

1

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA No.626 of 2012

Date of hearing: 19.12.2016

Dated of order: 23.12.2016

Present:

**THE HON'BLE MR. JUSTICE V.C.GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER**

.....

NIRMAL KUMAR BISWAS,
Son of Late Nirapada Biswas of Village and Post Office Sindrani,
PS. Bagdah, District North 24 Parganas.

.....Applicant

VERSUS

1. **UNION OF INDIA,**
Service through the Secretary to the Government of India,
Department of Post, Ministry of Communication, Dak Bhavan,
Sansad Marg, New Delhi-110 001.
2. **THE CHIEF POSTMASTER GENERAL,**
West Bengal, 36, Chittaranjan Avenue, Yagayog Bhawan,
Kolkata-700012.
3. **THE SUPERINTENDENT OF POST OFFICES,**
Barasat Division, Post Office and Police Staton Barasat,
District-North 24 Parganas.
4. **THE SUB DIVISONAL POSTAL INSPECTOR,**
Bongaon Sub Division, PO & PS Bongaon, District: North 24
Parganas.
5. **THE SUB POST MASTER,**
Sindrani Sub Post Office, PO. Sindrani, Ps. Bagdah, District:
North 24 Parganas.

.....Respondents

**Counsel for the Applicant :Mr.B.Chatterjee
Ms.T.Das,
Counsel.**

Counsel for the Respondents :Mr.B.P.Manna, Counsel

227

ORDER

MS.JAYA DAS GUPTA, AM:

The Applicant (Shri Nirmal Kumar Biswas), has filed this Original Application U/s. 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"(a) To quash the second removal order dated 29.09.2008 of the Disciplinary Authority as the second removal order was passed on the same day that is on 29.09.2008 in which the Appellate Authority quashed the first removal order dated 31.03.2008 and also quash the order dated 09.03.2012 (Annexure-A) of the Appellate Authority as no procedure or guidelines or rules has been followed regarding the de novo proceedings;

(b) To consider the case of the applicant with sympathy as the applicant is now 58 years and reinstate him to the post of Extra Departmental Delivery Agent (EDDA) and to pay him with all arrears of salaries and other allowances in accordance with law;

(c) To pass any other order or orders and/or direction or directions as to this Hon'ble Tribunal may deem fit and proper."

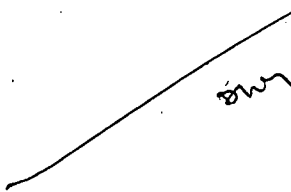
(extracted as such)

2. The case of the Applicant, in gist, is that he was appointed as Extra Departmental Duty Agent on 01.04.1980 of the Sindrani Sub Post Office, North 24 Parganas, WB and since then he had been discharging his duties to the utmost satisfaction of his authorities. It has been alleged that the Respondents, without holding any enquiry, examining any witnesses, giving him copy of the allegation and without issuing proposed order of punishment, removed him from service, straightaway, in violation of the Rules

22/4

and principles of natural justice. It has been alleged that the letter dated 24.08.2002 stated in the order of punishment, to have been submitted by the applicant is not correct. He has not submitted such letter dated 24.08.2002. As regards the allegation of the Sindrani SORD Pass Book No. 4081265, it has been stated that the same ought not to have been taken as a ground of removal in view of other specific letter of the policy holder.

Further case of the applicant is that on 06.04.2008 he preferred appeal against the order of punishment. Since appeal was not disposed of, he approached this Bench in OA No. 469 of 2008 which was disposed of on 04.06.2006 with direction to dispose of the appeal of the applicant. Since the appeal could not be disposed of, despite the specific order of this Bench, he once again approached this Tribunal in OA No. 1935 of 2009 which was disposed of on 05.10.2010 with direction to the Respondents to consider and dispose of the appeal of the applicant by a speaking order, if the applicant prefers a proper appeal before the Appellate Authority within a fortnight of receipt of a copy of the order dated 05.10.2010. He has challenged the aforesaid order of this Bench before the Hon'ble High Court of Calcutta in WPCT No. 166 of 2011 which was also disposed of on 20.12.2011 with direction that the applicant to prefer the appeal. However, the applicant preferred his appeal on 02.01.2012. But it has been alleged; that the Appellate Authority



without considering the appeal of the applicant in its proper perspective rejected the same vide order dated 09.03.2012. Hence, it has been stated that under the circumstances above, he has been constrained to prefer this OA seeking the reliefs, quoted above.

