

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 123 / 2006

Wednesday, this the 25th day of June, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

N.K.Sukumaran Nair,
S/o P Nanu Pillai,
Senior Accounts Officer,
O/o the Post Master General,
Calicut.Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by
the Secretary,
Ministry of Communication &
Information Technology,
Department of Telecommunications,
New Delhi.
2. The Director General,
Department of Posts,
New Delhi.
3. The Chief Post Master General,
Kerala Circle,
Trivandrum.Respondents

(By Advocate Mr TPM Ibrahim Khan, SCGSC)

This application having been finally heard on 28.5.2008, the Tribunal on 25.6.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant in this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, is aggrieved by the Annexure A-1 penalty order dated 22.7.005 by which he was imposed upon the penalty of reduction by 2 stages in

the time scale of pay for a period of 18 months with a direction that he will not earn increments during the period of such reduction and on expiry of such period of reduction will have the effect of postponing his future increments of pay. Since the aforesaid order was issued in the name of the President, no appeal/review has been filed. He has, therefore, sought quashing of the aforesaid Annexure A-1 penalty order and grant of all consequential benefits as if the said penalty order had not been issued at all.

2. The applicant has been working as Chief Accounts Officer under the Telecom Division at Ahmed Nagar, Maharashtra Circle from 15.5.2000. By virtue of his official position, he was a member of the Tender Evaluation Committee (TEC for short). Prior to his joining the Telecom Division at Ahmed Nagar, the General Manager Telecom, Ahmed Nagar had already issued a public notice dated 3.5.2000 (Annexure A-2) inviting tender for "Interactive Voice Response System" (IVRS for short). There were two stages for the opening of the tender and awarding the work. First stage pertain to the Technical Bid and the second stage pertained to the Financial Bid. Technical Bid relates to offer of the bidders with reference to the specification of works mentioned in the Notice inviting tenders. Financial Bid of those bidders only will be opened who satisfy the technical capability including the production of experience certificate in accordance with the technical specifications notified. The Technical Bids according to the existing rules and instructions are to be opened by the Tender Opening Committee (TOC for short) consisting of the Assistant General Manager, Sub Divisional Engineer (Pur) and Accounts Office. Three tenders received were from M/s Compushop Techno Indian Pvt Ltd, M/s Bay Talkitec Private Limited and M/s Electronic Corporation of India Ltd (ECIL for short).

3. The charge against the applicant was as follows:

"That the said Shri N.K.Sukumaran Nair, while functioning as

Chief Accounts Officer, O/o General Manager, Ahmednagar Telecom District, during the year 2000, and as Member of the Tender Evaluation Committee, irregularly recommended the acceptance of the second lowest tender of M/s Bay Talitec(P) Ltd. For the work of Supply, Installation, testing and commissioning of Interactive Voice Response Systems, and rejection of the lowest tender of M/s ECIL on untenable grounds, in gross violation inter alia of Rule 429 of P&T Manual Volume-II and Rule 60 of P&T Financial Handbook Volume-I; which led to placement of Purchase Order on M/s Bay Talitec (P) Ltd. at exorbitant rates; thereby causing undue pecuniary advantage of Rs.55,240/- to the said firm and corresponding loss to the government.

2. Thus, by his above acts, the said Shri N.K.Sukumaran Nair committed grave misconduct, failed to maintain absolute integrity and devotion to duty, and acted in a manner unbecoming of a Government servant, thereby contravening Rule 3(1)(i), (ii) and (iii) of the CCS(Conduct) Rules, 1964."

The statement of imputation and misconduct or misbehaviour in support of the articles of charge framed against him were as under:

"That the said Shri N.K.Sukumaran Nair was functioning as Chief Accounts Officer, O/o General Manager, Ahmednagar Telecom District, during the year 2000.

2. Tenders were invited by the General Manager, Ahmednagar Telecom District, for Supply, Installation, Testing and Commissioning of eleven number of Interactive Voice Response System (IVRS), i.e. eight numbers of IVRS for handling 2000 to 20,000 lines, at the estimated cost of Rupees Eight lacs per System, and three numbers of IVRS for handling 3000 to 30,000 lines, at the estimated cost of Rs.8,50,000/- per System.

3. Three parties responded to the Notice inviting Tenders, viz, M/s Bay Talkitec (P) Ltd., M/s Compu Shop, and M/s ECIL; and their technical bids were evaluated by a Tender Evaluation committee (TEC), comprising Shri A.P.Bhat, Deputy General Manager(HQ), Shri N.K.S.Nair, Chief Accounts Officer, and Shri A.R.Pawar, Assistant General Manager (A&P), all of Ahmednagar Telecom District. The TEC, vide its report dated 29.5.2000, inter alia found that "All the bidders are administratively acceptable" and that "All the bidders are technically acceptable". However, without assigning any reason, the TEC recommended the opening of the financial bids of only M/s Bay Talkitec (P) Ltd. and M/s Compu Shop, thereby rejecting the bid of M/s ECIL, a Government of India Undertaking. In the 'Technical Evaluation Sheet', while the entry in respect of M/s ECIL, in the column 'whether any technical deviation quoted', is 'nil', the entry in the next column 'whether technically acceptable', is a cryptic 'no'.

4. The TEC again met on 4.8.2000 to evaluate the financial bids of the tenders; and recommended the award of the work to M/s Bay Talkitec(P) Ltd., at the quoted rate of Rs.12,35,000/- per System, noting cryptically that "M/s ECIL is not having credentials". Instead

of returning the financial bid of M/s ECIL, unopened, as per the usual practice, the same was opened. The rates offered by M/s ECIL were Rs.5,33,720/- for IVRS with maximum capacity of 20,000 lines, and Rs.5,43,720/- for IVRS with maximum capacity of 30,000 lines.

