CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.381/2001
&
ORIGINAL APPLICATION NO.732/2000

DATED THIS Wednesday THE 29th DAY OF MAY 2002

CORAM: HON'BLE SMT. SHANTA SHASTRY, MEMBER (A)

1) Shri Nathurao Nanaji Pagar,
S/o Nanaji Tanaji Pagar,
56 years, Assistant Postmaster
Malegaon Head Post Office,
P.O.Malegaon,
R/at: Opp. Panchaganga Automobile
Moti Baug Naka,
Agra Road,
At P.O. Malegaon,
Dist. Nashik -423 203. ... Applicant in O.A.No.381/01

2. Shri Nanaji Taru Pagare,
45 years, working as Lower
Selection Grade Postal Assistant
Ravalgaon, S.O. (Malegaon),
R/a: Shivashakti-
Housing Society, Plot No.19,
S.No.362,
Church Road, Malegaon Camp-423105.... Applicant in O.A. No.732/2000

(Applicants represented by Shri S.P.Kulkarni, Advocate)

vs.

Union of India through
1. Superintendent of Post Offices,
Malegaon Postal Division.
At P.O. Malegaon H.O.
District - Nashik 423 203,

2. Director of Postal Services,
Aurangabad Region,
Office of the
Postmaster General,
Aurangabad Region,
At P.O. Aurangabad 3431002. .... Respondents (common)

(Respondents by Shri V.S.Masurkar, Advocate)

O R D E R

[Per: Smt.Shanta Shastry, Member(A)]

In both these OAs. the issue is common and facts are also similar. The relief sought is also similar. Therefore, I am proceeding to dispose of both the O.As by a common order.

O.A.381/01:

2. The applicant was called upon vide a letter dated 30.7.1999 to intimate if he was willing to credit Rs.26,980/- as his share of loss. The applicant replied to that in detail on 9.8.1999. On 16.9.1999 he was informed that he would be proceeded against under Rule 16 of the CCS (CCA) Rules 1965. The applicant was granted 15 days time to give his representation if any. The applicant gave the same on 9.11.1999.

3. The following was the Statement of Imputation of Misconduct or Misbehaviour.

> *"Statement of imputation of misconduct or misbehaviour on which action is proposed to be taken against Shri N.N. Pagar Supervisor SB/RD Malegaon H.O. 423203.*
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> *Shri N.N.Pagar while working as APM SB/ Malegaon HO during the period w.e.f. 13.3.1985 to 25.5.1985, the detailed period has already been mentioned in this office letter No.F-4/02/GSSK/85-86 dtd. 30.7.1999. There was a high value withdrawal of Rs.9,000/- in SB A/c No.1400238 & Rs.2500/- in SB a/c No.1400159 taken place at GSSK,S.O. on 8.1.1985. Shri N.T. Pagare Ledger Assistant (S.O. Group), Malegaon HO had prepared a half margin verification Memo of the above said high value withdrawals and sent for verification to ASP Sub Dn. Malegaon on 8.1.1985 to confirm the genuineness and these memos were not called for until the fraud came into light i.e. upto 3.10.85.*
>
> *Shri N.N. Pagar while working as APM SB has failed to check the register being Supervisor & Scrutinised the register of verification memos on the 16th and the last of the month and issued reminders and further follow up action as per Rule 85 (v) & (vii) of PO SB Manual Vol.I in r/o above memos to ASP Sub Division Malegaon from the date of issue of verification memo. And as no reply was received from ASP Sub Dn. Malegaon and*

has not reported his failure to Supdt. of Post Offices, Malegaon Dn.Malegaon for necessary action, had he taken timely action, the fraud could have detected earlier and further fraud also could have avoided. Thus said Shri N.N. Pagar has failed to follow the above procedure by violating the provisions of Rule 85 (v) & (vii) of PO SB Manual Vol.I.

