

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/320/2013

Date of order: 22.01.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Bipad Bhanjan Rej,
Son of Late Murari Mohan Rej,
Senior Accountant,
Office of the General Manager (PA & F),
West Bengal Postal Circle,
Aged about 48 years,
Residing at 9/81, Netaji Nagar,
Kolkata – 700 092.

.. Applicant

- V E R S U S -

1. Union of India,
Service through the
Chief Post Master General,
West Bengal Postal Circle,
P-36, Chittaranjan Avenue,
Yogayog Bhawan,
Kolkata – 700 012.
2. The Director of Accounts (Postal),
Office of the General Manager (PA & F),
West Bengal Postal Circle,
P/36, Chittaranjan Avenue,
Yogayog Bhawan,
Kolkata – 700 012.
3. Senior Accounts Officer (Admn.),
Office of the General Manager (PA & F),
West Bengal Postal Circle,
P-36, Chittaranjan Avenue,
Yogayog Bhawan,
Kolkata – 700 012.

.. Respondents

For the Applicant : Mr. A.K. Banerjee, Counsel
Mr. P. Sanyal, Counsel

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

O R D E RPer Dr. Nandita Chatterjee, Administrative Member:

An Original Application has been filed under Section 19 of the
Administrative Tribunals Act, 1985 praying for the following relief:-

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"(a) An order be passed directing the respondents to rescind, revoke and withdraw the purported charge-sheet dated 25.6.2009 (being made Annexure A-1 herein), the order of punishment dated 15.6.2010 (being made Annexure A-4 herein), passed by the Disciplinary authority, the order dated 11.3.2011 (being made Annexure A-6 herein), passed by the Appellate Authority and the order dated 10.6.2011 (being made Annexure A-7 herein) passed by the Revising authority and to grant all consequential benefits to the applicant arising thereto;

(b) An order be passed directing the respondents to produce the entire records of the case relating to this matter before this Hon'ble Tribunal;

(c) An order be passed directing the respondents to grant benefits made in MACP Scheme, which fell due on 1.9.2008 much prior to issuance of imposed charge-sheet, by quashing the memo dated 10.5.2010.

(Deleted)

(d) To pass such other or further order or orders, as Your Honour may deem fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record.

Ld. Counsel for the respondents has submitted written notes of arguments.

Ld. Counsel for the applicant would refer to the following judicial pronouncements in support of the applicant's claim:

(i) Original Application No. 744/PB/2009 (GurmeetKaur v. UOI & ors.)

(ii) Original Application No. 350/1961/2010 (BikashKantiMisra v. UOI & ors.)

(iii) Original Application No. 350/1448/2013 (RupaDebnath v. U.O.I & ors.)

3. The case of the applicant, in brief, is that a minor penalty chargesheet was issued against him on 25.6.2009 alleging that he had failed to perform the entrusted checking work for the month of September, 1998 thereby violating the provisions of paragraphs 2.12 and 2.16 of the Postal Accounts Manual and that, although the disciplinary authority could not supply all the relevant documents and despite the fact that the applicant categorically denied the allegations, without affording any opportunity of hearing, the disciplinary authority passed an order on 15.6.2010 withholding his increment for three years without any cumulative effect.

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The applicant preferred an appeal which was rejected and the appellate authority confirmed the penalty of the disciplinary authority. The Revising authority, however, suo motu issued an order of punishment of recovery @ Rs. 1000/- per month till the recovery of Rs. 1,40,000/- (deductible from the monthly salary of the applicant) without giving an opportunity of representing against the said order as per provisions of Rule 29 of CCS (CCA) Rules, 1965. As the applicant was constrained in performing his duties as not having received summary sheets and other particulars, he has been unduly penalized for no fault on his part.

That, the applicant filed an O.A. No. 596 of 2011 challenging the competency of the disciplinary authority which was disposed of by the Tribunal permitting the applicant to prefer a Special Revision Petition. Upon preferring such Special Review Petition, however, the same was rejected by the concerned respondent authority and accordingly, the applicant has approached the Tribunal in the instant Original Application challenging the entire disciplinary proceeding.

