

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

Present : Hon'ble Mr. Justice A.K.Chatterjee, Vice-Chairman
Hon'ble Mr. M. S. Mukherjee, Member (A)

1. OA 199 of 96 with MA 380 of 96

ASIT KUMAR SARKAR

VS

1. Union of India through Secretary, Ministry of Science & Technology, Technology Bhawan, Lodi Road, New Delhi-110 003
2. Director General of Meteorology, Indian Meteorological Deptt. Mausam Bhawan, Lodi Road, New Delhi- 110 003
3. Dy. Director General of Meteorology, Regional Meteorological Centre, Calcutta-27
4. Assistant Meteorologist (Administration) Regional Meteorological Centre, Calcutta-27
5. Shri K.K.Chakraborty, Director & Member Board of Inquiry, Regional Meteorological Centre, Calcutta-27
6. Shri T.K.Sarkar, Director & Member, Board of Inquiry, Regional Meteorological Centre, Calcutta-27
7. Shri D.K.Mondal, Meteorologist, Grade I & Member, Board of Inquiry, Regional Meteorological Centre, Calcutta-27

..... Respondents

2. OA 534 of 1996

VIJAY SHANKAR

VS

1. Union of India, through the Secretary, to Govt. of India, Ministry of Science & Technology, Technology Bhavan, New Delhi
2. Dr. M.K.Guha, Deputy Director General of Meteorology, Regional Meteorological Centre, 4, Dule Avenue, Alipore, Calcutta-700 027
3. Mr. R.N.Goldar, Director (Alipore Weather Section), Regional Meteorological Centre, 4, Dule Avenue, Calcutta-700 027
4. Shri R.N.Chandra, Asst. Meteorologist/ Cash Officer/Drawing & Disbursing Officer, Regional Meteorological Centre, 4, Dule Avenue, Alipore, Calcutta-27

JK

5. Shri M.L.Saha, Assistant Meteorologist,
Cash Officer/DDO, Regional Meteorological
Centre, 4, Dule Avenue, Alipore,
Calcutta-27

6. Mr. N.G.Das, Asst. Meteorologist (Alipore
Weather Section), Regional Meteorological
Centre, 4, Dule Avenue, Alipore, Cal-27

***** Respondents

For petitioner of : Mr. A.P.Chatterjee, Counsel
OA 199/96 Mr. S.K.Banerjee, Counsel
Mr. P.N.Jash,Counsel
Smt. R. Bhattacharyya,Counsel
Ms. K.Ganguly, Counsel

For petitioner of : Dr. D.C.Bhattacharjee, Counsel.

For respondents in : Ms. K.Banerjee, Counsel
both OAs

Heard on : 11.2.97 (OA 199/96) & 7.5.97 (OA 534/96)
& 21.7.97
Order on : 29.7.97

ORDER

M. S. Mukherjee, A.M.:

By this common order, we propose to deal with both the OAs as they concern more or less the same events.

2. Through OA 199/96 and the related MA 380/96 (which under the orders of the Tribunal dt. 2.12.97, has been treated as a supplementary petition to OA), the petitioner (Asit Kr. Sarkar) has prayed for the following reliefs, viz.:

i) Withdrawal of the suspension order dt. 10.10.94 passed by the respondents against the petitioner.

ii) Quashing of the major penalty charge-sheet dated 8.9.95 issued against the petitioner; and

iii) quashing of the order of penalty of removal from service dated 22.10.96 issued against the petitioner.

iv) He has also prayed for payment of arrear pay and allowance consequent upon such quashing of the aforesaid orders.

3. Similarly, in the other OA 534/96, the petitioner (Vijay Shankar) has prayed for -

i) Withdrawal of the suspension order dt. 20.9.94 passed against the petitioner;

ii) Quashing of the major penalty charge-sheet dated 8.9.95;

iii) Quashing of the order of penalty of removal from service passed against the petitioner on 23.10.96.

4. In this case also through MA 178/96, subsequent developments after the filing of the OA had been brought on record and by the order of the Tribunal this was also treated as a supplementary petition to the related OA.

