



o.a. 256.2012

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

No. O.A. 256 OF 2012

Date of order: 8th December, 2017

Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Kartick Chandra Saha (dismissed
Employee while working as PRI (P)
Barasat Head Office), son of
Late Sachinath Saha,
Residing at 1 No. Vivikananada Nagar,
P.O. East Udarajpur, Madhyamgram,
North 24 Parganas, District - North 24 Parganas,
Kolkata - 700 129.

.. Applicants

Vs.

1. Union of India,
represented through the Secretary
Department of Posts,
'Dak Bhavan',
New Delhi - 110 001.
2. The Director of Postal Services,
Kolkata Region, West Bengal Circle,
Yogayog Bhavan, P-36, C.R. Avenue,
Kolkata - 700 012.
3. The Chief Postmaster General,
West Bengal Circle, Yogayog Bhawan,
P-36, C.R. Avenue,
Kolkata - 700 012.
4. The Superintendent of Post Offices,
Barasat Division, P.O. Barasat,
P.S. Barasat, District - North 24 Parganas,
Kolkata - 700 124.
5. Shri A.K. Sanyal,
Enquiring Officer and Deputy Director,
P.O. (BD & Marketing), GPO,
Kolkata - 700 001.

.. Respondents

For the Applicant : Mr. P. Bajpayee, Counsel

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

ORDER (Oral)**Per Dr. Nandita Chatterjee, Administrative Member:**

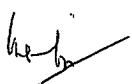
This application has been filed under Section 19 of the Administrative Tribunal Act, 1985 seeking the following relief:-

- "(a) For an order quashing and/or setting aside the entire disciplinary proceedings including the charge-sheet dated 29.4.2008, Enquiry Report dated 1.4.2011, Punishment Order dated 29.7.2011 and Appellate Authority Order dated 2.12.2011 made Annexures "A-1", "A-9" coll., "A-10" and "A-12" respectively to this application and further directing the respondents to reinstate the applicant in service with all consequential benefits.
- (b) For any other or further order or orders as to this Hon'ble Tribunal may deem fit and proper.
- (c) For costs of and incidentals to this application."

2. The Ld. Counsel for the applicant and respondents are both present and heard. Written arguments have been submitted on behalf of the applicant.

3. The case of the applicant, as submitted by his Ld. Counsel, is that the applicant was served with a memorandum of charge-sheet dated 29.4.2008 issued by the Sr. Superintendent of Post Offices, Barasat Division (Annexure "A-1") to which that the applicant had submitted his reply and pleaded himself to be not guilty to the charges levelled against him. Upon appointment of Enquiry Officer and Presenting Officer, the preliminary hearing of the departmental enquiry was held on 8.8.2008 and the Presenting Officer was directed to offer inspection of listed documents to the applicant on 27.8.2008. The applicant was directed to appear before the Board of Enquiry on 27.8.2008. While appearing before the Board of Enquiry, the applicant raised objection for non-production of original documents upon which he was directed to submit full particulars of the list of additional documents which were filed by him on 3.11.2008.

4. That the Enquiring Officer considered such request for additional documents and on 13.12.2008, allowed production of documents



mentioned against Srl. Nos. 1 to 5 which was found relevant by the Enquiry Officer. During the 5th sitting of the enquiry, it was reiterated that certain documents were non-available and the disciplinary authority was requested to supply the application form for purchase of KVP bearing Registration No. 4769 dated 17.6.2000 in the name of one Paritosh Mukherjee. During the 6th sitting, documents listed as per Annexure 3 of the charge-memo were produced and one Smt. Bani Bal was examined. Enquiry was held thereafter on February and August, 2010 when the charged witness were examined and cross-examined.

5. That the Enquiry Officer concluded the enquiry on 27.8.2010.

6. Thereafter the disciplinary authority forwarded the report of the Enquiring Officer dated 1.4.2011 to the applicant calling for representation, if any, of the applicant on the Enquiry Officer's Report. The applicant submitted written representation on the Enquiry Officer's Report on 31.5.2011. The disciplinary authority passed the punishment order.

7. That the enquiry was concluded in a hurry without providing any opportunity to the applicant to substantiate his defence as required under Rule 14 (16) & (17) of CCS (CCA) Rules, 1965.