The applicant has advanced the following grounds in support of relief claimed by him:-

- (a) That, the charge-sheet having been issued after 7/8 years of the alleged incident was stale and hence, liable to be set aside.
- (b) The provisions of Rule 2.14 and 2.16 of the Postal Accounts Manual, Vol-II are not applicable to the applicant as he is not an Item Worker but is expected to check the certificates received with weekly accounts.
- (c) That, the KVP discharge summary of Raniganj H.O. of 09/98 were not made available to him and that the disciplinary authority did not hold an enquiry although he had sought the same.
- (d) The Revising Authority did not furnish an opportunity of hearing to the applicant as contemplated under Rule 29 of the CCS (CCA) Rules, 1965.

4. Per contra, the respondents have argued as follows:-

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That, the applicant, Senior Accountant in the Office of the General Manager (Postal Accounts & Finance), West Bengal Circle, Kolkata while performing his duties in CC V Section for the period from 22.11.2001 to 18.1.2008, checked KVP discharge return for the month of 09/98 before preparing objection memo bearing No. UNP/Obj/7/KVP/146A/CC V/9/98 dated 5.2.2002 issued to Raniganj Head Office.

That, as per objection memo, there were discrepancies in number of certificates shown in KVP discharge summary of Raniganj H.O. and number of discharge certificates received in PAO Kolkata, in respect of various denominations. But the details of the offices wherefrom such discrepancy arose, was not shown in the objection memo. Resultantly, it was not possible to know the name of the offices against which such discrepancy pertained. Subsequently, it was detected that in the month of September, 1998, an amount of Rs. 85,17,055/- (Principal Rs. 45,64,000/- + interest Rs. 39,53,055/-) was charged in the account of Raniganj HO itself without being supported with relative KVP paid vouchers, resulting in loss of the amount to the Department.

As the objection memo was not drawn up properly and since the applicant had prepared a faulty objection memo without carrying out proper checking work, he had violated the provisions of paras 2.14 and 2.16 of Postal Accounts Manual, Vol-II thereby leading to (a) lack of devotion to duty (b) acting in a manner which is unbecoming of Government Servant in violation of Rule 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964. A charge memo was issued under Rule 16 of CCS (CCA) Rules, 1965 vide Office Memo No. Disc/Rule 16/BBR/Admn. I-2092 dated 25.6.2009 and the applicant was given an opportunity to make representation against the proposal. On going, through the representation in details, the Disciplinary Authority, in exercise of the powers conferred upon him under Rule 12(2) of CCS (CCA) Rules, 1965 and vide office memo dated 15.6.2010, ordered that the next increment of the applicant would be withheld for three years without cumulative effect.

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The applicant preferred an appeal against the above punishment order and the Appellate Authority upheld the said order of punishment passed by the Disciplinary Authority.

The Reviewing Authority, however found that the Disciplinary Authority had failed to assess the gravity of the offence for which the Department sustained a loss to the tune of Rs. 85,17,055/- for the month of September, 1998, charged in the account of Raniganj H.O. but without being supported with relative KVP paid vouchers. Improper checking work on the part of the applicant also led to the loss to the Department amounting to Rs. 85,17,055/-. Hence, in exercise of powers conferred upon him by Rule 29 of CCS (CCA) Rules, 1965, the reviewing authority revised the orders issued by the Disciplinary Authority and imposed punishment of recovery of Rs. 1,40,000/- from the pay of the applicant @ Rs. 1,000/- per month from the salary of June, 2011.

Being aggrieved, the applicant filed O.A. No. 596 of 2011 which was disposed by this Tribunal by an order dated 23.4.2012 directing the authorities to decide the issue of competency of the disciplinary authority in the said disciplinary proceedings. The respondent authority by memo dated 21.3.2013, rejected the application and held that the Disciplinary Authority was indeed competent to initiate the disciplinary proceedings.

