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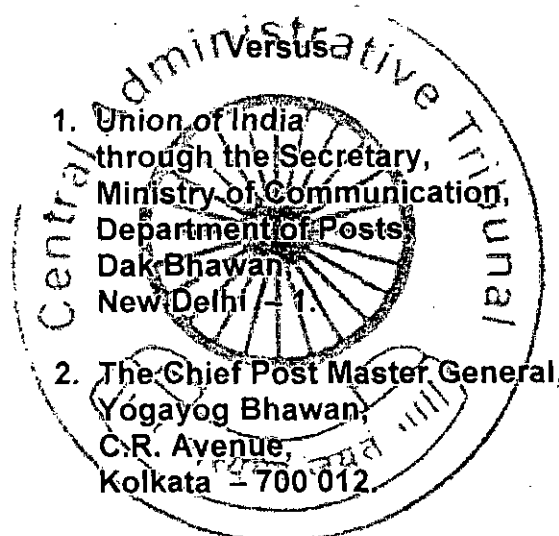
No. O.A. 757 of 2012

Date of order: 14th November, 2018

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

Shri Suwendu Mandal,
Son of Binoy Krishna Mandal,
Aged about 39 years,
Worked as P.A. (ME), Raniganj H.O.
Under the Postmaster, Raniganj H.P.O.,
Asansol Divn.,
Residing at Vill. Jirat,
P.O. – Kalipahari,
Dist. – Burdwan, PIN – 713339,
P.S. Raniganj.

... Applicant.



3. The Director,
Kolkata G.P.O. and the
Director of Postal Services,
South Bengal Region,
Yogayog Bhavan,
Kolkata – 12.
4. The Asstt. Director of Postal Services,
South Bengal Region,
Yogayog Bhavan,
Kolkata – 700 012.
5. The Sr. Superintendent of Posts Offices,
Asansol Divn., Asansol,
Burdwan, PIN – 713301.

... Respondents.

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. A. Mondal, Counsel

Ms. R. Basu, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved at the order of his dismissal, the applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

- "(a) Charge-sheet dated 09.02.2009 issued by the Sr. Superintendent of Post Offices is bad in law and therefore, the same may be quashed.*
(b) Order passed by the Disciplinary Authority vide Office Order dated 09.09.2011 dismissing the applicant from service can not be tenable in the eye of law and therefore, the same may be quashed.
(c) Order passed by the Appellate Authority dated 08.02.2012 can not be tenable in the eye of law and therefore, the same may be quashed.
(d) An Order do issue directing the respondents to re-instate the applicant in service with all consequential benefits."

2. Heard Ld. Counsel for the parties, examined pleadings and documents on record. Written notes of argument have been filed by both Ld. Counsel.

3. The applicant's case, as submitted by the Ld. Counsel, is that the applicant was holding a civil post and was working as Postal Assistant at Raniganj Head Post Office under Asansol Division. He was proceeded against under Rule 14 of CCS (CCA) Rules, 1965 by the Sr. Superintendent, Asansol Division, vide Office Memo No. - FD/Disc/Suvendu Mandal dated 09.02.2009 on baseless, flawed and unspecific charges of which Articles II and III are exactly the same as that contained in Article I.

That, the following critical issues were involved in all three articles of charges:

- (i) The applicant had prepared the KVP discharge summary without any order of the Postmaster Raniganj H.O.
- (ii) The applicant did not prepare the KVP summary on the basis of the KVP discharge journal.
- (iii) The applicant prepared KVP summary with malafide intention for personal gain.

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Further, although the disciplinary authority had mentioned six state documents and 7 state witnesses by which the articles of charge were proposed to be sustained. Ld. Counsel for the applicant would submit that the disciplinary authority did not produce six file documents despite the fact that the applicant had submitted list of nine additional documents for his inspection and for preparation of his defence. The Ld. Counsel for the applicant would cite the Supreme Court judgment in **Raizada Trilok Nath v. UOI 1967 (1) SLR 759** wherein it has been held that failure to furnish copies of documents in the inquiry amounts to violation of the provision of Article 311(2) of the Constitution.