5. The TEC noted that M/s Compu Shop had submitted Interface Approval Certificate issued in the name of M/s Bay Talkitec (P) Ltd., which meant that both the parties were in effect one and the same. The tender of M/s Compu Shop, therefore, ought to have been rejected; which would have left only the tender of M/s Bay Talkitec (P) Ltd. for consideration, as the tender of M/s ECIL had already been irregularly rejected. However, the TEC failed to even discuss the reasonableness of the rate quoted by M/s Bay Talkitec (P) Ltd. Which was approximately 150% of the estimated cost.

6. The aforesaid irregular recommendations of the TEC were approved by the General Manager, without any remarks. The General Manager, further, granted exemption to M/s Bay Talkitec (P) Ltd. from payment of Security Deposit, vide letter No.T-50/99-2000/31 dated 12.10.2000, inspite of letter No.NSIC(M)/GP/17 (4284)/95 dated 11.9.2000 from the National Small Industries Corporation Ltd. (NSIC), reiterating the position that the prescribed Security Deposit was liable to be taken from the firm as the value of the contract was beyond the limit for exemption to be granted to firms registered with the NSIC. The work was finally awarded to M/s Bay Talkitec (P) Ltd. Vide letter No.T-50/99-2000/32 dated 13.10.2000 and Purchase Order No.PT/ANR/IVRS/2000-01/173 dated 19.10.2000.

7. The aforesaid Purchase Order was "kept in abeyance until further orders" vide letter No.AGM(A/MM)/T-50/99-2000/38 dated 14.11.2000, when a report was called for by the Chief General Manager Telecom, Maharashtra Telecom Circle, on the complaint dated 17.10.2000 of M/s Modi Consultants Ltd., alleging irregularities in the procurement of IVRS in Ahmednagar Telecom District. A report was sent to the Chief General Manager, seeking advice, vide letter No.AGM(A/MM)/T-50/99-2000/39 dated 14.11.2000. However, without waiting for any communication from the O/o the Chief General Manager, the General Manager ordered, on Note Sheet No.15 of file No.T-50/IVRS/99-2000, the withdrawal of the aforesaid letter by which the Purchase Order had been kept in abeyance, claiming that he had "discussed the matter with CGM/DFA and they told us to send a report only and no need for keeping the PO in abeyance and hence the abeyance letter may be withdrawn". Neither the Chief General Manager nor the Director (Finance & Accounts) has confirmed any such discussion.

8. Further, one of the IVRS, so purchased, was converted into a Call Centre equipment, on the basis of a letter dated 17.1.2001 from M/s Bay Talkitech (P) Ltd., while the other components were procured separately from the same firm; though separate tenders were to be invited for the Call Centre equipments.

9. The said Shri N.K.Sukumaran Nair, as the Chief Accounts Officer, and as Member of the Tender Evaluation Committee, thus, irregularly recommended the rejection of the lowest tender and



acceptance of the second lowest tender at the exorbitant rate of Rs.12,35,000/- as against the lowest rates of Rs.5,33,720/- and Rs.5,43,720/- in gross violation inter alia of Rule 429 of P&T Manual Volume-II and Rule 60 of P&T Financial Handbook Volume-I, thereby causing undue pecuniary advantage of Rs.55,80,240/- to M/s Bay Talkitec (P) Ltd. and corresponding loss to the Government. Similar IVRS was supplied by the same firm to Pune Telecom District @ Rs.5,04,500/- per System, vide Purchase Order No.PTP/EG-166/99-2000/31 dated 31.12.1999.

10. Thus, by his above acts, the said Shri N.K.Sukumaran Nair committed grave misconduct, failed to maintain absolute integrity and devotion to duty, and acted in a manner unbecoming of a Government Servant, thereby contravening Rule 3(1)(i), (ii) and (iii) of the CCS(Conduct) Rules, 1964."

4. The applicant made the Annexure A-12 representation dated 28.8.2003 against the article of charge and statement of imputations. He denied the charges levelled against him and submitted that he was nominated as Finance Member of the TEC immediately after he joined as Chief Accounts Officer under the Telecom Division at Ahmed Nagar, Maharashtra Circle from 15.5.2000 and he had no exposure to technical matters, nor was he given any training in technology. The other two members of the TEC, DGM (HQ) and AGM (MM) were experienced telecom officers. TEC met on 29.5.2000 and there were elaborate discussion on the technical aspects of the tenders between the DGM (HQ) and the AGM (MM). Though he had no technical competence he had pointed out the primacy of ECIL as a public sector undertaking but he was in agreement with the other two members that one of the tenders viz, ECIL did not fulfil the conditions stipulated in the NIT/Tenders. Accordingly the tender of the ECIL was rejected by the TEC. During the second sitting of the TEC on 4.8.2000 for considering the financial bids, as the tender from ECIL was rejected, the remaining two tenders were taken up. M/s Bay Talitec(P) Ltd. Chennai quoted Rs.12,35,000/- and M/s Compushop, Mumbai quoted Rs.12,38,500/-. The LI from M/s Bay Talkitec was recommend by the TEC as their rate compared favourably with the IVRS system of 32 channels supplied to Ahmed Nagar Telecom itself during the previous year by M/s Compushop,



Mumbai at the rate Rs.12,50,000/-. He has therefore refuted the allegation that as a member of the TEC he had irregularly recommended the second lowest tender of M/s Bay Talkitec (P) Ltd. He has also submitted that (i) the TEC had only assessed the financial bids of M/s Bay Talitec(P) and M/s Compushop which were the two eligible tenders, (ii) the Tender Opening committee might have opened the financial bid of M/s ECIL inadvertently for which the TEC was not responsible, (iii) M/s Bay Talkitec (P) Ltd and M/s Compusho are two different companies having their headquarters in Chennai and Mumbai respectively and it was incorrect to infer that they are one and the same just because both of them happen to use the same Interface Approved Cards in their respective systems. As regards furnishing Security Deposit, he submitted that he did pointed out in the relevant file in his capacity as CAO that security deposit was essential. Regarding conversion of one of the IVRS into a call centre, when the file came to him seeking his views, he had suggested to ascertain the competitive rates from other firms providing similar service so that the best facility available could be obtained at the most competitive rates. As the member of the TEC, he was a party to recommend the lowest among the eligible tenderers but he has not violated the provisions of Rule 429 of P&T Manual Vol.II. Again his role as Finance Member of the TEC was to recommend the lowest among the tenderers which fulfil all the essential conditions stipulated in the tender, which he performed as prudently as possible. In his capacity as CAO, he did suggest the need for obtaining SD and competitive rates in respect of proposal for conversion of one of the IVRS into Call Centre and therefore, he has not violated Rule 60 of P&T FHB Vol.I.