3. Per contra, the Respondents have filed their counter in which it has been stated that the applicant was proceeded under Rule 10 of the GDS (Conduct & Employment) Rules, 2001 vide Memorandum dated 04.08.2004, on receipt of which he submitted his defence on 09.08.2004 against the charges levelled against him. The matter was decided to be enquired into and accordingly, Shri B.C.Das, former ASPOs and Shri S.S.Samanta, former ASPOs were appointed as the IO and PO to enquire into the matter. The IO fixed the inquiry on 20.04.2006. The applicant appeared and pleaded his guilt and admitted the charge unconditionally before the IO and, as such, the IO concluded the enquiry. The IO submitted his report on 15.05.2006 holding the charges as proved. The report of the IO was sent to the applicant vide letter dated 01.01.2008 which was received by him on 08.01.2008. But the applicant did not submit any reply to the report of the IO. Hence, the Disciplinary Authority, vide order dated 31.03.2008 imposed the punishment of removal from service on the applicant. Applicant preferred appeal dated 06.04.2008. The Appellate Authority vide order dated 29.09.2008 directed for de novo enquiry from the stage of issuing punishment

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order by the DA. Thereafter, vide order dated 29.09.2008 fresh order of punishment of removal from service which shall not be a disqualification for future employment was imposed on the applicant. The order of punishment was sent to the applicant through Overseer which was refused to be received by the applicant. Again the said order of punishment was sent to him by post which was also refused by him. Thereafter, as per the order of this Bench in OA No. 1935 of 2009, the order of punishment was sent to the applicant which was received by him on 23.07.2010. However, in consideration of the order of the Hon'ble High Court of Calcutta, the appeal preferred by the applicant was considered. He was also given a personal hearing in presence of Shri G.C.Mondal, his authorised representation on 20.02.2012 and result thereof was communicated to the applicant vide reasoned appeal order dated 09.03.2012. It has been stated that the allegation against the applicant was serious in nature as he had misappropriated the Government money to the tune of Rs. 11, 42, 660.00 which was admitted by him. So imposition of punishment of removal cannot be said to be shockingly disproportionate. Accordingly, they have prayed for dismissal of this OA.

4. We have heard the learned counsel for both sides. Consulted the records including the original file of the disciplinary

proceedings submitted by the Respondents, in compliance of the order of this Bench.

5. From the original file of the disciplinary proceedings initiated against the applicant and produced by the Respondents for the perusal of this Bench, no sooner the applicant was pointed out the misconduct, he has submitted a representation dated 24.08.2002 stating inter alia as under:

"I, Shri Nirmal Kumar Biswas, S/o. Nirapada Biswas, Vill & PO-Sindrani, was appointed as EDDA at Sindrani Post Office on 01.04.1980. I have been working as EDDA from 01.04.1980 to till date. I attend Post Office from 09:30 Hrs to 10 (PM) daily and do my own work. Sri Smadhi Deb (SPM) has been working as Sub Post Master, Sindrani Post Office from May, 1998 to 18.02.2002.

The said Sri Samadhi Deb (SPM) gave me the keys of the office locks and told me that if he becomes late for the office on any day I have to open the office in his absence and perform office works. On his verbal direction, the days on which he remained absent or became late upto 12:30 Hrs or 1 O'clock, I opened the office in time at 10 AM and received money along with pay in slip in respect of RD, SB, MIS from the depositors. On arrival of the Sub Post Master, I gave him RD, SB, MIS slip and cash along with all the forms. Moreover, in absence of the Sub Post Master, I used to enter transactions in some of the passbooks received along with cash and form from the depositors and impressed it with date stamp and initialled them and returned them to the depositors.

As an instance of the above, I have made the entries of transactions from 06.01.1999 to 05.04.2002 in the pass book of Sindrani SO RD account No. 4080900 Deno Rs. 60/- Depositor - Sandhya Biswas, W/O-Tarak Biswas, Vill & PO.

Sindrani impressed it with date stamp and signed as Sub Post Master.

I have made entries of transactions from 10.04.2001 to 13.05.2002 ;in the pass book of RD account No. 4081265 Deno 200/- Depositor Shaphali Halder, W/o. Sadhan Halder, Village Kamala Bag, PO. Sindrani impressed it with date stamp and **signed as Sub Post Master.**

In this way I have made transactions in many RD, MIS, SB pass book and made date stamp impressions.

In addition, I am saying that the specimen of signature which I used to do in RD, MIS, SB is given below:

"Specimen signatures from Sl.No. 1 to 6"

The above mentioned specimen of signatures as put by me has been shown to me by Samadhi Deb (SPM). Therefore, I used to make entries in the RD, MIS, SB pass book.

My original initial signature which I made in my office work is given below:

"Specimen signastures from Sl.No. 1 to 7 "

The above statement is voluntarily given b y me.

Faithfully,

Date: 24.8.2002

(Nirml Kumar Biswas)
EDDA-I Post Sindrani"

Thereafter as it further appears, a charge sheet was issued to the applicant vide Memorandum dated 04.08.2004 the article of charge which reads as under:

"ARTICLE I

That the said Shri Nirmal Kumar Biswas while working as GDSMD I Sinduri SO during the period from May, 1998 to 18.02.2002 has unauthorisedly opened the office room and has performed the duty of the SPM,

Sindurani SO for several days. Thus he violated Rule 21 of Department of Posts Gramin Dak Sevak - (Conduct & Employment) Rules, 2001.

That the said Shri Nirmal Kumar Biswas while working as GDSMD I Sindurani SO during the period from May, 1998 to 18.02.2002 has retained the keys of Sindurani SO. Thus, he violated Rule 21 of Department of Posts Gramin Dak Sevak (Conduct & Employment) Rules, 2001.