5. The orders of suspension (although issued on different dates) and the major penalty charge-sheets (issued on the same date) passed against the petitioners of both the cases, carry identical texts. In the impugned charge-sheets, there are two articles of charges and it will be useful to quote verbatim the texts of the two articles of charges as below :

Article-I

"That the said Shri Vijay Shankar (or Shri Asit Kumar Sarkar, as the case may be) while preparing O.T.A. bills in the Cash Branch of the Office of the Deputy Director General of Meteorology, Regional Meteorological Centre, Alipore, Calcutta-700 027 during the period from April, 1991 to September, 1994 had conducted himself in a manner which amounts to criminal breach of trust and thereby established that his honesty and integrity are highly doubtful." (emphasis added).

Article-II

"That during the aforesaid aperiod and while functioning in the aforesaid office, the said Shri Vijay Shankar (or Shri Asit Kumar Sarkar, as the case may be) had planned and or involved himself in a criminal conspiracy to defalcate government money and thus conducted himself in a manner which is not conducive for his continuance in government service any more." (emphasis supplied)

The said two statements of articles as per Annexure-A to the charge-sheet were further amplified through the statement of imputation of misconduct as per Annexure-II added to the said charge-sheet. These are also reproduced here verbatim.

ANNEXURE-II

"It has been established that an amount to the extent of Rs. 5,59,973/- (Rupees Five Lakhs Fifty Nine thousand Nine hundred Seventy three) only, so far detected, has been fraudulently drawn by preferring duplicate O.T.A. bills for some out-stations. This double drawal of O.T.A. claims has been done by



converting Proforma-I into Proforma-II (by hand-writing) of OTA claims and enclosing the same with the OTA bills. These duplicate OTA bills were submitted to PAO, IMD after obtaining signature of DDO. After encashment of the cheques received from PAO, IMD, in respect of the duplicate OTA bills, the liquid cash and/or bank drafts were set aside without sending the same to the concerned stations and ultimately misappropriated.

Article I

That Shri Vijay Shankar (or Shri Asit Kumar Sarkar, as the case may be), by preparing duplicate O.T.A. bills and converting Proforma I into Proforma II (by hand-writing) of OTA claims and enclosing the same with the OTA bills culminating in the misappropriation of government money, received through double drawal of OTA claims, as enumerated above, had acted in a manner which amounted to criminal breach of trust and thereby established that his honesty and integrity are highly doubtful.

Article II

That the said Shri Vijay Shankar (or Shri Asit Kumar Sarkar, as the case may be) conducted in a manner which established beyond doubt that he is involved in the criminal conspiracy to defalcate government money, as enumerated above, and thus his conduct is not conducive for his continuance in government service any more.

Shri Vijay Shanker (or Shri Asit Kumar Sarkar, as the case may be) has therefore exposed himself to disciplinary action under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 for acts & conducts which amount to misconduct as enumerated under Government of India's decision No. 24(3), (4) and (5) and the acts & omissions which amount to misconduct as enumerated under Government of India's decision No. (2) as appended to Rule 3 of Central Civil Services (Conduct) Rules, 1964 thereby violating Rule 3(1)(i), (ii) & (iii) of Central Civil Services (Conduct) Rules, 1964."

6. In the OA 199/96, the petitioner immediately after the suspension, prayed for withdrawal of the suspension order which was not heeded to by the respondents. The petitioner's prayer for enhancement of subsistence allowance under the rules when sufficient time had elapsed from the date of suspension, was also rejected by the respondents by their order dated 9.3.95. The petitioner then moved this Tribunal through OA 631 of 1995 which was disposed of by this Tribunal on 22.6.95 with the direction that the respondents should initiate disciplinary proceedings by issuing a charge-sheet, if any, within 3 months from the date of communication of that

[Handwritten signature]

order and in default the impugned suspension order would stand revoked and the petitioner should be paid all consequential benefits regarding arrear of salary and allowances.

