

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 142/2012

Shri Padmakar S/o Vyankatesh Kulkarni,
Aged about 57 years, R/o MSEB Colony,
Chandel Building, Bhandara
(Permanent Address : Dudhsagar Co-op HSG
Society, At post : Kedgaon, Dist. Ahmadnagar.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Finance Department, Mantralaya,
Mumbai-32.
- 2) The Director of Accounts & Treasuries,
Govt. Kutir nos. 15 & 16, Plot no.176,
Free Press Journal Marg, Mumbai-21.
- 3) The District Collector,
Bhandara.

Respondents

Shri Bharat Kulkarni, B.S. Naik, Advocates for the applicant.

Shri A.M. Ghogre, Id. P.O. for the respondents.

**Coram :- Shri Rajiv Agarwal (Vice-Chairman) (A) &
Shri J.D Kulkarni (Vice-Chairman) (J)**

JUDGEMENT

PER : Vice-Chairman (J).

(Delivered on this day of 11th August,2017)

Heard Shri Bharat Kulkarni, learned counsel for the applicant and Shri A.M. Ghogre, Id. P.O. for the respondents.

2. The applicant P.V. Kulkarni has challenged the order issued by respondent no.1, i.e., Secretary, Finance Department, Mumbai on 2/3/2012 whereby following punishment was imposed on the applicant.

^vksk

*Jh-i-0; a dyd.kh] rRdkyhu mi dks'kkxkj vf/kdkjh] oMxk&ekoG] ftYgk i wks; kpdMhu] egkj"V^a ukxjh I dk ¼f'kLr o vihy½ fu; e] 1979 P; k fu; e 5 ¼1½¼rhu½ e/khy rjrmhu k j ; k i dj.kh 'kkI ukps>kysysuplI ku #i ; s 40]000@& I 0; kt ol ny dj.; kr ; kos rI p] Jh-dyd.kh; k;k egkj"V^a ukxjh I dk ¼f'kLr o vihy½ fu; e] 1979 P; k fu; e 5 ¼1½¼I kr½ e/khy rjrmhu k j I Drhusl dkfuorR dj.; kr ; s vks gsvks k rRdkG veykr ; rhy-^{**}*

3. The applicant was working as an Accounts Officer in the office of respondent no.3 from 17/8/2009 onwards. He belongs to Finance Department and the respondent no.1 is the Appointing and Transferring Authority as the applicant is of Class-II state service MF&AS cadre.

4. The Departmental Enquiry (D.E.) was initiated against the applicant vide memorandum for the period in between 18/7/1984 to 2/9/1988. The memorandum was served on the applicant on 19/1/2002, i.e., after 14 years from the alleged misconduct. It is admitted fact that during pendency of the inquiry a criminal case was

also filed against the applicant. The applicant was tried for criminal charges before the Chief Judicial Magistrate, Pune in regular Criminal Case no.39/1992 (Original regular criminal case no.18/1989) from JMFC, Vadgaon, Maval, Dist. Pune. The applicant came to be acquitted from the criminal charges vide order dated 26/11/1998 by Additional Chief Judicial Magistrate, Pune. He was acquitted of the offences under sections 409 & 467 of the IPC. However on the similar charges the D.E. was conducted in which the punishment of compulsory retirement was inflicted upon the applicant and he was also directed to pay Rs.40,000/- to the State.

5. It seems that the applicant has also filed appeal against the order of punishment in the D.E. and Appellate Authority rejected the appeal during pendency of this O.A. vide order 28/8/2015. The applicant therefore amended the O.A. and has also challenged the order passed by Appellate Authority, i.e., Govt. of Maharashtra. The said order was written by Smt. Pankaja Munde, the Minister for Rural Development and Conservation Department. The appeal was dismissed and the order passed by respondent no.1 on 2/3/2012 was maintained.

