

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/0001305/2018

DATED THIS THE 27th DAY OF SEPTEMBER, 2019

**HON'BLE DR.K.B.SURESH
HON'BLE SHRI C.V. SANKAR**

**...MEMBER(J)
...MEMBER(A)**

Sri S. Mahanthesha,
Aged about 37 years,
S/o Sri T.S. Shanthaveerappa,
Occn: Postal Assistant,
Chitradurga Head Post Office,
Chitradurga District -577 501.

..Applicant.

(By Advocate Shri P.A. Kulkarni)

Vs.

1. Chief Post Master General ,
Karnataka Circle,
Palace Road,
Bengaluru-560 001.
2. Post Master General,
S.K. Region,
Palace Road,
Bengaluru-560 001.
3. Director of Postal Services,
Office of Post Master General,
S.K. Region,
Palace Road,
Bengaluru-560 001.
4. Superintendent of Post Offices,
Chitradurga Division,
Chitradurga-577 501.

...Respondents

(By Standing Counsel Shri K. Dilip Kumar for Respondents)

ORDER (ORAL)

HON'BLE DR.K.B.SURESH ...MEMBER(J)

Heard. In normal situation, when infraction is alleged against an employee of the Postal Department, we take a very serious view of it. This is because, unlike in other departments, huge volume of money is canvassed in the Postal Department and if 10 rupees fraud is detected, then it must be at least a fraud of 100 rupees, as other 90 rupees would have disappeared due to its volume. Therefore this also we perused everything with anxious eyes. We had gone very carefully through the report of the IO. We find that IP has looked into every aspect of the case and find that the charges alleged against the applicant are not proven. We quote from the IO's report:

I.O./SM/Dlgs dated at Bengaluru the 07.11.2016

Inquiry Officer's Report prepared by P.V. Badrinath, Inquiry Officer and A.S.P (Planning) o/o the Postmaster General, South Karnataka Region, Bengaluru in respect of Rule 14 Inquiry against Sri S. Mahanthesha, the then Postal Assistant Davangere H.O.

Superintendent of post offices Chitradurga division Chitradurga, vide his memo No. F6-03/13-14 dated 10.07.2014 proceeded under Rule 14 of CCS(CCA) Rules 1965 against Shri S. Mahanthesha then Postal Assistant Davangere H.O. Further another memo of even number dated 15.07.2014 was issued in respect of corrigendum. Those Memos were received at Davangere H.O by the said Sri S.Mahanthesha (Charged official) vide RL No. RK 832199911N dated at Chitradurga the 10.07.2014, RL No.RK.583224869IN and RK583226003IN. No communication is on record for having accepted or denied the allegation by the charged official. Superintendent of Post Offices Chitradurga division, Chitradurga appointed me as the Inquiring Authority and Sri B.C. Ravindra, Inspector Posts, Challakere sub division, Challakere as the Presenting Officer vide memo dated 14.10.2014. Brief narration of Article is mentioned below:

Article I: That the said Sri S. Mahanthesha while working as SPM Anji SO in the leave vacancy of regular SPM, during the period from 20.12.2013 to 27.12.2013, has kept the office cash balance short amounting to Rs 7500/- on 24.12.2013. And it is alleged that the said Sri S. Mahanthesha has cancelled UCP transaction dated 24.12.2013 in treasury package which was charged to UCP by IP Davangere II sub division Davangere on account of shortage of cash. And thus it is alleged that SO (C.O) has violated the provisions of Rule 23 (2) of Postal manual Volume VI part I and Rule 84 of postal manual volume VI Part III and

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thereby exhibited lack of integrity and devotion to duty contravening the provisions of Rule 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules 1964.

Details of sittings held are mentioned in a tabular form:

Daily Order Sheet number	Date	Venue of the	Business conducted
01	15.12.2014	Davangere H.O	Preliminary sitting. Charged Official denied the charge.
02	02.03.2015	Chitradurga H.O.	Charged official handed over one letter in Hindi to the Inquiry Officer.
03	24.06.2015	--do--	Charged Official permitted to avail AGS.
04	15.10.2015	--do--	Inspection of Prosecution side documents from EXP-1 to EXP-10.
05	27.11.2015	--do--	Inspection of documents Exp-11(a) and Exp-11(b)
06	16.02.2016	--do--	Inspection of Defence side documents EXD-1 to EXD-9
07	12.04.2016	Davangere H.O	Examined prosecution side witnesses PW-1, PW-2, PW-3
08	13.04.2016	--do--	--do--- PW-4, PW5
09	30.05.2016	--do--	--do--- PW-6
10	31.05.2016	--do--	--do--- PW-7 & PW-8
11	13.06.2016	--do--	--do--- PW-9 & PW-10
12	14.06.2016	--do--	--do--- PW-11 & PW-12
13	04.07.2016	--do--	--do--- PW-13
14	05.07.2016	--do--	--do--- PW-13
15	18.07.2016	--do--	Questioning by I.O to C.O
16	24.09.2016	--do--	C.O. presented his oral arguments

Documents marked during the inquiry proceedings are detailed below;

Serial No.	Details of the documents	Number assigned
1	Mahajar dated 24.12.13 drawn by IP Davangere II sub division Davangere	EXP-1
2	Statement dated 24.12.13 of Sri S. Mahanthesha given before the IP Davangere II sub division Davangere	EXP-2
3	UCR receipt No.A66 dated 24.12.13 issued at Anaji S.O. in the name if Sri S. Mahanthesha for having credited Rs.7500/- towards shortage of cash.	EXP-3
4	TCB report dated 24.12.13 of Anaji S.O.	EXP-4
5	S.O. daily a/c dated 24.12.13 of Anaji S.O.	EXP-5
6	Credit certificate dated 10.07.14 issued by Postmaster Davangere H.O.	EXP-6

7	Mahajar dated 27.12.13 drawn up by the IP Davangere II sub division Davangere	EXP-7
8	Statement dated 27.12.13 of Sri C. Dhanaraja given before the IP Davangere II sub division Davangere	EXP-8
9	Error book maintained at Anaji S.O. for the period from 18.3.11 to 26.12.2013	EXP-9
10	Remittances and Acquittances register maintained at Anaji S.O. for the period from 18.11.2011 to 26.12.2013.	EXP-10
11	Sub office summary maintained at Davangere H.O. for the period December 2013.	EXP- 11(a) & EXP-11(b)

Following Documents are considered for Defence purpose and noted as under;

Sl. No.	Details	No. assigned
1	PA 49 certificate of credit for Rs.15,000/- issued by the Postmaster Grade III Davangere H.O. in respect of transaction at Anaji S.O. on 24.12.13	EXD-1
2	Schedule of unclassified receipt of Davangere H.O. for the period from 27.12.13	EXD-2
3	Schedule of unclassified payments of Davangere H.O. for the date 27.12.13	EXD-3
4	Certificate of credit of date 24.12.13 of Anaji S.O.	EXD-4
5	Diary of Ashoka IP Davangere II sub division for the II fortnight of December 2013	EXD-5
6	Diary of Mail Over seer Sri K. Basavarajappa for the period from 16.12.13 to 31.12.13	EXD-6
7	Manual leave application dt 23.12.13 of Sri G.C. Kubera	EXD-7
8	APP-45 dt 23.12.13 of G.C. Kubera	EXD-8
9	Memo no.IP2/DVG/B2/GDS/MP/MD Anaji S.O. dt 13.1.14.	EXD-9

Following documents could not be supplied to the C.O. due to the non-availability of the same in the custody of custodian:

- Copy of error entry made by IP in error book of Anaji S.O. on 24.12.2013 and copy sent to PM Davangere HO and SP Chigtradurga.
- Attendance Sheets of persons who attended RPLI mela at Anaji S.O. on 24.12.2013.
- Notice issued by IP Davangere to GDS to attend RPLI Mela at Anaji on 24.12.2013.
- Copy of the order issued to Dhanaraj stop gap GDS to officiate in 2013.
- Orders given to Sri Dhanaraj for officiating as Postman in Anaji S.O. in 2013.

f. 2 e.MO paid vouchers paid at Anaji S.O. on 24.12.13 paid by C. Dhanaraj GDSMD Anaji S.O.

g. Office copy of S.O. daily a/c dtd. 24.12.13 of Anaji S.O.

h. Working details of Dhanaraj who worked as an outsider under Anaji S.O. during the month of December 2013.

AGS/ C.o did not submit any defence witness list.

Arguments of Presenting Officer.

Presenting officer as stated in his brief as under: “The shortage of cash Rs.7500/- is clearly established by PW1, PW2, PW3, PW4, PW5 and PW13”. As per the version of the P.O. the cancellation of UCP transaction is also established by PW6, PW7, PW10, PW4, PW11 and PW13 as they have clearly identified EXP-7 and deposed that the Charged Official torn the Error Extract Book page and cancelled the UCP transaction. PW 13 has explained in detail about this in his deposition. Further P.O has raised the following doubts/ queries in his brief as under;

a. If he not kept any shortage of amount why he credit under UCR for Rs.7500/- (EXP-4) by voluntarily?

For this he defends that as per the IP order C.O credit the amount to UCP but the same IP ask to give statement regarding UCP cancelled, but he refused to give statement. Why he not follow the IP order in this case. (as per his version).

b. As he argues that the cash given to GDSMD for Rs.7500/- at 0900 AM on 24.12.13 and Rs.1000/- emo paid on that day by him (by answering I.O. question 05) what about rest amount 6500/-?

c. If amount is really not found short, why cancelled the UCP transaction without consulting the concerned. For this as he replied I.O. Q no.6 the PW13 made a UCP transaction.

And he himself cancelled the transaction. And in the other side he defend that the UCR Rs.7500/- credited by him on 24.12.13 by the order of IP. C.O. not clarify the reason of PW13 entry UCP and order UCR because C.O. is the custodian of system.

d. If he did not made any mistake why he gave EXP-2 before PW-13?

e. If he did not made any mistake why he ask charge sheet in Hindi? And conduct inquiry in Hindi.

Instead to bring the notice to DA (what he argue during inquiry) by giving his defence in writing when offered by DA.

In view of the above arguments and reference to the documentary evidence and oral evidence adduced during the inquiry, P.O. has requested to hold the Article I charge levelled against Sri S. Mahanthesha, P.A. Davangere H.O as Proved beyond doubt.

Arguments of the Charged Official

Charged official has argued that the same amount of Rs.7500/- was with PW-09 for e-MOs payment (kindly read Rule 23(2) of PO manual volume VI part I, it permits to this). But while counting the cash and stamps in the middle of the working hours the IP did not check EXP-10 and did not take Rs.7500/- into account. He argues that he was not at Anaji S.O. during the time of visit by the said Ashoka then IP, on 27.12.13. He argues that on 24.12.13 witness PW-9, admitted that he made payment of 2 emos amounting to Rs.1000/-, he said that money was paid at post office counter. He does not say that he did not make payment which is a clear admission, that he made the 2 emo payments. It is stated by the C.O. that IP(PW-13) did not check EXP-10, and did not account for this amount and he came to the conclusion that Rs 7500/- was less in the cash balance. If he had checked the EXP-10, he would have accounted this Rs 7500/- but he did not carry out the check properly. He argues PW-13 had clearly stated that (AGS QUE-16 & 17) he charged amount to UCP at 1555 PM and he saw this in the daily account in system, but did not take out print on account of technical issues. It is PW-13 who charged amount of Rs.7500/- to UCP at 1555 hours (one of the charges). There is no evidence for this and the computer/ system had not remained under his (SPM's) sole custody for this reason. C.O. argues that he was at Anaji S.O. when PW-13 did editing and Cancellation and cancellation of UCP charge was done by PW-13 at 16.00 hours. He states that the intervention of PW-13 was a continuity which PW-13 handled in tandem. The Charged Official strongly puts forth his words that EXP-4 is the exclusive creation of PW-13 without the notice of SPM which is not signed by the SPM on duty. It is argued that PW-13 visited Davangere H.O. on 27.12.13 and misguided Postmaster and manipulated the daily account by adding UC P and then UCR to become Rs.15,000/- and to maintain correct account Postmaster credited Rs.7,500/- again to UCR.

