

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.509 OF 2015**

Eknath Gaude
Deputy Superintendent of Police (Retd.)
Currently residing at
House No.150, Rajinwada,
Gaunem, Bandora, Ponda-Goa. Petitioner

V/s

1. State of Goa,
Through the Chief Secretary,
having office at Secretariat,
Porvorim – Goa.
2. The Additional Director (Vigilance)
Directorate of Vigilance,
Panaji-Goa.
3. The Director General of Police,
Police Headquarters,
Panaji-Goa. Respondents

Shri C. Padgaonkar, Advocate for the Petitioner.
Shri Sagar Dhargalkar, Additional Government Advocate for
the Respondents.

**CORAM : F.M. REIS &
NUTAN D. SARDESSAI, JJ.
Reserved on : 24th JULY, 2017
Pronounced on : 2nd AUGUST, 2017**

JUDGMENT : (Per NUTAN D. SARDESSAI, J.)

Heard Shri C. Padgaonkar, learned Advocate appearing
for the petitioner and Shri S. Dhargalkar, learned Additional
Government Advocate appearing for the respondents no.1,2 &
3.

2. The challenge in the above petition is to the disciplinary

proceedings initiated against the petitioner on the alleged charge of participation in the selection process of his brother to the post of Police Sub-Inspector (RM), the memorandum dated 31/05/2011 being unjust, illegal and arbitrary without furnishing the supporting documents to him, the disciplinary inquiry sought to be initiated in pursuance of the said memorandum being grossly delayed and the inquiry based on a pseudonymous complaint which as per the CVC Guidelines, had to be filed.

3. Shri C. Padgaonkar, learned Advocate for the petitioner contended that the memorandum was issued to the petitioner for the first time in 2011 without any supporting documents and which documents were furnished when he was on the anvil of retirement. The role played by the petitioner was only to scrutinize the applications which were later tabulated and that he had no role to play in the written examination and the oral examination which were conducted by the Selection Committee. He had no role to play in the selection of the candidates. He was on leave between 24/07/2006 to 11/08/2006 and during which period 88 applications were examined by the Committee. The inquiry was grossly delayed

and due to which he was prejudiced in his defence. The entire material on the basis of which the inquiry was sought to be initiated was made available to him only in 2015 when he was on the anvil of retirement and that too after persistent reminders. He relied in **P.V. Mahadevan V/s. M.D., Tamil Nadu Housing Board [2005 (6) SCC 636]**, **Swapan Kumar Dasgupta V/s. Union of India & Ors. [2015 LabIC 2738]** on the aspect of delay. It was also his contention that there was no pecuniary loss to the Government and therefore he could not be visited with the major penalty of dismissal from service. He placed reliance in **Prabhakar V/s. The State of Maharashtra & Ors. [2016 5 BCR 50]** and pressed for quashing of the impugned memorandum dated 31/05/2011, the order dated 21/05/2015 and direction to the respondents to forthwith release all his retirement benefits including pension, earned leave and gratuity.

4. Shri S.G. Dhargalkar, learned Additional Government Advocate submitted that the petitioner had a significant role to play from the stage of the scrutiny of the applications to the correction of the answer sheets and that he had even

scrutinized the application of his brother. The petitioner as the Dy. S.P. (Wireless) had access to all the documents. He was admittedly directed to conduct the practical and the written test and was also instrumental in allotting the marks and that his brother had secured very high marks. He relied in **Balkrishna Namdeo Katkade V/s. State of Maharashtra & Ors. [2008 (4) Bom.C.R. 470]**, **Secretary, Forest Department & Ors. V/s. Abdur Rasul Chowdhury [2009 (7) SCC 305]** and **Chairman-cum-Managing Director Mahanadi Coalfield Ltd. V/s. Rabindranth Choubey [(2013) 16 SCC 411]** in the matter of delay and submitted that, it could not enure in favour of the petitioner. It was his further contention that the Recruitment Rules contemplated the conduct of the inquiry even after superannuation. He further relied in **State Bank of India V/s. Ram Lal Bhaskar & Anr. [(2011) 10 SCC 249]**, **Chairman, Life Insurance Corporation of India & Ors. V/s. A. Masilamani [(2013) 6 SCC 530]** and **Balkrishna Namdeo Katkade V/s. State of Maharashtra & Ors. [2008 (4) Bom.C.R. 470]**. Shri Dhargalkar, learned Additional Government Advocate further submitted that the delay per se in initiating the inquiry was not fatal when the

