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CUTTACK BENCH: CUTTACK.

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ORIGINAL APPLICATION NO. 560 OF 1993

Cuttack, this the 30th day of August, 1999

Bharat Chandra Sethi Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO.

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
30.8.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.560 OF 1993

Cuttack, this the 30th day of August, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G. NARASIMHAM, MEMBER (JUDICIAL)

.....

Bharat Chandra Sethi, Assistant Superintendent (HQ),
Office of the Superintendent of Cuttack South Division,
Cuttack-753 001

..... Applicant

Advocate for applicant - Mr. D. P. Dhalsamant

Vrs.

1. Union of India, represented through Director General (Posts), New Delhi.
2. Director of Postal Services (HQ),
Office of the Chief Postmaster General,
Orissa Circle, Bhubaneswar-751 001.
3. Superintendent of Post Offices, Cuttack South
Division, Cuttack-753 001

..... Respondents

Advocate for respondents - Mr. A. K. Bose,
Sr. Standing Counsel

ORDER

SOMNATH SOM, VICE-CHAIRMAN

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In this Application under Section 19
of Administrative Tribunals Act, 1985, the petitioner
has prayed for quashing the order of punishment

dated 29.1.1993 (Annexure-3) for recovering an amount of Rs.12980/- from the pay of the applicant in 23 equal monthly instalments and also the appellate order dated 25.8.1993 (Annexure-5) rejecting his appeal. The second prayer is for refunding the amount already recovered from the applicant.

2. On the day of admission of the petition, in order dated 19.10.1993 realisation of the amount from the applicant was stayed.

3. The applicant's case is that one J.K.Mohapatra, E.D.S.P.M., Dala E.D.S.O. under Jajpur Head Office committed a series of frauds in SB/CTD/RD/TD Accounts and National Savings Certificates. The case was handed over to the local police and later on taken over by the Central Bureau of Investigation. The accused was apprehended and is facing trial. The applicant was working as Sub-Divisional Inspector (Postal), Jajpur Road Sub-Division from 10.6.1985 and 31.5.1988 and Dala E.D.S.O. was under his jurisdiction. In memo dated 14.10.1992 at Annexure-1 chargesheet under Rule 16 of CCS(CCA) Rules, 1965 was issued to the applicant. In his explanation at Annexure-2 the applicant denied the charge. After considering his explanation, in the impugned order of punishment at Annexure-3 punishment referred to earlier was imposed on the applicant and his appeal at Annexure-4 against the order of the disciplinary authority was rejected in the impugned order at Annexure-5 of the appellate authority. The applicant has stated that he is no way connected with the frauds and when accused is facing trial it is

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inconsistent to order recovery from him. It is stated that there is no allegation of violation of any rule against the applicant and therefore initiation of the disciplinary proceeding is misconceived. The third ground taken is that the charges are not specific. Next it is stated that the departmental rules lay down that recovery can only be ordered when it is established that Government servant is responsible for negligence or violation of rules and instructions and such negligence has resulted in the loss. In this case there is no allegation to that effect. The findings of the disciplinary authority (respondent no.3) that the frauds could have been prevented but for the failure of the applicant is hypothetical & and on that basis the punishment should not have been imposed. The next contention is that respondent no.3 while ordering recovery ~~xx~~ has not correctly assessed in a realistic manner the loss, if at all, caused due to alleged negligence of the applicant. The departmental instructions in this regard have not been complied with by the disciplinary authority. It is further argued that the disciplinary authority and the appellate authority have failed to take into account ~~xxx~~ the submissions made by the applicant in his representation as also in his appeal petition. The appellate order is not a reasoned one and exhibits lack of application of mind. Lastly it is stated that the duty of ~~x~~ a Sub-Divisional Inspector (Postal) is inspectorial in nature and Sub-Divisional Inspector (Postal) is required

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to inspect the subordinate offices and bring to the notice of the higher authorities shortcomings, if any, in the work of such offices. The applicant has duly reported the results of his inspection of Dala E.D.S.O. from time to time but no action was taken on the earlier reports of the applicant. On the above grounds, the applicant has come up with the prayers referred to earlier.