The C.O. claims that there is nothing against him in the evidence of PW's 1-12 and therefore he refrains from dwelling on their depositions. C.O. argues that the imputation that IP (PW13) passed some remarks in the error book and that those pages were not available and the allegation that he had torn the pages and made a new entry are all false. While commenting on the brief of the Presenting Officer the C.O. has denied EXP-2, his statement given before the PW-13 on 24.12.13.

In view of the above stated points the Charged Official has requested to declare the Article as Not Proved.

Analysis made by the Inquiry Officer

Vide daily order sheet No.2 dated 2.3.15 Charged Official handed over 2 page latter addressed to the Inquiry Officer. In the 4th para he has requested that all the proceedings are to be conducted in Hindi language. But after joining of Sri K.S. Shetty as AGS, vide Daily Order sheet No.4 dated 15.10.2015, this point was not raised again by the C.O. and all the proceedings were continued in English.

About Deposition of Witnessess;

Sri S.K. Basavarajappa Retd. Mail Over seer was examined on 12.04.2016 and marked as PW-1 with reference to EXP-1. He has stated that EXP-1 is a Mahajar dated 24.12.13 drawn by Sri Ashoka, then Inspector Posts Davanagere II sub division Davanagere which is prepared at Anaji S.O. He has

identified his signature available at serial 5 in 2nd page . He has replied that is prepared before him and confirmed the contents as true. He has stated that while preparing the EXP-1, Manjula, H.Raghavendra, Sumitra A.K., B.C.Marulasiddapa and Mahanthesha were available at Anaji.S.O. He replies during cross examination and questioning by I.O. confirm his replies given during the time of examination in chief.

PW-2; H.RAGHAVENDRA---

He has deposed with the reference to EXP-1 and EXP-7 . But while answering the Q.1 of C.E. he has deposed that he was not Anaji SO while drawing the EXP-1. This is again confirmed by him while replying to Q.1 of re-examination by P.O. He has replied that he has signed in EXP-7 at about 2.30 P.M while replying to Q4 of C.E.

P.w-3; A.K.SUMITRA----

She has narrated about EXP-1 and identified her signature which is at serial number 3 at page 2 of EXP-1. While replying to Q.2 of C.E. she has replied that cash was not counted before her on 24.12.13.

PW-4; B.C.MARULASIDDAIAH----

PW-4 deposed in respect of EXP-1, EXP-2, and EXP-7 and identified his signatures available in those documents. He has answered the questions of C.O. without proper specific point regarding timings of his presence on 24.12.13 and on 27.12.13. While answering to Q.15 of AGS, he has agreed that cash was counted at Anaji S.O. on 24.12.13 after 1100 hours.

PW-5; C.R.MANJULA---

PW-5 deposed about Exp-1 and EXP-2 and identified her signatures in those documents. She has replied to Q3 of C.E. that she was not available at S.O. on 24.12.13 at the time of counting the cash in respect of EXP-1.

PW-6 SANNAPALAIAH;

PW-6 has identified EXP-7 and EXP-8 and his signatures in them. His replies to Q2 to 10 and 12 to 17 of AGS do not support the allegations. While replying to the Q.1 of Re-examination, Sri Sannapalaiah now P.A Harihara MDG and

PW-6 has replied that he does not know who has prepared EXP-7. His replies to P.O. for R.E.Qs 3 and 4 do not favour prosecution

PW-7;M.SREEKANTHA

PW-7 has identified and narrated about EXP-7. He has identified his signature which is at serial No 5.He has not clearly mentioned about the timings regarding the preparation of EXP-7.While replying to Q20 he has replied that s/s Sannapalaiah and Mahanthesha were there Anaji S.O. while signing in EXP-7. This is again confirmed while replying to Q.27 of C.E. Other replies to C.E. to do not favour prosecution.

PW-8 INDIRA BHAT

PW-8 has identified EXP-5 which is the S.O. daily account dtd. 24.12.13 of Anaji S.O. In her reply to P.O.Q2 she has stated about UCP and UCR entries of Rs 7500/ in the daily account. She has identified EXP11[b],S.O.Summary of Davanagere H.O. for the dt 27.12.13 and identified her signature in it. Her replies to AGS in C.E Q1, to Q9 favours the position of Charged Official. But while replying to Q-1 of Re-cross examination PW-8 has replied that Rs 7500/ is credited at Anaji S.O.

PW-9;C.DHANARAJ;

PW-9 has identified his signature in EXP-8 and narrated about the contents therein. As per his deposition , he has not received cash Rs7500/ for effecting the emo payments on 24.12.13 from Sri Mahanthesha, the Charged Official . But he has identified the cash acquaintance Register Exp-10, and confirmed about the receipt of cash of Rs 7500/ in reply to Q-3 of P.O.

While replying to Q-5 of P.O. he has replied that 2 emos worth Rs 1000/ are paid on 24.12.13 and the amount was paid by Sri Mahanthesha, the SPM. [C.O]But his reply to Q-3,of C.E. does not give picture about the availability of the C.O. at the time of preparing the EXP-8. Further his replies to CO/AGS Questions 4,8,9,10,14,17,18 and 22 do not support the prosecution side.

PW-10 P.H.ANJANEYA

P.W.10 has narrated about EXP-7 as a mahazar documented drawn at Anaji S.O. on 27.12.13 by the then I.P.Davanagere II Sub division Davanagere . His replies to AGS in C.E.Qs 6,7,8,9,11,12,13,15,16, and 20 do not favour the prosecution side.

PW-11 M.GANGAMMA

P.W-11 has identified EXP-5 the document EXP-7 and confirmed her signature available in it. But her replies to C.E.Qs to 12 do not support Prosecution side views.

PW-12;JAGADEESH BARKI

PW-12 has identified EXP-5 as the Anaji S.O. Daily Account for the date 24.12.13 and narrated about the UCP entry of Rs 7,500/. He has replied in cross examination, that he has made U.C.P entry as per the instructions of the Postmaster of Davanagere H.O and no written orders are given by the Postmaster.

PW-13-R.ASHOKA

Sri R.Ashoka attended the inquiry on 2 days , on 4.7.16 and on 5.7.16. He is marked as PW-13. He worked as Inspector Posts Davanagere II Sub Division Davanagere during the period from 15.11.2012 to 24.11.2014. He was the investigating officer in this case and identified the following documents of prosecution.

EXP-1,EXP-2,EXP-3,EXP-4,EXP-7,EXP-8,EXP-9 and EXP-10.

He has narrated in respect of the above documents in brief in the examination-in-chief.

His replies to Qs 1 to 4 and 8 to 4 of cross examination do not give support to the allegations against the Charged Official .Further replies of PW-13 to C.E.Qs 16,17,20,21,22,23,24,25,26,27,and 31 are non-supportive to the allegations against the C.O.

C.O. has raised the objections regarding the non-availability of SPM's signature in the T.C.B. dtd. 24.12.2013 i.e. Exp-4. Vide C.E. Qs 32 and 33. But the replies given by the PW-13 are not convincing one.

While replying to the Q34 of AGS, PW-13 has accepted that he had given a letter to the Postmaster Davanagere H.O. to correct the amount of Rs 7,500/to UCP.

AGS/CO raised the question about the availability of SPO's orders in respect of his action at Davanagere H.O. about correction of S.O. daily account of Anaji S.O. For that PW-13 has replied that there are no such orders in a reply to Q38.PW-13 has agreed that the statement of the C.O.i.e.EXP-02 is obtained in the absence of any independence witness. While replying to Q.41 of C.E.,PW-13 has deposed that Rs 7,500/ is credited by the C.O. voluntarily vide EXP-01.

Questioning of Charged Official by the Inquiring Officer was conducted on 18.07.2016.

To Q3 of I.O. the C.O. has been that he left Anaji S.O. at 0900 hours on 27.12.13. To Q no.4 of I.O. he has replied that he was not as S.O. at the time of visit by PW-13[R.ASHOKA, IP]. He has replied to Q 6 and raised the credibility of the document EXP-4 as it is not signed by the C.O. in any page. While replying to Q7, C.O. has deposed that as per the orders of PW-13 he has credited RS 7,500/ to U.C.R at Anaji S.O. on 24.12.13.

From the above, following doubts and ambiguities are drawn;

- 1.Time of preparing the mahajars and various statements are not available in the documents of prosecution side.
2. Whether PW-13 has passed remarks in the office error book of Anaji S.O. even though he is not authorized to write in that .
- 3.Whether Pw-13 has checked all the records of the S.O. account before coming to the conclusion about the shortage of cash on 24.12.13 at Anaji S.O.
4. Whether PW-13 has ordered the C.O. to credit Rs 7,500/ under UCR on 24.12.13.
5. Whether C.O. himself has credited the amount of Rs 7,500/ under UCR on 24.12.13 vide EXP-03.

6. Who has made correction entry in Exp-4, whether C.O. or PW-13[IP]

7. Whether EXP-4 is a valid document, because it is not signed by the SPM.

8. Many number of corrections are noticed in the S.O. daily a/c of Anaji S.O. for the date 24.12.13 i.e. in EXP-5. These corrections are done in the absence of the Charge Official. All the corrections are subject to different views.

9. Statements and Mahajars are prepared in the absence of independence witnesses.

10. Signature of the C.O. is obtained in EXP-1 and in EXP-2 on 24.12.13. But C.O. has denied about the shortage of cash in EXP-2 which is not questioned by the IP i.e. P.W.13.

Therefore, I have decided to declare as under;

CONCLUSION

I, P.V. Badrinath Inquiry Officer and A.S.P[PLANNING] O/o the Postmaster General, South Karnataka Region, Bengaluru-1, declare that the Article I regarding the allegations of keeping the office cash balance short amounting to Rs 7500/- at Anaji S.O. on 24.12.13 and the allegations about the cancellation of UCP transaction on 24.12.13 in treasury package which was charged to UCP by IP Davanagere II Sub Division Davanagere on account of shortage of cash, is NOT PROVED.

P.V.BADRINATH,
INQUIRY OFFICER & ASP[PLANNING],
O/O THE POSTMASTER GENERAL,
SOUTH KARNATAKA REGION,
BENGALURU-560001.

2. Due to the way in which the issue was considered by the IO, we have come to have some confidence the way in which it was handled. But vide Annexure A-3, the DA disagreed going on the basis of 10 reasons, we quote from the disagreement note of the DA:

I disagree with the findings of the IO for the following reasons:

DISAGREEMENT

The article I was very clear that, the charged official while working as SPM Anaji SO, in the leave vacancy of regular SPM, during the period from 20.12.2013 to 27.12.2013, has kept the office cash balance short amounting to Rs.7500/- on 24.12.2013 and alleged that, he has cancelled UCP transactions

dated 24.12.2013 in treasury package which was charged to UCP by IP Davangere sub division, Davangere on account of shortage of cash.

PW.13 Sri R Ashok, ASP, Hospet sub division, Hospet & then IP Davangere II sub division, Davangere who appeared before the Inquiry sittings held on 04.07.2016 & 05.07.2016 has deposed that, he worked as IP Davangere II sub division, Davangere for the period from 15.11.2012 to 24.11.2014. He has identified Exp.1 and deposed that, it was a mahazar dated 24.12.2013 of Anaji SO, regarding shortage of cash on 24.12.2013, he has visited Anaji SO, and carried out vigilance checks and conducted BD meetings with GDSs/SPM. Before commencing the visit report, he checked the cash and stamp balances and found Rs.7500/- found short and ordered to Sri Mahanthesha to made good the shortage, but he was telling a story that, yesterday he was ordered to convey cash from Davangere HO for Rs.500000/- for eMOs payments. He doubted shortage of cash in the bundles. Then Pw.13 made enquiry with the then Postmaster Smt Indira and Treasurer Sri A Rajappa both have confirmed that, there was no excess or shortage in the treasury. The same was conveyed to Sri S Mahanthesha, and once again he was requested to made good the shortage. Then the charged official created one more story that, on 24.12.2013, he had been to toilet without locking cash chest/drawer of cash and suspected that, his office GDS MD or GDS MP might have stolen the cash. Then Pw.13 made enquiry with GDS staff and they have stated that, they have not taken or stolen the cash. He once again requested the charged official to made the good the shortage of Rs.7500/-. Then he talked to the divisional office and obtain oral order to charge the same under UCP. Regarding shortage of cash mahazar was drawn. It was signed by the charged official.