chargesheet was filed in 2011 and the show cause notice was issued in the same year. Rather the petitioner had delayed in filing the reply as late as 2015 and who could not take the benefit of contending that the inquiry was delayed.

5. Shri C. Padgaonkar, learned Advocate in reply submitted that the petitioner having superannuated before the conclusion of the inquiry, imposing the major penalty of dismissal was purely academic. His next plank of argument was that only in case the proceedings were initiated under the Pension Rules then by virtue of the deeming provisions of the employer employee relation subsisting between them that the major penalty could be imposed and not otherwise as in the present case the inquiry was initiated under the CCS Rules. It was also his contention that no documents were given to the petitioner in time and that he had made repeated reminders to the Authorities to furnish the copies of the documents to him and that the documents were furnished only in 2015. Moreover, the order appointing the Inquiry Officer was only after the retirement of the petitioner. Therefore on all these counts, the petitioner had to be secured with the reliefs as claimed in the petition.

6. There was no particular rebuttal of the fact that the memo was issued to the petitioner for the first time in 2011 and no supporting documents were furnished to him despite his repeated reminders in June 2011 and that the documents came to be furnished to him only in February, 2015 i.e. when the petitioner was on the anvil of retirement. Admittedly, the inquiry was based on a pseudonymous complaint and as per the CVC guidelines, such pseudonymous complaint had to be filed i.e. the inquiry so contemplated against the petitioner was in breach of the CVC guidelines. A scrutiny of the records reveals that the petitioner as the Dy. S.P. (Wireless) was nominated with another i.e. a PI (Radio Mechanic) to carry out the scrutiny of the applications received in response to the advertisement for the filling up of the posts of PSI (RM) by direct recruitment. He was required to submit a detailed report about the eligibility or otherwise of each candidate within a week, enclosing a copy of the Recruitment Rules and a list of 88 applicants alongwith their applications. This was pursuant to the letter of the Superintendent of Police (HQ) dated 10/04/2006 and in response thereto the petitioner by his letter dated 18/04/2006 had submitted his report on

scrutinizing the applications and indicating the candidates in respect of whom the certificates and documents were in order and otherwise eligible and those candidate who were not eligible and not fulfilling the technical qualifications as per the Recruitment Rules alongwith the tabulated entries giving the details of the candidates.

7. Apparently, the petitioner was on commuted leave for a period of 19 days between 24/07/2006 to 11/08/2006 which was duly sanctioned, though ex-post facto during the time when the candidates were examined by the Selection Committee. The Police Inspector had enclosed the extract of the Work Diary of the PI (RM) to the petitioner as the Dy. S.P. (Wireless) and from which it is apparent that during the leave period of the petitioner, the scrutiny of the papers and preparation of the theory/practical test papers of PSI/RM, ASI/WO was to be done by the OS staff. The Work Diary of 18/08/2006 however reveals that the test papers were sealed in an envelope and brought to the Police Headquarters alongwith PI (Wireless) and Dy. S.P. (Wireless) who were present on instructions from SP (HQ) and handed over to SP (HQ). Furthermore, it is revealed from such Work Diary that

all the papers of PSI (RM) were corrected by PI/RM and ASI (Wireless) were corrected by the Dy. S.P. (Wireless) i.e. the petitioner in his cabin and who prepared the report. The brother of the petitioner had applied for the post of PSI (RM) and therefore considering this record, it cannot at all be heard on behalf of the respondents that the petitioner was instrumental in setting the paper and materially correcting the papers of his brother to favour his selection which is besides the point that he was not a part of the Selection Committee.