6. The applicant has now claimed that the order dated 2/3/2012 issued by respondent no.1 and the same order confirmed by

Government on 28/8/2015 in the appeal be quashed and set aside and the respondent no.1 be directed to reinstate the applicant and proceeding in the D.E. be quashed and set aside since due procedure was not followed in the D.E.

7. The Id. Counsel for the applicant submits that the D.E. was initiated against the applicant after 14 years from date of cause of action without any show cause notice and this has violated rights of natural justice. The charge sheet was issued on 19/1/2002 for the alleged misconduct which were allegedly committed in between 18/7/1984 to 2/9/1988. The Inquiry Officer was appointed in the year,2007. The report of inquiry was submitted on 22/1/2008 and the impugned order has been passed by respondent no.1 on 2/3/2012, i.e., almost after 24 years. The respondent no.2, the Director of Accounts & Treasuries, Mumbai did not apply mind. The Governor while appreciating the facts did not apply mind and the appeal was mechanically dismissed. The Appellate Authority, i.e., Governor had taken four years for deciding the appeal which has caused great harassment and mental agony to the applicant. It is stated that the entire proceedings were conducted against the principles laid down by the Hon'ble Apex Court in case of **P.V. Mahadevan Vs. M.D. Tamilnadu Housing Board** decided on 8/8/2005.

8) The learned counsel for the applicant also submits that the applicant was tried for same charges before CJM, Pune and CJM, Pune has acquitted the applicant on merits and therefore on all these counts the order passed by respondent no.1 as well as the Governor as Appellate Authority are required to be quashed and set aside. The respondent nos.1&2 have filed their reply-affidavit and tried to justify the action taken against the applicant. It is stated that in the D.E. it has been established that there was manipulation of the record of Sub Treasury Officer and also there was difference in the order annexed to the bills and actual bills. The punishment has been imposed after taking concurrence of the Maharashtra Public Service Commission. It is stated that even though the criminal court acquitted the applicant, the Government took concise decision to initiate D.E. and due procedure has been followed in the D.E.

9) The learned counsel for the applicant invited our attention to the Judgment reported in **2005 (6) SCC 636, i.e., P.V. Mahadevan Vs. M.D. Tamilnadu Housing Board.** In the said case, there was delay of 10 years in initiating D.E. for which the department was responsible and it was held that for the mistake committed by the department in the procedure for initiating departmental proceedings, the appellant should not be made to suffer. In this case it is material to note that the applicant was aged about 57 years at the time of filing

this O.A. and was due to retire within a year or so. The memorandum of charge sheet was served upon the applicant in D.E. on 19/1/2002 and the final order came from respondent no.1 on 2/3/2012. Thereafter the Appellate Authority took more than 3½ years to decide appeal since the appellate order has been delivered on 28/8/2005. It is also material to note that the charges on which the applicant was required to face D.E., pertains to the period of 18/7/1984 to 2/9/1988. It is not explained as to why the department took inordinate time to initiate D.E. on 19/1/2002 for the charges in between 1984-88. Not only that even after the memorandum was issued on 19/1/2002 the inquiry was completed and final order came in the enquiry on 2/3/2012,i.e., almost after 10 years even after initiating D.E. The respondents have not made allegations that the applicant was responsible for such delay nor it has denied or explained the cause for delay.

10. The another aspect of the case to be considered is that on the similar charges a criminal case was also filed against the applicant bearing regular criminal case no. 39/1992 and admittedly the applicant has been acquitted in the said case on 26/11/1998. In view of this, it is necessary to see as to whether the charges in the D.E. as well as those faced by the applicant in the criminal trial are similar or not ?