Pw.13 has identified Exp.3 and deposed that Sri Mahanthesha, has voluntarily made good the shortage of Rs.7500/-

Pw.13, has identified Exp.4 and deposed that, it was a TCB of Anaji SO dated 24.12.2013, After charging Rs.7500/- Sri S Mahanthesha, has cancelled the UCP entry without the permission and without furnishing reason.

On 27.12.13 he has visited Davangere HO and verified the records of Anaji SO, in the sub account branch and noticed that, Sri S Mahanthesha had cancelled the UCP amount of Rs.7500/- charged in the SO daily account/TCB. Again he has visited Anaji SO, on 27.12.2013 and verified EE book & found that, it was torn by Sri S Mahanthesha. Pw.13 has requested him to give statement, but he refused. Further he noticed that, Sri S Mahanthesha, has issued eMOs to GDS MP/MD without invoicing the delivery slip of eMO payments. After taking print out of TCB, it was noticed that, only Rs.1000/- cash was issued to GDS MP/MD against Rs.7500/-. Charged official has manipulated the office documents. He has drawn mahazar, regarding refusal to give statement and torn EE book.

Pw.13 has identified Exp.8 and deposed that, it was the statement of Sri Dhanaraj C, regarding eMOs and issue of delivery slips of 24.12.2013, it was known to him that, after 5 PM Sri S Mahanthesha, has written as 24.12.2013, beat no.2, 15 eMOs, cash for eMOs payment Rs.7500/- at 0900 AM and obtained the signature of Sri Dhanaraj forcibly.

Pw.13 has further deposed during the cross examination that, on 24.12.2013, actually cash was not given to GDS MD II in the morning, but record was prepared in the evening forcibly to the GDS and delivery slip was not issued to GDS MD II. Return cash was not shown in the TCB dated 24.12.2013.

Sri S Mahanthesh, in Exp.2 has written that, he has used Rs.7500/- for his personal, but he scored out and written as used for eMo payment.

Pw.13 has deposed that, he personally charged the amount under UCP through Sri S Mahanthesha and seen the daily account in the system. But print out was not taken due to some technical issues.

Sri Dhanaraja GDS MP/MD, Anaji SO (on stop gap), who appeared as Pw.9 in the inquiry sitting dated 13.06.2016 has deposed that, on 24.12.2013, then SPM Sri S. Mahanthesh, has not given any money orders or cash to him. In the evening at 5 PM, SPM has obtained his signature with remark that, "Received Rs.7500/- Rs. Seven thousand five hundred only" in Exp.10 forcibly. But no money orders and cash was given to him. On 24.12.2013 2 eMOs were paid for Rs.500/- each at the counter. That amount was given by Sri Mahanthesha, then SPM Anaji SO. Further in reply to question of IO, he has deposed that, in Exp.10, the timings of 09.00 AM was written by Sri S Mahanthesh.

Pw.5, C.B Manjula, GDS BPM, Tumbigere BO a/w Anaji SO, who appeared in the inquiry sitting held on 13.04.16 has deposed that, Exp.1 was a mahazar dated 24.12.13 and confirmed her signature appearing on the page no.2 of Exp.1 on that date, Inspector has informed her that, there was a shortage of cash Rs. 7500/- and got her signature to Exp.1.

Pw.03, Smt Sumithra A K, GDS BPM, Hulikatte BO a/w Anaji SO, who appeared in the inquiry sitting held on 12.04.2016, has identified Exp.1 and confirmed her signature, appearing on it. Contents of Exp.1 was read out by Pw.13 and asked here to sign.

Pw.04, Sri B C Marulasiddappa, GDS BPM, Mellekatte BO a/w Anaji SO, who appeared before the inquiry sitting held on 13.04.16, has identified his signature appearing in Exp.1. He was informed the contents of Exp.1 by Pw.13.

Pw.01 Sri S K Basavarajappa, then Mail Ovedrseer, Davanger II sub division, Davangere who appeared before the inquiry sitting held on 12.04.16, has identified Exp.1 & confirmed the contents. He also identified his signature appearing on it.

Ex.3 is a UCR receipt no.A66/ dated 24.12.13 of S Mahanthesh, an amount of Rs. 7500/- credited to UCR at Anaji SO, regarding shortage of cash.

Exp.4 is a treasurer's cash book dated 24.12.13 of Anaji SO. In the page no.3, of it there is a description that, other payments of UVP shortage of cash at SO a/c amount of Rs. 7500/- is cancelled on 24.12.2013 at 1600 hours.

As per rule 15 (2) of CCS (CCA) rule 1965, you may submit representation against the decision of disagreement of disciplinary authority and findings of IO if any within 15 days of its receipt of this letter.

Supdt. Of Post Offices
Chitradurga Dn, Chitradurga-577501

3. To which a detailed reply was given by the applicant, which we quote:

“From
Sri S. Mahanthesha
Postal Assistant
Chitradurga HO

30.01.2017

To
The Supdt of Po's
Chitradurga Division
Chitradurga

Through proper channel

Respected Sir,

Sub: Written Representation against disagreement of Disc Authority and on the IO Report.

Ref: Spo's ltr no. F6-03/13-14/dlgs dated at cta the 27.12.2016

I (i) I submit this representation for your kind consideration please.

In reality there was no shortage of cash on 24.12.2013 at Anajji PO but there was an excess in cash balance. There is no charge against me at all. The imputations in Annexure II and Article I are full of corrections, side references in unaltered asterisk making in very difficult to make out what exactly you have written. When the allegations are made it is necessary that they should be free from corrections and should provide for the charged official to make a full grasp of your intentions. Unfortunately disc authority has completely failed in this and it is difficult to grasp your intentions.

I (ii) Article of charge I relates to alleged shortage of cash in the office balance it has no basis in reality a there was an excess in the cash balance on 24.12.2013 but DA cites contravention of Rule 23 (2) of Postal Manual Vol. VI Part I and Rule 84 of Postal Manual Vol. VI Part III which are not violated. If at all the IP noticed deficiency in cash balance he should have taken action under Rule 217 of Postal Manual Vol. V. He should have called upon me to produce the money and if I was unable to produce or give a satisfactory explanation then he should have drawn up inventory signed by 2 independent witnesses and should have taken follow up action. This was not done. It is trite law that when a person is

charged for violation of a particular rule, only that rule should be read and it should be decided whether the charged official has violated that rule. On 24.12.2013 IP did not check the account and registers properly did not carry out visit properly. If only the IP had followed Rule 217 of Postal Manual Vol. V he would have found no shortage at all and based on the reality there was no charge at all. It is sad that DA failed to find out the reality in cash balance etc.

I (iii) Kindly read the charge sheet as a whole. The article of charge and the statements of imputations are full of opinions and expressions which can be construed as opinions and therefore the charge sheet as a whole is vitiated. Kindly read page 4, paras I and ii of P&T Manual vol. III in this regard. In view of the fact that this mandatory requirement is not adhered to, the charge sheet as a whole is null and no action pursuant to a void charge sheet can subsist.

II. The IO has come to the definite conclusion that the charge of keeping shortage of Rs. 7500/- in office balance on 24.12.2013 and the allegation of cancellation of UCP transaction on 24.12.2013 in treasury package are "NOT PROVED". IO's reasons for finding the charges as not proved are furnished clearly on pages 9 & 10 of his report.

IO says that the so called mahazars prepared by PW-13 have no value. Mahazar is a term non-est in codified rules. Rule 217 of P&T Manual Vol. V says that first the SPM should be called upon to explain the shortage, if any, found. If PW-13 had given me opportunity to explain I would have pointed out that PW-13 did not account for the sum of Rs. 7500/- which was given to PW-9 for no payments as per Exp-10. There was no shortage at all. In fact, there was excess of Rs. 7500/- in office cash balance which PW-13 ignored. That is because PW-13 compelled me to credit Rs. 7500/- to UCR. This is the excess. Again in rule-217 there is a provision to prepare inventory get it signed by 2 independent witnesses. If PW-13 had done this the independent witnesses would not have signed such inventory because there was no shortage it would have come to light that PW-9 EDDA had this sum of Rs. 7500/- with him for no payments. What PW-13 did is, he prepared a mahazar signed by his subordinates i.e. mail overseer and GDS staff who all signed the mahazar without demur and truth that Rs. 7500/- were with PW-9 was eclipsed.

IO held that PW-13 had no power to pass remarks in error book of Anaji PO. Again IO rightly held that PW-13 did not pass any remarks in EE book. As per IO it is admitted that PW-13 did not check Exp-10 and as a result he failed to get at the truth that Rs. 7500/- had remained with PW-9. If only he had checked Exp-10 he would have found out that PW-9 was having the sum of Rs. 7500/- and seen that there was no shortage. IO also held that PW-13 asked me to credit Rs. 7500/- to UCR and on 24.12.2013 what is repercussion? Rs. 7500/- available PW-9 was part of office cash and so there was no shortage. In spite of this PW-13 compelled me to credit Rs. 7500/- to UCR and that was the excess on 24.12.2013 in office cash balance. Since I credited Rs. 7500/- to UCR on the order of PW-13 there was excess of Rs. 7500/- in office cash balance. Exp-4 is the TCB report dated 24.12.2013 is not valid because I had not

prepared and I did not sign it. Corrections were made in Exp-4 by PW-13 not by me; this is what the IO found. All the corrections found in Exp-5 namely Daily Account dated 24.12.2013 were not made by me and these corrections have been made behind my back. All these corrections were made by or at the instance of PW-13.

At para 10 IO has rightly stated that my signature were obtained by PW-13 in Exp-1 and 2. This is uncalled for/unwarranted because there was no shortage of cash on 24.12.2013 at Anaji PO. Since there was no shortage IO has rightly found that there is no occasion to charge money under UCP. And hence cancellation of UPC transaction is a baseless allegation.

SP says that he disagrees with the findings of IO as made out in the Inquiry report see valid items on pages 9 and 10 of the IO report. My written representation on disagreement of SP is as follows..

On para 1. The article of charge is not clear. It is accompanied by correction and corrigendum. It is only an allegation and not a fact. It gets value only after it is proved in the inquiry and the very fact that SP says that it is very clear etc has no value.

Para 2. What SP says in this para doesn't nullify the IO report. SP doesn't say what is his disagreement with the findings of IO. PW-13 checked the balance but did not check Exp-10 and did not take action as required in rule 217 of P&T Volume V. He did not take into account that the sum of Rs. 7500/- was with PW-9. He did not check Exp-10 at all. His say that Rs. 7500/- was short is not based on fact but only on a false presumption. I never created any story. I never said about toilet, not locking cash chest that GDS might have stolen cash etc. These are all false creations against me by PW-13. When there is nothing in writing and when I did not admit any thing in writing how can SP bank on the lies of PW-13 and come up with such stories. When PW-13 asked me to make good Rs. 7500/- by crediting to UCR I told him that he should check Exp-10 in which case he would have found that there was no shortage. It is also to be pointed out that without realizing that the GDSMD had Rs. 7500/- with him for no payments and it was part of office cash according to Rule 23 (2) of Postal Manual Vol-VI Part I. PW-13 hushed up the whole matter and without forethought.

The DO must have permitted him to charge Rs. 7500/- to UCP stating that it could be taken as shortage in office cash. It was not desirable on the part of DO to say so, if at all DO advised PW-13 nothing is there in writing. It is only the activity of PW-13 in bringing DO to picture. He has indulged in one lie after the other. As already said his preparation of mahazar which is non-est is his mistake and my signing it doesn't alter the situation.