That the said Shri Nirmal Kumar Biswas while working as GDSMD-I, Sindurani SO during the period from May, 1998 to 18.02.2002 has made transactions in RD, SB, MIS A/Cs of Sindurani SO by entering the amount of transactions in the concerned Pass Books and put his initials as SPM, Sindurani SO and has impressed the date stamp of Sindurani SO in the said pass Books and misappropriated the amount thereof.

The statement of imputation of misconduct in support of articles of charge framed against the applicant as given in the charge sheet dated 04.08.2004 reads as under:

"ANNEXURE-II

Statement of imputation of misconduct or misbehaviour in support of articles of charge I framed against Shri Nirmal Kumar Biswas, GDSMD I Sindurani SO in a/c with Barasat HO.

Shri Nirmal Kumar Biswas, GDS MD I Sindurani SO while working as such during the period from May, 1998 to 18.02.2002 according to his written statement dated 24.08.2002 has performed the duties of the SPM, Sindurani SO for several days viz. He has opened the office made transactions with different pass books of different A/Cs viz. SB, RD, MIS, etc by entering the amount in those put initials as SPM, Sindurani SO and impressed date stamps of the SO in Pass Books. He used to keep the office keys. He also admitted that he made all entries in Sindurani SO RD /C No. 4081265 Deno of Rs. 200/- (two hundred) only standing opened in the name of - Shefali Halder, W/o. Sadhan Halder, Village Kamala Bagh, Po. Sindurani for the period from 10.4.2001 to

13.5.2002, put his initials in the RD Pass Book as SPM, Sindrani SO and has impressed the date stamp of Sindrani SO in the said RD Pass Book. But on enquiry it was revealed that the deposits dated 11.5.01, 14.6.01, 12.7.01, 8.8.01, 11.9.01, 15.10.01, 9.1.02 and 11.2.02 were not credited into SO A/c.

Thus, Shri Nirmal Kumar Biswas, GDSMD I Sindrani SO has failed to maintain absolute integrity and devotion to duty violating Rule 21 of Department of Posts, Gramin Dak Sevaks (Conduct & Employment) Rules, 2001;

ANNEXURE-III.

List of documents by which the articles of charge framed against Shri Nirmal Kumar Biswas, GDSMD-I, Sindrani SO in a/c with Barasat HO are proposed to be sustained.

1. Written statement of Shri Nirmal Kumar Biswas, GDSMD-I, Sindrani SO dtd. 24.08.2002;
2. Sindrani SO RD Pass Book No. 4081265.

ANNEXURE-IV

List of witnesses by whom the article of charge framed against Shri Nirmal Kumar Biswas GDSMD I Sindrani SO are proposed to be sustained.

1. Shri Taani Kanta Das, SPM, Sindrani SO;
2. Shri Sanmyasi Biswas, GDSMD II, Sindrani SO;
3. Shri Gopinath Roy, the then SDI (P), Bangaon Sub Dn now at Bishwapur Sub Dn under South Presidency Dn.

Sd/-

(A.K.Chakraborty)
Sub Divisional Inspector
(Post), Bongaon Sub
Division, Bongaon, 24
Parganas, North."

The applicant submitted his written statement of defence to the Memorandum of charge, cited supra, on 09.08.2004. It reads as under:

"Sir,

I, Sri Nirmal Kumar Biswas, EDDA-1, 1998-2002 Postmaster was Samadhi Deb Sir, according to his orders I received different books of the Post Office for keeping them and sometimes made a signature taught by him. But no monetary transaction took place. Because every day he could not attend the office before 12:00 Hrs. The competent authority was several times informed about the matter and the then SDI(P), Gopinath Roy has seen the matter in that very place but did not take any necessary step.

We are generally outdoor staff (ED officials) with no work no pay, we have to work as per directions of the Postmaster and presently the same is going on in the region of Sri Tarani Kanta Das and the matter has been intimated to you several times. It is my special request to your authority, why I am harassed on the same matter repeatedly, I have done various works of the office as per direction of Sri Samadi Deb besides, Sri Samadhi Deb in sound health and mind has said in his written statement that he is responsible for the fraud at Sindrani Sub Post Office, then why I am being contacted repeatedly through letters.

I have only written on the deposit dates of RD A/C No. 4081265 Deno Rs. 200 (Two hundred) Shefali Halder and rest of the transaction was done with the Postmaster. Presently the pass book has returned from Barasat and is being operated naturally. The statement of RD A/C A/C No. 4081265 has been given to the Superintendent, Barasat HO through RL No. 5862 dated 26.5.2004 and a copy of the same is enclosed."

Being not satisfied with his defence against the charge sheet a disciplinary proceedings was started against the applicant. The IO submitted his report on 15.05.2006 holding as under:

"Inquiry report in the proceedings against Shri Nirmal Kumar Biswas, GDSMD I, Sindrani SO.

