

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00656/2012

Jabalpur, this Thursday, the 25th day of February, 2021

HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBER



Vijay Jategaonkar,
 S/o Shri D.G. Jategaonkar
 Aged about 52 years
 R/o Sadar Bazar Betul 460001 (M.P.)

-Applicant

(By Advocate –**Shri Vijay Tripathi**)

V e r s u s

1. Union of India, Through its Secretary
 Ministry of Communication & IT
 Department of Posts
 Dak Bhawan Sansad Marg
 New Delhi 110 001

2. Chief Post Master General Hoshangabad
 Road Bhopal 462012 (M.P.)

3. Director, Postal Services
 O/o Chief Post Master General
 Hoshangabad Road
 Bhopal 462012 (M.P.)

4. Superintendent Post Office
 Chhindwara Division
 Chhindwara 480 001 (M.P.)

- Respondents

(By Advocate –**Shri S.S. Chouhan**)
(Date of reserving the order: 16.10.2020)

O R D E R

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant against the charge sheet dated 15.03.2011 (Annexure A/1), punishment order dated 05.08.2011 (Annexure A/2) whereby the recovery of Rs.71,354/- has been imposed upon him and the appellate authority order dated 22.06.2012 (Annexure A/3) whereby his appeal has been rejected.

2. The applicant has prayed for the following reliefs:

“8(i) Summon the entire relevant record from the possession of respondents for its kind perusal;

(ii) Set aside the order dated 15.03.2011 (Annexure A/1), order dated 05.08.2011 (Annexure A/2) and order dated 22.06.2012 (Annexure A/3) will all consequential benefits:

(iii) Direct the respondents to refund the amount which has been recovered from the salary of the applicant in pursuance to the order dated 5.08.2011 with interest;

(iv) Any other order/order, direction/directions may also be passed.

(v) Award cost of the litigation to the applicant.”



3. The facts of the case are that the applicant was issued a charge sheet dated 15.03.2011 (Annexure A/1) for the misconduct conducted by him while working as Postal Assistant SO SB LC Betul HO on 24.06.2004 to 27.06.2004, 10.09.2004, 15.03.2005 to 31.03.2005, 01.04.2005 to 14.04.2005, 11.06.2007 to 20.06.2007, 26.09.2007 to 30.09.2007, he failed to keep a watch on receipt of certificate from SPM Ghoradongri SO at the end of September about annual interest posting for the year 2003-2004 and 2006-2007 in all the pass books of SB accounts of Ghoradongri SO as per para 1.17 of SB order No.7/2003 as issued vide D.G. letter dated 27.03.2003. If the exercise has shown gross negligence in his work which facilitated the committing of fraud of Ranipur EDBO by the GDS BPM to the tune of Rs.1262607/- and thereby violated Rule 3(1)(ii) of CCS (Conduct) Rule, 1964. The applicant submitted his reply to the aforesaid charge memorandum on 29.03.2011 (Annexure A/4) denying the charges leveled against him and requested to withdraw the





charge sheet. The disciplinary authority after going through the reply of the applicant imposed a punishment of recovery of Rs.71,354/- from the pay of official in 35 equal installments for Rs.2000/- per month and last one installment for Rs.1354/- w.e.f. August 2011. The applicant preferred a detailed appeal to the respondent No.3 on 20.09.2011 (Annexure A/5) which was rejected by the appellate authority on 22.06.2012 (Annexure A/3) by holding that the applicant has committed misconduct and there is no reason to interfere with the penalty imposed by the disciplinary authority.

4. The applicant has contended that after receiving the charge sheet the applicant has denied the allegations and the departmental enquiry should have been conducted under the provision of Rule 14 of CCS (CCA) Rules, 1965. But the disciplinary authority has failed to apply his mind to take a decision to conduct departmental enquiry as per the procedure prescribed under Sub Rule (3) to (23) of

Rule 14 of the CCS (CCA) Rules as mandated under Rule 16 (1)(b) of the CCS (CCA) Rules.

