

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

**Original Application Nos.232/2022,29/2024,
111/2023, 163/2023, 164/2024, 172/2023,
173/2023, 174/2023, 178/2023, 186/2023,
187/2023, 188/2023, 189/2023, 203/2023,
204/2023, 270/2023, 282/2023, 402/2023,
430/2023, 431/2022, 432/2022 & 437/2022**

Dated this the 31st day of January, 2025

**Reserved On:22.11.2024
Pronounced On:31.01.2025**



CORAM :

**Hon'ble Mr.Jayesh V. Bhairavia, Member (J)
Hon'ble Dr.Hukum Singh Meena, Member (A)**

OA No.232/2022

DINESH BACHUBHAI WAGHELA
Age: 52 years (DoB being 01.06.1970)
Son of Shri Bachubhai K. Vaghela
Presently serving as Postal Assistant in Gondal Head
Office
under the Supdt. of Post Offices
Gondal Division, Rajkot District
Address For Communication:
"PARTH", Umiyanagar,
Near Swaminarayan Temple
Post: BHAYVADAR 360 450
District: Rajkot
.....Applicant

(By Advocate:M.S.Rao)

VERSUS

1. UNION OF INDIA
(To be represented through its Secretary to the
Government of India Department of Posts /
Recruitment Division,
Ministry of Communication & Information
Technology,
Government of India,
Dak Bhavan, Sansad Marg,
NEW DELHI 110 001).

2. THE CHIEF POSTMASTER GENERAL
Gujarat Postal Circle
O/o C.P.M.G.,
Department of Posts
Ministry of Communication & Information
Technology
Govt. of India
Khanpur
AHMEDABAD 380 001.
3. THE POST MASTER GENERAL
Saurashtra & Kutch Region Department of Posts,
Govt. of India
RAJKOT 360 001
4. THE DIRECTOR OF POSTAL SERVICES
(Appellate Authority)
Saurashtra & Kutch Region
Office of the Post Master General,
Saurashtra & Kutch Region
Department of Posts, Govt. of India
RAJKOT 360 001
5. THE SUPERINTENDENT OF POST OFFICES
(Disciplinary Authority)
Gondal Division
Department of Posts, Govt. of India
GONDAL 360 311
Dist.Rajkot
6. THE POST MASTER
Gondal Head Office
Department of Posts, Govt. of India
GONDAL 360 311
Dist.Rajkot

.....Respondents

(By Advocate:Ms.R.R.Patel)

OA No.29 of 2024

Rajubhai J. Thakor,
Son of Jerambhai Thakor,
Aged: 39 years,
Residing at: ThakorvasBamanava,
Taluka: Patdi,
District: Surendranagar,
Pincode: 382765
(By Advocate: Shri Joy Mathew)



VERSUS

1. Chief Postmaster General,
Gujarat Circle, Khanpur,
Ahmedabad 380 001.
2. Director of Postal Services,
South Gujarat Region,
Vadodara 390001.
3. Superintendent of Post Offices,
Kheda Division, Nadiad 387001.



(By Advocate: Ms.R.R.Patel)

OA No.111/2023

Smt. Gitaben S. Modi,
Wife of Sureshkumar Modi,
Aged 52 years,
Resident of, 60, Shardanagar,
Janakpuri Society,
Gobari Road,
Palanpur-385001.Applicant

(By Applicant: Shri Joy Mathew)

VERSUS

1. Union of India,
Through the Secretary,
Ministry of Communication & IT,
New Delhi – 110 001.
2. Chief Postmaster General,
Gujarat Circle,
Khanpur,
Ahmedabad 380 001.
3. The Postmaster General,
North Gujarat Region,
Ahmedabad - 380 004.

4. Director Postal Services,
North Gujarat Region,
Ahmedabad-380 004.
5. The Assistant Director Postal Services,
Postal Life Insurance,
O/o the Chief PMG, Gujarat Circle,
Ahmedabad - 380 001.
6. Superintendent of Post Offices,
Office of Superintendent of Post Offices,
Banaskantha Division,
Palanpur – 385 001.

.....Respondents



(By Advocate: Ms.R.R.Patel)

OA 163/2023

ValabhaiA. Solanki
S/o Alabhai Solanki
Aged About: 48 Years
Residing at: 13, Shrijinagar Society,
New 80 feet road, Surendranagar,
Pincode:363001....Applicant

(By Advocate: Shri Joy Mathew)

VERSUS

1. Chief Postmaster General,
Gujarat Circle,
Khanpur,
Ahmedabad 380 001.
2. Director of Postal Services,
Saurashtra & Kutch Region,
Rajkot- 360 001.
3. Superintendent of Post Offices,
Office of Superintendent Of Post Offices,
Surendranagar Division,
Surendranagar 363 001. Respondents

(By Advocate: Ms.R.R.Patel)

OA No.164/2023

Kuberbhai H. Vaniya
 S/o Harjibhai Vaniya
 Aged About: 52 Years
 Residing at: Maruti Park Society, 80 feet road,
 Surendranagar
 Pin code: 363 001Applicant

(By Advocate: Shri Joy Mathew)

VERSUS



1. Chief Postmaster General,
 Gujarat Circle,
 Khanpur Ahmedabad 380 001
2. Director of Postal Services,
 Saurashtra & Kutch Region,
 Rajkot- 360 001
3. Superintendent of Post Office
 Office of Superintendent Of Post Offices,
 Surendranagar Division,
 Surendranagar:363 001Respondents

(By Advocate Ms.R.R.Patel)

OA No.172 of 2023

Shri Hardik Dhirajlal Pandya,
 Son of Dhirajlal Pandya,
 Aged 36 years,
 Residing at 24, Sagar Society,
 Near Sardar Society,
 "Gayatri Krupa",
 Surendranagar:363001.Applicant

(By Advocate: Shri Joy Mathew)

VERSUS

1. Chief Postmaster General,
 Gujarat Circle, Khanpur,
 Ahmedabad 380 001.

2. Director Postal Services,
Saurashtra & Kutch Region,
Rajkot 360 001.
3. Superintendent of Post Offices,
Office of Superintendent of Post Offices,
Surendranagar Division,
Surendranagar363001.Respondents

(By Advocate:Ms.R.R.Patel)



OA No.173 of 2023

Shri NareshkumarDhirajlal Parmar,
Son of Dhirajlal Parmar,
Aged 37 years, Residing at 9, Matri Krupa,
Umiya Park, Nr. Swastik Primary School,
TB Hospital Road, Surendranagar,
SurendranagarDistrict:363001Applicant

(By Advocate: Shri Joy Mathew)

VERSUS

1. Chief Postmaster General,
Gujarat Circle, Khanpur,
Ahmedabad 380 001.
2. Director Postal Services,
Saurashtra & Kutch Region,
Rajkot 360 001.
3. Superintendent of Post Offices,
Office of Superintendent of Post Offices,
Surendranagar Division,
Surendranagar-363001....Respondents

(By Advocate: Shri H.D.Shukla)

OA No.174 of 2023

Asha Rushikesh Makwana,
W/o Rushikesh Makwana,
Aged About: 33 Years,
Residing at: New Vadaj P.O., 17, Ram Colony,
Near Nirmal School, Near Bhimjipura Char Rasta,

New Vadaj (Ahmedabad Dist.),
Gujarat, Pincode:380013.

....Applicant

(By Advocat: Shri Joy Mathew)

VERSUS

1. Chief Postmaster General Gujarat Circle,
Khanpur, Ahmedabad 380 001.

2. Director of Postal Services,
Saurashtra & Kutch Region,
Rajkot- 360 001.

3. Superintendent of Post Offices,
Office of Superintendent Of Post Offices,
Surendranagar Division,
Surendranagar: 363001.
.....Respondents



(By Advocate: Shri H.D.Shukla)

OA No.178 of 2023

Shri Sureshbhai T. Desai,

Son of Tejabhai Desai,

Aged 37 years,

Resident of, 53/1,

Saraswati Park,

PatanRoad,Deesa-385 535.

.....Applicant

(By Advocate: Shri Joy Mathew)

VERSUS

1. The Union of India,
Notice to be served through
The Secretary,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi-110 001.

2. Chief Postmaster General,
Gujarat Circle, Khanpur,
Ahmedabad 380 001.

3. The Postmaster General,
North Gujarat Region,
Ahmedabad-380 004.
4. Director Postal Services,
North Gujarat Region,
Ahmedabad-380 004.
5. The Assistant Divisional Manager,
Postal Life Insurance,
O/o the Chief PMG,
Gujarat Circle,
Ahmedabad-380001.
6. Superintendent of Post Offices,
Office of Superintendent of Post Offices,
Banaskantha Division,
Palanpur- 385 001.Respondents



(By Advocate: Ms.R.R.Patel)

OA No.186/2023

Jitendrakumar Dave
S/o Jagdishchan Dave
Age About 61 years, Resident of 2 Shardasadan Duplex,
Abdheshwer Township, Ratanpar,
Surendranagar-363001Applicant

(By Advocate : Ms. Vilas Purani)

VERSUS

1. Union of India,
Notice to be served Through
The Secretary Ministry Communication & IT Dept,
Department Of Posts, Daak Bhavan,
Sansad Marg, New Delhi-110001
2. The Chief Postmaster General,
Gujarat Circle,
Khanpur Ahmedabad -380 001.
3. The Director of Postal Services,
Rajkot Region
Rajkot-360001
4. Supdt. of Post Offices

Surendranagar Division,
Surendranagar -363 001

....Respondents

(By Advocate:Ms.R.R.Patel)

OA No.187 of 2023

Shri NareshkumarDhirajlal Parmar,
Son of Dhirajlal Parmar,
Aged 37 years,
Residing at 9, Matri Krupa,
Umiya Park, Nr. Swastik Primary School,
TB Hospital Road, Surendranagar,
Surendranagar District 363 001. .. Applicant



(By Advocate: Shri Joy Mathew)

VERSUS

1. Chief Postmaster General,
Gujarat Circle, Khanpur,
Ahmedabad 380 001.
2. Director Postal Services,
Saurashtra & Kutch Region,
Rajkot 360 001.
3. Superintendent of Post Offices,
Office of Superintendent of Post Offices,
Surendranagar Division,
Surendranagar 363 001. Respondents

(By Advocate Shri H.D.Shukla)

OA No.188 of 2023

Bharat Kumar Rathod,
Son of Ratilal Rathod,
Aged 56 years,
Resident of 7, Krishna Park Society,
Chavda Pura, Jitodia Road, Anand 388 001,
At present working
as oftg. SPM Bamangam SO-388 520
under Anand Division. ... Applicants
(By Advocate : Shri Joy Mathew)

VERSUS

1. The Union of India,
Notice to be served through The Secretary,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi-110 001.
2. Chief Postmaster General,
Gujarat Circle, Khanpur,
Ahmedabad 380 001.
3. Director Postal Services,
South Gujarat Region,
Vadodara - 390 002.
4. Superintendent of Post Offices,
Kheda Division, Nadiad 387 001.
5. Shri H. C. Parmar, Supdt of Post Offices,
Kheda Division,
Nadiad-387 001Respondents



(By Advocate: Shri H.D.Shukla)

OA No.189 of 2023.