PW-13 identifying Exp-3 and says that I voluntarily made good Rs. 7500/- is false. Expl-3 is the Acg receipt (UCR). I did not credit voluntarily. He compelled me. Regarding Exp-4 is not signed by me and hence not a

valid document. SP doesn't say why he is disagree with the IO and hence this para gets no validity.

In this para SP refers to visit of PW-13 to dvgere HO but he doesn't say how para 8 of IO report is nullified. IO says corrections are made in my absence. SP doesn't say why he disagree with IO. The allegation that I refused to give statement to PW-13 is not misconduct. Statements are always required to be voluntarily. No IP can compel a SPM to give any statement which IP want in fact that day 27.12.13 I was working at dvgere HO only, not at Anaji PO. The say that I issued mo's for payments to GDS and the mo's were not invoiced in delivery slip etc doesn't lead to adverse inferences. His acknowledgements with signature acquittance are all found in Exp-10. Non invoicing in delivery slip not printing delivery slip etc are only omissions because of the power failure in the office and nothing more. I had given him Rs. 7500/- and he has acknowledged and signed for that. Again mahazar is a term non-est in departmental parlance. I have never torn EE book. It is not clear as what is the disagreement with the IO by SP.

The statement of PW-9 was got written by PW-13 behind my back. If the PW-13 had obtained the written say of PW-9 in my presence he would have acted as required in page 3 para 3 first stage of Postal Manual Vol. III which required that the say of a witness should be reduced to writing in the presence of the accused official. PW-13 did not do this and did not require me to be present when the say of PW-9 was reduced to writing. So it has no validity. It should be noted that I gave him Rs. 7500/- in the usual course of mo payments.

Please go through the Exp-2 I have clearly stated that I had used Rs. 7500/- for mo payments. Any item scored doesn't get value. PW-13 compelled me to write for my personal etc when good counsel prevailed I carried out correction.

PW-13 saying that he saw the daily account in the system but printout was not taken due to technical problem is absurd and has no value. The fact is that there was no printout. Technical issue etc undefined and complete lies of PW-13. As the DA SP should not endorse such false utterances of PW-13.

IO questioned me under rule 14 (18)

The purpose was to give me an opportunity to explain any circumstances against me appear in the evidence adduced so far. The IO did not find any circumstances against me. And did not consider it and anything as a circumstance against me in the evidence and therefore I have not given explanation in the issue. I had no opportunity to explain the matter. The matter doesn't figure in the IO report.

SP doesn't say that IO had omitted this in his report. SP did not record in writing and did not remit the case to IO for further inquiry and report as required rule 15 (1) of CCS (CCA) Rules, 1965. Therefore your honour it clear means that you have accepted the IO report and has no

disagreement on IO report. SP doesn't say why he has included this matter stated above in his disagreement note. Therefore your honour under the circumstances this is a clear that SP doesn't come up under any disagreement with IO. I say that I gave Rs. 7500/- to PW-9 under acquittance in the normal course of business. There is no complaint from PW-9 of any use of force. SP doesn't say whether there was use of physical force or any other type force.

Mahazar is a term non-est in departmental codes. The question is PW-13 did not act according to Rule 217 of Postal Manual Vol. V this refers to GDS Staff Manjula, Sumithar, marulasiddappa, basavarajappa etc. PW-13 did not prepared inventory and signed by independent witnesses. In fact there was no shortage at all but he failed to carry out his visit properly and only created the problem.

If SP had considered under rule 15 (1) that the case was required to be remitted back to IO for further inquiry and report, he would have taken action under rule 15 (1) but SP did not do it. And did not find any reason to remit the case to the IO that clear means that your honour you have accepted the IO report. In view of this and in view of my representation in foregoing paras there is no material under rule 15 (2) for SP to prolong the issue. With this your honour has not said the issues on which you disagree with IO, you seem to have disagreed only with the IO's dropping the charge. This is opposed to law because you don't say why you disagree with the findings of IO to drop.

I pray with my folded hands you kindly consider this case as special case and to grant me a personal hearing if you feel that I have not convinced you. In the personal hearing Shri K.S. Shetty my DA be permitted to participate.

I humbly pray with folded hands SP to up hold the IO report and drop the charge and please refund of Rs. 7500/0 which was got credited to UCR by PW-13.

Thanking you

yours obediently

Chitradurga

(S. MAHANTHESHA)

4. Where he had explained the alleged infractions, as pointed out by the disagreement note. But thereafter, vide Annexure A-5, proceedings was issued against him, which we quote:

*The Superintendent of Post Offices Chitradurga Dn, Chitradurga – 577501
Telephone 08194-235695, e-mail-divisionalofficeta@gmail.com
No.F6-03/13-14 dated@ Chitradurga-577501 the 13.03.2017*

PROCEEDINGS

Read the following:-

1. This office memo number F6-03/13-14 dated 10.07.2014 & corrigendum dated 15.07.2014, issued to Sri.S.Mahanthesha, PA, Davangere HO.
2. IO report dated 7.11.2016.
3. And other connected records.

Sri. S Mahanthesha, Postal Assistant Davangere HO was informed of the proposed action to be taken against him vide this office memo F-03/13.14 dated 10.07.2014 under Rule-14 of CCS (CCA) Rules, 1965. A memo of charges leveled against him on which action was proposed to be taken was also enclosed to the said memo. The details of charges are furnished below.

ARTICLE-I

That the said Sri. S Mahanthesha, while working as SPM Anaji SO in the leave vacancy of regular SPM, during the period from 20.12.2013 to 27.12.2013, has kept the office cash balance short amounting to Rs.7500/- on 24.12.2013. And it is alleged that the said Sri. S Mahanthesha has cancelled UCP transaction dated 24.12.2013 in Treasury package, which was charged to UCP by IP Davangere II Sub Dn., Davangere on account of Shortage of cash.

And thus, it is alleged that Sri. S Mahanthesha has violated the provisions of Rule 23(2) of Postal Manual volume VI, Part I and Rule 84 of Postal Manual Volume VI Part III and thereby exhibited lack of integrity and devotion to duty, contravening the provisions of Rule 3(1)(i) and 3(1)(ii) of CCS(Conduct) Rules, 1964.

The charged official was given 10 days time to submit his representation if any vide this office memo dated 10.07.2014 cited above. The memo was received by the said charged official on 11.07.2014. A letter dated 14.07.2014 of the above said charged official received at this office on 15.07.2014. In his letter, he has requested for supply of listed documents for submission of his representation. Accordingly his request was considered and the documents were supplied on 17.07.2014. Due to some typographical errors, a corrigendum issued to the memo of charges vide this office memo dated 15.07.2014.

The charged official in his letter dated 24.07.2014 has sought a clarification regarding issue of corrigendum to the charge sheet. A clarification was given to him vide this office letter of even number dated 19.08.2014 that, there was no specific ruling regarding issue of corrigendum to the charge sheet, however there is no bar to issue corrigendum to the charge sheet before commencement of the inquiry. And it was issued due to typographical error & omission and not changed the substance of article of charge. He was instructed to submit a written statement of defence clearly whether he admits or deny the articles of charge.

Charged official had submitted his representation dated 28.08.2014 to the DPS, SK Region, Bengaluru against the issue of corrigendum by this office memo dated 15.07.2014. His representation was disposed off by The DPS, SK Region, Bengaluru informing the charged official vide letter number SK/VIG/2-6/RCS dated 26.09.2014 that, the action of The SPOs, Chitradurga division in issuing corrigendum to the memo of charge is well within the ambit

of the provision of CCS (CCA) Rule, 1965 and intervention of the appellate authority is not warranted at this stage.

IO/PO were appointed vide this office memo dated 14.10.2014. Sri.P.V.Badrinath the then ASP Chitradurga sub division, Chitradurga now ASP (Plg) o/o PMG, SK Region, Bengaluru appointed as IO & Sri B L Ravindra, IP, Challakere sub division, Challakere as PO.

The charged official had submitted a representation dated 04.10.2014 to the Postmaster General, SK Region, Bengaluru, regarding issue of a corrigendum to the charge sheet. He was informed vide letter No.F6-03/13-14 dated 16.10.14 that, he had already submitted a representation regarding issue of corrigendum, to the DPS, SK, Bengaluru and it was disposed of by RO vide letter NO.SK/VIG/2-6/RCS dated 26.09.2014 & reply was given directly to him by RO. As RO has already clarified and replied, further representation on the same subject does not arise. And also IO/PO were appointed to inquire into the case vide this office memo No.F/Disc/01/14-15(F6-03/13-14) dated 14.10.2014 and he could defend his case before the inquiry authority.

He has submitted a representation dated 27.10.2014 to this office, regarding issue of corrigendum to the charge sheet. He was informed vide this office letter No.F6-03/13-14 dated 31.10.2014 that, reply had already been given to him vide this office letter dated 19.08.2014 that, there was no bar to issue a corrigendum to the charge sheet.

He had represented to DPS, SK, Bengaluru, against the issue of a corrigendum to the charge sheet. RO vide it's letter No.SK/VIG2-6/RCS dated 26.09.2014 had informed to him directly that, action of issue of corrigendum to the charge sheet was well with in the ambit of provisions of CCS(CCA) Rules, 1965. In response to representation made to PMG, SK Region, Bengaluru, he was informed that, RO has already clarified & replied further representation on the same subject does not arise. IO/PO were appointed to inquire into the case against him under Rule 14 vide this office memo No.F/Disc/01/14-15/F6-03/13-14 dated 14.10.2014. He was asked to defend the case before the inquiry authority. But vide his letter dated 27.10.2014, he had raised the same points. Further he was instructed that, if he was not guilty, he could defend the case before inquiry authority. Once the charge sheet issued and IO/PO appointed, giving clarification to the ruling does not arise by the disciplinary authority, appellate authority or by any higher authority.

Charged official vide his letter dated 12.02.2015, has requested for supply of Hindi translated copy of charge sheet. He was informed vide this office letter No.F6-03/13-14 dated 24.02.2015 that, as per Rule 70 of P&T Manual Volume III, charge sheet may be issued/served in English or Hindi. Hence charge sheet was issued in English, and it was for him to get the same translated into some other language for his own benefit. Again the charged official vide representation dated 27.02.2015 requested for supply of copy of charge sheet in Hindi. He was replied vide this office letter No.F6-03/13-14 dated 10.03.2015 that, as per Rule 70 of P&T Manual Volume III, charge sheet can be issued either in Hindi or English. Hence the charge sheet was issued in English and IO/PO appointed. Oral enquiry has already been commenced by the IA and hence no further correspondence would be entertained. Again he had submitted representation dated 02.03.2015 requesting for supply of copy of charge sheet in Hindi. The inquiry office, Sri

P V Badrinath, then ASP, Chitradurga sub division, Chitradurga was instructed vide this letter No.F/Disc/01/14-15(F6-03/13-14) Dated 08.04.2015 to go ahead with inquiry proceedings by conducting continues sittings and complete inquiry early.

Again the charged official come to with a representation dated 04.11.2015 regarding issue of a corrigendum to the charge sheet. He was informed vide this office letter no.F/Disc/1/14-15 (F6-03/13-14) Dlgs dated 09.11.2015, that disciplinary authority will not interfere in the inquiry proceedings, further he was instructed that, in the subject of the letter, he had used the word "Unlawful action" any such word used in future, it would be viewed seriously. A charge sheet under Rule 14 of CCS(CCA) Rules, 1965 was issued against him for the alleged shortage of cash of Rs.7500/- kept on 24.12.2013 while working as SPM, Anaji SO, in the leave vacancy of regular SPM. Therefore using of any such word will be viewed seriously.

Again he had submitted a representation dated 7.12.2015 regarding issue of a corrigendum. He was informed by this office letter no.F/Disc/1/14-15(F6-03/13-14) Dlgs dated 10.12.2015 that, disciplinary authority will not interfere in the inquiry proceedings.