5. Respondents have filed their reply wherein it has been submitted that the reply of the applicant dated 29.03.2011 (Annexure A/4) found unmatched with the memo of charges dated 15.03.2011, which has no relevance with the instant case. According to Para 1.17 of SB order No.7/2003 as issued by the Govt. of India, Ministry of Information and I.T Department of Posts Dak Bhavan Sansad Marg New Delhi vide No.35-15/86-SB dated 27.03.2003 which has been circulated by the respondent No.4 vide letter dated 28.04.2003 (Annexure R/2), the Sub Postmaster Ghoradongri Sub Post Office should have to submit a certificate to Head Post Office and Divisional Office at the end of September of every year regarding posting of annual interest in all the pass books of Saving Bank accounts stand at Ghoradongri Sub Post Office but during the course of enquiry of the Ranipur BO (in account with Ghoradongri SO) fraud case and





verification of pass books of defrauded SB accounts, it is noticed that the SPM Ghoradongri SO has not call for all the pass books of SB accounts of Ghoradongri SO and its Branch Post Offices including Ranipur EDBQ for posting of annual interest in the pass books and has also failed to submit the certificate for the year 2003-2004 by the end of September 2004, for the year 2004-05 by the end of Sept. 2005 for the year 2005-06, by the end of Sept. 2006 to concerned Head Post Office i.e. Betul Head Post office. The applicant while working as Sub Office Ledger Asstt. Of Saving Bank Branch of Betul Head Post Office, failed to keep a keen watch about it during his incumbency as ledger Asstt. Saving Bank Branch Betul HO. Thus the applicant failed to perform his duty properly and carefully. The negligence of the applicant has provided a room to the GDS BPM Ranipur EDBO for committing a fraud. On this ground the applicant was issued a charge memo under Rule 16 of CCS(CCA) Rules, 1965 for violation of Rule 3 (1)(ii) of CCS (Conduct) Rule 1964 and penalized with a



minor penalty of recovery vide memo dated 05.08.2011. It is submitted by the respondents that detailed inquiry as provided under Rule 14 of CCS (CCA) Rules, 1965 was not necessary in the present case. Recovery of amount is not a major penalty. The respondents have strictly followed procedures prescribed under the CCS(CCA) Rules, 1965 for imposing minor penalty under Rule 16 of the CCS(CCA) Rules, 1965. The Govt. of India's instructions on the subject provides for the holding of an inquiry even when a minor penalty is to be imposed but only in the circumstances indicated therein and not in all cases. In other cases where a minor penalty is to be imposed under Rule 16(1) of CCS(CCA) Rules leaves it to the discretion of disciplinary authority to decide whether an enquiry should be held or not if demand for holding a detailed inquiry is made by the Government servant. In the instant case, the applicant never demanded for detailed inquiry. Neither the charged official nor the disciplinary authority were of the opinion to hold such an enquiry



hence it was not mandatory on the part of respondents to hold detailed inquiry as provided under Rule 14 of CCS(CCA) Rules. It is further submitted by the respondents that the decision cited by the applicant is not applicable in the present case. The punishment awarded in those cases is not similar to present case. The applicant has not made out sole parity with the judgment referred by him. The disciplinary authority passed the order of recovery after carefully considering the representation and material available against the applicant. Appeal has also been considered on merit and rejected by passing speaking and reasoned order. Respondents have relied upon the order passed by Hon'ble High Court of M.P. in Writ Petition No.10471/2010 (s) ***Union of India vs. M.L. Khare*** dated 28.09.2011 (Annexure R/1) that even not held guilty of charge of embezzlement but it is found negligent which led to siphoning of colossal amount of money by a co-accused, the recovery of whole or part of such loss from the negligent is justified.

6. Applicant has filed rejoinder to the reply filed by the respondents. The applicant submitted that the respondents have not disclosed as to how the applicant has facilitated GDS BPM to commit fraud and on what basis the amount has been quantified. The respondents have conducted Circle Level Inquiry behind the back of the applicant. Even the report of the Circle Level Inquiry has not been supplied to the applicant along with the charge sheet. It is submitted that the recovery has been imposed against the applicant by the disciplinary authority without application of mind. No reasons have been assigned for imposing recovery of Rs.71354/- against the applicant. It is submitted by the applicant that the case of ***M.L. Khare*** will not be applicable in the present case as this Tribunal had given a finding in M.L. Khare case that the employee is responsible for negligence towards duty and the matter was remitted back to the appellate authority to impose any other minor penalty except recovery. The respondent department challenged the order of this Tribunal before the