5. The point of determination in this instant matter is whether the disciplinary proceedings were vitiated at any stage.

6.(A) At the outset, we examine the statement of imputation of misconduct in detail:

"STATEMENT OF IMPUTATIONS OF MISCONDUCT OR MISBEHAVIOUR ON WHICH ACTION IS PROPOSED TO BE TAKEN AGAINST SHRI Bipad Bhanjan Rej, SENIOR ACCOUNTANT, OFFICE OF THE GENERAL MANAGER (PAF), WEST BENGAL CIRCLE, KOLKATA.

Shri Bipad Bhanjan Rej, Senior Accountant, Office of the General Manager (Postal Accounts & Finance), West Bengal Postal Circle, Kolkata in course of performance of his duties in C.C.V Section for the period from 22.11.2001 to 18.01.2008 checked KVP discharge return for the month of 09/98 before

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preparing objection Memo bearing No. UNP/Obj/7/KVP/146 A/C.C.V/9/98 dated 05.02.2002 issued to Raniganj Head Office.

As per objection memo there was discrepancy in number of certificates shown in KVP discharge summary of Raniganj H.O. and number of discharge certificates received in PAO, Kolkata in respect of denominations of Rs. 100/-, Rs. 500/-, Rs. 1000/-, Rs. 5000/- and Rs. 10000/-. But name(s) of -Office against which such discrepancy pertained was not shown in the objection memo. From the objection memo it is not possible to know the name(s) of Office(s) against which such discrepancy existed. Subsequently, it was detected that in the month of June '98 an amount of Rs. 85,17,055/- (Principal Rs. 45,64,000/- + Interest Rs. 39,53,055/-) was charged in the account of Raniganj H.O. itself without being supported with relative KVP paid vouchers resulting in loss of the amount to the Department. The objection memo is not specific in as much as the discrepancy in number of certificates was not shown against the concerned office(s).

Thus it transpires that the objection memo was not drawn up properly and said Shri Bipad Bhanjan Rej prepared the faulty objection memo without carrying out proper checking work. Had the objection memo contained the name(s) of the Office(s) where discrepancy in number of certificates existed, the above mentioned loss sustained by the Department could be detected much earlier and further loss of the type sustained by the Department subsequently could be averted.

It is, therefore, alleged that said Shri Bipad Bhanjan Rej by his above acts failed in his entrusted checking work and thereby violated the Provisions of Paras 2.14 & 2.16 of Postal Accounts Manual Vol.II and is thereby alleged to have shown (a) lack of devotion to duty, (b) acted in a manner which is unbecoming of a Govt. Servant and thereby alleged to have violated Rule 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rule, 1964."

From the above, the following is inferred.

- (a) That, the applicant, while functioning as a Sr. Accountant in the Office of General Manager (Postal Accounts & Finance), West Bengal Circle, Kolkata during the period from 22.11.2001 to 18.1.2008, checked KVP discharge return for the month of 09/98 and, thereafter, prepared an objection memo dated 5.2.2002 which was issued to the Raniganj H.O.
- (b) Although the objection memo pointed out that there was a discrepancy in the number of certificates shown in the KVP discharge summary of Raniganj HO as against the number of certificates of PAO, Kolkata in respect of specified denomination, the names of offices wherefrom such

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discrepancy had arisen were not noted in the objection memo. Consequently in the month of September, 98, an amount of Rs. 85,17,055/- (Principal Rs. 45,64,000 + Interest Rs. 39,53,055/-) was charged in the account of Raniganj H.O. itself without supportive KVP paid vouchers resulting in loss of the amount to the Department.

- (c) That, the objection memo was not drawn up properly and the applicant who prepared the faulty objection memo without checking it appropriately, failed to avert the loss sustained by the Department.
- (d) The applicant has violated paras 2.14 & 2.16 of the Postal Accounts Manual Vol. II.
- (e) The applicant was alleged to have shown (i) lack of devotion to duty (ii) acted in a manner which is unbecoming of a Govt. servant and, therefore, alleged to have violated Rule 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rule, 1964.