I was appointed as the Inquiring Authority by the SDI(P), Bongaon Sub Dn vide his Memo No. A-1/GDS/Disc/01 dated 1.3.06 to inquire into the charges framed against Shri Nirmal Kumar Biswas, GDSMD-I,

Sindrani SO vide the SDI(P) Bongaon Sub Dn Memo No. A-1/GDS/Disc/01 dtd.4.8.04.

Hri S.S.Samanta, ASPOS, Barasat Dn was appointed as the PO of the case.

2. Participation of the charged official in the inquiry.

The preliminary hearing of the case was held on 20.4.06. The CO attended the Board of Inquiry in time. Shri Nirmal Kr. Biswas, CO admitted the charges unconditionally.

3. The statement of article of charge framed against Shri Nirmal Kumar Biswas, CO is annexed h/w.

4. Particulars of listed documents produced before the inquiry.

Sl.No.	Particulars of documents	Exhibit nos.
1.	W/Stt of Shri N.K.Biswas dtd.24.8.02	SD-I
2.	Sindrani SO, RDPB No.408265	SD-2.

5. The proceedings in brief of the hearing held on 20.04.06:-

The CO attended the BOI in time. At the outset he informed that he could not engage any "Defence Assistant" to defend the case on behalf of him.

The PO read out the article of charges and statement of imputation of misconduct and explained in vernacular to the CO.

Thereafter, on being questioned by me Shri Nirmal Kumar Biswas, CO pleaded guilty and admitted the charges unconditionally. The inquiry was concluded then. The PO submitted his brief vide his No. PO/Rule-10/Sindrani/06 dtd. 28.4.06 which is also annexed h/w.

6. Findings:-

I have gone through both the listed documents and found that the CO used to open the Sindrani SO and keep the Keys of the SO with him during the period from May, 98 'to 18.2.02. It is further noticed that the CO made deposit particulars i Sindrani ;SO RD PB No. 4081265 on different dates in his own handwriting. So, the charges brought against Shri Nirmal Kumar Biswas, GDSMD-I, Sindrani SO are proved."

The disciplinary authority on 31.3.2008, after going through the records and the report of the enquiry, as no representation was submitted by the applicant against the report of the enquiry vide order dated 31.03.2008, imposed the punishment of "removal of service" on the Applicant. The relevant portion of the order is quoted herein below:

"FINDINGS:

I have gone through the case very carefully and I fully agree with the finding of IO. All the charges brought against Shri Nirmal Kr Biswas, GDSMD, Sindrani SO stand proved.

Therefore, I the undersigned award the said Shri Nirmal Kr Biswas with the penalty of REMOVAL FROM SERVICE WHICH SHALL NOT BE A DISQUALIFICATION FOR FUTURE EMPLOYMENT With immediate effect."

6. Being aggrieved by the penalty order dated 31.03.2008,, the Applicant appeal^d on 06.04.2008. Before disposal of appeal, the applicant moved to CAT, Calcutta Bench against the order of removal in OA No. 469 of 2008 which was disposed of with direction to the respondent no.3 [SPOs, Barasat Division] to dispose the appeal dated 06.04.08 of the Applicant within a stipulated time. The Superintendent of Post Offices, Barasat Division in his order dated 29.09.08 set aside the punishment order and ordered for de-novo proceedings from the stage of issuing punishment order. Accordingly disciplinary Authority passed a fresh Punishment Order with Removal from service' vide SDI(P), Bongaon Sub Division Memo No. A-1/GDS/Disc/01 dated 29.09.08. The Appellate order dated 29.09.08 & fresh Punishment order dated 29.09.08 were arranged

for delivery to the applicant through special messenger on 04.10.08 but the charged official refused to take delivery of the said orders. Thereafter orders were sent to the applicant through Registered post with AD under Bongaon MDG RL No.4888 dated 04.10.08 & RL No. 4889 dated 04.10.08 but the said registered letters were returned with remark 'refused'. The Applicant again approached this Tribunal in OA No. 1935 of 2005 seeking relief for reinstatement in the service by cancelling the punishment order of 'removal from service' which was disposed of on 05.10.10 with direction for disposal of appeal preferred by the applicant, within a stipulated period. But the applicant did not submit any appeal. Thereafter, the applicant approached the Hon'ble High Court, Calcutta in W.P.C.T. 166 of 2011, seeking direction of his reinstatement. The Hon'ble High Court disposed of the matter on 20.12.2011 granting liberty to the applicant to prefer fresh appeal on the punishment order dated 29.09.08. On receipt of fresh appeal, a personal hearing was ordered to be given to the applicant or through his authorized representative and to pass a reasoned order on the appeal preferred by the applicant. The applicant submitted fresh appeal dated 02.01.2012 which was received by the Respondents on 17.01.2012 and a personal hearing was afforded to the applicant on 20.02.2012 in the chamber of the Superintendent of post offices. Barasat Division. In the said personal hearing, Sri Ganesh Chandra Mondal, Retd. ASPOs, Krishnagar SO represented on behalf of

the applicant. Thereafter, the Appeal of the Applicant was duly considered but the same was rejected and reasons of rejection was intimated to the applicant vide Memo dated 09.03.2012. The relevant portion of the order of the appellate authority is appended herein below for ready reference:

**"DEPARTMENT OF POSTS: INDIA
OFFICE OF THE SUPERINTENDENT OF POST OFFICES
BARAST DIVISION
KOLKATA - 700 124**

Memo No. F4-6/8/02-03/WPCT No.166 of 2011/Apeal
Dated at Kolkata-124 the 09.03.2012

Appellate Order in respect of Appeal dated 02.01.2012
preferred by Sri Nirmal Kumar Biswas

Name of the appellant : Sri Nirmal Kumar Biswas, Ex-
GDSMD-I, Sindrani SO.
Order appealed against : SDI(P), Bongaon Sub Division
Memo No.