11. The charges framed in the D.E. against the applicant are at P.B. page nos. 23 to 27 (both inclusive) which are as under :-

^tkMi = &1

Jh-i-0; adGd.khZ ekth mi dks'kxkj vf/kdkjh] oMxko ekoG] ftYgk i wks; kpoj vl ysysnks'kjkj i =1/2

Jh-i-0; -dGd.khZ gs fnuad 18@7@1984 rs 2@9@1988 ; k dkyko/khr mi dks'kxkj vf/kdkjh] oMxko ekoG ; k inkoj dk; j r vl rkauk brj dk; kZy; kdMuu mi dks'kxkjkr I knj >ky; k ns dke/; s [kkMk [kkM o Qj Qkj d#u ns dkph jDde o inku ok<ou n'kfo.; kr ; ouu #-40]000@& brD; k jdepk vi gkj dY; kpsfun'kZukl vkysvks ; k I ozvi gkj idj.kke/; smi yC/k vfHky;[kso dk; i /nrh i kgrk I nj vi gkj Jh-dGd.khZ ; kauh dsk vkgs vl sfnl uu ; rs R; k vuMkxus 'kkl u 0; ogjkr I pk/h o drD; i jk; .krk u nk[ko.; kckcr R; kpoj [kkyhy vkjki Bo.; kr ; s vkgs-

vkjki dz1 & dk; Zdkjh vfHk; ark]i ouk tyfo?kr foHkx]i oukxj ; kauh Hkfo"; fuokZ fu/khps ns d #-6500@& fnuad 9@5@1986 jksth mi dks'kxkj] oMxko ekoG ; fksnk[ky dsysgkrsR; k i zek.kp ns d ikfjr gkouw frrdh jDde I adkhr dk; kZy; kr ns; kr vkyh gkth- i jaruurj I adkhr ns dke; s 6500@& , oth 16500@& vl k , d vkdMk Vkdnu cny dj.; kr vkyk- rl p ns dkojhy inkuP; k vkns kke/; s six thousand psixteen thousand dj.; kr vkysvks # -10]000@& brdh jDde ; kruu vi gkfjr dj.; kr vkyh vkgs # -10]000@& us ns d jDde ok<forkauk ns dke/; s 4500 #- ex.khps fBdk.kh 14]500@& vl k vkdMk dj.; kr vkyk vkgs ek= ; k ns dkl kcr #-4500@& o 2000@& brD; kp jdepk vxhe eatijh vknsk tkMyk vkgs vl sfnl uu ; rs rl p under rupees i "Bkdukp; k ckcrhr 6501@& brdhp jdepk mYy;[k vkgs vl sfnl uu ; rs gh ckc fopjkr ?krk mi dks'kxkj vf/kdkjh Jh- dGd.khZ ; kauh dk; kZy; i adkkl inku djrkuk 6500@& brdh jDde fnyh o urj R; ke/; s Qj Qkj d#u 16500@& v'kh ns dkph jDde d#u #- 10000@& pk vi gkj dsk vkgs v'kk Lo#i kph Qj Qkj gs dG mi dks'kxkj vf/kdkjh ; kaupt 'kD; gkrs R; kuq kj R; kauh dsysvks gs fopjkr ?krk Jh- dGd.khZ ; kauh egjk"V"ukxjh I ok 1/2orZkd1/2 fu; e 3 pk Hkx dsk vkgs drD; kr dl ij dsk vkgs

vkjki dz2 & i kpk; Zi kns'kd i ksyhl i f'k{k.k I d.Fkk] [kMkGk] i wks; kauh R; kpsdk; kZy; kusegkxkbZHKRrk Qj d kps ns d #- 3679-80@& fn- 9@5@1986 jksth mi dks'kxkjkr nk[ky dsysgkrs R; kps inku rl sdj.; kr vkys ek= urj mi dks'kxkjkr; k y; ke/; s 3679-80 @& ; k jdeP; k ekxs 1 vkdMk fyguu R; kps inku 13679-80@& vl sn'kfo.; kr vkys R; kruqgh #-10]000@& pk vi gkj dj.; kr vkyk- ; k I adkkr mi yC/k dlxni =si kgrk I adkhr dk; kZy; kus 3679-80@& brD; kp jdepsns d I knj dsysvks vl sfnl uu ; rs i jaru R; kps inku uknforkauk ek= #-10]000@& brdsok<ou dks'kxkj kpsy; ; kr n'kfo.; kr vkysvks Jh-dGd.khZ ; kpsdMuu v'kk Lo#i kr jder ok< d#u Qj d kpk vi gkj dj.; kr vkyk vkgs Jh-dGd.khZ ; kauh drD; gh egjk"V"ukxjh I ok 1/2orZkd1/2 fu; e 3 pk Hkx dj.kkjh vl uu R; kauh drD; kr dl ij dsk vkgs