(B) Hereinafter, we examine the objection memo dated 5.2.2002 which is reproduced as below:

**"OFFICE OF THE GENERAL MANAGER (POSTAL ACCOUNTS & FINANCE),
WEST BENGAL POSTAL CIRCLE "YOGAYOG BHAWAN" KOLKATA - 12.
NO.UNP/Obj./7/KVP/146A-CC-V/9/98 dated:05/02/2002**

To
The Postmaster
Raniganj H.O.

Subject: - Irregularities in the KVP / Duscharge return for the month of 9/98

The following irregularities have been noticed while checking of account of the above mentioned return. Kindly furnish the information/Settle the discrepancy as called for _____

Against the item as noted below:-

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(I) Invoice Wanting:

Please forward a true copy of the invoice under which the following certificates were received as the same has not been received by this office:-

<u>Certificate No.</u>	<u>Deno</u>	<u>Office of</u>	<u>Date of</u>	<u>Name of</u>
<u>Issue</u>	<u>Issue</u>	<u>Issue</u>	<u>Issue</u>	<u>Purchaser</u>

(2) Original Certificate No.

Original Certificate number of the following duplicate certificate has not quoted on the 'Top of the certificate' which is/are required as per para 44 of P.O.S.B. Manual Vol-II

Please intimate the same immediately :-

The following irregularities have been noticed while checking of account of the above mentioned return. Kindly furnish the information Settle the discrepancy as called for against the item as noted below:-

(I) Invoice Wanting:-

<u>Certificate No.</u>	<u>Deno</u>	<u>Issuing Office</u>	<u>Name of purchaser</u>
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Please forward a true copy of the invoice under which the following certificate were received as the same has not been received by this office:-

The issue journals of the following office is support of the Certificate No.

<u>Deno</u>	<u>Office of</u>	<u>Date of</u>	<u>Name of</u>
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amount credited against the summary have not been received. Please furnish the same at an early date after entering therein correct Serial

<u>Place</u>	<u>No. of Certificates</u>	<u>Deno</u>	<u>Period</u>
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(2) Original Certificate No.

Original Certificate number of the following duplicate certificate has not quoted on the 'Top of the certificate' which is/are required as para 44 of P.O.S.B. Manual Vol-II

Please intimate the same immediately:-

There is discrepancy between amount shown in the Summary and Cash Certificate received for the month of 9/98. The details of Journal Certificate received is/are given below:- A fresh Summary may kindly be given at an early date.

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6NS/VI(I) (O) Amount Shown In The Summary.	Office	Amount as per cash Certificate received.
18X100 = 1800		12X100 = 1200
513X500 = 256500		452X500 = 226000
363X1000 = 363000		319X1000 = 319000
410X5000 = 2050000		376X5000 = 1880000
817X10000 = 8170000		358X10000 = 3580000
10841300/-		6006200/-

Sd/-

For Director of Accounts (Postal),
Kolkata.

It is seen from the above, that, in Column I of part 6 of the said memo, the amounts have been shown as in the summary, totaling to Rs. 1,08,41,300/- whereas the amount as per cash certificates received, amounted to Rs. 60,06,200/- revealing thereby that there was a discrepancy between the summary statement and the cash certificates received from the concerned Post Office. Column 2 which is entitled as "Office", however, has remained blank and the applicant has not filled up the source from where such discrepancy was detected.

(C) Next, we examine the provisions of paragraphs 2.14 and 2.16 of the Postal Accounts Manual Vol-II which reads as follows, with emphasis supplied:-

Para 2.14 refers to "Examination of Summaries" wherein it has been categorically stated that Summaries for the monthly account should, after check, be made over to the checker for postings in the Abstract of P.O. Certificates issued and discharged [xxx] in respect of issues and in the Register of Discharges [xxx] in respect of discharges.

