CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1315 OF 2013
New Delhi, this 8th day of May, 2017

CORAM:
HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
é é é ..

Ambika Prasad,
S/o Shri Ram Prasad,
PA, Agra Fort HO (Head Post Office) é é .. Applicant

(By Advocates: Mr.Basab Sengupta and Mr.G.S.Lobana)

Vs.

1. Union of India,
Through Secretary, Ministry of Communication,
Department of Posts,
Dak Bhawan, New Delhi.

2. The Director Postal Services
O/o the Postmaster General
Agra Region, Agra
3. The Supdt. Post Offices,
Agra Division, Agra é é é .. Respondents

(By Advocate: Mr.Rajinder Nischal)

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ORDER

Per **Raj Vir Sharma, Member(J)**:

We have carefully perused the records, and have heard Shri Basab Sengupta and Shri G.S.Lobana, the learned counsel appearing for the applicant, and Shri Rajinder Nischal, the learned counsel appearing for the respondents.

2. Brief Facts: A charge memo dated 17.11.2006 was issued by the Disciplinary Authority (DA) initiating a major penalty proceeding under Rule 14 of the CCS (CCA) Rules, 1965, against the applicant. The statement of articles of charges, statement of imputations of misconduct, list of documents by which, and list of witnesses by whom the articles of charges were proposed to be sustained, were enclosed with the said charge memo. The articles of charges levelled against the applicant are reproduced below:

> ñArticle-I
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> Shri Ambika Prasad, while posted as Sub Postmaster,m Awagarh (Etah HO) during the period 21.6.2000 to 05.07.2002 did not call for the Pass Books from the depositors for crediting interest in respect of Savings Bank Account Nos.1508366, 1511575, and 1513411. Had the said Shri Ambika Prasad called for the Pass Books for crediting interest in terms of provisions of Rule 75 of the Savings Bank Manual Volume I, the embezzlement in the Pass Books could have been detected and there had been no loss of Government money. Thus a total loss of Rs.90,000/- was caused to the Government/public money. Shri Ambika Prasad is, therefore, charged with violation of Rule 75 of Savings Bank Manual Volume I and consequently the violation of Rule 3(I)(i)(ii) of Central Civil Services (Conduct)Rules, 1964.
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> Article II
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> Shri Ambika Prasad while functioning as Sub Postmaster, Awagarh by issue of Pass Books of Savings Bank A/C No.1513258 to 1513260, showed a balance of 15 blank Pass Books in Savings Bank Stock Register on 06.10.2001. But on 06.10.2001 itself issued Pass Book of Savings Bank A/C No.1513261 with deposit of Rs.18000/- which was not shown as having been issued on 06.10.2001, in the Savings Bank Stock Register. Thus, the said Shri Ambika Prasad issued the Pass Book in a wrong manner on 06.10.2001 in the name of the said depositor with account of Rs.18,000/- and this amount of Rs.18,000/- was not taken into relevant accounts of the Post

Office. Shri Ambika Prasad is, therefore, charged that by such an act he violated provisions of Rules 6 and 27 of the Savings Bank Manual Volume I and as a result he violated Rule 3(I)(i)(ii) of Central Civil Services (Conduct) Rules, 1964.

Article III

Shri Ambika Prasad, while posted as Sub Postmaster, Awagarh by receiving 100 bank Pass Books of S.B.Accounts on 07.02.2002 made an entry in the document list No.05 dated 06.02.2002 showed as issued total 40 Pass Books in the Pass Book Stock Register on 04.02.2002, 07.02.2002 up to SB A/C Nos.1511368 to 1511407 and the remaining were shown as 60. On 05.02.2002 and 07.02.2001, in the blank Savings Bank Pass Book Stock Register, by showing issue of pass books in respect of Savings Bank A/C No.1512408, he wrongly showed a balance of 39 instead of 59 pass books. Thus, by omitting 20 pass books of Savings Bank Account, issued pass books from among these in respect of SB A/C No.1513433 on 26.02.2002 with deposit of Rs.40,000/- but the said amount was not taken into Government accounts. On 26.03.2002, by showing fake withdrawal of Rs.13,000/- a total balance of Rs.27,000/- was shown in the pass book but the same was not taken into Government Account. It is, therefore, charged that the said Shri Ambika Prasad by his such an act, misappropriated Rs.27,000/- of the said account as mentioned above, violating Rules 6,27 and 33 of Savings Bank Manual Vol.I and Rule 3(I)(i)(ii) of the CCS (Conduct) Rules, 1964.