7. The petitioner contends that soon thereafter, the respondents issued the impugned charge-sheet against the petitioner (already described above) on 8.9.95 vide Annexure-C to OA 199/96. The petitioner responded to this charge-sheet by submitting a representation on 27.9.95 (Annexure-E to the petition) through which he alleged various contradictions in the chargesheet and its vagueness. Through a subsequent representation dt. 3.11.95 (Annexure-G to the petition), he brought to the notice of the respondents that only after the defects in the chargesheet were removed a fresh valid chargesheet had been issued, he would submit his written statement of defence. The respondents, however, by orders dated 10.10.95 appointed a Board of Enquiry to enquire into the charges and also a presenting officer. The Board of Enquiry consisted of 3 designated senior officers of the Meteorological Deptt. The petitioner repeated his objections about the defects in the chargesheet and he submitted a representation on 14.11.95 seeking supply of certain basic documents and also permission to engage a legal practitioner in his defence. The respondents through their letter dt. 16.11.95 (Annexure-K to the petition) rejected the prayer for engagement of legal practitioner for defence but allowed the petitioner to engage a government servant as his defence helper. The petitioner, thereafter, attended the preliminary meeting of the Board of Enquiry on 23.11.95 and subsequently continued pressing his prayer for supply of basic documents and engagement of a legal practitioners. The Board of Enquiry through its letter dt. 15.12.95 (Annexure-N to the petition) requested the petitioner to furnish reasons/relevance for certain documents prayed for by him. Board of Enquiry eventually by its letter dt./ 11.1.96 (Annexure-P) allowed

four specified documents to be inspected by the petitioner and the Board of Enquiry asked the Dy. Director General (Meteorology) (respondent No. 3) to give to the petitioner access to these four documents for inspection. The petitioner thereupon asked the Board of Enquiry to reconsider the matter regarding supply of all the documents and reiterated his demand for engagement of a legal practitioner. On the respondents' failure to satisfy the petitioner, he filed the instant petition before this Tribunal on 12.2.96. During the pendency of this petition at admission stage, the respondents issued certain letters to the petitioner on 13,14,16th Feb. 1996 regarding regular hearing in the DA proceedings on 26.2.96. On the petitioner's failure to attend to this, the Board of Enquiry continued ex parte hearings. Eventually, by the impugned order dt. 22.10.96, the disciplinary authority (respondent No. 3) awarded the major penalty of removal from service against the petitioner. The petitioner brought this subsequent development on record through MA 380/96 which by the order of the Tribunal has been treated as a supplementary petition as already stated.

8. The respondents have contested the case by filing a written reply to which the petitioner has filed a written rejoinder.

9. In the other OA viz. OA 534/96 and MA 178/96, after the aforesaid major penalty chargesheet had been received by the petitioner, he filed a detailed written statement on 4.10.95 denying the charges. The respondents by separate order had appointed a Board of Enquiry with the same composition as in the other case to enquiry into the charges and the said Board of Enquiry held preliminary enquiry on 23.11.95. The petitioner submitted that he would like to call all DDOs (Drawing & Disbursing Officer) as witnesses. This is apparent from the minutes of the proceedings of the preliminary enquiry dt. 23.11.95 vide Annexure-RII to the

reply of respondent No. 2 to the OA. According to the said minutes, the Board of enquiry asked the petitioner to submit such request in writing but that he refused to do so for the present. Thereafter, the board of enquiry held sittings on various dates. The petitioner was present on those dates and written briefs were submitted by both the presenting officer as well as the charged official i.e. the petitioner. The enquiry report was submitted by the board of enquiry on 18.4.96 and the report held the petitioner guilty of the charges. The respondents through their communication dt. 16.5.96 sent to the petitioner a copy of the enquiry report asking him to make his representation, if any. Meanwhile, the petitioner filed the present OA before this Tribunal on 21.8.96 and he submitted before the departmental authorities that since the case was sub judice, he would file his written statement only before the Tribunal before which the present case was pending. Eventually, during the pendency of the case before this Tribunal at the stage of admission, the respondents by their impugned order dt. 23.10.96 awarded the major penalty of removal from service against the petitioner. These subsequent developments were brought to the notice of the Tribunal by the petitioner by means of the MA, which by order of this Tribunal has been treated as a supplementary petition.

10. The respondents have contested the case by filing a written reply and the respondents have also filed a separate reply to the supplementary petition as well.