Hon'ble High Court of Madhya Pradesh by filing W.P. No.10471/2010 (s) and after considering the fact, the Hon'ble High Court has held that Tribunal has exceeded its jurisdiction and encroached the power of the disciplinary authority. Further applicant submitted that the objection raised in the representation has not been meted out by the disciplinary authority while imposing punishment. Since the applicant was not holding the permanent post of SBSO LC and he has not worked after September therefore he was not supposed to call certificate of Annual Interest from the sub offices. Apart from this, calling certificate of annual interest is the duty of Supervisor of SB Branch. The applicant has worked as Postal Assistant SO SBLB Betul HO from 26.09.2007 to 30.09.2007 only for the period of four days then how it can be expected from the applicant to obtain Annual Interest Certificate from the sub offices which was not his substantive duty. The applicant further submitted that in the case of **O.K. Bhardwaj**, it is held that if the charges are

denied and the same are factual in nature, therefore departmental enquiry under Rule 14 of CCS (CCA) Rules, should be conducted. However, without conducting any departmental enquiry and without disclosing the relevant material, the disciplinary authority has imposed punishment against the applicant.



7. The respondents have filed reply to the rejoinder to filed by the applicant. The respondents have reiterated the stand taken by them in reply. It is submitted by the respondents that the applicant was identified as a subsidiary offender in Ranipur B.O. fraud case and charge leveled against the applicant is based on material facts and Circle Level Inquiry report as issued by the Director Postal Services (HQ) Region Bhopal in the Ranipur B.O. fraud case and the same are specific and very clear. The penalty imposed against the applicant as his share against the pecuniary losses to the Government by negligence or breach of orders by a Government employees. Investigation work of the case by an officer may not be

conducted in presence of any subsidiary offenders. Hence the respondents have conducted Circle Level Inquiry behind the back of the applicant is not justified. The applicant neither demanded for copy of the Circle Level Inquiry report in the past nor there is any provision in the rule to provide a copy of such inquiry report to the charged official along with the charge sheet. Respondents further submitted that the reply of the applicant dated 26.03.2011 found unmatched with the memo of charges dated 15.03.2011. According to the Para 1.17 of SB order No.7/2003 as issued by the Govt. of India, Ministry of Information and I.T. Department of Posts Dak Bhavan, New Delhi on 27.03.2003, which had been circulated by the respondent No.4 vide letter dated 28.04.2003, the Sub Postmaster Ghoradongri Sub Post Office should have to submit a certificate to Head Post Office and Divisional Office at the end of September of every year regarding posting of annual interest in all the pass books of Savings Bank accounts stand at Ghoradongri Sub Post Office but





during the course of enquiry of Ranipur BO (in account with Ghoradongri SO) fraud case and verification of pass books of defrauded Saving Bank Accounts it was noticed that the SPM Ghoradongri SO has not called for all the pass books of SB Accounts of Ghoradongri SO has not called for all the pass books of SB accounts of Ghoradongri SO and its Branch Post offices including Ranipur EDBO for posting of annual interest in the pass books and has also failed to submit the certificate for the year 2003-2004 by the end of September 2004 for the year 2004, by the end of Sept. 2005, for the year 2005-06, by the end of Sept. 2006 and for the year 2006-07 by the end of 30.09.2007, to concern Head Post Office i.e. Betul Head Post Office. The applicant while working as Sub Office S.B. Ledger Clerk of Saving Bank Branch of Betul Head Post Office, failed to keep a keen watch about this during his incumbency. The negligence of the applicant has provided a room to the GDS BPM Ranipur EDEBO for committing a fraud. On this ground the applicant was

charge sheeted under Rule 16 of the CCS(CCA) Rules, 1965, for violation of Rule 3(1)(ii) of CCS(Conduct) Rules, 1964 and penalized with a minor penalty of recovery vide memo dated 05.08.2011. Thus the action taken against the applicant by the respondents is as per rules and procedure. The appellate authority has considered and rejected the appeal vide order dated 22.06.2012. The case cited by the applicant is on different situation and distinguishable. In **O.K. Bhardwaj's** case, though there was minor penalty but its effect was major thus the ratio of said case is not applicable in present case. It is well settled position of law that any judgment is precedent on its own facts. The judgments cited by the applicant are not applicable in the present case.

8. Heard the learned counsel for both the parties and perused the pleadings and documents attached with the file.

9. From the pleadings the admitted fact are that the applicant was charge sheeted on 15.03.2011 and



punishment order was passed on 05.08.2011 whereby recovery of Rs.71354/- was imposed upon him. The applicant preferred appeal. The same was rejected by appellate authority on 22.06.2012. The contention of the applicant is that the charge sheet has been served for gross negligence in his work which facilitated the committing of fraud while working as Postal Assistant and failed to keep a watch on receipt of certificate from SPM at the end of September about annual interest posting for the year 2003-2004 and 2006-2007. The contention of the applicant is that the charges were denied and requested to withdraw the charge sheet. The disciplinary authority without going into the reply and without initiating detailed inquiry has imposed a punishment of recovery of Rs.71354/-. The contention of the applicant is that the applicant had denied the allegation and the departmental enquiry should have been conducted under the provision of Rule 14 of CCS (CCA) Rules, 1965.