8. The letter of the Superintendent (HQ) dated 20/07/2006 reveals that the selection test to select candidate for the appointment to the post of PSI (RM) and ASI (W) had been fixed and the candidates called at the Police Headquarters as per the programme i.e. between 24/07/2006 till 25/07/2006 when admittedly the petitioner as Dy. S.P. (Wireless) was on commuted leave till 11/08/2006. Moreover, the submission of the petitioner dated 21/09/2006 to the SP(HQ) reveals that as per the instructions of SP(HQ), theory papers of the ASI/WO were corrected by him and the theory papers of PSI/RM were corrected by PI (RM) and that necessary course of action had to be adopted by the superiors. The scrutiny of these

documents would indicate more than prima facie that the petitioner had no role to play in the selection of his brother either by setting the paper or by correcting his answer sheet and that the only role played by him was to scrutinize the applications and submit them in a tabulated form to the SP(HQ).

9. Admittedly, the memorandum dated 31/05/2011 proposing to hold an inquiry against the petitioner was issued to him in terms of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as 'the CCS Rules') on the Articles of charge that he had committed discrepancies and irregularities in the selection process of Shri S.D. Khandeparkar i.e. he had participated in the process of selection of his brother for the post of Police Sub-inspector (Radio Mechanic) in Goa Police Department by suppressing the fact that Shri S.D. Khandeparkar was his brother in order to show undue favour to him and hence failed to maintain absolute integrity, devotion to duty and acted in the manner unbecoming of a Government servant. The petitioner pursuant to the said memorandum dated 31/05/2011 had written a letter dated

22/06/2011 to the Directorate of Vigilance conveying that though he had been served with the notice of the Memorandum not a single copy of the documents or annexures had been annexed to the said Memorandum. However, there was no response to his letter and therefore the petitioner had written another letter dated 27/06/2011 to furnish to him the copies of all the statements of the witnesses listed in annexure-IV of the memorandum so as to enable him to give effective reply in defence. It is only in February, 2015 while he was on the anvil of superannuation that the copies of the documents mentioned in annexure-III were furnished to the petitioner i.e. after a period of almost three years. The petitioner had retired on superannuation in April, 2015 and it is only thereafter that pursuant to the order dated 21/05/2015 an Inquiring Authority was appointed to inquire into the charges framed against him under copy to the petitioner. In other words, the petitioner was issued a memorandum only in 2011 more than 5 years later after the alleged discrepant selection of his brother to the post of PSI (RM) and an Inquiry Officer was appointed after his superannuation on 21/05/2015. Besides, as rightly pointed out by Shri Padgaonkar, learned Advocate for the petitioner

the response to the Additional Director (Vigilance) vide the letter dated 22/09/2010 lays the controversy to rest on the role of the petitioner qua the answer to the point no.4 that the question papers to the written test were set by Shri Aman Kumar Talwar, Station Superintendent, ISPW, Panaji alongwith PI, Victor D'Souza and PI, Suresh Mayekar both of Wireless Station, Panaji in the office of SP (HQ).

10. In **P.V. Mahadevan** (supra), certain disciplinary actions were initiated against the appellant who was working as an Superintending Engineer in the Tamil Nadu Housing Board. A charge memo was issued and he preferred a Writ Petition to call for the records, to quash the charge memo by the respondent and to forebear the respondent from in any manner proceeding with the charge memo against him. It was contended on behalf of the appellant that the charge memo had been issued in the year 2000 for the irregularity in issuing a Sale Deed in 1990 to one Mr. A.N. Beemaiah who was an employee of the Housing Board and was to superannuate shortly. It was further contended that though the records were very much available with the respondent, no action was taken against the appellant since 1990 almost for

about 10 years and no explanation whatsoever was offered by the Housing Board for the inordinate delay in initiating the disciplinary action against him. In the said case, the attention of the Hon'ble Apex Court was drawn to the counter affidavit filed by the respondents Board in which though some explanation was given it was found to be not at all convincing and in the circumstances it was held at paragraph 16 that :

“Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.”

