

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI BENCH**

**ORIGINAL APPLICATION NO.361 OF 2017**

Mr. Vijay Narayan Itkyl )  
Address : 133/22, Milan Society, )  
Kothrud, Pune - 411 038. ) **...Applicant**

**Versus**

1) The State of Maharashtra, )  
Through Secretary, )  
Tribal Development Department, )  
Mantralaya, Mumbai - 400 032. )  
2) The Minister, )  
Department of Rural Development & )  
Women and Child Development, )  
Govt. of Maharashtra, Mantralaya, )  
Mumbai - 400 032. ) **...Respondents**

**Mr. D.B. Khaire, learned Counsel for Applicant.**

**Ms. K.S. Gaikwad, learned Presenting Officer for Respondents**

**CORAM : Justice Mridula Bhatkar, Chairperson  
Shri Debashish Chakrabarty, Member (A)**

**RESERVED FOR ORDER ON : 11.10.2024**

**PRONOUNCED ON : 03.02.2025**

**PER : Shri Debashish Chakrabarty, Member (A)**

**J U D G M E N T**

1. The Applicant prays that Respondent No.1 & Respondent No.2 be directed to bring all records and proceedings relating to 'Order' dated 25.07.2011 passed by 'Disciplinary Authority' and 'Order' dated 13.10.2016 passed by 'Appellate Authority' to be examined for their legality and validity. The orders of 'Disciplinary Authority' and 'Appellate Authority' should be held and declared as bad-in-law and then should be

quashed and set aside. Further Applicant prays that Respondent No.1 & Respondent No.2 be directed to sanction and release withheld 'Retirement Benefits' within reasonable time to Applicant.

2. The learned Counsel for Applicant mentioned that Applicant had served as 'Under Secretary' and retired on 28.02.2009. The 'Joint Departmental Enquiry' was initiated by Tribal Development Department against 28 delinquent Government Servants including Applicant on 25.07.2011 for incidents which had occurred in the year 1999.

3. The learned Counsel for Applicant submitted that 'Order' dated 25.07.2011 of Tribal Development Department was passed after completion of 'Joint Departmental Enquiry' wherein 'Disciplinary Authority' has directed recovery of 1/3<sup>rd</sup> of Rs.92,00,000/- along with 24% Interest and permanently withheld 100% 'Pension' and 100% 'Gratuity'. Thereafter; 'Order' dated 13.10.2016 came to be passed by 'Appellate Authority' confirming these severe punishments awarded to Applicant.

4. The learned Counsel for Applicant submitted that although on 01.04.1999, the 'Cheque' of Rs.92,00,000/- was collected by Applicant after being issued on 31.03.1999; but on the very same day it was withheld from encashment by ATC, Thane. Thereafter, it was released by ATC, Thane in favour of 'SITI Tower Cooperative Housing Society' on 30.06.1999.

5. The learned Counsel for Applicant relied on the following 'Judgments' of Hon'ble Supreme Court of India :-

**(a) Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr. reported to (1999) 3 Supreme Court Cases 679.**

**(b) G.M. Tank Vs. State of Gujarat and Ors. reported in (2006) Supreme Court Cases 446.**

6. The learned PO for Respondent No.1 & Respondent No.2 submitted that there are no argument on point of procedural flaw by the learned Counsel for Applicant. She emphatically submitted that scope of 'Judicial Review' is limited in the administrative decision taken by 'Disciplinary Authority' and 'Appellate Authority'. She pointed out that 'Order' dated 25.07.2011 of Tribal Development Department was detailed and well-reasoned as well as passed with Application of Mind by 'Disciplinary Authority'. The Order dated 25.07.2011 of Tribal Development Department was subsequently challenged by Applicant before 'Appellate Authority'. The equally well-reasoned 'Order' dated 13.10.2016 dismissing 'Appeal' of Applicant was passed by 'Hon'ble Minister' of 'Women and Child Welfare & Rural Development'.

7. The learned PO has further submitted that 'Joint Departmental Enquiry' was initiated against 28 delinquent 'Government Servants' by 'Tribal Development Department'. Thereafter, 25 of these delinquent 'Government Servants' were acquitted but severe punishment was imposed on 3 Officers which included (i) Mr. V.D. Naik and (ii) Mr. V.D. Walvi and (iii) Mr. V.N. Itkyl; the present Applicant. As (i) Mr. V.D. Naik and (ii) Mr. V.D. Walvi were in service at the time of completion of 'Joint Departmental Enquiry'; so they were 'Dismissed from Service'. The charges framed against all of them were about serious misconduct as they had actively participated in cheating Tribal Development Department.

8. The learned PO pointed out 'Enquiry Report' submitted by Mr. A.V. Raikar, the 'Enquiry Officer' on 13.05.2009 shows that he has considered all documents with respect of 2 'Articles of Charges' against Applicant. These 2 'Articles of Charges' were of incidents leading to breach of 'Rule 3' of the 'Maharashtra Civil Services (Conduct) Rules, 1979'.

9. The learned PO elaborated the details of several documents which are enclosed with 'Additional Affidavit-in-Reply' dated 10.08.2023 filed by Mr. Ravindra Pandurang Gote working as 'Under Secretary' in Tribal Development Department. The documents include 'Acknowledgement' dated 01.04.1999 given by Applicant while accepting 'Cheque' of Rs.92,00,000/- issued in favour of 'SITI Tower Cooperative Housing Society'.