According to the applicant, in the inquiry, the charges under Article No. I and Article No. III have not been established. The IO established the charge under Article II excluding the portion "with malafide intention appearing at line 5 of para 2 of Annexure-I and excluding the portions "malafide intention and personal gain" appearing at lines 3 and 4 of para 1 and "wilfully with malafide intention and personal gain" appearing at line 14 of para 3 of Annexure II of Article - II.

The disciplinary authority, however, had disagreed to the findings of the Inquiry Officer and issued his note of disagreement on 29.07.2011 without any in-depth study of the statement of the state witnesses, his own failure to produce state documents, the flaws committed by him in framing the charge sheet and its consequential maintainability under law. The disciplinary authority also failed to see that there was no anomaly in the accounts of the Cash Book of the HO in respect of payments of KVP discharge and the Govt. did not incur any loss on account of the same.

That, the applicant had submitted his representations against the note of disagreement of the disciplinary authority detailing his arguments and praying for

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justice. But the disciplinary authority was predetermined to punish the applicant and hence turned a deaf ear to the applicant's pleadings and imposed the highest punishment of "Dismissal from Service" unprecedently ignoring the result of inquiry and statement of the state witnesses and demerits of the prosecution.

The applicant preferred an appeal to the appellate authority under Rule 23(ii) of CCS (CCA) Rules, 1965. The appellate authority not only upheld the punishment imposed by the disciplinary authority but also brought an extraneous allegation that wrong preparation of discharge summary paved the way for huge misappropriation of Govt. money to the tune of more than Rs. 94 crores. As the allegation of misappropriation was not incorporated in the charge sheet, at the appeal stage, no such allegation can be introduced as per rule. The appellate order is therefore absolutely unlawful and should be quashed forthwith.

The Chief Postmaster General, W.B. Circle, who was holding the charge of PMG, S.B. Region, deposed before the Special CBI Court, Asansol on 4th September, 2017 in his written complaint that he, in the capacity of PMG, S.B. Region had not mentioned the name of the applicant as the individual who had played any part in the defalcation and that no allegation was also made by him against the applicant in the FIR. It is hence established conclusively with such statement of the PMG, S.B. Region that the applicant is not at all culpable and hence the applicant has approached the Tribunal seeking relief therefrom.

According to the applicant,

- (a) He had prepared the KVP discharge summaries on the instruction of Postmaster Raniganj H.O.
- (b) The KVP discharge journals were in the custody of the Postmaster who did not give the said journals to the applicant but only gave him the rough note book of the counter KVP PA and the applicant cannot be made responsible for any mistakes in the same.

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(c) The inquiring official had concluded that his "malafide intention and personal gain" had not been established in any of the three articles of charges.

(d) As the applicant had not committed any misconduct in terms of the ratio of Hon'ble Supreme Court in its judgment in **Union of India v. J. Ahmed (1979) 2 SCC 286 (paras 9, 11)** imposition of any punishment is not lawful in his case.

4. Per contra, the respondents have argued that it was detected that Rs. 94.52 crores of Government money had been misappropriated in the shape of showing discharge of KVPs without supporting paid vouchers at Raniganj Head Post Office for the period 1992 to 2005 and that departmental proceedings were initiated against delinquent officers at all levels and the matter was reported to the CBI Kolkata which initiated criminal proceedings as well as disproportionate asset case against the suspected officials.

That, the applicant was chargesheeted under Rule 14 of CCS (CCA) Rules, 1965 vide memo dated 9.2.2009 and the three distinct Articles of charge were brought against him:-

Article-1

It is alleged that Sri Suwendu Mondal while working as PA (Marketing Executive) Raniganj Head Post Office for the period from January 2005 to April 2005 prepared KVP discharge summary for the month January 2005 of Raniganj HO. KVP discharge summary is required to be prepared on the basis of KVP discharge journals which is prepared in KVP counter. Sri Subir Mukherjee, was the counter clerk of KVP counter during the relevant period.

Sri Mondal had been working as PA and Marketing Executive, Raniganj H.O. and was not required to and was not given any order by Postmaster, Raniganj H.O. to prepare any documents regarding discharge of KVPs during the period from 1.1.2005 to 31.1.2005. But Sri Mondal had prepared KVP discharge summary for the month of January, 2005 of Raniganj HO with malafide

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intention and personal gain. Thus the said Sri Mondal has acted in contravention to Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article II

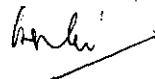
It is alleged that Sri Suvendu Mondal while working as PA (Marketing Executive) Raniganj Head Post Office for the period from January 2005 to April 2005 prepared KVP discharge summary for the month of February 2005 of Raniganj HO. KVP discharge summary is required to be prepared on the basis of KVP discharge journals which is prepared in KVP counter. Sri Subir Mukherjee, was the counter clerk of KVP counter during the relevant period.