In the said circumstances therefore the Hon'ble Apex Court quashed the charge memo issued against the appellant

and allowed the appeal holding him entitled to all the retiral benefits in accordance with law.

11. **Swapan Kumar Dasgupta** (supra), challenged in the writ the disciplinary proceedings against him through a chargesheet dated 30/05/2008 issued by the respondent no.3. The brief facts were that while working in the post of Assistant Security Commissioner, Railway Protection Force (RPF, for short), the petitioner was transferred to the Eastern Railway, Kolkata and posted in the same capacity and was subsequently served with a chargesheet dated 30/05/2008 proposing to hold an inquiry under Rule 9 of the Railway Servants (Discipline and Appeal) Rules (RSDA Rules, for short). As per the records, an interim order was passed on 7/04/2009 restraining the respondents from proceeding against the petitioner in respect of the first four articles of charge until further orders or until 15/09/2009 whichever was earlier but liberty was granted to the respondents to proceed against him in respect of the fifth article of charge, in accordance with law. The disciplinary proceedings were challenged alleging that the respondents no.3 had no jurisdiction to initiate the same against a superior officer like

the petitioner in the absence of modification of Clause (b) of Rule 3(1) of the RSDA Rules. The said ground of challenge was turned down by the order dated 7/04/2009 upon a prima facie satisfaction to the effect that the charge of collusion was not sustainable as the respondents did not initiate any proceeding against the officers namely, Sri Baldev Raj and S.Z. Samuel and an interim order was granted restraining the respondents from proceeding with the first four articles of charge. It was contended on his behalf that the charges were stale, having been framed against him more than 6 years after the alleged incident and the said delay had also not been explained by the respondents and on that ground itself the chargesheet was liable to be set aside. Reliance was placed in **P.V. Mahadevan** (supra).

12. In **Swapan Kumar Dasgupta** (supra), it was submitted that in the absence of any provision under the RSDA Rules, the respondents could not continue with the disciplinary proceeding after superannuation of the petitioner and on the basis of the same his terminal benefits could not be withheld. It was further contended that the proceeding which was pending against the petitioner was not a proceeding under the

provisions of Rule 9 of the Pension Rules and that as such the question of continuance of the proceedings under the RSDA Rules, after retirement, did not arise. Besides, the misconduct alleged against the petitioner did not entail pecuniary loss and was also not a grave misconduct as defined under the provisions of Rule 8(5)(b) of the Pension Rules. It was observed at para 28 as below :

“It is now a well settled principle of law that in a case where a disciplinary proceeding is pending when the employee attained the age of superannuation, the disciplinary proceeding will automatically come to an end. It is trite that a disciplinary proceeding cannot be allowed to continue after the employee retires. However, in the event of pecuniary loss and or grave misconduct, the authorities enjoy the right to continue with such proceeding initiated prior to superannuation of the employee concerned. ”

13. In **Swapan Kumar Dasgupta** (supra), the Calcutta High Court held that Rule 9 of the Pension Rules had no manner of application in the instant case since the disciplinary proceedings pending against the petitioner were not in terms of Rule 9 of the Pension Rules but in terms of the RSDA Rules. Apart from the provisions of Rule 9 of the Pension Rules, no rule had been brought to the notice of this Court providing for continuation of the disciplinary proceeding despite permitting

the employee concerned to retire unconditionally. Moreover, there was no allegation of any pecuniary loss nor any chargesheet issued to the petitioner for recovery of any pecuniary loss which might have been caused to the Railways by an act of misconduct or negligence of the petitioner. In that view of the matter, it was held that the disciplinary proceeding had died a natural death, with the cessation of the employee/employer relationship and that after superannuation, the disciplinary proceeding did not subsist.