10. The learned PO raised pertinent question as to how Applicant could have accepted the 'Cheque' of Rs.92,00,000/- on 01.04.1999, if he was neither 'Member' nor 'Office Bearer' of 'SITI Tower Cooperative Housing Society'. Further, learned PO submitted that 'Wife' of Applicant was one of the 3 'Office Bearers' of 'SITI Tower Cooperative Housing Society'. She also pointed out that 'SITI Tower Cooperative Housing Society' was not registered; whereas 'CITI Cooperative Housing Society' was registered under 'Maharashtra Cooperative Societies Act 1960'. Thus, by misusing certain documents of registered 'CITI Cooperative Housing Society', the unregistered 'SITI Tower Cooperative Housing Society' managed to submit proposal to sanction Rs.1,44,00,000/- in its favour and out of this Rs.92,00,000/- was released on 31.03.1999. The Applicant had personally collected 'Cheque' of Rs.92,00,000/- on 01.04.1999 issued in favour of unregistered 'SITI Tower Co-op Housing Society'.

11. The learned PO further pointed out recorded statements of 'Witnesses' recorded by Enquiry Officer. She specifically pointed out the evidence recorded by Mr. Vikas Deshmukh, Joint Director, Tribal Development Department which reads as follows :-

### Question No.27

- २७) सदर संस्थेबाबत आपल्या कार्यालयाने काय चौकशी केली ?
- अ) उप आयुक्त यांनी कागदपत्रांची छाननी करून त्यानुषंगाने तपासणी करणे.

ब) वित्त विषयक बाबीची तपासणी सहाय्यक आयुक्त (लेखा) यांनी करावी. माझ्या तपासणीमध्ये असे आढळून आले की Citi या गृहनिर्माण संस्थेचा प्रस्ताव आला होता, अशा नावाची संस्था रजिस्टर झाली नव्हती त्याऐवजी Citi या नावाची १३० सिडको माली कर्मचा-यांची सोसायटी रजिस्टर झाल्याचे आमच्या निदर्शनास आले.

### Question No.32

३२) रुपये ९२ लाखाच्या अनुदानाबद्दल आपल्या कार्यालयाने जी चौकशी केली त्यामध्ये काय निष्पन्न झाले?

अभिप्राय -- स्टेट बँक ऑफ इंडीया येथून श्री कोइली हे संस्थेच्यावतीने एस. बी. आय ठाणे यांच्याकडून एच.डी.एफ.सी. नरीमन पॉइंट शाखेच्या नावे काढलेला डिमांड ड्राफ्ट रुपये ९१,८३,०००/- घेऊन गेले. नंतर ते एच.डी.एफ.सी. लॉ कॉलेज पुणे येथे सिटी टॉवर गृहनिर्माण संस्थेच्या अंकाऊंटमध्ये जमा केले. संस्थेने श्री. व्ही.डी. वळवी, श्री व्ही.डी. नाईक आणि श्रीमती ललिता इटक्याला यांना प्राधिकृत केले होते. तीन पैकी दोन व्यक्तींच्या सहयांची आवश्यकता होती तेथून श्री. व्ही.डी. वळवी आणि श्री.व्ही.डी. नाईक ...

### Question No.34

३४) सदर उपयोगिता प्रमाणपत्रावर रुपये ९२ लाखाचा निधी कसा खर्च केल्याचे दर्शविले ?

अभिप्राय -- सिटी टॉवर यांना अदा केल्याचे दिसून येते.

### Question No.37

३७) आपल्या कार्यालयाने जी चौकशी केली त्यामध्ये कोणते निष्कर्ष निघाले ?

अभिप्राय -- गृहनिर्माण संस्थांना अर्थसहाय्य ही योजना आहे यामुळे शासनाची व कार्यालयाची फसवणूक करून नोंदणीकृत नसलेल्या Citi या गृहनिर्माण संस्थेने रुपये ९२ लाखाचे अनुदान मिळविले.

12. The learned PO further pointed out the contents of 'Order' dated 07.03.2016 was passed by 'Court of Sessions Judge; Thane' in 'Criminal Appeal No.337/2013' for offences punishable under Sections 177, 197, 198, 201, 403, 406, 417, 420, 467, 468 and 471 and 120(B) of 'IPC 1860' and under 'Section 147' of 'Maharashtra Cooperative Housing Societies Act 1960'. Further she also referred to copy of 'CID' Report dated 16.08.2002 (Exhibit A-7) submitted by Mr. S.K. Padwi, Deputy Superintendent of Police, CID, Kokan Bhavan, Navi Mumbai.

13. The role played by leadership within Tribal Development Department which sanctioned Rs.1,44,00,000/- out of which 92,00,000/- payment was made on 31.03.1999 to 'SITI Tower Cooperative Housing Society' was crucial to understand while examining the individual role played by Applicant. The final approval was given on 31.03.1999 by then Hon'ble Tribal Department Minister Mr. Vishnu Savra and those in post of Principal Secretary, Tribal Development Department were Mr. Ramanand Tiwari and Mr. P.M.A. Hakim.

14. The delinquency of Applicant was not only by way of cheating which is a criminal offense under 'IPC 1860' but which involved intentional deception, wrongful gain, and wrongful loss. The role of Applicant points to stark case of violation of 'Rule 3' of 'Maharashtra Civil Services (Conduct) Rules, 1979'.

15. The Applicant was serving on relatively junior post of 'Under Secretary' in 'Finance Department' when he got directly involved with those promoting bogus 'SITI Tower Cooperative Housing Society' for employees belonging to category of 'Scheduled Tribes'.