11. We may now deal with the case of the respondents which basically is identical in respect of both the petitioners. Their case is that in September 1994 it had been detected that an amount of Rs. 5,59,973/- had been fraudulently drawn by preferring duplicate Overtime Allowance (OTA) bills for some outstations employees of the Meteorological Deptt. This double drawal of OTA claims had been done by covering

1

Proforma I into Proforma II (by handwriting) of OTA claims and enclosing the same with the OTA bills. These duplicate OTA bills were submitted to the Pay & Accounts Office (PAO) after obtaining signature of the Drawing & Disbursing Officer (DDO) on the bills. After encashment of the cheques received from PAO in respect of the duplicate OTA bills, the liquid cash and/or bank drafts were set aside without sending the amount to the concerned outstations and ultimately misappropriated. *As alleged by the Respondents* In this act of misappropriation, three persons were involved, viz. (i) Shri Vijoy Shanker, Senior Observer (SO), petitioner in OA 534/96, (ii) Shri Asit Kumar Sarkar, UDC(Asst. Cashier), the petitioner in OA 199/96; and (iii) Shri B.B.Mukhopadhyay, Administrative Assistant (who has not yet filed any case before this Tribunal). According to the respondents, Shri Vijoy Shanker, the petitioner of OA 534/96, would prepare the duplicate TA bills, Shri A.K.Sarkar, UDC, (petitioner of OA 199/96) would remove the bills from the encashment register, obtain signature of the DDO on the bills and presented the bills to the PAO after making entry of the particulars of the bills in the register and Shri B.B.Mukhopadhyay, the Cashier, would encash the cheques received from PAO in respect of the duplicate bills and thus the amounts were misappropriated.

12. The respondents add that immediately after such detection of the incident, by separate orders, the aforesaid employees were suspended. But the petitioner of OA 199/96 (A.K.Sarkar) had moved this Tribunal through OA 631/95 against the suspension order and the Tribunal by its order dt. 33.6.95 had disposed of the said OA with the direction on the respondents to initiate disciplinary proceedings by issuing chargesheets within 3 months. According to the respondents, in order to implement this order of the Tribunal, DA proceeding were initiated by issuing separate chargesheets to all the 3 employees involved. A Board of Enquiry was

appointed on 10.10.95 to enquire into the charges. While the enquiry was in progress, the petitioner of OA 199/96 had filed this petition before this Tribunal challenging the chargesheet as well as the suspension order. Since then, the petitioner of OA 199/96 i.e. Asit Kr. Sarkar, had not attended the enquiry and therefore the Board of enquiry proceeded to hold ex parte enquiry against him as per rules. Thereafter, after following due procedures as already indicated above, the major penalty of removal from service had been ordered which has also been challenged by the petitioners.

13. The respondents have added that the enquiry report has held the petitioners guilty of the charges and the disciplinary authority in agreement with the report of enquiry duly awarded the penalty. Therefore, they have asked for rejection of the petitions.

14. The case of the respondents in OA 534/96 is more or less similar.

15. After hearing the parties at length, we felt that both the petitioners should be dealt with together as they concern identical events. Also since Shri B.B.Mukhopadhyay, the 3rd employee was also involved in the same event and subjected to similar DA proceedings and similar fate, it would be necessary to see the records concerning him, although he has not come up before this Tribunal with any petition. We, therefore, directed to the respondents to produce the relevant DA records in respect of the 3 employees. By a subsequent order, we also directed the respondents to produce apart from the relevant DA files of the 3 employees, also the records relating to preliminary enquiry into the matter, if any, even though the result of the said preliminary enquiry had not been used as part of formal DA proceedings against the petitioners. In response to these directions, the respondents have filed before us photocopies of some selected pages of the records pertaining to the separate DA proceedings of all the 3

employees and also the photocopies of the preliminary enquiry report. As per our direction, the respondents also filed before us photocopies of certain notings concerning their decision to exclude the then DDO from the purview of the DA proceedings as well as the copy of the FIR lodged by the respondents regarding the alleged misappropriation.

16. We have heard the learned counsel for the parties and have gone through the massive documents produced. In view of urgency of the matter, we propose to dispose of the cases at the admission stage itself.