Article IV

Shri Ambika Prasad while functioning as Sub Postmaster, Awagarh, opened a fake MIS A/C No.10020560 in the name of Shri Prempal Singh and Smt. Shanti Devi with Rs.73,000/- but the said amount was not taken into Government account. An amount of Rs.540/- was shown as payment of interest to the depositor on 02.05.2002 but the said amount was also not taken into account as payment. On 26.03.2002, as per stock Register of MIS pass books, there were 25 blank pass books of MIS Accounts after issue of pass book of MIS A/C No.10020560 on 26.03.2002 by getting issued from MSY pass book A/C fictitiously and misappropriated Rs.73,000/- of the said account. It is, thus, charged that the said Shri Ambika Prasad by such an act violated provisions of Rules 6,27 and 158

of the Savings Bank Manual Vol.I and as a result violated Rule 3(I)(i)(ii) of Central Civil Services (Conduct) Rules, 1964.ò

3. The applicant having denied the charges, the DA ordered departmental enquiry and appointed Inquiry Officer (IO) and Presenting Officer (PO). Defence Assistant was also nominated on behalf of the applicant. In the departmental enquiry, six prosecution witnesses (PWs) were examined on behalf of the Department/prosecution, and two defence witnesses (DWs) were examined on behalf of the applicant. Twenty-seven documents were produced by the prosecution/Department and marked as exhibits during the enquiry.

3.1 After analyzing the evidence, both oral and documentary, as well as the materials available on record of the departmental enquiry, the IO submitted its report on 5.5.2008 finding Articles I, II and IV of the charges as not proved and Article III of the charges as partially proved.

3.2 On 21.5.2008, the DA, disagreeing with the findings of the IO, forwarded to applicant a copy of the enquiry report together with its tentative reasons for disagreement, requiring him to submit his written representation, if any, thereto.

3.2.1 On 9.7.2008, the representation of the applicant to the enquiry report and disagreement note, was received by the DA. After considering the applicantôs representation and the materials available on record, the DA passed order dated 28.7.2008 holding Articles I to IV of the charges as fully proved against the applicant, and imposing on applicant ñthe penalty of recovery of Rs.2,08,000/- (Rupees two lac eight thousand) from his pay at

the rate of Rs.5,000/- (Rupees five thousand) per month from his pay and the penalty of withholding of annual increment for a period of 03 (three) years without cumulative effectò.

3.3 The applicant made an appeal dated 2.9.2008 against the punishment order dated 28.7.2008. Soon after making the appeal, the applicant filed OA No.793 of 2009 before the Tribunal, challenging the said punishment order dated 28.7.2008. OA No.793 of 2009 was disposed of by the Tribunal, vide order dated 27.3.2009, the operative part of which is reproduced below:

> ñ2. Without going into the merit of this case, we direct the appellate authority to deal with the appeal of the applicant dated 02.09.2008 and pass orders thereon as expeditiously as possible and preferably within a period of two months from the day a copy of this order is served upon respondents.ò

3.3.1 After considering the grounds urged by the applicant in his appeal and the materials available on record, the Appellate Authority (AA) disposed of the applicantôs appeal by passing an order dated 31.3.2009, the operative part of which is reproduced below:

> ñOn the basis of above details, though there is no merit in the appeal of the appellant on the basis of which a lenient view may be taken, yet punishment of recovery of departmental loss of Rs.2,08,000/- has also been awarded, the punishment of recovery only is sufficient against the appellant, in the interest of justice.
>
> Therefore, I, Umesh Verma, Director Postal Services, Agra Region, Agra, in exercise of powers under Rule 27 of the CCS (CCA) Rules, 1965, confirm the punishment of recovery of Rs.2,08,000/- at the rate of Rs.5,000/- from his pay, awarded against the appellant, vide Superintendent of Post Offices, Etah Memo No.F-4/5/2003 dated 28.07.2008. The punishment of

withholding of annual increment for a period of three years without cumulative effect is set aside.ò

3.4 The applicant filed OA No.1858 of 2009 challenging both the orders passed by the DA and AA. The Tribunal disposed of OA No.1858 of 2009, vide order dated 23.11.2009, the operative part of which is reproduced below:

