

(RESERVED ON 24.04.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This the **15th** day of **MAY 2018**.

ORIGINAL APPLICATION NO. 467 OF 2015

HON'BLE DR. MURTAZA ALI, MEMBER (J).

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

1. Mahesh Chandra Sharma aged about 56 years, S/o Late Basudev Sharma R/o – Gaur Market Gate No. 2 Anaj Mandi, Bye pass Mathura.

.....Applicant.

VERSUS

1. Union of India, through Secretary, Ministry of Communication Deptt of Postal, Dak Bhawan Sanshad Marg, New Delhi.
2. Chief Post Master General U.P. Circle, Lucknow.
3. Director of Postal Services O/o PMG Agra Region Agra-I.
4. S.S.P.O. Mathura Division, Mathura

.....Respondents

Advocate for the Applicant : Shri Bhagirathi Tiwari

Advocate for the Respondents : Shri L.P. Tiwari

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, Member-A)

The present Original Application (in short OA) has been filed by the applicant under Section-19 of the Administrative Tribunals Act, 1985 seeking the following main reliefs:-

- “(a) To issue directions/orders/writ in the nature of certiorari quashing the impugned orders dated 28.06.2013 (A-1), 05.12.2013 (A-2) and 01.09.2014 (A-3).
- (b) To issue directions/orders/writ commanding respondents in the nature of mandamus for withdrawing/setting aside the impugned orders dated 28.06.2013 (A-1), 05.12.2013 (A-2) and 01.09.2014 (A-3).
- (c) To consider for issuing orders or directions/writ, in the nature of mandamus commanding the respondents to give all consequential benefits including pay and allowances for

dismissal period and to immediately reinstate the applicant in service."

2. The facts as stated in the O.A. are that the applicant was appointed on 23.04.1983 after through advertisement and interview followed by verification of educational qualification and training, on the post of Postal Assistant at Head Post Office, Mathura. The applicant was confirmed and was given TBOP after 10 years and BCR promotion after 16 years of satisfactory service. It is stated that on the basis of some complaints, the applicant was suspended vide memo dated 29.03.2011 (Annexure No.A-4) pending disciplinary proceedings. The suspension order issued on 29.03.2011 was neither reviewed before 90 days violating provisions of Rule 10 (6), nor it was extended after 90 days. Thereafter, the respondent no. 4 vide memo dated 11.10.2011, (Annexure No. A-5 to the O.A.) served a charge sheet dated under Rule 14 of CCS(CCA) Rules, 1965, for alleged irregularities in RD passbooks, ledgers and withdrawals amounting to Rs. 6,000 and Rs. 3,29,000/- during the period from 05.07.2008 to 31.06.2010 from some of the accounts of the depositors and thereby the applicant did not perform his duties as required under rules and alleged to have violated provisions of rule 3 (1) (i) and 3 (1) (ii) of CCS Conduct Rule, 1964. The applicant vide letter dated 17.10.11 (Annexure No. A-6) denied all the charges leveled against him. The inquiry officer submitted inquiry report dated 03.06.2013 (Annexure No. A-7) and the copy of the same was sent by the disciplinary authority to the applicant on 06.06.2013. The applicant submitted representation dated 30.06.2013 (Annexure No. A-8) against the inquiry report before the disciplinary authority stating therein about non-submission of records about verification of signature of depositors, silence of the inquiry officer in the matter of seeking opinion from hand writing expert to prove who have signed the withdrawal forms,

non-production of original specimen signature of depositors at the time of recording statements during inquiry and non-summoning some witnesses to prove the charge against applicant etc. Thereafter, the respondent no. 4 vide memo dated 28.06.2013 imposed the penalty of dismissal from service upon the applicant. The applicant submitted an appeal dated 07.07.2013 (Annexure No.A-9 to the O.A.) to the respondent no. 3 against the penalty order and the respondent no. 3 vide order dated 22.11.2013/05.12.213 (Annexure A-2) rejected the appeal. Thereafter, the applicant preferred a revision petition dated 23.03.2014 (Annexure No. A-10 to the O.A.) before respondent no. 2 which was also rejected vide order dated 01.09.2014 (Annexure A-3).