10. On the other side the counsel for the respondents submits that the reply submitted by the applicant is unmatched and is not relevant in the instant case. The minor penalty has been imposed under Rule 16 (1) of the CCS (CCA) Rules, 1965 and it leaves it to the discretion of disciplinary authority to decide whether an enquiry should be held or not. The counsel for the applicant had relied upon order passed by this Tribunal in O.A. No.202/459/2017 dated 11.01.2018 (***Jyoti Goyner vs Union of India and others***) whereby this Bench has relied upon the judgment passed by the Hon'ble High Court of Madhya Pradesh in the matters of ***Union of India and others vs. Ajay Agrawal*** in MP. No.1798 of 2017 decided on 02.01.2018.

11. We have also carefully gone through the facts of the instant case as well as the decision of the Hon'ble High Court in the matters of ***Ajay Agrawal*** (supra), relevant paragraphs of the said order read thus:

“A Division Bench of this Court in **Union of India and Anr. Vs. C.P. Singh [2004 (2) MPJR 252]** had





an occasion to examine the issue as to whether an inquiry can be dispensed with, in all cases where the penalty purposed is recovery of pecuniary loss caused by negligence or breach of orders categorized as minor penalty? Their lordships taking note of decisions in C.R. Warrier Vs. State of Kerala (1983 (1) SLR 608), V. Srinivasa Rao Vs. Shyamsunder (ILR 1989 Ker. 3455); G. Sundaram Vs. General Manager, Disciplinary Authority, Canara Bank (ILR 1998 Kar. 4005); O.K.Bhardwaj Vs. Union of India and others [(2001) 9 SCC 180] and Food Corporation of India Vs. A. Prahalada Rao [(2001) 1 SCC 165] were pleased to observe:

“(16). The position as can be gathered from the Rules and the aforesaid decisions can be summarised thus:

(i) In a summary inquiry, a show cause notice is issued informing the employee about the proposal to take disciplinary action against him and of the imputations of misconduct or misbehaviour on which such action is proposed to be taken. The employee is given an opportunity of making a representation against the proposal. The Disciplinary Authority considers the records and the representation and records of findings on each of the imputations of misconduct.

(ii) In a regular inquiry, the Disciplinary Authority draws up the articles of charge and it is served on the employee with a statement of imputation of misconduct, list of witnesses and list of documents relied on by the Department. The Disciplinary Authority calls upon the employee to submit his defence in writing. On considering the defence; the Disciplinary



Authority considers the same and decides whether the inquiry should be proceeded with, or the charges are to be dropped. If he decides to proceed with the enquiry, normally an Inquiring Authority is appointed unless he decides to hold the inquiry himself. A Presenting Officer is appointed to present the case. The employee is permitted to take the assistance of a co employee or others as provided in the rules. An inquiry is held where the evidence is recorded in the presence of the employee. The employee is permitted to inspect the documents relied upon by the employer. The employee is also permitted to call for other documents in the possession of the Management which are in his favour. The delinquent employee is given an opportunity to rebut the evidence of the management by cross-examining the management witnesses and by producing his evidence both documentary and oral. Arguments-written and/or oral-are received/heard. The delinquent employee is given full opportunity to put forth his case. Therefore, the Inquiring Authority submits his report. The copy of the report is furnished to the employee and his representation is received. Thereafter the Disciplinary Authority considers all the material and passes appropriate orders. The detailed procedure for such inquiries is contained in sub-rules (6) to (25) of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 corresponding to sub-rules (3) to (23) of Rule 14 of the Central Civil Services (CCS) Rules, 1965 and M.R Civil Services (CCS) Rules, 1966.

(iii) The normal rule, except where the employee admits guilt, is to hold a regular inquiry. But where the penalty proposed is a 'minor penalty', then the Rules give the Disciplinary Authority a discretion to dispense with a regular inquiry for reasons to be recorded by him, and hold only a summary enquiry.