4. The respondents in their counter have stated that the applicant, presently working as Assistant Superintendent of Post Offices (Headquarters), Cuttack South Division, was previously working as Sub-Divisional Inspector (Postal), Jajpur Road, under the Superintendent of Post Offices, Cuttack North Division, from 8.7.1985 to 31.5.1988. The E.D.S.P.M., Dala E.D.S.O. was under his control. The E.D.S.P.M. committed fraud in several Pass Books and N.S.Cs. The applicant was considered as a subsidiary offender, as per P.M.G., Sambalpur's letter dated 23.3.1990. P.M.G., Sambalpur, directed initiation of proceedings against the applicant for his contributory negligence. The respondents have stated that accordingly the applicant was proceeded against under Rule 16 of CCS(CCA) Rules, 1965 and after considering his representation denying the charges, the impugned order of punishment was passed and his appeal was also rejected. The respondents have stated that the applicant has not preferred any petition to the next higher authority against the order of the appellate authority. The respondents have stated that

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it is the responsibility of the S.D.I.(P) to bring to the notice of higher authorities any irregularity committed by EDSPM/BPM noticed during his inspection and visits to such offices. In case involving fraud or embezzlement the Inspector is to take immediate action against the delinquent. It is stated that in paragraph 4.7 of the Application, the petitioner has admitted his responsibility in this regard but has failed to discharge his duties properly. The respondents have denied the averment of the applicant that Superintendent of Post Offices has entrusted any work to him which under the rules and instructions he is not required to do. The respondents have stated that Superintendent of Post Offices being the controlling ^{quite} authority is/competent to entrust any official work relating to any inspectorial staff. It is stated that in the case of fraud committed by E.D.S.P.M., Ex Dala E.D.S.O., the accused has been apprehended and the total loss to the Government is to the tune of Rs.1,09,493.80 paise. It is further stated that the punishment has been imposed on the applicant after observing due procedure and no illegality has been caused. It is further stated that the punishment has been imposed taking into account the proved lapses of the applicant and also the resulting loss to the Government. It is stated that the disciplinary authority and the appellate authority while passing their orders have acted in a judicious manner and a lenient punishment has been imposed on the applicant. On the above grounds, the respondents have opposed the prayer of the applicant.

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5. We have heard Shri D.P.Dhalsamant, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel appearing for the respondents and have also perused the records. The different contentions of the applicant in his petition and the learned counsel for the petitioner in course of his submissions are discussed below.

6. It has been urged that the charges are not specific in nature. We have gone through the statement of imputation of misconduct and we find that the charges cannot be held to be vague or non-specific. The first charge is that the Postmaster, Jajpur Head Office sent a telegram to the applicant on 31.8.1985 for enquiry against retention of heavy cash balance by the EDSPM, Dala EDSO, without liability, but no action was taken by the applicant. The second charge is that the Postmaster, Jajpur H.O. reported on 11.12.85 regarding retention of heavy cash on 10.12.1985 by E.D.S.P.M., Dala E.D.S.O. The case was enquired into by Overseer, Mails, on 18.1.1986 and he submitted his report to the applicant. In this report, the Overseer, Mails, sent the extracts of copy of the S.O. Accounts from 30.11.1985 to 30.12.1985 showing heavy retention of cash without any liability, but the applicant took no action against the E.D.S.P.M. except issuing a letter of warning on 7.2.1986. ^{higher} He also did not submit the report to the/authorities in this regard. The third charge is that the Postmaster,

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Jajpur Head Office reported to the applicant that the E.D.B.P.M., Dala E.D.S.O. filled up the receipt side of the SB withdrawal form (SB-7) of RD Account Nos. 506042, 506060, 506061 and 506062 for withdrawal of four items, details of which have been indicated in the charge, whereas the ~~xxxxxxx~~ applicant on sides of the said withdrawal forms were left blank. It is stated that the E.D.S.P.M. without obtaining sanction of the Head Office, paid the above withdrawals. The applicant conducted inquiry into the matter and issued a warning to the E.D.S.P.M. for his lapses. He also did not submit any report to the Superintendent of Post Offices, Cuttack North Division. The fourth charge is that the applicant was asked by Superintendent of Post Offices, Cuttack North Division on 12.5.1986 to make complete verification of all types of Pass Books and balances standing at Dala EDSO by 31.5.1986 as a preventive measure ~~xx~~ on loss and fraud cases. The applicant was appointed as leader of the squad with two other Overseers, Mails, under his jurisdiction as members. The applicant received the said letter on 14.5.86 but took no action. He submitted a report on 31.5.1986 that the work could not be completed as the Overseer, Mails, Jajpur, went for training at Cuttack. The applicant directed both the Overseer, Mails to complete the work by 5.6.1986. Overseer, Mails, Jajpur Road visited Dala E.D.S.O. on 30/31.5.86 and 4.6.86. The result of verification was reported to Superintendent of Post Offices, Cuttack North Division by the applicant on 20.7.1986 after receipt of reminder. The applicant