4. The Commissioner for Departmental Enquiries, Central Vigilance Commission was appointed as Inquiry Officer to inquire into the charges framed against the applicant. After detailed enquiry, he submitted the enquiry report vide Annexure A-15 dated 22.10.2004. The assessment, analysis of evidence



and the findings as recorded in the enquiry report was as under:

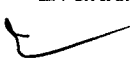
“6.1 The charge states that the CO while functioning as Chief Accounts Officer, O/o the General Manager, Ahmednagar Telecom District during the period 2000 and as a member of the Tender Evaluation Committee, irregularly recommended the acceptance of the second lowest tender of M/s Bay Talkitec (P) Ltd., Chennai for the work of Supply, Installation Testing and Commissioning of Interactive Voice Response Systems and rejection of the lowest tender of M/s ECIL on untenable grounds in gross violation inter alia of Rule 429 of P&T Manual Vol.II and Rule 60 of P&T Financial Handbook Vol.I, thereby undue pecuniary advantage of Rs.55,80,240/- to M/s Bay Talkitec (P) and corresponding loss to the Government.

6.2 I have perused the PO's & CO's written briefs, prosecution & defence documents adduced during inquiry and the depositions of witnesses; and my findings are as under.

6.3 Tenders were invited vide Ex.M.6 for the supply, installation, testing and commissioning of 11 number IVRS 8 Nos. IVRS for handling 2000 to 20000 lines at the estimated cost of Rs.8 lacs per system and 3 nos. IVRS for 3000 to 309000 at an estimated cost of Rs.8.5 lacs per system. It was a two bid tender, (a) Technical and Commercial; and (b) Financial.

6.4 Three parties responded to the Notice Inviting Tender i.e. M/s Baytalkitec Pvt. Ltd. M/s Compu Shop and M/s ECIL. The Technical bids were evaluated by a Tender Evaluation Committee (TEC) comprising Shri A.P.Bhat, Deputy General Manager (HQ), Shri N.K.S.Nair, Chief Accounts Officer and Sh A.R.Pawar, Asstt. General Manager of the Ahmednagar Telecom District.

6.5 The Tender Evaluation Committee report dated 29.5.2000 (Ex.M.7) states that three tender documents were sold and all have submitted their bid. No tenderer was refused to issue tender documents among the applications received. All the bidders are administratively acceptable and all the bidders are technically acceptable. It goes on to state “TEC has studied every aspect of this tender keeping in view technical details of technical bid, TEC observed that (i) M/s Baytalkitec, Chennai has submitted Interface Approval Certificate for the IVR Systems. The firm is having requisite experience in the field. M/s Baytalkitec has accepted our specifications without suggesting any change; (ii) M/s Compu Shop, Mumbai has submitted Interface Approval Certificate, which is in the name of M/s Baytalkitec, Chennai. The firm is having requisite experience in the field; (iii) M/s ECIL is Govt. of India undertaking company. The company is having wide network for mtce and training purposes throughout India. Their offered specifications for PC matches with our specifications. Only for fax card and IVR card, the company suggest it to be Dialogic. The application software will be of ECIL. ECIL has complied with all other specification. ECIL proposes Tower Cabinet instead of Rack Mounting. After necessary deliberations TEC recommends to open financial bid of M/s Baytalkitec, Chennai and M/s Compu Shop, Mumbai. Alongwith the TEC report is the Administrative Evaluation Sheet and Technical Evaluation Sheet signed by two members of TEC. The Administrative



Evaluation Sheet shows that the three tenders M/s Baytalkitec, M/s Compu Shop and M/s ECIL were all administratively acceptable. In the technical evaluation sheet against M/s ECIL, the column 'whether technical deviations quoted' says 'NIL' and the column 'whether technically acceptable' it states "NO". The "NIL" and "NO" together are contradictory.

6.6 Apparently in the three tenders the tender evaluation committee did not find any administrative shortcoming or technical deviation. Therefore, its recommendation for opening only the financial bids of M/s Baytalkitec and M/s Compu Shop appears strange. Logically the committee should have recommended the opening of all three bids as no shortcomings in the bid of M/s ECIL have been mentioned in the minutes by the TEC.

6.7 As per Ex.D2 "the Tender Evaluation report should clearly indicate deviations recommended vis-a-vis tender conditions alongwith reasons for such deviations. When there are no deviation from tender conditions, a declaration to this effect should be included in the report of the recommendations of the Tender Evaluation Committee". Clearly this has not been done in Ex.M.7. As per Ex.M.2 the financial bids of all the three bidders were opened and seen by all the three members of the TEC of which the CO was also a member. If the tender of M/s ECIL was technically not acceptable, it should not have been opened.

6.8 On 4.8.2000, the TEC met again and the three members noted that "M/s ECIL is not having credentials, hence as decided in earlier meeting financial bid of M/s Compu Shop and M/s Baytalkitec has been opened and studied by TEC. TEC observed that M/s Baytalkitec, Chennai has given slightly lower rate than M/s Compu Shop". The TEC recommended the award of the work to M/s Baytalkitec at the quoted rates of Rs.12,35,999/- per system.

