate of Loknath Roy) submitted by the C.O. nothing was mentioned regarding his illness on that period. In reply the C.O. (by the D.A. on behalf of the C.O.) expressed that nothing to say, which can be construed as the embezzlements in the year 2000 was made by the C.O. in sound mind as the said period was not covered by the unfit medical certificate dt. 31.12.01 (ExD-1).

Further the undersigned also put a few question to clear some points. In reply to a question the C.O. stated that, he was suffering from (as per unfit medical certificate) mental disease since the last part of Dec/2001, but the said m/c (ExD-1) unfit m/c of Loknath Roy) had been submitted to the Disciplinary authority only on 28.6.03 which was received by the disciplinary authority on 2.7.03. Further the C.O. stated during examination that he did not inform anything to the disciplinary authority regarding his mental disease before issue of chargesheet nor the C.O. did not submit any leave application against his above mental disease.

In reply of another question the C.O. stated to the undersigned that he accepted Rs.5200/- on 30.11.2000, 12.2.01, 2.4.01, 4.7.01 as SB deposit from Shri Durga Ram Roy the depositor of D/Bijni SB a/c No. 237021 and entered the amounts in the depositor's Passbook and authenticated by putting his signature and date stamp impression, but he (Charged Officer) failed to credit the amount to the govt. accounts.

In reply to another question the C.O. stated that he (Loknath Roy, C.O.) accepted Rs. 1200/- on 27.4.01, 26.5.01, 10.8.01 as R.D. deposit from Smti Manamati Owary the depositor of D/Bijni R.D.a/c No 1703570, entered the above amounts in the above noted passbook with his initials but he (C.O.) failed to credit the above amount to the govt. account.



At last of the hearing on 26.5.04, the Charged Officer Shri Loknath Roy confirmed his signature and contents of the defence statements dt. 28.6.03 as his own and correct wherein he indirectly admitted all the charges framed against him by the Supdt. of Post Offices vide his memo No. F6-22001-2002 dt. 5.06.03.

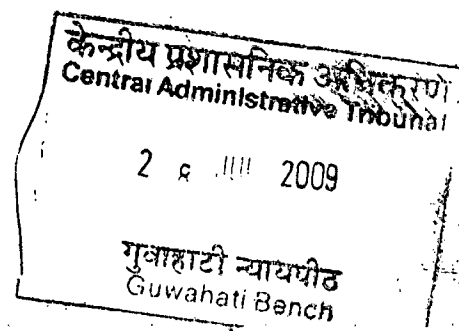
As the examination of witnesses and documents of the disciplinary authority and charged officer have been completed and both the P.O. and C.O. stated that they have no other additional witnesses/documents to be examined, the regular hearing declare as closed to today on 26.5.04.

16. The P.O. was directed to submit his written brief within 10 days from the closing date of enquiry with a copy to the charged officer. The C.O. also requested to submit his defence if any within 10 days from the d/o receipt of the written brief from the P.O. by the regd. Post.

17. Case for the disciplinary authority.

The charged officer also states that, unauthorised absent from duty w.e.f. 1.10.01, keeping shortage of cash of Rs. 4722.45 was not intentional and these were happened due to his mental disease. However, though there was a good support (unfit medical certificate) on mental disease of the charged officer, he did not applied for leave or informed the fact to the disciplinary/controlling authority to avoid above-mentioned anomalies.

Further, on examination of P.W.1, P.W. 4, Exp-5, Exp-7, Exp-11, Exp-4(A0, Exp-2(A), Exp-4(B), Exp-11(A) Exp-2(B), exp-4(C), Exp-9(C), Exp-11(E), it is clear that the Charged Officer accepted Rs. 1000/- on 30.11.2000, Rs. 500/- on 12.2.01, Rs.2000/- on 2-4-01, Rs. 1700/- on 4.7.01 from Shri Durga Ram Roy as SB deposit of D/Bijni S.B.Passbook a/c No. 237021 and which was indirectly admitted by the charged officer though his written statement of defence dt. 28.6.03, but he failed to credit the above mentioned amount to the Pos Office account and there-by the Charged Officer violated the provision of rule - 131(1) of Rules for Branch Offices. However, the Charged Officer stated that this was happened due to his mental disequilibrium and it was never intentional.



It is also seen from the Exp-8, Exp-2(D), exp-4(D); Exp-6, Exp-10, Exp-11(C), that the Charged Officer accepted Rs. 400/- on 27.4.01, Rs. 200/- on 26.5.01, Rs. 600/- on 10.8.01 from Smti Manamati Ouary depositor of D/Bijni R.D.a/c No. 1703570 as R.D.deposits, but he failed to credit the said amount to the Post office/Govt. account, and thereby the Charged Officer violated the provision of Rule-144 of the rules for Branch Offices. Because the Charged officer entered the above amount in the depositors pass book by himself and put his initials against the entries including impression of date stamps of his office. More over, the charged officer stated in his written statement of defence that, the actual cause of failure to credit the above amount was not intentional, but he forgot to credit the above amount into the govt. account due to his mental equilibrium, that means the fact of acceptance of above mentioned amounts and non-credit to the govt. account was correct.

18. Case for the Charged Officer:

During enquiry an opportunity has been given to the Charged Officer to produce the list of witnesses and documents if any in his favour vide order sheet dt. 30.09.03. Accordingly the Charged Officer Shri Loknath Roy produced one unfit medical certificate dt. 31.12.01 issue by Dr. Oli Choudhury, Abhayapuri Hospital and one fit certificate issued by the same Doctor from Nalbari Civil Hospital dt. 22.9.03 & the above two certificates were marked as ExD-1 and ExD-2 respectively. The Charged officer further stated during enquiry that he has no witness to be examined except above two medical certificates.

Further Shri Loknath Roy the Charged Officer had been furnished a written statement of defence dt. 28.6.03 which was received by the undersigned along with the appointment letter vide Supdt. of POs memo No. F6-2/2001-2002 dt.13.8.03. The undersigned like to mention here that the charged officer could not produce defence witness but he submitted one unfit medical certificate and one fit medical certificate i.e. ExD-1 and ExD-2. Through the ExD-1 (By unfit medical Certificate) the Charged Officer expressed that, he was suffering from nervous disorder since last several months of 2001. But it was mentioned in the defence statement dt. 28.6.03 by the charged officer that he was suffering from protracted mental disease from the middle of 2000.

The Charged office further stated in his defence statement dt. 28.6.03 that he was completely out of his head from the 1st Oct/2001. But as per ExD-1, it is seen that the

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charged officer was suffering from nervous disorder since last several months of Dec/2001. However the date suffering is not agree with two documents like (1) unfit medical certificate ExD-1 and defence statement dtd. 28.6.03.

The Charged Officer also state during examination on 26.5.04 that he was not submitted any leave application to the appointing/disciplinary authority showing his nervous disorder/mental disease or regarding lost of his memory. On the other hand the charged officer state in his written statement dt. 28.6.03 that he was suffering from mental disease from 1.10.01 and he was out of his brain during the above period and his absent from duties was not intentional i.e. the charged officer indirectly stated that his absent was due to his mental disease.

On examination of the charged officer during enquiry and as per written statement of defence dt. 26.8.03, it is clear that, all the facts mentioned in the chargesheet were genuine, but these were happened due to his mental disequilibrium. As per ExD-1 (unfit medical certificate) it is seen that the charged officer was actually suffered from the mental disease since a few months of Dec/2001 and lost his memory temporarily and as a result of which the charged officer did all the irregularities mentioned in the charge sheet issued by the disciplinary authority vide his memo No. F6-2/2001-2002 dt. 5.6.03. In this regard the Presenting Officer raised a question that the charged officer was suffering from mental disease since last few months of Dec/01 (as per ExD-1), but the charged officer was involved in SB/RD fraud cases before last few months of Dec/01 i.e. Rs. 1000/- on 30.11.2000, Rs. 500/- on 12.2.01, Rs. 2000/- on 2.4.01, Rs. 1700/- on 4.7.01, Rs. 400/- on 27.4.01, Rs. 200/- on 26.5.01 and Rs. 600/- on 10.8.01. The above question raised by the Presenting Officer is a notable and important one.

Further the Charged officer submitted the medical certificates only on 28.6.03, which was received by the disciplinary authority only on 2.7.03 i.e. after 19 (nineteen) months of the date of issue of the medical certificate. The C/O may apply for leave if he was suffering from mental disease since last few months of Dec/01 instead of submitting the m/c (ExD-1) after nineteen months to avoid monetary transactions.

Moreover the W/S of defence dt. 28.6.03 and defence documents (Exd-1) & (ExD-2) submitted by the C.O. were found to have been contradictory as the C.O. state in his W/S of defence dt. 28.6.03 that e was suffering from mental disease from the middle of 2000 and lost his memory temporarily but in the unfit m/s issued by Dr. Oli Roy

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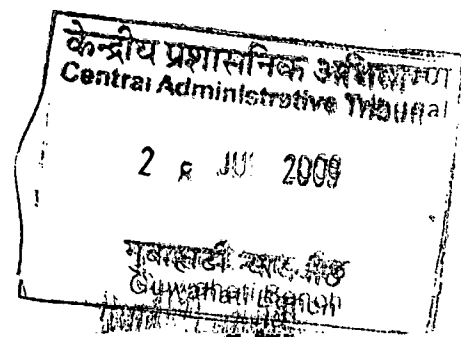
Choudhury of Abhayapuri Hospital clearly stated that the C.O. was suffering from nervous disorder from past several months of Dec/2001. The C/O also stated during enquiry that he could not remember the actual date from which he was suffering from mental disease. The undersigned therefore like to mention here that all the charges leveled against the charged officer vide SPOs/Dhubri memo no. F6-2/2001-2002 dt. 5.6.03 have been admitted indirectly by him but all the irregularities did due to his mental disease.

Further, the charged officer finally stated during enquiry on 26.5.04 that, the signature available on the defence statement dt. 28.6.03 of his own and also the contents of the said defence statement is correct, through which he admitted indirectly all the charges.

Shri Roy, the charged officer replied of a question raised by the P.O. on 30.9.03 that he was fully cured by the time and recovered his memory. The Exb-2 (Fit ni/c) also showing the fact as genuine. In reply of a question put by the Presenting Officer and the undersigned as Inquiring Authority, the C/O stated that he could not explain or exactly say through which it was proved that he was trying to avoid from this misdeed.

19. The charged officer has been given reasonable opportunity to submit his written brief/defence through the order sheet dt. 26.5.04. Further he was reminded to submit his written defence through regd. A/D. letter no. A1/Rule-10/2003-2004 dt. 12.7.04 which was received by the charged officer (Loknath Roy) on 17.7.04. But the charged officer has not submitted his written defence till this day.

20. In conclusion, I Shri G.C.Das, Inquiring Authority of the case like to mention here that, as per ExD-I (unfit medical certificate of the charged officer Loknath Roy dt. 31.12.01) it is clear that the charged officer (Loknath Roy) was suffering from nervous disorder for last several months of December/2001, but he were accepted under mentioned SB/RD deposits before the above suffering period i.e. (SB) Rs. 1000/- on 30.11.2000, Rs. 500/- on 22.2.01, Rs. 2000/- on 2.4.01, (RD) Rs. 400/- on 27.4.01, Rs. 200/- on 26.5.01, and he (charged officer) did not credited above amount in the govt. account. Moreover PW-4 (Depositor of Dakhin Bijni SB a/c No. 237021) stated during inquiry (In reply of question no. 3 of the P.O.) that, he handed over the above mentioned SB deposits to the charged officer, while he was on sound health.



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Further, P.W.-1 (SDI Bongalgnon) state during inquiry (In reply of question No. 4 of the P.O.) that, the charged officer was found sound health while he was found shortage of cash of Rs. 4722.45 on 5.10.01.

Under the above circumstances, it is clear that the charges framed against Shri Loknath Roy charged officer stand proved (proved).

Sd/- Illegible.

(G.C.Das)

Inquiring Authority &

ASPOS(HQ)Dhubri.

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No.A1/Rule-10/2003-2004

Dated Dhubri the 23.12.04.

Copy to:-

(1) The Supdt. of Post Offices, Goalpara Division, Dhubri for information and necessary action.

Regd. A/D (2) Shri Loknath Roy, B.P.M. Dakhin Bijni, B.O. (Now under Put Off duty) at Dakhin Bijni B.O. Via- Bijni S.O. for information and to submit his defence if ay within 10 days from the d/o receipt of the letter direct to the SPOS/Goalpara Divn under regd., post.

Sd/- Illegible.

(G.C.Das)

Inquiring Authority)

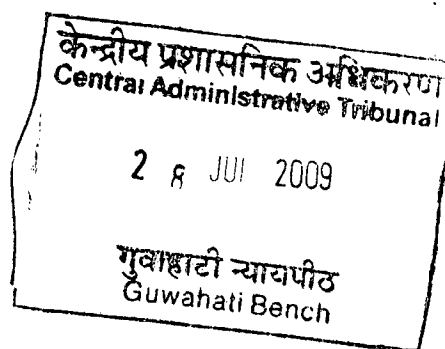
Following records/documents are forwarded A/W to the Supdt. of Post Offices for favour of disposal.

1. Order sheets No. 1 dt. 17.9.03. & d. 30.9.03, 3 d. 16.10.03, 4 d. 12.12.03, 5 d. 15.12.03, 6 d. 31.1.04, 7 dt. 5.5.04 and 8 dt. 26.5.04.
2. Written statements of Pw-1, PW-3, PW-4 PW-7, PW-2, PW-5, and charged officer (Loknath Roy) dt. 26.5.04.
3. Written brief of P.O. (Mr. R.K. Farid).

Sd/-

(G.C.Das)

Inquiring Authority)



DEPARTMENT OF POSTS, INDIA
OFFICE OF THE SUPERINTENDENT OF POST OFFICES,
GOALPARA DIVISION, DHUBRI-783301.

Memo No. F6-2/2001-02

Dated at Dhubri the 14-06-2005

In this Office memo of even No. dated 05-06-03 it was proposed to hold inquiry under Rule-10 of D.O.P.G.D.S (Conduct & Employment) Rules, 2001 against Sri Loknath Roy, GDS BPM Dakhin Bijni EDBO (Now under put off duty). The article of charges and statement of imputation of misconduct or misbehavior on the basis of which the charges were framed against him are as below.

ARTICLE - I

That Sri Loknath Roy while working as GDS BPM, Dakhin Bijni EDBO during the period from 20.07.89 to 04.10.2001 remained unauthorized absent from duty w.e.f. 01.10.2001 by keeping shortage of cash amounting to Rs., 4722.45 (Rupees four thousand seven hundred twenty two and paise forty five) only in his office cash balance. Thus the said Shri Roy violated the provision of Note below Rule-11 and Rule 177 (3) of Rules for Branch Offices and failed to maintain absolute integrity and devotion to duty violating Rule-21 Department of Posts, GDS (Conduct & Employment) Rules, 2001.

ARTICLE - II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Loknath Roy accepted Rs. 1000/- on 30-11-2000, Rs. 500/- on 12.02.01, Rs. 2000/- on 02-04-2001 and Rs. 1700/- on 04-07-2001 as deposit against SB a/c No. 237021 but he did not credit the above amount to the Govt. account on their respective dates of credits or any subsequent dates. By doing the above acts the said Shri Roy, violated Rule 131(3) of Rules for Branch Offices and Rule-21 of DOP, GDS (Conduct & Employment) Rules, 2001.

ARTICLE - III

That the said Shri Roy while functioning as such accepted Rs. 400/- on 27.04.01 Rs. 200/- on 26.05.01 and Rs. 600/- on 10.08.01 from the depositor of RD account No. 1703570 being the monthly installment of deposit for the month of March/01 to Aug/01 but failed to credit the amount to Govt. account on those dates of deposits or on any subsequent dates. Thus the said Shri Roy violated Rule-144 of Rules for Branch Offices and Rule-21 of DOP GDS (Conduct & Employment) Rules 2001.

ANNEXURE - II

Statement of imputation of misconduct or misbehavior in support of the article of charges framed against Shri Loknath Roy, GDS BPM, Dakhin Bijni EDBO (Now under put off duty).

ARTICLE - I

SPM, Bijni S.O. vide his error No. 35 dtd 17.09.01 reported this office that Shri Loknath Roy, GDS BPM Dakhin Bijni B.O. remained unauthorized absent from duty w.e.f. 15.09.01 and also kept excess cash without any liability. On receipt of the above information, the concerned SDI(P)/Bongaigaon was directed to enquire the case on 21.09.01 and accordingly the SDI(P)/Bongaigaon proceeded to Dakhin Bijni B.O. on 04.10.01 and found the office closed. He called for the BPM through EDDA/EDMC Shri H. Sutradhar but the BPM did not turned upto 15.00 hours. On next day 05.10.01 the SDI(P) again proceeded to Dakhin Bijni B.O. and found that the said EDDA -cum-EDMC attended the B.O. with 20 Nos of M.O.s received for payment and with the Office keys. The SDI(P)/Bongaigaon opened the office in presence of witnesses and verified the cash and stamps as per B.O. account book in presence of EDDA-cum-EDMC of the Office and other witnesses and found as follows :-

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Attested

Hab
Advocate

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(2)

According to account office closing balance of the B.O. dated 01.10.01 was

Cash	=	4446.80
Postage Stamp	=	580.00
Revenue	=	35.00
Total	=	5061.80

But on physical verification of cash and stamps, the SDI(P)/Bongaigaon found the following.

Cash	=	4.35
Postage stamps	=	288.00
Revenue	=	47.00
Total	=	339.35

So the shortage of cash and stamp balance of the B.O. was found as Rs. 5061.80 - 339.35 = 4722.45. An inventory of shortage of cash and stamps was accordingly prepared by the SDI(P)/Bongaigaon, on 05.10.01 in presence of witnesses and the shortage amount Rs. 4722.45 was charged as UCP on 05.10.01 at the B.O. being 02.10.01 holiday and 03.10.01 and 04.10.01 the B.O. did not function.

By doing the above acts the said Shri Loknath Roy violated the provision of Note below Rule-11 and Rule 177(3) of the Rules for Branch Offices and failed to maintain absolute integrity and devotion to duty as enjoined in Rule-21 of DOP GDS (Conduct & Employment) Rules, 2001.

ARTICLE - II-

That the said Shri Loknath Roy while working as GDS BPM Dakhin Bijni EDBO accepted the following amount tendered by the depositor Shri Durga Ram Roy of the SB account No. 237021 on the date mentioned below for deposit in his account.

Sl. No.	Account No.	Name and Address of the depositor.	Date of deposit	Amount of deposit.
1.	237021	Durga Ram Roy	30.11.2000	Rs. 1000.00
		Vill-Gossaigaon	12.02.2001	Rs. 500.00
		P.O- Dakhin Bijni	02.04.2001	Rs. 2000.00
			04.07.2001	Rs. 1700.00
		Total		Rs. 5200.00

The said Shri Roy entered the above transactions as deposit in the SB Pass Book on the date of deposit and the above entries were authenticated by him by impressing office date stamps and by putting his signature. But the said Shri Roy failed to credit the above deposited amount to Govt. account reflecting through B.O. account book on their respective date or any subsequent dates.

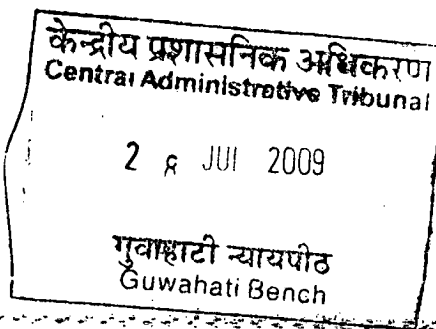
By doing the above acts the said Shri Loknath Roy violated Rule 131(1) of Rules for Branch Offices and failed to maintain absolute integrity and devotion to duty as enjoined in Rule-21 of DOP GDS (Conduct & Employment) Rules, 2001.

ARTICLE - III

Shri Loknath Roy while working as GDSPBM Dakhin Bijni B.O. from 20-07-89 to 04.10.01 received Rs. 1200.00 from the depositor Smt. Manamati Owary of RD account No. 1703570 being the monthly installments of deposit as detailed below.