Further Shri N.N.Pagar while working as APM (RD) Malegaon HO during the period w.e.f. 4.4.1985 to 3.10.1985 though there were regular monthly deposits under Pay Roll Savings Scheme of Pay Roll Savings Group of GSS Karkhana employees and staff of T.R. High School at GSSK Post Office upto Dec. 1984 but failed to check the further deposits in the said lots which were not credited onwards January, 1985 and caused to get issued intimation to each member of the Institute/ Group leader of Pay Roll Savings Group of the above RD lots that there were no deposits under PRSS at GSSK S.O. from January 1985 onwards and results collected & further non credit were also not reported to higherups.

Thus said Shri N.N. Pagar has failed to report the above facts to his higherups under intimation to Supdt. of PO's Malegaon nor timely follow up action was taken as required by the Rule 15 of Appendix II under the chapter Pay Roll Savings Scheme" of Post Office Savings Bank Manual Vol-I, had it followed, the fraud could have detected earlier and also further fraud could have avoided.

Thus failure on the part of said Shri N.N. Pagar has facilitated Shri M.L.Jadhav then SPM GSSK S.O. to continue the fraud amounting to Rs. 62730/-. Had the right action would have been taken at the very appropriate first stage of his working as Supervisor, the above fraude could have been detected earlier and avoided further.

Therefore, it is alleged that said Shri N.N. Pagar, is responsible for the loss to the Department of Rs.58475/- + Penal Interest Rs.22465/-.

Vide this office letter No.F-4/02/GSSK95-86 dtd. 30.7.1999 said Shri N.N. Pagar was addressed whether he is ready to credit his share ofRs.24118/- voluntarily, but he has not responded to the said.

Therefore, it is alleged that by violating the provisions of Rules as stated above Shri N.N. Pagar has failed to maintained the devotion to his duties as is required by Rule 3 (1) (it) of CCS (Conduct) Rules 1964."

4. The applicant in his representation stated that he had requested for inspection of documents which had not been provided to him. He had also requested for a proper enquiry to be conducted which was also not considered. The chargesheet was issued to him for an event which took place 14 years ago in the year 1985. However. the disciplinary authority considered all these points and after going through all case file and papers and documents carefully came to the conclusion that the applicant had been negligent. Had he checked the register of verification memos and issued reminders and taken further follow up action as required by the rules, the fraud could have been detected and Shri M.L. Jadhav would not have got an opportunity to commit fraud in the R.D. Account amounting to Rs.62,930/-. The Disciplinary Authority held that the applicant was involved in the fraud case as a subsidiary offender, he was personally responsible for the whole loss sustained to the Government. Accordingly, the Disciplinary Authority ordered the recovery of Rs.24,118/- from the Pay and Allowances of the applicant from the pay of December, 1999 at the rate of Rs. 1,000/- per month and the last instalment being Rs.118/-.

5. The Applicant's appeal against the aforesaid order of the Disciplinary Authority was rejected vide letter dated 24/26.7.2000 by the appellate authority. A reasoned speaking order has been passed by the appellate authority. He rejected the appeal.

6. The contention of the applicant is that both the Disciplinary Authority and the appellate authority failed to apply their mind properly. According to the applicant he was working in the Savings Bank A/c Section and not in R.D. Account Section where the fraud occurred. No recovery was made from the main accused. Although the applicant had made a specific request for oral enquiry the Disciplinary Authority did not reject it nor did he conduct the enquiry. Further no reply was given in regard to the furnishing of the documents by the Disciplinary Authority. Also the charge sheet was issued after a long lapse of 15 years and the charge sheet is vague. Therefore on the ground of not allowing inspection of the documents and not holding oral enquiry, the entire Disciplinary Proceedings need to be quashed and set aside. Further even the appellate authority simply held the action of the Disciplinary Authority to be correct and as per Rules and rejected the appeal of the applicant. It is difficult to remember the events and minute details quoted against the applicant in the chargesheet at such a belated stage. It would not have been possible for the applicant to defend himself without inspection of the documents. However, he was denied that and therefore, the applicant prays for quashing and setting aside of the orders of the Disciplinary Authority as well as the appellate authority.

7. The respondents submit that the applicant before approaching this Tribunal had also addressed a petition to Member (Personnel), Postal Services Board, New Delhi and the same was under process. This has now been considered and rejected.