6.9 As per the PO, in none of the three tenders, the TEC found either administrative shortcomings or technical deviations. Thus illogically all the three tenders should have been recommended for opening of financial bid. Hence, CO as a member of TEC for no recorded reasons in the TEC's report, recommended the opening of only 2 financial bids of M/s Baytalkitec and M/s Compu Shop. As per Ex.M.2 and M.8 the financial bids of all the three tenders were opened. Hence having known the rates of L-1 bidder (i.e. M/s ECIL, Pune), the CO made no efforts to match the price with the other bidders.

6.10 As per the CO, he was participating in the TEC for the first time when he had only 10 days experience in Telecom Department. Further the decision of the TEC of which he was the Finance Member, to reject the tender of M/s ECIL was on the valid and irrefutable reasons for not fulfilling the tender conditions. ECIL as per the CO did not have the required experience and TEC interface approval. He has also stated that C-77 of Ex.M.2 would show that similar equipment was procured in the recent past at a higher price of Rs.12.5 lacs. Further as per the CO, it was DW-1, who as convener of the TEC was responsible for drafting of the TEC report.

6.11 A perusal of Ex.M.7 shows that TEC has not pointed out any




deficiencies in the tender of M/s ECIL. It has neither discussed nor commented on the lack of experience of M/s ECIL or the lack of a valid interface type approval. In fact Ex.M.7 say that ECIL has complied with all other specification, hence it appears strange and illogical that the committee of three TEC members should have recommended the opening of only the financial bids of (i) Baytalkitec and (ii) M/s Compu Shop. PO has brought forth the evidence that all the three tenders were recommended and the name of M/s ECIL was removed later by application of white fluid. It can be observed from a perusal of Ex.M.7 that in the initial list M/s ECIL's name was also mentioned for opening of financial bids which seem to have been removed later from the document as an afterthought. It is also evident that nothing adverse has been noted against M/s ECIL. Hence the arguments of lack of experience of M/s ECIL were clearly an afterthought and had not been the reason for deletion of the name of M/s ECIL. As per practice, the financial bid of M/s ECIL should have been returned unopened. However, it was opened and the rates were known. I also do not accept the CO's averment that he was inexperienced and did not know much about the technicalities involved. As a member of the TEC, it was his duty to find out what were his responsibilities. As a Finance Member of the TEC, he should have also seen that reasonableness of rates was worked out. Ex.M.8 shows that nothing of the sort was done. Even if we accept that M/s ECIL did not have the experience, the rates of M/s ECIL were known to the CO, but no effort was made to bring down the prices of M/s Baytalkitec which were more than double the rates quoted by M/s ECIL. Clearly, the CO as the finance member did not have the financial interests of the department in his mind while recommending award of the work to M/s Baytalkitec.

6.12 As per the CO, both M/s Compu Shop and M/s Baytalkitec were two different companies as can be seen from the certificate of incorporation produced at Sr.No.B-32 and C-32 of Ex.M.2. The fact is that they were using same type of interface cards in their systems. As per the PO, in the tender evaluation sheet, it is recorded by the committee that M/s Compu Shop, Mumbai has submitted Interface Approval Certificate which is in the name of M/s Baytalkitec, Chennai. Since the firm M/s Compu Shop was not having valid interface approval certificate in its own name, its bid should have been rejected. As there was some doubt about M/s Compu Shop being an independent entity, it would have been prudent on the part of the CO to reject the bid of M/s Compu Shop.

6.13 As regards exemption of M/s Baytalkitec from payment of security deposit, it is seen from not sheet 9 of Ex.M.3 that the CAO has stated that "As the amount exceeds Rs.50 lacs security deposit is essential". He has also stated on notesheet 11 of Ex.M.3 that "the clarification given byt NSIC is not clear or unambiguous". Hence the CO cannot be faulted on his account.

6.14 As regards conversion of one of the IVRS into a call center, the CO had noted on 21-22/N of Ex.M.3 "(A) above may be approved in principle, however, we may have to ascertain the financial outlay involved. Besides the 'call centre' concept in all likelihood is not an proprietary concept and hence before accepting the offer from this firm, competitive offers from firms dealing in this lines of business may be ascertained so that the best facility is obtained at the most



competitive rates. It is seen that the GMN has overruled this, therefore, no blame can be attributed to the VO in this regard.

6.15 The CO instead of comparing rates with the rates offered by M/s ECIL has compared with the previous purchase of IVRS of Ahmednagar, which was for Rs.12.5 lacs/system. I agree with the PO that this was not sufficient for ding out the reasonableness of the rates when the estimation per system done by Ahmednagar Telecom had been recorded in the Tender Evaluation Committee's report Ex.M.8 of which CO was also a member and ECIL's rates of Rs.5,33,720/- and Rs.5,43,720/- per system were known. CO's ignorance of estimated rates cannot be accepted, as a member of TEC he has not acted with due diligence. Hence the charge that the CO's recommendation as a member of TEC led to placement of purchase order on M/s Baytalkitec at exorbitant rates thereby causing undue pecuniary advantage of Rs.55,80,240/- to M/s Baytalkitec is partly proved to the extent that CO as a member of TEC failed to take care of the financial interests of his department in recommending the tender of M/s Baytalkitec at the very high rate of Rs.12.35 lacs which was much higher than the estimated rate and the known rates of M/s ECIL a public sector undertaking. The CO neither discussed nor did he work out the reasonableness of rates in the TEC and his ignorance of prior exposure to technical matters or the procurement procedure in telecom is not acceptable. It was his duty to acquaint himself with the procedures for tenders. Besides the rejection of M/s ECIL was done in a manner that raises several questions about the bonafides of the recommendations. As regards the subsequent actions relating to exemption from payment of security deposit, not keeping the purchase order in abeyance or conversion of IVRS into call center, the CO cannot be held responsible for the same.

7. Findings:

Article of Charge: Held as partly proved."

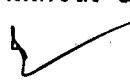
5. The Central Vigilance Commission, vide the I.D.Note dated 2.9.2004 (Annexure A-15/17) with the findings of the Inquiring Authority and advised the administrative authorities to impose a suitable minor penalty other than censure on the applicant.