Sri Mondal had been working as PA and Marketing Executive, Raniganj H.O. and was not required to and was not given any order by Postmaster, Raniganj H.O. to prepare any documents regarding discharge of KVPs during the period from 1.2.2005 to 28.2.2005. But Sri Mondal had prepared KVP discharge summary for the month of February, 2005 of Raniganj HO with malafide intention and personal gain. Thus the said Sri Mondal has acted in contravention to Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

It is alleged that Sri Suvendu Mondal while working as PA (Marketing Executive) Raniganj Head Post Office for the period from January 2005 to April 2005 prepared KVP discharge summary for the month of March 2005 of Raniganj HO. KVP discharge summary is required to be prepared on the basis of KVP discharge journals by the KVP counter PA, Sri Vijoy Prasad was the counter clerk of KVP counter PA.

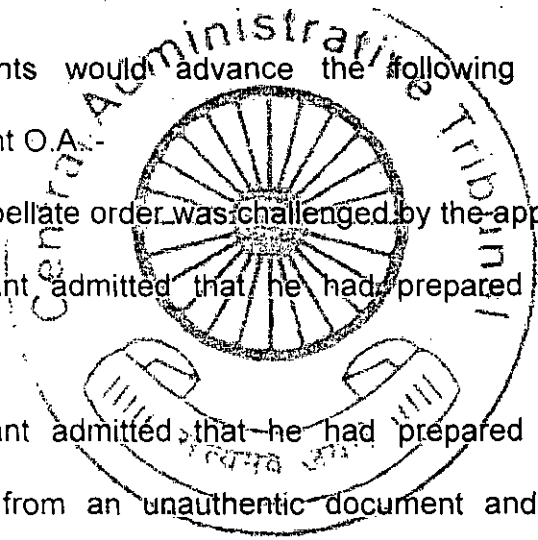
Sri Mondal had been working as PA and Marketing Executive, Raniganj H.O. and was not required to and was not given any order by Postmaster, Raniganj H.O. to prepare any documents regarding discharge of KVPs during the period from 1.3.2005 to 31.3.2005. But Sri Mondal had prepared KVP discharge summary for the month of March, 2005 of Raniganj HO with malafide intention and personal gain. Thus the said Sri Mondal has acted in contravention to Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

Sr. Supdt. Of Post Offices
Asansol Division
Asansol- 713301"



That, IO and PO were appointed, enquiry was conducted and the charged official took part in the proceedings and also availed of all reasonable opportunities as per the principle of natural justice. The enquiry was completed on 6.1.2011 and the enquiry report was submitted on 21.3.2011 whereby the Inquiry Officer in his report had concluded that while Articles I and III do not stand established, Article II stood established excluding the imputation of malafide and personal gain. The disciplinary authority, not having agreed with the IO's conclusion issued a disagreement note and after obtaining the Charge Officer's/applicant's response to the same, finally passed the order of punishment of dismissal from service. The appellate authority also upheld the decision of the disciplinary authority.

The respondents would advance the following arguments towards dismissal of the instant O.A.-

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- (a) Only the appellate order was challenged by the applicant in his O.A.
 - (b) The applicant admitted that he had prepared the KVP discharge summaries.
 - (c) The applicant admitted that he had prepared the KVP discharge summaries from an unauthentic document and not from the KVP discharge journals.
 - (d) An illegal act remains illegal regardless of who directs doing it and the circumstances under which it is done.
 - (e) The applicant was found guilty of the charges by preponderance of the evidence.
 - (f) The acts of the applicant constitute misconduct with malafide intent to secure personal gains unbecoming of a govt. servant.
 - (g) The charges brought against the applicant was proved comprehensively and the applicant was justly dismissed from service.

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(h) The appellate authority also considered the appeal of the applicant with due care and sympathy and passed a well reasoned and speaking order dismissing the appeal.