17. Regarding OA 199/96, the petitioner's one objection to the DA proceedings is that he has not been allowed to engage a legal practitioner in his defence. The respondents have rejected this prayer but have allowed him to avail himself of the service of any employee as defence assistant. Well regarding such objection, Rule 14(8)(a) of CCS(CCA) Rules is clear that unless the presenting officer is a legal practitioner, the delinquent employee may not be permitted to engage a lawyer to defend himself. It has also been held by the Hon'ble Supreme Court that in a disciplinary proceedings, when the delinquent official is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner, it should be granted, vide AIR 1983 SC 109 (Board of Trustee, Bombay Port -vs- Dipak Kr. etc.) In the instant case, there is no such allegation by the petitioner that he has been confronted with legally trained personnel in the DA proceedings. On the other hand, the respondents have given the petitioner due opportunity to defend his case by employing any employee as his defence helper. We find this action of the respondents as quite reasonable and therefore, we overrule this objection of the petitioner.

18. However, the other objections of the petitioner in both the cases are more serious. In both the cases, it has been alleged that the chargesheets are vague. The respondents

have, of course, denied this and they have proceeded with the DA proceedings on the basis of the said chargesheet.

19. To adjudicate this point, we can closely scrutinise the texts of the chargesheets, which have been quoted verbatim at para 5 above of this judgement. It would be seen that there are two articles of charges as per annexure-I or Annexure-II to the chargesheets. The charges in Art. I is regarding the conduct of the petitioner alleging criminal breach of trust and consequentially doubtful honesty and integrity. The charge in article II is that the particular employee had "planned and or involved himself in a criminal conspiracy to defalcate government money. (emphasis added) ²⁰

^{11/20} Annexure-II representing statement of imputations is supposed to amplify the charges. While article I in the statement of imputation of the misconduct or misbehaviour gives some details of the charges, the text of article II in the statement of imputation of misconduct, does not, in our opinion, give any meaningful detail. The charges in the Art. II ^{is} ~~is~~ ^{concern} criminal conspiracy and any conspiracy by implication has to be aided and abetted by a number of persons collectively - although different persons may play different roles with varying individual culpability in the operation of the conspiracy. But a reading of the article II either in Annexure-I or Annexure-II to the chargesheet, does not indicate the name of any employee with whom the particular employee had allegedly been in conspiracy.

21. It is, therefore, clear that this part of the charge is ~~doubtless~~ ¹¹ very vague and non-specific. Therefore, if the petitioners' objection had been that they were at a loss to ^{as} ~~to~~ rebut what, we cannot treat their problem as non-existent.

22. Of course, the presenting officer through his submission before the Board of Enquiry had furnished broad contour of the alleged conspiracy. But the presenting officer's brief is something different from the chargesheet.



The entire DA proceedings are only to prove or disprove what has in the formal text of the chargesheet and doubtless this has to be specific in order to sustain the proceedings.

23. It is, therefore, clear that the chargesheets in question, or at least the Article II of the chargesheets are very vague and non-specific. But both the articles of charge have been treated in the whole DA proceedings as closely inter related manner. So all the subsequent events in the DA proceedings viz. the report of enquiry submitted by the board of enquiry and penalty as awarded - are based on both the charges together. Under the circumstances, we are of the view that there was fatal flaw in the entire proceedings from the stage of the chargesheet itself. It is noteworthy that such deficiency has crept in the chargesheets although the respondents took about one year to process the matter regarding the chargesheet after ^{the ordering} ~~one~~ the suspension of the employees and that also after the Tribunal had directed while disposing of the DA filed earlier by the petitioner of OA 199/96 that the departmental proceedings should be initiated by issuing formal chargesheet within 3 months.

23A. The chargesheets therefore are bad and are liable to be set aside.

24. We do not, however, find any flaw with the order of suspension issued by the respondents. The order clearly states that certain disciplinary proceedings are contemplated against the petitioner and therefore in terms of the relevant rules of CCS(CCA) Rules, the petitioners had been placed under suspension. This is quite in order.