A- 1/GDS/Disc/01 dated 29.09.08
Disciplinary Authority : SDI(P), Bongaon Sub Division.
Appellate Authority : Superintendent of Post Offices,
Barasat Division.

This is regarding disposal of appeal dated 02.01.2012 preferred by Sri Nirmal Kumar Biswas, Ex-GDSMD-1, Sindrani SO against the punishment order dated 29.09.08 issued by the SDI(P), Bongaon Sub Division in accordance to the judgement dated 20.12.2011 passed by the Hon'ble Judges of Calcutta High Court case no. W.P.C.T No.166 of 2011 in the matter of Nirmal Kumar Biswas -vs- Union of India & Ors.

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6. In his fresh appeal dated 02.01.2012, Sri Biswas made argument on the following points on his behalf—

i) Before removing from service on 31.3.08, no any opportunity as per departmental rule was given to Sri Biswas;

ii) Sri Biswas denied the charge, whereas in the punishment order it was depicted that Sri Biswas admitted the charge;

iii) In the punishment order, it was also depicted that Sri Biswas admitted the charge on 24.8.02 in black and white but Sri Biswas stated that he never gave any written representation on 24.8.02. Rather the then SPM, Sindrani SO had submitted one unsigned paper on 24.8.02 as per version of Sri Biswas;

iv) As the claim of depositor of Sindrani SO RD A/c No. 4081265 has already been settled, hence the fact of non credit in respect of instant RD A/c brought against Sri Biswas has no merit;

v) The Appellate order dated 29.09.08 and Fresh punishment order dated 29.09.08 were not communicated to Sri Biswas for some oblique motive;

vi) The punishment order dated 29.09.08 was not sustained in the eye of law and that may be quashed and set aside;

7. In the personal hearing held on 20.02.2012, Sri Nirmal Kumar Biswas represented the following points of determination:-

i) The charge incorporated in the charge sheet dated 04.08.04 brought against Sri Biswas is not correct;

ii) The written statement dated 24.08.02 [SD-I] of Sri Biswas was made forcibly and without his consent;

iii) During Board of Inquiry, the charge against him was not clearly explained by IO or PO for which he could not engage defence assistance on his behalf. The listed documents were not authenticated by the listed witness;

iv) No listed witnesses were summoned and examined due to which the Inquiry was incomplete;

8. I have gone through the facts and arguments brought by Sri Nirmal Kumar Biswas, Ex-GDSMD-I, Sindrani SO as

narrated in his appeal dated 02.01.2012 and in personal hearing dated 20.02.2012 and observed the followings:

- i) In his appeal dated 02.01.2012, Sri Biswas represented against the punishment order dated 31.03.2008 whereas he was granted to submit fresh appeal against the punishment order dated 29.09.08. Hence, the argument of Sri Biswas on the punishment order dated 31.03.08 is not at par with the judgment of High Court, Calcutta and not relevant.
- ii) There are no procedural flaws in any stage of disciplinary proceedings under Rule 10 of Department of Posts GDS (Conduct & Employment) Rules, 2001 against Sri Biswas and all sorts of opportunity and natural justice were afforded to him;
- iii) Sri Biswas in his written statement dated 24.08.02 and in the Board of inquiry dated 20.04.06 categorically admitted the charge levelled against him. During the personal hearing Sri Biswas confirm the signature on the written statement dated 24.08.02 i.e. SD I . Thus the SD I found genuine and the content of it are found true and the story of submission of unsigned written statement by the then SPM Sundrani SO came out with absolute spurious.
- iv) During personal hearing Sri Biswas confirmed his signature on the original pass book of Sindrani SO RD A/c No. 4081265 and the genuineness of the original pass book was reaffirmed. Hence both the listed documents were reaffirmed during personal hearing. Therefore, mere argument of settlement of claim of RD A/c; No. 4081265 is irrelevant and cannot dissolve Sri Biswas from the charge.
- v) Sri Biswas attended the Board of Inquiry dated 20.04.06 and the charge was explained by PO. Both the listed documents produced in the board and marked as SD-1 and SD-2 being undisputed and authenticated by the signature

of charged official, IO & PO. Being satisfied the charged official unconditionally admitted the charge in the board. Henceforth, the IO on the strength of unconditional admittance of charge by the charged official concluded the inquiry. Therefore the argument of Sri Biswas regarding brought of incorrect charge non authentication of listed documents by listed witnesses non summoning of witnesses are not justified.