in his report stated that he could not verify 91 Pass Books out of 310 pass books, which included 44 SD Accounts as notices in form SB-46 in respect of remaining 165 Accounts were not issued for want of SB-46 forms. Thus the verification work of Dala EDSO could not be done properly by the applicant. Had he verified the work completely the fraud could have been detected then and there. The fifth charge is that the applicant inspected Dala EDSO on 29.8.1985 and in the inspection report he mentioned to have issued SB-46 notices in respect of Dala EDSO SB Account Nos. 345285 and 345385. In SB Account No. 345285 two deposits of Rs.100/- on 20.2.1984 and Rs.350/- on 6.6.84 were defrauded by the EDSPM, Dala ED SO. In the Pass Book of SB Account No. 345385 there were many fraudulent transactions as detailed in the statement of imputation of misconduct. It is stated that it is not known if the applicant had actually issued SB-46 notices. It is alleged that had the applicant kept close watch over the receipt of reply from the depositors, the fraud could have been detected earlier. The sixth and the last charge is that the applicant suspected the integrity of the EDSPM, Dala EDSO when he noticed temporary misappropriation of Rs.8251.25 towards VP delivery amount of 29 VP articles. He submitted a report to the Superintendent of Post~~x~~ Offices, Cuttack North Division on 25.8.1987 and also called for the explanation of the EDSPM in letter dated 25.8.1987. Calling for explanation was quite unwarranted. The applicant ~~sh~~ should have examined the EDSPM and recorded his statement

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and submitted his detailed report to the Superintendent of Post Offices for further follow up action and commenced verification of past work of EDSPM simultaneously besides putting the EDSPM off duty. He did not make investigation as required under Rule 216 of the P&T Manual, Vol.V. Thereby he gave scope to the EDSPM to commit more frauds. We have mentioned all these charges only to bring out the point that the charges are actually quite specific and this contention of the learned counsel for the petitioner that the charges are not specific is without any merit and is rejected.

7. The next contention of the learned counsel for the petitioner is that the applicant is no way ^{and} connected with the fraud/while the trial of the EDSPM is going on the applicant should not have been proceeded against. This contention is ~~wholly~~ also misconceived because the applicant in the Rule 16 proceedings has not been charged with the commission of frauds. He has been only charged with negligence and acts of commission or omission with regard to exercising supervision and control over the work of EDSPM, Dala EDSO. It is alleged that because of his alleged negligence, the EDSPM, Dala EDSO continued to commit fraud and embezzlement. In view of this, the fixation of criminal liability on the EDSPM who is facing trial in court of law has nothing to do with the initiation of disciplinary proceeding against the applicant. This contention is also rejected.

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8. Next it is stated that in the charges there has been no allegation of violation of any departmental rule or instruction. This contention is also without any basis because in Charge No.6 it has been specifically mentioned that the applicant has failed to take action as required under Rule 216 of P & T Manual, Vol.V. The specific instructions of the higher authorities he has not followed have also been mentioned. It is stated that the allegation that had he taken action against the EDSPM, the EDSPM could not have committed further fraud, is hypothetical in nature and on the basis of this, the applicant should not have been found guilty. In the charges specific allegations have been made. In Charge Nos 5 and 6 specific allegation has been made that the applicant reportedly examined two SB Accounts but could not detect the fraud and he found temporary misappropriation of Rs.8251.25 but he did not take further follow up action. Therefore, this allegation cannot be termed as hypothetical.

9. The next contention is that the negligence of the applicant has not been established. In this case the ~~xxxx~~ disciplinary authority after considering the explanation of the applicant at Annexure-2 has found that the charges have been proved. The Tribunal cannot reassess the evidence and come to a different only finding. The Tribunal can/interfere if there is violation of principle of nature justice or denial of reasonable opportunity and if the findings are based on no evidence or are patently perverse. The

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applicant has not alleged that there has been denial of reasonable opportunity or rules of natural justice have not been followed. We have looked into the explanation submitted by the applicant and the findings of the disciplinary authority only for the purpose of finding out if the findings are based on no evidence or are patently perverse. In reply to Article I of the charge the applicant has stated that he has been charged for ~~xx~~ not taking any action on a docket telegram sent to him by the Postmaster, Jajpur H.O. on 31.8.1985 regarding retention of excess cash by EDSPM, Dala EDSO. He has stated that the telegram was received by him on 6.9.1985. He had already inspected Dala EDSO on 29.8.1985 and had instructed the EDSPM to desist from the practice of retaining heavy cash and because of this, the applicant felt that there was no necessity of taking any action on the telegram of the Postmaster. This contention is patently absurd because when even after the applicant's inspection and instruction to EDSPM it was reported that the ~~xxxxxxx~~ EDSPM was continuing to retain heavy cash, the petitioner should have immediately taken further and stronger action. It cannot be said that the finding on this charge is based on no evidence. The applicant on the contrary has admitted that he took no action against the EDSPM even after receipt of the telegram dated 31.8.1985. In this connection he has further stated that there is no rule which he has violated by not taking any action against the EDSPM for heavy retention of cash. This contention is also patently absurd because the EDSPM is not