16. The Applicant from very beginning was well aware of the fact that land against which 'Government Subsidy' was sought to be obtained for bogus 'SITI Tower Cooperative Society' had already been allotted to registered 'CITI Cooperative Housing Society' by 'CIDCO' in 1994 but it could not be developed by Original Allottees who were members of 'Mali Community'. The Applicant therefore knew that land allotted to 'CITI Cooperative Housing Society' could be usurped by independently striking deal with Original Allottees with connivance of 'Private Developer' by forming bogus 'SITI Tower Cooperative Housing Society' of employees belonging to 'Scheduled Tribes'.

17. The Applicant was undoubtedly working rather covertly making systematic plans to obtain 'Government Subsidy' linked to land already allotted by 'CIDCO' to registered 'CITI Cooperative Housing Society'. The lament is that dubious role played by Applicant who was then serving as 'Under Secretary' in 'Finance Department' was brought to notice of Tribal Development Department rather late much after Tribal Development Department had fallen victim to dubious game plan hatched by Applicant. The Tribal Development Department without an iota of doubt about the intentions of Applicant had approved grant of 'Government Subsidy' of 1,44,00,000/- for bogus 'SITI Tower Cooperative

Housing Society' and then with at unusual speed ensured that 'Cheque' of amount of Rs.92,00,000/- was issued to bogus 'SITI Tower Cooperative Housing Society' by running against the clock on midnight of 31.03.1999. The 'Cheque' of Rs.92,00,000/- reached the hands of Applicant on 01.04.1999. Noteworthy; is the fact that it was only by providence that 'Cheque' of Rs.92,00,000/- which had been handed over to Applicant on 01.04.1999 with impunity was not permitted to be encashed by then 'ATC, Thane' on 03.04.1999 who informed 'SBI' not to do so based on instructions, but after discrepancies observed by Tribal Development Department were rectified by bogus 'SITI Tower Cooperative Housing Society' it could be released later, as was done by then ACT, Thane who informed 'SBI' on 29.06.1999. So, what is exceedingly intriguing is that Tribal Development Department after having once stopped payment of 'Cheque' of 92,00,000/- to bogus 'SITI Tower Cooperative Housing Society' which had been handed over hurriedly to Applicant on 01.04.1999 in bizarre 'U Turn' agreed soon after to do so on 29.06.1999 when then 'ATC, Thane' wrote to 'SBI' to permit encashment of 'Cheque' of Rs.92,00,000/-. The Tribal Development Department could not have turned 'Nelsons Eyes' to those proceedings which had pointed towards acts of conspiracy and blatant fraud by Applicant and others to promote bogus 'SITI Tower Cooperative Housing Society' for employees belonging to category of 'Schedule Tribes'. The probable reason for this largesse shown by Tribal Development Department especially to Applicant who had initially received 'Cheque' of Rs.92,00,000/- on 01.04.1999 suggests '*quid-pro-quo*' engineered by Applicant by agreeing to withdraw names of his 'Wife' & 'Relative' and non-Schedule Tribe members of bogus 'SITI Tower Cooperative Housing Society'. The Applicant had evidently had played role of main conspirator in defrauding the 'Government Exchequer' of Rs.92,00,000/- in cohorts with unknown others who may have even escaped being subject to 'Departmental Enquiry' which was held belatedly by Tribal Development Department only on 16.10.2004.

18. The Applicant by forthrightly mentioning sequence of time and dates along with linked events in 'Synopsis' of this OA No.361/2017 has more than admitted that there were well-wishers who extended help to Applicant from behind the shaded curtains of Tribal Development Department to defraud 'Government Exchequer' for Rs.92,00,000/-. Equally puzzling is the fact that no initiative was ever taken by Tribal Development Department to cross-check any facts from land owing authority which was 'CIDCO'; as to whether allotment of land made to registered 'CITI Cooperative Housing Society' was required to be first revoked and then land could have been allotted to proposed unregistered 'SITI Tower Co-operative Housing Society'. No mention was made about applicable rules and regulations for allotment of lands by 'CIDCO'. The mystery remains as to why officers of 'CIDCO' who had dealt with allotment of land to registered 'CITI Cooperative Housing Society' were not included in 'List of Witnesses' under 'Annexure-III' and copy of 'Order' by which Land Allotment had been made by 'CIDCO' to 'CITI Cooperative Housing Society' was also not included in 'List of Documents' under 'Annexure-IV' of 'Memorandum' dated 16.10.2004 of Tribal Development Department for conduct of 'Joint Departmental Enquiry' against 28 delinquent 'Government Servants' including Applicant.

19. The Applicant was thus not subject to one such Departmental Enquiries in which Government Servants are served 'Charge Sheet' for default in performance of their assigned duties and responsibilities Or in other words 'Departmental Enquiry' ordered against Applicant was not from amongst 'Run Of The Mill'; although it came to be held jointly by Tribal Development Department for 28 delinquent 'Government Servants' under the provisions of 'Rule 12' of 'MCS (D & A) Rules 1979'.

20. The Tribal Development Department had subsequently filed Criminal Cases against Applicant and several others which were decided

as 'RCC No.230/2008' on 28.05.2013 by 'CJM, Thane' and 'Criminal Appeal' decided on 07.03.2016, but have resulted in acquittal of all accused including Applicant associated with promoting of bogus 'SITI Tower Co-operative Housing Society'. However, Departmental Enquiry though instituted belatedly by Tribal Development Department on 16.10.2004 was conducted diligently by 'Enquiry Officer' who arrived at clear conclusions about dubious role played by Applicant by recording statements of witnesses and examining relevant documents. The 'Order' dated 25.07.2011 of 'Disciplinary Authority' is well reasoned although it came to be passed after retirement of Applicant on 28.02.2009.