14. **Prabhakar** (supra), challenged in the Writ Petition the departmental inquiry initiated against him as per the Memorandum dated 20/11/2013 and the show cause notice issued by the respondent no.3 dated 5/08/2015 pursuant to the inquiry report dated 31/12/2014. His case was that he had rendered more than 32 years of service with unblemished record, got promotion in the year 2012 and his performance had been appreciated by the respondents no.2 & 3 who had also issued an appreciation letter to him for achieving a record sale of pesticides. However, he was shocked to receive the show cause notice dated 27/08/2013 alleging excess supply of fertilizers to Venkatesh Agency and called upon to show cause

why disciplinary proceedings should not be taken against him for the alleged misconduct. He was informed of the proposal to hold the departmental inquiry against him as per the Memorandum dated 20/11/2013 in which he filed his statement of defence denying the charges levelled against him and in the meantime he had retired from service on 31/07/2014. He had requested to grant him pensionary benefits including the difference of pay as per the revised pay scale, arrears, leave encashment, gratuity, provident fund, etc. and on the silence of the respondents, he was constrained to file the petition in quashing the departmental inquiry as there was no provision or rule for continuing the inquiry after his retirement.

15. In **Prabhakar** (supra), it was contended on his behalf that the continuation of the departmental inquiry after retirement in the absence of specific provisions, was not just, legal and proper and in that context reliance was placed in **Bhagirathi Jena V/s. Board of Directors [1999 (2) SCR 354]** where the Hon'ble Supreme Court held that in the absence of the provisions for continuing an inquiry after retirement, no authority is vested in the Corporation for

continuing the departmental inquiry and the delinquent was entitled to the full retiral benefits. The respondents no.2 & 3 by their affidavit-in-reply submitted that an outstanding of ₹29.40 lakhs was to be recovered from M/s. Venketash Krushi Kendra, Parbhani. The petitioner had sold 2369 metric tones of fertilizers worth approximately ₹5.00 crores from April, onwards to M/s. Venkatesh Agency, Parbhani on credit basis and violated the norms of the respondent Corporation. The petitioner favoured M/s. Venkatesh Agency and supplied huge fertilizers on credit and did not recover the amount due towards the said Agency. He had committed irregularity and misappropriated the huge amount of the Corporation and hence the memo was issued to him on 20/11/2013 and the departmental inquiry was initiated against him. On considering the submissions of the learned Counsel appearing for the petitioner, the learned Additional Government Advocate appearing for the respondent State and the learned Counsel appearing for the respondents no.2 & 3, the Division Bench of this Court considered the legal question raised by the petitioner whether the respondent Corporation was entitled to continue with the departmental inquiry/proceedings in the absence of any provision either in MAIDC Service Rules

or in the MCS (D & A) Rules, 1979. In **Prabhakar** (supra), the Division Bench held at para 12 as below and allowed the petition.

12. In our opinion, it is no doubt true, that the gratuity is a terminal benefit and is subject to the terms and conditions. Withholding of the gratuity can therefore be only if there be the provisions for withholding it in the Act or if there being any service condition which so provide. A person cannot be charged for a misconduct if it does not constitute a misconduct within the definition of misconduct either in terms of the standing order or the service regulations. Similarly no enquiry can be conducted for misconduct if there being no statutory provisions. In the absence of any statutory provisions for continuing the enquiry, in our opinion, the ratio of Bhagirathi Jena's case (supra) which has directly dealt with the issue would be applicable. In the case of Bhagirathi Jena (supra) the Court itself noted the effect of absence of a provision. In our opinion, therefore, the ratio of Bhagirathi Jena's case (supra) would squarely apply. The enquiry therefore against the petitioner after his superannuation in the absence of a provision to continue enquiry is without authority of law."