KanaiyalalJayantilal Bhavsar,
Son of Jayantilal Bhavsar,
Aged 52 years,
Resident of 30, Kialasdham Society,
Vaishali Cinema Road,
Nadiad-387002Applicant
(By Advocate: Shri Joy Mathew)

VERSUS

1. The Union of India,
Notice to be served through The Secretary,
Department of Posts, Dak Bhavan, Sansad Marg,
New Delhi-110 001.
2. Chief Postmaster General,
Gujarat Circle,
Khanpur, Ahmedabad 380 001.
3. Director Postal Services,
South Gujarat Region, Vadodara - 390 002.

4. Superintendent of Post Offices,
Kheda Division, Nadiad 387 001.
5. Shri H. C. Parmar,
Supdt of Post Offices,
Kheda Division,
Nadiad:387001.Respondents
(By Advocate: Mr.H.D.Shukla)

OA No.203 of 2023



Shri VinodbhaiBrijlalJagani,
Son of BrijlalJagani
Aged 57 years, ABPM.,
Navania Branch Post Office,
In account with Sayla Sub Post Office,
Sayla-363 430
Residing at Out of Rampura Gate,
Sayla-363 430.Applicant

(By Advocate: Shri Joy Mathew)

VERSUS

1. The Union of India,
Notice to be served through The Secretary,
Department of Posts,
Dak Bhavan, Sansad Marg, New Delhi-110 001.
2. The Postmaster General,
Saurashtra & Kutch Region,
Rajkot-360 001.
3. Director Postal Services,
Saurashtra & Kutch Region,
Rajkot-360 001.
4. Superintendent of Post Offices,
Surendranagar Division,
Surendranagar-363 001.
5. Sub Divisional Inspector,
South Sub Division,
Surendranagar-363001.Respondents

(By Advocate: Ms.R.R.Patel)

OA No.204 of 2023

Shri Mahendra. B. Sharma,
Son of Bhikhajibhai Sharma,
Aged 48 years, ABPM.,
Juna Jaspur Branch Post Office,
In account with Sayla Sub Post Office,
Sayla-363 430.
Residing at
Inside Muli Darwaja,
Sayla-363 430.



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Applicant

(By Advocates: Shri Joy Mathew & Shri V.R. Shah)

VERSUS

1. The Union of India,
Notice to be served through The Secretary,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi-110 001.
2. Chief Postmaster General,
Gujarat Circle, Khanpur,
Ahmedabad 380 001.
3. Director Postal Services,
Saurashtra & Kutch Region, Rajkot-360 001
4. Superintendent of Post Offices,
Surendranagar Division,
Surendranagar-363 001.
5. Sub Divisional Inspector,
South Sub Division,
Surendranagar -363001

.... Respondents

(By Advocate: Ms.R.R.Patel)

OA No.270 of 2023

Tejalba Rajivsinh Vala,

Wife of Rajivsinh,
Aged 37 years,
Working as Postal Assistant,
Residing at A-303, Parimal Point,
B/H Maruti Plaza, Sardarchowk Road,
Krishnanagar, Ahmedabad 382345.

.... Applicant

(By Advocate: Shri Joy Mathew)

VERSUS



1. Union of India,
Notice through the Secretary,
Ministry of Communications and Information
Technology,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi 110 001.
2. The Chief Postmaster General,
Gujarat Circle, Khanpur, Ahmedabad 380 001.
3. Director of Postal Services,
North Gujarat Region, Ahmedabad 380 004.
4. Senior Superintendent of Post Offices,
Ahmedabad City Division,
Ahmedabad 380 009.
5. Senior Postmaster,
Ahmedabad GPO,
Ahmedabad 380 001.Respondents

(By Advocate: Ms.R.R.Patel)

OA No.282/2022

Dineshkumar Patel,
Son of Vadilal Patel,
Aged 51 years,
Resident of A-404,
Paremeshwar-IV
Near Godrej Gardan City,
Jagatpur, Ahmedabad-382 470

.....Applicant

(By Advocate: Shri Joy Mathew &
Shri V.R.Shah)

VERSUS

1. The Union of India,
Notice to be served through The Secretary,
Department of Posts, Dak Bhavan, Sansad Marg,
New Delhi-110 001
2. Chief Postmaster General,
Gujarat Circle, Khanpur, Ahmedabad 380 001.
3. Director Postal Services,
North Gujarat Region, Shahibag,
Ahmedabad - 380 004.
4. Sr. Superintendent of Post Offices,
City Division, Ashram Road,
Ahmedabad-380 009.
5. Senior Postmaster,
Ahmedabad G.P.O,
Ahmedabad-380 001.
6. Senior Postmaster
Navrangpura HO,
Ahmedabad-380 009.....Respondents



(By Advocate: Ms.R.R.Patel)

OA No.402/2023

Pinal Prajapat,
Daughter of Babulal Prajapat,
Aged 31 years,
Resident of 197, Minakshi Green Society,
B/H GIDC, Lunawada Road,
Godhra-389 002Applicant

(By Advocate: Shri Joy Mathew)

VERSUS

1. The Union of India,
Notice to be served through
The Secretary,

Department of Posts,
Dak Bhavan,
Sansad Marg, New Delhi.

2. Chief Postmaster General,
Gujarat Circle,
Khanpur,
Ahmedabad 380 001.

3. Director of Postal Services,
South Gujarat Region,
Vadodara- 390 002.



4. Superintendent of Post Offices,
Panchmahal Division,
Godhra-389001.

5. Postmaster,
Godhara Head Post Office,
Godhara-389001 Respondents

(By Advocate Ms.R.R.Patel)

OA No.430/2022

L.C.Vaghela,
Son of Chaturbhai Vaghela,
Aged 46 years,
Resident of Wadhwan,
Surendranagar District 363 030Applicant

(By Advocate: Shri Joy Mathew)

VERSUS

1. Chief Postmaster General,
Gujarat Circle,
Khanpur,
Ahmedabad 380 001.

2. Director of Postal Services,
Saurashtra & Kutch Region,
Rajkot- 360 001.

3. Superintendent of Post Offices,
Office of Superintendent Of Post Offices,
Surendranagar Division,

Surendrana-363001.Respondents

(By Advocate: Ms.R.R.Patel)

OA No.431/2022

Valabhai Solanki
S/o Alabhai Solanki
Aged About: 48 Years
Residing at: 13, Shrijinagar Society,
New 80 feet road, Surendranagar,
Pincode:363001Applicant



(By Advocate: Shri Joy Mathew)

VERSUS

1. Chief Postmaster General,
Gujarat Circle,
Khanpur,
Ahmedabad 380 001.
2. Director of Postal Services,
Saurashtra & Kutch Region,
Rajkot- 360 001.
3. Superintendent of Post Offices,
Office of Superintendent Of Post Offices,
Surendranagar Division,
Surendranagar-363001. Respondents

(By Advocate: Shri Joy Mathew)

OA No.432 of 2022

Vinod Solanki,
S/o Meghabhai Solanki,
Aged About: 42 Years,
Residing at: 7-Narayan nagar,
New 80 feet Road Opp. Sunshine School Wadhwan,
Surendranagar Dist., Gujarat
Pincode:363001.Applicant

(By Advocate: Shri Joy Mathew)

VERSUS

1. Chief Postmaster General Gujarat Circle,
Khanpur Ahmedabad 380 001.
2. Director of Postal Services,
Saurashtra & Kutch Region,
Rajkot- 360 001.
3. Superintendent of Post Office
Office of Superintendent Of Post Offices,
Surendranagar Division,
Surendranagar : 363 001

.....Respondents



(By Advocate: Ms.R.R.Patel)

OA No.437 of 2022

K.H. Vaniya,
S/o. Harjibhai Vaniya,
Aged about: 52 years
Residing at: Maruti Park Society,
80 feet road,
Surendranagar,
Pin code: 363 001

.....Applicant

(By Advocate: Shri Joy Mathew)

VERSUS

1. Chief Postmaster General Gujarat Circle,
Khanpur, Ahmedabad 380 001.
2. Director of Postal Services,
Saurashtra & Kutch Region,
Rajkot- 360 001.
3. Superintendent of Post Office
Office of Superintendent Of Post Offices,
Surendranagar Division,
Surendranagar : 363 001

.....Respondents

(By Advocate: Ms.R.R.Patel)

ORDER**Per :Hon'ble Dr. Hukum Singh Meena, Member (A)**

In these group of OAs, since the facts and the grounds/submissions urged in support of the claim and/or the counter claim are identical or common in nature, with the consent of learned counsel for the parties, these matters have been heard together and are being disposed of by this common order.



1.1 For the sake of brevity and convenience, the facts of the case, i.e., OA No.232 of 2022 have been taken into consideration as a lead case.