3. It is further stated in the OA that the departmental proceeding was conducted violating statutory procedure of Rules 14 (3) (ii) (b) of the CCS/CCA Rules, 1965 as the list of witnesses by whom the Article of charge was proposed to be sustained was not enclosed with the charge sheet but during the proceedings 13 prosecution witnesses were produced, who were actually the account holders and officials submitting statements as documentary evidences for the allegations. The cross examination of the witnesses was not allowed to the CO violating provisions of Rule 14 (14) and 14(15) of CCS (CCA) Rules, 1965. The inquiry report also reflected that the settlement of claims of alleged defrauded amount have also been accepted by the complainants as such there remained no occasion to continue the proceedings. There was no analysis in the inquiry report as to who defrauded the amounts and who made forged signature in withdrawal forms. There was no discussion how the applicant was responsible for any

irregularity and how the amounts have been treated as paid to the complainants.

4. It has also been alleged in the OA that one Shri B Arya, deputy SPO, Jhansi in his statement dated 14.08.2012 and 28.08.2012 stated that the applicant committed fraud in SB/RD Accounts. Shri Arya was made as PW2 but he did not disclose how the applicant was responsible for irregularity or fraud which was unspecified. It has also been alleged that the inquiry officer had violated the provisions of Rule 14 (11) (ii) and 14 (17 & 18) of CCS/CCA Rules, 1965. The written statement of defence dated 04.01.2013 submitted by the applicant was treated as deposition of C.O. The defence statement included the allegations being based for wrong facts, all the withdrawal forms being signed by depositors required expert opinion by handwriting expert and the inquiry officer did not analyze the written statements submitted by C.O.

5. In the counter affidavit filed by the respondents it is stated that the applicant had misappropriated Government money from the RD Accounts of the post office during the period 05.07.2008 to 31.06.2010. He withdrew money from the RD Accounts by making fake signature of depositors. For these lapses on the part of the applicant, he was proceeded under Rule 14 of CCS (CCA) Rules, 1965 vide memo dated 11.10.2011 (Annexure A-5) and finally the applicant was awarded the penalty of dismissal from service. The appeal and revision petitions preferred by the applicant against the punishment order were also dismissed by the respondents. It is also submitted that all the depositors have denied to have withdrawn any money from their respective RD Accounts and they have also declared that their signatures do not tally with specimen

signatures available in SB-3 as well as specimen signature book and as such no opinion of hand writing expert in the instant case was needed as there was no dispute regarding signatures of the depositors. It is further stated that the inquiry officer completed the inquiry as per provisions of Rule 14 of CCS (CCA) Rules, 1965. After examination of prosecution witnesses the applicant submitted his defence brief on 4.01.2013 and thereafter, the date for his personal examination by inquiry officer was fixed on 27.02.2013 as there was no defence witness to be examined. But before his personal examination, an application dated 25.02.2013 was received by inquiry officer from the applicant in which he stated to treat his defence statement as his personal examination and further stated that he has nothing to say. Further, it is submitted that due opportunity was given to both the depositors of RD Account No. 279502 & 279579 to attend oral inquiry as per the prescribed procedure under Rule-14, by giving registered notice to both the depositors. But they did not attend the inquiry for the reasons best known to them. However, there are documentary evidences to prove that the withdrawals have been made from their RD Accounts fraudulently by making their forged signatures on the withdrawal form by the applicant. All the other depositors who attended the inquiry, have denied that they withdrew money from their RD Accounts and further added that their money has been withdrawn fraudulently. It is also submitted that the inquiry was conducted as per departmental rules. During the course of the inquiry 96 documents and 13 prosecution witnesses were produced by prosecution side. No defence witness was produced by the applicant during the course of inquiry.