21. The 'Enquiry Officer' had submitted 'Enquiry Report' on 13.05.2009 to Tribal Development department. The Enquiry Officer had unequivocally come to conclusions about nature of culpability of Applicant in promoting bogus 'SITI Tower Cooperative Housing Society' to defraud 'Government Exchequer' of Rs.92,00,000/-. The findings of 'Enquiry Officer' were as follows:-

“या प्रकरणामध्ये सादरकर्ता अधिकारी यांनी मांडलेली शिस्तभंगविषयक प्राधिकार्यांची बाजू, अपचारी यांनी केलेला आपला बचाव, या प्रकरणामध्ये समाविष्ट करण्यांत आलेले दस्तावेज, तसेच चार सरकारी साक्षीदारांची अभिसाक्ष या सर्वांचा सखोल, साकल्याने, तसेच एकत्रित विचार केला असता, मी या निष्कर्षाप्रत आलेलो आहे की, अपचारी श्री. व्ही. एन. इटक्याल यांना तत्कालीन शासनाच्या दि. 9/8/९८ च्या शासन निर्णयातील तरतुदीनुसार रितसर नोंदणीकृत झालेल्या मागासवर्गीय गृहनिर्माण संस्थांचे फक्त या योजनेखाली अर्थसहाय्य मिळण्यास पात्र ठरतात याची पूर्ण कल्पना होती. तथापि, केवळ अनुदान मिळविण्याच्या हव्यासापोटी सिटी टॉवर्स (SITI Towers) ही गृहनिर्माण संस्था नोंदणीकृत नसतांना देखील सिटी टॉवर्स (CITI Towers) या नोंदणीकृत संस्थेच्या कागदपत्रांच्या आधारे सिटी टॉवर्स (SITI Towers) ही संस्था नोंदणीकृत असल्याचे खोटी कागदपत्रे सादर करून शासनाची फसवणूक करून रुपये ९२.०० लाख इतके अनुदान मिळविले व या अनुदानाचा अपहार करून गैरवापर केला.

श्री. व्ही.एन. इटक्याल यांनी कथित सिटी टॉवर्स या सहकारी गृहनिर्माण संस्थेचे तथाकथित अध्यक्ष व सचिव यांना हाताशी धरून महाराष्ट्र सहकारी संस्था अधिनियम-१९६० मधील तरतुदीनुसार संस्थेच्या प्रस्तावित उपविधीनुसार कोणत्याही प्रकारचे दस्तऐवज तयार केलेले नाही. केवळ गैरमागांचा अवलंब करून दुस-या नोंदणीकृत संस्थेच्या नावाचा दुरुपयोग करून शासनाकडून अनुदान मिळविणे हाच कुहेतु अपचारी श्री इटक्याल यांचा होता.

सिटी टॉवर्स (SITI Towers) सहकारी गृहनिर्माण संस्था यांचे नावे असलेल्या एच.डी.एफ.सी. बँक, लॉ कॉलेज रोड, पुणे शाखेतील बँक खाते क्र.००७१०००८१२६९ मध्ये अनुदान जमा करण्यात येऊन सदरचे बँक खाते हाताळण्यासाठी श्रीमती ललीता इटक्याल, श्री. व्ही.डी. वळवी व श्री.व्ही.डी. नार्डक यांना प्राधिकृत करण्यांत आले होते. त्यापैकी दोघांच्या सहीने बँक खात्याची उलाढाल करण्यास मुभा दिलेली होती. तसेच नियमानुसार पोच पावत्या न करता लाखो रुपयांच्या रक्कमांचे प्रदान नियमबाह्यरित्या केल्याचे आढळून आले आहे.

वरील गृहनिर्माण संस्था सहकारी संस्था अधिनियमाखाली रितसर नोंदलेली नाही व शासनाकडून अर्थसहाय्य मिळण्यास ती पात्र नाही, याची पूर्ण जाणीव असताना देखील संस्थेचे सभासद असलेल्या इतर अनुसूचित जमातीच्या सभासदाबरोबर स्वतःचा स्वार्थ साधण्यासाठी श्री. इटक्याल यांनी या बोगस गृहनिर्माण संस्थेमध्ये आपली पत्नी व एक अन्य जवळची नातेवाईक यांना सभासद केले.

कथित सहकारी गृहनिर्माण संस्थेचे पदाधिकारी वित्त विभागात श्री. इटक्याल यांच्या कार्यालयात व त्यांच्या हाताखाली काम करीत होते. त्यामुळे संस्था नोंदणीकृत नसल्याने शासनाची फसवणूक करून अनुदान मिळविण्याच्या

कृत्यापासून संस्थेच्या पदाधिकार्यांना परावृत्त करण्याची शासन स्तरावरील एक जाणकार व जबाबदार अधिकारी या नात्याने त्यांचे कर्तव्य होते. तथापी, तसे न करता त्यांनी बोगस संस्थेच्या नांवे शासनाची फसवणूक करून अर्थसहाय्य मिळविण्यासाठी संस्थेच्या पदाधिकार्यांना सर्व प्रकारचे सहकार्य केले.

वरील सर्व बाबींचा सखोल तसेच एकत्रितपणे विचार केला असता मी या निष्कर्षाप्रत आलेलो आहे की, अपचारी श्री. व्ही.एन. इटक्याल, तत्कालीन अवर सचिव, वित्त विभाग यांच्यावर ठेवण्यात आलेले एकूण दोन दोषारोप हे त्यांच्यावर पूर्णतः सिध्द होतात.

वरीलप्रमाणे चौकशी अहवाल आदिवासी विकास विभाग, मंत्रालय, महाराष्ट्र शासन यास सादर करण्यांत येत आहे.”