Again he had submitted a representation dated 21.12.2015 regarding issue of corrigendum. He was informed vide this office letter no. F/Disc/1/14-15(F6-03/13-14) Dlgs dated 01.02.2016 that, vide his representation dated 21.12.2015, it was mentioned that, corrigendum to the charge sheet was issued on 15.07.2015 it was not correct. Corrigendum to the charge sheet was issued vide this office memo no.F6-03/13-14 dated 15.07.2014. He had made several representation regarding issue of charge sheet and corrigendum. He was informed/clarified vide this office references.

1. F6-3/13-14 dated 17.07.2014
2. F6-3/13-14 dated 19.08.2014
3. SK/VIG/2-6/RCS dated 26.09.2014 (RO letter reference)
4. F6-3/13-14 dated 16.10.2014
5. F6-03/13-14 dated 31.10.2014
6. F6-03/13-14 dated 24.02.2015
7. F6-03/13-14 dated 10.03.2015
8. F/Disc/1/14-15(F6-03/13-14)Dlgs dated 09.11.2015
9. F/Disc/1/14-15(F6-03/13-14)Dlgs dated 10.12.2015

Disciplinary authority will not interference in the inquiry proceedings. Regarding issue of charge sheet, he had filed on application before the honorable CAT, Bengaluru Bench vide OA No.170/00851/2015.

Again he had submitted a representation dated 18.05.2016, regarding issue of a charge sheet under Rule 14 of CCS(CCA) Rules, 1965. He was informed vide this office letter no.F/Disc/1/14-15(F6-03/13-14) Dlgs dated 19.05.2016 that, disciplinary will not interfere in the inquiry proceedings & the same has already been informed vide this office letter of even number dated 01.02.2016.

Again he had submitted a representation dated 11.07.2016, regarding refund of Rs.7500/- quoting the evidences adduced during the inquiry proceedings and oral evidence of the witness. He was informed vide this office letter No.F/Disc/1/14-15(F6-03/13-14) Dlgs dated 19.07.2016 that, disciplinary authority will not interfere at that, stage, since inquiry proceedings was still in progress.

Regarding issue of Charge Sheet & corrigendum, charged official had filed an application before the Hon'ble CAT, Bengaluru Bench vide OA No.170/00851/2015 dated 21.07.2015. The Hon'ble CAT Bengaluru bench, has dismissed the OA in judgment/order dated 28.10.2016. And it was ordered, in para no.4 of the said judgment that, "The applicant has approached this tribunal seeking an order for withdrawal of the charge sheet stating that the charge sheet is defective. Having heard the learned counsel for the applicant and upon perusal of the relevant documents. It is found that the action of the Respondent No.4 in issuing the corrigendum is well within the ambit of CCS(CCA) Rules, 1965. The applicant is seeking a direction to the respondents to withdraw the charge sheet for which he has not made out any sustainable grounds in the OA.

After concluding the inquiry the IO, Sri.P V Badrinath the then ASP Chitradurga sub division, Chitradurga now ASP (plg), o/o the PMG, S K Region, Bengaluru, submitted his report dated 07.11.2016, received at this office on 10.11.2016.

Sri P V Badrinath, IO vide report dated 07.11.2016, has held the article I as Not Proved for the following reasons:

- I. Time of preparing the mahazar and various statements were not available in the documents of prosecution side.*
- II. Whether Pw.13 has passed remarks in the office error book of Anaji SO, even though, he was not authorized to write in it.*
- III. Whether Pw.13 has checked all the records of the SO account before coming to the conclusion about the shortage of cash on 24.12.2013 at Anaji SO.*
- IV. Whether Pw.13 has ordered the charged official to credit Rs.7500/- under UCR on 24.12.2013*
- V. Whether charged official himself has credited the amount of Rs.7500/- under UCR on 24.12.2013 vide Exp. 03.*
- VI. Who was made correction entry in Exp.4, whether charged official or Pw.13*
- VII. Whether Exp.4 is a valid document, because it was not signed by the SPM*
- VIII. Many corrections were noticed in the SO daily account of Anaji SO, for the date 24.12.2013 i.e., in Exp. 5. These corrections were done in the absence of the charged official. All the corrections were subject to different views.*
- IX. Statements and mahazar are prepared in the absence of the independent witnesses.*
- X. Signature of the charged official was in Exp.1 and Exp.2 on 24.12.2013. But charged official has denied about the shortage of cash in Exp.2 which was not questioned by IP i.e., Pw 13.*

I disagree with the findings of IO for the following reasons:

DISAGREEMENT

The article I was very clear that, the charged official while working as SPM Anaji SO, in the leave vacancy of regular SPM, during the period from 20.12.2013 to 27.12.2013, has kept the office cash balance short amounting to Rs.7500/- on 24.12.2013 and alleged that, he has cancelled UCP transactions dated 24.12.2013 in treasury package which was charged to UCP by IP Davanagere II sub division, Davanagere on account of shortage of cash.

Pw.13 Sri R Ashok, ASP, Hospet sub division, Hospet & then IP Davanagere II sub division, Davanagere who appeared before the inquiry sittings held on 04.07.2016 & 05.07.2016 has deposed that, he worked as IP

Davangere II sub division, Davangere for the period from 15.11.2012 to 24.11.2014 he has identified Exp.1 and deposed that, it was a mahazar dated 24.12.2013 of Anaji SO, regarding shortage of cash on 24.12.2013, he has visited Anaji SO, and carried out vigilance checks and conducted BD meetings with GDSs/SPM. Before commencing the visit report, he checked the cash and stamp balances and found Rs.7500/- found short and ordered to Sri.S.Mahanthesha to made good and shortage, but he was telling a story that, yesterday he was ordered to convey cash from Davangere HO for Rs.500000/- for eMOs payments. He doubted shortage of cash in the bundles. Then Pw.13 made enquiry with the then Postmaster Smt.Indira Bhat and Treasurer, Sri A Rajappa both have confirmed that, there was no excess or shortage in the treasury. The same was conveyed to Sri S Mahanthesha, and once again he was requested to made good the shortage. Then the charged official created on more story that, on 24.12.2013, he had been to toilet without locking cash chest/drawer of cash and suspected that, his office GDS MD or GDS MP might have stolen the cash. Then Pw.13 made enquiry with GDS staff and they have stated that, they have not taken or stolen the cash. He once again requested the charged official to made good the shortage of Rs.7500/-. Then he talked to divisional office and obtain oral order to charge the same under UCP. Regarding shortage of cash mahazar was drawn. It was signed by the charged official.

Pw.13 has identified Exp.3 and deposed that, Sri Mahanthesha, has voluntarily made good the shortage of Rs.7500/-

Pw.13 has identified Exp.4 and deposed that, it was a TCB of Anaji SO dated 24.12.2013, After charging Rs.7500/- Sri S Mahanthesha, has cancelled the UCP entry without the permission and without furnishing reason.

On 27.12.13 he has visited Davangere Ho & verified the records of Anaji SO, in the sub account branch and noticed that, Sri S Mahanthesha had cancelled the UCP amount of Rs.7500/- charged in the SO daily account/TCB. Again he has visited Anaji SO, on 27.12.2013 and verified EE book & found that, it was torn by Sri S Mahanthesha. Pw.13 has requested him to give statement, but he has refused. Further he noticed that, Sri S Mahanthesha, has issued eMOs to GDS MP/MD without invoicing the delivery slip of eMO payments. After taking print out of TCB, it was noticed that, only Rs.1000/- cash was issued to GDS MP/MD against Rs.7500/-. Charged official has manipulated the office documents. He has drawn mahazar, regarding refusal to give statement and torn of EE book.

Pw.13 has identified Exp.18 and deposed that, it was the statement of Sri Dhanaraj C, regarding eMO payments and issue of delivery slips on 24.12.2013, it was known to him that, after 5 pm Sri. S Mahanthesha, has written as 24.12.2013, beat no.12, 15 eMOs, cash for eMOs payment Rs.7500/- at 0900 AM obtained the signature of Sri Dhanaraj forcibly.

Pw.13 has further deposed during the cross examination that, on 24.12.2013, actually cash was not given to GDS MD II in the morning, but record was prepared in the evening forcibly to the GDS and delivery slip was not issued to GDS MD II. Return cash was not shown in the TCB dated 24.12.2013.

Sri.S.Mahanthesha, in Exp.2 has written that, he has used Rs.7500/- for his personal, but he scored out and written as used for eMO payments.

Pw.13 has deposed that, he personally charged the amount under UCP through Sri.S.Mahanthesha and seen the daily account in the system. But print out was not taken due to some technical issues.

Sri Dhanaraja GDS MP/MD, Anaji SO(on stop gap), who appeared as Pw.9 in the inquiry sitting dated 13.06.2016 has deposed that, on 24.12.2013, then SPM Sri S Mahanthesha, has not given any money orders or cash to him. In the evening at 5 pm, SPM has obtained his signature with

remark that, "Received Rs.7500/- Rs.Seven thousand five hundred only" in Exp. 10 forcibly. But no money orders and cash was given to him. On 24.12.2013 2 eMOs were paid for Rs.500/- each at the counter. That amount was given by Sri Mahanthesh, then SPM Anaji SO. Further in reply to question of IO, he has deposed that, in Exp.10, the timings of 09.00 AM was written by Sri S Mahanthesh.

Pw.5, Smt.C.B Manjula, GDS BPM, Tumbigere BO a/w Anaji SO, who appeared in the inquiry sitting held on 13.04.2016 has deposed that, Exp. 1 was a mahazar dated 24.12.2013 and confirmed her signature appearing on the page no.2 of Exp.1 on that date, Inspector has informed her that, there was a shortage of cash Rs.7500/- and got her signature to Exp.1.

Pw.03, Smt.Sumithra A K, GDS BPM, Hulikatte BO a/w Anaji SO, who appeared in the inquiry sitting held on 12.04.2016, has identified Exp.1 and confirmed her signature, appearing on it. Contents of Exp.1 was readout by P.w.13 and asked her to sign.

Pw.04, Sri B C Marulasiddappa, GDS BPM, Mellekotte BO a/w Anaji SO, who appeared before the inquiry sitting held on 13.04.16, has identified his signature appearing on Exp.1. He was informed the contents of Exp.1 by Pw.13.

P.w.01 Sri S K Basavarajappa, then Main overseer, Davangere II sub division, Davangere who appeared before the inquiry sitting held on 12.04.2016, has identified Exp.1 & confirmed the contents. He also identified his signature appearing on it.

Exp.3 is a UCR receipt No.A66/Dated 24.12.13 of S Mahanthesh, an amount of Rs.7500/- credited to UCR at Anaji SO, regarding shortage of cash.

Exp.4 is a treasurer's cash book dated 24.12.13 of Anaji SO. In the page No.3 of it there is a description that, other payments UCP shortage of cash at SO a/c, amount of Rs.7500/- is cancelled on 24.12.2013 at 1600 hours.

As per rule 15(2) of CCS(CCA) rule 1965, a show cause notice including disagreement with the findings of IO along with IO report issued to the said charged official on 27.12.2016 and asked to submit representation against the decision of disagreement of disciplinary authority and findings of IO if any within 15 days of its receipt of this letter. The said notice was received by the charged official on 29.12.2016. the charged official vide his letter dated 05.01.2017 received at this office on 06.01.2017 had requested to accord 20 days more time to submit his representation and also requested for personal hearing along with AGs & representation, the request of the official for 20 days more time to submit his representation was granted and no permission was granted for personal hearing along with AGS & representation, vide this office letter number F6-03/13-14 dated 09.01.2017. The charged official has submitted his representation dated 30.01.2017 which was received at this office on 31.01.2017.