6. The applicant filed rejoinder affidavit basically reiterating the facts stated in the O.A.

7. Both the parties have filed their respective written submissions. In the written submission filed by the applicant it is stated that suspension order dated 29.03.2011 is arbitrary and it was not in force after 90 days, as no order of extension was received or issued before lapse of 90 days. As per Rule 10 (6) & 10 (7) of CCS (CCA) Rule 1965 a charge sheet is to be issued within 90 days, but in this case it was issued on 11.10.2011 i.e., after 7 months of suspension. In the written submission filed by the respondents it is submitted that the charge of misappropriation has been proved by the witness and material available on record.

8. The main grounds of the applicant as per his pleadings as well as the submissions by which the punishment orders have been challenged are as under:-

- (i) The suspension order dated 29.03.2011 has lapsed after 90 days i.e., from 27.06.2011 and the charge sheet was issued on 01.10.2011 i.e., after 7 months which is against the provisions of Rule. The charge sheet dated 01.10.2011 was issued without application of mind.
- (ii) Disciplinary proceeding including the inquiry was held in violation of Rule-14. No signature of the depositors was obtained nor it was verified from the Government experts and no cross examination of the witnesses was undertaken in the inquiry. Thus, it inquiry proceedings violated the principles of natural justice.
- (iii) The representation of the application dated 30.06.2013 was not considered by the disciplinary authority while imposing the penalty.
- (iv) The Appellate Authority did not consider the appeal dated 07.07.2013 (Annexure No. A-9).
- (v) The Revisionary Authority did not consider the revision application of the applicant and the Revisionary Authority came to a wrong conclusion by rejecting the revision. He did not consider the request of the applicant to obtain expert opinion on the depositors signature which are alleged to be forged in the charge sheet. This charge of forgery against the applicant is not supported by any evidence in the inquiry.

(vii) The applicant who rendered 31 years of service cannot be subjected to disproportionate punishment and he would be without pension.

9. Learned counsel for the applicant has also cited following judgments in different cases in the written submission filed by him:-

- (i) Union of India Vs Dipak Mali (2010 Volume-II SCC 222)
- (ii) Ajay Kumar Chaudhary Vs U.O.I. para 14 in Civil Appeal No. 1912 of 2015 SLP 31761/13 judgements of Hon'ble Supreme Court on 16.02.2015.
- (iii) (1970) 3 SCC 548 para 5 in Surath Chandra Chakravarti Vs State of West Bengal
- (iv) Zunnarrao Bhikyi Nagrkar Vs U.O.I para 4.2 of (1999) 7 SCC 403.
- (v) State of Punjab Vs V.K. Khanna para 33, 34 & 37 (2001 2 SCC 330, (vi) K.V. Shephard Vs. U.O.I. para 9.
- (vii) U.O.I. Vs J. Ahamad (1992) SCC 286.
- (viii) AIR 1987 SC 1892, Mahaveer Singh Vs Co-operative Aurangabad.
- (ix) Constitutional Bench decision AIR 1963 SC 375, State of Mysoor Vs S.S. Makapur,
- (x) AIR 1981 SC 1068, SLJ 3 SC 46 Chamoli District Co-operative Bank Vs Swadeshi Cotton Mill.
- (xi) 2016 (3) SLJ 1 Surjeet Bhamsen Vs Bank of India,
- (xii) CMD Uco Bank Vs P.C. Kakkar 2003 (4) SCC 364
- (xiii) Roop Singh Negi Vs Punjab National Bank 2009-1 SCC L & 398,
- (xiv) State of U.P. Vs S.K. Sinha, 2010
- (xv) Sher Bahadur Vs U.O.I. AIR 2002 SC 3030
- (xvi) U.O.I. Vs Parmand 1989 (2) SCC 177
- (xvii) Ministry of Finance Vs S.B. Ramesh 1998 SCC L & S 865.
- (xviii) 2006 (10) SCC 368 U.O.I. Vs D.P. Tiwari
- (xix) AIR 2010 SC 2478-Para-14
- (xix) AIR 2010 SC 2478 Para-14, Indu Bhushan Dwivedi Vs State of Jharkhand
- (xx) Kashi Nath Dixit Vs U.O.I. -1986 SCC 2118, AIR 2006 SC 3533, AIR 1995 SC 71 U.O.I. Vs Mohd. Ramzan Khan, U.O.I. Vs S.K. Kapoor, order dated 16.03.2011 Civil Appeal No. 5341 of 2006.
- (xxi) Brij Bihari Singh Vs Bihar State of Corporation Civil Appeal No. 1217 of 2011 decided on 20.11.2015
- (xxii) State of J & K Vs R.K. Jalpuran Civil Appeal No. 58340-91 of 2014 SLP 11203-11204 of 2014.