According to the respondents, whether in the form of form of excess principal amount or correspondingly less the interest amount, the wrong projection of KVP discharge figures in its totality give way to misappropriation of Government money and that the intention of the applicant who obtained unauthorised access to the task of preparation of KVP discharge summary without following the extant rules and procedures cannot be construed as innocent action on the part of the applicant and, hence, O.A. seeking relief deserves to be dismissed with cost.

5. The key point of determination herein is whether the disciplinary proceedings initiated, concluded as well as upheld against the applicant invokes judicial intervention.

6. Upon a careful perusal of the three articles of charges it is established that the charges are similar in nature but divided chronologically according to the months of preparation of KVP discharge summary by the applicant. While Article I refers to the preparation of KVP discharge summary of January, 2005 of Raniganj H.O., Article II refers to preparation of KVP discharge summary of Raniganj H.O. in February 2005 and Article III refers to the preparation of KVP discharge summary for the month of March, 2005 respectively.

The common issue involved in all the three charges are that,

- (a) The applicant had prepared the KVP discharge summary without any approval of Postmaster, Raniganj HO.
- (b) That the applicant did not prepare the KVP summary on the basis of KVP discharge journal and;

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- (c) That the applicant prepared KVP summary with malafide intention and with a view to personal gains.

The Enquiry Officer while furnishing his enquiry report dated 29.3.2011 had concluded on each of the charges as follows:-

1. Article-I

The KVP discharge Summary for January, 2005 was prepared irregularly by the CO without the order from the Postmaster, Raniganj HO and not on the basis of respective discharge journals as discussed at (a)(iii) above of this on-coming para. But details of malafide intention and personal gain are not explained in the statement of Article of charge (Annexure-I) and also in the statement of imputation of misconduct/ misbehaviour (Annexure-II). The Po's brief is totally silent on this point. But the IO can not keep his eyes closed to have proper analysis/ assessment of evidence for the sake of Natural Justice. The presenting side did not produce any documentary evidence in support of Co's malafide intention and personal gain. Rather the oral evidences given by SW-1 in replies to CEQ No. 23 and 25, by SW-2 in reply to CEQ No. 20 and by SW-3 in reply to CEQ No. 12 are in support of the fact that there was no malafide intention and personal gain on the part of the CO. The Co's further point of defence is that the charge is not precisely drawn on the ground highlighted at (ii)(a) under Article-I of the para 5. While going to analyse this point, it is not understood how the figures of discharged KVPs alongwith interests thereof were arrived at and shown in the statement of imputation of misconduct and misbehaviour (Annexure-II) without reflecting the details of calculation. For this purpose, a detailed calculation-sheet showing KVPs and interests thereof discharged from Raniganj HO has been prepared and produced in Annexure-I to this inquiry report in respect of January, 2005 through hard work and the same from Sub-Offices under Raniganj HO in Annexure-II. The defence has correctly pointed out that the decrease between the figures of KVPs discharged as per SO Summary (Ext. S-5) and the figures in KVP Discharge Summary has been wrongly shown as Rs. 1,66,000/- in place of the correct figure (Rs. 89,14,000 - 87,47,500) = Rs. 1,66,500/-. Similarly the sum of interests of all the KVPs discharged as Rs. 70,36,315.50/- and Rs. 68,08,024.50/- in the corresponding KVP Discharge Summary showing thereby a decreased of Rs. 2,28,231/- as reflected in Annexure-II of Article-I. But the decrease should come to (Rs. 70,36,315.50 - Rs. 68,08,024.50) = Rs. 2,28,291/- as pointed out by the defence. The total amount of interests discharged from Sos during January, 2005 shown as Rs. 2,10,46,702/- in Annexure-II under Article-I against the actual figure of (Rs. 1,40,10,446.50 + Rs. 70,36,315.50) = Rs. 2,10,46,762/- as pointed out by the defence. As per Annexure-II enclosed with this Inquiry Report the sum of interests discharged from Sos as per Ext. S-5 is found as Rs. 70,36,255.50/- against the figure of Rs. 70,36,315.50/- as mentioned in the statement of imputation (Annexure-II under Article-I) and if this figure is accounted for the sum of total interests discharged from HO and its So's should come to (Rs. 1,40,10,446.50 + Rs. 70,36,255.50) = 2,10,46,702/- agreeing to what mentioned in the Annexure-II under Article-I. Thus the insertion and placement of incorrect and anomalous figures in the statement of imputation of misconduct/ misbehaviour (Annexure-II under Article-I) can not take the basis of inquiry proceedings for the charge not being precisely drawn.