> ñ3. In view of above, we set aside the orders of the disciplinary authority and also of the appellate authority and remit the matter back to the disciplinary authority for being taken up from the stage of receipt of the representation of the applicant to the disagreement note for passing a final order within a period of three months from the date of receipt of a certified copy of this order. Should the applicant be further aggrieved, he would be at liberty to seek redressal in accordance with law. In case, the final order is not passed within such stipulated period of time, the inquiry shall be treated as having been dropped. Since the dismissal order has been set aside, the recovery having been made so far is also to be refunded within the same period. No costs.ò

3.5 In compliance with the Tribunalôs order dated 23.11.2009(ibid), the DA again considered the applicantôs representation to the IOôs report and disagreement note and the materials available on record, and passed order dated 19.2.2010(Annexure A-1), the relevant part of which is reproduced below:

> ñAfter technical and dispassionate analysis of the facts and evidences (oral & documentary) and circumstantial witnesses adduced and produced in the course of inquiry, inquiry report of inquiry officer thereby written brief submitted by C.O. and P.O. defence statement and all related documents and all written statements of listed witnesses exhibited course of iquiry, I reach to the estimation as under:
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> Article I
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> While working as SPM Awagarh S.O. under Etah H.O., the said Shri Ambika Prasad for the period July 2000 to July 2003 did not willfully make efforts for the reason best known to

him to collect the SB pass books of account nos.158366, 1511575, 1511576 and 1513411 for posting of annual interest thereby confirmation of the balance of the pass books with the postal record. Had the said Shri Ambika Prasad while working as SPM during the period noted above obtained the pass books for the purpose noted above, the misappropriation of Government money deposited by aforesaid account holder of above noted accounts worth Rs.90000.00 could have been averted.

Article II

As per spirit of the instruction laid down in the departmental existing rules amended from time to time, the postmaster should personally receive blank pass books in numbers as advised in the invoice prepared by supplying office, physically counted and accounted for as received blank pass books and detected day by day consumption of each pass book by noting purpose i.e. New pass book No., issue of fresh pass book in lieu of old pass book used up, spoiled up etc. must be noted by SPM against his initial with date in stock register maintained for the purpose. Thus, it is crystal clear that the said Shri Ambika Prasad did not deduct a new pass book SB Account No.1513261 dated 06.10.01 opened with initial deposit of Rs.18000.00 was neither deducted in stock register of blank pass books nor the initial deposited amount Rs.18000.00 was taken in the Govt. account thereby he misappropriated Govt. money worth Rs.18000.00 by misusing of his official position. Thus, he committed/misappropriated willfully Rs.18000-00 managed to accepted as initial deposit of Awagarh SO SB account no.1513261 on 06.10.01 without any shadow of doubt by stolen one blank pass book by him by misusing his official position as SPM Awagarh S.O.

Article-III

As per facts adduced in the course of inquiry said Shri Ambika Prasad while functioning as SPM Awagarh SO had receipted 100 blank pass books on 07.2.02 through Etah HO invoice no.5 dated 06.2.02 and accordingly noted in stock register of blank pass book of Awagarh SO. The said Shri Ambika Prasad who was personalcustodian of stock register of blank pass book had willfully misued 20 blank pass books on the pretext that he had shown willfully 39 blank pass books in

stock on 05.02.02/07.02.02 after issuing pass book in favour of Awagarh SOSB account no.1512408 instead of actual lstock of blank pass book as 59 as the opening balance of blank pass books on 04.2.02 was 60 pass books in hand. By virtue of aforesaid willful offence Shri Ambika Prasad had misused Govt. money by not taking Rs.40000.00 on 26.2.02 as initial deposit of Awagarh SO SB account no.1513433, Rs.13000.00 as withdrawal from the aforesaid account on 26.3.02 thereby net misuse of Govt. money of Rs.27,000.00 and willfully acted for personal gaining against the departmental Rule No.6,27 and 33 of PO SB Manual Vol.I thereby stands clear cut misappropriation of Govt. money worth Rs.27000.00.

Article IV

Shri Ambika Prasad while acting on the post of SPM Awagarh SO on 26.3.02 manage to accept Rs.73,000.00 in shape of initial deposit for opening of MIS account no.10020560 through his P.A. and managed to prepare MIS pass book having aforesaid account no. in the name of Shri Prem Pal Singh and Smt. Shanti Devi thereby prepared/arranged to prepare the pass book from discontinued unauthorized stock of blank MSY blank pass books in fluff the account holder despite of the availability of 25 blank pass books in the stock after declaration of MIS account pass book of account no.10020546 on 26.3.02.