10. The respondents on the other hand have contradicted above contentions and submitted the following grounds in their pleadings as well as submissions:-

- (i) The applicant is the main offender in recurring deposit fraud case in SKJ Post Office, Mathura & he has misappropriated

Rs. 3,35,000/- deliberately and deserved a severe punishment. The allegation with regard to misappropriation of the said amount has been proved by the witness and material available on record.

- (ii) The appeal and revision filed by the applicant have also been rejected.
- (iii) Each account holder who were produced as prosecution witnesses had stated that the amount from their account has been withdrawn fraudulently by using forged signature.
- (iv) The applicant did not file any application to prove the forged signature through hand writing expert.

11. We have considered the submissions of learned counsels for both the parties and also perused the materials on record. The relevant issues in this case are:-

- (i) Whether the contention of the applicant that charge of fraudulent withdrawal is not proved as the signatures of the depositors have not been verified or examined by hand writing expert is correct.
- (ii) Whether the contention of the applicant that the inquiry held by the inquiry officer as well as the disciplinary proceeding have been vitiated as pleaded by the applicant in the OA.

12. Regarding the issue at (i) of para 11 above, regarding non-verification of signatures by the hand writing expert, the respondents in the para-22 of their counter reply have stated that the witnesses have denied to have put their signatures on withdrawal forms and signatures do not tally with the specimen signature in SB-3 and since, there is no dispute regarding signature of depositors, the matter was not referred to hand writing expert. This was also a ground mentioned by the Appellate Authority in his order dated 22.11.13/05.12.2013. However, it will not be correct to say that there is no dispute in this regard, as the applicant is consistently submitting this point to the disciplinary authority and to the appellate authority about it, who have rejected it by stating that there is no dispute about it as the account holders have stated that these were not their signatures.

13. On the issue at (ii) regarding the contention of the applicant in the OA that the inquiry held by the inquiry officer is vitiated and there is violation of the principles of natural justice, it is seen that following reasons in support of such contention have been mentioned in the OA:-

- The list of witnesses was not enclosed with the charge-sheet as required under the rule 14(3)(ii)(b) of the CCS(CCA) Rules, 1965 in spite of the fact that 13 prosecution witnesses were examined.
- Cross-examination of the witnesses was not allowed to the applicant violating the sub rules 14 and 15 of the rule 14 and the inquiry officer recorded his findings only on the basis of the statements of the account holders.
- There is no analysis as to who made forged signatures in withdrawal forms and how the applicant was responsible for it and how the amounts have been treated as paid to the complainants.
- The opinion of the handwriting expert was not taken about tallying signatures on withdrawal forms with specimen signatures.
- Inquiry officer has violated the sub rules 11(ii) and 17 of the rule 14 of CCS (CCA) Rules, 1965. The Rule-14 (18), which mandates the inquiry officer to generally question the charged officer on the circumstances appearing against him in the evidence to enable the Government Servant to explain, was also not followed.
- Inquiry officer has not analyzed the written brief dated 25.04.2013 furnished by the applicant.