16. **Balkrishna Katkade** (supra), was served with three chargesheets which had different grounds in 2005, 2006 and again in 2006. It was contended on his behalf that the chargesheets had been issued to him after considerable lapse of 10 years which inordinate delay was bound to cause serious prejudice to the petitioner in the departmental proceedings

and furthermore the documents which he had asked for were not being furnished to him despite the fact that they had direct bearing on the article of charges framed against the petitioner, which violated the principles of natural justice. It was reiterated by the Division Bench of this Court headed by the then Hon'ble Chief Justice that it was right that inordinate and unexplained delay in serving the chargesheets upon the delinquent officer was a relevant factor but it was not an absolute proposition of law that in every case of delay the chargesheets should essentially be quashed by the Court. If the chargesheet was served after a prolonged delay and serious prejudice was caused to the delinquent officer during the course of the departmental proceedings resulting from such delay, the Court may quash the chargesheets provided the article of charges were not of very grave nature. In the facts of that case, the petitioner was still in service when the chargesheets were served on him unlike the facts of this case. Moreover, at the cost of repetition, it was shown from the records that though the alleged misconduct of the petitioner took place sometime in 2006, show cause notice was issued to him only in 2011 of the departmental proceeding initiated against him in 2015 after the superannuation i.e. after almost

10 years and when he had otherwise superannuated from service.

17. **Rabindranath Choubey** (supra), was working as a Chief General Manager (Production) at Rajmahal area under Mahanadi Coalfields Ltd. i.e. the appellant therein since 17/2/2006. The memo containing the articles of charge was issued to him on 1/10/2007 alleging that there was a shortage of stock of coal in Rajmahal Group of Mines which was under his management and inquiry was proposed to be conducted under Rule 29 of the Coal India Executives Conduct, Discipline and Appeal Rules. During the pendency of the departmental proceedings, he was allowed to retire on 31/07/2010 on attaining the age of superannuation and thereupon he submitted an application on 21/09/2010 for payment of gratuity. In pursuance to the notice, the appellant appeared and stated that the payment of gratuity was withheld due to the reason that the disciplinary case was pending against him and that the claim of the respondent was premature. He challenged the order of the Authority by filing the Writ petition which was dismissed by the Single Judge holding that in view of the existence of an appellate

forum against the order passed by the authority, he may file an appeal before the appellate authority. He then filed an intra-court writ appeal and the Division Bench of the High Court had held that the petition was maintainable. On merits, it ruled that the disciplinary proceedings were initiated prior to attaining the age of superannuation and that he having retired from service on superannuation the question of imposing the major penalty of removal or dismissal from service would not arise as per the decision of the Supreme Court in **Jaswant Singh Gill V/s. Bharat Coking Coal Ltd. [2007 (1) SC 663]**. The High Court further held that the power to withhold the payment of gratuity as contained in Rule 34(3) of the 1978 Rules shall be subject to the provisions of the Payment of Gratuity Act, 1972 and such statutory right accrued to him to get gratuity could not be impaired by reason of the rules framed by Coal India Ltd. which did not have the force of a statute. In the circumstances, the question which fell for consideration was whether it was impermissible in law for the appellant to withhold the payment of gratuity to the respondent, even after his superannuation from service, because of the pendency of disciplinary proceedings against him.

18. In **Rabindranath** (supra), the Apex Court found that the appellant had framed the Conduct Discipline and Appeal Rules, 1978 applicable to its employees and who were empowered to impose various punishments including the procedure for imposing major penalties for misconduct and misbehaviour, but these were not statutory in nature. The respondent when served with the chargesheet dated 1/10/2007 was posted as Chief General Manager and shortly after the service of chargesheet, he was made to join as Chief General Manager, Mining in M-3 Grade on transfer and was posted as Chief General Manager, Production, MCL. He was suspended from service on 09/02/2008 under Rule 24.1 pending the departmental inquiry against him which was revoked from 27/02/2009 without prejudice to the departmental inquiry. On completion of 60 years of age, he was superannuated w.e.f. 31/07/2010 for which notice of retirement on superannuation was given by the appellant to him vide the letter dated 8/02/2010. The inquiry made against him was concluded on 25/03/2009 but nothing was heard from the respondent. It was also not known whether the Inquiry Officer had submitted the report and if such a

report was submitted whether the Officer had exonerated him or held him guilty of the charges. In any event, no further action was taken on the report by the disciplinary authority and more than 4½ years had lapsed in the meantime. On the said facts, it was the case of the respondent that his statutory rights to receive the gratuity could not be interdicted and he was entitled to have the payment of gratuity on his superannuation under the provisions of the Payment of Gratuity Act.