It is not for the fact to place mention here that SPM is whole and sole responsible for use and misuse of stamps, seal, etc., during the course of working hours/closing hours of function of PO. Thus, it is as much as clear as day of light that Shri Ambika Prasad while functioning on the post of SPM Awagarh SO has willfully misused his official position as Govt. servant and willfully purported Govt./Public document to bluff the public and arrange to misuse Govt. money thereby neck and cropely failed to maintain high degree standard of integrity and devotion to duty thereby solely responsible the loss of Govt. money amounting Rs.208000.00 + 66597 interest & bonus of MIS as detailed below by adopting lucunic sweet will and laxitic work of supervision with heinous tactics for his own ill motive purpose for personal gain, the department sustained loss as detailed below:

1. MIS Account for Rs.73000.00

	(a)Bonus	=	Rs. 7300.00
	(b) Interest	=	Rs.38340.00
	(c)PMI	=	Rs. 8304.00
2.	SB Account for	=	Rs.18000.00
	(a) Interest	=	Rs. 5250.00
3.	SB Account for		Rs.90000.00
4.	SB Account for	=	Rs.27000.00
	(a) Interest	=	Rs. 7403.00
	Total	=	Rs.274597.00

Order

I, R.S.Nigam, Sr.Supdt. of Post Offices, Agra Division, Agra-282002 the present disciplinary authority after giving due weightage of the facts, evidential oral/documentary factual facts adduced/produced during the inquiry, the facts mentioned/proved by the I.O. thereby due weightage representation on inquiry report by the charge official, facts of all exhibits confirmed by listed/defence witnesses, it fully proved beyond any corner of shadow of doubt that ShriAmbika Prasad is not in position to detain in the department in the interest of justice. But after considering his past long service in the department on different post and hazardous financial position in present days which compel to take lenient view towards his family survivor is hereby order to recover the amount Rs.274597.00 in 54 (fifty-four) instalments of Rs.5000.00 five thousand each and last instalment No.55 of Rs.4597.00 (Four thousand five hundred Ninety Seven) from his pay and to stop his next one increment for 3 (three) years with cumulative effects.ò

3.6 Being aggrieved by the above punishment order dated 19.2.2010, the applicant made an appeal on 15.3.2010.

3.7 While the applicantôs appeal dated 15.3.2010 remained pending consideration, the AA called for the records of the enquiry and proposed to enhance the punishment as imposed by the DA on the applicant and, accordingly, issued a notice dated 23.1.2012 calling upon the applicant to

show cause as to why the penalty as imposed by the DA on him should not be enhanced to ñRemoval from Serviceò. The applicant also submitted a detailed representation dated 7.2.2012 against the notice for enhancement of the penalty, and prayed for withdrawal of the said notice for enhancement of penalty and for disposal of his appeal against the DAôs order dated 19.2.2010(ibid).

3.8 Thereafter, the AA considered the applicantôs appeal dated 15.3.2010 and representation dated 7.2.2012, and passed order dated 16.7.2012 upholding the DAôs order dated 19.2.2010 and withdrawing the show cause notice dated 23.1.2012 for enhancement of penalty to ñRemoval from serviceò. The relevant portion of the AAôs order dated 16.7.2012(Annexure A-2) is reproduced below:

> ñThe points raised by the appellant in his appeal ldated 07.02.2012 are discussed as under:
>
> 1. No comments.
> 2. The plea of the appellant is not tenable because, the fact is that the disagreement note was duly sent with inquiry report by the disciplinary authority.
> 3. The plea of the appellant is not tenable because decision taken by the SSPOs Agra Division vide his memo No.F/Misc./Disc./Ambika Prasad court case dated 19.02.2010 is based on factual ground and merit of the case.
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> 4&5. The charges mentioned in charge are fully proved in the IO report and outcome of the IO report is a self explanatory. The grounds and factual fact with documentary proof has not been submitted by appellant in his support.
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> 5. The plea of the appellant is not tenable, except the facts mentioned and available.
>
> In view of above discussion the charge no.1 to 4 were fully proved against the appellant. Therefore, I Umesh Kumar Verma, Director, Postal Services, Agra Region, Agra under the powers conferred in Rule 27