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supposed to keep excess cash beyond what the Sub-Office is authorised to keep or the amount required to discharge immediate liabilities of the next day, and the Sub-Divisional Inspector (Postal) being the immediate inspecting and supervising officer of EDSPMs is required to ensure the above. This contention that the applicant has not violated any rule or instruction in this regard cannot also be accepted. Article II of the charge is that the Postmaster, Jajpur H.O. in his letter dated 11.12.1985 reported retention of heavy cash on 10.12.1985 by EDSPM, Dala EDSO. The Overseer of Mails, Jajpur, enquired into the matter and reported to the applicant. But the applicant did not submit any report to the higher authorities and simply issued a letter of warning to the EDSPM. In reply the applicant has stated that there is no rule which requires an Inspector to submit report to the Divisional Office invariably in all cases and he did not consider ~~this~~ this to be a befitting case to be reported to the Divisional Office. The applicant has stated that he has closed this case at his level after issuing a warning letter to the EDSPM without taking any further action. This plainly is an error of judgment because later on it has been prima facie found that the EDSPM committed a series of frauds and embezzlement and it was necessary for him to report the matter to the higher authorities. His explanation in this regard has been found unacceptable by the disciplinary authority and it cannot be said that the finding is based on no evidence or is patently perverse. The applicant has also stated in reply to this charge that he had earlier reported against the EDSPM, Dala EDSO and asked for certain documents from

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the Divisional Office but no action was taken on his report. The applicant has further stated that the Divisional Office has not taken the required action which it was supposed to take under the departmental rules and instructions. In the proceedings against the applicant, the lapses of the Divisional Office are not subject matter for consideration. In case there has been lapse on the part of the Divisional Office or more particularly the Superintendent of Post Offices, then the higher authorities have to take note of that and take further action. The liability of the applicant with regard to the specific charges cannot be ignored on account of alleged lapses of the Divisional Office. This contention is also without any basis. With regard to Article-III of the charge the applicant has taken the stand that the depositor has stated that he had actually received the amount mentioned in the withdrawal form. The EDSPM was warned by the applicant but he felt that the irregularity committed by the EDSPM did not cast serious aspersion on his conduct and therefore the applicant did not report. Again this is another case where the Divisional Office brought certain lapses to his notice. On enquiry the applicant found prima facie proof of the lapse but he did not take any further action. The finding in respect of this charge also cannot be said to be based on no evidence. As regards Article IV of the charge, the applicant has stated that the

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Superintendent of Post Offices had no powers to ask the applicant to verify the Pass Books. This was not his work and in any case he had asked the Overseers, Mails to get the work done. He has mentioned that out of 310 Pass Books, 91 Pass Books were verified. There were 44 SB Accounts in SO. The balance of Pass Books required to be verified were 175 but by mistake he reported the balance to be verified as 165. It is stated that some of the depositors were contacted but they did not take interest to produce the Pass Books for verification as they had reposed an implicit trust on the EDSPM. In view of this, it was felt necessary to issue notice in Form SB-46 to the depositors. He asked for getting the forms but no action was taken. It is also stated that all the Pass Books could not have been verified. He has stated that this work has been unlawfully entrusted to him. Again in the context of the fact that the EDSPM was in the habit of retaining heavy cash and the allegation as mentioned in the earlier charges about fraudulent action and irregularities committed by him, the applicant cannot say that it was not his responsibility to verify the Pass Books. As an inspecting officer and even without any direction from higher authorities, in course of his inspection he was required to verify the Pass Books and the finding of the disciplinary authority rejecting his explanation cannot be said to be perverse. We have also gone through the explanation of the applicant and the finding of the disciplinary authority on Articles V and VI of the charge and we find that the

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applicant simply tried to shift his responsibility. In reply to Article VI of the charge, the applicant has gone to the extent of supporting the delinquent EDSPM by saying that he could not be forced to give a statement admitting his lapses because under Article 20 of the Constitution recording of such statement of the EDSPM is barred. Going through the explanation and the findings of the disciplinary authority we find that the disciplinary authority has given reasons for his findings. We have also discussed the explanation of the applicant and found that the findings cannot be held to be patently perverse or based on no evidence. Therefore, the applicant's contention that his negligence has not been proved cannot be accepted.