- vi) Sri Biswas contended that the punishment order dated 29.09.08 was not sustained in the eye of law and that may be quashed and set aside. But Sri Biswas failed to depict the reason for which the said order was not sustained in law. The undersigned go through the punishment order dated 29.09.08 and found in order in all respect.

Considering all, I passed the order:

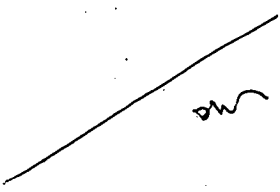
O R D E R

I, Sri Umasankar Ghosh, Superintendent of Post Offices, Barasat Division in exercise the power conferred upon me under departmental rules, do hereby confirm the punishment order of removal from service dated 29.09.08 issued by the disciplinary authority against Sri Nirmal Kumar Biswas, Ex-GDSMD I, Sindrani SO and rejected the appeal dated 12.01.2012."

7. We note from the above facts that though the report of the IO was sent to the applicant vide letter dated 01.01.2008 which he has received on 08.01.2008 he did not submit any defence to the said report. It is the contention of the Applicant that the reply dated 24.08.2002 was not submitted by him. But he has not denied the defence submitted by him to the Memorandum of Charge sheet on 09.08.2004. The letter dated 24.08.2002 was exhibited as one of the documents in the charge sheet. If according to him the letter dated

24.08.2002 was not of his, he should have stated so in the reply submitted by him on 09.08.2002 or before the IO. Before the IO the applicant has also candidly without any contradiction admitted his guilt. None of the grounds canvassed by the applicant in support is case is of any help to him, as we find that charge sheet was issued to the applicant. The applicant submitted his defence. After considering the defence the competent authority directed for enquiry. The applicant participated in the enquiry and admitted his guilt before the Inquiry Officer. The report of the enquiry was also sent to the applicant. But the applicant did not submit his defence to the report of the IO dated 01.01.2008. The Appellate authority, as per the direction of the Hon'ble High Court, Calcutta, cited supra, after allowing due opportunity of personal hearing to the applicant rejected the appeal in a well reasoned order on 09.03.2012. Also the Applicant submitted that as per the verbal direction of SPM he kept the keys of the office and made entries in various postal instruments. This is not acceptable as verbal orders cannot be taken as proof without any supporting evidence. The learned counsel for the Respondents informed at the bar that the SPM of the concerned SO has been dismissed from service. As such the stand of the applicant that he was punished without reasons is far from truth.

Further it is the stand of the applicant that he was imposed with the punishment without giving him opportunity to



represent against the proposed punishment. In the circumstances, the decision relied on by the learned counsel for the applicant rendered in the case of **Jagdish Prasad Saxena vs State of Madhya Bharat**, AIR 1961 SC 1070 is of no help to him. Further we find that all the points raised by the applicant in the appeal as also before us were dealt into by the appellate authority in his order.

8. As a last straw of the camel's back, the learned counsel for the applicant, placing reliance on the decisions of the Hon'ble Apex Court in the case of **S.S.Tewari vs Union of India and another** reported in (2013) 2 SCC (L&S) 893 have tried to persuade us that the order of punishment of removal from service is too harsh and, therefore, this Tribunal can interfere on the same. We have gone through the said decision of the Hon'ble Apex Court vis-a-vis the misconduct alleged and proved against the applicant. The allegation against the applicant was that during the period from May, 1998 ;to 18.02.2002 he unauthorisedly opened the office room and performed the duty of the SPM, Sindrani SO for several days. He also retained the keys of Sindrani SO unauthorisedly. During the period the applicant used to make SB, RD, MIS transactions as SPM and authenticated the transactions made therein with his dated initials along with date stamp impression. This allegation, under no circumstances can be construed as not grave misconduct attracting the harsh punishment of removal from service. In this connection, we feel that the decision of the Hon'ble Apex Court in the case of **Chief**

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**Executive Officer, Krishna District Cooperative Central Bank Ltd
and Another vs K.Hanumantha Rao and Another in Civil Appeal**

No. 11975 of 2016 (Arising out of SLP (Civil) No. 30710 of 2014)

disposed of on 9th December, 2016 is relevant. An excerpt from it would run thus:

"2. A departmental inquiry was conducted against respondent No.1 herein, an employee of appellant, viz. Krishna District Cooperative Central Bank Ltd., into certain charges of misconduct. In the said inquiry, charges were proved and as a result the disciplinary authority inflicted the punishment of dismissal from service upon respondent No.1. The High Court vide impugned judgment has altered the said penalty of dismissal to that of stoppage of two increments for a period of three years.

Whether it was permissible for the High Court to do so in the facts of the present case, is the question that needs to be determined in the instant appeal.