> of CCS (CCA) Rules, 1965 hereby confirm the orders of SSPOs Agra issued vide his memo No.F/Misc./Disc.Ambika Prasad/Court Case Agra Dated 19.02.2010. Considering all the facts and circumstances and his present performance a lenient view is being taken and accordingly show cause notice of even No. dated 23.01.2012 in which it was proposed to ñRemove from Serviceòis hereby withdrawn. Accordingly, appeal is disposed off.ò

3.9 Hence, the applicant has filed the present O.A. seeking the following reliefs:

> ñ1. That the impugned orders Annexure-1 and appellate order Annexure A-2 may kindly be quashed and set aside and amount recovered on the basis of impugned punishment order, may kindly be ordered to be refunded to the applicant within a time frame period with interest @ 12% per annum.
> 2. That any other benefit or relief which in the circumstances of the case deemed fit and proper be allowed to the applicant.
> 3. That the cost of the suit be awarded to the applicant.ò

4. Shri Basab Sengupta, the learned counsel appearing for the applicant, made the following submissions:

(1) The impugned order dated 16.7.2012 (Annexure A-1) passed by the AA is a non-speaking order. The points urged by the applicant in his appeal dated 15.3.2010 have not at all been considered by the AA. The AA has failed to apply its mind to the materials available on record inasmuch as it has been observed by the AA that the IO found charge nos. 1 to 4 as ófully provedô against the applicant, although the IO in his report found Articles I, II and IV of the charges as not proved, and Article III as partially proved. The said finding having been

arrived at by the AA without affording the applicant an opportunity of making representation is unsustainable in the eyes of law.

(2) In the criminal case (Crime No.937/2008) initiated by the complainant-Shri Prempal Singh against the applicant for alleged commission of offences under Sections 406, 409 and 420 of the Indian Penal Code with respect to opening of fake MIS A/C No.10020560 and misappropriation of Rs.73,000/-, the learned Judicial Magistrate, vide judgment dated 25.5.2011, has acquitted him of the said charges. Therefore, the orders passed by the DA and AA are unsustainable and liable to be quashed.

(3) The contributory negligence on the part of the applicant, if any, for the purported loss to the Government, which is sought to be recovered from the applicant, has not been correctly assessed by the DA and AA in a realistic manner, and, therefore, the impugned orders passed by the DA and AA are unsustainable and liable to be quashed.

4.1 In support of his submissions, Shri Basab Sengupta relied on the following:

(i) Government of India, Department of Personnel & Administrative Reforms, O.M.No.134/1/81-AVD.I, dated 13.7.1981, the gist of which has been printed as

GOI Decision No.1 below Rule 15 of the CCS (CCA) Rules, 1965, laying down, inter alia, that the authorities exercising disciplinary powers should issue self-contained, speaking and reasoned orders conforming to the law laid down by the Hon'ble Supreme Court in **Mahavir Prasad v. State of U.P,** AIR 1970 SC 1302.

(ii) The decision of the Hon'ble Supreme Court in **Narender Mohan Arya v. United India Insurance Co.Ltd. & others,** 2006(3) SLR 92(SC), wherein it has been held that the AA, while disposing of the appeal, is required to apply his mind with regard to the relevant facts.

(iii) The decision of the Hon'ble Supreme Court in **Yoginath D.Bagde v. State of Maharashtra & anr,** AIR 1999 SC 3734, wherein it has been held that the DA has to communicate to delinquent officer the tentative reasons for disagreeing with the findings of the IA so that the delinquent officer may further indicate that the reasons on the basis of which the DA proposes to disagree with the findings recorded by the IA are not germane and the finding of ñnot guiltyò

already recorded by the IA was not liable to be interfered with.

(iv) Decision of the Hon'ble Madras High Court in **V.Lakshmanan v. The Chairman, Disciplinary Authority, Pandiyan Grama Bank and another,** W.P. (MD) No.921 of 2006, decided on 2.11.2012, wherein it has been held that the AA need not write an order, like a judgment, but the reasons for rejection of the appeal should be brief, reflecting application of mind to the grounds urged by the applicant in the appeal.

(v) Rules 106, 107 and 111 of P&T Manual, Vol.III, the gist of which has been printed as GOI Decision No.12 below Rule 11 of the CCS (CCA) Rules, 1965, stipulating, inter alia, that in the case of loss caused to the Government, the competent DA should correctly assess in a realistic manner the contributory negligence on the part of an officer, and while determining any omission or lapses on the part of an officer, the bearing of such lapses on the loss considered and the extenuating circumstances in which the duties were performed by the officer, shall be given due weight.