2. Article-II

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The allegation of malafide intention and personal gain on the part of the CO as mentioned both in Annexure-I and Annexure-II to Article-II and the allegation of showing increased/ decreased amount wilfully in Annexure-II do not have support from documentary/ oral evidence as already discussed under Article-I of this on-coming para 6(b). The DVPs discharged from Raniganj Hos and it Sos alongwith interests have been arrived at and produced in Annexure-III and Annexure-IV of this Inquiry Report. The figures when compared with the statement of imputation of misconduct/ misbaviour (Annexure-II of charge sheet) with those contained in Annexure-III and Annexure-IV to the Inquiry Report (Figures arrived at and enclosed with the Inquiry Report) alongwith Ext. S-2, it is observed that all the figures are agreeable to what is mentioned in Annexure-II to the memo of charge-sheet. The preparation of KVP Discharge Summary for February, 2005 without any proper order, without consulting Discharge Journal and reflecting wrong figures in Ext. S-2 definitely deviate the CO from absolute integrity, devotion to duty and becoming of a govt. servant infringing thereby Rules, 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (conduct) Rules, 1964. Such irregular preparation by the CO without any order can not take the support from the Law of Natural Justice as already analysed at (a)(iii) of this on-coming para.

3. Article-III

(1) The KVP Discharge Summary for March, 2005 (Ext. S-3) was prepared by the CO irregularly without the order from the Postmaster, Raniganj HO and not on the basis of respective Discharge Journals as discussed at (a)(iii) of this on-coming para. But details of malafide intention and personal gain are not explained in the statement of imputations of misconduct/ misbehaviour (Annexure-II) under Article-III. The Po's brief is totally silent on this point. But the IO can not keep his eyes closed to have proper analysis/ assessment of evidence for the sake of Natural Justice. The presenting side did not produce any documentary evidence in support of Co's malafide intention and personal gain. Rather the oral evidences given by SW-1 in replies to CEQ No. 23 and 25, by SW-2 in reply to CEQ No. 20 and by SW-3 in reply to CEQ No. 12 are in support of the fact that there was no malafide intention and personal gain on the part of the CO. The Co's further point of defence is that the charge is not precisely drawn on the ground as highlighted at (ii)(a) under Article-III of para 5. While going to analyse this point, it is not understood how the figures of discharged KVPs alongwith interests thereof were arrived at and shown in the statement of imputation of misconduct and misbehaviour (Annexure-II) without reflecting the details of calculation. For this purpose a detailed Calculation Sheet showing KVPs and interest thereof discharged from Raniganj HO and its Sos during March, 2005 has been prepared and produced being enclosed in Annexure-V and Annexure-VI. The defence has very correctly pointed out that an imaginary figure of Rs. 2,75,54,500/- (appearing at line 8 of para 2 of Annexure-II under Article-III) has been shown as the total of interests on all KVPs discharged from Raniganj HO during March, 2005 showing thereby excess of Rs. 17,57,000/- (appearing at line 8 of para 2 of Annexure-II under Article-III). But the excess should have been calculated as $(Rs. 2,75,54,500 - Rs. 2,43,55,158) = Rs. 31,99,342/-$. It is very ridiculous that the actual amount of interest discharged from SOs as per Ext. S-3 is Rs. 2,61,18,821/- which leads to show excess as $(Rs. 2,61,18,821 - 2,43,55,158) = Rs. 17,63,663/-$ and this figure has been shown in Annexure-II under Article-III. The sum of interests discharged from all SOs has been shown as Rs. 2,22,18,820/- (appearing at line 3 in para-4 of Annexure-II of Article-III) and Rs. 2,04,55,157.50/- as per KVP Discharge Summary (Ext. S-3) showing thereby the decrease of Rs. 17,63,663/-. But the decrease should have been calculated as $(Rs. 2,22,18,820 - Rs. 2,04,55,157.50) = 17,63,662.50/-$ which agrees to what have been maintained in the CO's brief and cross-examination of

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SW-4 through CEQ 9. The discharge figure on interests from all SOs shown at line in para-4 of Annexure-II of Article-III) shown as Rs. 2,22,18,820/- should have been calculated as Rs. 2,22,18,820.50/- (as per Annexure-VI enclosed with this Inquiry Report). The point of defence is also agreeable that the total amount of interest shown in the charge sheet as Rs. 4,65,978.50/- (line 6 at para 4 of Annexure-II under Article-III) against the correct figure of (Rs. 2,43,55,158 + Rs. 2,22,18,820) = 4,65,73,978/-.