vkjki dz3 & ikpk; Zi kns'kd i ksyhl i f'k{k.k l h.Fkk} [kkMkGk ; kauh fnukad 17@11@1986 jksth oMxko ekoG ; fks2312-60@& psns d l knj dsysgkrs R; k ns dkph mi dks'kkxkj kP; k ns d uknoghr [kkMk[kkM gkouw ukn gh 2312-60@& v'khp vkgs ek= ; k ns dkps inku #-12312-60 vl sn'kfoys vkgs ; ke/; s ns[khy #-10]000@& gh jDde ok<ouw vQjkrQj dj.; kr vkyh vkgs ; k l aalkr dtxni =s i kgrk ns d uknoghoj ns dkph ukn 2312-60@& v'kh vkgs ; ke/; smi jhys[kugh dj.; kr vkys vkgs mi dks'kkxkjkr uknoysys inku #-12312-60@& gsvl w inkukr 1 vkdMk ok<ouw #-10]000@& pk vi gkj dj.; kr vkyk vkgs vl s Li "V gkrs gk vi gkj Jh-dygd.khZ; kauh dsk vkgs vl sfnl w ; srs gs fopkjkr ?krk Jh-dygd.khZ; kauh oS fDrd Ok; n; kl kBh ns dkæ/; s [kkMk[kkM d#u ns dkph jDde ok<ouw #-10]000@& pk vi gkj dsk vkgs R; kR; k ; k dirhusR; kauh egkj k"V" ukxjh l ok %orZknd½ fu; e 3 pk Hkx dsk vkgs d rD; kr dl j dsk vkgs vl k nks'kkjki R; kpoj Bø.; kr ; s vkgs

vkjki dz4 & dk; Zdkjh vfHk; ark] i ouk tyfo?kr foHkx] i oukj ; kauh 30 vkDVKcj 1987 jksth #-7800@& ps Hkfo"; fuokg fu/khps ns d mi dks'kkxkjkr inku kFKZ l knj dsys ; k ns dkps inku #-7800@& ps l aalkhr dk; ky; kl dj.; kr vkysgkrs o urj 7800@& vkdM; ki ks, d vkdMk ok<ouw R; kps 17800@& dj.; kr vkys ns dkrhy inku vkns kkr seven thousand , oth seventeen thousand vl sdj.; kr vkysvkgs o 17]800@& psi nku nk[kouw #-10]000@& pk vi gkj dj.; kr vkyk vkgs ; k l mHkkr dtxni =s i kgrk egkys[kki kykdMuu i klr ns dkP; k >jkD l irhoj vMj #i h i "Bkdu gs7801@& vl p vkgs vl sfnl w ; srs R; keGseG ns d 7800@& vl rkauk R; ke/; s [kkMk[kkM d#u #-10]000@& ok<ouw R; kpk vi gkj Jh-dygd.khZ ; kpsdMuu dj.; kr vkyk vkgs gs Li "V gkrs Jh-dygd.khZ ; kauh ns dkoj [kkMk[kkM d#u #-10]000@& pk vi gkj d#u egkj k"V" ukxjh l ok %orZknd½ fu; e 3 pk Hkx dsk vkgs d rD; kr dl j dsk vkgs