Sl. No.	Account No.	Name and Address of the depositor.	Date of Deposit	Amount of deposit
1.	1703570	Manamati Owary	27.04.01	Rs. 400.00
		W/O Dipak Kr. Basumatary	26.05.01	Rs. 200.00
		Vill- Dangaigaon	10.08.01	Rs. 600.00
		P.O.- Dakhin Bijni	Total	Rs. 1200.00

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The said Shri Roy entered the above monthly deposits in the RD Pass Book and authenticated the entries by impressing Office date stamps and his initial but he failed to credit the above deposited amount to Govt. account reflecting through B.O. account book and B.O. RD Journal violating the provision of Rules 144 of the Rules for Branch Offices. By doing so the said Shri Roy failed to maintain absolute integrity and devotion to duties violating Rules 21 of DOP GDS (Conduct & Employment.) Rules, 2001.

ANNEXURE - III

List of documents by which the articles of charges framed against Shri Loknath Roy are proposed to be sustained.

- (1) Inventory dtd 05.10.01 and Joint inventory prepared from witnesses dtd 05.10.01.
- (2) B.O. Daily account of Dakhin Bijni B.O. dtd 05.10.01, 12.02.01, 02.04.01, 04.07.01, 27.04.01, 26.05.01 and 10.08.01.
- (3) B.O. a/c book of Dakhin Bijni B.O. dtd 05.10.01, 04.07.01 and 10.08.01 (Covering a/c book for the period from 05.10.01 to 21.11.01 and 01.06.01 to 03.10.01).
- (4) B.O. Summary of Bijni S.O. dtd 08.10.01 (Covering period from 29.09.01 to 08.12.01) dtd 30.11.00 (covering period from 05.09.00 to 19.01.2001) dtd 12.02.01, 02.04.01 and 27.04.01 (Covering period from 20.01.01 to 26.05.01) dtd 26.05.01 and 04.07.01 (Covering period from 28.05.01 to 26.07.01) and dtd 10.08.01 (Covering period from 27.07.01 to 28.09.01).
- (5) SB Pass Book No. 237021 of Dakhin Bijni B.O. in the N/o Shri Durga Ram Roy.
- (6) RD Pass Book No. 1703570 of Dakhin Bijni B.O. in n/o Smt. Manomati Owary.
- (7) Statement of Shri Durga Ram Roy dtd 05.12.2001 depositor of SB a/c No. 237021.
- (8) Statement of Smt. Manomati Owary dtd 23.03.2002 depositor of RD a/c No. 1703570.
- (9) SB Journal of Dakhin Bijni B.O. dtd 13.11.2000, 12.02.2001, 02.04.2001 and 04.07.2001 (Covering period from 05.08.96 to 13.08.01).
- (10) RD Journal of Dakhin Bijni B.O. dtd 27.04.01, 26.05.01 and 10.08.01 (Journal not maintained from 01.06.01).
- (11) B.O. Journal of Dakhin Bijni B.O. dtd 30.11.00 (Covering period 17.11.00 to 15.01.01) dtd 12.02.01, 02.04.01 and 27.04.01 (Covering period from 16.01.01 to 03.05.01) dtd 26.05.01 and 04.07.01 (Covering period 05.05.01 to 09.08.01) and dtd 10.08.01 (covering period from 10.08.01 to 01.10.01).

ANNEXURE - IV

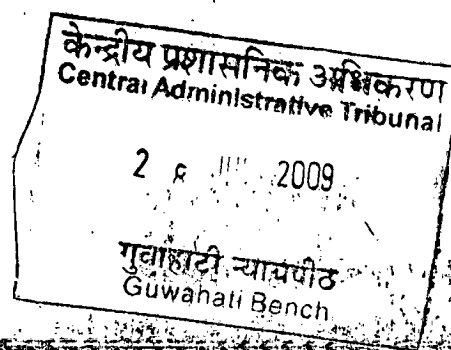
List of witnesses by whom the article of charges framed against Shri Loknath Roy are proposed to be sustained.

- (1) Shri Joydev Karmakar, SDI(P)/Bongaigaon.
- (2) Shri H.K. Choudhury, O/S Mails Bongaigaon (Now retired).
- (3) Shri Markeswar Sutradhar EDDA-cum-EDMC, Dakhin Bijni B.O.
- (4) Shri Durga Ram Roy, Depositor of SB a/c No. 237021.
- (5) Smt. Manomati Owary, Depositor of RD a/c No. 1703570.
- (6) Shri Dinesh Ch. Mushahary, Dakhin Bijni B.O. Via- Bijni S.O.
- (7) Shri Hari Prasad Roy, Vill- Dangaigaon P.O. Dakhin Bijni Via- Bijni S.O.

(2) Shri Loknath Roy was given an opportunity to make representation if any against the proposal within 10 (Ten) days of the receipt of the said memo. Shri Loknath Roy received the above memo on 19-06-03 and submitted his written statement of defence dtd 28-06-03 which was received by this office on 02-07-03. In his written statement of defence Shri Roy stated as below :-

" With reference to the office memorandum dated 05-06-2003 enclosing therewith articles of charges, list of documents by which the charges are sought to be sustained, and the list of witnesses, has been received by the undersigned only on 19-06-03.

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(.... 4)

Now, before I attempt to reply to the articles of charges, I beg to be permitted to lay a few lines for your kind perusal and for appreciating the circumstances in their proper perspectives that led to the unfortunate happenings for which I have been charged with.

1. That sir, from the middle of 2000 I have been suffering from protracted mental disease and at the times my illness became so acute that I even forgot everything and oftener than not I lost my memory temporarily. From 1st of October/2001 I was completely out of my head and for a few days I did not know where I was and what was I doing these days I even fail to recognize my near and dear ones. The Medical Certificates issued by my attending physician dated 31.12.2001 will testify the truth of my above statement. Non receipt of my monthly salary from July, August and September, 2001 and the yearly bonus put me into an extremely financial hardship to maintain my dependant family and that added to my mental strain resulting in aggravation of my mental equilibrium which was already disturbed.

2. That sir, I have a somewhat large family to maintain. The family consists of my old parents, my wife and four minor children. Your honour can well imagine how difficult it is to maintain such a large family with the meager income from my salary, and that also stopped from July, 2001. All this has added to my mental condition which was already very weak.

3. That sir, with regard to charge No. 1, that I, unauthorizedly, absent from duty w.o.f. 01.10.2001, I would only reiterate what I have already stated in Para 1 above. During this period I was completely out of my head and even today I cannot recollect where I was and what was I doing those days.

I would only request you to appreciate my mental condition and realize that my absence from duty was not intentional but it was beyond me to explain. In such circumstances it cannot be construed that I intentionally violated any service rules.

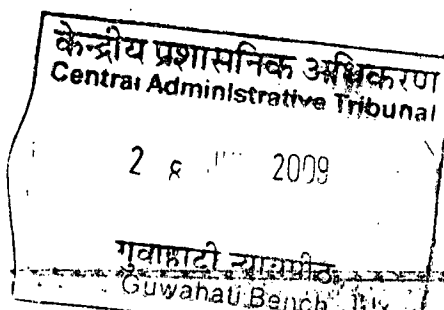
4. That sir, regarding charge No. 2 that during the period from 30-11-2000 to 04.07.2001, although I received certain amounts deposited against A/c no. 237021 but I did not credit the said amounts into the above account. As already stated above, during the aforesaid period my brain did not function properly and I forgot many things. I have no defence against this lapse but, it was due to my mental disequilibrium, and it was never intentional. The said amount has already been refunded by me.

5. That sir, with regard to charge No. 3 that during the period from 27.04.01 to 10.08.01 I accepted certain amounts against Account No. 1703570 but did not credit the amounts to the account concerned, I would only reiterate what I have already stated in the foregoing paragraph. During the period in question I lost my mental equilibrium and could not remember many things. My failure to credit the amounts into the relevant account was not intentional; I just forgot to credit the amounts into the account.

In this connection I would like to say that in my Sub-Post-Office there are fifty old accounts but only in the two accounts there were discrepancies. There is no personal enmity with the two account holders nor had I any evil intention to deceive them. It just happened because of my unmindfulness and mental imbalance. The amount in question has since been realized from me. If I had any evil intention, I would not have paid the amounts without raising any question.

I would also point out here that as per the charge sheet issued to me, an amount of Rs. 10,922.45P was found to be short in the accounts, but you have already realized an amount of Rs. 22,874.90P in three installments. In the first installment you have realized an amount of Rs. 15,000 on 11.01.2002 vide Chalan No. 124715/049, second installment amounting to Rs. 6,350.00 on 09.07.2002 vide Chalan No. 269781/053 and third installments of Rs. 1,524.90P on 26.02.2003. Thus nearly Rs. 12,000 more has been realized from me than the amount shown in the article of charges which must be refunded to me.

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(Page 5)

That sir, by your order dated 12.10.2001 I have been put off duty with effect from 05.10.2001. But prior to placing me "Off duty" my monthly salary for the months of July, August and September, 2001 have not been paid to me, besides the annual bonus and these amounts remain to be paid to me, in addition to the excess amount realized from me.

That sir, I have not yet fully recovered from my mental ailment and I have been under the treatment of a registered practitioner, whose certificate is enclosed for your kind perusal, though I am fairly on the road to complete recovery.

I therefore, hope and pray that your honour would find the explanation given above reasonable and cogent and you would be preciously pleased to withdraw my "put off duty" order, allow me to rejoin my duties, and also pay me my outstanding salary, bonus and the excess amount realized from me and thus save a distressed family from utter ruination.

An immediate action is solicited.

And for this act of your kindness I shall remain ever grateful to you.

Yours faithfully,

Sd/-

(Loknath Roy)

GDS BPM, Dakhin Bijni EDBO

(3) In view of denial of charges by Shri Loknath Roy, it was decided to hold an oral inquiry and accordingly Shri G. C. Das, the then ASPOs(HQ), Dhubri was appointed as the Inquiry Authority and Shri R. K. Farid, IPOs, Kokrajhar as the Presenting Officer of the case vide this office memo of even no dtd 26.08.03 to conduct the inquiry under the frame work of rules.

(4) The Inquiry Authority as stated above conducted the oral inquiry by holding the reasonable hearing and extending full justice and opportunity to the charged official and concluded the inquiry and submitted his findings in his report vide No. A1/Rule-10/2003-2004 dated 23.12.2004 wherein he brought out a clear picture of the inquiry and held the charges proved. A copy of the inquiry report was supplied to Shri Roy directly by the I.A. with a direction to submit defence if any against the said report with in 10 days to the SPOs/Goalpara Divn. Dhubri. the said report was received by Shri Roy on 30-12-2004 but he did not submit any defence till this day. The report of Inquiry Authority referred to above is reproduced below.

Inquiry Report of Rule-10 case framed against Shri Loknath Roy, GDS BPM, Dakhin Bijni B.O. in a/w Bijni S.O. (Now under put off duty) under Rule-10 of DOP GDS (Conduct and Employment) Rules-2001.

The undersigned Shri G. C. Das, Asstt. Supdt. of Pos (HQ), Goalpara Divn. Dhubri had been appointed as Inquiry Authority to enquire into the Charges leveled against Shri Loknath Roy GDS BPM (now under Put off duty) Dakhin Bijni B.O. in a/w Bijni S.O. vide SPOs, Goalpara Division, Memo No. F6-2/2001-2002 dtd 13.08.03.

2. Shri R. K. Farid, the SDIPOs, Kokrajhar Sub-Division had been selected as Presenting Officer of this case vide SPOs, Goalpara Divn., Dhubri memo No. F6-2/2001-2002 dtd 13.08.03. Accordingly Mr. Farid acted as Presenting Officer with his full co-operation.

3. Shri Adyanuth Mahanta, APM(SB) of Dhubri H.O. had been proposed by the charged Officer as his Defence Assistant, which was accepted by the undersigned with due permission from the Controlling authority of Shri A.N. Mahanta vide SPOs, Goalpara Divn., Dhubri and accordingly he has been acted as Defence Assistant in the case.

4. Article of charges framed against Shri Loknath Roy, GDS BPM, Dakhin Bijni B.O. were that - while he was working as GDS BPM Dakhin Bijni B.O. in a/c with Bijni S.O. during the period from 20-07-89 to 04-10-2001, remained unauthorized absent from duty w.e.f. 01-10-2001 by keeping shortage of cash amounting to Rs. 4722.45 (Rupees four thousand seven hundred twenty two and paise forty five only) in his office cash balance. Thus the said Shri Roy violated the provision of note below Rule -11 and Rule-177(3) of Rule for B.O.s and failed to maintain absolute integrity and devotion to duty violating Rule-21 - Department of Posts, GDS (Conduct and Employment) Rules-2001.

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Inquiry Report

That Shri Loknath Roy while working as GDS BPM- Dakhin Bijni B.O. the said Shri Roy accepted Rs. 1000/- on 30-11-2000, Rs. 500/- on 12.02.01, Rs. 2000/- on 02-04-2001 and Rs. 1700/- on 04-07-2001, as deposits against D/B SB a/c No. 237021, but he did not credit the above amount to the Govt. account on their respective dates of credits or any subsequent dates. By doing the above acts the said Shri Roy violated Rule-131(3) of Rule for Branch Offices and Rule-21 of DOP-GDS (Conduct and Employment) Rules-2001.

That the said Shri Loknath Roy GDS BPM Dakhin Bijni B.O. while functioning as GDS BPM, accepted Rs. 400/- on 27.04.01, Rs. 200/- on 26.05.2001, and Rs. 600/- on 19-08-01 from the depositor of RD a/c No. 1703570 being the monthly installments of deposits for the month of March/2001 to August/2001 but failed to credit the amount to Govt. Account on those dates of deposits or on any subsequent dates. Thus the said Shri Roy violated Rule-144 of Rules for Branch Offices, and Rule-21 of DOP-GDS (Conduct and Employment) Rules, 2001.

The statement of imputation of misconduct or misbehaviour in support of the article of charges framed against Shri Loknath Roy GDS BPM, D/Bijni B.O. (Now under Put off duty).

ARTICLE- I

The SPM, Bijni S.O. vide his error No. 35 dt 17.09.01 reported this office that Shri Loknath Roy, Charged Officer and GDS BPM, Dakhin Bijni B.O. remained unauthorized absent from duty w.e.f. 15-09-01 and also kept excess cash without any liabilities, on receipt of the above information, the concerned SDIPOs, Bongaigaon Sub-Division was directed to enquire the case on 21.09.01 & accordingly the SDIPOs, Bongaigaon proceed to Dakhin Bijni B.O. on 04-10-01 and found the office closed. He called for the BPM through EDDA/EDMC Shri H. Sutradhar, but the BPM did not turned up to 15.00 hours. On the next day on 05.10.01 the SDIPOs, Bongaigaon again proceeded to Dakhin Bijni B.O. and found that the said EDDA/EDMC attended the B.O. with 20 Nos of MOs received for payment and with the office keys.

The SDIPOs/Bongaigaon opened the office in presence of witnesses and verified the cash and stamps as per B.O. account book in presence of the EDDA/EDMC of the office and other witnesses and found as follows-

Accordingly to Account Office closing balance of the B.O. dtd 01.10.01 was

(i) Cash	= Rs. 4446.80
(ii) Postage stamps	= Rs. 580.00
(iii) Revenue Stamps	= Rs. 35.00
	<u>Rs. 5061.80</u>

But on physical verification of cash and stamps the SDI(P)/Bongaigaon found the following-

(i) Cash	= 04.35
(ii) Revenue Stamps	= 288.00
(iii) Revenue Stamps	= 47.00
	<u>Total 339.35</u>

So the shortage of cash and stamps balance of the B.O. was found as Rs. 5061.80 - 339.35 Rs. 4722.45. An inventory of shortage of cash and stamps was accordingly prepared by the SDIPOs, Bongaigaon on 05.10.01 in presence of witnesses and the shortage amount Rs. 4722.45 was charged as UCP on 05.10.01 at the B.O. being 02-10-01 holiday and 03.10.01 and 04.10.01 the B.O. did not function.

By doing the above acts the said Shri Roy violated the provision of note below Rule-11 and Rule 177(3) the Rules for Branch Offices and failed to maintained absolute integrity and devotion to duty as enjoined in Rule-21 of DOP-GDS (Conduct and Employment) Rules-2001.

ARTICLE - II

That Shri Loknath Roy while working as GDS BPM D/Bijni accepted the following amounts tendered by the depositor Shri Durga Ram Roy of the SB a/c No. 237021 on the dates mentioned below for deposit in his account.

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SL No.	A/C No. No.	Name & Address of depositor.	Date of Deposits	Amount of deposits
1.	237021	Durga Ram Roy	30-11-2000	Rs. 1000.00
		Vill-Gossaigaon	12-02-2001	Rs. 500.00
		PO&Dist. D/Bijni	02-04-2001	Rs. 2000.00
			04-07-2001	Rs. 1700.00
				Rs. 5200.00

The said Shri Roy entered the above transactions as deposit in the SB Pass Book on the date of deposit and the above entries were authenticated by him by impressing Office Date stamp and by putting his signature. But the said Shri Roy failed to credit the above deposited amount to Govt. account reflecting through B.O. accounts book on their respective dates or any subsequent dates.

By doing the above acts the said Shri Roy violated Rule-131(1) of Rules for Branch Offices and failed to maintain absolute integrity and devotion to duty as enjoined in Rule-21 of DOP GDS (Conduct and Employment) Rules, 2001.

ARTICLE-III

Shri Loknath Roy while functioning as GDS BPM Dakhin Bijni B.O. from 20-07-89 to 04-10-01 received Rs. 1200/- from the depositor Smti Manamati Ouary of RD a/c No. 1703570 being the monthly installments of deposits as detailed below:-

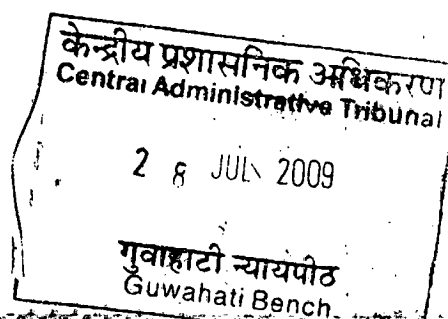
SL No.	A/C No. No.	Name & Address of depositor.	Date of Deposits	Amount of deposits
1.	1703570	Manamati Ouary	27-04-01	Rs. 400.00
		W/O Dipak Kr.	26-05-01	Rs. 200.00
		Basumatary	10-08-01	Rs. 600.00
		Dongaigaon		Total Rs. 1200.00
		PO- D/ Bijni		

The said Shri Roy entered the above monthly deposits in the RD Pass Book and authenticated the entries by impressing office date stamps and his initials, but he fails to credit above deposited amount to Govt. account reflecting through B.O. account book and B.O. RD Journal violating the provision of Rules 144 of the Rules for Branch Offices. By doing so, the said Shri Roy failed to maintain absolute integrity and devotion to duty violating Rules-21 of DOP-GDS (Conduct and Employment) Rules-2001.

ANNEXURE - III

List of documents by which the articles of charges framed against Shri Loknath Roy are proposed to be sustained -

- 1) Inventory dt 05-10-01 and joint inventory prepared from witnesses dtd 05-10-01.
- 2) B.O. daily account of D/Bijni B.O. dt 05-10-01, 12-02-01, 02-04-01, 04-07-01, 27-04-01, 26-05-01 and 10-08-01.
- 3) B.O. a/c book of D/ Bijni B.O. dt 05.10.01, 04.07.01 and 10-08-01 (Covering a/c book for the period from 05-10-01 to 21-11-01 and 01-06-01 to 03-10-01.)
- 4) B.O. summary of Bijni S.O. dt 08-10-01 (Covering from 29-09-01 to 08-12-01) dtd 30-11-00 (Covering period from 05-09-00 to 19-01-2001) dtd 12-02-01, 02-04-01 and 27-04-01 (Covering period from 20-01-01 to 26-05-01) dtd 26-05-01 and 04-07-01 (Covering period from 28-05-01 to 26-07-01) and dtd 19-08-01 (Covering period from 27-07-01 to 28-09-01).
- 5) SB Pass book no 237021 of D/Bijni B.O. in the name of Shri Durga Ram Roy.
- 6) RD pass book no 1703570 of D/Bijni B.O. in the name of Smt. Manamati Ouary.
- 7) Statement of Shri Durga Ram Roy dtd 05-12-01 depositor of SB a/c No. 237021.
- 8) Statement of Smti Manamati Ouary dtd 23-03-02 depositor of RD a/c No. 1703570x)
- 9) SB Journal of D/Bijni B.O. dt 13.11.2000, 12.02.01, 02-04-01 and 04-07-01 (Covering period from 05-08-96 to 13-08-01).