2. Being aggrieved with (i) the charge Memorandum No.B2-4/R-16/DBW/ 03/ 2021-22 dated 06.07.2021 issued under Rule 16 of the CCS (CCA) Rules, 1965 (Annexure-A/1);(ii) order of Penalty passed by the disciplinary authority bearing No.B2-4/R-16/DWB/03/2020-21 dated 30.11.2021 ordering recovery of an amount of Rs.17,41,565/- in 101 installments of Rs.17,075/- every month from the applicant's monthly salary from December 2021 onwards and the last installment of Rs.16,990/- i.e (Annexure-A/2); (iii) Order passed by the appellate authority bearing No.STA-20/03/DBV/2022 dated 11.03.2022 whereby the penalty awarded by the disciplinary authority had been upheld (Annexure-A/3); and (iv) order passed by the Revisionary Authority dated 17.8.2023 (Annexure A/3a), the applicant has approached this Tribunal under Section 19 of the Administrative Tribunal Act, 1985 seeking following reliefs:-

"A. Call upon the official respondents herein to forthwith place before this Hon'ble Tribunal the entire original files/documents, reports, etc., which gave rise to the issuance of the impugned Rule-16 Charge Memorandum dated 06.07.2021 at Annexure-A/1 hereto;

B. Upon perusal of the same, this Hon'ble Tribunal may be graciously pleased to quash and set aside, holding the same as ex facie without authority of law, whimsical, arbitrary, unfair, unreasonable and discriminatory the (i) respondent no.5's impugned Rule 16 Charge Memorandum bearing No.B2- 4/R-16/DBW/03/2021-22 dated 06.07.2021 at Annexure-A/1 hereto, (ii) the respondent no.5's Order of Penalty bearing No.B2-4/R-16/DWB/03/2020-21 dated 30.11.2021 at Annexure-A/2 hereto and also (iii) the respondent no.4's impugned Order bearing No.STA-20/03/DBV/2022, dated 11.03.2022 at Annexure-A/3 hereto:



C. This Hon'ble Tribunal may be further graciously pleased to issue appropriate directions to the respondents herein commanding them to (i) refund to the applicants, with interest thereon @ 18% p.a. the amounts which the respondents herein had recovered in installments from the monthly salary of the applicant herein from December 2021 till date in pursuance of the respondent no.5's impugned order of penalty dated 30.11.2021 at Annexure-A/2 hereto and (ii) permanently restrain themselves, their agents, officers, representatives, etc.. from recovering any amount whatsoever from the future monthly salaries of the applicant herein in pursuance of the aforesaid impugned order of penalty dated 30.11.2021 at Annexure-A/2 hereto.

"C-1 quash and set aside the Respondent No.2's impugned Order being Memo No. VO/2-89/201/2022 dated 17.08.2023 at Annexure-A/3(a) hereto, holding and declaring that the decision and action of the respondent no.2 in proceeding with the applicant's pending revision application dated 30.03.2022 is without any power or authority to do inasmuch as the same is in utter violation of the statutory provisions contained in sub section (4) of Section 19 of The Administrative Tribunals Act, 1985

D. Impose exemplary costs on the respondents herein to be recoverable from the salary of the authorities concerned who were responsible for the initiation of the impugned departmental disciplinary proceedings against the applicant herein under Rule 16 of the CCS (CCA) Rules, 1965."

3. The brief facts of the case are as follows: -

3.1 Initially, the applicant was engaged as a Branch Post Master on temporary basis since 1993 and subsequently, after qualifying the Postman Examination held in the year 2001, he was appointed as a Postman vide Memo bearing No.B2-21/P-man/D-Exam,/01 dated 24.04.2002 (Annexure-A/4). Subsequently, after his successful performance in the departmental examination conducted for promotion to the next higher post of Postal Assistant, he was appointed as Postal Assistant at Gondal Head Office, vide Memo No.B2-27/PA/2006 dated 10.01.2007 (Annexure-A/5) which was subsequently changed to Bhayavadar Sub Post Office on 12.01.2007.



3.2 The applicant was issued a charge memorandum bearing No.B2-4/R-16/DBW/03/2021-22 dated 06.07.2021 (Annexure-A/1) in the month of July 2021 under Rule 16 of the CCS (CCA) Rules, 1965 for alleged misconduct to have been observed during his service as a Postal Assistant between 25.05.2017 and 13.06.2018 at Sub Post Office, Bhayavadar, and the sum and substance of the allegations levelled against the applicant are that during the period when the applicant was working as a Postal Assistant, he had failed to stop one Shri Atul P. Bhatt, a Small Savings Agent (SSA) in Bhayavadar Sub Post Office on 04.09.2017, 24.10.2018, 26.12.2018 and 08.03.2019 and said SSA entered in the post office against the spirit of the Postal Directorate's instructions dated 28.04.1998 as also the instructions dated 16.09.2005 and had taken blank passbook from the stock of Bhayavadar Sub Post Office and to facilitate the said Small Savings Agent to commit a fraud amounting to a total sum of Rs.41,00,000/- by allowing

him to use the Round MO Stamp of Bhayavadar Sub Post Office for preparing forged Passbooks for 5 TD Accounts in the name of the depositors with forged signature of the sub postmaster and handing over the same to the depositors without ensuring to credit the said amount in the consolidated account of the said sub post office.

The applicant was called upon to submit his representation, if any, against the allegations levelled against him in the charge memorandum. The said Charge Memorandum is impugned in the present OA.



3.3 In response to the said charge memorandum, the applicant had submitted his written detailed representation dated 17.07.2021 wherein he had denied and did not admit any of the allegations levelled against him under the charge memorandum. In his representation, the applicant had stated that he is not authorized to allow or permit anyone to enter in the Post Office and as such the permission for entering in the office is to be taken from the SPM, who is the head of the office.

Further it has been stated by the applicant that the date stamp was a general stamp used by office MTS etc. The said stamp was used for mails and delivery and the same was frequently required by the MTS working in the office as well. Therefore, the said 'date stamp' could not remain in his personal custody for the entire working hours. It is also stated therein that on 4.9.2017, the round MO stamp does not remain in the custody of the PA.

Further, with reference to allegation about misuse of blank passbook, the applicant had stated in his

representation that the passbooks remain in the custody of SPM. He had not given any blank passbooks to anybody. He do not know that how the SSA had managed to get hold of the passbooks. The blank passbooks referred in the charge memorandum do not bear any stamp of office. Thus, the passbook of any office can be used in any office. There was no shortage of stock of passbook at Bhayavadar SO. Thus, it is a matter of investigation how the agent had managed to get hold of the passbooks. Therefore, all the charges are based on assumption and presumption and the same cannot take the place of proof and nobody can be penalized on assumption and presumption.



Accordingly, he had requested the disciplinary authority to drop the proposal to take action against him under Rule 16 of the CCS (CCA) Rules, 1965 (Annexure A/8 refer).

3.4 Thereafter, the disciplinary authority, i.e., respondent No.5 herein, vide order bearing No.B2-4/R-16/DWB/03/2020-21 dated 30.11.2021 held that the applicant had failed to exercise to follow the instructions issued by the Postal Department and circulars and violated Rule 21 (1) & (2) of the P&T Manual Vol.I Part 1 (Chaper-1) and as well as Rule 6 (2) (b) of POSB (CBS) Manual (SB Order NO.09/2018) and failed to discharge his duties as well he had facilitated Mr. Atul P. Bhatt, SSA, Bayavadar to misappropriate an amount of Rs.41,00,000/- from various accounts and had awarded the penalty order for total recovery of Rs.17,41,565/- in 101 installments, each of an amount of Rs.17,075/- w.e.f December, 2021 and with a last installment of Rs.16,990/- from the pay and allowances of the applicant

(Annexure A/2 refer), which is impugned in the present OA.

3.5 Aggrieved with the order issued by respondent No.5, the applicant preferred a statutory appeal on 13.12.2021 (Annexure-A/9) to the respondent No.4 as laid down under Rule 23 of CCS (CCA) Rules, 1965 wherein he has prayed for and submitted to the Appellate Authority that the order of the respondent No.5 was without any evidence and requested for setting aside the same order of recovery issued by respondent No.5. Subsequently, by upholding the punishment awarded by Disciplinary Authority, the appellate authority had rejected the said appeal of the applicant vide order dated 11.3.2022 (Annexure A/3 refer) which is also impugned in the present OA.



3.6 It is stated that since the applicant was not in conversant with the law and procedures as laid down in the CCS(CCA) Rules, 1965 that as per the Statutory Rule, the applicant is not required to file any revision before any statutory authority as provided in Rule 29 read with Rules 11 & 23 of CCS(CCA) Rules, 1965. However, inadvertently, he filed revision petition before the CPMG, Gujarat Circle. The said revision petition was also rejected by the revisionary authority vide order dated 17.8.2023 (Annexure A/3a refer), which is also impugned in the instant OA. Hence, the applicant has filed this OA.

4. Learned counsel for the applicant has submitted the following grounds and relied on legal pursuits which are mentioned hereinbelow:-

4.1 Learned counsel for the applicant has submitted that on a close perusal and scrutiny of the allegations as

levelled in the charge memorandum issued under Rule 16 of the CCS (CCA) Rules, 1965, the substance and summary of the charges and allegations are that during the period when the applicant was working as a Postal Assistant, he had failed to stop Shri Atul P. Bhatt, a Small Savings Agent (SSA) in Bhayavadar Sub Post Office on 04.09.2017, 24.10.2018, 26.12.2018 and 08.03.2019 to-



(i) enter inside the working place of post office counter against the spirit of the Postal Directorate's instructions dated 28.04.1998 as also the instructions dated 16.09.2005;

(ii) take blank passbook from the stock of Bhayavadar Sub Post Office and to facilitate the said Small Savings Agent to commit a fraud amounting to a total sum of Rs.41,00,000/- by allowing him to use the Round MO Stamp of Bhayavadar Sub Post Office for preparing forged Passbooks for 5 TD Accounts in the name of the depositors with forged signature of the sub postmaster and handing over the same to the depositors without ensuring to credit the said amount in the consolidated account of the said sub post office.