vkjki dz 5 & fnukad 9@5@1986 jksth djUl h e/kuu jDde dk<rkauk [kkMk[kkM dj.; kr vkyh vkgs vl sfnl w ; srs djUl h jftLVje/; si Eke 100 P; k 320 ukv/k dk<Y; k vl rkauk [kkMk[kkM d#u R; k 520 ukv/k vkgs vl sn'kfo.; kr vkysvkgs R; kauh kj mi dks'kkxkjkrhy 0; ogkj ke/; s [kkMk[kkM dj.; kr vkyh vkgs rh [kkMk[kkM Ms capkr l wnk dj.; kr vkyh vkgs ; k l aalkr Vsyxte i kbforkauk eG jDde #-38]000@& dGfo.; kr vkyh vkgs r kje/; suarj [kkMk[kkM d#u #-52]000@& vl sn'kfo.; kr vkysvkgs Eg.ktp fj>oZcWsdMsdk<ysyh djUl h gh #-52]000@& dGfo.ksvko'; d gkrs rFki h fj>oZcWsdMuu oMxko ekoG P; k eJ 1986 P; k djUl h 0; ogkj kckr th ekfgrh i klr >kyh vkgs rh i kgrk fj>oZcWsdMsfnukad 9@5@1986 P; k rkj s æk.ksdGfo.; kr vkysyh jDde gh #-38]000@& vl w rh fnukad 13@5@1986 jksth fj>oZcWsdM sus foFkMNB y e/; snk[kfoysyh vkgs RkFki h fj>oZcWsdM e/; sT; koGh djUl h Lyhi fnukad 26@5@1986 jksth feGkyh R; koGh djUl h Lyhi ojhy jDde #-52]000@& vl Y; keGsfj>oZcWsdMsvki Y; k rkje/; svkdyY; k jdepk tek 0; ogkj d#u djUl h Lyhi i æk.ks#-52]000@& jDde foFkMNB y [kkrh uknfoyh vkgs ; ko#u Li "V gkrsdh] i R; {k rkj #-38]000@& ph i kbf.; kr vkyh vkgs i jarwR; koj fdjdlG [kkMk[kkM d#u rh #-52]000@& ph vkgs vl s jdkMZRkj uknoghoj dj.; kr vkyh vkgs Jh-dygd.khZ; kauh rkje/; sdsysyh ne#Lrh gh xdgxkj h Lo#i kph vl w djUl h e/kuu tknk th jDde dk<yh xsyh frpk rkj [ks kh eG c l kok ; kp mnns kkus

R; kauh [kkMk [kkM d#u cukoV jdkMZR; kj dj.; kpk iz Ru dsyk vkgs R; kph gh dirh gh R; kR; k i nkp; k drD; kl 'kkk.kkj h uOgrh- i R; {k rkjæ/; soxGh jDde oGouu djUl h Lyhi 'kh eG ?kskkjh n#Lrh rkjB; k uknoghr dj.; ke/; svi gkj dj.; kpk R; kpk gsmLi "V gksksvlf.k v'kk Lo#i kpk jdkMZR; kj d#u R; kauh egjkj"V^aukxjh I sok %orZkud½ fu; e 3 pk Hkax dsyk vkgs drD; kr dl ij dsyk vkgs