6. The applicant made Annexure A-16 representation dated 22.10.2004 against the findings of the enquiry authority. The contention of the applicant was that tender submitted by M/s ECIL was ineligible due to non-fulfillment of tender conditions and that the tender of M/s Bay Talkitec(P) Ltd. was the lowest among the two eligible tenders, that the charge against him was erroneously framed and not proved and therefore he has not violated any of the rules cited in the charge.



The respondent-department has forwarded a copy of the proceedings against the applicant to the UPSC for their advice vide Annexure A-17 letter dated 25.5.2005.

7. The Union Public Service Commission vide the Annexure A-17 advice observed that the case of the Disciplinary Authority is that the General Manager, Ahmednagar Telecom District called tender for procurement of 11 numbers of IVRS. The total cost of the project was Rs.89.5 lakhs. Three parties responded to the tender notice, viz, M/s Bay Talkitec (P) Ltd., M/s Compu Shop and M/s ECIL. The technical bids were evaluated by the Technical Evaluation committee and the applicant was one of the Members of the TEC. The TEC recommended the opening of the financial bid of only M/s Bay Talkitec (P) Ltd. The bid of M/s ECIL was rejected without assigning any reason. There was no technical deviation in the case of M/s ECIL but in the next column 'Whether technically acceptance' there was a cryptic 'no'. It was also mentioned cryptically that "M/s ECIL is not having credentials". The work was awarded to M/s Bay Talkitec (P) Ltd. at the quoted rate of Rs.12,35,000/- per system. The financial bid of M/s ECIL was opened. If the technical parameters were not met by M/s ECIL, their financial bid should not have been opened. The rate offered by M/s ECIL was Rs.5,33,720/- for Interactive Voice Response System (IVRS) with the maximum capacity of 20,000 lines and Rs.5,43,720/- with the maximum capacity of 30,000 lines. The Commission has also held that both M/s Compu Shop and M/s Bay Talkitec Pvt. Ltd. were in fact one and the same entity and the tender of M/s Compu Shop should have been rejected leaving only two bidders in the field i.e. M/s Bay Talkitec (P) Ltd. and M/s ECIL. Taking into account the reasonableness of the rate quoted by M/s Bay Talkitec (P) Ltd. which was approximately 150% higher than the estimated cost and more than double the rate of M/s ECIL and therefore, the recommendation made by the TEC was without any logic about the reasonableness of the price and the same was




approved by the General Manager without any observation. The Commission further observed that the charge against the applicant is that he, as a Member of the TEC, irregularly recommended the rejection of the lowest tender and acceptance of the second lowest tenderer at an exorbitant price of Rs.12,35,000/- per system as against the lowest rate of Rs.5,33,720/- and Rs.5,43,720/- per system, violating Rule 429 of P&T Manual Vol.II and Rule 60 of P&T Financial Handbook Vol.I. The total pecuniary benefit to the supplier was to the tune of Rs.55,80,240/-. The applicant thus failed to protect the financial interest of the State and his conduct was undesirable under Rule 3(1)(i), (ii) & (iii) of CCS (Conduct) Rules, 1964. The Commission has also observed that the disciplinary authority considered the points raised by the applicant in his representation and held that the Inquiry Officer conducted the inquiry as per the provisions and rules, extending opportunity to the applicant to defend himself and arrived at the conclusion that the applicant has not brought out any new facts to disprove the charge. As a Member of the TEC, the applicant recommended procurement of the equipment at a very high rate and the findings of the inquiry Officer have established the same to that extent. The Commission has also held that the applicant could not be held responsible for the subsequent actions relating to exemption from payment of security deposit, not keeping the purchase order in abeyance or conversion of IVRS into call centre equipment. The Commission considered that the ends of justice would be met in this case if the penalty of reduction by two stages in the time scale of pay of the applicant for a period of 18 months is imposed on him with further direction that he will not earn increments of pay during the period of such reduction and on the expiry of this period, the reduction will have the effect of postponing his future increments of pay.

8. The President, the Competent Disciplinary Authority after considering the findings of the Inquiry Officer, submissions made by the applicant and the advice


tendered by the UPSC, accepted the advice of the UPSC and imposed the aforesaid penalty suggested by them vide the Annexure A-1 order dated 22.7.2005.

9. The applicant challenged the aforesaid penalty order, the CVC Report and the advice of the UPSC on various grounds. His main contention is that the findings of the inquiry Officer and that of the UPSC and Disciplinary Authority are perverse, pre-concluded and not based on any evidence on record. He has also submitted that the allegation of violation of Rule 429 of P&T Manual Vol.II and Rule 60 of the P&T Financial Hand Book Vol.I were absolutely unfounded. According to him, Rule 429 would not apply to the members of the TEC and it applies only to the authority competent to accept the tender, viz, The General Manager, Telecom Division. Similarly, Rule 60 of P&T Financial Handbook Vol.I is also has not been violated by the applicant as a member of the TEC since it lays down that every officer incurring or authorising expenditure from public funds should be guided by high standards of financial propriety. The applicant as a member of the TEC had neither incurred any expenditure from public funds nor authorised any expenditure from public funds by mere submission of a recommendation as a member of the TEC. He has also submitted that the Inquiring Authority and the Disciplinary Authority ought to have found at the outset that the applicant has not violated Rule 429 and Rule 60 referred to in the charge memo. He further submitted that the finding of the Inquiry Officer that the charge was "partly proved" is totally perverse finding. According to him, the charges are either proved or not proved. The applicant maintained his position that the offer by M/s ECIL could not have been accepted by the TEC for valid reasons as the TEC is expected to go only by records and materials placed before them and the norms prescribed for such evaluation and their recommendation/evaluation cannot be based on a speculative venture. The applicant has also challenged the recommendation of the UPSC. He has



submitted that the recommendation of the UPSC was not given to him till Annexure A-1 penalty order was issued and it is this advice/recommendation of the UPSC which was accepted by the disciplinary authority for imposing a major penalty. He submitted that the UPSC's recommendation was adverse to him and the disciplinary authority has considered the same behind his back without giving him an opportunity to speak against the same before a final decision was taken. It is also his contention that the findings of the Inquiry Officer is not based on evidence on record. Moreover, he has considered evidences which are irrelevant and not material to the charges in question. He has also alleged that the UPSC has not considered the evidence on record and as a matter of fact, some of the materials considered by the UPSC which lead to its decision were not material connected to the charges against the applicant. According to him, the disciplinary authority had not made any independent application of mind nor has he considered the evidence on record. It has simply accepted the advice of the UPSC and that too at the back of the applicant. Lastly, he has submitted that the penalty imposed upon him was shockingly disproportionate and shocking to the conscience of any person of ordinary prudence.