14. To examine the points mentioned in the OA as listed above, the copy of the inquiry report dated 30.07.2013 (Annexure No A-7 to the OA) was referred to. The said inquiry report mentions the following charges against the applicant:-

“Annexure – I

Statement of imputations of misconduct or misbehavior against Shri Mahesh Chand Sharma PA (U/S) Mathura HO in brief

Article-I :- Shri Mahesh Chandra Sharma PA (U/S) Mathura HO while he was working as SPM SKJ PO Mathura for the period 05.07.2008 to 31.01.10 accepted a sum of Rs. 2000/- on 18.11.08 & 20.05.10 @ Rs. 1000/- on each date from the depositor of SKJ PO RD A/c No 299496 to be deposited in the a/c. He made entry of these deposits in RD PB, date stamped it on each occasion and returned the same to the depositor after his initials. But he failed to account for this money into

the Govt A/c of SKJ PO & misappropriated the same at his own accord. Similarly he also accepted a sum of Rs. 4000/- on 20.05.2010 and 18.11.08 @ Rs. 2000/- on each date from the depositor of SKJ PO RD A/c No. 279495 to be credited into this a/c. He made deposit entry in the RD PB on respective dates, date stamped the RD PB and then returned it to the depositor after his initials for satisfaction of the depositor but he failed to account for the sum of Rs. 4000/- into Govt. a/c of SKJ PO Mathura and misappropriated the sum of Rs. 4000/- for his personal use.

Thus by acting in the aforesaid manner said Shri Mahesh Chand Sharma failed to perform his duties faithfully violating the provision of Rule No. 106 of PO SB Manual Volume part I and thereby he is also alleged to have act in contravention of Rule No. 3 (1) (i) and 3 (1) (ii) of CCS (conduct) Rules, 1964.

Article II:- Shri Mahesh Chand Sharma PA (U/S) Mathura HO while he was working as SPM SKJ PO Mathura during the period 05.07.08 to 31.06.10 failed to maintain absolute integrity in as much as he withdrew the money from the following RD A/cs of SKS PO Mathura fraudulently on the date as noted against each by making the forged signatures of the depositors.

Sl No	A/c No	Date of withdrawal	Amount of w/d
1	279482	26.08.09	18000
		12.03.10	22000
			} Rs.40000
2	279495	11.12.08	19000
3	279496	20.05.10	20000
4	279502	11.05.10	22000
5	279589	15.04.10	21000
6	279827	03.03.10	17000
7	279840	21.04.10	24000
8	279896	17.02.10	26000
		25.02.10	25000
			} Rs.51000
9	279905	12.08.09	17000
		09.03.10	24000
			} Rs.41000

10	279491	09.04.10	22000	
11	279507	15.10.09	17000	Rs.38000
		17.03.10	21000	
12	279818	01.10.09	14000	

Said Shri Sharma made entries of these w/ds in the RD long book and So A/c of SKJ PO on respective date but did not make the entry of these above W/Ds in RD PB as well as respective lodger cards of SKJ PO and thus misappropriated a sum of Rs. 3,29,000/- for his personal use.

Thus said Shri Mahesh Chand Sharma failed to perform his duties as required of him vide Rule No. 113 of PO SB manual volume Part I and he is also alleged to have infringed the Rule No. 3 (1) (i) & 3 (ii) of CCS (Conduct) Rules, 1964."