22. The deep rooted conspiracy planned by Applicant and co-delinquent (i) Mr. V.D. Naik and (ii) Mr. V.D. Walvi to defraud ‘Government Exchequer’ of Rs.1,44,00,000/- came out of the well-guarded ‘Chest of Secrets’ after it was exposed by ‘Controller and Auditor General Civil Report for the Year ended on 31<sup>st</sup> March, 2000’ for Tribal Development Department. The sharp observations recorded in ‘Audit Para No.6.15’ which literally blew the whistle on the acts of commission and omission of Tribal Development Department especially the then Hon’ble Tribal Department Minister. The Tribal Development Department thereafter left with no option had to initiate ‘Joint Departmental Enquiry’ against 28 delinquent ‘Government Servants’ including Applicant who had personally acted in events linked to withdrawal of Rs.92,00,000/- lakhs by ‘Cheque’ issued on the name of bogus non-registered ‘SITI Tower Cooperative Housing Society’. Hence, for better insight about the brazenness with which the sinister design to defraud ‘Government Exchequer’ of Rs.92,00,000/- was put into action at level of then Minister Incharge of Tribal Development Department and to understand background to why the Applicant and Others had acted with so much impunity, it is necessary to reproduce ‘Audit Para No.6.15, it finds mention in ‘Enquiry Report’ of Disciplinary Authority :-

**“Audit Para No.6.15 :** Financial assistance is extended to backward class housing societies for construction of houses under the Backward Class Co-operative Housing Scheme. This scheme is implemented by Social Welfare Department and Tribal Development Department.

A co-operative society with 41 members, in Nerul, Navi Mumbai comprising mainly State Government employees of Finance Department, Mantralaya applied in March 1999 for financial assistance for purchase of 16,000 sq.ft. of land. The financial assistance was not recommended

by the Additional Commissioner, Tribal Development, Thane on the grounds that :

- (i) The society was not registered as a backward class housing society.
- (ii) The plot area in excess of the prescribed ceiling of 4200 to 4300 sq.ft.
- (iii) 13 of its members did not give the income certificates. The members who furnished the income certificates also might not be eligible as they were Government employees and their salary after implementation of the V<sup>th</sup> Pay Commission might cross Rs.95,000 (the ceiling limit prescribed under the scheme) per annum.
- (iv) Caste certificates for 9 members were not furnished along with the applications.
- (v) The valuation of land proposed to be purchased had not been done by the Town Planning Department.

The Government received the Additional Commissioner's observations on 30th March 1999, but instead of insisting upon their compliance by the Society, the Government sanctioned the entire cost of land of Rs.1.44 crore as assistance to the society on the very next day. The Government asked the Additional Commissioner to draw an amount of Rs.92 lakhs as the first installment from the saving under Tribal Sub Plan since regular Budget grant was not available for the scheme. The Additional Commissioner drew a cheque for this amount on 31st March, 1999 but informed the Government that he would hand over the cheque only after compliance with all the provisions of the schemes by the society.

Based on the orders of the Minister, Tribal Development for the release of the cheque for Rs.92 lakh, after obtaining an undertaking from the Society that it would expel four of its non-tribal members, the cheque was released to the Society in June 1999.

During audit of the Additional Commissioner, Tribal Development, Thane in February, 2000 it was noticed that the registration certificate produced by the proposed Society (SITI Tower Co-operative Society Limited) contained suspicious over-writings. On further examination in the Office of the Joint Registrar of Co-operative Societies it emerged that the Society which had applied for financial assistance was only a proposed society and they used the registration certificate of another society with a similar name (CITI Tower Co-operative Housing Society Limited) and altered the date of registration in the copy of the registration certificate submitted along with the application.

When the production of fraudulent registration certificate was pointed out in audit, the Additional Commissioner ordered (April 2000) an inquiry and a police complaint was filed against the Society for forgery and misappropriation of Government funds. The second installment of funds was not released to the Society. The Principal Secretary, Tribal Development Department cancelled its sanctioned of Rs.1.44 crore to the Society in May 2000 and instructed the Additional Commissioner to recover the first installment released along with the interest at market rates. Accordingly, notices for recovery were issued to all members of the society in June 2000. Further progress in this regard was awaited.”

23. The ‘Public Accounts Committee’ of ‘Maharashtra Legislature’ in its ‘7<sup>th</sup> Report’ for 2007-08 had made stringent observations about undue delay in conduct of ‘Departmental Enquiry’ by Tribal Development Department and recovery of loss caused to ‘Government Exchequer’. The recommendations made in Para 5.17 are as follows :-

“५.१७ मागासवर्गीयांच्या सहकारी गृहनिर्माण संस्थांना अनुदान देण्याच्या धोरणाचा शासकीय अधिकारी/कर्मचार्यांनी केलेला गैरवापर व सदर गैरव्यवहार उघडकीस आल्यानंतरही शासनाच्या रकमेची वसुली करण्याबाबत वरीष्ठ अधिकार्यांमध्ये स्वारस्य नसल्याचे समितीला आढळले. तसेच गैरव्यवहार केलेल्या अधिकारी कर्मचार्यांवर विभागीय चौकशी सुरु करण्याबाबत विभागाने केलेल्या दिरंगाईबाबत समिती तीव्र नाराजी व्यक्त करते व विभागीय चौकशी लवकरात लवकर पूर्ण करावी तसेच शासनाचे पैसे वसूल करून केलेल्या कार्यवाहीबाबत समितीला तीन महिन्यांत अवगत करावे अशी समितीची शिफारस आहे.”