- 10) RD journal of D/Bijni B.O. dtd 27-04-01, 26-05-01 and 10-08-01 (Journal not maintained from 01-06-01).
- 11) B.O. Journal of D/Bijni B.O. dtd 30-11-00 (Covering period from 17-11-00 to 15-01-01) dtd 12-02-01, 02-04-01 and 27-04-01 (Covering period from 05-05-01 to 09-01-01 and dtd 10-08-01 (Covering period from 10-08-01 to 01-10-01).

ANNEXURE- IV

List of witness by whom the article of charges framed against Shri Loknath Roy are proposed to be sustained.

- (i) Shri Joydev Karmakar SDI(P)/Bongaigaon
- (ii) Shri H. K. Choudhury, O/S Mail Bongaigaon (Now retirement).
- (iii) Shri H. Sutradhar, EDDA-cum-EDMC, Dakshin Bijni B.O.
- (iv) Shri Durga Ram Roy, Depositor of SB a/c No. 237021.
- (v) Smti Manamati Ouary depositor of RD a/c No. 1703570.
- (vi) Shri Dinesh Ch. Mushahary Vill & P.O. - D/Bijni.
- (vii) Shri H. P. Roy Vill- Dongaigaon

5. The Presenting Officer, stated during enquiry that, he has no additional witness and documents to be examined.

6. The Charge Officer was proposed the following documents to be examined in his favour which were also enclosed to the Disciplinary Authority along with the Written Statement of defence dtd 28-06-03. As there are relevancy with the Written Statement of defence submitted and received by the undersigned from the Disciplinary Authority following Certificate (Medical) have been accepted by the undersigned as documents of the charged Officer.

- (i) Unfit medical certificate of Shri Loknath Roy charged Officer dtd 31-12-01 issued by Dr. Oli Roy Choudhury of Abhayapuri Hospital in the district of Bongaigaon.
 - (ii) Fit medical certificate of Shri Loknath Roy charged Officer dtd 22-09-03 issued by the Dr. Oli Roy Choudhury of Nalbari Civil Hospital, Nalbari.
7. Preliminary and regular hearings were held on the following dates -
- (a) Preliminary hearing held at Bijni S.O. on 17-09-03.
 - (b) Regular hearing held at Bijni on 30-09-03, 14-10-03, 12-12-03, 15-12-03, 03-01-04, 05-05-04 and 26-05-04.

Preliminary Hearing :-

Preliminary hearing was held at Bijni S.O. on 17-09-03. /The charged Officer stated that he had received the charged sheet issued by the Supdt. of Post Offices, Goahpara Division, Dhubri vide his memo no F6-2/2001-02 dtd 05-06-03 and he understood the contents of the charged sheet. However the contents of the charge sheet had been explained by the Presenting Officer to Shri Loknath Roy Charged Officer. But Shri Roy Charged Officer pleaded not guilty and did not admit the charges brought against him.

The Charged Officer proposed the name of Shri Adyanath Mahanto APM-SB-II of Dhubri H.O. as his Defence Assistant which had been allowed by the undersigned after taking permission from the Competent Authority.

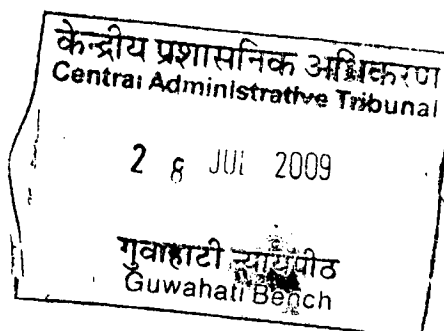
The enquiry was adjourned for that day fixing the next date on 30-09-03 for exhibition of listed documents. The presenting Officer was asked to produced all listed documents on the next date i.e. on 30-09-03 for exhibition.

9. Regular hearings :- Dated 30-09-03.

On 30-09-03 (regular hearing) the Presenting Officer produced the following listed documents in favour of the Disciplinary Authority. All the documents(listed documents) were marked as "exhibits" as under -

- (i) Inventory prepared at D/Bijni B.O. and signed by the SDI(P) Bongaigaon dtd 05-10-01 Exp-1.

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- (ii) Inventory(joint) prepared at D/Bijni B.O. dt 05-10-01 signed by the SDI(P)/Bongaigaon and O/S Mails, EDDA of D/Bijni B.O. in presence of a few local public. Exp-1 (A)
- (iii) D/Bijni B.O. D/A dtd 05-10-01 = Exp-2
- (iv) D/Bijni B.O. D/A dtd 12-02-01 = Exp-2(A)
- (v) D/Bijni B.O. D/A dtd 02-04-01 = Exp-2(B)
- (vi) D/Bijni B.O. D/A dtd 04-07-01 = Exp-2(C)
- (vii) D/Bijni B.O. D/A dtd 27-04-01 = Exp-2(D)
- (viii) D/Bijni B.O. D/A dtd 26-05-01 = Exp-2(E)
- (ix) D/Bijni B.O. D/A dtd 10-08-01 = Exp-2(F)
- (x) D/Bijni B.O.A/C Book dtd 05-10-01 = Exp-3
- (xi) D/Bijni B.O.A/C Book dtd 04-07-01 = Exp-3(A)
- (xii) D/Bijni B.O.A/C Book dtd 10-08-01 = Exp-3(B)
- (xiii) S.O. Summary of Bijni S.O. dated 08-10-01 = Exp-4
- (xiv) S.O. Summary of Bijni S.O. dated 30-11-00 = Exp-4(A)
- (xv) S.O. Summary of Bijni S.O. dated 12-02-01 = Exp-4(B)
- (xvi) S.O. Summary of Bijni S.O. dated 02-04-01 = Exp-4(C)
- (xvii) S.O. Summary of Bijni S.O. dated 27-04-01 = Exp-4(D)
- (xviii) S.O. Summary of Bijni S.O. dated 26-05-01 = Exp-4(E)
- (xix) S.O. Summary of Bijni S.O. dated 04-07-01 = Exp-4(F)
- (xx) S.O. Summary of Bijni S.O. dated 10-08-01 = Exp-4(G)
- (xxi) D/Bijni SB Pass Book No. 237021 = Exp-5
- (xxii) D/Bijni RD Pass Book No. 1703570 = Exp-6
- (xxiii) W/S of Shri Durga Ram Roy dt 05-12-01 = Exp-7
- (xxiv) W/S of Sinti Manamati Ouary dtd 23-03-02 = Exp-8
- (xxv) D/Bijni B.O. SB Journal dtd 13-11-00 = Exp-9
- (xxvi) D/Bijni B.O. SB Journal dtd 12-02-01 = Exp-9(A)
- (xxvii) D/Bijni B.O. SB Journal dtd 02-04-01 = Exp-9(B)
- (xxviii) D/Bijni B.O. SB Journal dtd 04-07-01 = Exp-9(C)
- (xxix) D/Bijni B.O. RD Journal dtd 27-04-01 = Exp-10
- (xxx) D/Bijni B.O. RD Journal dtd 26-05-01 = Exp-10(A)
- (xxxi) D/Bijni B.O. RD Journal dtd 10-08-01 = Exp-10(B)
- (xxxii) D/Bijni B.O. Journal dtd 30-11-00 = 11
- (xxxiii) D/Bijni B.O. Journal dtd 12-02-01 = 11(A)
- (xxxiv) D/Bijni B.O. Journal dtd 02-04-01 = 11(B)
- (xxxv) D/Bijni B.O. Journal dtd 27-04-01 = 11(C)
- (xxxvi) D/Bijni B.O. Journal dtd 26-05-01 = 11(D)
- (xxxvii) D/Bijni B.O. Journal dtd 04-09-01 = 11(E)
- (xxxviii) D/Bijni B.O. Journal dtd 10-08-01 = 11(F)

(d) The Charged Officer inspected all the above listed documents and signed them as his own office, but he have not signed on the following listed documents/Exhibited on the plea that there are no entries on the (SB/RD Journals) dates mentioned in the charge sheet , which should be entered by the Charge Officer himself as per rules.

Particulars of Exhibits and not signed by the Charged Officer on the date of inspection on 30-09-03 and for which the charged Officer himself is responsible for non-entries of SB/RD transactions in his SB/RD Journal.

- (i) Exp-9 D/Bijni SB Journal dtd 13.11.00, 12.02.01, 02-04-01 and 04-07-01.
- (ii) Exp-9 (A)
- (iii) Exp-9 (B)
- (iii) Exp-9 (C)
- (i) Exp-10 D/Bijni RD Journal dtd 27-04-01, 26-05-01 and 10-08-01.

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- (ii) Exp-10(A)
(iii) Exp-10(B)

9. Photocopies of all listed documents have been supplied to the Charged Officer as desired on date of hearing on 30-09-03.

During inspection of listed documents on 30.09.03 the Presenting Officer raised a question to the charged officer regarding suffering from mental disease from the middle of 2000 and loosing his memory temporarily upto 10.08.2001 (as stated by the charged officer vide his defence statement dated 28.06.03. The charged officer replied that, at present (on 30.09.03) he had cured fully and he recovered his memory. The Inquiry was closed for 30.09.03. The P.O and C.O were asked to submit addl. documents/ witness if any to the I.O showing relevancy.

10. The next regular hearing was held on 14.10.03 without progress due to absence of Sri Loknath Roy, charged officer.

11. The next regular hearing was held on 12.12.03 but no progress due to absence of Sri A.N.Mahanta, Defence Assistant of the charged officer.

12. Another regular hearing was held on 15-12-03 at Bijni Sub-Post Office. On which PW-12 (Shri J. Karmakar SDI(P), Bongaigaon) and PW-3 (Shri H. Sutradhar EDDA -cum-EDMC D/Bijni B.O. were examined, cross examined, and re-examined by the Presenting Officer/Defence Assistant including I.A.

On examination of PW-1 (SDI(P)/Bongaigaon), it was revealed that, being the SDI(P), Bongaigaon Sub-Division, he visited Dakshin Bijni B.O. along with the O/S mails on 04-10-04 and he found the office closed as well as absent, of the BPM (Charged Officer) during the working hours. Shri H. Sutradhar PW-3 had been sent to the house of the BPM/Charged Officer for calling him to the office on 04-10-01, but the PW-3 on returning from the house of the Charged Officer reported to the SDI(P) Bongaigaon that the Charged Officer was not willing to appear before the PW-1 on 04-10-01. Then the SDI(P), Bongaigaon awaiting up to 15.00 hours for the BPM(C.O) and then returning to his head quarter.

Further the PW-1 stated -- during enquiry that he also visited D/Bijni B.O. on 05-10-01 and, it was found that the B.O. was opened at 10.30 hours but the BPM was found absent on that date also, though PW-1 first. Stated that the BPM was found in the office. On re-examination by the P.O. the PW-1 clarified that, the BPM was actually found absent on 05-10-01 also as a result of which, the PW-1 compelled to sent the PW-3 to collect key of the office from the residence of the BPM.

As per statement of the PW-3, he visited the residence of the (BPM) charged Officer on 05-10-01 and collected the key of the office including 20(Twenty) numbers of unpaid Money Orders and handed over to the SDI(P), Bongaigaon. It is also stated by the PW-1 SDI(P), Bongaigaon that almost all the payees were pressing hard for arrangement of payment of their M.O.s. However, the PW-1 stated in reply of a question of the Presenting Officer during enquiry on 15-12-03 that, he verified cash and stamps balance of the office in presence of the PW- 2, PW-3 and a few local publics (Payees of pending M.Os) and found shortage of cash of Rs. 4722.45 on 05-10-01. The shortage amount was charged as UCP to adjust the amount in the B.O. account book/B.O. daily account of 05-10-01.

Further it was shown in Exp-1 (inventory dt 05-10-01) it is also stated by the PW-1 that 02-10-01 was holiday on 03-10-01 and 04-10-01 did not function the B.O. due to absent of the Charged Officer (BPM).

Further, the PW-1 stated in reply of a question of the P.O. that, he also detected some irregularities in SB/RD transactions as below. The PW-1 stated that the Charged Officer accepted Rs. 5200/- during the period from 30-11-00 to 04-07-2001 from the D/Bijni SB a/c holder Shri Durga Ram Roy as SB deposit for depositing in the D/Bijni SB a/c No. 237021 and authenticated the entries of deposits by the C.O. but failed to credit the amount to the Govt. account by the C.O.

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Moreover, the Charged Officer accepted Rs. 1200/- as monthly deposit for the period from 27-04-01 to 10-08-01 in respect of D/Bijni RD a/c No. 1703570 from Smt. Manamati Ouary and the amount were entered on three dates by the C.O., but he failed to credit the above amount to the Govt. account by the charged Officer.

Further, the PW-1 (SDIPO, Bongaigaon confirmed his signature put on Exp-I, Exp-1(A), Exp-7 and Exp-8 and also confirmed that the Charged Officer was physically and mentally sound health as he found and observed at the time of his visits.

In the cross examination, the DA put a question to the PW-1 regarding the presence of the Charged Officer in the office on 05-10-01 against which the PW-1 replied as "Perhaps it is correct in a confused manner, but the fact had been cleared by the P.O. through another question on re-examination of PW-I as the C.O. was not present on 05-10-01.

Further, the DA asked PW-1 vide his question No. 2 that the inventory Exp-1 & 1(a) did 05-10-01 was prepared PW-I himself but in reply the PW-I cleared it was not prepared by himself & it was prepared by the PW-2 (O/S Mail Bongaigaon).

In another question the DA raised an objection that there was no signature of the Charged Officer on the Exp-I and Exp-1(A) why, the PW-I cleared the point as the C.O. perhaps not present on 05-10-01 at the time of preparation of Exp-1 & Exp-1(A).

In another the DA wanted to know that whether the P-W-I taking any help from the Police on 05-10-01 to bring the C.O. to the Office. The PW-I replied as negative.

On re-examination by the P.O. the PW-I cleared that he compelled to open the B.O. in presence of the local public as huge number of payees of the pending M.O.s were pressing hard for opening of the P.O. without the help of Police.

In another question the D.A want to know from PW-I that whether the opening of the office without help of police was as per rules of the department PW-I replied as affirmative and he could not specify any rules. Lastly the D.A put a question to the PW-I regarding the possibility of misappropriation of shortage amount of Rs. 4722.45 by the PW-I alongwith other deptl staff. The PW-I denied the fact straightly.

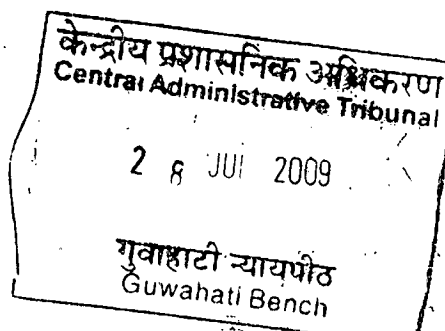
At last the undersigned put a question to the PW-I to clarify the fact that, whether the PW-I verified the office cash and stamp balance on 05-10-01 and found shortage of Rs. 4722.45. The reply of the PW-I was affirmative.

On 15-12-03, PW-3 H. Sutradhar EDDA-cum- EDMC of D/Bijni B.O. examined, in his deposition PW-3 it was revealed that the PW-I alongwith two O/S Mails were visited D/Bijni B.O. on 04-10-01 and found the B.O. was closed. Then the PW-I directed PW-3 to called for the Charged Officer from his residence. But the Charged Officer expressed his unwillingness to attend the Office due to his illness. Again on 05-10-10 the PW-I visited D/Bijni B.O. alongwith two O/S Mails and found that the PW-3 (EDDA-cum- EDMC of D/Bijni B.O.) was present in the B.O., but the Charged Officer was absent and PW-3 collected the office key mid 20 (Twenty) the 11. Nos of unpaid M.O.s from the residence of the C.O. The PW-3 then confirmed the signature put on Exp-I as his own and also confirmed the signature and contents of the Exp-1(A). On cross examination by the D.A the PW-3 stated that the Charged Office was present in the office duties regularly except a few days including 05-10-01 and he seen the office works smoothly. Moreover the PW-3 that the signature of the local public have not collected forcefully but they signed on the Exp-1(A) accordingly to their own wise.

13. Another date of enquiry was held on 03-01-04 at the same venue. On 03-01-04 PW-2, PW-4 and PW-7 were examined and recorded their statement as under.

The charged officer produced two documents on 03-01-04 viz (i) unfit certificate of Shri Loknath Roy C.O. did 31-12-01 issued by Dr. Oli Roy Choudhury, Abhayapuri Hospital Dist. Bongaigaon (2 Fit Certificate of Shri L. Roy C.O. did 22-09-03 issued by the same Doctor from Nalbari Civil Hospital, which where marked as Exd-1 and Exd-2 respectively.

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On examination of PW-2 (H.K. Choudhury O/S Mails Bongaigaon) it was revealed that during his service period the PW-2 visited D/Bijni B.O. along with PW-1 (SDIPOs Bongaigaon) in c/w enquiry against Shri Loknath Roy Charged Officer. It also stated that he prepared an inventory (Exp-1, Exp-1(A) of cash and stamp dtd 05.10.01 and contents there in as well as the signature put by him (PW-2) were confirmed as his own.

In question the Presenting Officer asked PW-2 that, whether he observed any mental unsoundness of Shri L. Roy C.O. while he (PW-2) visited in the D/ Bijni B.O. as official tour during the period from 20-07-89 to 04-10-01 and also on 05-10-01. The reply of the PW-2 was negative.

At the time of cross examination by the D.A it was revealed that, the PW-2 was working as O/S mails Bongaigaon before the joining of the Charged Officer as BPM D/Bijni and he visited the B.O. almost once in every month and found discrepancies in cash and stamp balance, but he did not reported the fact to the authority.

At the time of re-examination by the P.O. the PW-2 also stated that he was present at the time of opening of the cash box on 05.10.01 and he was stated as eye witness including PW-I and other local public.

Further the PW-2 stated during enquiry that the C.O. did not co-operated with them at the time of enquiry dtd 05.10.01 which can be construed that only for this reason the signature of the C.O. could not be obtained on the inventory dtd 05.10.01.

On examination of Shri Durga Ram Roy PW-4 and the depositor of D/Bijni SB a/c No. 237021, it become clear that the Charged Officer (Loknath Roy) collected Rs. 1000/- on 30.11.2000, Rs. 500/- on 12.02.01, Rs. 2000/- on 02.04.01 and Rs. 1700/- on 04.07.01 in person from PW-4 as SB deposits and entered the above amounts in the Pass book of PW-4, put his initials impressing d/s of the office but he (C.O.) failed to credit the above amount to the Govt. account. It is also stated by the PW-4 that the Charged Officer was found in sound mind on the above dates i.e. at the time of acceptance of the above amount. Finally the PW-4 confirmed his signature available on the Exp- 7 as his own.

On examinations of PW-7 he stated that he was present at the D/Bijni B.O. 05.10.01 at the time of preparing Exp-1/Exp-1(A). It is also stated by him that the contents of the Exp-1 and Exp-1(A) are genuine. He confirmed his signature available on the Exp-1(A) as his own.

14. Result of enquiry dtd 05.05.04 at the same venue.

On 05.05.04, PW-5 Smti Manamati Ouary the depositor of D/Bijni B.O. RD a/c No. 1703570 was examined, cross examined and re-examined and recorded her statement as under :-

PW-5 stated that, she opened a RD account at D/Bijni B.O. bearing a/c No 1703570 and deposited Rs. 400/- on 27.04.01, Rs. 200/- on 26.05.01, Rs. 600/- on 10-08-01. the above mentioned amount were accepted by Shri Loknath Roy Charged Officer on the above dates and entered the said deposits in the Pass Book put his signature with office date stamps. Further PW-5 admitted her written statement dtd 23.03.02 (Exp-8) and confirmed the contents and signature of the Exp-8.

On cross examination by the D.A. the PW-5 replied that she did not lodged any complaint to any authority about her monthly deposits as she was not aware about the non-credit by the C.O. She also examined the Exp-6(D/Bijni RD Pass book) and confirmed as her own. She also stated that she had no any enmity with the Charged Officer.

Finally, the undersigned cleared it from the PW-5 that she handed over all the above amounts to the Charged Officer Shri Loknath Roy as RD deposits.

The PW-6 was present on 05-05-04, but the Presenting Officer did not examined him as he felt not necessary.