15. The charges against the applicant are related to the alleged misappropriation by the applicant of the amounts deposited by some of the account holders by not reflecting in government accounts while reflecting it in the pass books and fraudulent withdrawals from some of the accounts and reflecting the same in government accounts but not in the pass books as well as ledger cards and with the help of forged signatures on the withdrawal forms. It is seen that both oral and documentary evidences were produced before the inquiry officer and the statement of prosecution witnesses recorded by the inquiry officer were discussed in the inquiry report. In all the cases the signatures of the depositors on the statement and the specimen signature did not tally with the signature on the withdrawal forms in question to prove the charge of fraudulent withdrawal. The findings of the inquiry officer in the inquiry report in respect of one account, where amount deposited has not been accounted for in government account, are stated as under:-

"1 (i) Km Surjeet Kaur PW 12 has confirmed opening of RD A/c No. 279495 on 17.08.06 at SKJ PO for Rs. 2000/- p.m. She has also confirmed the pass book Exk 7 with balance of

Rs. 120000/- on 25.07.2011 without any withdrawal. The pass book Exk 7 bears the entry of deposit dated 20.05.10 for Rs. 2000/- with balance of Rs. 92000/- The ledger of this a/c Exk 10 has no this deposit entry dated 20.05.10 for Rs. 2000/-. As per RD Journal Exk 70 and RD LOT Exk 76 there is no deposit entry for Rs. 2000/- in RD A/c No 279495. As per Exk 76 total RD Deposit (without deposited amount of Rs. 2000/- shown in pass book Exk 7) has been entered in SO A/c Exk 72. As such it is clear that the deposit dated 20.05.10 for Rs. 2000/- entered in pass book Exk 7 has not been accounted for in Govt account. Similarly the deposit entry dtd 18.11.08 for Rs. 2000/- entered in Exk7 has neither been entered in Exk 10, no Exk 66. The amount of this deposit has also not been accounted for in Exk 71. As such it is clear that the deposit dtd 18.11.08 for Rs. 2000/- entered in pass book Exk 7 has not been accounted for in Govt Account. In the charge sheet the date of this deposit dated 18.11.08 has erroneously been typed as 11.08.10. This should be 18.11.08 instead of 11.08.10 in the charge sheet.

.....
In view of the above I find that the deposits for Rs. 1000/- each on 18.11.08 & 20.05.10 in RD pass book A/c No. 299496 and deposits for Rs. 2000/- each on 18.11.08 & 20.05.10 in RD A/c No. 299495 have not been accounted for in the Govt account and thus the amount of these deposits have been misappropriated by the charged official.

Regarding transactions involving withdrawals, the inquiry report has recorded the following findings in respect of one account:-

"(ii) Km Surjeet Kaur PW-12 has confirmed her RD Pass Book A/c No 279495 Exk-7 with balance of Rs. 120000/- on 25.07.2011 without any withdrawal. She has denied to have any W/D dtd 11.12.2008 for Rs. 19000/- from her above account. She has also denied her signatures made on Exk-8 SB7. The signatures on SB-7 Exk-8 do not tally with the signatures of depositor available on SB 3 Exk-9 and also on her statement Exk-11. This W/D has also no entry in the pass bok Exk-7 but it has been accounted for in ledger Exk-10, LOT Exk-75, RD Journal Exk-67 and SO A/c Exk-71. Thus it is proved that there is M/A of Rs. 19000/- on 11.12.08 in RD A/c No 279495 by way of fraudulent W/D by the charged official."

After examining all the accounts mentioned in the charge-sheet, the inquiry officer has recorded the following conclusion in the inquiry report:-

"Conclusion:-

In view of the above the charges framed against Shri Mahesh Chand Sharma PA Mathura HO (U/S) are fully proved."

However, there is no mention in the inquiry report about the cross-examination of the witnesses by the applicant, or if they were cross-

examined, then the statements of the witnesses during such cross-examination by the applicant. Further, the list of witnesses were not provided alongwith the charge-sheet as required under the rule 14(3)(ii)(b) of the CCS (CCA) Rules, 1965.