I have gone through the representation and all connected records of the case. The charged official in his representation dated 30.01.2017 has stated that,

Article I, relates to alleged shortage of cash in the office balance, it was no basis in reality as there was excess cash in the cash balance on 24.12.2013, but DA cites contravention of Rule 23(2) of Postal Manual Vol. VI Par-I and Rule Rule 84 of Postal Manual Volume VI Part-III which are not violated. If at all IP noticed deficiency in cash balance, he should have taken action under Rule 217 of Postal Manual Volume V. He should have called upon to him to produce the money and if he was unable to produce or give satisfactory explanation, then IP should have drawn up inventory signed by 2 independent witnesses and should have taken follow up action.

The Article of charge and the statements of imputation are full of opinions and expressions which can be construed as opinions and therefore the charge sheet as a whole is vitiated.

The IO has come to the definite conclusion that, the charge of keeping shortage of Rs.7500/- in office balance on 24.12.2013 allegation of cancelling of UCP transaction in treasury package are not proved are furnished in page No.9 & 10 of his report.

Mahazar prepared by Pw.13 has no value, Mahazar in a term of non-est in codified rules. Rule 217 of P&T manual Vol-V, says that, first the SPM, should be called upon to explain the shortage, if any found, if Pw.13 given an opportunity to explain, he would have pointed out. Pw.13 did not account for the sum of Rs.7500/- which was given to Pw.9 for MO payments as per Exp.10. There was no shortage at all, in fact there was excess cash of Rs.7500/- in office cash balance. Pw.9 EDDA had this sum of Rs.7500/- with him for MO payments. Pw.13 prepared Mahazar and signed by his subordinates i.e. mail overseer & GDS staff without demur and truth that Rs.7500/- were with Pw.9.

IO held that, Pw.13 has no power to pass remarks in error book of Anaji SO. Pw.13 did not check Exp.10 and as a result, he failed to get truth that Rs.7500/- has remained with Pw.9. There was no shortage. In spite of that, Pw.13 compelled him to credit Rs.7500/- to UCR. Exp.4 is the TCB report dated 24.12.2013 is not valid because, he had not prepared and not sign it. Corrections were made Exp.4 by Pw.13. Corrections in Exp.5 namely daily account dated 24.12.2013 were not made by him.

At para 10, IO has rightly stated that, Signatures of charged official were obtained by Pw.13 in Exp.1 and Exp.2 un-warranted, because there was no shortage of cash in Anaji PO on 24.12.2013. Hence cancellation of UCP transaction was a baseless allegation.

Regarding disagreement with the findings of IO, he has stated as follows:-

Article of charge is not clear. It is accompanied by correction and corrigendum SP says that it is very clear etc. has no value.

Pw.13 checked the balance ,but did not check Exp.10. He did not take action as required in Rule 217 of P&T manual volume V. He did not take into account that , the sum of Rs 7500/- was with Pw.9 . He never created any story and never said about toilet, not locking of cash chest that, GDS might have stolen cash etc. Those were false creations against him by Pw.13 when Pw.13 asked him to make good Rs.7500/- by crediting to UCR , he told him that , he should check Exp.10 in which case he would have found that , there was no shortage.

The DO must have permitted him to charge rs.7500/- to UCP stating that, it could be taken as shortage in office cash. It was not desirable on the part of DO to say so. If at all DO advised Pw.13 nothing was there in writing . It was only the activity of Pw.13 in bringing DO to picture.

Pw.13, identifying Exp.3 says that, charged official voluntarily made good Rs.7500/- was false . Exp.3 was ACG receipt (UCR), he did not credit voluntarily vide para 7 of IO's report, IO says that , Exp.4 was not signed by charged official and hence not a valid document. Sp does not say, why he disagreed with the inquiry officer.

SP refers to visit of Pw.13 to Davanagere HO, but he does not say how para 8 of IO's report was nullified. The IO says, corrections were made in the absence of charged official. SP does not say why he disagreed with the IO. The allegations that , he refused to give statement was not misconduct.

The say of Pw.13 that, charged official issued MOs for payment to GDS and the MOs were not invoiced in delivery slip etc. does not lead to adverse inferences. Non-invoicing in delivery slip and not printing delivery slip were only the omissions because of the power failure. He had given Rs.7500/- to GDS & obtained his acquittance in Exp.10.

The statement of Pw.9 was not recorded in the presence of the charged official.

In Exp.2, he had clearly stated that , he has used Rs.7500/- for MO payments. Any item served does not get value.

Pw.13 said that , he saw daily account in the system but print out was not taken due to technical problem was absurd and has no value.

Regarding questioning him by the Inquiry Officer , he has stated/submitted the following in his above said representation .

The purpose was to give him an opportunity to explain any circumstances against him appear in the evidences adduced during the inquiry . IO did not find any circumstances against the charged official. Hence he did not give explanation.

SP does not say that , IO had omitted in his report . SP did not record in writing and did not remit the case to IO for further inquiry and report as required in rule15(1) of CCS(CCA) Rules, 1965. Therefore there was no disagreement on IO's report.

Pw.13 did not act according to Rule 217 of Postal Manual Volume V. He did not prepare inventory and signed by independence witnessed.

SP has not said that issues on which dis-agreed with the findings of IO.

Comments on the representation of the charged official are as follows:-

The article I of memorandum of charge was issued against the charged official vide this office memo on .F6-03/13-14 dated 10.07.2014 following by corrigendum no. F6-03/13-14 dated 15.07.2014 based on the list of documents by which article of charge proposed to be sustained against the charged official were listed out in annexure III & IV of the above said charge sheet issued on 10.07.2014. Annexure I & II clearly explains the alleged violations of Rule 23(2) of Postal Manual Vol. VI part I and Rule 84 of Postal Manual Volume VI part III and contravening the provisions of Rule 3(1)(i) & 3(1)(ii) of CCS conduct Rules, 1964 & Statement of imputations of misconduct or misbehaviour on which action was proposed to be taken against the charged official .

The deposition of Pw.13 regarding shortage of cash of Rs.7500/- noticed on 24.12.2013 at Anaji SO was very clear .It was furnished in the disagreement note supplied to charged official vide this office letter no.F6-03/13-14/Dlgs dated 27.12.2016. Pw.13 had followed the procedures regarding shortage of cash Rs 7500/- noticed on 24.12.2013. In the inquiry sitting held on 04.07.2016, Pw.13 has clearly answered to the question no.02 in cross-examination that , on 24.12.2013, when deficiency of cash was noticed, he did not ask the charged official to make good the shortage

immediately . But the charged official told stories, then only he came to conclusion to draw the inventory. On that date no independent witnesses were available in the post office premises . Therefore the contention of the charged official that , Pw.13 did not take action as per Rule 217 of postal manual volume V and there was an excess of Rs.7500/- on 24.12.2013 were not based on fact ,

No opinion or expression was given in the article of charge and imputations. In the article of charge it was clearly mentioned that the charged official alleged to have violated the provisions of Rule23(2) of postal manual volume VI part III and thereby exhibited lack of integrity and devotion to duty contravening the provisions of Rule 3(1)(i) and 3(1)(ii) of CCS(conduct) Rules, 1964. It is therefore the contention of the charged official that , article of charge and statements of imputations are foul of opinions and expressions are not based on facts.

As per rule15(2) of CCS(CCA) Rules, 1965, disciplinary authority is empowered to dis-agree with the findings, of IO, accordingly , the charged official was supplied with a copy of IO's report and disagreement note vide letter no.F6-03/13-14/Dlgs dated 27.12.2016. Therefore the contention of the charged official that , IO had come to a definite conclusion that , The article I was not proved was not based on facts, since disagreement note in detail was supplied to the charge official.

The charged official has repeatedly pointed out the rule 217 of P&T manual volume V, alleging that, Pw.13 had not followed the procedures. It was already discussed that, Pw.13 had followed the procedures regarding deficiency of cash noticed on 24.12.2013. Pw.13 has clearly deposed during the inquiry sitting held on 04.07.2016 that , reasonable opportunity was given to charged official, but charged official told 2 stories then only he came to conclusion to draw inventory . Pw.13 has identified Exp.8 and deposed that, it was the statement of Sri Dhanraj C, obtained regarding eMO payments and issue of delivery slips on 24.12.2013 . It was known to him that, after 5 PM Sri S Mahanthesha, has written as 24.12.2013, beat no.2, 15 eMOs cash for eMOs payments Rs.7500/- at 9 AM and obtained the signature of Sri Dhanraj forcibly. He has further deposed during the cross-examination that, on 24.12.2013, actually cash was not given to GDS MD II in the morning , but record was prepared in the evening forcibly to the GDS and delivery slip was not issued to GDS MD II . Return cash was not shown in the TCB dated 24.12.2013 . Pw.13 has deposed that, he personally charged the amount of deficiency to UCP through Sri S Mahanthesha and seen the daily account in the system. But print out was not taken due to technical issue. Sri Dhanaraja GDS MP/MD, Anaji SO(on stop gap) who appeared as Pw.9 in the inquiry sitting dated 13.06.2016 has deposed that, on 24.12.2013 , Sri S Mahanthesha, then SPM , has not given any money orders or cash to him. In the evening at 5 PM, SPM had obtained his signature with remarks that, received Rs.7500/- Rs. Seven thousand five hundred only in Exp.10 forcibly. But no money orders and cash was given to him. The contention of charged official that, there was an excess cash of Rs.7500/- in the office cash, Pw.13 did not account for the sum of Rs.7500/- given to Pw.9 & did not follow the procedures of Rule 217 P&T manual volume V are not based on facts.

Pw.13 has clearly deposed during the cross-examination that on 24.12.2013, actually cash was not given to GDS MD II in the morning, but record was prepared in the evening forcibly to the GDS. Delivery slip was not

issued to GDS MD II and return cash was not shown in the TCB dated 24.12.2013. Pw.9 had clearly deposed during the inquiry that, Sri S Mahanthesha, then SPM had not given any money orders and cash to him. In the evening his signature was obtained forcibly with remark that received Rs.7500/- Rs.Seven thousand five hundred only in Exp. 10. Pw.13 in reply to question no.22 during cross-examination held on 05.07.2016 had deposed that, details 15 MOs issued to beat no.II not found. If cash was actually given to GDS MD II it could have been reflected in TCB dated 24.12.2013. Exp. 10 was created in the evening. Pw.13 in reply to question no.32 during cross-examination held on 05.07.2016 has deposed that, in Exp.4 at page no.3, there is an entry regarding UCP charges. It is sufficient. In reply to question no.41 during cross-examination Pw.13 has deposed that, Rs.7500/- was credited by Sri S Mahanthesha voluntarily on 24.12.2013. In reply to question no.43 & 44 during , cross-examination Pw.13 has deposed that, on 24.12.2013 found that, no entries were made in error book regarding acquittance of MO payment and then he had signed in the last page, but the same page torned Sri S Mahanthesha in evening of 24.12.2013 and again he signed on 27.12.2013. He passed the remark with his designated signature, remark could not remembered as particular page not available in the error book. The contention of the charged official that, there was no shortage on 24.12.2013, Exp.4 was not a valid document, Pw.13 did not check Exp.13 and has no power to pass remark in error book are not based on fact.

Pw.13 has rightly deposed during the inquiry that, there was shortage of cash of Rs.7500/- on 24.12.2013 in Anaji SO. Exp.1 and Exp.2 were prepared in connection with shortage of cash. He has identified Exp.1 as a Mahazar dated 24.12.2013 and Exp2 was a statement of Sri S Mahanthesha, recorded regarding shortage of cash on 24.12.2013. the contention of the charged official that, IO has rightly stated that, signature of charged official obtained in Exp.1 and Exp.2 were unwarranted is not based on fact.

Article of charge was very clear, there was no ambiguity. Corrigendum was for typographical error. The honorable CAT Bengaluru bench has already given verdict regarding charge sheet and corrigendum. Hence no comments is made in this regard.

Regarding shortage of cash of Rs.7500/- on 24.12.2013, it has been discussed elaborately in the foregoing paras. Pw.13 has followed required procedure regarding deficiency of cash notice in Anaji SO on 24.12.2013.