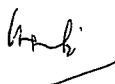
8. The applicant preferred an appeal whereby the appellate authority upheld the punishment order and no opportunity of hearing was given to the applicant by the appellate authority.

9. Hence being aggrieved, the instant application was filed for setting aside the entire disciplinary proceeding including the chargesheet, enquiry report, punishment order and order of appellate authority.

10. Per contra, the Ld. Counsel for the respondents argued that the applicant, who was the PRI (P), Barasat HPO had prepared and submitted a forged claim in the name of Smt. Bani Bal. That Smt. Swapna

Chakraborty, C/o Late Hemanga Bhusan Chakraborty, Pansila, Sodepur, North 24 Parganas, in connivance with the applicant, the then PRI (R), Barasat Head Post Office had prepared and submitted a forged claim in the name of Smt. Bani Bal, the actual nominee (Nomination No. 2800 dated 17.6.2000) in respect of Hridaypur S.O. 6th NSC VIIIth issue certificates for Rs. 28000/- bearing No. 6NS/33CC 643226-643228 of deno Rs. 1000/-, 6NS/08DD 546443 of deno Rs. 5000/- and 6NS/24EE 964215-964216 of deno Rs. 10000/-, Registration No. 4764 dated 17.6.2000 which were held in the name of Late Paritosh Mukherjee, 174/29 Hridaypur Station Road, P.O. Hridaypur, North 24 Parganas.

11. The claim application was filled up by the applicant in his own hand writing and Smt. Swapna Chakraborty signed as 'Bani Bal' in the claim application in presence of the applicant. The claimant's signature was identified by the signatures of two officials of Barasat Head Office. Being PRI (P), Barasat H.O.; the applicant did not take any steps towards indexing the deceased claim case at Barasat HO and also did not verify the genuineness of the claimant, Bani Bal. The applicant authenticated the claim papers by his signatures and designated stamp under entry 'verified' and himself went to Hridaypur SO and handed over the same to the SPM, Hridaypur SO for sanction and payment thereof. As the maturity amount of claim was exceeding Rs. 20000/- and SPM, Hridaypur SO had to issue cheque for that matured amount and the cheque in the name of nominee 'Bani Bal' had to be encashed from any Post Office/Bank, the applicant, in connivance with Smt. Swapna Chakraborty, false nominee, opened a PO SB Account at Barasat HO in the name of Bani Bal, wife of Swapan Kumar Bal, Kalikapur, P.O. Barasat under A/C No. 640612 on 7.9.2006 submitting false records and identifying Smt. Swapna Chakraborty as 'Bani Bal' to



facilitate the encashment of said cheque. The applicant filled the Index Card (SB -3) in his own handwriting and identified the holder "Bani Bal" by putting his signature and inserting the SB A/c No. of the applicant in the Index Card. Smt. Swapna Chakraborty signed as 'Bani Bal' in the space provided for signature of depositor in the Index Card and Specimen Signature which were identified by the applicant. On 3.11.2006, Smt. Swapna Chakraborty, the false nominee accompanied by the applicant, along with original certificates, attended Hridaypur SO and claimed the matured amount. Smt. Chakraborty submitted the original certificates signing the same as 'Bani Bal' before SPM, Hridaypur SO with false identification of claimant by the applicant. Suspecting forgery, the SPM tried to contact Smt. Bani Bal, the actual nominee of the case and Smt. Bal attended P.O. with documentary evidence of identification and the attempted forgery was disclosed. In consultation with the SPO Barasat Division the SPM, Hridaypur SO lodged an FIR under Barasat PS case No. 912/06 dated 3.11.2006 under Section 419/468/420/471 IPC and Smt. Swapna Chakraborty was arrested on the spot. Disciplinary Proceedings were initiated against the applicant under Rule 14 of CCS (CCA) Rules, 1965 on 29.4.2008 which was concluded with the penalty of 'dismissal from service' dated 29.7.2011.

12. Being aggrieved with the punishment order dated 29.7.2011, the applicant preferred an appeal dated 24.8.2011 to the Director of Postal Services, Kolkata region, Kolkata - 12. The appellate authority considered the appeal and upheld the punishment by rejecting the appeal vide appellate order No. Vig/Z-12/8/2011/Appeal dated 2.12.2011 which was delivered to the applicant under receipt on 14.12.2011 at his residence.