16. Against the inquiry report dated 03.06.2013, the applicant submitted the defence statement vide letter dated 30.06.2013 (Annexure A-8) to the disciplinary authority mainly stating the point that in spite of his request, the hand writing expert opinion was not obtained by the inquiry officer on the point whether the signature of depositors on withdrawal forms tally with the specimen signature or not. It was stated by the applicant that as the opinion of the expert was not obtained, it is not justified to say that the signature of the depositors on the withdrawal forms are false or forged. It was further stated that there is no corroboration of evidence in the statements given by the prosecution witnesses as recorded by the inquiry officer. Therefore, the action of the inquiry officer to prove the charges in respect of Article-I basing only on the prosecution witness statement is incorrect. It was also pointed out that the inquiry officer did not follow the correct procedure as per the guidelines which stated that the statements of the witnesses recorded at the preliminary inquiry may be read out to them during the oral inquiry and if it is admitted by them, then the cross examination of witness may commence straightaway. But the inquiry officer recorded the statements of witnesses during the oral inquiry again in contravention of the departmental instructions dated 11.06.1976, for which the inquiry was vitiated. It was further pointed out that three prosecution witnesses could not be produced in the inquiry. It was further pointed out in the defence

statement that for these reasons the charges against the applicant have not been proved by the inquiry officer.

17. In the appeal dated 07.07.2013 (Annexure No. A-9 to the OA), the applicant has taken the following grounds:-

- (i) The representation submitted to the disciplinary authority was rejected by the respondents without assigning any cogent reason. The said representation was not considered while inflicting harsh punishment of dismissal from service upon the applicant.
- (ii) The applicant requested the inquiry officer as well as the disciplinary authority to obtain the opinion of handwriting expert to find out whether the signature of the depositors tally with their specimen signature or not. However, this was not accepted by them. The money was withdrawn by the depositors by their own signature. Hence this action was very essential.
- (iii) The contention of the disciplinary authority that the charged official had admitted his guilt in written statement during preliminary investigation is not tenable because the previous statement of a person cannot be taken as evidence until the same is confirmed and admitted by that person during oral inquiry. There is no evidence on file or record to show that the applicant withdrew amount as cited in the charge-sheet by forged signature of the depositors.
- (iv) The conclusion of the disciplinary authority that the written statement dated 27.08.2011 substantiates the charges against the applicant is not tenable.
- (v) The prosecution witnesses i.e., the depositors of RD Account no. 279502 and 279579 were dropped by the inquiry officer without any consent of the charged officer while the evidence of all the prosecution witnesses was essential

18. The Appellate Authority in their order dated 05.12.2013 (Annexure No. 2 to the OA) considered the grounds mentioned in the appeal filed by the applicant and observed the following:-

- (i) The plea of the applicant that the representation on inquiry report was not considered by the disciplinary authority is not acceptable as each and every para of the representation was considered before passing of the punishment order dated 28.06.2013.
- (ii) The signature on SB-7 was produced during the course of inquiry. Moreover, the signature of the depositors do not tally with specimen available in SB-3 of respective accounts as well as specimen book of the post office for the period and as such

- no opinion is needed from the handwriting expert where there is no dispute regarding signature of the depositor.
- (iii) All the SB-3 (Index Cards) of respected RD Accounts were produced during the course of oral inquiry and the SB-& (withdrawal forms) on them the fake signature were made by the ex-official were also available in the inquiry and the all the depositor who attended the inquiry have denied their signature on all the SB-7. Apart from this the official had himself admitted this version in the written statement dated 28.07.2011 recorded during the course of preliminary inquiry of the case.
 - (iv) The written statement dated 28.07.2011 has been confirmed by PW-2 Shri B Arya the then ASPO's (W) Mathura during the course of the inquiry and as such the version of the official can be said as true. All the depositors have totally denied that they withdrew any money from their respective RD Accounts and they have also stated that their signatures do not tally with the specimen signature available on SB-3 and specimen book etc therefore there is no need of any hand writing expert in this case.
 - (v) Money tendered by both the depositors has not been taken into A/c by the official through he had made entry of this deposit in respective RD PB No. 279495 & 279496, date stamped the RD PBs with the date stamp of SKJ PO. But no entry of this deposit was made in the RD ledger card, long book & SO A/c of SKH PO. Thus, it is clear that this amount of deposit has been misappropriated by the applicant.
 - (v) Due opportunity was given to both the depositors of RD Ac no. 279502 and 279579 to attend oral inquiry as per prescribed procedure of Rule 14 inquiry by giving registered notice to both the depositors. But they did not attend the inquiry for the reasons best known to them. However, there is documentary evidence to prove that the withdrawals have been made from their RD Account fraudulently by making their forged signature on the SB-7 by the applicant.
 - (iv) The applicant is the principal offender of the RD Fraud case of SKJ PO involving the amount Rs. 1084659/-. He had blemished the image of the department in the eyes of public and depositors as well. Therefore, he deserved no sympathy.