Further, the Charged Officer has been given an opportunity to examine himself as his witness, but he expressed his unwillingness to examine himself as his own witness.

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15. Another enquiry was held on 26-05-04.

On 26-05-04, the Charged Officer produced original unfit medical certificate Exd-1 and Original fit medical certificate Exd-2 as he was submitted Photocopies of these certificate on 03-01-04 as his defence documents. On examination of both the medical certificate with the Photocopies were found agree with the Original medical certificate.

The Presenting Officer put a question to the Charged Officer regarding suffering of nervous disorder since last several months of 2001, but the C.O. did not applied for leave due to his illness. In reply the C.O. stated that he could not exactly explain the period from which he was suffering from the said disease prior to the period mentioned in the Exp-1, but he agreed with the contents of the Exd-1 i.e. he suffered from nervous disorder from the last several months of Dec/2001. Which was noted by the issuing Doctor. Further another important question was asked by the P.O. regarding some monetary embezzlements were occurred in the year 2000, but as per Exd-1 (Unfit Medical Certificate of Loknath Roy) submitted by the C.O. nothing was mentioned regarding his illness on that period. In reply the C.O. (by the D.A. on behalf of the C.O.) expressed that nothing to say, which can be construed as the embezzlements in the year 2000 was made by the C.O. in sound mind as the said period was not covered by the unfit Medical Certificate dtd 31-12-01 (EXD-1).

Further, the undersigned also put a few question to clear some points. In reply to a question the C.O. stated that, he was suffering from (as per unfit medical certificate) mental disease since the last part of Dec/01. But the said M/C (Exd-1) unfit M/C of Loknath Roy) had been submitted to the Disciplinary Authority only on 28-06-03 which was received by the disciplinary authority on 02-07-03. Further the C.O. stated during examination that he did not informed anything to the disciplinary authority regarding his mental disease before issue of Charge Sheet nor the C.O. did not submit any leave application against his above mental disease.

In reply of another question the C.O. stated to the undersigned that he accepted Rs. 5200/- on 30-11-2000, 12-02-2001, 02-04-01, 04-07-01 as SB deposit from Shri Durga Ram Roy the depositor of D/Bijni SB a/c No. 237021 and entered the amounts in the depositors Pass Book and authenticated by putting his signature and date stamp impression, but he (Charged Officer) failed to credit the amount to the Govt. accounts.

In reply to another question the C.O. stated that he (Loknath Roy C.O.) accepted Rs. 1200/- on 27-04-01, 26-05-01, 10-08-01 as RD deposit from Smti Manamati Owary the depositor of D/Bijni RD a/c No 1703570, entered the above amounts in the above noted Pass book with his initials but he (C.O.) failed to credit the above amount to the Govt. account.

At last of the hearing on 26-05-04, the Charged Officer Shri Loknath Roy confirmed his signature and contents of the defence statement dtd 28-06-03 as his own and correct. Wherein he indirectly admitted all the charged framed against him by the Supdt. of Post Offices vide his memo No. F6-2/2001-2002 dtd 05-06-03.

As the examination of witnesses and documents of the disciplinary authority and charged officer have been completed and both the P.O. and C.O. stated that they have no other additional witnesses/documents to be examined the regular hearing declared as closed today on 26-05-04.

16. The P.O. was directed to submit his written brief within 10(Ten) days from the closing date of enquiry with a copy to the Charged Officer. The C.O. also requested to submit his defence if any within 10 days from the date of receipt of the written brief from the P.O. by the Regd. post.

Case for the disciplinary authority.

The Charged officer was also stated that, unauthorized absent from duty w.e.f. 01-10-01 keeping shortage of cash of Rs. 4722.45 was not intentional and these were happened due to his mental disease. However though there was a good support (Unfit medical certificate) on mental disease of the Charged Officer, he did not applied for leave or informed the fact to the disciplinary /controlling authority to avoid above mentioned anomalies.

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Further, on examination of PW-I, PW-4, Exp-5, Exp-7, Exp-11, Exp-4(A), Exp-2(A), Exp-4(B), Exp-11(A), Exp-2(B), Exp-4(C), Exp-9(B), Exp-11(B), Exp-2(C), Exp-3(A), Exp-4(F), Exp-9(c), Exp-11(E) it is clear that the Charged Officer accepted Rs. 1000/- on 30-11-2000, Rs. 500/- on 12-02-01, Rs. 2000/- on 02-04-01, Rs. 1700/- on 04-07-01 from Shri Durga Ram Roy as SB deposit of D/Bijni SB Pass Book a/c No 237021 and which was indirectly admitted by the Charged Officer through his written statement of defence dtd 28-06-03, but he failed to credit the above mentioned amount to the Post Office account and thereby the Charged Officer violated the provision of Rule-131(1) of Rules for Branch Offices. However the Charged Officer stated that this was happened due to his mental disequilibrium and it was never intentional.

It is also seen from the Exp-8 Exp-2(D), Exp-4(D), Exp-6, Exp-10, Exp-11(c) that the Charged Officer accepted Rs. 400/- on 27-04-01, Rs. 200/- on 26-05-01, Rs. 600/- on 10-08-01 from Smti Manamati Owary depositor of D/Bijni RD a/c No 1703570 as RD deposit, but he failed to credit the said amount to the Post Office/Govt. Account, and thereby the Charged Officer violated the provision of Rule-144 of the rules for Branch Offices. Because the Charged officer entered the above amount in the depositors Pass Book by himself and put his initials against the entries including impression of date stamps of his office. Moreover, the charged Officer stated in his Written Statement of defence that the actual cause of failure to credit the above amount was not intentional, but he forgot to credit the above amount into the Govt. account due to his mental disequilibrium that means the fact of acceptance of above mentioned amounts and not-credit to the Govt. accounts were correct.

18. Case for the Charged Officer.

During enquiry an opportunity has been given to the Charged Officer to produced the list of witnesses and documents if any in his favour vide order sheet dtd 30-09-03. Accordingly the Charged Officer Shri Loknath Roy produced one unfit medical certificate dtd 31-12-01 issued by Dr. Oli Roy Choudhury, Abhayapuri Hospital and one fit certificate issued by the same Doctor from Nalbari Civil Hospital dtd 22-09-03 and the above two certificates were marked as EXD-1 and EXD-2 respectively. The charged officer further stated during enquiry that he has no witness to be examined except above few medical certificates.

Further Shri Loknath Roy the Charged Officer had been furnished a Written Statement of defence dtd 28-06-03 which was received by the undersigned along with the appointment letter vide Supdt. of Post Offices memo No. F6-2/2001-2002 dtd 13-08-03.

The undersigned like mentioned here that the Charged Office could not produced defence witness but he submitted one unfit medical certificate and one fit medical certificate i.e. Exd-1 and Exd-2. Through the Exd-1 (By unfit medical certificate) the Charged Officer expressed that he was suffering from nervous disorder since last several months of 2001. But it was mentioned in the defence statement dtd 28-06-03 by the Charged Officer that he was suffering from protracted mental disease from the middle of 2000.

The Charged Officer further stated in his defence statement dtd 28-06-03 that he was completely out of his head from the 1st Oct/2001. But as per Exd-1, it is seen that the Charged Officer was suffering from nervous disorder since last several months of Dec/2001. However the date suffering is not agree with two documents like (1) Unfit medical certificate Exd-1 and defence statement dtd 28-06-03.

The Charged Officer also stated during examination on 26-05-04 that he was not submitted any leave application to the appointing/disciplinary authority showing his nervous disorder/mental disease or regarding lost of his memory on the overhand the Charged Officer stated in his Written Statement dtd 28-06-03 that he was suffering from mental disease from 01-10-01 and he was out of his train during the above period and his absent from duties was not intentional i.e. the Charged Officer indirectly stated that his absent was due to his mental disease.

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On examination of the charged Officer during enquiry and as per Written Statement of defence dtd 26-08-03 it is clear that all the facts mentioned in the Charge Sheet were genuine, but these were happened due to his mental disequilibrium. As per Exd-I (Unfit medical certificate) it is seen that the Charged Officer was actually suffered from the mental disease since a few months of Dec/2001 and lost his memory temporarily and as a result of which the Charged Officer did all the irregularities mentioned in the Charge Sheet issued by the disciplinary authority vide his memo no F6-2/2001-2002 dtd 05-06-03. In this regard the Presenting Officer raised a question that the Charge Officer was suffering from mental disease since last few months of Dec/01 (as per Exd-I), but the Charged Officer was involved in SB/RD fraud cases before last few months of Dec/01 i.e. Rs. 1000/- on 30-11-2000, Rs. 500/- on 12-02-2001, Rs. 2000/- on 02-04-01, Rs. 1700/- on 04-07-01, Rs. 400/- on 27-04-01, Rs. 200/- on 26-05-01 and Rs. 600/- on 10-08-01. The above question raised by the Presenting Officer is a notable and important one.

Further the Charged Officer submitted the medical certificates only on 28-06-03 which was received by the disciplinary authority only on 02-07-03 i.e. After 19(Nineteen) months on the date of issued of the medical certificate. The C.O. may apply for leave if he was suffering from mental disease since last few months of Dec/01 instead of submitting the M/C (Exd-I) after nineteen months to avoid monitory transaction.

Moreover, the W/S of defence dtd 28-06-03 and defence documents (Exd-1) & (Exd-2) submitted by the C.O. were found to have been contradictory as the C.O. stated in his W/S of defence dtd 28-06-03 that he was suffering from mental disease from the middle of 2003 and lost his memory temporarily but in the unfit M/C issued by Dr. Oli Roy Choudhury of Abhayapuri Hospital clearly stated the C.O. was suffering from nervous disorder from past several months of Dec/01. The C.O. also stated during enquiry that he could not remember the actual date from which he was suffering from mental disease. The undersigned therefore like to mentioned here that, all the charges levelled against the charged Officer vide SPOs/Dhubri Memo No. F6-2/2001-2002 dtd 05-06-03 have been admitted indirectly by him but all the irregularities did due to his mental disease.

Further, the charged officer finally stated during enquiry on 26-05-04 that the signature available on the defence statement dtd 28-06-03 of his own and also the contents of the said defence statement is correct, though which he admitted indirectly all the charges.

Shri Roy the charged office replied of a question raised by the P.O. on 30-09-03 that he was fully cured by the time and recovered his memory. The Exp-2 (Fit M/C) also showing the fact as genuine. In reply of a question put by the Presenting Officer and the undersigned as Inquiring Authority. The C.O. stated that he could not explain or exactly say through which, it was found that he was trying to avoid from this misdeed.

The Charged Officer has been given reasonable opportunity to submit his written brief/defence through the order sheet dtd 21-05-04. Further he was reminded to submit his written defence through Regd. A/D letter No. A1/Rule-10/2003-2004 dtd 12-07-04 which was received by the Charged Officer (Loknath Roy) on 17-07-04. But the Charged Officer has not submit his written defence till this day.

20. In conclusion, I Shri G. C. Das, Inquiring Authority of this case like to mentioned here that, as per Exd-1 (Unfit medical certificate of the charged Officer Loknath Roy dtd 31-12-01) it is clear that the Charged Officer (L.N. Roy) was suffering from nervous disorder for last several months of December/2001, but he were accepted under mentioned SB/RD deposit before the above suffering period i.e. (SB Rs. 1000/- on 30-11-2000, Rs. 500/- on 22-02-01 Rs. 2000/- on 02-04-01 (RD) Rs. 400/- on 27-04-01, Rs. 200/- on 26-05-01 and he (charged officer) did not credited above amount in the Govt. account. Moreover PW-4 (Depositor of Dakhin Bijni SB a/c No. 237021) stated during inquiring (In reply of question No 3 of the P.O.) that he handed over the above mentioned SB deposits to the charged officer, while he was on sound health.

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(16)

Further, PW-1 (SDI(P)/Bongaigaon) stated during inquiry (In reply of question No 4 of the P.O.) that, the Charged Officer was found sound health while he was found shortage of cash of Rs. 4722.45 on 05-10-01.

Under the above circumstances, it is clear that the charges framed against Shri Loknath Roy Charged Officer stand proceed.

Sd/-
(G. C. Das)
Inquiring Authority
&
ASPOs (HQ)/Dhubri

(5) I have gone through the report of the Inquiry Authority very carefully and found no ground to disagree with the findings of the Inquiry Authority. The Charged Official has utterly failed to refute the article of charge brought against him and that the charges levelled against Shri Loknath Roy proved beyond doubt. Shri Loknath Roy deserves severe punishment for violation of Rules in force. So orders are passed against Shri Lok Nath Roy as under.

O R D E R

I, Shri R. Rabha, Supdt. of Post Offices, Goalpara Division, Dhubri do hereby punish Shri Loknath Roy GDS BPM (Now under put off duty), Dakhin Bijni EDBO in a/c with Bijni S.O. with removal from the service of GDS BPM of Dakhin Bijni EDBO in account with Bijni S.O. from the date of his put off duty.

Sd/-
(R. RABHA)
Supdt. of Post Offices
Goalpara Divn. Dhubri
783 301.

Copy to :-

1. Shri Loknath Roy, GDS BPM, Dakhin Bijni EDBO (Now under put off duty) under Bijni S.O.
2. The Postmaster, Dhubri H.O. for information and necessary action.
3. The IPOs, Bongaigaon Sub-Division, Bongaigaon for information.
4. The D/A Esstt. Branch of Divl. Office for information and necessary action.
5. The SPM, Bijni S.O.
- 6-7. Punishment Register.
- 8-9. Office copy & Spare.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

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गुवाहाटी न्यायपीठ
Guwahati Bench

(R. RABHA)
Supdt. of Post Offices
Goalpara Divn. Dhubri
783 301.

BEFORE THE POST MASTER GENERAL, ASSAM CIRCLE,
GUWAHATI.

IN THE MATTER OF:-

Appeal under Rule 13 of the Service Rules for
Postal Gramin Dak Sevak

- AND -

IN THE MATTER OF:-

Order dated 14/6/2005 issued by Superintendent of
Post Offices, Goalpara Division, Dhubri issued
under Memo No F.6-2/2001-02 dated 14.6.2005
imposing the penalty of removal from service of
G.D.S.B.P.M., Dakhin Bijni, EDBO from the date
of put off from the duty.

- AND -

IN THE MATTER OF:-

Sri Lok Nath Ray, (since removed from service),
GDSBPM, Dakhin Bijni EDBD,
Resident of Kumargaon (Kasdaha),
P.O. & P.S. Dakhin Bijni,
Dist: Bongaigaon (Assam).

.....APPELLANT.

Attested
H. S.
Advocate

The humble Memorandum of Appeal
Of the abovenamed appellant most respectfully begs to state: -

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Guwahati Bench

1. That the appellant before this Hon'ble Appellate authority is a resident of Kumargaon, P.O. and P.S. Dakhin Bijni, in the district of Bongaigaon, Assam. He joined the service as an Extra Departmental Branch PostMaster, hereinafter referred to as EDBPM, at Dakhin Bijni Extra Departmental Branch Office on 6/9/89. The said branch is working under Superintendent of Goalpara Division, Dhubri during his service, there was no adverse report against the appellant in his service career and he was discharging his services very sincerely and honestly without any malpractices.

2. That while the appellant was holding the post of EDBPM, a Departmental Proceeding was initiated against him on the ground that during the period 20.7.89 to

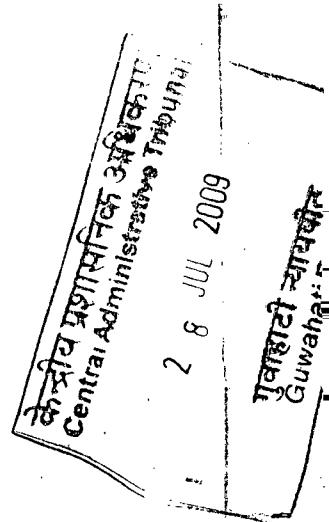
4.10.2001, the appellant remained unauthorized absence from duty w.e.f. from 1.10.2001 by keeping shortage of cash amounting to Rs. 4,742.45 paise and thereby, he has violated the provision of Rule 11 and Rule 177(3) of the Rules of Branch Offices. He further failed to maintain absolute integrity, devotion to duty and violating Rule 21 of the department of Post and Gramin Dak Sevak (Conduct and Employment) Rules, 2001. It was further alleged in the said enquiry report that the appellant accepted Rs. 1000 on 30.11.2000, Rs. 500/- on 12.2.2001, Rs. 2000/- on 2.4.2001 and Rs. 1700/- on 4.7.2001 and deposit against SB Account No. 237021 of Durga Ram Ray but he did not credit the said amount to the Govt. account on the respective dates of credit as well as on subsequent dates. The appellant was also further charged that while functioning as aforesaid he accepted Rs. 400/- on 27.4.2001, Rs. 200/- on 26.5.2001 and Rs. 600/- on 10.8.2001 from the depositors of R.D. Account No. 1703570 of Monomati Ovary being the monthly installment of deposit for the month of March 2001 to August 2001 but he failed to credit the said amount to the Govt. account on those dates of deposits as well as on subsequent dates.

The said shortage was detected by SDI (P), Bongaigaon who went to enquire the case on 21.9.2001 and on 4.10.2001, he visited the office but the office was closed and, on the next day, the physical verification was made and there was a shortage of cash and stamp amounting to Rs. 4,722.45 p.

3. That the appellant states that regarding the said shortage of stamp and cash as well as the alleged misappropriation of money of the depositor, one Sri J. Karnakar, Inspector of Posts, Bongaigaon at Bongaigaon Sub-Division lodged a written complaint before the Office-in-charge of Bijni Police Station. The said case was registered as Bijni P.S. Case No. 134/2001 under Section 409 of IPC. The police, after completion of investigation, submitted Chargesheet against the appellant under Section 409 IPC. The charge was also framed under Section 409 IPC against the appellant and witnesses were also examined. After perusal of the evidence, the learned trial court i.e. Court of Sub Divisional Judicial Magistrate, Bijni vide Judgment and order dated 30.8.2004 was pleased to acquit the appellant of the charge under Section 409 IPC. There was no appeal filed against the said order of acquittal.

A copy of the order of acquittal passed by the SDJM, Bijni in G.R. Case No 209/2001 is enclosed herewith and marked as Annexure-1.

4. That the further case of the appellant is that in the said Departmental Proceeding, the appellant submitted his written statement against the charges brought against the appellant. It was stated that from the middle of the year 2000, the appellant has been suffering from protracted mental disease and at times his illness became so acute that he



even forgets everything. It was further stated that since 1st of October, 2001 for a few days, the appellant was completely out of his head. He failed to recognize his near and dear one. As regards to the unauthorized absence also, the appellant has taken a specific plea that due to mental illness, he could not recollect where he was and what he was doing w.e.f 1.10.2001. Similarly, with regard to the charge of alleged misappropriation of money of the depositors, the appellant has stated that the said Sub Post Office there are 50 accounts and there are discrepancies only with regard to 2(two) accounts and thus, discrepancies may occur due to his mental imbalance which the appellant had to undergo during the said period. In the said written statement, the appellant also further stated that he was not fully recovered from the mental ailments and presently he is undergoing treatment under registered practitioner and to that effect a medical certificate was also issued.

A copy of written statement is enclosed herewith and marked as Annexure-II.

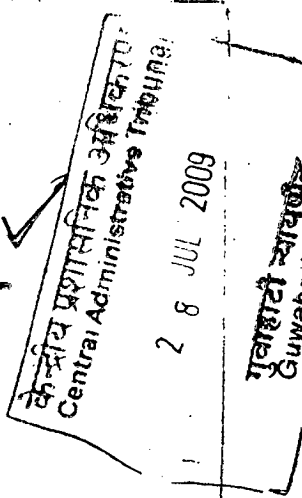
5. That the further case of the appellant is that vide order dated 12.10.2001, the appellant was placed under put off duty w.e.f. 5.10.2001 resulting non-payment of salary and other dues, which the appellant was entitled to. But the said order of put off duty was not confirmed by the appointing authority. Thereafter the appellant was in put off duty for about 4 years resulting loss of livelihood. Therefore, the decision of the Disciplinary Authority to impose penalty with effect from the date of his put off duty is bad in law and same is liable to be set aside.

6. That it was further pleaded that SDI(P), Bongaigaon who conducted the enquiry and also made an inventory has not authority to check any account maintained in any Sub Post office without any departmental officer. One Sri Jaydeep Karmakar was holding the post of SDI (P) and he does not have any jurisdiction to conduct such enquiry and, therefore his reporting to the higher officer regarding shortage of cash and stamps cannot be taken into consideration.