(vi) Memo No.INV/4-4/29-2004 dated 18.10.2006 issued by the Post Master General, Agra Region, Agra, conveying sanction for restoration of defrauded amount and stating that the said amount was misappropriated by Shri Amar Singh, P.A., Awagarh S.O.

5. *Per contra*, Shri Rajinder Nischal, the learned counsel appearing for the respondents, submitted that the orders passed by the DA and AA spell out reasons in a precise manner, and, therefore, it cannot be said that the said authorities have failed to apply their mind to the facts/materials available on record. In compliance with the direction contained in the order dated 23.11.2009 passed by the Tribunal in OA No. 1858/2009, the DA proceeded from the stage of receipt of representation already made by the applicant to the disagreement note and the inquiry report. After considering the applicantôs representation and materials available on record of the departmental enquiry, the DA passed the impugned order dated 19.2.2010(Annexure A-2). Mere observation made by the AA that the IO held charge nos.1 to 4 as fully proved would not invalidate the orders passed by the DA and AA. In the impugned order (Annexure A-2) the DA, after taking into account the interest, bonus, etc., paid on the defrauded amount, has determined the amount of loss caused to the Government and has assessed in a realistic manner the contributory negligence of the applicant as Sub Post Master, Awagarh (Etah H.O.). The

acquittal of the applicant in the criminal case initiated by Shri Prem Pal Singh, the depositor of MIS A/C No.10020560, has no bearing on the departmental proceedings in which the DA held the charges as proved and passed the impugned order of punishment.

6. It is no more *res integra* that the power of judicial review does not authorize the Tribunal to sit as a court of appeal either to reappraise the evidence/materials and the basis for imposition of penalty, nor is the Tribunal entitled to substitute its own opinion even if a different view is possible. Judicial intervention in conduct of disciplinary proceedings and the consequential orders is permissible only (i) where the disciplinary proceedings are initiated and held by an incompetent authority; (ii) such proceedings are in violation of the statutory rule or law; (iii) there has been gross violation of the principles of natural justice; and (iv) on account of proven bias and mala fide.

7. In **State of Mysore v. Shivabasappa**, (1963) 2 SCR 943 = AIR 1963 SC 375, it has been held thus:

> "Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an

> opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.
>
> 2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

8. The Hon'ble Apex Court in the case of **K.L. Shinde v. State of Mysore**, (1976) 3 SCC 76, having considered the scope of jurisdiction of this Tribunal in appreciation of evidence, has ruled as under:

> ñ9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That

apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in State of Mysore v. Shivabasappa, (1963) 2 SCR 943 = AIR 1963 SC 375 where it was held as follows:-

> "Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.
>
> 2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous

> statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

9. In **Rajinder Kumar Kindra v. Delhi Administration through Secretary (Labour) and Others,** AIR 1984 SC 1805, it has been laid down by the Hon'ble Supreme Court that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It has also been laid down that where a quasi judicial tribunal records findings based on no legal evidence and the findings are its mere *ipse dixit* or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

10. In **B.C. Chaturvedi v. Union of India**, AIR 1996 SC 484, reiterating the principles of judicial review in disciplinary proceedings, the Hon'ble Apex Court has held as under:

> ñ12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some

> evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.
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> 13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In **Union of India v. H. C. Goel (1964) 4 SCR 718 :** (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issuedò.

11. In **R.S. Saini v. State of Punjab and ors**, (1999) 8 SCC 90, the Hon'ble Apex Court has observed as follows:

> "We will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the

evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

12. The above view has been followed by the Hon'ble Apex Court in **High Court of Judicature at Bombay through its Registrar v. Shashikant S. Patil,** (2000) 1 SCC 416, wherein it has been held as under:

> ñ...Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority, (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed before Article 226 of the Constitution.ò

13. In **Syed Rahimuddin v. Director General, CSIR and others**, (2001) 9 SCC 575, the Hon'ble Apex Court has observed as under:

> ñé It is well settled that a conclusion or a finding of fact arrived at in a disciplinary enquiry can be interfered with by the court only when there are no materials for the said conclusion, or that on the materials, the conclusion cannot be that of a reasonable mané .ò

14. In **Sher Bahadur v. Union of India,** (2002) 7 SCC 142, the order of punishment was challenged on the ground of lack of sufficiency of the evidence. The Hon'ble Apex Court observed that the expression "sufficiency of evidence" postulates "existence of some evidence" which

links the charged officer with the misconduct alleged against him and it is not the "adequacy of the evidence".