25. The other grievance of the petitioners is that although they had been suspended in September 1995, their subsistence allowance during the period of suspension had not been enhanced after the stipulated period of six months. The petitioners, particularly, the petitioner in OA 199/96, had specifically asked for enhancement of the subsistence



allowance but this was rejected by the respondent No. 3 by his specific order dt. 11.12.95, copy of which is at Annexure-0 to OA 199/96. It appears that the request for enhancement of subsistence allowance was rejected on review by the DA authority because in the words of the respondents "in view of seriousness of the charge of defalcation of government money by criminal conspiracy. the petitioner would continue to get the subsistence allowance at the rate at which it was sanctioned by the order dt. 17.10.94."

26. We find this stand of the respondents as unreasonable and contrary to the rules. The nature of the charge against the charged official is irrelevant regarding the rate of subsistence allowance admissible. The important fact to be considered is the period spent in suspension. In view of the fact that the petitioners are on suspension for a long time, their subsistence allowance ought to have been enhanced to the prescribed limit as per rules. We, therefore, direct that the respondents shall, within one month from the date of communication of this order, enhance the subsistence allowance under the rules in favour of the petitioners retrospectively and all arrears in this account shall be paid to them accordingly within the said period of one month.

27. Before concluding, we may incidentally touch upon certain pertinent matters. As already indicated, the charges are very grave. These concern alleged defalcation of government money to the tune of about Rs. 5.60 lakhs in aggregate (so far detected), which have been fraudulently done over a period of time, by systematically drawing fraudulent and duplicate OTA bills. According to the respondents, only 3 employees viz. the 3 charged officials are involved in the conspiracy. However, according to the affidavit in the respondents' reply itself, the chain of drawal of the money is not completed without the actions of some other specific

~
~

employees which includes the then DDO. But the then DDO, without whose signature the duplicate bills could not be drawn and who was also responsible to sign various registers including bill register and cash book etc., has been left out of the proceedings altogether. Even if the then DDO were personally honest, yet, his negligence or slackness in supervision cannot prima facie be denied as contributing to the defalcation of government money by the other employees with criminal intention. In that case, the DDO could be considered at least for appropriate lesser penalty after establishment of facts through DA etc. proceedings. But the respondents, it seems, have totally eliminated any such scope, by excluding him out of the DA proceedings altogether ab initio. It is also seen that the then DDO has also not even been called as a witness, even if he was very much formal part of the chain. It also seems rather curious that in none of the impugned chargesheets, not a single other person also has been listed as witness by the DA authority in order to establish the charges. They have proposed to rely only on certain documents and the documents are various bills and some records.

29. Shri B.B.Mukhopadhyay, the Administrative Assistant, the 3rd charged officer (who has not come before this Tribunal) in his reply to the chargesheet has specifically alleged that unauthorised change of proforma I and II had been done after obtaining specific orders of the then DDO. Moreover, according to him, he had been specifically ordered by the DDO to hand over the money to him. Further according to him, he used to hand over the money to the DDO himself (Vide reply of Shri B.B.Mukhopadhyay dt. 24.11.95 before the board of enquiry). Shri B.B.Mukhopadhyay has also alleged more less the same thing in his written reply before respondent No. 3 on 18.9.95. Before the preliminary enquiry committee, however, Shri B.B.Mukhopadhyay had confessed his

N

guilt.

30. In drawing the DA proceedings, the respondents have, perhaps, gone by the report of the preliminary enquiry, although there is no whisper about this anywhere in the chargesheets or in the subsequent proceedings. The preliminary enquiry committee was comprised of 3 particular Director level officers as constituted under orders dt. 5.9.94 by respondent No. 3. Through the said confidentiala order, Shri H.L.Saha, AM, who happended to be the relevant DDO, was rather directed to assist the committee for this purpose. The said committee examined only 3 employees, who were only subsequently subjected to DA proceedings. Shri H.L.Saha, AM-cum-DDO was not of course examined and his statement was not even recorded. The preliminary enquiry report prima facie found only 3 charged officials as guilty and held that the Cash Officer, viz. Shri H.L.Saha "was not careful enough in checking proper entries of bills/drafts/cheques etc. in the concerned registers before putting his signature. However, his integrity is beyond doubt. The case was actually brought into light by him only." Presumably because of this, the preliminary enquiry committee did not propose any action against Shri H.L.Saha, Cash Officer/AM.