Para 2.16 states that "Monthly Journals of discharges should be examined to see:-

- (i) That all particulars required by the form are given;
- (ii) That the entry numbers run in a consecutive series for each month;

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- (iii) That each entry is supported by a paid (discharged) P.O. Certificates or Safe Custody receipt if any voucher is wanting, it should be called for, a check slip in Form No. D.G. (PA)-319-A being prepared and kept in the proper place;
- (iv) That the amount shown in the column for "Interest" is correct with reference to the dates of issue and discharge of the certificates; and
- (v) That the totals of the journals are correct.

Hence, admittedly as the applicant was responsible for checking/examining the entries in respect of discharges, paras 2.14 and 2.16 are applicable to him.

(D) Next we examine the orders of the disciplinary authority dated 15.6.2010 (Annexed as A-4 to the O.A.) and the following are deciphered therefrom:

- (a) That, the applicant was given an opportunity to represent against the charge memo, that the applicant was called for examination of documents/records and he was allowed to inspect the same, as subsequently admitted by the applicant on 3.9.2009.
- (b) That, the following points were raised by the applicant in his defence statement:
 - (i) That, he was permitted to examine five documents out of eight. As such, he had been denied the opportunity to present his case fully and comprehensively.
 - (ii) That, he performed his duties for checking of discharge certificates in accordance with the prevailing rules and instructions.
 - (iii) That, since the objection was raised in a printed form with column as 'Amount shown in the Summary', 'office and 'Amount' as per cash certificates received', here was no option for him than to go beyond the printed matter.

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(iv) That the summary was not available and there was a large difference in number of certificates supplied to him at the time of checking and the number of certificates shown on the document for inspection. His name was also not found in the work Distribution List.

(v) That, the objection memo was prepared as per para 60 of PAM Vol-II and he denied the charges of violation of provisions of Paras 2.14 and 2.16 of PAM, Vol.-II and Rules 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

(c) According to the disciplinary authority, the allegations were clear and unambiguous and the rules so violated along with corresponding conduct rules have been noted duly in the charge memo. That, the applicants duties were to check the journals of PO certificate issued and discharged with reference to the summary sheet along with Post Office returns as provided in paras 2.14 of PAM Vol. II. Similarly as provided in Paras 2.16 of the said Manual read with Note 2 below para 2.16 of PAM Vol-III, the journals of discharges would have to be examined to see that each entry is supported by a paid (discharged) PO certificate and if the discharged certificate is not available with the list, the same has to be called for through an objection statement and had the applicant conducted proper checking, he could have easily detected the office-wise list of KVPs that were wanting. The applicant/charged official, however, left the Column No. 2 of the printed objection memo part 6 of the same blank.

(d) That the applicant/charged official had not mentioned in the objection statement that he had not received the summary with the Post Office returns, rather he had actually referred to the summary statement in Column I of Part 6 of the objection memo.

(e) It is obvious from the objection statement that the applicant/charged official had prepared the objection memo and initialed the same.

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(f) As it is a long standing practice of the CC Section to perform both the item works and check works by every individual official for which a composite outturn had been formulated and the applicant/charged official furnished his daily outturn on prescribed proforma on regular basis and hence, his plea that he was not an item worker or checker in the present system is not tenable.

(g) As Rs. 85,17,055/- were charged to Raniganj H.O. in September, 1998 itself without being supported with respective KVP paid vouchers, ultimately the department suffered a loss to the extent of the said amount.

(h) And, accordingly, the disciplinary authority imposed a minor penalty of withholding the increment for three years without cumulative effect.

Next, we examine the order of the Appellate authority (Annexure A-6 to the O.A.) and infer the following therefrom.

That, the competency of the disciplinary authority was challenged by the applicant/charged official in his appeal who further alleged that the penalty was imposed without due weightage to the contents of his written representation, meaning in particular, that the appellant/charged official was only entrusted with the job of checking and not item works.