4.2 It is submitted that by referring various instructions issued by the Directorate vide Memo No.107-5/98-SB-III dated 28.4.1998 (SB Order No.2/98) and CPMG, Ahmedabad instructions dated 16.9.2005 and circular issued by the Gondal Division dated 20.9.2005, it has been alleged against the applicant that in violation of the said instructions, he has allowed one Shri Atul P. Bhatt, SSA, to enter inside the working place of Post Office counter who had took blank passbook from the stock of Bhayavadar Sub Post Office and said Mr. Bhatt had prepared forged passbooks and made forged signature of SPM in respect to new 5 TD accounts and by using rubber stamp had handover the same to the depositors.

However, the disciplinary authority along with the said charge Memorandum had not supplied any such documents as referred to herein above. Neither the same had been attached with the Charge Memorandum. Thereby, the said action on the part of the disciplinary authority is in violation of principles of natural justice inasmuch as the applicant herein has not been afforded with reasonable opportunity to defend his case against the charges levelled against him. Therefore, the impugned charge Memorandum is required to be quashed and set aside.



4.3 As per the instructions of Director General Postal Services and CPMG, Gujarat Circle, either to allow or to deny the entry of any small saving agent inside the said post office are/was vested, as a policy subject, with the Sub Postmaster of the concerned sub post office.

4.4 Further, in response to another charge, learned counsel for the applicant submitted that when the applicant himself was functioning as a Sub Postmaster of the said Sub Post Office during the period from 14.06.2018 to 26.12.2019, the applicant herein had not issued any order to permit any outsider, including Shri Atul P. Bhatt to enter inside the working place of office counter, more particularly on the alleged dates i.e. 24.10.2018, 26.12.2018.

4.5 Other allegation levelled against the applicant was for facilitation of the misuse of the passbook by the said Shri Atul P. Bhatt- SSA for fraudulent purposes. In this regard, it is submitted that the custody of the aforesaid passbook remained with the SPM and as a matter of fact, at any point of time, including on 24.10.2018,

26.12.2018 and on 08.03.2019, the applicant had not issued any blank pass book or had given any blank passbook to anybody, including Shri Atul P. Bhatt. Further, the blank passbooks are available in any Sub Post Office which do not bear any stamp of any particular office and therefore, it is possible that the aforesaid Shri Atul P. Bhatt might have taken blank passbooks from any other post office(s); and used the stamp of Bhayavadar sub post office; committed fraud and misappropriation of the said amount to have been deposited by the prospective investor's interest.



4.6 In addition to the above submissions, learned counsel further submitted that the applicant should have been given a reasonable opportunity to explain his stand and to place his defence before the competent authority and could have been effectively established the responsibility and accountability of the aforesaid alleged fraudulent work of the said Shri Atul P. Bhatt-SSA who had allegedly misappropriated the fund which was said to have deposited by private depositors by conducting the regular departmental inquiry as provided under the provisions of the Rule 14 of the CCS (CCA) Rules, 1965. Though the applicant in his representation brought to the knowledge of the disciplinary authority that the matter is required to be investigated thoroughly but the said request and submission of the applicant had not been acceded to by the Disciplinary Authority.

It is stated that without there being a full fledged inquiry/departmental inquiry as stipulated under Rule 14 of the CCS (CCA) Rules, 1965 the applicant had been denied just and fair opportunity to defend his case effectively and therefore, the disciplinary authority had

violated the principles of natural justice by issuing the Charge Memorandum under Rule 16 of the CCS (CCA) Rules, 1965 (under the term of minor penalty). Therefore, the impugned orders are required to be set aside.

4.7 It is submitted that the disciplinary authority had allowed Shri M. M. Ardeshta, the then Sub Postmaster (SPM), to voluntarily retire from the said post on and from 01.05.2018 while he was serving as a Sub Postmaster in Bhayavadar Sub Post Office where fraud and misappropriation of money of private depositors were taken place.



4.8 It is submitted that before the impugned charge Memorandum dated 6.7.2021 issued to the applicant, the Disciplinary Authority issued show cause notice dated 23.6.2021 to the said Shri M. M. Ardeshta, the then Sub Postmaster (SPM) and was called upon to submit his explanation/representation in respect to proposed intension of the competent authority to conduct a departmental proceeding under Rule 9 of the CCS (Pension) Rules, 1972 against him with respect to the alleged charge that while he was functioning as sub PostMaster of Bhayavadar SO had allowed said Shri Atul P. Bhatt – SSA to enter inside the working place of Bhayavadar SO against the spirit of directives and instructions dated 28.4.1998 to take blank passbooks from the stock of the post office and who further used the round MO stamp of the post office and prepared the forged passbooks for new 5 TD accounts and allotted existing SB account for Rs.7,50,000/- by impressing rubber stamp of SPM and round MO stamp of Bhayavadar SO and made forged signature of sub Post Master and handed over to the depositors and the said

amount of Rs.7,50000/- was not credited in Bhayavadar Post Office and thereby said Shri M.M. Ardeshna, retired SPM is alleged to have maintained devotion of duty as required under CCS (Conduct) Rules, 1964 (Annexure A/13 refer).



Thereafter, pursuant to the sanction accorded by the President under Rule 9 of the CCS (Pension) Rules, 1965 for institution departmental proceeding against said Shri M.M. Ardasana, the disciplinary authority had also issued charge memorandum dated 26.8.2021 for disciplinary proceeding/inquiry under Rule 14 and 15 of the CCS (CCA) Rules, 1965 against him in respect to the alleged charges that he had allowed said Shri Atul Bhat, SSA, to enter into the sub Post Office and to take blank passbooks against the Directorate's instructions and who fraudulently prepared forged passbooks for a new TD account and allotted existing SB Account in the name of private person/depositor for Rs.7,50,000/- by impressing rubber stamp of SPM and forged the signature of the Sub Postmaster and handed over to the creditors and not deposited in the Bayavadar Post Office. Along with the said charge Memorandum, list of documents as well list of witnesses were also supplied to him.

By referring the aforesaid charge Memorandum issued to the then SPM by the disciplinary authority, learned counsel for the applicant would argue that explanation is required to be sought from the disciplinary authority i.e., the respondent No.5 herein as to how and why the said disciplinary authority did not deem fit, expedient and necessary to resort to Rule 14 departmental disciplinary inquiry in the case of the

applicant also when the applicant made a written representation dated 17.7.2021 in response to the impugned charge memorandum issued by the said disciplinary authority under Rule 16 of the CCS (CCA) Rules, 1965, the inquiry held against the said the then SPM was pending at the relevant point of time in August 2021. Therefore, it is submitted that the respondent no.5 has resorted to malicious exercise of his power as disciplinary authority on extraneous consideration. On the very said ground of discriminatory nature of the impugned action of the respondent no.5, the same is required to be set aside.



4.9 Learned counsel further submitted that though the Disciplinary Authority in its charge memorandum mentioned about a fraud of an amount of Rs.41,00,000/- said to have been committed by Shri Atul P. Bhatt-SSA, however, the respondent authority had never filed any FIR against anybody before the competent police authority which explicitly explained the double standards on the part of the respondents.

4.10 It is submitted that the impugned penalty for total recovery of Rs.17,41,565/- from the pay and allowances of the applicant is *ex facie* without authority of law. In this regard, learned counsel further submitted that either in the impugned charge Memorandum or even in the impugned order of penalty, there is not even an iota of allegation that due to alleged misconduct on the part of the applicant as alleged there was loss of revenue to the respondent department. Therefore, the disciplinary authority is not vested with any power or authority either under Rule 12 of the Rules *ibid* or any other rules for

recovery of the huge amount of Rs.17,41,565/- from the pay and allowances of the applicant.

It is submitted that as per the statutory provisions contained in Rule 11 stipulates that for good and sufficient reasons and as provided be imposed upon the Government servants, namely, **MINOR PENALTIES:**

- (i) Censure;
- (ii) Withholding of his promotion;
- (iii) the 'recovery from his (Government servant) pay of the whole or part of any **pecuniary loss caused by him to the Government**, by negligence or breach of orders',.
- (iii)(a) Reduction to lower stage in the time scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his position.
- (iv) Withholding of increment of pay.



By referring the aforesaid provisions in respect to imposition of minor penalties, more particularly, the minor penalty as prescribed in Rule 11 (iii) of the Rules *ibid*, learned counsel would argue that there is no specific charge levelled against the applicant that the pecuniary loss caused to the Government due to his negligence or breach of orders. Further, there was no FIR or information given to the Police Station with reference to the hereinabove mentioned irregularities and pecuniary loss of huge amount to the Government. Therefore, the action on the part of respondent to take initiative for recovery of any revenue/loss to the respondent department is devoid of any authority or power under

Rules 11 and 12 of the CCS (CCA) Rules, 1965 and imposition of penalty of recovery of huge amount from the applicant.

4.11 Learned counsel for the applicant reiterated that it is a settled law that an official can be punished for a good and sufficient reason, but penalty of recovery can be awarded only, if there is lapse on applicant's part that lead to the commissioning of the forgery or misappropriation. In the present case, the statement of imputation of misconduct or misbehaviors did not mention that the proposal of the Disciplinary Authority was to proceed against the applicant under Rule 16 of the CCS (CCA) Rules, 1965 for imposing minor penalty of recovery of revenue loss caused to the respondent department due to alleged negligence or misconduct of the applicant. The instructions issued by Director General Postal Services clearly stipulates that the reasons and charges should be such that a recovery proceeding has to be initiated against the Government servant in the cases where the reported negligence or misconduct or misbehavior of the Government servant has led to revenue loss to the respondent department.



4.12 In order to substantiate the averments mentioned hereinabove, learned counsel for the applicant by referring to the Order sheet dated 18.02.2022 (Annexure-A/21) recorded by the IO in the ongoing departmental inquiry initiated against Shri M.M. Ardeshna, the then SPM would argue that it can be seen that in the said order sheet the IO has recorded that the stand taken by Presenting Officer on behalf of the respondent before the Inquiry Officer on 18.02.2022, was that no claim had been received and subsequently sanctioned by the

respondent authority to the private depositors for the action of fraudulent committed by the small savings agent and same cannot be furnished.