24. The ‘Order’ dated 25.07.2011 was passed against Applicant upon completion of ‘Joint Departmental Enquiry’ has directed recovery of 1/3<sup>rd</sup> of Rs.92,00,000/- along with 24% Interest and permanent withholding of 100% ‘Pension and 100% ‘Gratuity. Thereafter, ‘Order’ dated 13.10.2016 was thereafter passed by ‘Appellate Authority’ confirming these severe punishments awarded to Applicant.

24-A. The Order dated 25.07.2011 passed against Applicant reads as follows :-

“आदेश:-

१) श्री व्ही. एन. इटक्याल, सेवानिवृत्त अवर सचिव, कृषी व पदुम विभाग हे तथाकथित बनावट संस्थेचे पदाधिकारी म्हणून वरीलप्रमाणे विभागीय चौकशीत दोषी ठरलेले आहेत. त्यामुळे त्यांचे संपूर्ण (१००%) सेवानिवृत्तीवेतन व संपूर्ण सेवा उपदान रोखण्यात यावे.

२) शासनास झालेल्या नुकसानाच्या एकूण रु.९२.०० लक्ष एवढ्या रकमेच्या एक तृतीयांश इतकी रक्कम श्री. व्ही. एन. इटक्याल यांच्याकडून दिनांक १ एप्रिल, १९९९ पासून ते हे आदेश निर्गमित झाल्याच्या दिनांकापर्यंतच्या कालावधीपर्यंत २४% या दंडनीय व्याजदरासहीत एकरकमी वसूल करण्यात यावी.

वरीलप्रमाणे झालेल्या नुकसानीची वसूली करण्यासाठी जिल्हाधिकारी, ठाणे यांना प्राधिकृत करण्यात येत असून त्यांनी सदरहू नुकसानीची रक्कम संबंधितांकडून जमीन महसूल संहितेतील वसूलीच्या कारवाईनुसार वसूल करून लेखाशीर्ष क्र. ०२५० - इतर सामाजिक सेवा - १०२ - अनुसूचित जाती, अनुसूचित जमाती व इतर मागासवर्ग यांचे कल्याण (०२५० ००२८) मध्ये जमा करावी व याबाबतचा अनुपालन अहवाल आदिवासी विकास विभागास सादर करावा.

४. हे आदेश तात्काळ अंमलात येतील.”

24-B. The Order dated 25.07.2011 passed against Mr. V.D. Walvi, co-delinquent reads as follows :-

“आदेश:-

१) श्री व. दि. वळवी, सहायक, विधी व न्याय विभाग हे तथाकथित बनावट संस्थेचे पदाधिकारी म्हणून वरीलप्रमाणे विभागीय चौकशीत दोषी ठरलेले आहेत. त्यामुळे त्यांना शासन सेवेतून बडतर्फ करण्यात येत आहे.

२) शासनास झालेल्या नुकसानीच्या एकूण रु.९२.०० लक्ष एवढ्या रकमेच्या एक तृतीयांश इतकी रक्कम श्री व. दि. वळवी यांच्याकडून दिनांक १ एप्रिल, १९९९ पासून ते हे आदेश निर्गमित झाल्याच्या दिनांकापर्यंतच्या कालावधीपर्यंत २४ : या दंडनीय व्याजदरासहीत एकरकमी वसूल करण्यात यावी.

वरीलप्रमाणे झालेल्या नुकसानीची वसूली करण्यासाठी जिल्हाधिकारी, ठाणे यांना प्राधि—त करण्यात येत असून त्यांनी सदरहू नुकसानीची रक्कम संबंधितांकडून जमीन महसूल संहितेतील वसूलीच्या कारवाईनुसार वसूल करून लेखाशीर्ष क्र. ०२५० - इतर सामाजिक सेवा - १०२ - अनुसूचित जाती, अनुसूचित जमाती व इतर मागासवर्ग यांचे कल्याण (०२५० ००२८) मध्ये जमा करावी व याबाबत अनुपालन अहवाल आदिवासी विकास विभागास सादर करावा.

४. हे आदेश तात्काळ अंमलात येतील.”

24-C. The Order dated 25.07.2011 passed against Mr. V.D. Naik, co-delinquent reads as follows :-

“आदेश:-

१) श्री वि. दा. नाईक, कक्ष अधिकारी (निलंबनाधीन), सहकार व वस्त्रोद्योग विभाग हे तथाकथित बनावट संस्थेचे पदाधिकारी म्हणून वरीलप्रमाणे विभागीय चौकशीत दोषी ठरलेले आहेत. त्यामुळे त्यांना शासन सेवेतून बडतर्फ करण्यात येत आहे.

२) शासनास झालेल्या नुकसानीच्या एकूण रु.९२.०० लक्ष एवढ्या रकमेच्या एक तृतीयांश इतकी रक्कम श्री वि. दा. नाईक यांच्याकडून दिनांक १ एप्रिल, १९९९ पासून ते हे आदेश निर्गमित झाल्याच्या दिनांकापर्यंतच्या ‘कालावधीपर्यंत २४% या दंडनीय व्याजदरासहीत एकरकमी वसूल करण्यात यावी.

वरीलप्रमाणे झालेल्या नुकसानीची वसूली करण्यासाठी जिल्हाधिकारी, ठाणे यांना प्राधिकृत करण्यात येत असून त्यांनी सदरहू नुकसानीची रक्कम संबंधितांकडून जमीन महसूल संहितेतील वसूलीच्या कारवाईनुसार वसूल करून लेखाशीर्ष क्र. ०२५० - इतर सामाजिक सेवा - १०२ - अनुसूचित जाती, अनुसूचित जमाती व इतर मागासवर्ग यांचे कल्याण (०२५० ००२८) मध्ये जमा करावी व याबाबतचा अनुपालन अहवाल आदिवासी विकास विभागास सादर करावा.