31. We find, however, significant discrepancy from the selected copies of documents furnished by the respondents before us. It appears that the decision to constitute a preliminary enquiry committee was processed through the office noting dt. 5.9.94 in which it was mentioned that "while checking the Bill Regeister on 30.8.94 it is seen that OTA Bill for the month of May 94 for station No. Agartala was submitted to the PAO on 7.7.94, T.No. 103 for Rs. 58057/- and passed by PAO. But a draft for Rs. 58957/- as OTA for May in respect of R/o Agartal was already sent earlier. Matter was brought to the notice of DDGM on 30.8.94 and



subsequently it was found that the above case was not an isolated one." We have also been shown an office noting dt. 7.9.94 from the said Shri H.L.Saha, AM-cum-Cash Officer-cum-DDO, marked to respondent No. 3, which was also a report of misappropriation of cash. It was mentioned in the same noting that "while on routine checking the Bill Register brought to me by Shri A.K.Sarkar, Asst. Cashier on 30.8.94" he (Shri Saha) noticed the irregularities. So, all along the story is that it is only on 30.8.94, that Shri H.L.Saha, DDO, first came to notice the fraudulent transaction and that he immediately brought it to the notice of Dy. DGM, respondent No. 3 and that subsequently a preliminary enquiry report was submitted.

32. As against this, we have come across the photocopy of the confidential letter DDGM-CB(Conf)/05 dt. 14.9.94 written by Dr. P.N.Sen, Dy. * DGM (respondent No. 3) to Director General of Meteorology, New Delhi, in which it has on the other hand, been mentioned that on August 26, 1994, Shri H.L.Saha, A.M.DDO. reported to him(Shri Sen) about the said incident of defalcation. So, the question may arise, whether there is any significance about such discrepancy on the alleged date of detection.

33. The respondents have not produced any evidence to establish as to how *prima facie* there could be a case to totally keep the then DDO out of the purview of any enquiry proceedings. On our specific request, the respondents have produced a copy of the FIR lodged by them before the Watgunge Police Station, Calcutta, by means of a confidential letter written by respondent No. 3 on 19.9.94. This letter also indicates that according to the respondents' preliminary enquiry only the 3 charged officials are responsible for the alleged embezzlement.

34. Under the circumstances, we tend to feel that respondent No. 1, i.e. Secretary, Ministry of Science &

Technology and respondent No.2. i.e Director General of Meteorology, New Delhi ~~should~~ ^{it may rather} took specifically into the matter to see that in the name of proceedings only a few selected officials are not subjected to departmental or criminal proceedings and other employees who might have been involved in the net, ^{it that} do not go outside the purview of the requisite enquiry because of the ~~action~~ ^{decision} by the local functionaries of the Deptt. ^{it that} in Calcutta and it does not appear to be a cover up proceedings. The respondents may also pursue with the appropriate authority regarding the criminal complaint in the matter.

35. We, therefore, dispose of both the petitions with the following orders :

i) Both the impugned chargesheets dt. 8.9.95 and all proceedings subsequent to the issue of such chargesheets are hereby quashed.

ii) The respondents are, however, given the liberty to frame any fresh chargesheets against the appropriate employees regarding the event. Since a lot of time has already elapsed, such chargesheets should be issued within 3 months from the date of communication of this order.

While framing appropriate chargesheets against the appropriate employees accordingly, the respondents, specially, respondent Nos. 1 and 2 shall particularly keep in view all the relevant facts including our observations at paras 27 to

34 above. ^{it} The Registry shall also send copies of the judgment to Respondent Nos. 1 & 2 direct. ^{it}

ii) The petitioners shall continue to be on suspension and the suspension orders already issued against them are treated as valid. The respondents shall, however, within a month from the date of communication of this order, pay to the petitioners enhanced amount of subsistence allowance retrospectively as per rules along with arrears

iv) There will be order as to costs in either cases.

29/7/97
(M.S.MUKHERJEE)
MEMBER(A)

28/7/97
(A.K.CHATTERJEE)
VICE CHAIRMAN