19. In **Rabindranath** (supra), it was contended on behalf of the appellant that in view of the Rule 34 of the CDA Rules, the management had a right to withhold the payment of the gratuity and that it was not contrary to the provisions of the Payment of Gratuity Act. In that context the two judge Bench of the Apex Court considered the provisions of the payment of gratuity and held that a statutory right accrued in favour of an employee under the Act could not be impaired by reason of a rule which did not have the force of statute and that the said rules were not statutory in nature. Their Lordships considered the appellant's case that in the chargesheet served upon the respondent there were very serious allegations of misconduct

alleging dishonestly causing coal stock shortage amounting to ₹31.65 crores and causing substantial loss to the employer. If such a charge was proved and punishment of dismissal was given thereupon, the provisions of Section 4(6) of the Payment of Gratuity Act would naturally get attracted and it would be within the discretion of the appellant to forfeit the gratuity payable to the respondent. This course of action was available only if the disciplinary authority had necessary powers to impose the penalty of dismissal upon the respondent even after his retirement. Nonetheless, the two Judge Bench held that in view of the discussion in **Jaswant Singh Gill and Ram Lal Bhaskar** (supra), this issue was required to be considered authoritatively by a larger Bench and opined that the appeal be decided by a Bench of three Judges. This judgment with respect therefore does not substantiate the contention of Shri Dhargalkar, learned Additional Government Advocate for the respondent that imposition of major penalty of dismissal even after retirement is permissible.

20. In **Pronab Chakraborty** (supra), a two Judge Bench of the Hon'ble Apex Court held that in terms of Rule 10(1) of the

W.B. Services (Death-cum-Retirement Benefits) Rules, 1971 departmental proceedings could continue against a delinquent employee after superannuation not only for causing pecuniary loss to the Government but also for grave misconduct or negligence. It further held that if such grave misconduct or negligence entails pecuniary loss to Government, such loss could also be recovered from employee concerned. The High Court erred in interpreting Rule 10(1) to conclude that proceedings after superannuation could continue only when charges against the delinquent entailed pecuniary loss to the Government and since charges levelled against the respondent did not depict any pecuniary loss to the Government, the proceedings could not continue after his superannuation.

21. In **Ram Lal Bhaskar & Anr.** (supra), a three Judge Bench of the Hon'ble Apex Court held that where a departmental inquiry was initiated against a bank employee while he was in service, and which was continued after his retirement in accordance with the enabling provision contained in the relevant rules, held, dismissal imposed on him could not be considered as without jurisdiction. The

respondent no.1, a Branch Manager in the appellant Bank was served with a chargesheet and after inquiry he was dismissed from service on 15/05/2001. In the meanwhile, he had already retired on superannuation on 31/01/2000. The disciplinary proceedings and punishment was challenged as without jurisdiction, having been continued after the respondent no.1 had already retired from service. There was further provision in Rule 19(3), State Bank of India Officer Services Rules, 1992 under which disciplinary proceedings initiated while an employee was in service could be continued at the discretion of the Managing Director, after retirement. It was held that in view of this enabling provision, the inquiry proceedings against the respondent no.1 could not be invalidated.