7. That being aggrieved and dissatisfied with the said order of imposition of penalty of removal of service, the appellant herein is preferring the present appeal amongst others on the following -

- G R O U N D S -

(I) For that the Inquiry Officer in his enquiry report has come to a finding that the unfit medical certificate issued by Oly Roychouhury of Abhayapuri Hospital clearly states that the appellant was suffering from nervous disorder for several months since the month of December 2001. The said fact was also admitted by the appellant in the



course of enquiry. Therefore the findings arrived by the Charge Officer that he accepted S.B. deposit while he was on sound health is perverse and therefore, the impugned order of removal is liable to be set aside.

- (II) For that the appellant during the course of enquiry has taken a specific plea that due to mental illness he was unable to remember about the exact nature of the amount entrusted to him as well as failure on his part to handover the deposit to the Government after receiving the same from the depositor, however, during the course of enquiry, the Inquiry Officer took note of the fact that the appellant was suffering from mental disease and same was discussed in detail in the enquiry report. However, he has failed to give any reasons or finding for rejection of the defence plea raised by the appellant. Therefore, the findings arrived by the said enquiry report suffers from perversity and absurdity and, therefore, the impugned penalty is liable to be set aside.
- (III) For that the Inquiry Officer while conducting the said enquiry has failed to give finding with regard to the charge framed against the appellant vis-à-vis his defence and, therefore, there has been total non-application of mind on the part of the Inquiry Officer while conducting the said enquiry and the said enquiry report has caused serious prejudice to the appellant, and, therefore, the order of imposition of penalty of removal from service is bad in law and same is liable to be set aside and quashed.
- (IV) For that the Inquiry officer in his enquiry report has accepted Ext. 1, unfit medical certificate where it has been stated that the appellant was suffering from nervous disorder for last several months from December 2001. However, according to the Inquiry Office he has accepted the deposits from the account holders on 24.7.2001 and 26.5.2001 but did not credit the said amount into Govt. account but the Inquiry Officer has illegally come a finding that he accepted the said amount while he was in sound health, the said findings are perverse and is not supported by any iota of evidence adduced by the witnesses and, therefore, the order of imposition of penalty is bad in law and same is liable to be set aside and quashed.
- (V) For that the order of the Put-Off duty of dated 12.10.2001 is illegal and not as per rule 12(2). The said order was not confirm by the appointing authority which is mandatory by Rule. The impugned order of removal from service on the basis of illegal Put-off duty is bad in law and same is liable to be set aside and quashed.

- (VI) For that the petitioner was not paid the salaries for the month of July, August, and September 2001 and the yearly bonus of previous Year, cause known to SD(P)I Bangaingaon and it is bad in law and as such the impugned order of removal is liable to be set aside and quashed.
- (VII) For that the petitioner however in the Put-Off duty is entitled to get the exgratia payment under rule 12(3) and without paying the exgratia to the petitioner is amounts to deprivation of livelihood of the petitioner and his family and as such the impugned order of removal is liable to be set aside and quashed.
- (VIII) For that with regard to similar charge, a criminal case was also instituted against the appellant which was culminated with the order of acquittal passed by the trial court which has come to a finality and no appeal has been preferred against the said order, but the disciplinary authority has failed to take into consideration that the said judgment of acquittal has caused a travesty of justice and, therefore, the impugned order of removal from service is bad in law and same is liable to be set aside and quashed.
- (IX) For that the appointing authority while imposing the punishment of removal from service did not arrive at any specific finding with regard to the charge and allegations made against the appellant nor has given any valid reasons for accepting the said enquiry report and, therefore, there is violation of Rule 10(2)(vi) of the Gramin Dak Sevak (Conduct and Employment) Rules, 2001.
- (X) For that while accepting the enquiry report a duty was cast upon the appointing authority to afford a reasonable opportunity to the appellant to submit representation, if any, before imposition of penalty but, no such opportunity was given to the appellant and, therefore, the order of imposition of penalty of removal from service is violative of principles of natural justice and, as such the same is liable to be set aside and quashed.
- (XI) For that the punishment that has been imposed by the appointing authority is excessive and far more repressive and it does not commensurate with the gravity of the offence in as much as the Enquiring authority has already come to a finding that the appellant was suffering from mental disorder since several months before December 2001 and, therefore, the impugned order of imposition of penalty of removal from service is bad in law and same is liable to be set aside and quashed.
- (XII) For that in any view of the matter, the impugned order of imposition of penalty of removal from service is bad in law and same is liable to be set aside and quashed.

केन्द्रीय प्रशासनिक अपील
Central Administrative Tribunal

28 JUL 2009

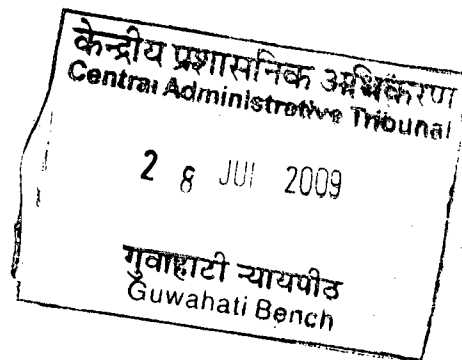
गुवाहाटी न्यायपीठ
Guwahati

- 82 - - 85 -

It is, therefore, prayed that your Honour would be pleased to admit this appeal, call for the records from the appointing authority and, after perusal of the records and hearing the matter, would be pleased to set aside and quash the impugned order of imposition of penalty of removal from service and, reinstate the appellant back into service with all back wages and other consequential benefits which the appellant is entitled to.

And for this act of kindness, the appellant as in duty bound shall ever pray.

Sri Loknath Ray



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DEPARTMENT OF POSTS
Government of India
Ministry of Communications & IT
Office of the Chief Postmaster General,
Assam Circle, Guwahati: 781001.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

28 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Memo No. Staff/9-63/2005

Dated the 30.10.2006.

APPELLATE ORDER

Shri Loknath Roy, Ex-GDS BPM Dakhin Bijni EDBO had submitted an appeal dated 6.2.06 addressed to the Postmaster General, Assam Circle, Guwahati against the penalty of his removal from service imposed vide Memo No.F6-2/2001-02 dated 14.6.2005 of Superintendent of Post Offices, Goalpara Division, Dhubri following enquiry made under Rule-10 of GDS(Conduct and Employment) Rules, 2001. The order, imposing penalty, was received by the Ex-GDS on 20.6.2005 from Supdt. of post Offices, Goalpara Division, Dhubri and as such an appeal on his order should have been submitted to Director Postal Services (HQ & Marketing), Guwahati within three months i.e latest by 20.09.2005. But Shri Loknath Roy Ex-GDS EDBPM Dakhin Bijni (hereinafter referred to as appellant) preferred his appeal only on 6.2.2006, that too addressed to the Postmaster General, Assam Circle, Guwahati. Along with the appeal, the appellant has also requested for condonation of delay in submitting the appeal stating 'various ailments'. However, no specific reason has been pointed out for the inordinate delay in submitting the appeal. Though the appeal has been submitted in violation of Rule 13 & 14 of GDS (Conduct & Employment) Rules, 2001 and 8 months after imposition of penalty, I am considering his appeal condoning the delay on humanitarian grounds and adhering to the principles of natural justice.

The appellant was proceeded against under Rule-10 of GDS (Conduct & Employment Rules-2001) vide SP Goalpara Memo No.F6-2/2001-02 dated 5.6.2003. The Memorandum contained a statement of articles of charge framed as Annexure-I, Statement of imputations of misconduct or misbehavior in support of

Attested

H. N.
Advocate

the articles of charge as Annexure-II and a list of documents by which and a list of witnesses by whom the articles of charge were proposed to be sustained were also enclosed as Annexure -III & IV. The articles of charge and statement of imputations of misconduct or misbehavior in support of the charges are detailed below.

Annexure - I

Article - I

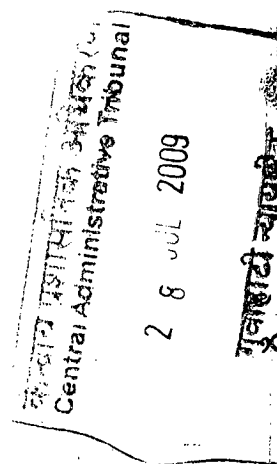
That Shri Loknath Roy while working as GDS BPM, Dakhin Bijni EDBO during the period from 20.07.89 to 04.10.2001 remained unauthorized absent from duty w.e.f. 01.10.2001 by keeping shortage of cash amounting to Rs. 4722.45 (Rupees Four Thousand Seven Hundred Twenty two and paise forty five) only in his office cash balance. Thus the said Shri Roy violated the provision of note below Rule-11 and Rule 177(3) of Rules for Branch Offices and failed to maintain absolute integrity and devotion to duty violating Rule-21 Department of Posts, GDS (Conduct & Employment) Rules, 2001.

Article - II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Loknath Roy accepted Rs 1000/- on 30-11-2000, Rs 500/- on 12-02-01, Rs 2000/- on 02-04-2001 and Rs 1700/- on 04-07-2001 as deposit against SB a/c No. 237021 but he did not credit the above amount to the Govt. account on their respective dates of credits or any subsequent dates. By doing the above acts the said Shri Roy violated Rule 131(3) of Rules for Branch Offices and Rule-21 of DOP, GDS (Conduct & Employment) Rules, 2001.

Article - III

That the said Shri Roy while functioning as such accepted Rs 400/- on 27-04-01, Rs 200/- on 26-05-01 and Rs 600/- on 10-08-01 from the depositor of RD account No. 1703570 being the monthly installment of deposit for the month of March/01 to August/01 but failed to credit the amount to Govt. account on those dates of deposits or on any subsequent dates. Thus the said Shri Roy violated



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Rule- 144 of Rules for Branch Offices and Rule-21 of DOP GDS (Conduct & Empoloyment) Rules, 2001.

Annexure - II

Article - I

" SPM, Bijni SO vide his error No.35 dtd. 17.9.01 reported this office that Shri Loknath Roy, GDSBPM Dakhin Bijni BO remained unauthorised absent from duty w.e.f. 15.9.01 and also kept excess cash without any liability. On receipt of the above information, the concerned SDI(P)/Bongaigaon was directed to enquire the case on 21.9.01 and accordingly the SDI(P)/Bongaigaon proceeded to Dakhin Bijni BO on 4.10.01 and found the office closed. He called for the BPM through EDDA/EDMC Shri H. Sutradhar but the BPM did not turned upto 1500 hrs. On next day 5.10.01 the SDI(P) again proceeded to Dakhin Bijni BO and found that the said EDDA cum EDMC attended the BO with 20 Nos. of MOs received for payment and with the office keys. The SDI(P) Bongaigaon opened the office in presence of witnesses and verified the cash and stamps as per BO account book in presence of EDDA cum EDMC of the office and other witnesses and found as follows:-

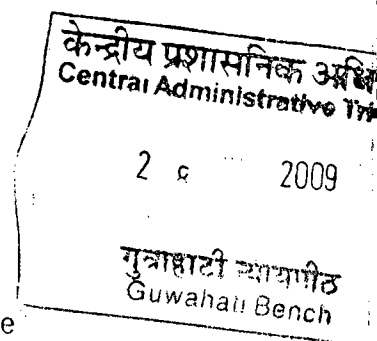
According to account office closing balance of the BO dated 1.10.01 was

Cash	= 4446.80
Postage Stamps	= 580.00
Revenue	= 35.00
Total	= 5061.80

But on physical verification of cash and stamps the SDI(P)/Bjongaigaon found the following:

Cash	= 4.35
Postage stamps	= 288.00
Revenue	= 47.00
Total	= 339.35

So the shortage of cash and stamp balance of the BO was found Rs.5061.80-339.35 = Rs.4722.45. An inventory of shortage of cash and stamps was accordingly prepared by the SDI(P)/Bongaigaon on 5.10.01 in presence of witnesses and the shortage amount Rs.4722.45 was charged as UCP on 5.10.01



at the BO being 2.10.01 holiday and 3.10.01 and 4.10.01 the BO did not function. By doing the above acts the said Shri Loknath Roy violated the provision of Note below Rule-11 and Rule 177(3) of the Rules for Branch offices and failed to maintain absolute integrity and devotion to duty as enjoined in Rule-21 of DOP GDS (Conduct & Employment) Rules, 2001.

Article-II

That the said Shri Loknath Roy while working as GDSBPM Dakhin Bijni EDBO accepted the following amount tendered by the depositor Sri Durga Ram Roy of the SB account No.237021 on the date mentioned below for deposit in his account.

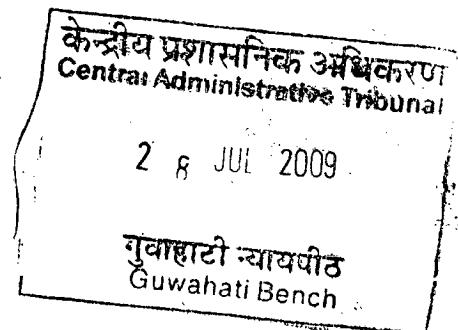
<u>Sl.No.</u>	<u>Account No.</u>	<u>Name & address of the depositor</u>	<u>Date of Deposit</u>	<u>Amount of Deposit</u>
1.	237021	Durga Ram Roy	30.11.2000	Rs.1000.00
		Vill: Gosaigaon	12.02.2001	Rs. 500.00
		PO: D/Bijni	02.04.2001	Rs.2000.00
			04.07.2001	Rs.1700.00
			Total	Rs.5200.00

The said Sri Roy entered the above transactions as deposit in the SB Pass Book on the date of deposit and the above entries were authenticated by him by impressing office date stamps and by putting his signature. But the said Shri Roy failed to credit the above deposited amount to Govt. account reflecting through BO account book on their respective date or any subsequent dates.

By doing the above acts the said Shri Loknath Roy violated Rule 131(1) of Rules for Branch Offices and failed to maintain absolute integrity and devotion to duty as enjoined in Rule 21 of DOP GDS (Conduct & Employment) Rules, 2001.

Article - III

Shri Loknath Roy while working as GDS BPM Dakhin Bijni BO from 20.7.89 to 04.10.2001 received Rs.1200.00 from the depositor Smt. Manamati Ouary of RD Account No 1703570 being the monthly installments of deposit as detailed below.

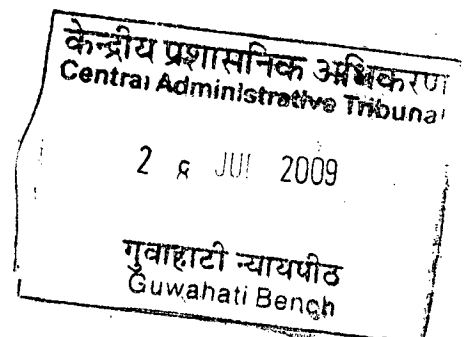


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Sl.No.	Account No.	Name & address of the depositor	Date of Deposit	Amount of Deposit
1.	1703570	Manornati Oway	27.04.01	Rs. 400.00
		W/o Dipak Kr. Basumatary	26.05.01	Rs. 200.00
		Vill: Bangaigaon	10.8.01	Rs. 600.00
		PO: Dakhin Bijni.	Total	Rs.1200.00

The said Sri Roy entered the above monthly deposits in the RD Pass Book and authenticated the entries by impressing office date stamps and his initial but he failed to credit the above deposited amount to Govt. account reflecting through B.O. account book and BO RD Journal violating the provision of Rules 144 of the Rules for Branch offices. By doing so the said Shri Roy failed to maintain absolute integrity and devotion to duties violating Rule 21 of DOP GDS (Conduct & Employment) Rules,2001."

The appellant was directed to submit his defence, if any ,within 10 days of receipt of Memorandum. The appellant received the memo on 19.6.2003 and he submitted his defence on 28.6.2003 denying the charges framed against him. Therefore, the Superintendent of Post Offices, Goalpara and the Disciplinary Authority initiated an enquiry under Rule-10 of GDS (Conduct & Employment) Rules 2001 appointing Shri G.C.Das, then ASP(HQ) Dhubri as Inquiring Authority (IA) and Shri R.K.Farid , then IPOs, Kokrajhar as Presenting Officer (PO). After conclusion of the Rule-10 enquiry wherein the appellant was given sufficient opportunity to defend his case, the IA submitted his report to the Disciplinary Authority vide letter No. A1/Rule-10/03-04 dated 23.12.04 concluding that the charges against the appellant as proved. It is evident from the records that a copy of the inquiry report was forwarded to the appellant, which was received by him on 30.12.04. The appellant did not submit any representation in response to the Inquiry Report till 14.6.2005 and therefore the disciplinary authority issued his final order vide memo No.F6-2/01-02 dated 14.06.2005 removing the appellant from service concluding that the charges leveled against the appellant as proved.



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I have gone through the record connected to the case with due application of mind and has carefully considered the appeal submitted by the appellant on 6.2.2006. The arguments raised by the appellant are discussed in the following paragraphs.

1. Argument:

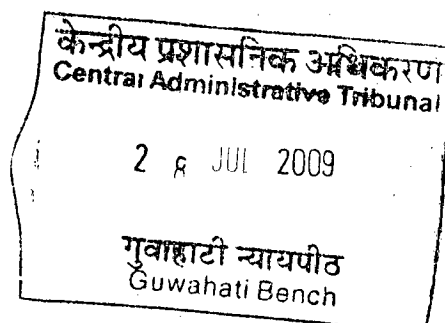
The appellant argues that for the shortage of stamp and cash as well as the alleged misappropriation of money of the depositor, the IPOs Bongaigaon Sub Division had lodged a written complaint before the Officer in-charge Bijni Police Station. The case was registered at Bijni Police Station as case No.134/2001 under Section 409 IPC. After perusal of the evidence and examination of the witnesses, the learned trial court of Sub Divisional Judicial Magistrate, Bijni vide Judgement and order dated 30.8.2004 was pleased to acquit the appellant of the charge under section 409 IPC. The Department did not file any appeal against the order of acquittal.

Reply:

It is true that the learned court acquitted the appellant as the prosecution failed to prove its case under section 409 IPC. However, the proceedings against the official under Rule 10 GDS (Conduct & Employment) Rules, 2001 is for the appellant's failure in observing Departmental rules and regulations. The Department has every right to proceed against the appellant as he failed to discharge his duties properly.

2. Argument:

The appellant pleads that he was suffering from protracted mental illness from the middle of the year 2000 leading to his un-authorized absence since 1-10.2001. His mental imbalance also resulted in discrepancies in a few accounts standing in the Post Office. The appellant states that this was brought to the notice of the disciplinary authority in his defence statement dated 28.06.03.



Reply:

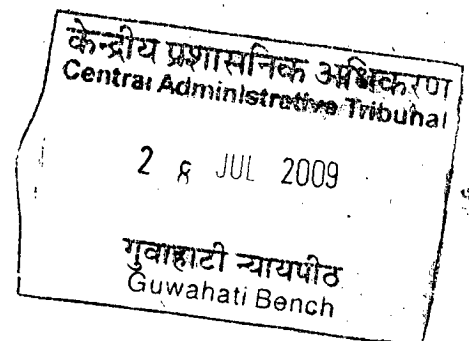
Here, I find that the appellant is admitting the lapses on his part while attributing the same to his mental imbalance and protracted mental illness from the middle of the year 2000. The major evidence in support of his defence produced during the inquiry is exhibit EXD-1, a medical certificate dated 31-12-01 issued by Dr Oli Roy Chowdhury, Abhayapuri Hospital. The certificate issued on 31-12-01 states that the appellant was examined on 29-10-01 and he was suffering from nervous disorder 'for the last several months'. It is not clear what prevented the doctor from recording the correct date as he states that 'since then he is under my treatment'. The appellant's defence statement dated 28.06.03 says that he was completely out of his head from 1st October 2001. Thus, the appellant's statement dated 28.06.03 and the medical certificate are contradictory as far as the date from which his 'mental imbalance or nervous disorder' started. It is not also clear what 'several months' means. Here, the argument raised by the Presenting Officer that the irregularities in the last few months of year 2000 and the first few months of the year 2001 were committed by the appellant when he was not suffering from mental imbalance is valid.