That, the objection memo only mentioned "office" in part 6 column 2 and not Sub-Post Office.

That, there are no provisions of composite outturn in the Postal Accounts Manual and the prescribed checks were carried scrupulously which helped to detect inappropriate payment.

The appellate authority, having gone through the contention of the appeal, concluded as follows:-

(i) That; the disciplinary authority was indeed competent to initiate disciplinary proceedings against the appellant /charged official.

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- (ii) As the appellant/charged official had actually prepared the objection memo he had carried out the work of the item worker and such works were guided by provisions Paras 2.14 and 2.16 of Postal Accounts Manual, Volume – II.
- (iii) That, when the objection statement is of a particular Head Office, it is obvious that the irregularities existed either in the Head Post Office or in the Sub-Offices and, consequently, the details of Sub-Office has to be furnished. Hence, having been convinced that the appellant/charged official did not carry out the prescribed checks, the appellate authority confirmed the penalty of the appellant.

7. The applicant in his defence has submitted as follows:-

- (i) That the charge memo being stale is liable to be set aside.

We find, however, that during all the representations made against the charge memo as well as in his defence statement, the applicant has only referred to the need for receipt of authentic and attested copies of documents on account of the lapse of 7 years since the issue of the objection memo. In none of his defence statements, the applicant has raised the issue of the non-maintainability of charge-memo on the ground of delay. According to the grounds advanced in this O.A., the proceedings are vitiated on account of delay. Mere delay is not sufficient to vitiate disciplinary proceedings unless the applicant is able to prove, as held in **G. Anandam v. Tamil Nadu Electricity Board (1996) II LLJ 1198 (Mad)**, that prejudice caused to him on account of the delay. The respondent authorities have explained that financial losses to the tune of Rs. 85,17,055/- that occurred on account of faulty preparation of objection memo, came to light consequent to detection of fraud. Hence, the charge of vitiation on ground of delay does not hold good.

- (ii) According to the applicant, the documents, as prayed for, were not furnished to him in totality. It is seen, however, that, by memo dated 25.6.2009 (Annexure A-1 to the O.A.) the objection memo dated 5.2.2002 has

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been furnished to the applicant and as this memo has been referred to in the memorandum of charges, the vital document has been furnished.

(iii) The next issue raised by the applicant is that he was not given the documents as sought for particularly the KVP discharge summary of Raniganj H.O. pertaining to 09/98. It is obvious, however, from the objection memos that the inputs in Column 1 in part 6 of the objection memo has been obtained from the summary sheet and hence it is too late in the day to dispute that there was no summary statement which was made available to him at the time of preparation of the objection memo.

Upon an examination of the objection memo once again it is clear that as the applicant has noted the following amounts as shown in the summary in objection memo for the month of September, 1998, the following has been quoted from the summary sheet:-

6. NS/VI(I) (O)
Amount Shown in
The Summary.

18X100	=	1800
513X500	=	2,56,500
363X1000	=	3,63,000
410X5000	=	20,50,000
817X10000	=	8170000
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1,08,41,300/-		
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It is inferred therefore, that the applicant must have obtained these details from the summary sheet failing which there could have been no other source of information based on which he could have filled in the "amounts as shown in the summary." Further, in the objection memo of September, 1998 there is no noting against the "office" wherefrom the cash certificates were received and column 2 of part 6 of the objection memo of 9/1998 has been left blank.

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(iv) The applicant has further stated that no enquiry was conducted by the disciplinary authority despite his seeking the same. Herein we refer to the applicant's representation dated 7.7.2009 against the charge memo (Annexure A-3 to the O.A.) and his representation against proposed action to be taken against Rule 16 of CCS (CCA) Rules, 1965 dated 10.12.2009 (Annexure A-3 to the O.A.) addressed to the disciplinary authority and nowhere we find that he had specifically requested for an enquiry.