10. In the reply to the O.A, the respondents have submitted that the applicant has admitted that the TEC had not properly scrutinised the papers of the bidders. The TEC has opened the bid including the financial bid of M/s ECIL which was stated to be not eligible. TEC though not empowered to open the financial bid, has opened the same. It was highly irregular to open the financial bid of the ineligible bidder since the cost would be known to other bidders at the initial stage i.e. before the stage of technical evaluation. Being the financial member of TEC the applicant was aware of this irregularity but failed to point out the same. They have also submitted that the applicant was well aware of the practice but did not take objections to this irregular practice. According to the



respondents, the sequence of the developments mentioned by the applicant clearly pointed to the nexus between the members of the TEC and the bidders, viz, M/s Bay Talkitech which was accepted by the General Manager causing huge loss to the department. They have also submitted that the Inquiry Officer, a Commissioner for Departmental Inquiries of the CVC has conducted the inquiry as per the laid down procedure and there were no violation of principles of natural justice as has been alleged by the applicant. They have also submitted that after the inquiry, the disciplinary authority have consulted the CVC and the UPSC as required under the provisions of the statutory rules. Thereafter the the disciplinary authority considered the records of the case, submission of the applicant, advice of the CVC and UPSC and took a conscious decision to impose the penalty. They have further submitted that the advice of the CVC and UPSC are only guiding factors for the disciplinary authority who has to apply his mind and to come to the conclusion regarding the quantum of penalty on the delinquent official and the disciplinary authority in this case has exercised his own wisdom and arrived at its own conclusion. They have also submitted that the UPSC which is an independent statutory body under the Constitution of India examined the entire records of the case dispassionately before tendering their advice. They have therefore, rejected the submission of the applicant that the UPSC did not consider the records of the case.

11. During the course of the argument, learned counsel for applicant has brought to our notice an order of the Bangalore Bench of this Tribunal in **A.P.Bhat v. Union of India and another** [O.A.356/2005) dated 24.11.2006. The applicant therein was another member of the TEC along with the applicant herein. The charge against the said officer was also identical. A separate inquiry was conducted against him in the same manner as in the case of the applicant. The Inquiry Officer in that case also held that the charges were proved. After obtaining the advice of the CVC and UPSC, the disciplinary



authority imposed upon him the penalty of reduction by 5 stages in the time scale of pay for a period of 3 years with a further direction that he will not earn increments during the said period of such reduction and on the expiry of this period, the reduction will have the effect of postponing his future increments of pay. The Bangalore Bench after detailed examination of the case, allowed the O.A. The operative part of the order reads as follows:

"5. We have heard Mr N.G.Phadke, learned counsel for the applicant and Mr Vishnu Bhat, learned counsel appearing for the respondents.

6. The charge against the applicant reads as follows:-

That the said Shri A.P.Bhat, while functioning as Deputy General Manager (HQ), O/O General Manager, Ahmednagar Telecom District, during the period 1999-2000, and as a Member of the TEC, irregularly recommended the acceptance of the second lowest tender of MIs Bay Talkitee (P) Ltd. For the work of Supply, Installation, Testing and Commissioning of Interactive Voice Response Systems, and rejection of the lowest tender of MI s ECIL on untenable grounds, in gross violation inter alia of Rule 429 of P & T Manual Volume-II and Rule 60 of P & T Financial Handbook Volume-I, which led to placement of Purchase Order on M/s Bay Talkitec(P) limited at exorbitant rates; thereby causing undue pecuniary advantage of Rs.55,80,240/- to the said firm and corresponding loss to the Government.

2. Thus, by his above acts, the said Shri A.P.Bhat committed grave misconduct, failed to maintain absolute integrity and devotion to duty, and acted in a manner unbecoming of a Government Servant, thereby contravening 1 Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964."

It is also necessary to note the statement of imputations of misconduct or misbehaviour in support of the articles of charge. It reads thus:

"That the said Shri A.P.Bhat was functioning as Deputy General Manager (HQ) , O/O General Manager, Ahmednagar Telecom District, during the period 1999-2000.

2. Tenders were invited by the General Manager, Ahmednagar Telecom District, for Supply, Installation, Testing and Commissioning of eleven numbers of Interactive Voice Response Systems (IVRS), Le., eight numbers of IVRS for handling 2000 to 20,000 lines, at the estimated cost of Rupees eight lacs per System, and three numbers of IVRS for handling 3000 to 30,000 lines, at the



estimated cost of Rs.8,50,000/- per System.

3. Three parties responded to the Notice inviting tenders viz., *M/s Bay Talkitec (P) Ltd.*, *M/s Compu Shop* and *M/s ECIL*; and their technical bids were evaluated by a TEE (TEC), comprising Shri A.P.Bhat, Deputy General Manager (HQ), Shri N.K.S. Nair, Chief Accounts Officer, and Shri A.R.Pawar, Assistant General Manager (A & P), all of Ahmednagar Telecom District. The TEC, vide its report dated 29-05-2000, inter alia found that "All the bidders are administratively acceptable" and that "all the bidders are technically acceptable". However, without assigning any reason, the TEE recommended the opening of the financial bids of only *M/s Bay Talkitec (P)* and *M/s Compu Shop*, thereby rejecting the bid of *M/s ECIL*, a Government of India Undertaking. In the "Technical Evaluation Sheet", while the entry in respect of *M/s ECIL*, in the column 'whether any technical deviation quoted', is nil, the entry in the next column 'whether technically acceptable', is a cryptic 'no'.