४. हे आदेश तात्काळ अंमलात येतील.”

The tri ‘Orders’ dated 25.07.2011 passed against (i) Mr. V.D. Walvi, (ii) Mr. V.D. Naik and (iii) Mr. V.N. Itkyal, all co-delinquents found guilty in ‘Joint Departmental Enquiry’ have the common thread of recovery of 1/3<sup>rd</sup> of Rs.92,00,000/- with 24% Interest which is in conformity of directions to Tribal Development Department to implement

recommendations made by the 'Public Accounts Committee of Maharashtra Legislature' in its '7<sup>th</sup> Report' for 2007-08. The fates of (i) Mr. V.D. Walvi, (ii) Mr. V.D. Naik and (iii) Mr. V.N. Itkyl; the Applicant stands cemented by the fact that recommendations of 'CAG' relating to recovery of losses caused to 'Government Exchequer' if directed to be recovered by 'Police Accounts Committee' of either 'Parliament' or 'State Legislative', then becomes binding on respective 'Ministries' and 'Departments'.

25. The ***Hon'ble Supreme Court of India in Arun Kumar Agrawal Vs. Union of India & Ors. decided on 9<sup>th</sup> May, 2013*** which dealt with important issue of recovery of losses due to excess payment of 100% 'Royalty' and 'Cess' by 'ONGC' had made following pertinent observations regarding role of 'CAG' in matters relating to direct oversight on nature of 'Government Expenditures' as well as 'recovery of Government Dues'. The contents of Paras 45, 46, 53, 54, 55 and 56 are reproduced below :-

*“45. The petitioner has also sought a direction to CAG/Government of India to calculate the alleged losses from payment of 100% royalty and cess by ONGC before the Cairn-Vedanta deal and for a direction to ONGC/Government to recover the excess royalty paid by ONGC from Cairn India.*

*46. CAG may be right in pointing out that public monies are to be applied for the purposes prescribed by Parliament and that extravagance and waste are minimized and that sound financial practices are encouraged in estimating and contracting, and in administration generally.*

*53. Action Taken Reports (ATRs) are then required to be made out by the ministries. Speaker has the power to issue directions under the rule and procedure. Direction 102 requires the Government to, as early as possible, furnish the PAC with a statement showing the action taken on the recommendations of the PAC report. The Parliament has before it not only the report of the CAG, the report of the PAC in the first instance drawn up after hearing the view of the ministries, the Action Taken Report including the replies of the Government and the further comments of the PAC on the replies of the Government.*

*54. We have referred to the report of the CAG, the role of the PAC and the procedure followed in the House, only to indicate that the CAG report is always subject to scrutiny by the Parliament and the Government can always offer its views on the report of the CAG.*

**55.** *The question that is germane for consideration in this case is whether this Court can grant reliefs merely placing reliance on the CAG's report. The CAG's report is always subject to parliamentary debates and it is possible that PAC can accept the ministry's objection to the CAG report or reject the report of the CAG. The CAG, indisputably is an independent constitutional functionary, however, it is for the Parliament to decide whether after receiving the report i.e. PAC to make its comments on the CAG's report.*

**56.** *We may, however, point out that since the report is from a constitutional functionary, it commands respect and cannot be brushed aside as such, but it is equally important to examine the comments what respective ministries have to offer on the CAG's report. The ministry can always point out, if there is any mistake in the CAG's report or the CAG has inappropriately appreciated the various issues. For instance, we cannot as such accept the CAG report in the instance case."*

26. The **Hon'ble Supreme Court of India in Pathan Mohammed Suleman Rehmatkhan Vs. State of Gujarat & Ors. decided on 22<sup>nd</sup> November, 2013** has reiterated the earlier view about importance of reports submitted by 'CAG' in taking corrective action relating to Government expenditures and recovery of Government dues by observing follows :-

*"Reference in this regard may also be made to the judgment of this Court in Centre for Public Interest Litigation & Ors. v. Union of India & Ors. AIR 2012 SC 3725, wherein it was held that when the CAG report is subject to scrutiny by the Public Accounts Committee and the Joint Parliamentary Committee, it would not be proper to refer the findings and conclusions contained therein. The Court even went on to say that it is not necessary to advert to the reasoning and suggestions made, as well."*

27. The learned PO in support of her submissions relied on the **Judgment of Union of India & Ors. Vs. Dalbir Singh reported in AIR 2021 SC 4504** wherein it is held as follows :-

*"The act of cheating is a criminal offense in the Indian Penal Code (IPC) involves intentional deception, wrongful gain, and wrongful loss.*

28. The learned PO had emphatically stated that the case of Applicant is classic case of complete violation of 'Rule 3' of 'Maharashtra Civil Services (Conduct) Rules, 1979' reads as below :

**“3.** *Duty of Government servant to maintain integrity, devotion to duty etc. (1) Every Government servant shall at all time –*

*(i) maintain absolute integrity;*

*(ii) maintain devotion to duty ; and*

*(iii) do nothing which is unbecoming of a Government Servant;*

29. The Hon’ble Supreme Court of India judgment in **Capt. M. Paul Anthony** (cited supra) which was relied upon by learned Advocate of Applicant in Para 34 has held as follows :-

**“34.** *There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex- parte departmental proceedings, to stand. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.”*

30. The Hon’ble Supreme Court of India Judgment in **G.M. Tank** (cited supra) which was also relied upon by learned Advocate for Applicant in Para 20, Para 21 & Para 30 has held as under :-