13. The two main grounds based on which the applicant has challenged

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the impugned orders are as follows:-

(i) That the orders of the appellate authority suffers from non-application of mind and it has been passed without giving any opportunity to the applicant to be heard. The order of the appellate authority does not disclose the reasons for upholding the order of the disciplinary authority.

(ii) That the punishment of dismissal from service is squarely disproportionate compared to the charges and requires the interference by the Tribunal.

Upon examination of documents and upon hearing the oral submissions, we arrive at the following findings:-

FINDINGS

(i) Under Section 23 of the CCS (CCA) Rules, 1965 the following are the orders against which an appeal lies:-

"23. Subject to the provisions of Rule 22, a Government servant may prefer an appeal against all or any of the following orders, namely:-

(i) an order of suspension made or deemed to have been made under rule 10;

(ii) an order imposing any of the penalties specified in Rule 11, whether made by the Disciplinary Authority or by any Appellate or [Revising] Authority;

(iii) an order enhancing any penalty, imposed under Rule 11;

(iv) an order which-

(a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement; or



(b) interprets to his disadvantage the provisions of any such rule or agreement;

(v) an order-

(a) stopping him at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;

(b) reverting him while officiating in a higher service, grade or post, to a lower service, grade or post, otherwise than as a penalty;

(c) reducing or withholding the pension or denying the maximum pension admissible to him under the rules;

(d) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;

(e) determining his pay and allowances-

(i) for the period of suspension, or

(ii) for the period from the date of his dismissal, removal or compulsory retirement from service, or from the date of his reduction to a lower service, grade, post, time-scale or stage in a time-scale of pay, to the date of his reinstatement or restoration to his service, grade or post; or

(f) determining whether or not the period from the date of his suspension or from the date of his dismissal, removal, compulsory retirement or reduction to a lower service, grade, post, time-scale of pay or stage in a time-scale of pay to the date of his reinstatement or restoration to his service, grade or post shall be treated as a period spent on duty for any purpose."

13. Further, according to Rule 27(2) of the said Rules, while considering an appeal imposing any of the penalties specified in Rule 11. or in

enhancing any penalty imposed under the said Rules, the appellate authority shall consider as below:

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

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

(b) whether the findings of the Disciplinary Authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders-

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

or

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

provided that-

(i) The Commission shall be consulted in all cases where such consultation is necessary;

(ii) If such enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 11 and an inquiry under Rule 14 has not already been held in the case, the Appellate Authority shall, subject to the provisions of Rule 19, itself hold such inquiry or direct that such inquiry be held in accordance

and

with the provisions of Rule 14 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit:

[(iii) if the enhanced penalty which the Appellate Authority proposes to impose is one of the penalties specified in Clauses (v) to (ix) of Rule 11 and an enquiry under Rule 14 has been held in the case, the Appellate Authority shall make such orders as it may deem fit after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty]; and

(iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 16, of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in Rule 23, the Appellate Authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable."

14. It is seen from the said Rule 27(iv) to the proviso that:

"27(iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 16, of making a representation against such enhanced penalty."

15. Hence, the CCS (CCA) Rules, 1965 does not mandate the appellate authority of giving a hearing to the applicant to be heard except where the penalty is proposed to be enhanced.

16. In the instant matter, the penalty imposed by the disciplinary authority has only been reiterated and upheld. Hence, in the absence of enhancement of penalty in the instant order of the appellate authority dated

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2.12.2011 (Annexure "A-12"), the scope of hearing the applicant cannot be held to be as mandatory.

17. Another allegation made that the appellate authority did not disclose the reasons for upholding the order of the disciplinary authority also does not hold good as because the appellate authority while examining the case, and the report of the IO, has arrived at certain findings on authentication of documents, non-reliance of observance of technical matter as well as on the appellate authority's satisfaction that the applicant had opened a false account in the name of Smt. Bani Bal, inserted his own Savings Bank Account number as introducer in the index card and in verification of entries.