4. The TEC again met on 4-Q8-2000 to evaluate the ~ financial bids of the tenderers; and recommended the award of the work to *M/s Bay Talkitec (P)Ltd.* at the quoted rate of Rs.12,35,000/- per System, noting cryptically that "*M/s ECIL* is not having credentials". Instead of returning the financial bid of *M/s ECIL*, unopened, as per the usual practice, the same was opened. The rates offered by *M/s ECIL* were Rs.5,33,201/- for IVRS with maximum capacity of 20,000 lines, and Rs.5,43,720/- for IVRS with maximum capacity of 30,000 lines.

5. The TEC noted that *M/s Compu Shop* had submitted Interface Approval Certificate issued in the name of *M/s Bay Talkitec (P) Ltd.*, which meant that both the parties were in effect one and the same. The tender of *M/s Compu Shop*, therefore, ought to have been rejected; which would have left only the tender of *M/s Bay Talkitec (P) Ltd.* for consideration, as the tender of *M/s ECIL* had already been irregularly 'rejected'. However, the TEC failed to even discuss the reasonableness of the rate quoted by *M/s Bay Talkitec (P) Ltd.* which was approximately 150% of the estimated cost.

6. The aforesaid irregular recommendations of the TEC were approved by the General Manager. without any remarks. Though the Assistant General Manager pointed out the need for taking the prescribed Security Deposit from *M/s Bay Talkitec (P) Ltd.* as the value of the contract was beyond the limit for exemption to .. be granted to firms registered with the National Small Industries Corporation Limited (NSIC); the General Manager granted exemption to the firm from payment of Security Deposit-vide letter No.T-50/99-2000/31 dated 12.10.2000, in spite of letter No.NSIC (M)/GP/17(4284) 95 dated 11-09-2000 from NSIC, reiterating the position as pointed out by Assistant General Manager. The work was finally awarded to *M/s Bay Talkitec*

(P) Ltd . vide letter No.T-SO/99-2000/32 dated 13-10-2000 and Purchase order NO.PT/ANRI IVRS/2000-011173 dated 19-10-2000.

7. The aforesaid Purchase order was "kept in abeyance until further orders" vide letter No.AGM(AIMMI/T-SO/992000 / 38 dated 14-11-2000, when a report was called for by the Chief General Manager Telecom, Maharashtra Telecom Circle, on the complaint dated 17-10-2000 of Mis Modi Consultants Limited alleging irregularities in the procurement of IVRS in Ahmednagar Telecom District. A report was sent to the Chief General Manager, seeking advice, vide letter No.AGM (NMM)T-50/99-2000/39 dated 14-11-2000. However, without waiting for any communication from the Chief General Manager, the General Manager ordered Note Sheet No.15 of file No.T50/ NRS/99-2000. the withdrawal of the aforesaid letter by which the Purchase Order had been kept in abeyance, claiming that he had -discussed the matter with CGM/DFA and they told us to send a report only and no need for keeping the PO in abeyance and hence the abeyance letter may be withdrawn". Neither the Chief General Manager nor the Director (Finance & Accounts) has confirmed any such discussion.

8. Further, one of the IVRS, so purchased, was converted into a Cali Centre equipment, on the basis of a letter dated 17.1.2001 from M/s Bay Talkitec(P) Ltd., while the other components were procured separately from the same firm. The said Shri A.P.Bhat, as the Deputy General Manager (HQ), failed to point out the need for, inviting separate tenders for the Call Centre equipments.

9. The said Shri A.P.Bhat, as the Deputy General Manager (HQ), and as Member of the TEC, thus, irregularly recommended the rejection of the lowest tender and acceptance of the second lowest tender at the exorbitant rate of Rs.12,35,000/- as against the lowest rates of Rs.5,33,720/- and Rs.5,43,720/-, in gross violation inter alia of Rule 429 of P & T Manual Volume-II and Rule 60 of P & T Financial Handbook volume-I, thereby causing undue pecuniary advantage of Rs.55,80,240/- to M/s Bay Talkitec (P) Limited and corresponding loss to the Government. Similar IVRS was supplied by the same firm to Pune Telecom District @ Rs.5,04,500/- per System, vide Purchase Order No.PTPIEG-166/99-2000/31 dated 31-12-1999.

10. Thus, by his above acts, the said Shri A.P.Bhat committed grave misconduct, failed to maintain absolute integrity and devotion to duty, and acted in a manner unbecoming of a Government servant, thereby contravening Rule 3(1) (i) ,(ii) and (iii) of the CCS (Conduct) Rules, 1964."

In the reply to the charges filed the applicant inter alia he made submissions with regard to dropping of the charges as, according

to him, the charges are not based upon the facts of the case and his promotion order dated 21-07-2003 has not been effected due to the said memorandum of charges. It is stated therein that the ECIL bid was rejected since it was not conforming to the NIT conditions. It is stated that ECIL did not have interface approval certificate nor did they have experience of having completed three similar works as required by NIT/tender conditions. Since ECIL did not fulfill the basic technical and eligibility requirements as stipulated in the tender conditions ECIL was not qualified for consideration of their financial bid. It is also stated that Rule 429 of P&T Manual Volume-II, has not been violated on the facts of the case. The applicant has also stated that all the provisions of Rule 60 of P&T Financial Handbook Volume-I have been fully followed and that all cannons of financial propriety have been observed sincerely while finalizing the tender under consideration. He has further stated that as a Member of Tender Evaluation Committee he was only recommending the case and it is entirely left to the Financial Adviser and the decisioning authority to go for purchase or not. It is also observed that when a complaint was received from the circle office, the purchase order was, kept in abeyance, as per his instructions (as the OM was not in the Head headquarter) pending investigation on the complaint. But, the GMT on returning to the Headquarter, issued an unequivocal order on the file that the purchase order should not be kept in abeyance and his order was then followed. The applicant has got a grievance that without considering the aforesaid circumstances the Disciplinary Authority has decided to proceed with the inquiry which according to him is illegal. The applicant has also produced the copies of the depositions of witnesses including his as Annexure-A5 and A6. He also submitted a statement of defence on 5-02-2004 (Annexure-A6) dealing with the allegations with reference to the charges.