3. Argument:

The appellant argues that he was placed under put off duty w.e.f. 5.10.01 resulting in non-payment of salary and other dues further resulting in loss of livelihood for about 4 years. The appointing authority did not confirm the order of put off duty. The appellant feels that the decision of the disciplinary authority to impose penalty of removing from service w.e.f. the date of his put off duty is bad in law and is liable to be set aside.

Reply:

From the records, it is clear that the order of put off duty issued by the Inspector of Post Offices, Bongaigaon vide memo no. A2/L.Roy/ED dated 12.10.01 was later ratified by Superintendent of Post Offices, Bongaigaon on 19.10.01.



disciplinary authority vide his memo no. F6-2/2001-2002 dated 16-10-01. Thus, the proper authority confirmed the put off duty.

Note below Rule 12 (3) of DOP GDS (Conduct & Employment) Rules 2001 clearly states that a GDS, if absconding and subsequently put-off duty is not entitled for any ex-gratia compensation. The appellant was absconding since 1-10- 2001 and hence ineligible to get any ex-gratia compensation. Therefore, there is nothing wrong on the part of disciplinary authority in issuing the order of penalty of removal from service w.e.f. the date of put-off duty of the appellant.

4. Argument:

The SDI(P) Bongaigaon who conducted the enquiry had no authority to check any account maintained in any Sub Post Office without any departmental officer and his reporting to the higher officer regarding shortage of cash and stamps cannot be taken into consideration.

Reply:

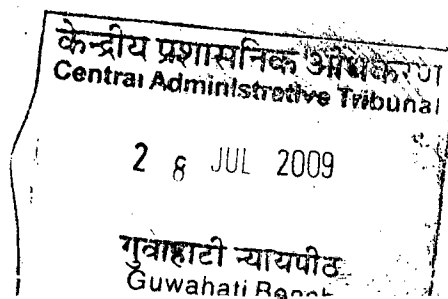
Sub-Divisional Inspector also called the Inspector of Post Offices is the head of a sub-division and has every right to inspect any Post Office under his jurisdiction. SDI(P) Bongaigaon had the authority to inspect and verify the cash accounts of Dakhin Bijni EDBO. It is also his duty to report any irregularity noticed during such inspections to his superior officer. Hence, the above argument is totally unfounded.

5. Argument:

The medical certificate submitted during the enquiry clearly states that the appellant was suffering from nervous disorder for several months since the month Dec'2001. However, the IA did not take his medical certificate into consideration and concluded his findings that he accepted SB deposit while he was on sound health.

Reply:

This has been discussed in detail below the appellant's argument numbered 2. The IA in his report discussed this aspect in great detail and a copy of the



report was forwarded to the appellant also. The argument that the IA did not consider this certificate is baseless.

6. **Argument:**

The specific plea of the appellant that he was suffering from mental illness and he was unable to remember exact amount entrusted to him as well as his failure on his part to handover the deposit to the Government was taken note of by the IA. However, IA failed to give any reason for rejecting this defence plea.

Reply:

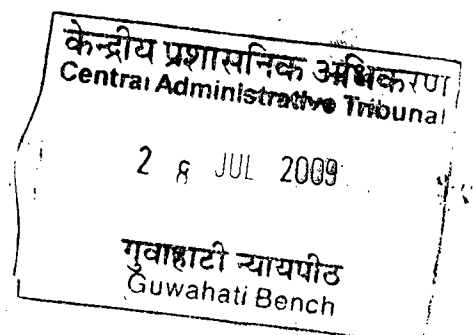
Here again, the appellant is admitting the lapses on his part and attributing the same to his 'mental illness'. This argument was taken note of by the IA and discussed in detail in the inquiry report. The medical certificate EXD-1 and the appellant's representation dated 28.06.03 contain contradicting facts as to when his mental illness started. The IA has discussed all these aspects in his report submitted to the disciplinary authority. A copy of the inquiry report was also forwarded to the appellant. However, the appellant did not submit any representation.

7. **Argument:**

The IA failed to give his findings on the charges framed against the appellant vis-à-vis his defence and there was total non-application of mind on the part of the IA while conducting the said enquiry.

Reply:

I have gone through the records connected with the inquiry proceedings under Rule 10 GDS (Conduct & Employment) Rules, 2001. The inquiry was done in a proper manner giving adequate opportunity to the appellant at every stage for his defence. IA has discussed every aspect of the case in great detail in his report and there is nothing to prove that he did not apply his mind while conducting the inquiry. No specific reason has been pointed out by the appellant to prove non-application of mind on the part of the IA.



8. **Argument:**

That the appellant was not paid the salaries for the month of July, August and September'2001 and the yearly bonus of 2000 have not been paid and it is bad in law.

Reply:

The appellant was put off duty only in October 2001. As such, the non-payment of salary for the months of July to September has nothing to do with this case.

9. **Argument:**

While the appellant was in the put off duty, no ex-gratia payment was made under Rule-12(3) was paid to the appellant which amounts deprivation of livelihood of his family members.

Reply:

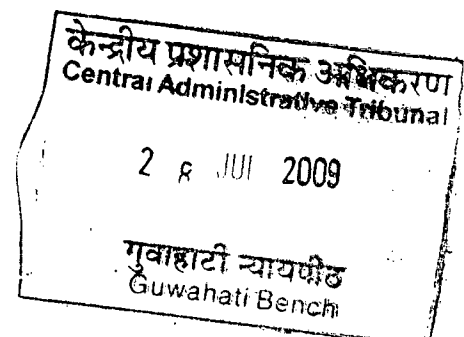
Note below Rule 12 (3) of DOP GDS (Conduct & Employment) Rules 2001 clearly states that a GDS, if absconding and subsequently put-off duty is not entitled for any ex-gratia compensation. The appellant was absconding since 1-10- 2001 and hence ineligible to get any ex-gratia compensation.

10. **Argument:**

The criminal case against the appellant was culminated with the order of acquittal passed by the trial court and no appeal was preferred against the said order. However, the Disciplinary Authority failed to take into consideration that the said judgement of acquittal and therefore the order of removal from service is liable to be set aside and quashed.

Reply:

The proceedings against the official are under Rule 10 GDS (Conduct & Employment) Rules, 2001 for the appellant's failure in observing Departmental rules and regulations. As a GDS employee, appellant had to act as per the rules and regulations of the Department and the Department has every right to proceed against the appellant as he failed to discharge his duties properly.



That the learned court concluded that the prosecution failed to prove the charges under section 409 IPC is altogether a different matter.

11. Argument:

The appointing and disciplinary authority while imposing the punishment of removal from service did not arrive at any specific finding with regard to the charges and allegations made against the appellant nor has he given any valid reason for accepting the said enquiry report, which is under violation of Rule 10(2)(vi) of the GDS (Conduct and employment) rules 2001.

Reply:

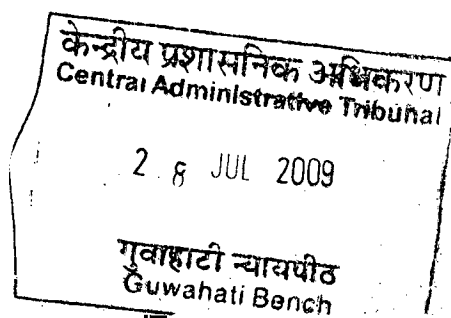
The disciplinary authority has stated in his memo imposing penalty that "I have gone through the report of the Inquiry Authority very carefully and found no ground to disagree with the findings of the Inquiry Authority. The charged official has utterly failed to refute the articles of charge brought against him and that the charges leveled against Shri Loknath Roy proved beyond doubt". The disciplinary authority could not have discussed the matter in greater detail as the appellant also did not submit any representation after receipt of a copy of the inquiry report.

12. Argument:

The appointing authority should afford a reasonable opportunity to the appellant to submit representation while accepting the enquiry report. No such opportunity was given to the appellant before imposition of penalty, which is in violation of principles of natural justice.

Reply:

From the records it is clear that a copy of the inquiry report was forwarded to the appellant, which was received by him on 30-12-04. The acknowledgement card signed by the appellant for having received the said report is on record. He submitted no representation during 30-12-04 to 14-6-05. Thus, adequate opportunity was given to the appellant, but he failed to make use of it.



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13. Argument:

The punishment imposed by the appointing authority is excessive and does not commensurate with the gravity of the offence in as much as the Enquiring Authority come to a finding that the appellant was suffering from mental disorder since several months before Dec' 2001.

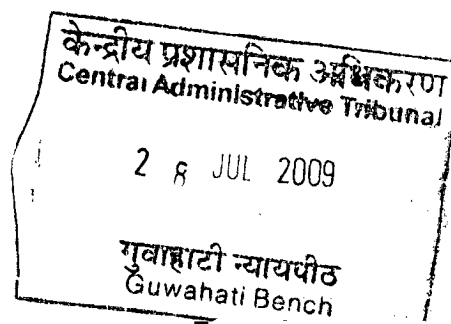
Reply:

That the IA came to a finding that the appellant was suffering from mental disorder since several months before Dec' 2001 is only the appellant's presumption as there is no such conclusion in IA's report. On the contrary, the IA discussed all the evidences produced during the inquiry and concluded that the appellant was in sound health when he accepted various deposits under SB/RD and failed to credit it to Government accounts. I don't buy the argument that the punishment is not commensurate with the lapses as the appellant violated the rules and regulations of the Department and failed to credit the money handed over by the SB/RD customers into Government accounts. As such, the appellant deserved severe punishment and the penalty awarded is commensurate with the irregularities he committed.

ORDER

I, Dr. N. Vinodkumar, Director of Postal Services (HQ& Marketing), Assam Circle, Guwahati 781001, in exercise of power conferred in Rule – 18 of DOP GDS (Conduct & Employment) Rules, 2001 do hereby confirm the penalty of removal from service awarded to Shri Loknath Roy, GDS BPM Dakhin Bijni (appellant) in this case by the Disciplinary Authority vide SP/Goalpara memo No. F6-2/2001-2002 dated 14.6.2005.

sd/ —
(Dr. N.Vinodkumar)
Director of Postal Services(HQ & Marketing)
Assam Circle,Guwahati:781001.



Copy to:

1. Shri Loknath Roy, Ex-GDS BPM, Dakhin Bijni EDBO(now removed from service)

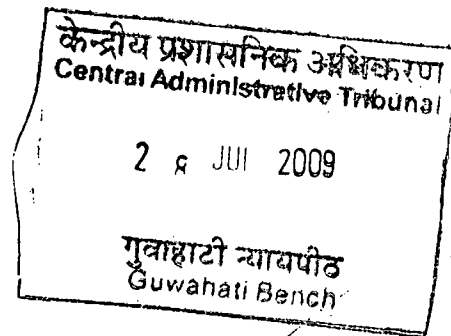
2-3) Shri R.C.Rabha, Supdt. of Post Offices, Goalpara Divn. Dhubri- for necessary action. A copy of the appellate order shall be delivered to the appellant under clear receipt and a copy of receipt should be sent to the APMG(Staff) Circle Office, Guwahati within a week positively for record.

✓ 4-5) Staff(Appeal)/Petition) Branch Circle Office, Guwahati.

6) PA to DPS(HQ), Guwahati.

7) Office copy.

(Dr. N.Vinodkumar)
Director of Postal Services(HQ & Marketing)
Assam Circle,Guwahati:781001.



प्रतिनिधि के निवेदन को तारीख Date of application for the copy	स्टाम्प और फोटो की अपेक्षित संख्या सूचित करने की तिथि Date and for notifying the requisite number of stamps and photos	अपेक्षित स्टाम्प और फोटो देने की तिथि Date of delivery of the required stamps and photos	तारीख, जबकि देने के लिए प्रतिनिधि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिनिधि देने की तारीख Date of making over the copy to the applicant.
11/2/09	11/2/09	11/2/09	13/2/09	13/2/09

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,

Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from
Civil Rule

W.P.(C)

No. 3240 of 2007

Appellant
Petitioner

Sri Loknath Roy

Versus

Union of India & ors

Respondent
Opposite Party

Appellant: Mr. S. M. Sarkar

Petitioner: Mr. P. Katabi,
Miss S. Khatanias

Respondent: Mr. S. Chakraborty
Opposite Party: Asst. G. G. I.

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports orders or process with signature

Attested
Advocate

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
28 JUL 2009
गुवाहाटी न्यायपीठ
Guwahati Bench

6/3/

- AND -

IN THE MATTER OF:

Sri Loknath Ray.,

S/o Ananda Mohan Ray.

Resident of Kumargaon Kochadoha,

P.O. Dakhin Bijni,

District Chirang, Assam.

.....PETITIONER.

- VERSUS -

1. Union of India,

Represented by the Secretary to the
Department of Posts, Govt. of India,
Ministry of Communication & I.T., New
Delhi.

2. The Director of Postal Services,

H.Q. & Marketing,
Assam Circle, Guwahati-1.

3. The Superintendent of Post Offices,

Goalpara, Dhubri.

4. The Inspectors of Posts, Bongaigaon Sub

Division, Bongaigaon, Assam.

.....RESPONDENTS

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

28 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

- 4 -

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

WP(C) 3240/07

BEFORE

THE HON'BLE MR JUSTICE B. K. SHARMA.

30.01.2009

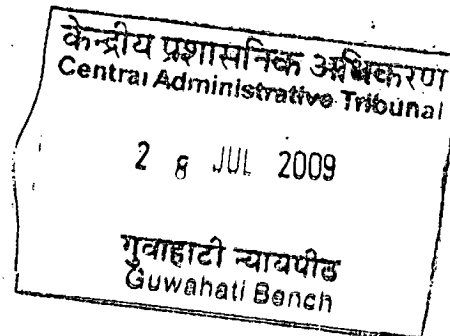
The petitioner is an employee of the Postal Department working in the Extra Departmental Branch Post Master. He has filed this writ petition assailing the order of removal from service. As per the provisions of the Administrative Tribunal Act and the decision of the Apex Court in L. Chandra v. Union of India, reported in (1997) 1 GLT 1 (SC), in such matters, the jurisdiction lies with the Central Administrative Tribunal as a Court of first instance. If a party is aggrieved by any order of the Tribunal, it may approach the Division Bench of this Court by filing writ petition.

In view of the above, this writ petition is disposed of granting liberty to the petitioner to approach the Tribunal as per the provisions of the administrative Tribunal Act. The delay, if any, in pursuing the matter before this Court may be condoned by the Tribunal in accordance with law.

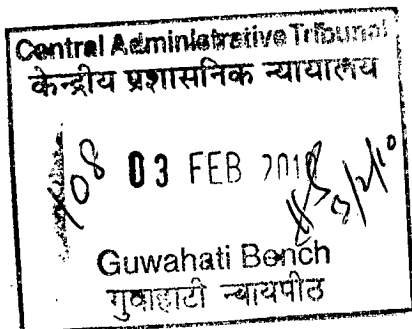
Sd/- B. K. Sharma
Judge

SL-111962-
off-11/2/09
[Signature]

CERTIFIED TO BE TRUE COPY
Nripen Pathak
Date: 13/2/09
Superintendent (Copying Section)
Gauhati High Court
Authorised U/S 76, Act 1, 1872
[Signature]
13/2/09



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH



IN THE MATTER OF

Original Application No.143/2009.

Shri Loknath Roy

.....Applicant

- Versus -

Union of India & Ors.

.....Respondents

IN THE MATTER OF

Written statement submitted by the Respondents No. 3

WRITTEN STATEMENT

The humble answering respondents

submit their written statement as follows

:

1(a) That I Shri Ashok Kumar Das

and Respondents No. 3 in the above case and I have gone through a copy of the application served on me and have understood the contents thereof. Save and except whatever is specifically admitted in the written statement, the contentions and statements made in the application may be deemed to have been denied. I am competent and authorized to file the statement on behalf of all the respondents.

(b) The application is filed unjust and unsustainable both on facts and in law.

(c) That the application is also hit by the principles of waiver estoppel and acquiescence and liable to be dismissed.

Motin Ud-Din Ahmed
M.A., B.Sc., LL.B.
Addl. Central Govt. Standing Counsel
Guwahati Bench (CAT)

Dept. of Post Offices,
Gomohore Divn., Dibrugarh
783301

Received copy
Has
10.2.10.

Undertaken to serve the Court.

Service copy attached herewith, & Undertaken to serve the Court.

22/11

(d) That any action taken by the respondents was not stigmatic and some were for the sake of public interest and it cannot be said that the decision taken by the Respondents, against the applicant had suffered from vice of illegality.

2. **Brief history of the case :**

This is regarding misappropriation of Govt. cash/stamps and Saving Bank (SB/RD) deposits by Shri Loknath Roy, Ex-GDS BPM, Dakhin Bijni Branch Post Office in account with Bijni SO in his official capacity.

The Sub Postmaster, Bijni Post office reported vide his Error No.34 dated 17.09.01 that Sri Loknath Roy, GDS-BPM, Dakhin Bijni EDBO remained absent from duty unauthorisedly from 15.09.01 keeping excess cash without showing any liability. On receipt of the above information the Inspector of Posts, Bongaigaon Sub Division was directed to enquiry the case on the spot and submit his report.

Accordingly the IPO's Bongaigaon visited the Dakhin Bijni EDBO on 4.10.01 and found that the office was closed and Shri Loknath Roy GDS-BPM absconded. The office was then opened in presence of witnesses and an inventory of Govt. cash and other valuable was prepared and found shortage of Govt. cash amounting to Rs.4722.45. Thereafter the IPO's, Bongaigaon started investigation and detected fraud on the part of Sri Loknath Roy in his official capacity amounting to Rs.21339.95 as particularized below :

i) Shortage of Govt. cash and stamps	= Rs. 4722.45
ii) Non credit of RD deposits	=Rs. 7500.00
iii) Non credit of SB deposits	= Rs. 6800.00
iv) Non credit of VP article	= Rs. 179.00
v) <u>Non credit of delivered unpaid letter</u>	=Rs. 138.50
Total	=Rs. 19,339.95

Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय
03 FEB 2002
Guwahati Bench गुवाहाटी न्यायपीठ

The case was reported to Bijni Police Station on 18.10.01 and the same was registered under Bijni PS case No.134/2001 U/S 409 IPC. The police

charge sheeted the case against Sri Loknath Roy to the SDJM, Bijni. The court case No. GR 209/01 was finalized and the accused Sri Loknath Roy was acquitted of the charges.

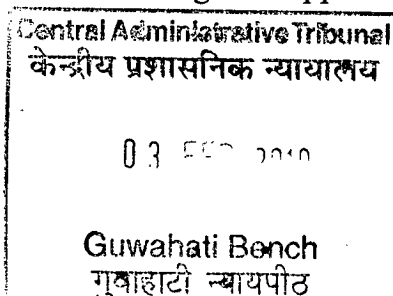
Since a prima facie case was established against Sri Loknath Roy disciplinary proceeding initiated against Sri Loknath Roy under Rule 10 of DOP, GDS (Conduct and Employment) Rules 2001. The disciplinary case under Rule 10 against the said Sri Roy was finalized on 14.06.2005 after affording him all opportunity and he was awarded punishment of 'removal' from service with immediate effect.

On being aggrieved with the penalty, Shri Loknath Roy preferred appeal to the appellate authority and his appeal was forwarded to the Director of Postal Services, Guwahati on 24.06.2006. The appellate authority considered his appeal petition and finalized the case on 30.10.2006 confirming the punishment awarded by the disciplinary authority. Shri Loknath Roy acknowledged receipt of the order of the appellate authority on 29.11.06.

Shri Loknath Roy again on being aggrieved with the order of punishment moved his case to the Hon'ble CAT, Guwahati and the Hon'ble CAT, Guwahati held preliminary hearing on 29.07.09 and marked the case under No.OA-143/09 and served the notice to the respondents to show cause as to why the OA will not be admitted. The OA is filed after expiry of the period of limitation.

3. That with regard to the statements made in paragraph 1 of the original application the answering respondents beg to state that the applicant was removed from service vide Memo. No. F6-2/2001-2002 dated 14.6.2005.

4. That with regard to the statements made in paragraphs 2, 4.1, 4.10, 4.15, 4.16, 4.18, 4.19, 5.7, 6 and 7 of the Original Application the answering



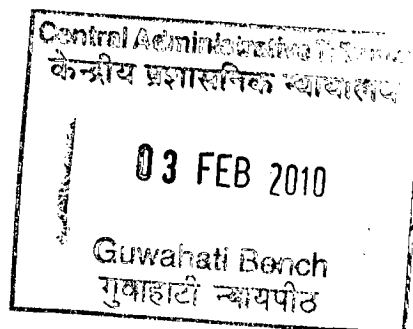
Asst. Secy.
Post Office
Guwahati
781001

respondents beg to state that they do not offer any comment and do not admit anything which are beyond the records and has some rational foundation and the applicant is put to strict proof thereof.