3. The events leading to the filing of this appeal are recapitulated in brief as under:

Respondent No. 1 was a Supervisor of five Primary Agricultural Cooperative Societies (PACS). He failed in discharging his duties properly in supervising the same, which led to cheating by the members of the Nidamanuru Primary Agricultural Cooperative Society (PACS) resulting in misappropriation of the society funds, for which disciplinary action was initiated against him. The precise charges against him, vide charge memo dated 08.03.2002, were that he had derelicted his duties as Supervisor leading to misappropriation of the funds of the society. Details of fifteen such accounts/instances were given wherein frauds had taken place and the amount of fraud involved in each such case totalling upto Rs.46,87,950.10. Names of the persons who had misappropriated these amounts were also given. It was mentioned that respondent No.1 worked as a Supervisor of the society and it was his duty to have close supervision over the affairs of the society and bring to

257

the notice of the Bank the fraud which took place and safeguard the funds of the society and the Bank. However, he failed to discharge his legitimate duties of supervision leading to huge misappropriation that had taken place, which he could not detect and thwart. Thus, by derelicting his legitimate duties he paved way for huge misappropriation and thereby committed grave misconduct. Inquiry was held and charge of dereliction of duty was proved as per the report given by the Inquiry Officer.

4. There is no dispute that this inquiry was conducted in accordance with the principle of natural justice giving fair chance to respondent No.1 to defend himself. In fact, as per the report of Inquiry Officer, respondent No.1 had even admitted dereliction of duties on his part.

5. The General Manager, Krishna District Cooperative Central Bank Ltd., after examining the report of the Inquiry Officer in detail, observed that the charged employee committed grave misconduct and acted in a way unbecoming of an employee of the Bank and passed an order of dismissal from service of the Bank. Feeling aggrieved by the order dated 05.10.2002, respondent No. 1 herein filed an appeal/mercy petition before the Chairman, Person In - charge Committee of the Krishna Cooperative Central Bank Ltd., and prayed to consider the case sympathetically on humanitarian grounds and issue reinstatement orders, which was also dismissed on 22.01.2003. Respondent No. 1 thereafter filed writ petition bearing W.P. No.4238/2003 before the High Court of Andhra Pradesh at Hyderabad.

6. The learned single Judge of the High Court of Andhra Pradesh at Hyderabad, after considering the material available on record and after hearing the arguments of the counsel for the parties, held that respondent No.1 was negligent in performing his duties and committed an act prejudicial to the interest of the Bank which resulted in serious loss to the Bank. The Single Judge of the High Court further observed that because of the negligence of respondent No.1, an amount of Rs.46,87,950.10 had been misappropriated by the staff and members of Nidamanuru PACS. It was held that there were no grounds to interfere with the punishment

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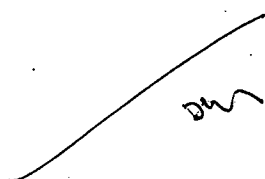
imposed by the disciplinary authority and confirmed by the appellate authority.

7. Feeling aggrieved by the order dated 18.07.2005, respondent No.1 preferred Writ Appeal No. 1640/2005, which has been partly allowed by the Division Bench of the High Court vide its impugned order dated 17.08.2014. The Division Bench of the High Court has, in fact, interfered with the penalty imposed. Reason for such a course of action adopted by the High Court given in the impugned judgment is that there was no allegation of misappropriation against respondent No.1. The accusation was lack of proper supervision which holds good against the top administration as well.

8. After hearing the counsel for the parties, we are of the view that the impugned judgment of the Division Bench of the High Court is unsustainable. There are more than one reason for coming to this conclusion, which are stated hereunder:

(i) The observation of the High Court that accusation of lack of proper supervision holds good against the top administration as well is without any basis. The High Court did not appreciate that respondent No.1 was the Supervisor and it was his specific duty, in that capacity, to check the accounts etc. and supervise the work of subordinates. Respondent No.1, in fact, admitted this fact. Also, there is an admission to the effect that his proper supervision would have prevented the persons named from defrauding the Bank. The High Court failed to appreciate that the duties of the Supervisor are not identical and similar to that of the top management of the Bank. No such duty by top management of the Bank is spelled out to show that it was similar to the duty of respondent No.1.

(ii) Even otherwise, the aforesaid reason could not be a valid reason for interfering with the punishment imposed. It is trite that Courts, while exercising their power of judicial review over such matters, do not sit as the appellate authority. Decision qua the nature and quantum is the prerogative of the disciplinary authority. It is not the function of the High Court to decide the same. It is only in exceptional circumstances, where it is



found that the punishment/penalty awarded by the disciplinary authority/ employer is wholly disproportionate, that too to an extent that it shakes the conscience of the Court, that the Court steps in and interferes. No doubt, the award of punishment, which is grossly in excess to the allegations, cannot claim immunity and remains open for interference under limited scope for judicial review. This limited power of judicial review to interfere with the penalty is based on the doctrine of proportionality which is a well recognised concept of judicial review in our jurisprudence. The punishment should appear to be so disproportionate that it shocks the judicial conscience. (See **State of Jharkhand & Ors. v. Kamal Prasad & Ors.** It would also be apt to extract the following observations in this behalf from the judgment of this Court in **Deputy Commissioner, Kendriya Vidyalaya Sangthan & Ors. v. J. Hussain**:

"8. The order of the appellate authority while having a relook at the case would, obviously, examine as to whether the punishment imposed by the disciplinary authority is reasonable or not. If the appellate authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty so imposed by the disciplinary authority. Such a power which vests with the appellate authority departmentally is ordinarily not available to the court or a tribunal. The court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts. (See **UT of Dadra & Nagar Haveli v. Gulabhia M. Lad** [(2010) 5 SCC 775 : (2010) 2 SCC (L & S) 101] . In exercise of power of judicial review, however, the court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when the punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of the court lesser punishment would have been more

appropriate, cannot be a ground to interfere with the discretion of the departmental authorities.