4.13 The applicant, further, contended that the disciplinary authority himself has no authority or power vested to impose the impugned penalty for recovery from the applicant's pay and allowances in the absence of any specific charge and elaboration that due to the negligence or breach of order of instructions, there was a loss to the respondent department. Further, the decision to uphold the order of the Disciplinary Authority by the Appellate Authority is without any merit being bad in law, illegal and malafide.



4.14 Learned counsel by referring the legal maximum **“sublatofundamentocadit opus”, meaning thereby, in case a foundation is removed, the superstructure falls, and would argue that** as the allegations levelled against the applicant are baseless and without any merit and the same is not tenable in the eyes of law as well the subsequent order passed by the DA, AA and RA.

5. *Per contra*, the respondents have denied the claim of the applicant by filing their counter reply. By referring to the contents of the same, learned counsel for the respondents mainly submitted as under: -

5.1 the applicant while working as a Postal Assistant during the period from 25.05.2017 to 13.06.2018, he had allowed Shri Atul P. Bhatt- SSA, Bhayavadar SO to enter inside the working place of post office counter on 04.09.2017 against the directions/guidelines issued by the Director General Postal Services issued vide memo No.107-5/98-SB-III dated 28.04.1998 (SB Order

No.2/98) and CPMG, Ahmedabad instructions issued vide memo No.SB/17-2/1 dated 16.09.2005. Shri Atul P.Bhatt also took blank Passbook from the stock of Bhayavadar Sub Post Office; used Round MO stamp of Bhayavadar Sub Post office and also prepared forged Passbook for new 5 TD accounts; allotting Bhayavadar SO existing SB account numbers in the name of depositors by impressing Rubber stamp of SPM and MO round stamp of Bhayavadar SO of SPM; made forged signature of Sub Postmaster and handed over to the depositors; and subsequently those amounts of Rs.30,00,000/- were not credited and reflected in the head of accounts of Bhayavadar post office.



5.2 Further, it is submitted that the applicant while functioning as a Sub Postmaster, Bhayavadar sub post office for the period from 14.06.2018 to 26.12.2019, had allowed Shri Atul P. Bhatt- SSA HO on 24.10.2018, 26.12.2018 and 08.03.2019 to take blank passbook from the stock of Bhayavadar Sub Post office; used date stamp of Bhayavadar Sub Post office; who prepared forged passbook for new 5 Term Deposit accounts, allotting existing SB accounts in the name of depositors by impressing Rubber stamp of SPM, Bhayavadar and date stamp of forged stamp of Bhayavadar SO of SPM, Bhayavadar SO; made forged signature of Sub postmaster; handed over to depositor and those amounts were of Rs.11,00,000/- not credited in the Bhayavadar Post Office.

5.3 It is submitted that it is the personal responsibility of the SPM of the concerned sub post office to maintain safe custody of all the stamps and seals of post office as laid down under Rule 21(1) &(2) of Postal and Telegram

Manual Vol. VI part I (Chapter-I). However, the applicant while working as a SPM Bhayavadar sub post office failed to keep the safe custody of date stamp and pass book and to prevent the small saving agent to misuse the same.

Learned counsel for the respondents therefore submitted that if the applicant had acted diligently, he could have prevented said Shri Atul P. Bhat - SSA to misuse the blank pass book and stamp of the Sub Post Office



5.4 It is submitted that the disciplinary authority had issued Charge Memorandum under Rule 16 of the Rules *ibid* and had granted opportunity to the applicant to submit his representation/explanation in respect to the allegations levelled against him in the said charge Memorandum. Accordingly, the applicant had submitted a detailed representation dated 17.7.2021 before the disciplinary authority.

It is submitted that after taking into consideration the representation of the applicant, the material on record and by referring and relying upon the statement of the said Shri Atul P. Bhat, Small Saving Agent, Bayavadar SO submitted before the PSI Bayavadar, the Disciplinary Authority denied the explanation of the applicant and held that the applicant had failed to exercise to follow the instructions issued by Directorate and CPMG and the procedure laid down in P&T Manual Vol.IV (Part 1 (Chapter No.1)), as well as Rule 6 (2) (b) of POSB (CBS) Manual (SB Order No.9/2018) thereby he is alleged to have failed to maintain devotion to duty as required under Rule 3 (1)(ii) of CCS (Conduct) Rules,

1964 and facilitated SSA to play mischief. At the same time, by considering the long service rendered by the applicant in the Postal Department, the Disciplinary Authority by taking lenient view had decided to impose the minor punishment of recovery of only Rs.17,41,565/- under Rule 11 (iii) of the Rules *ibid* vide impugned order dated 30.11.2021. Therefore, it is not correct on the part of the applicant that he was not granted opportunity to submit his defence. According to the learned counsel for the respondents, the Disciplinary Authority by following principles of natural justice and as per the terms of the statutory rules of CCS (CCA) Rules, including Rule 11 had imposed just penalty upon the applicant.



5.5 Thereafter, the applicant preferred an appeal before the Director General Postal Services dated 14.12.2021 against the punishment of recovery imposed by Disciplinary Authority. The Appellate Authority, after giving reasonable opportunity to the applicant and taking all material and facts available on records, upheld the order of imposing punishment of recovery by competent authority.

It is submitted that during the pendency of this OA, the Revision Petition filed by the applicant came to be rejected. Since the applicant while working as PA and SA at the relevant time failed to prevent small saving agent namely Shri Atul P. Bhatt to misuse the blank pass books and thereby committed misconduct under the CCS (Conduct) Rules, 1964.

5.6 Learned counsel for the respondents would argue that the applicant(s) failed to comply with the instructions issued by the competent authority in respect

to maintenance and administration of account and stock of pass books, seal and stamp, preparation of consolidated journal etc. and had they worked diligently the misuse of post office, official materials by the Small Saving Agent(s) and its fraudulent use and could have prevented the fraud played by the said Small Saving Agent(s). Therefore, the Disciplinary Authority rightly held that the applicant failed to maintain devotion and integrity while working as Postal Employee and had correctly imposed the penalty of recovery for their negligence.



6. In rejoinder, while refuting the contents of the reply filed by the respondents, learned counsel for the applicant(s) reiterated his submissions as mentioned in the OA.

6.1 He further submitted that as per the instructions and guidelines issued by the Postal Department Hqrs, the impugned penalty of recovery in question cannot be imposed on him due to the absence of any specific allegation or any loss of revenue to the Government. The facts have been placed in detail before the Appellate Authority in appeal application. However, the Appellate Authority without considering those facts rejected the appeal mechanically, without application of mind as well as the revisionary authority.

6.2 It is submitted that the respondents in their reply admitted that with regard to settlement of claim of all seven accounts of Bayavadar SO mentioned in the charge sheet has been as such placed and submitted before the appointing authority of Small Saving Agent(s), i.e., Mamladar, Uplata vide 25/28.06.2021 (Annexure R/6

refer) in light of instructions issued by the Directorate, New Delhi vide Memo dated 11.8.2017 (Annexure R/7 refer) and as per the directions of PMG, Rajkot under letter dated 20.9.2021 (Annexure A/8 and Annexure A/9).



6.3 Further in the reply, the respondents have admitted that total pecuniary loss cause to the department in Bayavadar SO fraud case was not mentioned in the chargesheet. Therefore, learned counsel would vehemently argue that on the one hand, the respondents have placed the claim for settlement before the Mamladar, Uplata by mentioning that the said SSA is the sole responsible for the misuse and misappropriation of the funds of private depositors and at the same time, without mentioning any specific amount of loss caused to the Government on behest of the applicant in the charge Memorandum, the Disciplinary Authority had summary inquiry under Rule 16 for imposing the minor penalty under Rule 11(iii) of the Rules *ibid* which is not permissible and not tenable in the eyes of law.

In other words, he argued that in the charge Memorandum, no specific allegations had been levelled for any particular pecuniary loss caused to the Government due to negligence of the applicant nor any reasons had been assigned by the disciplinary authority while determining the quantum of amount to be recovered as a penalty out of the total so called alleged revenue loss to the Government.

6.4 Learned counsel reiterated that in the present case, there were no specific charges of specific amount of revenue loss or caused to the postal department; hence

no penalty for recovery can be imposed against the applicant.

6.5 Learned counsel contended that the Director General Postal Service, New Delhi had issued a detailed instructions and guidelines how the responsibility for subsidiary offender and the main offenders in case of miss appropriation of Government money or the depositors' money be identified. However, the charge sheet framed by the Disciplinary Authority as issued to the applicant was without any support of documentary evidence and witnesses which clearly and unequivocally amounts to legal infirmities and irregularities and the same cannot be allowed to stand in the eyes of law.



6.6 Learned counsel for the applicant(s) submitted that there is no allegation of misconduct, misappropriation or allegation amounting to moral turpitude. In sum and substance, the allegation raised against the applicant is to the effect that the applicant did not detect and prevent the Small Saving Agent to misuse the office material and his fraudulent activity. It is submitted that in catena of judgments, it has been held that only negligence cannot be termed as misconduct.

Further by referring the judgment passed by the Division Bench of Hon'ble High Court of Madhya Pradesh (Jabalpur) in **Union of India and another vs.C.P. Singh** (W.P. No.5685/2001) decided on 2.9.2004, learned counsel would argue that it was held therein that penalty of recovery of huge amount cannot be termed as minor penalty. Therefore, in the present case, the huge amount of penalty imposed by the Disciplinary Authority in terms

of minor penalty is contrary to the law laid down by the Hon'ble High Court.

Further, in support of the prayers sought in the instant OA and the supporting submissions to it, learned counsel for the applicant(s) had also relied upon the following judgments :(i)1978 GLR 1028; (ii) AIR 1979 SC 1022; (iii) AIR 1992 SC 2188; and (iv) (2007) 4 SCC 566.