5. That with regard to the statements made in paragraph 3 of the Original Application the answering respondents beg to state that as per Section 21 of the Administrative Tribunals Act, 1985 the applicant had to file the OA before the Hon'ble CAT within 1(one) years and 6 months from the date on which the final order was passed on 14.6.05. The Section of the said Act 1985 is enclosed and marked as Annexure-1. So the application is not filed within the period of limitation under Section 21 of the Administrative Tribunals Act, 1985. Hence the contention of this para is not true.

Furthermore, the applicant failed to render public service as per rules and resolution while he was in service and after detection he pleaded that due to his mental disorder he committed the mistake which is not acceptable. When the fraud is established on his part he produced medical certificate for his mental disorder after a long gap of 3 years which is not expected from a Govt. servant. When he submitted appeal after expiry of period of limitation he pleaded that due to his mental illness he failed to do so. Now he moved his case to the Hon'ble CAT after long gap of 4 years and he will say now that due to his mental illness he did so. Actually the applicant is a mentally sound man and he is using the medical certificate as a weapon to protect himself from the misdeeds done by him

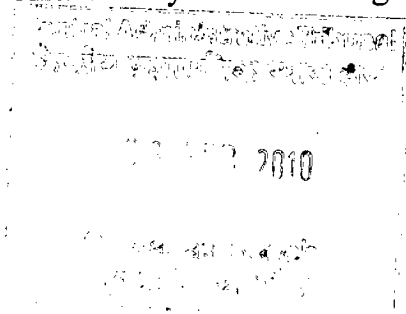
6. That with regard to the statements made in paragraph 4.2 of the Original Application the answering respondents beg to state that the applicant was joined into service on 20.07.89 as EDBPM at Dakhin Bijni BO and not as on 06.09.89 as contended in this para.



(As per K. S. S.)
 Joint of Post Office
 Ludhiana Divn. Dhut
 788001

Asst. Secy. to Govt.
732301

10. That with regard to the statements made in paragraph 4.6 of the Original Application the answering respondents beg to state that there was a prima facie evidence of commission of criminal offence beyond doubt against the

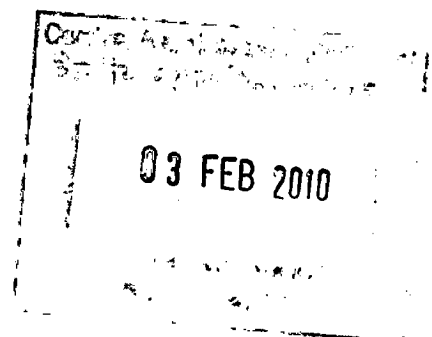


applicant and that is why the IPO's, Bongaigaon lodged FIR for initiation of criminal proceedings.

11. That with regard to the statements made in para 4.7 of the original application the answering respondents beg to state that the same is true.

12. That with regard to the statements made in para 4.8 of the original application the answering respondents beg to state that the applicant was charge sheeted under Rule 10 of GDS (Conduct & Employment) Rules, 2001 on the materials gathered during departmental enquiry on his negligence in the performance of official duties and for breach of service Rules with a view to finalise disciplinary case against him after affording him all opportunity under the provision of rules.

13. That with regard to the statements made in para 4.9 of the original application the answering respondents beg to state that in the defence statement dated 28.06.03 the applicant admitted the charges leveled against him and pleaded that he committed the offences for his protracted mental illness. As per the office records it is seen that the applicant was in service of BPM from 20.7.89 to 03.01.01. During the above period no information regarding his mental disorder was received by this office. During his incumbency, the office was inspected by the Inspector/Mail Overseer each year and noticed no information regarding his so called mental illness. The applicant submitted one medical certificate dated 31.12.01 from Dr Oli Roy Chakraborty wherein the Doctor had neither mentioned anything about incapability of the applicant to work as BPM nor advised to take rest by applying leave. So it is very much clear that the applicant was quite fit and he committed the fraud violating Rules and subsequently he pleaded that he was mental patient which is not entertainable.



14. That with regard to the statements made in para 4.11 of the original application the answering respondents beg to state that the contention of this para is not true. The Inquiry Authority vide his daily order sheet dated 26.5.04 asked the applicant to submit his defence as per Rule 14(18) of CCS(CCA) Rules, 1965 within 10(ten) days. But the applicant did not submit anything despite reminder dated 12.07.04. The fact was stated by the Inquiry Authority in his Inquiry Report at page 17. The order sheet dated 26.05.04 and page -17 of IA's report are enclosed and marked as Annexure-III & IV.

15. That with regard to the statements made in para 4.12 of the original application the answering respondents beg to state that the departmental proceedings and the criminal proceedings are independent of each other. The departmental proceeding should be initiated without regard of the outcome of the criminal proceedings. Secondly, the criminal proceeding and departmental proceedings were not based on the same set of charges as contended in this para. It is evident that the charges at articles II and III of the departmental proceedings are completely separate with the charges that not proved in the court of law. Hence the statement made in this para is not acceptable.

16. That with regard to the statements made in para 4.13 of the original application the answering respondents beg to state that the applicant is not entitled ex-gratia during his put off period as he remained absent from duty unauthorisedly as per Rules 12(3) of the GDS DOP (Conduct & Employment) Rules 2001 which is enclosed as Annexure-V.

17. That with regard to the statements made in para 4.14 of the original application the answering respondents beg to state that the order was passed by ex Superintendent of Post Offices, Goalpara Division and it is seen that the order are self contained speaking and reasoned order.

(Ashok kumar Das)
In-charge of Post Office,
Goalpara Divn. Dibrugarh
781 001

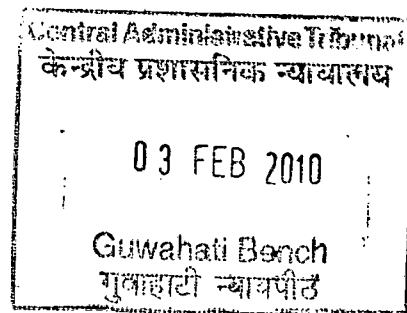
03 FEB 2010

18. That with regard to the statements made in para 4.17 of the original application the answering respondents beg to state that the charges leveled against the applicant was enquired by the Inquiry Authority who conducted the oral inquiry under the frame work of rules and by extending all opportunity to the applicant. Lastly the Inquiry Authority submitted his Inquiry Report to the Disciplinary Authority with findings the charges proved. The Disciplinary Authority agreed with the findings of IA and passed speaking orders as per rules.

19. That with regard to the statements made in para 5.1 of the original application the answering respondents beg to state that the applicant remained absent from duty unauthorisedly and as per Rule 12(3) of GDS DOP (Conduct and Employment) Rules, 2001 the applicant are not entitled Ex-gratia compensation. The action was in order and as per rule. The Rule are enclosed as Annexure V.

20. That with regard to the statements made in para 5.2 of the original application the answering respondents beg to state that the criminal proceedings was based only on one article which was not proved in the Court of Law. Only one prosecution witness was examined by the Court in the criminal proceedings. But in the departmental proceeding altogether 7 witnesses were examined and all the witnesses were present and gave evidence against the applicant. 3 sets of article of charges were leveled against the applicant in the departmental proceeding and all the article of charges were proved during oral inquiry. Hence the criminal and departmental proceedings were not based on the same facts and evidence as stated in this para.

21. That with regard to the statements made in para 5.3 of the original application the answering respondents beg to state that the applicant was given chance to submit his defence as per Rule 14(18) of CCS (CCA) Rules, 1965 vide



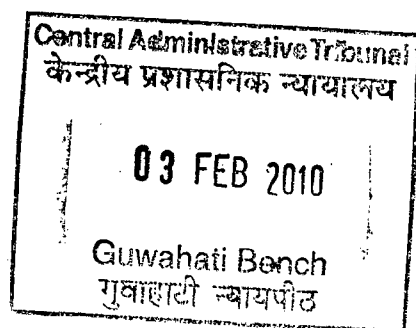
order sheet dated 26.5.04. A copy of IA's order sheet dated 26.5.04 is enclosed and marked as Annexure-III.

22. That with regard to the statements made in para 5.4 of the original application the answering respondents beg to state that the applicant failed to refute the charges leveled against him during oral inquiry despite extending all opportunity. The disciplinary authority fully agreed with the findings of IA and passed his final orders which is found spoken and reasoned orders.

23. That with regard to the statements made in para 5.5 of the original application the answering respondents beg to state that the disciplinary proceedings against the applicant was disposed of under the frame work of departmental rules without any procedural flaw.

24. That with regard to the statements made in para 5.6 of the original application the answering respondents beg to state that the applicant was negligent in performance of official duties and acted violating departmental rules. As soon as his illegal activities were come to notice and establish he absconded. Subsequently he managed medical certificate at his own and produced the same before Inquiry Authority after a long gap of 3 years and now before the Hon'ble court to save his skin. The applicant may produce the medical certificate to the authority in proper time and he may apply for due leave for better treatment of his so called mental disorder, but he did not do so. So the disciplinary authority decided his case for the misdeed done by him observing departmental rules.

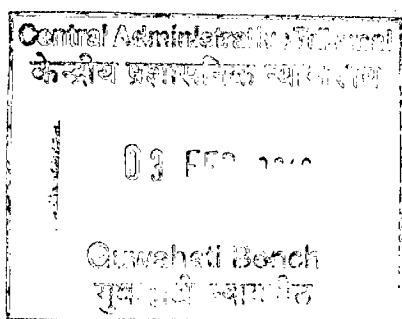
25. That with regard to the statements made in para 5.8 of the original application the answering respondents beg to state that the applicant was a Govt. servant and he had to perform his official duties as per the departmental rules and regulation. But violation of rules were detected on his part and he was punished observing rules.




26. That with regard to the statements made in para 5.9 of the original application the answering respondents beg to state that the applicant was proceeded as per rules and his case was finalized within the frame work of rules. Hence his application should not be admitted and it should be dismissed with cost.

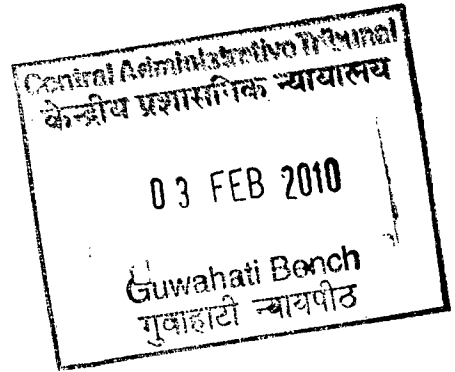
11. That the reply has been made bonafide and for the ends of justice and equity.

It is therefore humbly prayed before this Hon'ble Tribunal that the present application filed by the applicant may be dismissed with costs.




(Ashok Kumar)
Supdt. of Post Office,
Gadipara Divn. Dhubri.
785301

VERIFICATION



I Shri Ashok Kumar Das

Son of Late Tanu Ram Das aged about 40

years, resident of Dhubri

working as 1/c, Supdt. of Post offices, Dhubri.

Duly authorized and competent officer of the answering respondents to sign this

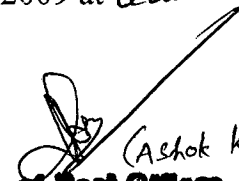
verification, do hereby solemnly affirm and verify that the statements made in

paras ^{13, 14, 21, 24} 2, 5, 7, 12, 16 are true to my knowledge, belief and information & those

made in para 3 & 6 being matter of record are true to my

knowledge as per the legal advice and I have not suppressed any material facts

and I sign this verification on this 30th day of November, 2009 at Guwahati


(Ashok Kumar Das)
Supdt. of Post Office,
Goalpara Divn. Dhubri
783301

THE ADMINISTRATIVE TRIBUNALS ACT, 1985

21. Limitation -

(1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

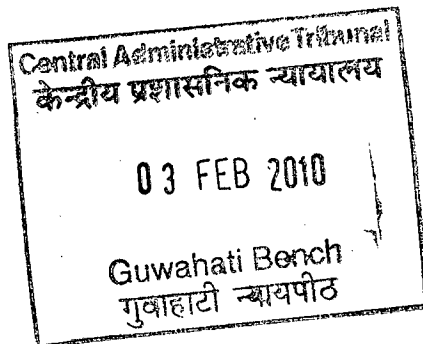
(2) Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates ; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or , as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.



SECTION III

**Department of Posts, Gramin Dak Sevak
(Conduct and Employment) Rules, 2001***

The following rules are issued under the authority of the Government of India:—

1. Short Title and Commencement

- (1) These rules may be called the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001.
- (2) They shall come into force on and from the date of their circulation.

DIRECTOR-GENERAL'S INSTRUCTIONS

As you would be aware, change in nomenclature of ED Agents was one of the demands included in the Charter of Demands from the Federations, dated 6-11-2000 for the postal strike in December, 2000.

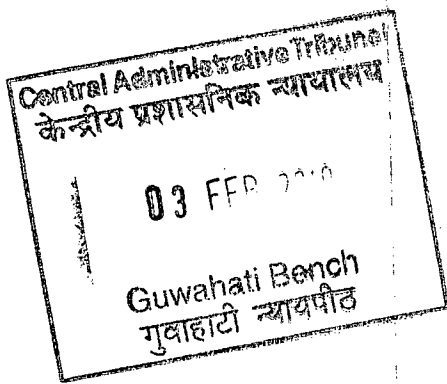
2. The above-mentioned demand was considered by the Group of Ministers (GoM) constituted by the Prime Minister for examining strike-related issues. The GoM agreed to accept the demand for change in nomenclature of ED Agents to 'Gramin Dak Sevaks' from the date of issue of orders. The GoM also desired that it should be made explicitly clear that the change in nomenclature will not in any manner alter the existing terms and conditions of employment of ED Agents in terms of the non-statutory P & T ED Agents (Conduct & Service) Rules, 1964 and that legal status of such agents will be suitably reflected in the relevant rules to make it amply clear that they would continue to be outside the Civil Service of the Union and shall not be treated on par with the regular Government employees.

3. Accordingly, the existing rules called the P & T ED Agents (C&S) Rules, 1964 have been suitably amended/revised, also incorporating changes/revisions which have been introduced in the recent past. In supersession of the existing P&T ED Agents (C&S) Rules, 1964, the revised rules, called the Gramin Dak Sevaks (Conduct & Employment) Rules, 2001 are hereby circulated.

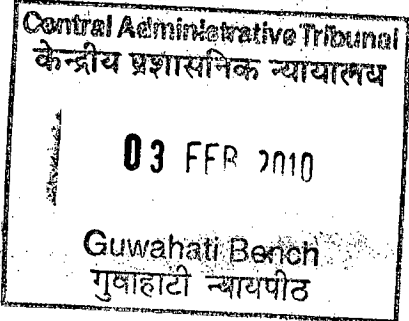
4. In brief, revisions/amendments made in the existing rules—are as follows:—

- (i) The rules called "Gramin Dak Sevaks (Conduct & Employment) Rules, 2001" — containing 31 Rules replace the existing set of rules called the "P & T ED Agents (Conduct & Service) Rules, 1964"

* D.G., Posts, Letter No. 22-1/2000-ED & Trg., dated the 24th April, 2001.



14



GDS (CONDUCT AND EMPLOYMENT) RULES

77

the judgments of the Supreme Court delivered on 11-7-1985 and 12-9-1985. It is, therefore, imperative that these clarifications are not lost sight of while invoking the provisions of the second proviso to Article 311 (2), or service rules based on them. Particularly, nothing should be done that would create the impression that the action taken is arbitrary or *mala fide*. So far as Clauses (a) and (c) and service rules similar to them are concerned, there are already detailed instructions laying down the procedure for dealing with the cases falling within the purview of the aforesaid clauses and rules similar to them. As regards invoking Clause (b) of the second proviso to Article 311 (2) or any similarly worded service rule, absolute care should be exercised and it should always be kept in view that action under it should not appear to be arbitrary or designed to avoid an inquiry which is quite practicable.

11. Ministry of Finance, etc., are requested to bring the above clarifications to the notice of all the authorities serving under their control for their information, guidance and compliance.

[G.L., Dept. of Per. & Trg., O.M. No. 11012/11/85-Estt. (A), dated the 11th November, 1985 and Corrigendum, dated the 19th November, 1985 and O.M., dated the 4th April, 1986.]

Annex - II & (IV)

12. Put-off duty

(1) The Appointing Authority or any authority to which the Appointing Authority is subordinate or any other authority empowered in that behalf by the Government, by general or special order, may put a Sevak off duty:

- (a) where a disciplinary proceeding against him is contemplated or is pending; or
- (b) where a case against him in respect of any criminal offence is under investigation, enquiry or trial:

Provided that in cases involving fraud or embezzlement, the Sevak holding any post specified in the Schedule to these rules may be put-off duty by the Inspector of Post Offices or the Assistant Superintendent of Post Offices of the Sub-Division, as the case may be, under immediate intimation to the Appointing Authority.

(2) An order made by the Inspector of Post Offices or the Assistant Superintendent of Post Offices as the case may be, of the Sub-Division under sub-rule (1) shall cease to be effective on the expiry of fifteen days from the date of such order unless earlier confirmed or cancelled by the Appointing Authority or the authority to which the Appointing Authority is subordinate.

(3) A Sevak shall be entitled per month for the period of put-off duty to an amount of compensation as *ex gratia* payment equal to 25% of his/her Time Related Continuity Allowance together with admissible Dearness Allowance:

Provided that where the period of put-off duty exceeds 90 days, the Appointing Authority or the authority to which the Appointing Authority or any other authority empowered in this behalf, as the case may be, who made the order of put-off duty shall be competent to vary the amount of compensation for any period subsequent to the period of first 90 days as follows:

- (i) The amount of compensation as ex gratia payment may be increased by a suitable amount, not exceeding 50% of such compensation admissible during the period of the first 90 days, if in the opinion of the said authority the period of put-off duty has been prolonged, for reasons to be recorded in writing, not directly attributable to the Sevak.
- (ii) The amount of compensation as ex gratia payment may be reduced by a suitable amount not exceeding 50% of such compensation admissible during the first 90 days, if in the opinion of the said authority, the period of put-off duty has been prolonged due to reasons to be recorded in writing directly attributable to the Sevak.

NOTE 1.— The rate of Dearness Allowance will be based on the increased or decreased amount of compensation admissible under sub-clauses (i) and (ii) above.

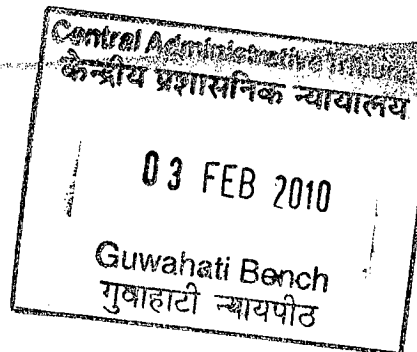
NOTE 2.— The payment of compensation for the put-off duty period shall not be subject to furnishing of a certificate that the Sevak is not engaged in any other employment, business, profession or vocation:

Provided that a Sevak who has been absconding or remains absent unauthorizedly and is subsequently put-off duty shall not be entitled to any compensation as ex gratia payment:

Provided further that in the event of a Sevak being exonerated, he shall be paid full admissible allowance for the period of put-off duty. In other cases, such allowances for the put-off duty can only be denied to a Sevak after affording him an opportunity and by giving cogent reasons.

* (4) Where a penalty of dismissal or removal from employment imposed upon a Sevak putting him off the duty under this rule is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action with any other direction, the order of putting him off the duty shall be deemed to have continued in force on and from the date of the original order of dismissal or removal and shall remain in force until further orders.

* Sub-rules 4 and 5 inserted vide D.G., Posts, Lr. No. 19-111/2001-GDS, dated the 7th February, 2003.



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GDS (CONDUCT AND EMPLOYMENT) RULES

79

(5) Where a penalty of dismissal or removal from employment imposed upon a Sevak, is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against the Sevak on the allegations on which the penalty of dismissal or removal was originally imposed, the Sevak shall be deemed to have been put off his duty by the Appointing Authority from the date of original dismissal or removal and shall continue to remain on put-off his duty until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.