Citing the above reasons, the appellate authority rejected the appeal dated 7.07.2013 of the applicant and confirmed the punishment order.

19. It is noticed that many of the points mentioned by the applicant in the OA to challenge the inquiry report as discussed in para 13 of this order were not mentioned or raised by the applicant in his representation dated 30.06.2013 on the inquiry report to the disciplinary authority and in his

appeal dated 07.07.2013 (Annexure A-9). The points like list of witnesses not enclosed to the charge-sheet as required under the Rule 14(3)(ii)(b), refusal of the inquiry officer to allow cross-examination of the prosecution witnesses, violation of the sub rule 11(ii), 14, 15, 17 and 18 of the Rule 14 of the CCS(CCA) Rules, 1965 by the inquiry officer and absence of analysis by inquiry officer as to how the applicant was responsible etc. had not been raised by the applicant in his representation dated 30.06.2013 to the disciplinary authority and appeal dated 7.07.2013 to the appellate authority. However, it is noted that the Rule 27 of the CCS (CCA) Rules, 1965 provides for how the appeal is to be considered and it states as under:-

“27. Consideration of appeal

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-

(a) whether the procedure laid down in these rules have been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case
.....”

From above, it is clear that the appellate authority is required to consider whether procedure as laid down under the rules have been followed or not and whether the findings of the disciplinary authority are warranted by the evidence and about quantum of penalty. From the impugned appeal order dated 5.12.2013 (Annexure A-2), compliance of procedure and justification for the quantum of punishment have not been discussed as required under the Rule 27. The inquiry report is silent about whether the prosecution witnesses were cross-examined or not. Further, the list of witnesses was not enclosed in the charge-sheet although their statements in the preliminary investigation were cited as documentary evidence in the charge-sheet. Further, the submission of the applicant as to how his responsibility for the forged signature and withdrawal of money from the accounts has been established during the inquiry has not been examined by the appellate authority.

20. Taking into account the contentions of the applicant about violation of rules in the inquiry and violation of the Rule 14(3)(ii)(b) in issue of the charge-sheet and denial of cross-examination of the witnesses and other points mentioned in the OA, we are of the considered view that in the interest of justice, the case is required to be re-examined by the appellate authority. Hence, the impugned order dated 5.12.2013 and 1.09.2014 are set aside and quashed and the matter is remanded to the appellate authority to re-examine the appeal in the light of the observations in this order in accordance with the Rule 27 of the CCS (CCA) Rules, 1965 and dispose of the same within three months from the date of receipt of a copy of this order. The applicant is at liberty to submit a fresh appeal raising the grounds raised in this OA alongwith a copy of this order and copy of

his earlier appeal dated 7.07.2013 to the appellate authority within 15 days of receipt of a copy of this order and if such a fresh appeal is received in stipulated time, the appellate authority shall consider the same alongwith his appeal dated 7.07.2013, treating these appeals to have been filed within the time as stipulated under the rules before passing his order as directed above.

21. The OA is allowed in terms of the directions in paragraph 20 above.
No costs.

(GOKUL CHANDRA PATI)
MEMBER-A

(DR. MURTAZA ALI)
MEMBER-J

Arun..