When Pw.13 noticed shortage of cash of Rs.7500/- in Anaji SO on 24.12.2013, charged official told 2 stories. Then Pw.13 asked the charged official to charge the amount of deficiency to the UCP (unclassified payment) without that there was no other option to the Pw.13 except ordering to charge it to UCP to tally the account. The action of Pw.13 (Inspector posts) Davanagere II sub division, Davanagere was nothing wrong. Moreover he had clearly deposed that, he spoke to Divisional Office and obtained oral permission to get charge the amount of shortage to the head of UCP (unclassified payment). The contention of the charged official against the Pw.13 is not based on fact.

It was the duty of charge official to credit the amount of shortage to the UCR (Unclassified receipts) when there was a shortage of cash. Regarding shortage of cash of Rs.7500/- on 24.12.2013 in Anaji SO has been discussed elaborately in the foregoing paras. Exp.4 is a computerized report.

Mere not signing the Exp.4 by the charged official. It does not get less of its validity. Pw.13 has clearly deposed during the inquiry that, Sri Mahanthesha voluntarily credited Rs.7500/- to UCR. The contention of the charged official that, Exp.4 is not a valid document and he has not credited Rs.7500/- to UCR voluntarily are not based on facts.

Regarding dis-agreement with IO's report a detailed note was supplied to the charged official vide this office letter no.F6-03/13-14/Dlgs dated 27.12.2016. Details of dis-agreement have been furnished in the foregoing paras. The contention of the charged official regarding dis-agreement with findings of 10 are not based on facts.

Pw.9 who appeared in the inquiry sitting dated 13.06.2016 has deposed that, on 24.12.2013, then SPM Sri S Mahanthesha, has not given any money orders or cash to him. In the evening at 5 PM, SPM has obtained his signature with remark that, received Rs.7500/- Rs.Seven thousand five hundred only in Exp.10 forcibly. But no money orders and cash was given to him. On 24.12.2013 2 eMOs were paid for Rs.500/-each at the counter. That amount was given by Sri S Mahanthesha then SPM Anaji SO. The timing of 09 AM was written by Sri S Mahanthesha. It was the duty of charged official to invoice details of money orders issued to GDS MD for payment in the delivery slip if he had really issued money orders for payment. The contention of the charged official that, he had given Rs.7500/- to GDS for money orders payment and delivery slip could not prepared and printed are not based on facts.

Exp.2 was the statement of charged official recorded by Pw.13. Pw.9 has clearly deposed that, on 24.12.2013, then SPM Sri S Mahanthesha, has not given any money orders or cash to him. In the evening at 5 PM, SPM has obtained his signature with remark that, received Rs.7500/- in Exp.10 forcibly. Mere making correction in Exp.2 & writing that, Rs.7500/- was used for MO payments does not get any value, unless it is proved during the inquiry. Charged official failed to prove that, Rs.7500/- was given to MO payments. The contention of the charged official that, he had clearly stated that he had used Rs.7500/- for MO payments is not tenable.

Pw.13 has clearly deposed during the inquiry that, the amount of shortage Rs.7500/- was charged under the head UCP through Sri S Mahanthesha. He saw the daily account in the system, but print out could not be taken due to some technical issues. The contention of the charged official that say of the Pw.13 was not valid one is not tenable.

There was ample opportunity to explain before IO. The contention of the charged official that, IO did not find any circumstances against him, hence he did not give explanation is not based on facts.

It is the presumption of charged official that, SP did not remit the case to IO for further inquiry & report. As per the provisions of Rule 15 (2) of CCS (CCA) Rules, 1965 & based on the report of IO, dis-agreement note was given to the charged official vide letter no.F6-03/13-14/Dlgs dated 27.12.2016 and further he was given the details of the provisions of the Rule 15 (2) of CCS(CCA) Rules, 1965 vide letter no.F6-03/13-14/Dlgs dated 09.01.2017. The contention of the charged official that, there was no dis-agreement on IO's report is not based on facts.

Pw.13 has followed the procedure prescribed in Rule 217 of postal manual volume V as discussed elaborately in the foregoing paras. Dis-agreement with the findings of IO, was given to the charged official vide letter no.F6-03/13-14/Dlgs dated 27.12.2016. The contention of the charged official that, Pw.13 did not act according to Rule 217 of Postal manual volume V and SP has not said the issues on which dis-agreed with IO's findings are not based on facts.

Gravity of offence on the part of charged official is serious in nature, which requires deterrent action. However with a fervent hope that he would not come across with such irregularities in future, I take a lenient view and pass the following order.

ORDER

I, O. Govindappa , Supdt Of Post Offices Chitradurga Division, Chitradurga- 577501 in exercise of the powers conferred under Rule 11 of CCS(CCA) Rules, 1965, hereby order that, pay of Sri S Mahanthesha, PA, Chitradurga HO be reduced by 1 stage from Rs.40400- to Rs.39200- in the level of 5 of pay matrix of RP Rules, 2016 for a period of 3 years without cumulative effect with immediate effect. It is further directed that, Sri S Mahanthesha, will not earn increment during the period of reduction and that, on expiry of this period the reduction shall not have the effect of postponing his future increments of pay.

*(O.GOVINDAPPA)
Supdt.Of Post Offices,
Chitradurga Dn, Chitradurga-577501.*

*Sri S. Mahanthesha
Postal Assistant
Chitradurga HO-577501.*

5. Since the infraction in Government service is an essential requirement, we had very carefully with anxious eyes went through the punishment order. Relating to the evidence given by PW 13, that by force GDS MD was made to sign the document, even though the actually the cash was not given, seems to be very surprising, as at least, then all other transactions like this would have been examined. We do not think for a moment that it can be correct, because the GDS is also an employee under the full and total control of the respondents and there seems to be some kind of unbelief about this testimony. In fact, after we had gone carefully through the depositions and proceedings, we are satisfied that

some kind of frame seems to have occurred, whether or not there was some cover up at some stage by the department for everybody is unable to discern between what actually might have happened and what is actually taken up by the department. It may also be a case of department wrongly taking up the matter and having made the applicant to pay up Rs.7,500/- successfully and now finding themselves in a situation of being unable to back out. This is an impression which we are able to gather after examining all the documents, evidence aforesaid. The applicant had taken up the punishment against him to the appellate forum by an appeal dated 25.4.2017, which we quote:

*“From,
Sri S. Mahanthesha
Postal Assistant
Chitradurga HO
Chitradurga.*

*To,
The Director of Postal Services
South Karnataka Region
Bangalore-01.*

*Respected Sir,
Sub: Petition and Appeal under Rule-26 of CCS (CCA) Rules 1965.*

Ref: No.F6-03/13-14 dated @ Chitradurga-577501 the 13.03.2017.

Your honour with respectfully the copy of the impugned order is submitted herewith as Annexure-A. The SPO's Chitradurga has imposed the following penalty on me that "Pay of Sri S. Mahanthesha, PA, Chitradurga HO be reduced by 1 stage from Rs.40400- to Rs.39200 – in the level of 5 of pay matrix of RP Rules, 2016 for a period of 3 years without cumulative effect. It is further directed that, Sri S. Mahanthesha, will not earn increment during the period of reduction and that, on expiry of this period the reduction shall not have the effect of postponing his future increment of pay". This is not a penalty under Rule 11 (v) of CCS (CCA) Rules because in that Rule it is not specified anywhere "without cumulative effect" and "with immediate effect", in the result the punishment imposed is not the one specified in Rule 11 (v). It shows the scant knowledge of the SPO's Chitradurga and his lack of respect for the statutory rules.

I am enclosing copies of Annexures I and II of the charge sheet and corrigendum dated 15.07.2014 as Annexure-B and C. The SPo's has materially altered the charge sheet by issuing a corrigendum. The charge sheet issued on 10.07.2014 and within 5 days (after getting reply to charge sheet) on 15.07.2014 he issued a corrigendum and thereafter went on wasting his time trying to justify the issue of the corrigendum. According to Govt. of India MHA DB & AR OM No.134/1/81-AVD I dated 13.07.1981 initiation of Disc proceedings against me is quasi judicial and has the force of law. Here is the Disciplinary Authority who issues a charge sheet and then comes up with corrections in the form of corrigendum which proves that sufficient care was not be stored while issuing the charge sheet. The SPo's doesn't say why he was so careless and then issuing a corrigendum. Again on page no.8 para 2 of the impugned order he says that a show cause notice including disagreement with the findings of I.O was issued to me and this he says is as per Rule 15(2) of CCS (CCA) Rules. It is not a show cause notice under Rule 15 (2) of CCS (CCA) Rules 1965. SPo's sent me a copy of the I.O report with his reasons for disagreement requiring me to submit my written representation. It is not a show cause notice. On receipt of the I.O report, if there were mistakes in the said report the SPo's could for reasons to be recorded in writing, remit the case to IO for further inquiry and report. The SPo's did not do this which clearly shows that the I.O had held the inquiry according to rules and law and therefore there was no cause for him to write letter No.F6-03 dated 27.12.2016 to me because there are no faults on the part of IO in the conduct of his inquiry.

On pages 9 and 10 of the I.O report the I.O has clearly enumerated 10 points of doubt and ambiguity on account of which he came to the conclusion that the charge against me was 'not proved'. The SPo's in his proceedings (impugned order) running to 15 pages of futile exercise in tautology has done nothing to challenge these 10 points of doubt and ambiguity. According to Rules the burden of proving the charge lies on the prosecution and the I.O in view of the doubt and ambiguity came to the definite conclusion. The prosecution did not prove the charge. The SPo's has not been able to say that these doubts and ambiguity do not exist. Again I, in my written representation dated 30.01.2017 furnished information that these doubts and ambiguity do exist and SPo's in the impugned order has not been able to say that those doubts and ambiguity do not exist. This amply proves that the charge is not proved and every doubts/ambiguity analysed by I.O do subsist and so charge is not proved.

The SPo's has not gone through the analysis made by the I.O on pages 6,7,8 and 9 of his I.O report. On page no.9 I.O speaks about the questions he put to me under the provisions of Rule-18 of CCS (CCA) Rules 1965 and reply given by me, this means that I.O questioned me on

circumstances appearing against me in the evidence and I explained those circumstances satisfactorily and proved they were not against me. Shri S.K Basavarajappa said that Exp-1 is a mahazar, it is not an inventory signed by 2 independent witnesses. Sri H. Raghavendra said that he signed Exp-7 at 2.30pm. Smt A.K. Sumitra said that cash was not counted before her on 24.12.2013 and Sri Muralisiddaiah was not specific in his replies. Smt C.R. Manjula has clearly said that she was not available in so on 24.12.2013 at the time of counting cash in respect of Exp-1 it clear means that the GDS staff signatures obtained by the PW-13 who actually were not there. The evidence of PW-6 Sri Sannapalaiah do not supports the allegation and he says that he doesn't know who prepared the Exp-7 dated 27.12.2013 and on the allegation dated 27.12.2013 he was working at Anaji. On that date 27.12.2013 I was working at Davangere HO only. Sri Sannapalaiah replies to PO to questions no.3 and 4 do not favour prosecution and the replies of PW-7 do not favour prosecution and the evidence of PW-8 Smt Indira bhat clearly favour me. While analysing the evidences of PW-9 C. Dhanaraj the I.O says that he confirmed evidences of PW-9 C. Dhanaraj the I.O says that he confirmed receipt of cash Rs.7500/- payment of 2 emo's and his replies to questions no.4,8,9,10,14,17,18 and 22 do not support the prosecution case. PW-10 Sri P.H. Anjaneya in his replies doesn't favour prosecution. The evidence of PW-11 Smt Gangamma doesn't favour prosecution. PW-13 Sri Ashoka failed to act according to Rule-217 of P&T Manual Vol.V and indulged in nonest words like mahazar etc., in the proceedings the SPo's changed stance and began saying that PW-13 prepared inventory and this is a lie.

In the impugned memo Sop's has not answered the clarification given by me in my written representation dated 30.01.2017 and reduced the punishment order4 to a mere rigmarole of in accuracies and falsehood. Spo's has not made out a good and sufficient reasons and therefore the punishment awarded to me is opposed to law. With this I request your honour kindly to read my written representation dated 30.01.2017 as part of this appeal copy is enclosed as Annexure-D wherein I prayed for refund of Rs.7500/- which was got credited to UCR by PW-13 which is still excess sin the Departmental accounts. And the Spo's has not refunded me yet.