6.7 Learned counsel for the applicant further vehemently argued that the applicant is chargesheeted and penalized as subsidiary offender. According to learned counsel in all group of these OAs, the applicants are penalized as subsidiary offenders. In this regard, it is submitted that various Hon'ble High Courts held that the penalty of recovery cannot be imposed on an employee for the fraud committed by someone else. It is settled principles of law that the recovery if any was to be made for the loss of the amount out to have been made from the person directly responsible for the misappropriation. In support of the said submission, learned counsel for the applicant relied upon the judgments passed by the Hon'ble Apex Court (i) **O.K. Bhardwaj vs. Union of India and others**, 2001 8 SCC 180; (ii) judgment passed by the Hon'ble High Court of Madhya Pradesh in MP No.1798 of 2017(**Union of India and Ors. Vs. Ajay Agrawal**) dated 2.1.2018; (iii) order dated 14.9.2011 passed by CAT, Allahabad Bench in OA No.496/2008 wherein the order passed by this Bench in OA No.750/1998, OA NO.508/1996; (iv) order dated 4.8.2022 passed by CAT, Jaipur Bench in OA No.245/2013; (v) order passed by CAT, Jaipur Bench in OA 556/2015.

6.8 Learned counsel for the applicant(s) would argue that in some of cases in this group of OAs, the respondents had not alleged about integrity and devotion of such applicant(s), however, the Disciplinary Authority held that the applicant(s) has/have violated the provisions of Rule 3 (2) (i) of CCS (Conduct) Rules, 1964.

Further, it is submitted that the said Rule reads as under:-



“3(2)(i) Every government servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority.”

By referring the aforesaid Rule, it has been submitted that when the allegation of lack of integrity and doubtful integrity alleged by the respondents, the same cannot be tested in a proceeding initiated under Rule 16 of the Rules *ibid*. The respondents cannot simplify the issue of doubting someone integrity which is serious business by holding a summery inquiry under Rule 16 of the Rules *ibid*. Therefore, the Disciplinary Authority failed to consider the vital aspect of the serious allegations levelled against the applicant and erroneously held inquiry under Rule 16 of the Rules *ibid* instead of the full fledged inquiry under the provisions of Rule 14 of the Rules *ibid* where the charges of lack of devotion of integrity has been alleged against the applicant(s).

6.9 Lastly, learned counsel for the applicant submitted that the Disciplinary Authority not able to assign any reason as to how he has arrived at the quantum of amount to be recovered from the applicant. Therefore, for

such serious legal infirmities, the impugned order(s) are not tenable and the same are required to be set aside.

7. Heard the learned counsel for the parties at length.

7.1 It emerges from the records of OAs that the charge Memorandums were issued under Rule 16 of the CCS (CCA) Rules, 1965 against the applicant(s) herein more or less for alleged violation or non adherence of the various rules of Postal Manual, and various instructions and guidelines issued by competent authority in respect to the affairs of the Post Office/sub Post Offices and alleged that the applicant(s) had facilitated the Small Saving Agent (SSA) and others to commit fraud with the post office. It is further alleged that the applicant(s) failed to prepare consolidated journal to tally with total SO summery in terms of various instructions issued by the Postal Department, further, against some of the applicants, it is alleged that they failed to raise objection for RD Loan and also failed to carry out proper checks/procedure in SOs. Thereby it has been alleged that the applicant(s) remained negligent in discharging their duties as per rules and instructions issued by the Postal Department and facilitated the SSA(s) and others third person(s) to commit fraud and misappropriation of huge amount of Government money. It is alleged that the applicant(s) failed to prevent fraud/misappropriation in Post Office(s) committed by the Small Saving Agent(s) and others. Therefore, the applicant(s) alleged to failed to maintain devotion to duty and the integrity as Government servant(s) and the same is in violation of Rule 3 (1)(ii) of the CCS (Conduct) Rules, 1964 and have committed misconduct accordingly.



7.2 The applicants have denied the charges and also requested the Disciplinary Authority considering the nature of allegation levelled against them, the detailed investigation is required to ascertain accountability and responsibility of the individual in respect to allege fraud of huge amount by the SSA(s) or any other person(s). It is also brought to the knowledge of the Disciplinary Authority by the applicant(s) that there is no specific charge of pecuniary loss caused to the Government at the behest of the applicant(s). The documents relied upon in respect to the alleged charges levelled against the applicant(s) has/have not been provided to the applicant(s) nor any opportunity had been afforded to examine the witnesses which are relied upon by the Disciplinary Authority to frame the charge Memorandum against the applicant.



Since serious allegation(s) levelled against the applicant(s) about their devotion to duty and integrity and the Disciplinary Authority had relied upon the statement of the very person(s) who had stated to have committed misappropriate and fraud with the Postal Department as well as other persons, therefore, the learned counsel for the applicant(s) had also vehemently argued that despite the request made by the applicant(s) for detailed inquiry is necessary to determine the accountability and responsibility of the individual concerned or any other person(s), the Disciplinary Authority should have resorted to the full fledged departmental inquiry as provided under the provisions of Rule 14 of the Rules *ibid* instead of merely a summary inquiry under the provisions of Rule 16 of the Rules *ibid* that too without assigning any reason for denying the

regular departmental inquiry. According to the learned counsel for the applicant(s) not acceding to the request of the applicant to conduct regular inquiry proceedings under the provisions of Rule 14 of the Rules *ibid* in the facts and circumstances and more particularly, the serious allegations levelled against the applicant(s), the impugned charge Memorandum and subsequent orders are passed in violation of the principles of natural justice.



7.3 In the present case, the disciplinary authority proceeded with summary inquiry under Rule 16 of the Rules *ibid* and held that due to negligence and non adherence various instructions issued by the Postal Department which led to facilitation to Small Saving Agent(s) and other persons, to commit fraud and misappropriation of Government money and further for such act, the applicant(s) is/are held to be responsible for causing pecuniary loss to the Government and accordingly, imposed penalty of recovery of huge amount under the terms of Minor Penalty under Rule 11 (iii) of the CCS (CCS) Rules, 1965.

7.4 It is noticed that without determining the actual pecuniary loss caused to the Government on the behest of the applicant(s) and without assigning any reason for ascertaining the liability and responsibility for the recovery of amount from the applicant(s) by the impugned order passed by the disciplinary authority. It is appropriate to refer the details of the penalty amount ordered to be recovered from the applicants' monthly pay in installments as mentioned in the impugned order(s) are as under:.

OA Nos.	Penalty of Recovery Amount
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232/2022	Rs.17,41,565/-
430/2022	Rs. 14,94,946/-
431/2022	Rs.12,53873/-
432/2022	Rs.1,48,914/-
437/2022	Rs.18,81,409/-
111/2023	Rs.7,46,823/-
163/2023	Rs.2,72,889/-
172/2023	Rs.12,48315/-
173/2023	Rs.47,409/-
178/2023	Rs.5,60,117/-
187/2023	Rs.4,73,779/-
188/2023	Rs.18,82,595/-
189/2023	Rs.18,82,595/-
174/2023	Rs.2,92,860/-
164/2023	Rs.2,72,889/-
165/2023	Rs.2,72,889/-
186/2023	Rs.7,28,703/-
270/2023	Rs.13,64,841/-
282/2023	Rs.6,28,637/-
402/2023	Rs.6,71,440/-
29/2024	Rs.8,63,061/-

In two cases, the punishment of recovery had been awarded under GDS (Conduct and Engagement) Rules 2020 as under:-

OA Nos.	Penalty of Recovery Amount
203/2023	Rs.2,75,000/-
204/2023	Rs.2,75,000/-

7.5 Having regard to the aforesaid huge amount of penalty to be recovered from the monthly salary of the applicant, by referring the judgment passed by the Division Bench of **Hon'ble High Court of Madhya**

Pradesh (Jabalpur) in the case of **Union of India and another vs.C.P. Singh** (W.P. No.5685/2001) decided on 2.9.2004, would argue that it was held therein that penalty of recovery of huge amount cannot be termed as minor penalty. .

7.6 It is noticed that in the case of **Union of India and another vs.C.P. Singh** (WP No.5685/2001) decided by the Hon'ble High Court of Madhya Pradesh decided on 2.9.2004, *wherein the respondent (Original Applicant in OA 391/2004 before the CAT Jabalpur Bench), who was working as Telecom Assistant Signal and Telecommunication Officer in the office of Railway Electrocutation, Ranchi against whom charge was levelled that he committed the misconduct and serious irregularities in as much as he showed negligence in working and **accepted** the list of released B&T Materials, including 74 number of Rail posts which was prepared and submitted to him by one Shri O.P. Pal, SI/Grade II without ensuring their proper prescription and specification and without ensuring the physical presence of 74 number of rail posts at site. It is alleged that the said failure on the part of CO i.e. C.P. Singh led to disappearance of 74 number of rail posts from the site resulting into enormous loss to the Railways, and further alleged that 50% costs of the 74 costs of the rail posts would be recovered from him and remaining 50% would be recovered by the said OP Pal.*



The disciplinary authority conducted the summery inquiry and by denying the explanation submitted by the delinquent C.P. Singh held that the charges levelled against the said C.P. Singh is proved as his inaction and lack to devotion to duty resulted in heavy loss to the

Railways, accordingly the punishment of penalty of recovery of 50% of the cost of rail posts and his next increment had been withheld for a period of one year without cumulative effect had been imposed upon the said C.P. Singh. Subsequently, by separate order, cost of material determined Rs.1,51,050/- and 50% thereof, Rs.75,525/- was ordered to be recovered from the said C.P. Singh. The said penalty had been ordered in terms of 'Minor Penalty' as prescribed under Rule 6 of the Railway Servants (D&A) Rules, 1968. The appeal thereon was dismissed. Being aggrieved, the said C.P. Singh had filed OA No.391/2004 before the CAT, Jabalpur Bench and vide Order dated 6.7.2001, the OA was allowed by the Tribunal and held that no inquiry was held and as there was no evidence to establish the charge, the punishment could not be sustained and accordingly the same was quashed and set aside and accordingly directed to refund any amount recovered from the said C.P. Singh.