Further the applicant was given an opportunity vide letter dated 30.7.1999 to indicate if he was willing to credit Rs.24,118/- as his share of loss. The Disciplinary case started after thorough investigation considering all facts of the case. It took time as per rules on the subject and therefore, even though delayed, it was justified. The Disciplinary action related to recovery of all loss suffered by the Govt. due to grave negligence of the applicant and, therefore, punishment has been rightly awarded to the applicant. The respondents have, however, not denied that the applicant was not furnished the documents asked for by him and that the Disciplinary Authority did not consider it necessary to give the documents. However, the applicant was not informed accordingly. Similarly, the applicant had asked for oral enquiry. Again there was no reply from the Disciplinary Authority to the effect that he did not consider it necessary to go for the enquiry. The Respondents have not denied that the applicant was kept in dark about both these points and accordingly, certainly the disciplinary proceedings could be remanded back.

8. According to the respondents the applicant was responsible for the work he was allotted. He failed to work with full devotion and due to his negligence the Department had to suffer a huge loss. The respondents have further submitted that there were several subsidiary offenders besides the applicant. Some of them had retired from service, some had left the department and absconded and one person had expired. So disciplinary action was, therefore, against the remaining officials. One official had voluntarily credited the amount of

his share and, therefore, no disciplinary action was taken against him. The respondents have submitted that the main offender was proceeded against under the provisions of Rule 14 of the CCS (CCA) Rules and he was dismissed from Govt. Service though no recovery was made from him. The criminal Court also found him guilty under Section 409 of the IPC and he was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.2,000/- or to undergo simple imprisonment for one month. While explaining the delay the respondents submit that while camping at Malegaon on 15.6.99 to 16.6.99 for ~~normal~~ Annual inspection purpose, the PMG, Aurangabad came across the fraud case of GSSK, Malegaon Post Office and ordered to recover the outstanding amount of loss from the the subsidiary offenders immediately and accordingly the Show Cause Notice was issued to subsidiary offenders to credit the amount of their share as assessed to be recovered from them. The applicant refused to credit the amount stating that he was in no way connected with the fraud and therefore, he was proceeded against under Rule 16 of CCS (CCA) Rules 1965 and finally orders were passed.

9. The applicant further relied on certain judgements of the Madras High Court and Madhya Pradesh High Court in *B.Loganathan vs. Union of India* decided on 4.8.2000 reported in 2001 (1) ATJ 289 and *Lavkush Prasad Gautam vs. Food Corporation of India* reported in 2001 (3) SCT 899 respectively. He has also produced a copy of a judgement of the Jodhpur Bench of Tribunal dated 27.6.2000 in O.A. 390/1999 in *Ranjeet Lal Jain vs. Union of India* and another in support of his contention that any departmental proceedings initiated after a long lapse of period

need to be quashed. As such inordinate delay without any explanation for the same would amount to denial of reasonable opportunity to defend and is violative of the principles of natural justice. And, therefore, the charge memo needed to be quashed. In OA. No.390/1999 even the Tribunal expressed the opinion that since the applicant therein had been served with a chargesheet relying on the incidence of 1992 in the year 1999 such chargesheet with an inordinate delay is a sufficient ground to quash the same.

10. The applicant has further relied on a judgement of the Ahmedabad Bench of the Tribunal in O.A.No.750/98 in *J.M. Makwana vs. Union of India & Ors.* reported in 2002 (1) ATJ 283. In this case a recovery was ordered against the applicant for fraud committed by another employee. The applicant was found responsible for the same on the ground that by his negligence the fraud was not detected earlier. There was no charge that due to his negligence any pecuniary loss was caused to Govt. Therefore, the Tribunal quashed and set aside the impugned order withholding one increment and recovery of loss caused to Govt. The Tribunal held that one who is not directly responsible for causing any pecuniary loss to the Govt. cannot be made responsible for recovery of the loss sustained by the Govt. The learned counsel for the applicant submits that his case is fully covered by the aforesaid judgement and the facts are also similar.

O.A.No.732/2000

11. In this case also charge sheet was issued to the applicant on 16.9.1999. The applicant was working as Postal Assistant.

The transactions related to the same period i.e. January 1985 to October, 1985 as in the case of the applicant in OA. No.381/01. In fact, it was the same fraud and the incident was the same. The applicant was also treated as a subsidiary offender and similar punishment as was given to the applicant in O.A.No.381/2001 was imposed upon the applicant by ordering recovery of Rs.26,980/- to be recovered in installments of Rs.1,000/- per month with the last instalment being Rs.980/-. Except for the amount of recovery, all the other facts are similar to those in OA 381/01. He was also working in SB A/c. Section The arguments advanced were also the same as in OA.No.381/01 both by the learned counsel for the applicant as well as by the respondents.

12. I have heard the learned counsel for the applicants in both the OAs, as well as the respondents and have given careful consideration to the arguments advanced. I find that the incident related to period from January 1985 to October, 1985. The charge memo was issued in 1999 after a lapse of 14 years. The respondents have tried to explain this delay by stating that the investigation took time. But it is seen from the records against that actually the matter was lying in cold storage. It is only then the PMG Aurangabad while camping for the annual review, found out about the incident and then ordered recoveries to be made. I do not find any good reasons by the respondents for the inordinate delay in issuing the charge sheet. In my considered view, such charge Memo issued after a long lapse of period, causes prejudice and is vitiated as has been rightly pointed out by the learned counsel for the applicant. I am

supported in this view by the judgement cited by the applicant wherein it has been clearly held that a delay constitutes a denial of a reasonable opportunity to the person concerned to defend himself. And it amounts to violation of principles of natural justice. The Disciplinary Proceedings must be conducted soon after discovering the irregularity. They cannot be initiated after a lapse of considerable time. It is not fair to the delinquent officers also. Such a delayed initiation of proceedings is bound to give room for allegations for bias, malafides and misuse of power. In the judgement in the case of *B.Lognathan (supra)* several judgements of the Supreme Court were relied upon and therefore, the impugned charge memo was quashed. In the other case also reliance was placed on several judgements of the Supreme Court including one in the matter of *State of Madhya Pradesh vs. Bani Singh and another AIR 1990 SC 1308, State of Punjab and Ors. vs.ChamanlalGoyal, 1995 (2) SCT 343 (SC)*. I am therefore, satisfied that in the present case due to the inordinate delay in issuing of the chargesheet memo without any satisfactory explanation for the delay, the Charge Memo and further proceedings thereafter need to be quashed and set aside. That apart the respondents in spite of the applicant asking for inspection of the relevant documents and for an enquiry was not given any reply. The Disciplinary authority has simply brushed aside both the requests without applying his mind to the requests. Although the Disciplinary Authority has the discretion whether to conduct an enquiry or not still he was duty bound to inform the applicant rejecting the request which was not done. Disciplinary authority did not consider it necessary to provide

documents to the applicant. But he never informed the applicant that he could not be given the documents. Even on these two grounds the Disciplinary Proceedings are vitiated. Therefore, without going into the further merits of the case on the ground of inordinate delay in issuing of the charge sheet and non supply of relevant documents and not considering the request of the applicant for conducting regular enquiry I quash and set aside the entire disciplinary proceedings including the orders of the disciplinary authority as well as the appellate authority dated 15.12.1999 and 7/10.7.2000 respectively in O.A.No.732/2000 and orders of the disciplinary authority as well as the appellate authority dated 15.12.1999 and 24/27.7.2000 respectively in O.A.No.831/2001. Any recovery made shall be refunded to the applicant within a period of one month from the date of receipt of a copy of this Order.

13. In the result, both the O.As. are allowed.

14. I also award cost of Rs.5,000/each in both the cases to be paid to the applicants for the harassment caused to the applicants due to the inordinate delay in issuing of the chargesheet.

Shanta S

(Smt. Shanta Shastry)

Member (A)

sj* dt 29/5/02

~~Order~~/Judgement despatched
to Applicant / Respondent (s)
1/7/02