vkjki dz6 & mi dks'kkxkjkrthy ns dkps inku djrkauk I aalhr dk; kzy; kdMuu egjkj"V^a dks'kkxkj fu; e 46 e/khy i kf/kdkji =s?ksksvko'; d vkgs o R; kud kj rs?kouup dk; kzy; kP; k i frfu/khl ekx.khps inku dj.; kr ; srs ; k i koR; kR; k tru dkyko/kh gk fu; ekuul kj 10 o"kbbrdk Bo.; kr vkyk vkgs rFki h Jh-dy d.khZ; kauh 1985&86 o 86&87 P; k i kpi koR; k ; k ojhr" B dk; kzy; kph i jokuxh u ?krk u"V dY; k vkgs vl sfnl uu.; srs ; k I aalkr fnuakd 22@8@1988 P; k i =ki ek.kJh- dy d.khZ; kauh egjkj"V^a dks'kkxkj fu; e dz46 ckr I knj dsysvkgsh- dk; kRk; krhy f'ki kbZJh- njdj ; kauh fopkj.kk dsyh vl rk R; kauh rsu"V dsysvl Y; kpsl kixrys vlf.k ; kl kBh mi dks'kkxkj vf/kdkjh Jh- dy d.khZ; kauh epbZfoRrh; fu; ekoyhrthy vi sMDI 17 e/khy v-dz 196 vl k fu; e n'kfoyk vkgs oLnr%; k I aalkr egjkj"V^a dks'kkxkj fu; e dz46 P; k i koR; kR; k tru dkyko/kh gk 10 o"kkpk vkgs vlf.k dks'kkxkj @ mi dks'kkxkjkrthy , duk dxni =s I {ke i kf/kdk& ; kR; k eat'ijhf'kok; u"V djrk ; s ukgh o r l p mi dks'kkxkj vf/kdkjh] ; kauh tksfu; e n'kfoyk vkgs rks egjkj"V^a dks'kkxkj fu; e dz46 'kh I aal/kr ukgh] gs fopkjr ?krk egjkj"V^a dks'kkxkj fu; e 46 P; k i koR; k u"V djrkauk fof'k"V gsmusgh dk; Bkgh Jh- dy d.khZ ; kpsdMuu dj.; kr vkyh gsLi "V vkgs mi dks'kkxkj kpsdke dkt djrkauk dksR; k ckchpk tru dkyko/kh fdrh vkgs; kph ekfgrh ?kouup dke dj .ksvi s {kr vkgs vlf.k dkskrgh jdkMZgs I {ke i kf/kdk& ; kR; k eat'ijhf'kok; u"V dsystkr ukgh gh ckc fopkjr ?krk Jh-dy d.khZ; kauh egjkj"V^a dks'kkxkj fu; e 46 ckr u"Vhdj.kkpk fny'kk vgoky gk vR; ar I ak; kLin vl uu u"Vhdj.kkph tckcnkjh f'ki k; kDj Vkuu o pndhpk fu; e n'kbuu tckcnkjhruu eDr gks; kpk R; kauh iz Ru dsyk vkgs vl sLi "V fnl rs Jh- dy d.khZ; kph ; k I aalrkhy dirh gh vR; ar xdkhj Lo#i kph vl uu doG ij kok u"V dj.; kP; k n"Vhdkskruu R; kauh i koR; k u"V dY; k vkgs vl sLi "V gksrs Jh-dy d.khZ; kauh I aal/kr inkph drD; so tckcnk& ; k fopkjr u ?krk dkedkt dsysvkgsvl sfnl uu.; srs Jh-dy d.khZ; kauh u"Vhdj.kk I aal/kr fny'syk vgoky gk I ak; kLin vl uu R; kauh ; k izdj.kh egjkj"V^aukxjh I sok %orZkud½ fu; e 3 pk Hkax dsyk vkgs drD; kr dl ij dsyk vkgs**

12. Perusal of the said charges shows that it was alleged that the applicant has misappropriated the Government amount and for that purpose he has also fabricated the record or manipulated the record by scoring the entries etc.

13. In the criminal trial the charges faced by the applicant seems to be similar in nature and this can be seem from the points

framed by the learned C.J.M. in his Judgment. The same points are as under :-

“1) Does prosecution prove that from 9/4/1986 to 30/10/1987 the accused was entrusted with the cash of Rs.30,000/- in the capacity of Sub Treasury Officer at Vadgaon Maval and he committed criminal breach of trust of that amount by converting the same for his own use and thereby committed an offence under section 409 of I.P.C. ?

2) Does prosecution also prove that during the same date, time and place accused has forged the pay bill by mentioning figure 1 in front of earlier figure of withdrawal from G.P. Fund and thereby committed an offence punishable under section 467 of I.P.C.”

Admittedly both these points have been answered in negative by the learned C.J.M.