(ii) No documentary/ oral evidence was produced by the Presenting side in support of the allegation that the CO had sent the Discharge Summary to the o/o the GM (PA & F). Rather, the oral evidences rendered by SW-1 through CEQ No. 24, by SW-2 through CEQ NO. 21 and by SW-3 through CEQ No. 11 are in support of the fact that the CO had no connivance with them (SW-1, SW-2 and SW-3) and CO did not send Return/ Discharge Summary to the o/o the CM (PA & F) and also as replied by SW-5 to Io's question, by SW-1 to CEQ No. 20 and SW-2 to CEQ No. 17:

(iii) The CO's grievance for not producing discharge and anomalous figure dated 24.03.2005 as recorded in the D.O.S No. 10 dated 03.09.2010 stands also justified.

(iv) Moreover insertion and placement of incorrect discharge figures in the statement of imputation of misconduct/ misbehaviour at Annexure-II under Article-III can not take the basis of inquiry proceedings for the charge not being precisely drawn.

7. Findings

In view of documentary and oral evidence adduced in the case before me and in view of the reasons given above, I hold that the charges under Article-I and Article-III do not stand established while the charge under Article-II excluding the portion "with malafide intention" appearing at line 5 of para 2 of Annexure-I and excluding the portions "malafide intention and personal gain" appearing at line 3 and 4 of para-1 and "wilfully with malafide intention and personal gain" appearing at line 14 of para-3 of Annexure-II of Article-II stands established."

The disciplinary authority issued a dissent note vide his letter dated 29.7.2011 in which the disciplinary authority had remarked as follows:-

"I disagree with the findings of the IO that the charge brought under Article I & III for the violation of Rule 3(1)(i).3(1)(ii) & 3(i)(iii) of CCS (Conduct) Rules 1964 have not been proved, the reason for the same are as follows:

It is observed from the I.O.'s report that the reason of non proof of two charges are mainly for the discrepancies in the figures (i.e. KVP discharge and interest) in the statement of imputation of misconduct/misbehaviour (Annexure-II of Article I & III) shown in the charge sheet and those appearing in H.O. and S.O. summary.

In point 6 of I.O.'s report that I.O. has stated the figures when compared with the statement of imputation of misconduct/misbehaviour (Annexure - II) of chargesheet with those contained in Annexure A-III and Annexure-IV to the I.O.'s report (figure arrived at and enclosed with the I.O.'s report) along with Ext. S-2 it is observed that all the figures are agreeable to what is mentioned in Annexure-II to the memo of charge sheet. But the C.O. prepared KVP discharge summary without any proper order, without consulting discharge journal and resulting wrong figure in Ext. S-2 deviate the C.O. from absolute integrity,

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devotion to duty and becoming of a Govt. servant infringing thereby Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964.

Such irregular preparation by the C.O. without any order cannot take the support from the law of natural justice as already analysed in the I.O.'s report at point 6(a)(iii) para.

From the I.O.'s report it is clear that the charge official Sri Suwendu Mondal prepared KVP discharge summaries from January-2005, Feb-2005 and March-2005 (i.e. Ext. S-1, S-2 & S-3) copying from the rough copy of Assistant Clerk (Postal Assistant) without any order of the competent authority.

Secondly, the charged official prepared the summaries without consulting / supporting KVP discharged journal. Moreover the CO was M.E. (Marketing Executive) of Raniganj HO and the preparation of KVP discharge summary was not allotted duty in his part as indicated by MDW of Raniganj H.O.

Therefore, in the view point from the angle clearly support the allegation regarding preparation of Ext. S-1, S-2 & S-3 by the charged official and thereby the charge of not maintaining absolute integrity, devotion to duty and unbecoming of a Govt. servant in contravention of Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964 stands established and conclusively proved.