10. The next contention of the applicant is that the disciplinary authority and the appellate authority have not considered the submissions of the applicant with regard to each of the six charges. In view of our discussions in the preceding paragraph, it cannot be said that the disciplinary authority and the appellate authority have not applied their mind and have ignored the submissions of the applicant made in his representation and the appeal petition. This contention is therefore held to be without any merit and is rejected.

11. Next it is stated that the applicant did not submit report against the EDSPM, Dala EDSO even after finding the irregularities. He has issued suitable instructions and closed the matter at his level because ~~ix~~ on the earlier reports submitted against SPMs and other ED officials, the Divisional Office has

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not taken any action. This cannot be a ground for not reporting the irregularities committed by the EDSPM, Dala EDSO, to the Divisional Office. Going through the explanation of the applicant it does appear that the applicant's action in not reporting the irregularities to the Divisional Office has resulted in the EDSPM, Dala EDSO, committing further irregularities by ignoring such instructions which the applicant had given to him from time to time against ~~heavy~~ retention of heavy cash and irregularities in the matter of writing of withdrawal forms, etc. This contention of the applicant is also without any merit and is rejected.

12. It has been further submitted that Rules 106 and 107 of the P & T Manual at Annexure-7 and Director General, Posts' instruction dated 1.10.1980 at Annexure-8 specifically provide that in case of penalty of recovery the loss has to be assessed in a realistic manner and the contributory negligence of any official and bearing of such lapses on the loss considered should be taken into consideration along with extenuating circumstances. It is stated that this has not been done. More particularly it has been stated that in the impugned order of punishment an amount of Rs.12,980/- has been ordered to be recovered from the applicant. This contains two items. ~~xxxxxxx~~ ~~xxxxxxxxxx~~ Rs.7200/- relates to fraud with regard to deposits and withdrawals in SB Account Nos.345285 and 345385 during the period from 20.2.1984 to 25.6.1985. The other item relates to fraud and loss to the Department during the period from 19.8.1987 to 9.9.1987 amounting to Rs.5780/-. The total of these two figures

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comes to Rs.12,980/-. In the charge it has been mentioned that the applicant was Sub-Divisional Inspector (P), Jajpur Road, from 8.7.1985 to 31.5.1988. The applicant in his explanation has mentioned that he was working as Sub-Divisional Inspector (P) from 10.6.1985 to 31.5.1988. It is submitted that Rs.7200/- ordered to be recovered from his salary relates to frauds committed regarding withdrawals and deposits in the two accounts mentioned earlier during the period from 20.2.1984 to 25.6.1985. The applicant worked as Inspector from 10.6.1985 to 31.5.1988.

Therefore, most of these withdrawal dates are before his joining. On this ground it is submitted that the order of recovery of this amount from his salary is not sustainable. We have considered the above submission of the learned counsel for the petitioner carefully.

In a case of contributory negligence no precise determination of the loss caused by the action or inaction of the applicant is possible because ^{the applicant} is ^{J. Som.} not the real perpetrator of the fraud and embezzlement but the allegation against the applicant is that of contributory negligence. In view of this, in such case some element of approximation is bound to be there. But at the same time we find that the applicant's assertion that he worked as S.D.I(P) from 10.6.1985 to 31.5.1988 has not been denied by the respondents. In view of this, it is clear that out of 9 instances of fraudulent deposits and 3 instances of fraudulent withdrawals totalling 12, eleven of deposits and withdrawal were done before he took over charge as S.D.I(P).

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The liability for this must attach, if at all, to the predecessor of the applicant during whose time these frauds had occurred. In case the predecessor of the applicant was negligent with regard to supervision and checking of these items, the applicant cannot be held responsible for these amounts. But so far as the other item of Rs.5780/-, this occurred during the period from 19.8.1987 to 9.9.1987 during the tenure of incumbency of the applicant. In view of this, we hold that out of the first amount of Rs.7200/-, an amount of Rs.6700/- cannot be held to be recoverable from the applicant. In consideration of this, while we reject the O.A. on the grounds mentioned in our discussions above, we direct that the amount sought to be recovered from the applicant should be reduced from Rs.12,980/- to Rs.6280/-. In case any amount beyond Rs.6280/- has been recovered from the applicant in the meantime, then the ^{same} amount should be refunded to the applicant within a period of 90(ninety) days from the date of receipt of copy of this order.

13. In the result, the Original Application is disposed of in terms of the observations and direction above but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
30.8.99