15. In **Government of Andhra Pradesh v. Mohd. Nasrullah Khan,** (2006) 2 SCC 373, the Hon'ble Apex Court has reiterated the scope of judicial review as confined to correct the errors of law or procedural error if it results in manifest miscarriage of justice or violation of principles of natural justice. In para 7, the Hon'ble Court has held:

> ñBy now it is a well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error if any resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by appreciating the evidence as an Appellate Authorityé ..ò

16. After going through the orders passed by the DA and AA and the materials available on record, we are of the view that the conclusions reached by the said authorities cannot be said to be perverse or based on no evidence. We are also unable to accept the contention of the applicant that the DA and AA have failed to apply their mind to the materials available on record and the points urged by the applicant before them. The DA has recorded its findings on each of the articles of charges. Although the appellate authority has not discussed in detail the points urged by the applicant in his appeal, yet, in view of the clear findings arrived at by the DA that the charges were proved against the applicant, and in view of the fact that the AA, after considering the grounds urged by the applicant in his

appeal and the materials available on record of the departmental enquiry, has agreed with the findings of the DA and has upheld the order passed by the DA, we do not find the appellate order to have been vitiated. This view of ours is fortified by the decisions of the Hon'ble Supreme Court **in Ram Kumar v. State of Haryana**, AIR 1987 SC 2043; **S.N.Mukherjee v. Union of India**, AIR 1990 SC 1984; and **State Bank of Bikaner & Jaipur and others v. Prabhu Dayal Grover,** AIR 1996 SC 320, wherein it has been laid down, inter alia, that the need for recording of reasons is greater in a case where the order is passed at the original stage, and that the appellate or revisional authority need not give separate reasons if it agrees with the reasoning given by the DA in the order under challenge and affirms the said order.

17. As has rightly been submitted by Shri Rajinder Nischal, the learned counsel appearing for the respondents, mere observation made by the AA that the IO had found articles I to IV of the charges as fully proved, would not invalidate the original order of punishment passed by the DA and the order passed by the AA upholding the DA's order. After considering the applicant's representation to the inquiry report and the disagreement note, the DA having held that all the four articles of charges stood proved and having passed the original order of punishment, and further the AA having accepted the findings of the DA and upheld the order of punishment, the question of affording the applicant an opportunity of making representation against the view taken by the AA while considering his appeal did not arise.

18. The applicant was working as Sub Post Master, Awagarh S.O. Shri Amar Singh, Postal Assistant, was working under him. Because of the lapses on the part of the applicant, Shri Amar Singh, working as Postal Assistant, under the applicant, committed fraud and misappropriated Rs.2,08,000/- from different accounts. As per the Memo No.INV/4-4/29-2004, dated 18.10.2006, which was brought to our notice during the course of hearing, the sanction of the competent authority was conveyed for restoration of the defrauded amount to the respective accounts of different depositors, subject to recovery/write off. The said Memo dated 18.10.2006 has no bearing on the departmental proceedings initiated against the applicant and the orders passed by the departmental authorities therein. It has been averred by the applicant in paragraphs 4.1 and 4.2 of the O.A. that after the fraud was detected, Shri Amar Singh, P.A., Awagarh S.O., was murdered, and the charge memo was issued against him. It is, thus, apparent that when one of the delinquents passed away, the Department proceeded only against the other delinquent, i.e., the applicant. No departmental proceeding could have been initiated against the said Shri Amar Singh, P.A., Awagarh S.O. In the disciplinary proceedings initiated against the applicant, the charges having been held to have been proved, the impugned order of punishment has been passed by the DA for recovery of the loss caused to the Government on account of fraud. Mr.Basab Sengupta, the learned counsel appearing for the applicant, has not brought to our notice any material in support of his submission that the DA and AA have failed to assess in a

realistic manner the contributory negligence on the part of the applicant for the loss caused to the Government on account of fraud that took place in the Sub-Post Office, Awagarh, while the applicant was working as Sub Post Master.

19. After having given our thoughtful consideration to the facts and circumstances of the case and the rival submissions, in the light of the decisions referred to above, we have found no substance in any of the submissions made by Shri Basab Sengupta, the learned counsel appearing for the applicant.

20. In the light of our above discussions, we hold that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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