Article II I disagree with the evolution of the I.O. in respect of Article -II excluding the portion "with malafide intention" and "wilfully with malafide intention and personal gain" against the C.O. on the following grounds:

Now the Disciplinary authority want to clarify on the above point of I.O.'s report point 6 that "Malafide" is irrelevant in proving misconduct as it is not a necessary element of it. And act is not honest when it is not just and fair or when it causes wrongful gain or wrongful loss. It is not bonafide when it is committed without due care and attention. It is not reasonable when a fair and prudent person would not do it. Malafide need not be proved, if the act itself speaks. It is fact that the I.O. failed to make out the intention of the C.O.

It is clearly proved that the charged official was worked as MI of Raniganj HO and the preparation of KVP discharge summary was not allotted duty in his own part as indicated in Ext. D-3.

Secondly, the said Ext. S-1, S-2, S-3 were prepared very shrewdly by the C.O. from the rough copy instead of prescribed records i.e. KVP discharged journal. It is also fact that the said rough copy prepared by some body and he prepared the said Ext. S-1, S-2, S-3 without any order of the competent authority.

Therefore, it is clearly established that the intention of the charged official was not clear and his intention was malafide and was least intention of helping others. Hence, the excluding portion of Article II, as reflected in the findings of I.O., stands established.

Encl: IO's report dated 29.3.2011.

(Ashoke Pal)
Disciplinary Authority &
Sr. Superintendent of Post Offices
Asansol Division"

After receiving the Charged Officer's explanation to the disciplinary note the disciplinary authority arrived at his findings (Annexure A-7 to the O.A.). While

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examining the observations of the disciplinary authority, the following paragraphs are highlighted:-

"I do not agree with the view of the IO for the reason that some petty mistakes, he opined to the effect that the charge brought under Article-I was not established."

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"So mistake of such petty nature, in my opinion would not compare the merit of the case and it would not surely decrease the degree of offence of the charged official who prepared the monthly summary of KVP payments at Raniganj H.O. and its SOs in January, 2005....."

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"But I am in the view that though no documentary evidence or witness in support of Govt. loss for personal gain of the charged official was produced before the enquiry, Sri Mondal may not be declared free from the charge. Personal gain does not always mean the monetary to a particular person it may be advantage of any other kind which cannot always be proved with evidence. Such a benefit the purpose for which Sri Mondal prepared KVP discharge audit return on the basis of baseless records, though could not be unearth by the I.O., in my opinion he had an intention of personal gain and so he acted in such a wrongful way."

"Thus total of interest figure of KVP discharge of Raniganj H.O. and its SOs as per inquiry report is (Rs. 24355158-00 + Rs. 22218820-50) = Rs. 46573978-50. So actual difference of Rs. 0.50 is found and this difference is due to difference of Rs. 0.50 as clarified in para (ii) above.

For such negligible mistake, I think that the main theme of case was not vitiated for any reason. The main charge remain unaltered."

Such, assertions and observations by the disciplinary authority are not grounded strongly on robust evidence or logical analysis. Rather the observations appears to be based on surmises and conjectures. The penalty imposed hence contradicts the incidence of offence. The Hon'ble Apex Court has laid down the ratio with respect to the duties of Disciplinary authorities in **Roop Singh Negi -vs- Punjab National Bank [(2009) 2 SCC 570]** wherein the court held as follows:-

" 14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges levelled against the delinquent officer must be found to have been proved.

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17. In **Moni Shankar v. Union of India and Anr. [(2008) 3 SCC 484]** this Court held:

"The departmental proceeding is a quasi judicial one although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken at its face value to be correct in its entirety, meet the requirements of burden of proof, namely preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."

The Hon'ble Court has in **Moni Shankar (supra)** stated further that which exercising powers, the disciplinary authority should be satisfied that the evidence adduced is correct in its entirety and meets the requirement of burden of proof, namely, preponderance of probability.

On the subject of a situation wherein the Disciplinary authority disagrees with the Inquiry officer, the Hon'ble Court, in **K. Prasad v. Central Coalfields Ltd (1993) II LLJ 554 (Pat)** had held that, while disagreeing with the findings of the Inquiry officer, the disciplinary authority is not only required to record his reasons but also to record his own findings on such charges by analysing the evidence for the purpose of coming to the conclusion as to how and in what manner the charges as against the employee can be said to have been proved by such evidence on record.