18. The relevant portion of the order of the appellate authority is reproduced below:-

"(i) Exhibits at Sl. 5 & 6 of Annexure-II are the xerox copies of Savings Certificate duly examined by Sri Saha as well as seized by Police Authority, Barasat Police Station on 3.11.2006. The official raised question about the authenticity of the documents but did not state that the documents were false and forged. During Board of Enquiry also, apart from in the initial stage he did not raise any objection and allowed to continue the board. Therefore, the argument that the documents were not authenticated is not tenable at all.

(ii) In the appeal he put different non-observance of technical matters which are not relevant for the instant charge sheet. As a matter of fact, he did not make any comment as to the mischief he had committed or denied the charges.

(iii) It is clear from the report of the I.O. as well as from the statement of Smt. Bani Ball and Smt. Swapna Chakraborty that Sri Kartick Chandra Saha duly opened the false account in the name of Smt. Bani Ball by opening account by Smt. Swapna Chakraborty showing her as Bani Ball. Sri Saha filled the Index Card in his own handwriting and identified the holder as Bani Ball but putting his signature and inserting the SB Account No. Of Shri Saha as an introducer in the said index card. Being PRI (P), Sri Saha did not take any step to verify the genuineness of the claimant Bani Ball, authenticated the claim papers by his signature and designated stamp under entry "verified" and he himself went to Hridaypur SO and handed over the same to the SPM, Hridaypur S.O. for sanction and payment thereof."

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19. Hence, we are of the considered view that as the appellate authority has, upon examination of documents and upon perusal of the enquiry report, arrived at certain conclusions which are independent in nature, the question of non-application of mind does not arise in this case.

20. The next ground i.e. the punishment of dismissal from service is squarely disproportionate compared to the charges levelled against the applicant has been examined.

In this context, we refer to the written statement of defence of the applicant dated 30.5.2011 which are attached as Annexure 9/1 to the O.A.

While responding to Article I of the charges the applicant admits, "I have done a mistake in this case not verifying the matter at the residential address of the nominee of those NSCS only on good faith believing them at their request.

The applicant further goes on to say, "Actually I did a mistake in this case and nothing else."

21. While responding to Article II of the charges the applicant once again has stated as follows:-

"

XXXXXXXXXXXXXX

Again I beg to say that I have done a mistake that I did not verify the claimant at her residential address because of the fact that I believed them in simple mind at their repeated requested which I already stated above.

I beg to submit to your honour and state turely that this is unfortunate a mistake one by me in this case.

I also beg to say that the mistake once done in the performance of work in the long period of (34) thirty four years of unblemished service life may not kindly be considered to have not maintained absolute integrity, devotion of duty and to have acted in a manner of unbecoming of Govt. Servant and violated Rule 3(1)(I), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

This is really a mistake that I did unfortunately in the circumstances stated above and it may kindly be condoned for this time. I do assure that I will never do such a wrong and I will discharge my duties to the best satisfaction to my higher authority."



22. Hence, by his own admission, the applicant has admitted his default while responding to the articles of charge.

23. The next issue to be decided upon in this regard is whether the penalty was disproportionate to the charges. The enquiry officer had arrived at the following:-

" In view of assessment and evaluation of the written Brief of the Ld. Presenting Officer and written Brief of the Charged Officer and oral and documentary evidence based on exhibited documents, facts and deposition of material witnesses, it is crystal clear that the charge framed against Sri Kartick Chandra Saha in Article - I and Article - II stands Established. Sri Kartick Chandra Saha, the Charged Officer in the capacity of PRI (P), Barasat, H.O. have violated the provision of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964 and found to be responsible for infringement of said Rules."

24. The orders of the disciplinary authority at page 121-124 of the O.A. states as follows:-

"I have gone through the written statement of defence and charged official's Saha and observed the following:

1. (i) In respect of Article - I, Shri Kartick Chandra Saha categorically admitted that being PRI (P), Barasat, HO, he had done a mistake by not verifying the genuineness of the claimant i.e. Smt. Bani Ball, W/o. Late Swapan Kumar Ball, Hariharpur, PO- Hridaypur, Dist. - North 24 Parganas of the NSCs in question, at her residential address.

(ii) In his written representation dated 31.5.11, Sri Saha stated that IO failed to consider the following points which has come to light through the deposition and cross examination of the state witnesses-

(a) Who was the custodian of the NSCs at the time of preferring the claim.

(b) Who collected said NSCs and from whom.

(c) Who collected the death certificate of Late Paritosh Mukherjee and from whom to submit the same before the PRI(P).

(iii) Sri Saha stated in his written statement dated 31.5.2011 that as per request of some Alokesh Chowdhury and Smt. Swapna Chakraborty, Sri Saha filled up the deceased claim application (SD-2) in his own hand writing. In presence of Sri Saha, Smt. Swapna Chakraorty (SD-2) signed by him as duly verified, to the SPM, Hridaypur SO directly by hand. Sri Saha made an effort to come out from the charge on the plea that he had done all such as he was not aware of the identity of the claimant.

(iv) Sri Saha admitted that he requested Sri Prasanta Kr Roy (SW-4) and Sri Kartick Chn. Ghosh (SW-5) to put their signature on claim application (SD-2) as witness.

(v) Sri Saha stated that except his written statement dated 3.11.06 (SD-11), the written statement dated 4.11.2006 (SD-12), dated 6.11.06 (SD-13) & dated 8.11.06 (SD-14) were written by him according to the

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direction of the recording officer under compelling and prevailing circumstances.

(vi) Sri Saha stated that xerox copies of NSCs (SD-5/1 to SD 5/6 and SD-6/1 and 6/6) were produced in the BOI whereas the original certificates were not produced and in his written direction dated 9.2.2010, Sri Saha categorically mentioned that those documents could not be treated as authenticated one.

(vi) Sri Saha also raised question about witness of disciplinary authority on the seizure list made by the police authority and he opined that the memo of charges is totally defective.

In respect of Article - II, Sri Saha stated that as per request of Smt. Chakraborty, Sri Saha arranged for opening one SB A/c in the name of Smt Bani Bal at Barasat H.O. Sri Saha himself filled up the SB-3 and also introduced Smt. Swapna Chakraborty as Smt. Bani Bal putting his signature as introducer to open a new SB account in the name of Bani Bal.

Now from the daily order sheets, POs brief and IO's report following are observed.

Article-I

(i) As per IO's observation on analysis of the evidence, Smt. Bani Bal (SW-1) declared that she had not submitted any claim application for settlement of deceased claim and also denied her signature on SD-2.

Sri Kartick Saha confirmed the version of SW-1 in his written statement of defence that he identified Smt. Swapna Chakraborty as 'Bani Bal' without verifying the genuineness of the claimant.

In reply of mandatory Q.1, Q.2, Q.5 & Q.6, Sri Saha also confirmed the version of SW-1 before the Board of Inquiry dated 27.8.2010.

Being the PRI(P), Barasat HO, it was the first & foremost duty of Sri Saha to verify the genuineness of the claimant before recommendation of the deceased claim case, instead he filled up and processed false claim application in the name and style of 'Bani Bal' and also attested and verified the forged signature in the name of 'Bani Bal'.

(ii) Sri Saha raised question regarding - (a) Custodian of NSCs (b) the person by whom the NSCs were collected and submitted (c) from whom and how the death certificate of Late Paritosh Mukherjee collected.

The plea raised by Shri Saha as mentioned above is irrelevant to the charge but an effort to refute him from the charges framed against him.

(iii) Being a responsible officer, Sri Saha cannot refute him from the charge by doing such highly irregular activities without verifying the identity of the claimant as he is the verifying authority of such claim.

In reply to the Mandatory Question made by IO dated 27.8.2010, (a) Sri Kartick Ch Saha agreed that he filled up the claim application (SD-2) by himself, (b) Smt. Swapna Chakraborty signed as 'Bani Ball' on SD-2 (c) the claim case was received by him from one Sri Alokesh Chowdhury directly along with copy of death certificate and Affidavit, (d) Sri Saha submitted all documents duly

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verified and signed by him to the SPM, Hridaypur SO personally by hand.

So, the plea of filling up the claim application and processing of such claim only as per request of any claimant without verifying the identity of the said claimant as stated in his written statement dated 31.5.2011 by Sri Saha is not acceptable. Moreover his personal involvement towards processing and submission of the claim case towards sanction proves his clear intention of malpractice.

(iv) Sri Saha admitted that he asked Sri Prasanta Kr. Roy (SW-4) and Shri Kartick Ch. Ghosh (SW-5) to put their signature on claim application (SD-2) as witness. SW-4 in his deposition dated 22.6.2010 & SW-5 in his deposition dated 23.6.2010 also confirmed the fact. So it is crystal clear that Sri Saha insisted those postal officials to become witness against a false claim.

(vi) SD-12, SD-13 and SD-14 were produced by the PO before the board and the said documents were marked as state documents having been authenticated one without raising any question by the CO. Sri S. Samanta (SW-11) confirmed the authenticity of the said documents in his deposition dated 18.8.2010. Thus the plea of Sri Saha is not tenable.

(vii) AS the original NSCs were seized by the police in connection with Barasat PS case No.912/06 dated 3.11.2006 u/s 419/468/420/471 IPC, photo copy of one set of NSCs duly examined by Sri Kartick Saha, the charged official and photo copy of another set duly authenticated by police authority were produced in the Board of inquiry and marked as State documents. From SD-5/1 and SD-5/6, it revealed that those documents were got authenticated by the signature of Sri Kartick Ch. Saha, the charged official during preliminary inquiry of the case and Sri Saha made no objection in this regard. Thus the said documents in photo copies being authenticated by the signature of the charged official have an intrinsic value.

Article - II

2. Sri Saha agreed that he himself filled up the SB-3, put his signature as introducer to pen a new SB account at Barasat HO in the name of Bani Bal on request of Smt. Swapna Chakraborty.

In her deposition dated 17.8.10 in respect of Q.3 made by the IO, Smt. Swapna Chakraborty also confirmed that she did not fill up the SB-3 (Index Card) for opening of a new SB account at Barasat HO and she herself signed as 'Bani Bal' in the space provided for as per direction of Sri Kartick Ch. Saha. She also stated that Sri Saha signed as introducer in the SD-23 and gave his SB A/c No.

In her deposition dated 9.2.10, Smt. Bani Bal (SW-1) also denied the fact of opening such SB account at Barasat HO in her name. She also disowned the signature appeared in SB-3 as "Bani Bal".

Thus from the above, it is established that Sri Kartick Ch. Saha himself made an effort to encash the cheque which was to be issued against the amount of the deceased claim of NSCs as was processed by him by opening SB account at Barasat HO in the name of Bani Bal, misusing his official capacity of PRI (P), Barasat HO.

Therefore, it is evident from Sri Kartick ch. Saha, being PRI(P), Barasat H.O. misusing the official capacity, processed the false deceased claim case in respect of 6 NSCs stands at Hridaypur SO by his own hand for sanctioning the claim and discharging the value. He also managed to open a forged SB account bearing No. 640612 at Barasat H.O. for encashment of the cheque was to be issued against the false deceased claim. Thus, Sri Kartick Ch. Saha acted in such a manner which are clear contravention of absolute integrity, devotion to duty and unbecoming of a Govt. Servant violating of provisions under Rule-3(1)(i), Rule 3 (1)(ii) and Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

So, I agree with the findings of the Inquiry Officer in respect Article -I & Article - II of memo of charges framed against Sri Kartick Chandra Saha.

Thus the charges under Article - I and Article - II framed against Sri Kartick Ch. Saha stands established beyond.

The act of Sri Saha is so grave that he deserves exemplary punishment. Consider the pros and cons of the case, I passed the following order:

ORDER

I, Sri Umasankar Ghosh, Superintendent of Post Offices, Barasat Division, Barasat in exercising the power conferred upon me under Rule 12(2) of CCS (CCA) Rules, 1965 hereby award the punishment to Sri Kartick Ch Saha, PA, Bongaon MDG with "Dismissal from service which shall ordinarily be a disqualification for future employment under the Government" with immediate effect."