We further refer to Rule 16 of the CCS (CCA) Rules which lays down the procedure for imposing minor penalty (emphasis supplied):-

"16. Procedure for imposing minor penalties

(1) Subject to the provisions of sub-rule (5) of Rule 15, no order imposing on a Government servant any of the penalties specified in Clause (i) to (iv) of Rule 11 shall be made except after-

- (a) Informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;
- (b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary;
- (c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;
- (d) consulting the Commission where such consultation is necessary. The Disciplinary Authority shall forward or cause to be forwarded a copy of the advice of the Commission to the Government servant who shall be required to submit, if he so desires, his written representation or submission on the advice of the Commission, to the Disciplinary Authority within fifteen days; and
- (e) recording a finding on each imputation or misconduct or misbehavior]

(1-A) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the

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manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include-

- (i) a copy of the intimation to the Government servant of the proposal to take action against him;
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
- (iii) his representation, if any;
- (iv) the evidence produced during the inquiry;
- (v) the advice of the Commission, if any;
- (vi) representation, if any, of the Government servant on the advice of the Commission;
- (vii) the findings on each imputation of misconduct or misbehaviour; and
- (viii) the orders on the case together with the reasons therefor.]"

We would, in particular, refer to Rule 16(1)(b) which states that an enquiry is to be held in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary.

In this context, there is nothing on record to show that the applicant sought an enquiry, the disciplinary authority in minor penalty proceedings did not consider it fit to arrange for a specific enquiry thereof and as no provisions of Rule 16(1A) would apply, we do not find that there were any procedural infirmities by the disciplinary authority in not conducting an enquiry in minor penalty proceedings.

(v) Another ground advanced by the applicant is that he was not directly involved in any financial loss to the Government. The respondents have stated that a sum of Rs. 85,17,055.00 was found charged in the discharge journal without supporting paid vouchers. Even if the applicant was not directly involved in any fraud, his negligence had led to non-detection of the issuing Post Offices wherefrom the discrepancies between cash and certificates had occurred. It is noted here that the imputation of misconduct was based on charges of "negligence" and not on "fraud" which was a criminal offence. Had the applicant been vigilant in preparing his objection memos, the discrepancies detected by

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him could have been tracked to its source and the respondents could have taken corrective action in this regard.

8. We therefore refer to the orders of the disciplinary authority who had analysed available evidence stating as follows:-

- (i) That, sufficient scope of natural justice was accorded to the applicant;
- (ii) That, relevant documents as well as applicant's submissions were taken into account;
- (iii) That, rules had been adhered to and
- (iv) That, negligence of the applicant arising from procedural lapses were serious in nature and, in particular, the disciplinary authority had referred to the following provisions in his order:-

"7.4. As per Para 2.69 of PAM, Vol.II, the objection statement should be forwarded to the concerned Postmaster and the Charged Official correctly forwarded the objection statement to the Postmaster Raniganj. But the objection statement should be specific and distinct in so far as the office-wise break-up of objected amount as well as wanting certificates are concerned. If the objection statement is not correctly prepared, all further exercises would become futile.

7.5 Format of an objection statement is in Form DG (PA)-335 as prescribed in Para 2.55 of PAM, Vol. II. The form prescribes mentioning of the Post-Office in respect of which the irregularity is reported. In this case, the objection memos under reference are faulty and have not been completed with the names of defaulting Post Offices."

Next, we examine the orders of the appellate authority, who found that, while filing his appeal, the applicant, in his appeal, had not mentioned anything beyond what he had submitted in his statement of defence except in referring to harshness of punishment imposed upon him.

The appellate authority has further stated that identification or issue of objection statement is a critical function related to accounts check. The appellate authority has further held that as the applicant has not been able to prove that he had filled the objection memo accurately and as per the provisions of Postal Accounts Manual Vol. II, the appellate authority did not find that he could be

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absolved of the charges of negligence and the charges, being of the nature of minor penalty, was not excessive in his case.