In this case, the disciplinary authority has not engaged in any logical analysis and weighing of evidence garnered by the Inquiry officer. The Disciplinary authority has concluded on the misconduct of the employee on the following rationale:

hsh

" As per rule, if the act for conduct of an employee is such that the master cannot rely on the faithfulness of his employee, it may be termed as misconduct on part of the employee"

What the Disciplinary authority failed to do was to logically sift the evidence to arrive at his conclusion as to how the employee has forfeited faith reposed in him by his employers.

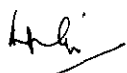
The Disciplinary authority has clarified that "Personal gain may be advantage of any other kind which cannot always be proved with evidence" .

The Disciplinary authority, however, did not weigh scientifically the preponderance of probabilities to prove how the employee charged upon had gained personally by preparing the KVP discharge summaries.

Hence, we find both by factual inference and in deference to the ratio of Hon'ble Apex Court that the Disciplinary authority did not scientifically conclude upon analysing the evidence adduced before him to meet the requirements of burden of proof. Hence, we deem it fit to quash the order of the Disciplinary authority.

The appellate authority concluded that due to malafide action of the appellant, the department sustained huge loss and the punishment awarded to the appellant is commensurate to the nature of his lapses and misdeeds. There are no findings or evidence, however, that establishes the applicant's role in the financial misappropriation. It is also noteworthy that the appellate authority concluded on a charge which was never part of the articles of charge brought against the applicant. Herein we are guided by the decision of the Hon'ble Apex Court in **State of AP v. Sree Rama Rao, AIR 1963 SC 1723, BC Chaturvedi v. Union of India (1995) 6SCC 749 and Bank of India v. T. Jagran (2007) 7SCC 236** where it has been held that if the decision is vitiated by considerations extraneous to the evidence and merits of the case, the disciplinary proceedings is of the judicial review.

During hearing and also in the written notes of arguments, the applicant produced before us the order of Special Judge (CBI) Court, Asansol dated

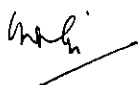


4.9.2017, which has recorded the following deposition of retired Chief Post Master General, West Bengal and erstwhile Post Master General, South Bengal Region.

" In the written complaint I have not mentioned the name of the accused Suvendu Mondal as a person played the part in the defalcation. There is no allegation made by me against the said accused person at the stage of lodging the first information report."

We are not convinced that the conclusions arrived at by the disciplinary authority and upheld by the appellate authority are objective and evidence based. The CBI Court has also clearly recorded the Chief Post Master General (retd.)/ erstwhile Post Master General (South Bengal)'s deposition that the applicant was not mentioned as an accused who played a part in the defalcation. This deposition before the Special Judge CBI was not made available before the appellate authority as the appellate authority's orders preceded such deposition before the Ld. Special Judge CBI.

6. Hence, we deem it fit in terms of the ratio in *Chairman, LIC of India v. A. Masilamani*, 2012 (8) *Supreme Today* 224 (SC); *Managing Director, ECIL, Hyderabad v. B. Karunakar*, AIR 1994 SC 1074; *Hiran Mayee Bhattacharyya v. Secretary, S.M. School for Girls*, (2002) 10 SCC 293; *U.P. State Spinning C. Ltd. V. R.S. Pandey*, (2005) 8 SCC 264, and *Union of India v. Y.S. Sandhu, Ex-Inspector*, AIR 2009 SC 161 to remit the matter to the respondents. The applicant is directed to file a revisional appeal/appeal (as per law) citing evidence in his support along with records of deposition before the Ld. Judge CBI Court. The Revisional Appeal/appeal may be filed within a period of one month from the date of receipt of this order and the Revisional/Appellate Authority, upon receipt of such petition, will pass a reasoned and speaking order after taking into account all evidence of record as well as the deposition before the Ld. Special Judge CBI. The entire exercise may be completed within a period of 12 weeks from the date of receipt of the revision petition/appeal from the applicant. The orders of the Disciplinary Authority and Appellate Authority are set aside. The



status of the applicant during the period of interregnum will be decided by the competent respondent authority in the speaking order.

With these observations, the O.A. is disposed of. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP

