

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
CAMP AT NAGPUR.**

O.A.211/00248/2017

Dated this Tuesday the 9th day of October, 2018.

Coram: Dr.Bhagwan Sahai, Member (A).

Gajendra Prabhakar Gawali,
Aged 33 years, Occ. Service,
Resident of Onkar Nagar,
Nagpur. . . Applicant.

(By Advocate Shri B. Lahiri).

Versus

1. Bharat Sanchar Nigam Limited,
through its Principal General
Manager Telecom,
Civil Lines,
Nagpur - 440 001.
2. The Deputy General Manager
(Finance & Accounts),
O/o PGM Telecom,
Civil Lines,
Nagpur - 440 001.
3. The Accounts Officer (Cash),
O/o PGM Telecom,
Civil Lines,
Nagpur - 440 001. . . Respondents.

(By Advocate Ms.Usha Tanna).

Order reserved on : 30.08.2018

Order delivered on : 09.10.2018.

O R D E R

1. This O.A. is a result of transfer of the Writ Petition No.1607/2004 from the Hon. High Court vide order dated 06.10.2017. In the Writ Petition and now in turn the O.A. the applicant seeks -

1 (a) . quashing and setting aside of the order of 20.05.2003 to make recovery from salary of the applicant; and

1 (b) . direction to the respondents to release arrears deducted from salary of the applicant in pursuance of the order of 20.05.2003.

2. Facts of the case stated in brief:-

2 (a) . The applicant was appointed initially as Telecom Office Assistant (TOA) on 04.06.1991 under Principal General Manager, Bharat Sanchar Nigam Limited (BSNL), Nagpur. While working on this post, the applicant was posted at cash collection centre of bills of subscribers of BSNL. Subsequently he was posted as Cashier under Accounts Officer (Cash) on 08.08.2002 and job assigned to him was disbursement of cash towards advances and all other payments after their scrutiny by pre-checker, Jr. Accounts Officer and sanction by the Accounts Officer (Cash). This posting was for a period of 4 years without Special Pay admissible to the Cashier.

2 (b) . He worked as Cashier under Respondent No.3 for 12 years from the time of his initial appointment. He used to make payments to the departmental employees on receipt of vouchers sanctioned by the Jr. Accounts Officer and Accounts

Officer (Cash). These payments pertained to overtime allowance, TA bills, arrears of salary, increments to the employees and all other advances drawn by them.

2(c). The applicant claims that one Sr.Telcom Office Assistant, Shri S.T. Sonare committed a fraud by preparing vouchers with inflated figures and after their checking and sanction, the applicant made the payments.

2(d). Later investigation was conducted by vigilance team of the respondents into the overpayments made by the applicant and others, and based on the confession submitted by the applicant, recovery of such excess payments came to be initiated against him.

2(e). The applicant seems to have submitted explanation on 29.06.2003 as to how only Shri S.T. Sonare was responsible and the applicant was not responsible for the loss caused to the respondents.

2(f). The investigation was conducted by AGM (F&A), Head Office (Vigilance), Circle Vigilance Team during August, 2003 into the irregularities and fraud committed while making payments from unpaid wages register of PGM, Nagpur. 45 cases of such irregular withdrawals since November 1996 came to

notice of the Vigilance Team. However, payment in respect of 3 cases had not been done and in the remaining 42 cases, excess amount of Rs.2,52,483/- was found to have been paid. The fake payments were noticed in January, 2003 by Jr. Accounts Officer who brought them to the notice to Asst. Chief Accounts Officer (ACAO) (Cash) and Chief Accounts Officer (CAO) (Works). Since the handwriting on the vouchers resembled that of Shri S.T. Sonare, Sr.TOA, he was interrogated when he confessed the excess payments made and disclosed names of these 3 other officials involved in the cases -

1. Shri G.M. Barapatre, TOA (G) Cashier
2. Shri G.P. Gawali, Sr.TOA (G) Cashier
3. Shri B.V. Rangari, Daftary.

2(g). The inquiry found that all the four officials i.e. Shri S.T. Sonare and the above 3 had been involved in the forgery cases and all of them confessed the fraud committed by them. This confession was made in writing and the four officials made good the loss of Rs.1,68,000/- as below:-

1. Shri S.T. Sonare Rs. 50,000/-
2. Shri G.M. Barapatre Rs. 50,000/-
3. Shri G.P. Gawli Rs. 18,000/-
4. Shri B.V. Rangari Rs. 50,000/-

Rs.1,68,000/-"

2 (h) . A copy of the confession statement of the present applicant is also available in the case papers on page 42. In its para 2,3 and 4, the present applicant submitted as follows:-

"Now I confirm the fraud committed by Shri S.T. Sonare and take the responsibility of deliberate irregularity committed by me in this connection. I am ready to make good of losses incurred by BSNL due to this irregularity.

In view of this self-acceptance and repayment of the amount, I request you to consider my case sympathetically.

This statement is submitted by me without any pressure and with full consciousness."

3. Contentions of the parties:-

The advocate for the applicant has contended that -

3 (a) . the fraud was committed by submitting false vouchers by Shri S.T. Sonare and the applicant disbursed those approved amounts but he has been made scapegoat. Confession of the applicant dated 29.01.2003 is on page 19. But on the same day he also made a representation saying that the payments made by him were based on the signatures of his senior, whether ACG-17 was wrong was not known to him, that is why mistake has been made, and this

should be considered while taking further action;

3 (b) . then on 30.07.2003, the applicant made a representation to Assistant Chief Accounts Officer that from his salary of June, Rs.8000/- had been deducted and he had not been informed about additional recoveries to be made and he also alleged that the recovery was being made to harass him. Therefore, the recovery made should be released to him;

3 (c) . in response to this, he received a reply dated 01.08.2003 stating that the applicant himself had admitted wrongful payments made by him and based on it, the recovery had been made from him. His allegations of harassment by the officers were stated to be unfounded;

3 (d) . the applicant further represented on 09.09.2003 claiming that the fraud had taken place prior to his posting and till that time Rs.18,000/- had been deducted from his salary. He requested to stop the recovery and if that was not done, he would resort to legal remedies;

3 (e) . the recovery from him has been made without conducting disciplinary proceedings and the order of punishment dated 19.04.2010 has been issued against him. While the punishment order is not contested by

the applicant, the recovery ordered from him and the order of stoppage of one increment amount to double jeopardy. Therefore, the O.A. should be allowed.

The respondents advocate has contended that -

3(f). the applicant was posted as a Cashier. His job was to disburse money. While doing so he was not only negligent but along with others indulged in wrongful payments;

3(g). because of his involvement and confession before the investigating team of his involvement in the wrongful payments, he himself had deposited Rs.18,000/- to make good the loss caused by him. The confession statement given by him on 29.01.2003 (on page 42 of the Writ Petition memo), and a copy of which is also on page 19 (Annex-2), he himself made the clear confession and also undertook to make good the loss caused to the respondents; and

3(h). since the Tribunal had already granted liberty to the applicant to seek appropriate legal remedies against the order of stoppage of his increment dated 19.04.2010, this O.A. deserves to be dismissed.

4. Analysis and conclusions:-

I have considered the Writ Petition memo,

which later has got converted into this O.A., reply of the respondents, copy of the investigation report and contentions of the parties made before me.

4 (a) . From the case record and the contentions of the parties, it becomes clear that the applicant has attempted to blame only Shri S.T. Sonare as responsible for the fraud. But he has not impleaded Shri Sonare as one of the party respondents in the Writ Petition or this O.A.

4 (b) . In spite of his clear confession submitted before the investigating team on 29.01.2003 and deposit of Rs.18,000/-, the applicant has attempted to shift the blame of the fraud only on Shri Sonare and others. His claim that the confession was made under pressure is based on afterthought and unacceptable as the confession statement clearly mentions that he had made it without any pressure on him. He cannot retract it now.

4 (c) . The payment of Rs.18,000/- had already been made by him, along with additional amounts paid by the three others, to make good the loss caused to the respondents as recorded in the inquiry report (page 41).

4 (d) . In view of these facts of the fraud committed by the present applicant, along with 3

other persons and clear confession of his involvement in it, owing his responsibility for it and payment of Rs.18,000/-, this O.A. seems to be only an afterthought based attempt of the applicant to shift the blame only on others. Therefore, this O.A. is devoid of merits and, accordingly it deserves not only to be dismissed but with imposition of cost on the applicant.

5. Decision:

The O.A.2248/2017 is dismissed with costs. The applicant has to pay as cost Rs.2000/- to the CAT Bar Association, Mumbai for library purposes.

**(Dr.Bhagwan Sahai)
Member (A) .**

H.