14. We have perused the charges framed in the D.E. as well as those framed by the Id. CJM in criminal trial. We are satisfied that in the criminal case the allegations against the applicant was that the applicant was entrusted with the cash of Rs.30,000/- in the capacity of Sub Treasury Officer and has committed breach of trust of the said amount and as such has committed offences under section 409 of the IPC. It was also alleged that the applicant has forged pay bill by mentioning figure “1” in front of earlier figure of withdrawal of GPF and

whereby committed an offence under Section 467 of the IPC. The period of alleged misappropriation and forgery was in between 2/4/1986 to 30/10/1987. It might be because misappropriation of one year is to be considered for criminal prosecution at a time. Almost similar charges are framed in the D.E. also.

15. The competent court, i.e., CJM, Pune came to the conclusion that the prosecution has failed to prove that the offence is committed as alleged. This fact should have been taken into consideration by the competent authority dealing with the D.E. against the applicant. However, the respondent authorities, including the Governor as Appellate Authority had not considered these aspects. The action on the part of department therefore seems to be arbitrary and the Disciplinary Authority as well as Appellate Authority have not applied mind while considering the fact that the applicant was acquitted by competent court in a trial on similar charges.

16. The learned P.O. has invited our attention to the Judgment delivered by the Hon'ble Apex Court in the case of **State of Karnataka & Ano. Vs. T. Venkataramanappa reported in 1996 SCC (L&S), 1462.** It is a case regarding difference of standard of proof in proceedings i.e. D.E. and criminal trial. It has also been held that acquittal in prosecution for bigamy, held not a bar to D.E. for

contracting the second marriage without permission of the Government. It is true that the department is at liberty to initiate D.E. simultaneously during the pendency of the criminal trial. However when the charges in the D.E. as well as those being faced by the delinquent in criminal trial are similar, the findings given by the competent criminal court are definitely binding on the department. Once the competent criminal court held that the applicant has not committed forgery or misappropriation of Government amount, the department cannot say that the applicant has committed such misappropriation or forgery. There is an inordinate delay in initiation of D.E. The memorandum has been issued on 19/1/2002 for the alleged misconduct which relates to the period between 18/7/1984 to 2/9/1988 and thereafter the inquiry was concluded vide order dated 2/3/2012 and finally vide order dated 28/8/2015. One can just imagine as to under what tremendous agony the applicant might be during such a prolonged period of almost 24 years. There is nothing on the record to show that the applicant was responsible for such delay and therefore the fact remains that the department itself was responsible for the delay for which the applicant cannot be punished. In our opinion these aspects have not been considered either by the Competent Authority, i.e., respondent no.1 or by the Appellate Authority, i.e., the Hon'ble Governor. Considering all these aspects

we are satisfied that the order of punishment passed by the respondent no.1 in D.E. on 2/3/2012 so also the order passed by the Appellate Authority on 28/8/2015 are illegal. Hence, we pass the following order :-

ORDER

The O.A. is allowed in terms of prayer clause no. 11 (I) & (V). The impugned order dated 2/3/2012 passed by the respondent no.1 and dated 28/8/2015 passed by the Appellate Authority stand quashed and set aside. It seems that since the applicant was aged about 57 years on the date of filing of the O.A. and we are in the year 2017, the applicant must have attained the age of superannuation during the pendency of this O.A. In such circumstances, the respondents cannot be directed to reinstate the applicant. It is however made clear that the applicant shall be treated to have retired on attaining the age of superannuation as if he was in service till the date of his retirement on superannuation. The respondents shall pay, pay and allowance and as may be admissible to the applicant from the date of compulsory retirement till the date of his superannuation to the applicant. It is needless to mention that the applicant will be entitled to pension and all retiral benefits as may be admissible as per rules and

same shall be paid to the applicant within six months from the date of this order. No order as to costs.

(J.D Kulkarni)
Vice-Chairman (J)

(Rajiv Agarwal)
Vice-Chairman (A).

dnk.