(iv) Though the Rules contemplate imposing a minor penalty without holding a regular enquiry, where the Disciplinary Authority is of the opinion that such enquiry is not necessary, such decision not to hold an enquiry can be only for valid reasons, recorded in writing. Dispensation with a regular enquiry where minor penalty is proposed, should be in cases which do not in the very nature of things require an enquiry, for example, (a) cases of unauthorised absence where absence is admitted but some explanation is given for the absence; (b) non-compliance with or breach of lawful orders of official superiors where such breach is admitted but it is contended that it is not wilful breach; (c) where the nature of charge is so simple that it can easily be inferred from undisputed or admitted documents; or (d) where it is not practicable to hold a regular enquiry.

(v) But, even where the penalty proposed is categorised as minor penalty, if the penalty involves withholding increments of pay which is likely to affect adversely the amount of pension (or special contribution to provident fund payable to the employee), or withholding increments of pay for a period exceeding three year or withholding increments of pay with

cumulative effect for any period, then it is incumbent upon the disciplinary authority to hold a regular inquiry.

(vi) Position before decision in FCI:



Where the charges are factual and the charges are denied by the employee or when the employee requests for an inquiry or an opportunity to put forth the case, the discretion of the Disciplinary Authority is virtually taken away and it is imperative to hold a regular inquiry.

Position after decision in FCI:

Where the Rules give a discretion to the Disciplinary Authority to either hold a summary enquiry or regular enquiry, it is not possible to say that the Disciplinary Authority should direct only a regular enquiry, when an employee denies the charge or requests for an inquiry. Even in such cases, the Disciplinary Authority has the discretion to decide, for reasons to be recorded, whether a regular enquiry should be held or not. If he decides not to hold a regular enquiry and proceeds to decide the matter summarily, the employee can always challenge the minor punishment imposed, on the ground that the decision not to hold a regular enquiry 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 enquiry was arbitrary. If the Court/Tribunal holds that the decision was arbitrary, then such decision not to hold an enquiry and the consequential

imposition of punishment will be quashed. If the Court/Tribunal holds that the decision was not arbitrary, then the imposition of minor penalty will stand.



(17). It is also possible to read the decisions in Bharadwaj and FCI harmoniously, if Bharadwaj is read as stating a general principle, without reference to any specific rules, that it is incumbent upon the Disciplinary Authority to hold a regular enquiry, even for imposing a minor penalty, if the charge is factual and the charge is denied by the employee. On the other hand, the decision in FCI holding that the Disciplinary Authority has the discretion to dispense with a regular enquiry, even where the charge is factual and the employee denies the charge, is with reference to the specific provisions of a Rule vesting such discretion.

(18). There is yet another aspect which requires to be noticed. Where the penalty to be imposed though termed as minor, is likely to materially affect the employee either financially or career-wise then it is not possible to dispense with a regular enquiry. In fact, this is evident from sub-rule (2) of Rule-11 which says that where the penalty to be imposed, though termed as minor penalty, involves withholding of increments which is likely to affect adversely the amount of pension or special contribution to provident fund, or withholding of increments of pay for a period exceeding three years or withholding of increments of pay with cumulative effect, then an enquiry as contemplated under Rule-9 (6) to (25) is a must. Thus, categorisation of penalties into

'major' and 'minor' penalties, by itself may not really be determinative of the question whether a regular enquiry is required or not.

(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 byway 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 of 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.'

Careful reading of these decisions and applying the principle of law in the facts of present case leaves no iota of doubt that the disciplinary authority acted arbitrarily in dispensing from holding a regular departmental enquiry for no recorded reasons. Or even if there were reasons the same were not communicated. The impugned order when tested on the anvil of above analysis cannot be faulted with as would warrant an indulgence. Consequently, petitions fail and are dismissed. However no costs.

12. We find that in the instant Original Application, a penalty of recovery of Rs.71354/- has been imposed upon the applicant without conducting any departmental enquiry. This amount exceeds the monetary equivalent of increments for a period of three years. Thus, the present

case is fully governed by the said decision of Hon'ble High Court of Madhya Pradesh in the matters of *Ajay Agrawal* (Supra).

13. We are not going into the merits of the charge-sheet at this stage, and therefore, the decision in the matters of M.L.Khare (Supra) is distinguishable.



14. Accordingly, the present Original Application is allowed. The impugned orders are quashed and set aside. The respondents are directed to refund back the amount so recovered from the applicant, within a period of 60 (Sixty) days from the date of communication of this order. However, the applicant shall not be entitled for any interest on the said amount. No costs.

(Naini Jayaseelan)
Administrative Member

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(Ramesh Singh Thakur)
Judicial Member