Prayer

Your honor I have completed 14 years of unblemished service in the Department and I have suffered lot in this case along with lose of my own cost of Rs.7500/- which is still excess in the Departmental accounts. I, pray with my folded hands your honor kindly to set aside the punishment order and exonerate me fully in the interest of justice."

6. But apparently this was also rejected by the Appellate order, which we quote:

“DEPARTMENT OF POSTS INDIA

*Office of the Postmaster General, South Karnataka Region, Bangalore
560 001*

No.SK/STA/9-3/24/2017/I dated at Bengaluru the
29.11.2017

This is an appeal dated 25.04.2017 preferred by Sri. S. Mahanthesha, PA, Chitradurga HO under Chitradurga division against the order of penalty of reduction by one stage from Rs. 40400 to Rs. 39200 imposed by the Supdt. Of Post Offices, Chitradurga division vide memo no. F6-03/13-14 dated 13.3.2017.

2. The Appellant Sri Mahanthesha S was proceeded against under Rule 14 of CCS (CCA) Rules 1965 vide Supdt. Of Post offices Chitradurga division Chitradurga division vide memo no. F6-03/13-14 dated 10.7.2014 for the following article of charge.

Article I: That the said Sri S Mahanthesha while working as SPM Anaji SO in the leave vacancy of regular SPM during the period from 20.12.13 to 27.12.2013 has kept the office cash balance short amounting to Rs. 7500-00 on 24.12.2013. and it is alleged that the said Sri S Mahanthesha has cancelled UCP transaction dated 24.12.2013 in treasury package, which was charged to UCP by IP Davanagere II Sub division on account of shortage of cash. Thus it is alleged that Sri S. Mahanthesha has violated the provisions of Rule 23 (2) of Postal Manual Vol. VI Part I and Rule 84 of Postal manual Volume VI Part III and thereby exhibited lack of integrity and devotion to duty contravening the provisions of Rule 3 (1) (i) and 3 (1) (ii) of CCS (Conduct) Rules 1964.

3. The Appellant was directed to submit his statement of defence within ten days of receipt of the memorandum. In response to this, the Appellant vide his letter dated 14.7.2014 requested copies of the documents mentioned in Annx III of C/s. The Disc authority has supplied the documents on 17.7.2014 along with a copy of corrigendum to the charge sheet. Instead of submitting defence representation the appellant represented to DPS SK region regarding issue of corrigendum. The same was disposed by the AA vide letter No SK/Vig/2-6/RCS dated 26.9.2014. On 25.9.2014 and informed the appellant that issuing corrigendum to the memo of charges is well within ambit of the provisions of CCS (CCA) Rules 1965. Again on 4.10.14, the appellant submitted a representation to PMG S.K. Region by endorsing a copy to CPMG and stated that the reply given by the AA is vague without citing the rules. The Disc authority appointed ... vide memo No F/DISC/01/14-15(F6-03/13-14). On 09.12.14 the

appellant submitted a representation to SPOs Chitradurga division for issue of Charge sheet in Hindi language. The oral inquiry completed on 24.9.2016 and IO has submitted the IO report on 7.11.2016 by holding the article of charge as "Not proved". The Disciplinary authority disagreed the findings of the IO and issued disagreement note to the appellant on 27.12.2016. The Appellant submitted his representation dated 30.1.2017 in response to the disagreement note. The Disciplinary authority after considering the representation of the Appellant dated 10.03.2017 along with other connected records and the inquiry report, imposed the penalty of 'reduction by one stage from Rs. 40400/- to 39200/- in the level 5 of pay matrix of RP Rules 2016 for a period of 3 years without cumulative effect with immediate effect. It is further directed that, the appellant will not earn increment during the period of reduction and that on expiry of this period the reduction shall not have the effect of postponing his future increments of pay.' vide memo no. F6-03/13-14 dated 13.3.2017 and this order of the penalty is appealed against now.

4. The appellant in his appeal has put forth the following:-

a. The punishment imposed is not specified in Rule 11 (v) of CCS (CCA) Rules.

b. The Disc authority materially altered the charge sheet by issuing a corrigendum and wasted his time trying to justify the issue of the corrigendum. That the Disc Authority has not taken sufficient care while issuing charge sheet. The notice issued to him on the findings of the IA is not a show cause notice as mentioned by the Disc authority as per Rule 15 (2). If there were mistakes in IO report then Disc authority to remit back the IO report to the IA by recording the reasons for further inquiry. But in the instant case the Disc Authority has not sent the case back to IO which shows that IO had held the inquiry according to rules.

c. That the doubts/ambiguity analyzed by the IO do subsist and the SPOs not able to say that those doubts and ambiguity do not exist.

d. SPOs has not gone through the analysis made by the IO on page No 6,7,8 and 9 of IO report. On page No 9 IO speaks about the question he put to the appellate under provision of Rule 18 of CCS (CCA) Rules 1965 which means that the IO questioned the appellant on circumstances appearing against him in the evidence and the appellant explained those circumstances satisfactorily. The GDS staff signature obtained by the PW-13 who actually were not there. That the IO says that PW-9 Sri Dhanaraj had confirmed receipt of cash Rs. 7500-00 and PW-13 had failed to act according to Rule 217 of P&T man Vol V. That the stand of the SPOs saying PW-13 prepared inventory is a lie.

e. The SPOs has not answered the clarification given by the appellant in his representation dated 10.1.2017. SPOs has not made out good and sufficient reasons and therefore the punishment awarded is opposed by law.

f. That he completed 14 years of unblemished service and suffered lot in this case and requested to set aside the punishment order.

5. I have gone through the appeal along with all connected documents and Disciplinary proceedings. The points raised by the appellant are analysed as below:

a. The contention of the appellant that the words “without cumulative effect” and “with immediate effect” is not specified in Rule 11 (v).

The words “with immediate effect” after “without cumulative effect” is not required for. However, this will not have effect in implementation of the orders.

b. The contention of the appellant is not correct. The charge sheet was issued on 10.7.2014 and corrigendum was issued on 15.7.2014. After the issue of corrigendum the appellant made several correspondence/representations to DPS/PMG/CPMG and even filed an OA before the Hon’ble CAT though it was clarified that issuing corrigendum to the memo of charges is well within ambit of the provisions of CCS (CCA) Rules 1965.

The Disc authority has forwarded the IO report along with disagreement note and directed the appellant to submit his representation within 15 days. The action of the Disc authority is as per the provisions of rule 15 (2) of CCS (CCA) Rules 1965.

c. The disc authority has not agreed with the findings of the IO and issued disagreement note to the appellant. IO has raised doubts/ambiguity in his IO report instead of clarifying the same during the course of the inquiry. Hence, the action taken by the Disc authority is in order.

d. The PW-10 categorically admitted that he had signed EXP-7 and the appellant was present at Anaji SO on 27.12.13. While answering Q. no 15 and 19 in Cross examination deposed that the appellant was present at Anaji SO. Similarly PW-11 also confirmed that the appellant was present at Anaji SO on 27.12.13, that EXP-7 was drawn by the PW-13 as the appellant has refused to give the statement regarding torn of error book. Hence, the argument of the appellant that he was not present at Anaji SO on 27.12.13 is not correct. IP has obtained the signature of the GDS staff on 24.12.13, as the GDS staff attended for RPLI mela held at Anaji SO on 24.12.13. The PW-9 Sri Dhanaraj, confirmed the contents of statement given by him on 24.12.13. Further, he confirmed before the IO that he had signed and wrote in EXP-10 AS “received cash Rs. 7500/-“ on 24.12.13 as per the direction of the appellant. But actually he has not received cash and eMO forms for payment on 24.12.13 and the appellant himself wrote as “beat No 2, 15 eMOs cash for eMO payment Rs. 7500/- 9 AM” in EXP-10. So it is evident that the PW-9 has not received cash Rs. 7500-00 on 24.12.13. While giving reply to Q. No 3 in examination in chief the PW-9 says

that he had written as "Received cash Rs.7500/- in EXP-10 and nowhere confirmed by the PW-9 that he had received the cash on 24.12.13. As the appellant had failed to produce the cash, the IP has charged the short found amount under UCP and prepared a Mahazar.

e. After considering the written representation received from the appellant the Disc authority has passed the final proceedings.

f. The say of the appellant that he has served unblemished service is not correct as in an earlier occasion he was let off with a minor punishment for financial irregularity.

The appellant who has put in 14 years of service, was expected to work with integrity in his work. The financial misdemeanor needs to be dealt with severely. Hence, the quantum of punishment is justified.

In view of the above, I do not see any grounds to intervene in the orders of the Disciplinary Authority and hence I pass the following order;

ORDER

I, Natarajan, Director of Postal services (HQ) Karnataka Circle Bengaluru in exercise of the powers conferred by Rule 27 of CCS (CCA) Rules 1965 hereby confirm the penalty imposed on him by the Disciplinary authority and reject this appeal.

Sd/-
/G Natarajan/
Director Postal services (HQ)
Karnataka Circle, Bengaluru-1

*To:
Sri Mahanthesh S
PA Chitradurga HO
Chitradurga Division"*

7. Even though in an appeal in detail the lacuna have been pointed out. But then the Appellate Authority has not dealt on the evidence at all, as he was supposed to do. Clearly a lacuna in marshalling the evidence and assessing it was shown up by the applicant. Appellate Authority has also, we feel has failed in his jurisdiction.

8. On imagination, which however strong, no man can be punished. So for all these cumulative reasons, we find that, the report of the IO, preponderance of

evidence focussed, is in favour of the applicant. PW-9, we enquired and found that he is a stop gap arranged GDS, who is totally under the control of the respondent. Therefore, what is the level of credence to be placed on the only sole evidence of PW-9 to destroy a man's life, is the question?

9. At this point of time, Shri P.A. Kulkarni refers to page 69, wherein Davangere HO, accounts of Anaji SO are shown as UCR 15000/- and UCP 7500/- and he would now say that to adjust this payment, this payment error had been pointed out against the applicant. But then, since this was not the point, which was raised by the applicant earlier, we refuse to consider this point. But at the same time, we find that both the Disciplinary Authority and Appellate Authority may have failed in their jurisdiction, as they have not answered the questions raised by the IO in his findings and we find the IP has actually not considered the relevant aspect. We do not consider PW-9 credibly involved. Therefore, we will remit the matter back to the DA to pass a reasoned order looking into all the aspects in the IO report, after giving opportunity to the applicant. To facilitate this, both the Disciplinary Authority's order and Appellate Authority's order are hereby quashed

10. OA disposed of as above. Matter may be finalised within the next 2 months.
No costs.

(C.V. SANKAR)
MEMBER(A)

(DR.K.B.SURESH)
MEMBER(J)

vmr

Annexures referred to by the Applicant in OA No.170/01305/2018

1. Annexure A1 : Copy of the charge memo dated 10.7.2014.
2. Annexure A2 : Copy of the IO's report dated 7.11.2016.
3. Annexure A3 : Copy of the disagreement note dated 27.12.2016.
4. Annexure A4 : Copy Representation dated 3 9.01.2017.
7. Annexure A5 : Copy of the DA's punishment order dated 13.3.2017.
8. Annexure A6 : Copy of the appeal memo dated 25.04.2017.
- 9 Annexure A7 : Copy of Representation dated 08.09.2017.
- 10 Annexure A8 : Copy of the AA.s order dated 29.11.2017.

Annexures referred to by the Respondents in the Reply

1. Annexure R1 : Copy of Corrigendum dated 15.7.2014.
2. Annexure R2 : Copy of the Mahazar dated 24.12.2013.
3. Annexure R3 : Copy of Statement dated 24.12.2013.
4. Annexure R4 : Copy of Treasurer's Cash Book for 24.12.2013.