25. While concluding upon the penalty, the disciplinary authority states that in respect of Article I, the applicant categorically admitted that being PRI(P), Barasat he had done a mistake by not verifying the genuineness of the claimant I.e. Smt. Bani Bal. The applicant had himself stated in his written statement that he had filled up the claim of the deceased in his own hand-writing and that Smt. Swapna Chakraborty had signed as Bani Bal in his presence. The applicant put his signature after stating that the documents are duly verified and submitted all such documents purportedly verified to SPM, Hridaypur SO directly by hand. The applicant also submitted that he had requested the witnesses SW-4 and SW-5 to put their signature on the claim applications as witness.

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26. Regarding Article (ii) of the charges the applicant has admitted that as per request of Smt. Chakraborty, the applicant had arranged for opening one Savings Bank Account in the name of Smt. Bani Bal in the Barasat Head Office wherein she herself signed as 'Bani Bal' in the space provided for as per direction of Sri Kartick Ch. Saha. She also stated that Sri Saha signed as introducer in the SD-23 and gave his SB A/C no.

27. Hence, it was adequately proved that the applicant facilitated a forged claim by supporting the case of Smt. Swapna Chakraborty, who was impersonated as Bani Bal, the genuine claimant, not only by verifying the forged document but also by introducing the impersonator to open Savings Bank Account to receive the claimed amount.

28. Rule 3(I) of the CCS (Conduct) Rules, 1964 lays down as follows:-

"3(1) Every Government servant shall at all times -

- (i) maintain absolute integrity;
- (ii) maintain devotion to duty; and
- (iii) do nothing which is unbecoming of a Government servant."

29. Both from the IO's report, the order of the DA as well as his own written statement it is established that the applicant has failed to maintain absolute integrity and absolute devotion to duty as well as functioning in a manner unbecoming of a Govt. Servant by facilitating implementation of a forged claim. As the basic tenants of the CCS (CCA) Rules, 1964 is violated, the penalty of dismissal cannot be disproportionate to the charges established against the applicant.

It is a settled principle of law that:

The Tribunal cannot go into the basic decision, that is, the nature and quantum of penalty imposed. It can only interfere in a case just to see whether-

- (i) statutory provision or rules prescribing the mode of enquiry were disregarded.
- (ii) rules of natural justice were violated.

(iii) there was no evidence, that is, punishment has been imposed in the absence of supporting evidence.

If there are some legal evidence on which the findings can be based, the Tribunal cannot go into the adequacy or reliability of that evidence, even if it be of the view that on the same evidence, its conclusion may have been different.

(iv) considering extraneous to the evidence or the merits of the case taken into account.

(v) the conclusion was so wholly arbitrary and capricious that no reasonable person could easily arrive at the conclusion."

The Hon'ble Supreme Court has restated the above grounds of judicial review in High Court of Judicature at **Bombay v. Shashikant S. Patil (2000) 1 SCC 416.**

30. In this case, it is not the case of the applicant that the statutory provision or rules prescribing the mode of enquiry were disregarded as he had participated in the proceedings without questioning the statutory provisions thereof. It is not his case that the rules of natural justice were violated as because he was heard both at the level of enquiry and was given an opportunity to submit his written submissions against the enquiry report. In response to his request, additional documents to the extent considered relevant, were also furnished to him.

31. The punishment imposed was not in absence of supportive evidence because witnesses were examined and cross-examined, documents were furnished and his written submissions were considered. The disciplinary authority had come to a conclusion based on evidence adduced on record.

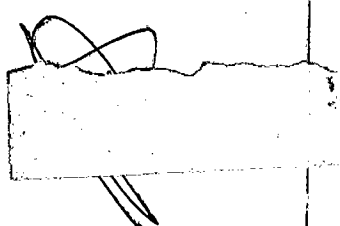
32. There is nothing to prove that extraneous consideration to the evidence on merits of the case were taken into account. Finally, the conclusions were neither arbitrary nor capricious given his default and given his admitted mistakes and in the background of total violation of Rule 3(1) of CCS (Conduct) Rules, 1964 it cannot be held that no reasonable

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person could arrive at the conclusion of dismissal given the charges levelled against him.

33. Hence, we do not consider any scope of interference by the Tribunal in this regard and dismiss the O.A. on merit. There will be no order as to costs.


(Dr. Nandita Chatterjee)
Administrative Member


(Manjula Das)
Judicial Member

SP