9. When the punishment is found to be outrageously disproportionate to the nature of charge, principle of proportionality comes into play. It is, however, to be borne in mind that this principle would be attracted, which is in tune with the doctrine of *Wednesbury* [*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] rule of reasonableness, only when in the facts and circumstances of the case, penalty imposed is so disproportionate to the nature of charge that it shocks the conscience of the court and the court is forced to believe that it is totally unreasonable and arbitrary. This principle of proportionality was propounded by Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] in the following words: (AC p. 410 D-E)

"...Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads of the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality'."

10. An imprimatur to the aforesaid principle was accorded by this Court as well in *Ranjit Thakur v. Union of India* [(1987) 4 SCC 611 : 1988 SCC (L & S) 1 : (1987) 5 ATC 113]. Speaking for the Court, Venkatachaliah, J. (as he then was)

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emphasising that "all powers have legal limits" invoked the aforesaid doctrine in the following words: (SCC p. 620, para 25)

"25...The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

No such finding is arrived at by the High Court to the effect that the punishment awarded to respondent No.1 was shockingly disproportionate.

Even otherwise, we do not find it to be so having regard to the fact that respondent No.1 did not perform his duties with due diligence and his negligence in performing the duties as a Supervisor has led to serious frauds in number of accounts by the subordinate staff. It was, therefore, for the disciplinary authority to consider as to whether respondent No.1 was fit to continue in the post of Supervisor.

(iii) The impugned order is also faulted for the reason that it is not the function of the High Court to impose a particular punishment even in those cases where it was found that penalty awarded by the employer is shockingly disproportionate. In such a case, the matter could, at the best, be remanded to the disciplinary authority for imposition of lesser punishment leaving it to such authority to consider as to which lesser penalty needs to be inflicted upon the delinquent employee. No doubt, the administrative

32

authority has to exercise its powers reasonably. However, the doctrine that powers must be exercised reasonably has to be reconciled with the doctrine that the Court must not usurp the discretion of the public authority. The Court must strive to apply an objective standard which leaves to the deciding authority the full range of choice. In Lucknow Kshetriya Gramin Bank & Anr. v. Rajendra Singh[3], this principle is formulated in the following manner:

"13. Indubitably, the well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to a delinquent employee keeping in view the seriousness of the misconduct committed by such an employee. Courts cannot assume and usurp the function of the disciplinary authority. In Apparel Export Promotion Council v. A.K. Chopra [(1999) 1 SCC 759 : 1999 SCC (L & S) 405] this principle was explained in the following manner: (SCC p. 773, para 22)

"22...The High Court in our opinion fell in error in interfering with the punishment, which could be lawfully imposed by the departmental authorities on the respondent for his proven misconduct. ... The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground alone."

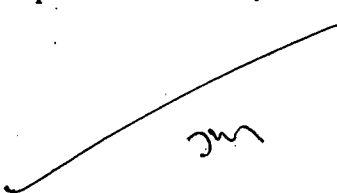
14. Yet again, in State of Meghalaya v. Mecken Singh N. Marak [(2008) 7 SCC 580 : (2008) 2 SCC (L & S) 431], this Court reiterated the law by stating: (SCC pp. 584-85, paras 14 and 17)

"14. In the matter of imposition of sentence, the scope of interference is very limited and restricted to exceptional cases.

The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

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17. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The High Court in this case, has not only interfered with the punishment imposed by the disciplinary authority in a routine manner but overstepped its jurisdiction by directing the appellate authority to impose any other punishment short of removal. By fettering the discretion of the appellate authority to impose appropriate punishment for serious misconducts committed by the respondent, the High Court totally misdirected itself while exercising jurisdiction under Article 226. Judged in this background, the conclusion of the Division Bench of the High Court cannot be regarded as proper at all. The High Court has interfered with the punishment imposed by the competent authority in a casual manner



and, therefore, the appeal will have to be accepted."

In any case, insofar as the instant matter is concerned, since we find that the punishment imposed was not shockingly disproportionate, no question of remitting the case to the disciplinary authority arises. We, thus, allow this appeal and set aside the impugned judgment of the Division Bench of the High Court.

9. On going through the records and the decision of the Hon'ble Apex Court, cited supra, we find no scope to interfere in this matter. This OA is accordingly dismissed by leaving the parties to bear their own costs.

10. The Registry is directed to return the original disciplinary proceedings' record of the applicant, produced by the Respondents for the perusal of this Bench, to them with due acknowledgement.

(Jaya Das Gupta)
Member (Admn.)

(Justice V.C.Gupta)
Member (Judl.)