Being aggrieved, the employee (Railway Administration) had filed Writ Petition before the Hon'ble High Court of Madhya Pradesh. While answering whether any inquiry can be dispensed with where the penalty proposed is recovery of pecuniary loss caused by negligence or breach of orders categorized as a 'Minor Penalty' and whether the Disciplinary Authority was justified in imposing the penalty of recovery without inquiry, the Hon'ble High Court after referring the law laid down by the Hon'ble Apex Court in **O.K. Bhardwaj vs. Union of India**, 2001 (9) SCC 180 and judgment passed in **Food Corporation of India vs. A. Prahalada Rao**, 2001 (1) SCC 165, held as under:-

“position after decision of FCI:

.... If the disciplinary authority decides not to hold regular inquiry and proceed to decide the matter summarily, the employee can always challenge the minor penalty imposed, on the ground that the decision not to hold regular inquiry was an arbitrary decision. In that event, the Court or Tribunal will in exercise of power of judicial review, examine whether the decision of the Disciplinary Authority not to hold an inquiry was arbitrary. If the court/tribunal hold that decision was arbitrary, then such decision not to hold an inquiry and consequential imposition of punishment will be quashed. If Court/Tribunal holds that the decision was not arbitrary then the imposition of minor penalty will stand.



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19. While "censure" and withholding of increments of pay for specified period may conveniently be termed as minor punishments, we feel very uncomfortable with "recovery of pecuniary loss, for negligence or breach of orders" without stipulating a ceiling, being considered as a "minor penalty". Recovering small amounts, as reimbursement of loss caused to the employer by way of negligence or breach of orders from the pay of the employee can be a minor penalty. But can recovery of huge amounts running into thousands and lakhs, by way of loss sustained on account of negligence or breach of orders, be called as a minor penalty ? For example, in this case, recovery sought to be made from the petitioner is Rs. 75,525/- determined as being 50% of the total value of 74 rail posts. Theoretically, what would be the position if the loss was 740 or 7400 rail posts? Does it mean that recovery of Rs. 7.5 lakhs or Rs. 75 lakhs can be ordered from the government servant, still terming it as a minor penalty, without holding any enquiry ? It is time that the State and authorities take a second look as what is termed as "minor penalty" with reference to recovery of losses. The recovery of pecuniary loss on account of negligence or breach of order though termed as a minor penalty may have disastrous consequences, affecting the livelihood of the employee, if the amount sought to be recovered is huge.

20. In the absence of any ceiling as to the pecuniary loss that can be recovered by treating it as minor penalty, it is necessary to find out whether there is any indication of the limit of amount that can be recovered without enquiry, by applying the procedure for imposition of minor penalties. We get some indication of the pecuniary limit in Rule-11 (2) which provides that if the minor penalty involves withholding of increments of pay for a period exceeding three years then a regular enquiry is necessary. Thus, we can safely assume that the pecuniary loss proposed to be recovered exceeds the monetary equivalent of increments for a period of three years, then a regular enquiry has to be held.



21. The fastening of pecuniary liability on the basis of negligence or breach of orders, involves decision on four relevant aspects:

- (a) What was the duty of the employee?
- (b) Whether there was any negligence or breach of order on the part of the employee while performing such duties?
- (c) Whether the negligence or breach of order has resulted in any financial loss to the employer?
- (d) What is the quantum of pecuniary loss and whether the pecuniary loss claimed include any remote damage and whether the employer has taken steps to mitigate the loss?

These are not matters that could be decided without evidence, and without giving an opportunity to the employee to let in evidence. Therefore, where the charge of negligence or breach of lawful order is denied, a regular enquiry is absolutely necessary before fastening financial liability on the employee, by way of punishment or recovery of pecuniary loss from the employees. However, having regard to the decision in FCI, regular inquiry can be dispensed with, for valid reasons, if the amount to be recovered is small (which in the absence of a specific provision, does not exceed the equivalent of three years increment at the time of imposition of penalty). Any attempt to fasten any higher monetary liability on an employee without a regular enquiry, by terming

it as a minor penalty, would be a travesty of justice.

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23. Having regard to the nature of the charge, explanation and quantum of pecuniary loss proposed to be recovered, we are of the view that the disciplinary authority could not have dispensed with a regular inquiry. The decision of the disciplinary authority is arbitrary. The result is no regular inquiry was held. Respondent was not given any opportunity to put forth his evidence, though he denied his negligence, the respondent was made liable for a huge sum.

(emphasis supplied)



Accordingly, after recording the aforesaid observations and findings, the Hon'ble High Court allowed the said petition by quashing and setting aside the order passed by the Disciplinary Authority and the Appellate Authority. Further declared that the decision of the Disciplinary Authority to dispense with the inquiry is arbitrary. Further, directed that the amount, if any, recovered from the pay of the respondent, in pursuance of order imposing the punishment shall be refunded with 12% interest from the respective dates of recovery to date of payment within three months.

Further the Hon'ble High Court in the said judgment recorded that *this order will not come in the way of the disciplinary authority holding the regular inquiry into the charge against the respondent, if it still wants to do so.*

7.7 In the present case, as noted herein above, undisputedly, the disciplinary authority had conducted the summary inquiry under Rule 16 of the Rules *ibid*

despite the fact that the applicant had made a request for holding a regular departmental inquiry/investigation that too without assigning any reason for not holding regular inquiry in terms of Rule 14 of the Rules *ibidas* well as the fact that the applicant herein had been denied just and reasonable opportunity to put forth their evidence, though they denied any negligence on their part and they have been made liable for recovery of huge amount, the said decision of the disciplinary authority is in our considered view is arbitrary in light of dictum laid down by the Hon'ble High Court of Madhya Pradesh in **C.P. Singh's** case (supra).



7.8 It is apt to state that the departmental proceedings have been started under Rule 16 of the CCS (CCA) Rules, 1965 for recovery of pecuniary losses to the Government department. However, it is apparent from the documents available on the records that there was no reported loss to the postal department. The allegations are with reference to the misappropriation of private public money, fraudulently taken; without any authority from the private depositors by small saving agent rather than misappropriated from the government account. It was contended during the argument that there was no information available for any claim said to have been received from the private persons and sanctioned by the postal department with reference to the said alleged act of the applicant. Moreover, the small saving agent was appointed by Mamlatdar i.e, Revenue authority of the state Government, how the applicant could be responsible for the alleged misconduct perceived to have been committed by the small saving agent who has not been appointed by the postal department. Therefore, this

apparently exposes the authority to legal testing on the point of control exercised by the applicant on the small saving agents? Hence the allegation that the applicant was failed to prevent the small saving agent to commit fraud by illegally taking money from private depositors and used for personal purpose without depositing the same in the account of postal department cannot stand in the scrutiny of law.



7.9 Having held that the decision of the Disciplinary Authority to dispense with the regular inquiry is arbitrary, We find force in the submissions of the learned counsel for the applicant(s) that in absence of any malafide or willful negligence on the part of the employee to adhere to the instructions issued by the Department, the same cannot be termed as misconduct. In this regard, there are catena of judgments of Hon'ble Supreme Court and Hon'ble High Courts, wherein it was held that mere negligence or violation of instructions and guidelines issued by the department without having *mens rea* or ill motive will not amount to misbehavior or misconduct. Suffice to refer, in this regard, the following judgments: -

i. State of Punjab and Ors. v. Ram Singh Ex. Constable reported in AIR 1992 SC 2188.

"Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, if must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence to performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined

service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

ii ***Inspector Prem Chand vs Govt. Of N.C.T. Of Delhi And Others*** reported in ***(2007) 4 SCC 566.***



"It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was willful in character. No such finding was arrived at. An error of judgement, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In Union of India &Ors. Vs. Jahmed (1979) 2 SCC 286, whereupon Mr. Sharan himself has placed reliance, this Court held so stating:

"Code of conduct.....which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgement, or innocent mistake, do not constitute such misconduct."

7.10 Furtherin these group of OAs, it is noticed that the applicants were penalized as subsidiary offenders. The various courts, including Hon'ble High Courts held that the penalty of recovery cannot be imposed on an employee for the fraud committed by someone else. Therefore, learned counsel for the applicant would argue that it is settled principles of law that the recovery if any was to be made for the loss of the amount ought to have been made from the person directly responsible for the misappropriation or fraud and in support of it relied upon the dicta laid down by the Courts in the following cases:-

(i) judgment passed by the Hon'ble High Court of Madhya Pradesh in MP No.1798 of 2017 (**Union of India and Ors. Vs. Ajay Agrawal**) dated 2.1.2018; (ii) order dated 14.9.2011 passed by CAT, Allahabad Bench in OA No.496/2008 wherein the order passed by this Bench in OA No.750/1998, OA NO.508/1996; (iii) order dated 4.8.2022 passed by CAT, Jaipur Bench in OA No.245/2013; and (iv) order passed by CAT, Jaipur Bench in OA 556/2015.



7.11 We find force in the aforesaid submissions of learned counsel for the applicant(s). In this regard, it is apt to mention that in an identical case, the CAT, Jaipur Bench in OA NO.556/2015 (**Jeewan Ram Meena vs. Union of India through Secretary Department of Post and others**) decided on 31.5.2024 wherein the applicant aggrieved by the order passed by the Disciplinary Authority for recovery of huge amount of recovery of Rs.1,00,666/- in pursuance of the term 'minor penalty' under Rule 11 of the CCS (CCA) Rules had approached the Tribunal under Section 19 of the AT Act. The CAT Jaipur Bench by referring the relied upon judgment and order i.e. judgment dated 5.4.2018 passed by the Hon'ble High Court of Rajasthan at Jaipur in CWP No.21729/2023 and connected petition (**UOI and others vs. K.L. Disthwania**) whereby the orders passed by the CAT Jaipur Bench in a similar case for refund of amount recovered from the Government employee in the case where the employee was erroneously held to be responsible for negligence in allowing payments in excess and has contributed to a large fraud committed by somebody else, further in OA No.245/2013 (**Adisal**



Meena vs. Union of India and others) decided on 4.8.2022 by the CAT Jaipur Bench wherein it was alleged against the applicant that while he was working as Laser Assistant at Bheror Head Post Office he had not checked and verified the signature of depositor with the signature of warrant of payment related to fraudulent transactions and eventually was held responsible for misappropriation of Government money, the Tribunal in absence of quantum of loss levelled against the applicant was not quantified and ascertained by the disciplinary authority. Moreover the applicant had been considered to be subsidiary offender, the respondent in an arbitrary manner imposed penalty of recovery of huge amount and quashed the charge memorandum as well as the order passed by the disciplinary authority, the Jaipur Bench in the said OA 556/2015, held that the disciplinary authority without determining the amount of quantum of loss actually incurred to the Government and the extent of the role of the applicant, who the respondents themselves had identified to be a subsidiary offender, in relation to other involved persons and the proportionate share to be recovered consequently from the applicant, the said conclusion and finding reached by the disciplinary authority was held to be suffered from the legal infirmities and accordingly, the impugned charge memorandum along with the order of punishment of recovery imposed by the disciplinary authority as well as order of the appellate authority were quashed and set aside and directed the Postal Department to refund the amount if any recovered from the applicant.