**“20.** *It is thus seen that this is a case of no evidence. There is no iota of evidence against the appellant to hold that the appellant is guilty of having illegally accumulated excess income by way of gratification. The respondent failed to prove the charges leveled against the appellant. It is not in dispute that the appellant being a public servant used to submit his yearly property return relating to his movable and immovable property and*

*the appellant has also submitted his return in the year 1975 showing his entire movable and immovable assets. No query whatsoever was ever raised about the movable and immovable assets of the appellant. In fact, the respondent did not produce any evidence in support of and/or about the alleged charges levelled against the appellant. Likewise, the criminal proceedings were initiated against the appellant for the alleged charges punishable under the provisions of P.C. Act on the same set of facts and evidence. It was submitted that the departmental proceedings and the criminal case are based on identical and similar (verbatim) set of facts and evidence. The appellant has been honourably acquitted by the competent Court on the same set of facts, evidence and witness and, therefore, the dismissal order based on same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice.*

**21.** We shall now scan through the judgments on this issue.

**30.** *The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand."*

31. The Hon'ble Supreme Court of India in Judgment of **Dalbir Singh** (cited supra) which was relied upon by learned PO Para17 & Para 22 has held as under :-

**"17.** *We find that the High Court has exceeded its jurisdiction while exercising the power of judicial review over the orders passed in the disciplinary proceedings which were conducted while adhering to the principles of natural justice.*

**22.** *This Court in Union of India & Ors. V/s. P. Gunasekaran had laid down the broad parameters for the exercise of jurisdiction of judicial review. The Court held as under :-*

*“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether :*

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.”*

**13.** *Under Articles 226/227 of the Constitution of India, the High Court shall not :*

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*

(v) *interfere, if there be some legal evidence on which findings can be based.*

(vi) *correct the error of fact however grave it may appear to be;*

(vii) *go into the proportionality of punishment unless it shocks its conscience.”*

32. The Hon'ble Supreme Court of India besides the above has through catena of landmark 'Judgments' clearly delineated the limited scope of 'Judicial Review' in matters of 'Departmental Enquiry' by recording incisive observations which are reproduced below:-

“A. The **Hon'ble Supreme Court in (1995) 6 SCC 749 (B.C. Chaturvedi v/s. Union of India and Others)** observed as under:-

*“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.*

*13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a*

*disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel this Court held that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”*

B. The **Hon'ble Supreme Court in (2011) 4 SCC 584 (State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya)** has held as below:

*“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.”*

C. The **Hon'ble Supreme Court in (2008) 5 SCC 569 (Chairman & Managing Director, V.S.P. and Others v. Goparaju Sri Prabhakara Hari Babu)**, on the Doctrine of Proportionality of the order of punishment passed by the Disciplinary Authority has held that :-

*“21. Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved.”*

D. The **Hon'ble Supreme Court in (2015) 2 SCC 610 (Union of India and Others v. P. Gunasekaran)** observed as under :-

*"13. Under Articles 226/227 of the Constitution of India, the High Court shall not:*

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience."*

E. The **Hon'ble Supreme Court in (2022) 1 SCC 373 (Union of India and Others Vs. Ex. Constable Ram Karan)** decided on **11<sup>th</sup> November, 2021** has made the following observations :-

*"23. The well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to the delinquent employee. Keeping in view the seriousness of the misconduct committed by such an employee, it is not open for the courts to assume and usurp the function of the disciplinary authority.*

*24. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons."*

33. The dubious role of Applicant along with co-delinquents (i) Mr. V.D. Naik and (ii) Mr. V.D. Walvi has been clearly brought out in respective Enquiry Reports of 'Joint Departmental Enquiry' instituted by Tribal Development Department on 16.10.2004. However, the Applicant through these entire saga of conspiracy within Tribal Development Department to defraud 'Government Exchequer' of total Rs.1,44,00,000/- undoubtedly stand out amongst all 28 delinquents 'Government Servants' as the one lead from front each activity directed to manipulate the vulnerable administrative systems showing cause of employees belonging to 'Scheduled Tribe Category'. The Applicant intelligently leverage advantage of having insider knowledge serving on post of 'Under Secretary' in Finance Department. The Applicant therefore had played the role of 'Kingpin of Conspiracy' to brazenly defraud 'Government Exchequer' of Rs.1,44,00,000/- by promoting bogus 'SITI Tower Cooperative Housing Society'.

34. We rely completely for reasons elaborated above on principles laid down by catena of landmark 'Judgments' of Hon'ble Supreme Court of India regarding limited scope of 'Judicial Review' in cases relating to decisions taken in respect of delinquent 'Government Servants' by 'Disciplinary Authority' and 'Appellate Authority'. We also adopt subtlety of well distinguished 'Judgments' of 'Hon'ble Supreme Court of India' by which refrain has been expressed affirmatively about 'Judicial Review' of recommendations made in 'CAG Reports' once those are accepted by the 'Public Accounts Committees' and 'Parliament in State Legislature'. Hence, we arrive at well considered conclusion that 'Order' dated 25.07.2011 of 'Disciplinary Authority' and 'Order' dated 13.10.2016 of 'Appellate Authority' which are about recovery of 1/3<sup>rd</sup> of Rs.92,00,000/- along with permanent withholding of 100% Pension and 100% Gratuity do not merit any interference. Hence, the following order

**ORDER**

- (A) The OA No.361 of 2017 is Dismissed.  
(B) No Order as to Costs.

Sd/-

**(DEBASHISH CHAKRABARTY)**  
**Member-A**

Sd/-

**(MRIDULA BHATKAR, J.)**  
**Chairperson**

Mumbai

Date : 03.02.2025

Dictation taken by :

S.K. Wamanse.

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