Upon following the Hon'ble Apex Court's decision in *High Court of Judicature at Bombay v. Shashikant S. Patil, (2000) 1 SCC 416*, we find that in this matter natural justice has not been denied, bias was not established, extraneous considerations were not detected, statutory provisions were not flouted and the punishment could not be called excessive given the established charges. Hence, we are of the view that the orders of the disciplinary and appellate authorities do not call for any intervention in this matter.

9. It is seen, however, that the Chief Post Master General, West Bengal Circle, in exercise of powers conferred upon him, under Rule 29 of CCS (CCA) Rules, 1965, suo motu, revised the order issued by the disciplinary authority and imposed a punishment of recovery of Rs. 1000/- p.m. from the salary of the applicant concerned. In this context, we refer to the provisions of Rule 29 of the CCS (CCA) Rules, 1965.

"29. Revision:

- (1) Notwithstanding anything contained in these rules-
 - (i) the President; or
 - (ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or
 - (iii) the Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board and Adviser (Human Resources Development), Department of Telecommunications in the case of a Government servant serving in or under the Telecommunications Board; or
 - (iv) the Head of a Department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such Head of a Department; or
 - (v) the appellate authority, within six months of the date of the order proposed to be revised or
 - (vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order;

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and revise any order made under these rules or under the rules repealed by rule 34 from which an appeal is allowed, but from which no appeal

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has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of rule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under rule 14 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in rule 14 subject to the provisions of rule 19, and except after consultation with the Commission where such consultation is necessary :

Provided further that no power of revision shall be exercised by the Comptroller and Auditor-General, Member (Personnel), Postal Services Board, Adviser (Human Resources Department), Department of Telecommunications or the Head of Department, as the case may be, unless-

- (i) the authority which made the order in appeal, or
- (ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for revision shall be commenced until after-

- (i) the expiry of the period of limitation for an appeal, or
- (ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules."

The Ld. Counsel for the applicant had referred to certain judicial pronouncements in O.A. No. 1448 of 2013 dated 19.11.2014 in which the Tribunal had quashed the order passed by the Chief Post Master General exercising his powers under Rule 29 of the CCS (CCA) Rules in violation of the provisions therein. We are of the considered view that the applicant being similarly circumstanced, the decision arrived at in O.A. No. 1448 of 2013 will also apply in the case of the applicant. We also refer to the directions of the Chandigarh Bench of the Tribunal in O.A. No. 744/PB/2009 dated 2.9.2009 in which it was held that unless the person concerned is directly responsible for

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misappropriating any amount or causing pecuniary loss to the Government, no recovery can be made from the applicant. We also agree with the findings in O.A. No. 1961 of 2010 dated 3.6.2015 in which the Tribunal in referring to **C.N. Harihara Nandanam v. Presidency Post Master, Madras and another**, reported in **(1988) 8 Administrative Tribunal Cases page 673** by the Ahmedabad Bench of the Tribunal, **J.M. Makwana v. UOI and others** reported in **2002 (1) ATJ 283** and by the Cuttack Bench of the Tribunal in **O.A. No. 634 of 2009** disposed of on 11th November, 2010 (**Sukomal Bag v. UOI & ors**), (upheld by the Hon'ble High Court of Orissa vide order dated 22.8.2011 in WP (C) No. 4343 of 2011), held that recovery for contributory lapses in negligence is held to be illegal.

10. Accordingly, we hold that this Tribunal does not deem it fit to intervene in the orders of the disciplinary authority or the appellate authority dated 15.6.2010 and 11.3.2011 respectively. The orders on Special Revision Petition declaring competency of the disciplinary and appellate authority respectively, not being successfully challenged, shall also hold good. The orders of the Reviewing Authority dated 15.6.2011 ordering recovery, however, is quashed and set aside as being violative of Rule 29 of the CCS (CCA) Rules, 1965. The respondent authorities will refund the amount recovered from the applicant within six weeks of the date of receipt of this order.

11. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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