NOTE.— The period of putting a Sevak off his duty including the period of deemed putting him off his duty shall be decided by the Competent Authority after *de novo* proceedings in this regard are finalized and compensation as *ex gratia* payment for the concerned period shall be regulated according to provisions of sub-rule (3). The break caused due to putting the Sevak off his duty shall be regulated as per extant provisions issued from time to time by the Central Government for this purpose.

NOTE.— Any payment made under this rule to a Sevak on his reinstatement shall be subject to adjustment of compensation already paid as *ex gratia*.

DIRECTOR-GENERAL'S INSTRUCTIONS

(1) Orders made by lower authority should be got confirmed by Appointing Authority.— Of late, it has been noticed that the orders made by the Inspectors of Post Offices under Rule 9 (1) are not being confirmed or cancelled by the Appointing Authority or an authority to which the Appointing Authority is subordinate. Since the provisions of Rule 2 *ibid* in regard to confirmation of order made by an Inspector of Post Offices within fifteen days is mandatory, it is requested that the Divisional Superintendents may issue suitable instructions to their Inspectors to refer all such cases to them immediately after orders for put-off duty are issued by the IPOs to ensure that timely action is taken in this regard.

[D.G., P. & T., Letter No. 43-115/73-Pen., dated the 26th July, 1974.]

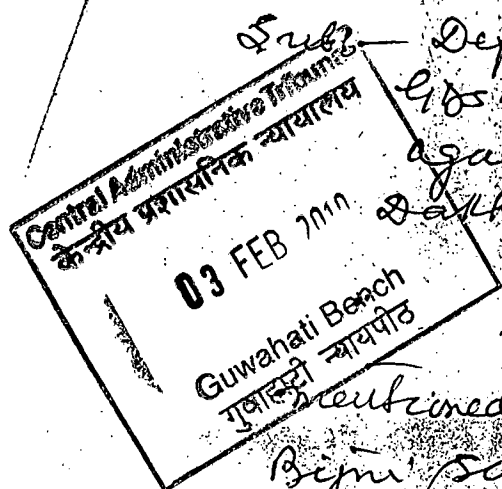
(2) Instructions on "put-off duty" cases.— On the basis of the accepted recommendations by the Government of the Committee of Enquiry (Savoar Committee) on Extra-Departmental System, the following instructions are given below to follow while putting an EDA off duty:—

(i) ***

(ii) *Personal review by the Regional Director:* The Regional Director should personally review every month cases of put-off duty of all EDAs and issue appropriate orders in each case.

(iii) *Cases pending over six months to be brought to the notice of PMG/Addl. PMG:* Cases of put-off duty pending for six months or

Ordersheet no. 8 dt. 26.5.04.



Departmental enquiry under Rule-10 of SOP-
Gds - (conduct and employment) Rules-2001.
Against Shri Loknath Roy. Gds BSM
Dakshin Bijn. Bo.

Held the enquiry of the above
mentioned case today on 26.5.04 in the
Bijn. Bo at 1100 hours.

Following were present in the enquiry-

- (1) Shri Loknath Roy. - charged officer.
- (II) " A.N. Mahanta - Defence Assistant.
- (III) Mr. R.K. Farnot - Presenting officer.

The charged officer produced the original
fit and unfit medical certificate (Exd-1 and
Exd-2) and confirmed the genuineness of the
photo copies of the same which were produced
by the CPO as defence documents.

The Presenting officer examined the
above certificates and clarified some
points of the case as desired by the PO.

The Enquiring Authority examined
the charged officer and cleared some points
of the above mentioned case.

As the inquiry is completed, the Presenting
officer will submit his written brief of
the case within 10 days from today with
a copy to the charged officer.

The charged officer will also submit
his written ^{within 10 days} defence on receipt of the
written brief from the Presenting officer, by
Regd. Post. to the Enquiring Authority. Contd.

Shri Loknath Roy.
26/05/04

(18)

(2)

(314)

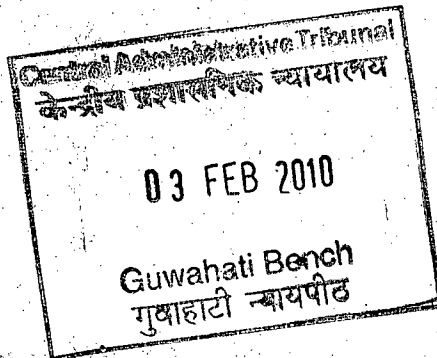
Copy to: -

- (i) the charged offices for information and necessary action
- (ii) the Presenting Officer for information and necessary action.

A 26/5/04
(R.K. Fand)
PO & DIP/Kjn.

Amsh
26/5/04.
(G. K. Seng)
Inquiring Authority &
ASPOs, Goalpara Dist.
Dibrui.

Pratibha Ray
26/5/04



Department of Posts India.

(19)

Inquiry Report of Rule-10 case framed against Shri Loknath Roy. GDS BPM. Dakshin Bijni Bo. in a/w Bijni S.O. (now under Put off duty) under Rule-10 of DOP. - GDS (Conduct and Employment) Rules-2001.

The undersigned Shri G. C. Das. Asstt. Supdt. of Pos, (Hd) Goalpara Divn - Dhubri had been appointed as Inquiry Authority to enquire into the charges leveled against Shri Loknath Roy GDS - BPM. (now under Put off duty) Dakshin Bijni Bo. in a/w. Bijni S.O. vide Sp03, Goalpara Division, Memo no. F6-2/2001-2002 dt 13.8.03.

2. Shri R.K. Farid, the SdGPO3, Kokrajhar Sub-Division had been selected as Presenting Officer of this case vide Sp03, Goalpara Divn - Dhubri memo. no. F6-2/2001-2002 dt. 13.8.03. Accordingly Mr. Farid acted as Presenting officer with his full co-operation.
3. Shri Adyanath Mahanta, APM. (S3) of Dhubri H.O. had been Proposed by the Charged officer as his Defence Assistant, which was accepted by the undersigned with due Permission from the Controlling authority of Shri A. N. Mahanta vide Sp03, Goalpara Divn - Dhubri and accordingly he has been acted as Defence Assistant in the case.

Article of Charges framed against Shri Loknath Roy. GDS - BPM. Dakshin Bijni Bo. were that —

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Contd. to Page - 2

The charged officer has been given reasonable opportunity to submit his written brief/defence through the codesheet dt 26.5.04. Further he was reminded to submit his written defence through Regd A/D. letter no. A1/Rule-10/2003-2004 dt 12.7.04. which was received by the charged officer (Loknath Roy) on 17.7.04. But the charged officer has not submitted his written defence till this day.

20. In Conclusion, I shri G. K. Das, Inquiring Authority of this case like to mentioned here - that, as per ExD-I (unfit medical certificate of the charged officer Loknath Roy) dt 31.12.01. it is clear that the charged officer (Loknath Roy) was suffering from nervous disorder for last several months of December/2001, but he were accepted under mentioned SB/RD deposits before the above suffering period i.e. (SB) Rs. 1000/- on 30.11.2000, Rs. 500/- on 22.2.01, Rs. 2000/- on 2.4.01, (RD) Rs. 400/- on 27.4.01, Rs. 200/- on 26.5.01, and he (charged officer) did not - credited above amount in the govt. account. Moreover PW-4 (Depositor of Dakshin Bijni SB A/c no 237021) stated during inquiry (In reply of question no. 3 of the P.O) that, he handed over the above mentioned SB deposits to the charged officer, while he was on sound health.

Further, P.W-1 (Sd/- Bougaichan) stated during inquiry (In reply of question no. 4 of the P.O) that, the charged officer was found sound health while he was found at shortage of cash of Rs. 4722.45. on 5.10.01.

Under the above circumstances, it is clear that the charges framed against Sd/- Loknath Roy charged officer stand proved.

Contd. to Page-18

(G. K. Das)
Inquiring Authority &
ASPD (Hr) Dhulian.

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NO. A1/Rule-10/2003-2004 Dated Dibrugarh 23.12.04.

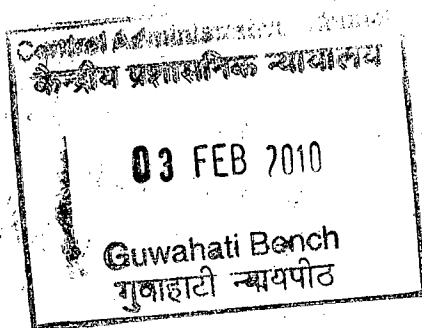
Copy to:—

- ① The Supdt. of Post Offices Goalpara Division Dibrugarh for information and necessary action.
2. Smt Loknath Roy. B.P.M. Dibrugarh Bijnor B.O. (was under Put off duty) at Dibrugarh Bijnor B.O. via - Bijnor S.O. for information and to submit this reference if any within 10 days from the d/o receipt of this letter direct to the SPOs/Goalpara Divn. under Regd. Post.

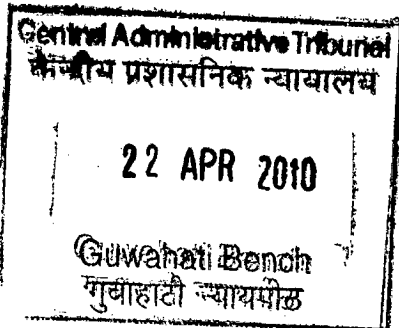
Self—

Following records/documents (G. C. Das) (Signing Authority)
are forwarded (d/w) to the Supdt. of Post Offices for further disposal.

1. Ordersheets No. 1 dt. 17.9.03, 2 dt. 30.9.03, 3 dt. 14.10.03, 4 dt. 12.12.03, 5 dt. 15.12.03, 6 dt. 3.1.04, 7 dt. 5.5.04 and 8 dt. 26.5.04.
2. Written statements of PW-1, PW-3, PW-4, PW-5, PW-2, PW-8, and charged officer (Loknath Roy) dt. 26.5.04.
3. Written brief of P.O. (Mr. R.K. Gaid.)



(G. C. Das)
Signing Authority



Filed by:
The Applicant
1
Through
Shriy Ar. Das
Advocate
22/4/10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::

GUWAHATI BENCH:: GUWAHATI::

QA No. 143/2009.

BETWEEN

Loknath Ray.

APPLICANT

-Versus-

Union of India and Ors

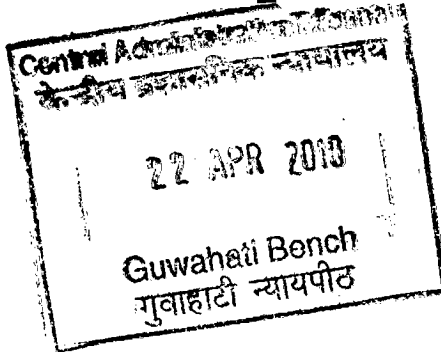
RESPONDENTS

REJOINDER

1. That a copy of written statement has been served upon the applicant. The applicant has gone through the same and understood the contents thereof. The statements which are specifically admitted herein below, other statements made in the written statement are categorically denied and the respondents are put to the strictest proof thereof.
2. That with regard to the statements made in Para 2 of the written statement the deponent does not admit anything contrary to the relevant records of the case.
3. That with regard to the statements made in Para 3 of the written statement the applicant does not admit anything contrary to the relevant records of the case.
4. That with regard to the statements made in Para 5 of the written statement the applicant while denying the contentions made therein begs to state that the applicant

Lok Nath Ray.

Received
22/4/10 at
4 PM



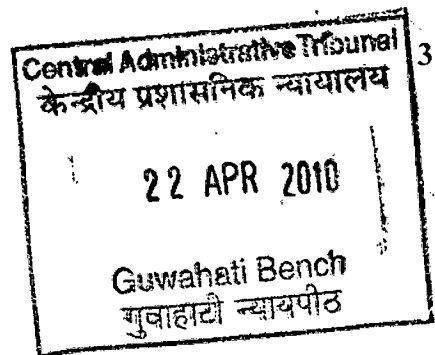
being unaware of the jurisdiction of this Hon'ble Tribunal making a bonafide mistake approached the Hon'ble Gauhati High Court within the limitation period by way of filling WP(C) No. 3240/07 wherein the respondents contested the case by filling affidavit in opposition. Therefore, the Hon'ble High Court vide order dated 30.01.09 remanded the matter to the Hon'ble Tribunal for adjudication of the matter on merit condoning the delay if any. Hence, the objection of delay raised by the respondents is merely a technical plea and has got no legs to stand in deciding the matter on merit.

5. That with regard to the statements made in Para 6 of the written statement the applicant does not admit anything contrary to the relevant records of the case.

6. That with regard to the statements made in Para 7 of the written statement the deponent begs to state that the respondents failed in totality to consider the medical certificate dated 31.12.01 at Annexure- 2 of the O.A., wherein it has been categorically stated that the applicant is a psychiatric patient and under examination of the doctor. It is stated that in spite of his illness he never disobeyed his duties and served the department to the best of his abilities.

7. That with regard to the statement made in Para 8 of the written statement the deponent while denying the contentions made therein and reiterating and reaffirming the contentions made in the O.A. begs to state that due to his sickness the applicant was unable to attend duty w.e.f. 01.10.01 to 05.10.01 i.e. during the visit of the inspector and vide order dated 12.10.01 the applicant was placed under suspension retrospectively w.e.f. 05.10.01. Therefore, prior to submission of his leave application the applicant was placed under suspension.

Lok Nath Ray.

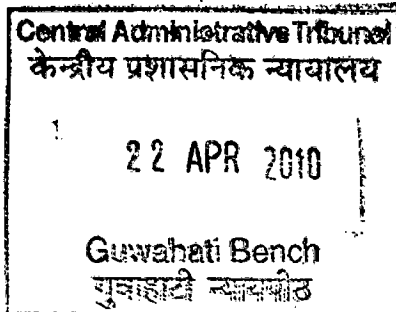


8. That with regard to the statements made in Para 9, 16 and 19 of the written statement the deponent while denying the contentions made therein and reiterating and reaffirming the contentions made in the O.A. begs to state that the applicant failed to attend his duty w.e.f. 01.10.01 to 05.10.01 due to his sickness and before he could submit his leave application he was placed under suspension. It is not the case that the applicant was absconding or unauthorizedly absent which lead to denial of subsistence allowance which can be easily understood from the fact that the respondents did not initiate any departmental proceeding for his absence w.e.f. 01.10.01 to 05.10.01. Therefore, the action on the part of the respondents in denying subsistence allowance is in clear violation of Article 21 of the Constitution of India and on this score along the entire proceeding vitiated. ✓

9. That with regard to the statements made in Para 10 of the written statement the deponent begs to state that the Learned Chief Judicial Magistrate rejecting the prosecution story granted acquittal to the applicant in the criminal case lodged against the applicant after examination of all the materials on record and basing on the same set of facts and evidences. Hence, the different findings arrived at by the I.O. and the agreement of the Disciplinary authority to the finding of the I.O. on the identical set of facts and evidence is grossly illegal and liable to be set aside and quashed.

10. That regard to the statements made in Para 11 of the written statement the deponent dos not admit anything contrary to the relevant records of the case.

Lok Nath Ray.

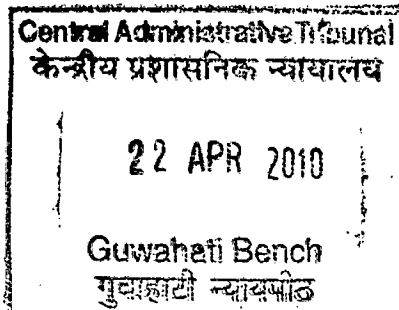


11. That with regard to the statements made in Para 12 of the written statement the deponent begs to state that respondents in clear violation of Article 21 of the Constitution of India did not grant the subsistence allowance to the applicant and issued the charge sheet dated 05.06.03 and finally imposed the penalty of removal from service with retrospective effect which is per se illegal and contrary to the law laid down by the Apex Court in this regard. Hence, the law is well settled that non payment of subsistence allowance causing serious prejudice and imposing penalty of removal from service with retrospective effect vitiated the entire proceeding and on this score alone the impugned order is liable to be set aside and quashed.

12. That with regard to the statements made in Para 13 of the written statement the deponent begs to state that taking into consideration his denial of all the charges regular departmental proceeding was initiated against the applicant. There was no admission of the charges on the part of the applicant. So far as mental illness is concerned, it is already substantiated by the Doctor certificate dated 31.12.01 and 22.09.03 which were not disputed by the respondents neither in the departmental proceeding nor in the present proceeding.

13. That with regard to the statements made in Para 14 and 21 of the written statement the deponent while denying the contentions made therein and reiterating and reaffirming the statements made in the O.A. begs to state that the respondents have initiated the entire departmental proceeding in gross violation of the statutory provisions of Rule 14(18) of the CCS(CCA) Rules as no opportunity was given to the applicant by the I.O. to the applicant to explain the circumstances appearing in the evidence against

Lok Nath Ray

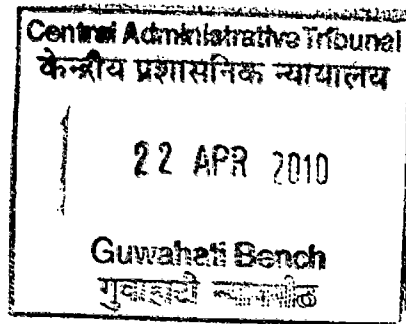


him. It is further stated that the I.O. exceeded his domain acting as prosecutor by putting leading questions to the applicant which is also not at all sustainable in the eye of law and reveals biasness of the I.O. Hence on this score alone the entire proceeding vitiated.

14. That with regard to the statements made in Para 15 and 20 of the written statement the deponent begs to state that the law is well settled that in the department and criminal proceeding charges are sought to be proved in different parameters. But when the witnesses in both the proceedings are identical and the charges are sought to be proved basing on similar facts and evidence, in such an eventuality the action on the part of the respondents in not considering the acquittal in the criminal proceeding and coming to a different finding in the departmental proceeding basing on same evidence and witnesses is illegal and is violative of the administrative fairness as well as Constitutional mandate. In the instant case the respondents in spite of clear cut acquittal of the applicant in the criminal proceeding came up with a different finding in the departmental proceeding on same set of facts, evidence and witnesses which is not at all sustainable in the eye of law and on this score alone the impugned order is liable to be set aside and quashed.

15. That with regard to the statements made in Para 17, 18, 22 and 23 of the written statement the deponent while denying the contentions made therein and reiterating and reaffirming the statements made in the O.A. begs to state that from the bare reading of the order dated 14.06.05 [Annexure- 11, Page- 64], it can very well be construed that the disciplinary authority never applied mind while imposing the penalty of removal from service. The order of the disciplinary authority is only the cut and paste of the

Lok Nath Ray.

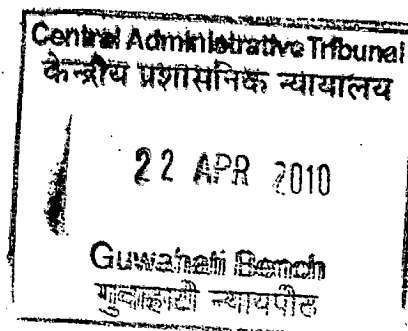


inquiry officer's report and reveals clear non application of mind of the D.A. The law is well settled that the order of disciplinary authority must cite reasons for his agreement with the views of the inquiry officer. Hence the order of the disciplinary authority is cryptic and non speaking and liable to be set aside and quashed.

16. That the applicant begs to state that the respondents by not giving reply to the statements made in Para 5.7 have admitted the fact that they have committed serious illegality by giving retrospective effect to the impugned order imposing penalty which is contrary to the decision of the Government of India in this regard. Hence on this score alone the entire proceeding vitiated and the impugned orders are liable to be set aside and quashed.

17. That in view of the aforesaid the present original application deserves to be allowed with cost.

Lok Nath Ray.



VERIFICATION

I, Sri Loknath Ray, aged about 45 years, son of late Anada Mohan Ray, resident of Kumargaon, Kachdoha, P.O- Dakhin Bijni, District- Chirang, Assam do hereby solemnly affirm and verify that the statements made in the accompanying application in paragraphs _____

are true to my knowledge, those made in paragraphs _____ being matters of records are true to my information derived there from and the grounds urged are as per legal advice. I have not suppressed any material fact.

And I sign this verification on this the 22nd day of April, 2010 at Guwahati.

Lok nath Ray.

APPLICANT