22. It is apparent that the respondents could not proceed with the inquiry based on a pseudonymous complaint when the CVC Guidelines clearly prescribe to the contrary and that such complaint was required to be filed. Besides, the inquiry was initiated against the petitioner in respect of the alleged misconduct sometime in 2006 only in 2011 by the issuance of the memo for the first time and that too without supplying the

documents and that the documents were furnished to him only when the petitioner was on the anvil of retirement in 2015, without any justifiable reason. The inquiry therefore was grossly delayed and likely to prejudice the petitioner in his defence. Besides, the proceedings were not initiated under the Pension Rules but under the CCS Rules and therefore no major penalty including that of dismissal from service could be imposed against the petitioner after his superannuation from service. Hence, the contention of Shri Dhargalkar, learned Additional Government Advocate to the contrary does not stand the test of legal scrutiny. The delay in initiating the inquiry therefore enures in favour of the petitioner which is apart from the fact that it was based on a pseudonymous complaint and initiated in breach of the CVC guidelines. The guidelines issued by the Central Vigilance Commission clearly contemplate that no investigation should be commenced or action initiated on any anonymous/pseudonymous complaint and that these should invariably be filed. The office memorandum issued to that effect clearly stipulates that no action is required to be taken on anonymous complaints, irrespective of the nature of allegations and such complaints need to be simply filed. If a

complaint contains verifiable allegations, the administrative Ministry/Department may take cognizance of such complaint with the approval of the competent authority to be designated by the Ministry/Department as per their distribution of work. In such cases, the complaint will be first sent to the complainant for owning/disowning, as the case may be. If no response is received from the complainant within 15 days of sending the complaint, a reminder will be sent. After waiting for 15 days after sending the reminder, if still nothing is heard, the said complaint may be filed as pseudonymous by the Ministry/Department. The subsequent circular issued by the CVC dated 25/11/2014 clearly stipulates that if any verifiable facts contained in such complaints are proposed to be looked into prior concurrence of the Commission is required to be taken by the departments/organizations.

23. Apparently, in the facts of this case a pseudonymous complaint was received and an intimation was sent to the said complainant who clearly stated that he was not the author of the complaint and that he had no nexus with the complaint whatsoever. In such circumstances, and being a pseudonymous complaint and in view of the CVC guidelines,

the same ought to have been filed. Instead the department without even taking any prior concurrence had chosen to proceed with the inquiry which is contrary to the CVC guidelines. On this premise too the petition is bound to succeed other than the aspect of delay and laches in initiating the inquiry against the petitioner which could not have been initiated in the first instance. Moreover, at the cost of repetition it was also amply demonstrated from the records that the petitioner had only scrutinized the applications and tabulated the same and that as per the Work Diary he was neither instrumental in setting the examination paper nor in correcting the papers particularly of the candidate i.e. his brother who had applied for the post of PSI (RM).

24. From foregoing, it clearly reveals that the memorandum issued on 31/05/2011 was issued prior to retirement. The documents in support thereof were supplied only after the retirement and, in fact, the inquiry commenced only after retirement. There is no justification for any delay in such proceedings. Apart from that, the alleged role by the petitioner in such process is very minimal and in fact the persons involved in the recruitment process have not been

given any such memorandum. In such circumstances, we find that the question of proceeding with such inquiry is not at all justified in the facts and circumstances of the case. On all these counts, the petition is bound to succeed.

25. In the result, the Writ Petition is allowed. Rule is made absolute in the above terms.

NUTAN D. SARDESSAI, J.
NH

F.M.REIS, J.

26. At this stage, Shri S.G. Dhargalkar, learned Additional Government Advocate appearing for the respondents prays for stay of the operation of the judgment passed today. Shri C. Padgaonkar, learned Advocate for the petitioner vehemently resists such relief, but, in fairness concedes that he will not avail of the terminal benefits immediately.

27. Considering the view that we have taken, granting

Correction carried
out as per order
dated 22/11/2017
passed in MCA No.
945/17

Sd/-

stay would result in allowing the respondents to proceed
with the inquiry. We find that the ~~recruitment~~ ^{retirement} benefits, if
any, accrued in favour of the petitioner shall be released
to the petitioner within 14 weeks from today.

NUTAN D. SARDESSAI, J.

F.M.REIS, J.

NH