In our considered view, the aforesaid judgments and orders are also squarely applicable in the case in the present case.

7.12 It is reiterated that in the present case, the respondents in their reply admitted that total pecuniary loss cause to the Department has not been mentioned in the impugned charge sheet. However, the respondents attempted to justify their stand by averring that they have elaborated in the charge sheet about the negligence of the applicant to facilitate the fraud and misappropriation committed by other person(s) and the applicant(s) failed to detect the same at the early stage.



The said stand of the respondents in our considered view is not tenable in the light of the judgment passed by the Hon'ble Supreme Court, Hon'ble High Court and this Tribunal as referred and noted hereinabove. Further, the submissions of the respondents that the applicant along with others are subsidiary offenders wherein the preliminary enquiry was conducted on 09.02.2021; subsequently, a charge memorandum was also issued to the applicant and applicant has given his representation therein. The respondent authority had followed all the laid down principles of natural justice, including the enquiry to fix the responsibility and accountability for recovery of the revenue loss to the Government. The said submission, in our considered view, is not tenable since the disciplinary authority in arbitrary manner held the summary inquiry under Rule 16 of the CCS (CCS) Rules, 1965 that too without assigning any reason not to accede the request of the applicant for detailed department inquiry under Rule 14 or Rule 16 (1) (b) of the Rules *ibid*.

7.13 It is reiterated that the applicant had categorically denied his negligence and in some of cases, though the charges of lack of devotion and integrity was not alleged in spite Disciplinary Authority held the applicant for it that too without giving opportunity to the applicant(s) as provided under Rule 14 of the Rules *ibid*. Even otherwise, impugned order suffers from the legal infirmities of violative of principles of natural justice and the huge amount ordered to be recovered in terms of minor penalty is held to be arbitrary and contrary to the law laid down by the Hon'ble High Court in the case of **C.P. Singh** (supra)(amount more than three years annual increment). Thus, the submission of the respondents justifying their stand/action is not tenable.



8. This Tribunal is conscious about the limited scope of interference in decision of the disciplinary authority to conduct inquiry against the employee and the order of punishment passed thereon. In this regard it is profitable to mention that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued as held by the Hon'ble Apex Court in the case of **B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80]** wherein it has been held as under:

"13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be

canvassed before the court/tribunal. In Union of India v. H.C. Goel [Union of India v. H.C. Goel, (1964) 4 SCR 718 : AIR 1964 SC 364] this Court held at SCR p. 728 (AIR p. 369, para 20) that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

8.1 In another judgment rendered by the Three Judge Bench in the case of **SBI vs. Ajay Kumar Srivastava**, reported in **(2021) 2 SCC 612: (2021) 1 SCC (L&S) 457**, by referring the law laid down in **B.C. Chaturvedi (supra)** and catena of other judgments, the Hon’ble Apex Court held as under:-



“22. The power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities discharged by constitutional courts under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority.....”

23. It has been consistently followed in the later decision of this Court in H.P. SEB v. Mahesh Dahiya [H.P. SEB v. Mahesh Dahiya, (2017) 1 SCC 768 : (2017) 1 SCC (L&S) 297] and recently by the three-Judge Bench of this Court in Pravin Kumar v. Union of India [Pravin Kumar v. Union of India, (2020) 9 SCC 471 : (2021) 1 SCC (L&S) 103].

24. It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be

such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

25. *When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the court is to examine and determine:*

- (i) *whether the enquiry was held by the competent authority;*
- (ii) *whether rules of natural justice are complied with;*
- (iii) *whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.*

26. *It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry.*

27. *It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.*

28. *The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or*



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where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.”

8.2 Further, the Hon'ble Apex Court in the **State of Karnataka &Anr. vs. Umesh**, (2022) 6 SCC 563: (2022) 2 SCC (L&S) 321, emphasized about the scope of judicial review by the Courts/Tribunal in the matter of disciplinary/departmental inquiry and held that:-



"22. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not re-appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether: (i) the rules of natural justice have been complied with; (ii) the finding of misconduct is based on some evidence; (iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and (iv) whether the findings of the disciplinary authority suffer from perversity; and (v) the penalty is disproportionate to the proven misconduct."

9. From perusal of the Hon'ble Supreme Court directions and the facts as mentioned hereinabove as well as the judgments referred herein above Hon'ble High Court of Madhya Pradesh in **C.P. Singh**(supra), it is clear that although the scope of judicial review, in the cases of disciplinary proceedings, by the Courts/Tribunals is limited, however, Tribunals can intervene in the case wherein the decisions have been taken by the competent authority in the absence of any evidence on record or the findings are perverse and bias or are taken without following the principles of natural justice.

10. Moreover, in the present case (in OA NO.232/2022), the summary inquiry was held under Rule 16 of the CCS (CCA) Rules by the Disciplinary Authority and the

applicant therein held liable for the recovery of an amount of Rs.17,41,565/- without assigning any reason for such summery inquiry as well as not mentioned any reasons for determining the quantum of amount ordered to be recovered from the applicant out of the total alleged amount of misappropriation/fraud committed by other person. Further there was no reported claim from any private depositors or whatsoever from the postal department even after a lapse of four years period. Therefore, it can be concluded that there was no pecuniary loss to the department caused by the negligence or act of the applicant, thus, in absence of any full fledged departmental inquiry and evidence on record, the impugned orders in our considered view suffer from the legal infirmities.



11. Another very important fact is that the charge sheet has been issued for recovery of losses to the department. However, the statement of imputation of misbehavior and misconduct explicitly indicates that the applicant failed to take all possible steps to ensure integrity and devotion to the duty of Government servant for the time being under his control and authority as required under Rule 3(1)(i)&(ii) of CCS (Conduct) Rules 1964 which in the eye of law is not tenable.

Moreover, there is no single evidence or document/witness which indicates that the applicant was squarely or partly beneficiary of the misappropriated amount of Rs.41,00,000/- said to have been done by private small saving agent Shri Atul P.Bhatt.

Moreover the reporting authority of the applicant had assessed the integrity of the applicant in the APAR during the period under discussion as beyond doubt.

12. At this stage, we mention that in order to ascertain the specific responsibility and accountability of the applicant, with reference to the misappropriated amount, if any, it was administratively appropriate on the part of the respondent authority that a detailed enquiry should have been conducted which necessitated to invoke the provisions of Rule 16 (1) (b) of CCS (CCA) Rules, 1965 and also as laid down by Department of Personnel & Training in its OM No.11012/18/85-Estt.(A) dated 28.10.1985. According to hereinabove mentioned guidelines of DoPT, it is clearly stipulated that where the delinquent Government servant request for access to the documents or for conduct of enquiry, the Disciplinary Authority should consider the same judiciously and take decision, if the request is not accepted, then he should say so in writing indicating his reason for not holding enquiry. If the respondent authority does not take any action or decide without any indication of reason for rejection, then such action could be construed as violation of principles of natural justice.



13. In the present case, the delinquent officer reportedly has requested for access of certain documents as well as to conduct enquiry to ascertain the misconduct /negligence/ misbehavior of the applicant leading to misappropriation of the public money by small saving agent. This was neither accepted nor rejected by the respondent authority. Therefore, it is construed, as per instructions of DoP&T hereinabove mentioned, as to denial of principles of natural justice to the applicant.

14. Therefore, in view of the above, the disciplinary proceedings has been conducted under Rule 16 of CCS (CCA) Rules, 1965 for alleged misconduct of the Government servant on the basis of negligence of the instructions, which as per catena of judgments delivered by Hon'ble Supreme Court and Hon'ble High Courts, does not come under the purview of misconduct and would not stand in the eye of law. Hence, as per the directions and judgments passed by Hon'ble Supreme Court/Hon'ble High Courts; detailed guidelines of DoP&T for conduct of enquiry in the case so demanded by delinquent officer and in the absence of compliance of principles of natural justice in this case, there is a sufficient reason to intervene in this case by this Tribunal.



15. In view of the aforesaid facts and circumstances, the OAs are allowed with the following directions/orders:-

- (i) The decision of the Disciplinary Authority to dispense with the regular departmental inquiry is declared to be arbitrary;
- (ii) Accordingly, the impugned order of Penalty bearing No.B2-4/R-16/DWB/03/2020-21 dated 30.11.2021, (Annexure-A/2), Charge Memorandum No.B2-4/R-16/DBW/03/2021-22 dated 06.07.2021 (Annexure-A/1) and Order bearing No.STA-20/03/DBV/2022 dated 11.03.2022 (Annexure-A/3) are quashed and set aside. Pending MAs, if any, also stands disposed of.
- (iii) In view of the above, while allowing all OAs, the Charge Memorandum impugned in **each case**

is quashed and set aside. Subsequent steps taken pursuant to the charge-sheet including the orders passed by the Disciplinary Authority, Appellate Authority and the Revisionary Authority, as the case may be, are also quashed and set aside. Pending MAs, if any, also stands disposed of.



- (iv) The applicants shall be entitled for interest on the recovered amount at the rate admissible to GPF amount from the date when the recovery was made till the same is refunded to the applicants.
- (v) The aforesaid exercise shall be complied by the respondents as expeditiously as early as possible and preferably within 04 months from the date of receipt of a certified copy of this Order.

(Dr. Hukum Singh Meena)
Member (A)

(Jayesh V. Bhairavia)
Member (J)

/Ravi/SKV