6. The tender notification, general instructions and conditions for works, scope of work etc. issued by the office of the Gcnra1 Manager Telecom are produced as Annexures-A8, A9 and A10. The administrative evaluation sheet - Tender No.T-50/99-2000 for the work S/I/C of IVRS Systems in Ahmednagar SSA is produced as Annexure A11 where it is noted that all the work tenders submitted pursuant to the notification are administratively acceptable. The Technical Evaluation Sheet (Annexure-A12) in answer to column 'whether technically acceptable' it was noted 'Yes'. In the Technical Evaluation Committee report dated 29.05.2000 (Annexure-A13) the committee consisting of the applicant and two others met on 29.05.2000 in the chamber of the applicant has also noted that all the bidders are administratively acceptable and they are also technically acceptable. Regarding M/s ECIL it is stated that it is a Government of India undertaking company; the company is having wide network for mice and training purposes throughout India; their offered specification for PC matches with our specification; only for FAX card and IVR Card the company suggests it to be Dialogic and the application software will be of ECIL. ECIL has complied with all other specification and ECIL proposes Tower Cabinet instead of Rack Mounting. Thereafter, it is stated that after necessary deliberations TEC recommends to open financial bid of (i) M/s Bay

Talkitec, Chennai and (ii) M/s Compu Shop, Mumbai. This is signed by all the three members including the applicant. In the communication dated 5-05-2000 (Annexure-A 14) issued by the Government of India, Ministry of Communications, Department of Telecommunications, New Delhi in regard to procurement of Type C node at Punjab Circle it is stated that it has been decided that a limited or single response to an open tender will not be viewed as 'a case of single tender; the accepting authority, CGM in this case consultation with GM (Finance) has to be satisfied that the selected bidder meets all the tender conditions; the CGM, Telecom should also observe all other rules/policy guidelines in the matter of procurement of materials and satisfy himself that the rates are reasonable. The TEC report dated 4.08.2000 (Annexure-A15) referring to the meeting held on 4-08-2000 in continuation of the meeting held on 29-05-2000 had stated that "M/s ECIL is not having credentials hence as decided in earlier meeting financial bid of M/s Compu Shop M/s Bay Talkitec has been opened and studied by TEC. TEC has observed that M/s Bay Talkitec, Chennai has given slightly lower rate than M/s Compu Shop. Since the IVRS introduction is time bound program as per circle office so it is decided to take 80% of the estimated talukas such as Sangamner / Akole / Shevagon / Pathardi / Newasa / Shrigonda / Parner / Karjat." It is stated that after necessary deliberations TEC recommended to award the work of SITE of integrated IVR System in Ahmednagar SSA to M/s Bay Talkitec, Chennai at its quoted rates enclosed in Annexure-I. This is also signed by all the members of the committee. After the closing of the evidence in the case, the Presenting Officer had submitted a brief dated 12-02-2004 (Annexure-A 16). The applicant after receipt of a copy of the written brief of the Presenting Officer had submitted his written brief along with Annexure-A17. The Inquiry Officer after considering the matter has prepared the inquiry report (Annexure-A18). After referring to the brief submitted by the Presenting Officer and by the applicant, the Inquiry Officer has given her assessment after analyzing the evidence in paragraph 6 of the report. After referring to the two reports of the TEC mentioned earlier and after considering the version of the applicant regarding non-recommendation of M/s ECIL, she accepted the contention of the Presenting Officer who had stated that on a perusal of the report of the TEC in the initial list M/s ECIL's name was also mentioned for opening of financial bids, which seems to have been removed later from the document as an after thought. The Inquiry Officer has also agreed with the Presenting Officer that having known the rates of M/s ECIL the applicant should have made efforts to match this price with the bidders, financial prudence demanded that this should have been done. The Inquiry Officer has also observed that she is inclined to accept the explanation of the Presenting Officer and the deposition given by MW-1 and MW-7; the cost of Rs.12,35,000/- per system was on the face of it an unreasonably huge cost as compared to the lowest cost of M/s ECIL even as per the estimate prepared by the department. It is further stated that even if it is accepted for the sake of argument that M/s ECIL was not qualified for the tender, how did the CO accept the tender at such a high cost without making any effort to bring down the prices to the offer of M/s ECIL. It is also observed that as the rates quoted by M/s Bay Talkitec were clearly more than double

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the cost of the system quoted by M/s ECIL financial prudence seems to have been brushed aside. Regarding application of Rule 429 of P & T Manual Vol.11 it is stated in cases where the lowest tender is not accepted, the reasons should be recorded confidentially in writing and prior approval of the authority next higher than the one competent to accept the tender should be obtained. Regarding the application of Rule 60 of P & T Financial Handbook Vol. I after referring to various principles it is stated:

"It is quite clear from the above discussion that CO did not follow the norms of ordinary financial prudence while accepting the tender of M/s Bay Talkitec at the exorbitant rate of Rs.12,35,000/- per system and rejected the lowest rate of M/s ECIL of Rs.5,35,720/- and Rs.5,43,720/- in an irregularities manner thereby causing wrongful gain to M/s Bay Talkitec and corresponding loss to the Government."

In that view, the finding of the Inquiry Officer is that the articles of charge "held as proved". It is seen that the Central Vigilance Commission, after perusing the inquiry report along with the relevant records and comments of the administrative authorities, had concurred with the findings of the Inquiring Authority and advised to impose a suitable major penalty on the applicant [Annexure-A19]. There is no detailed consideration of the matter at the hands of the Central Vigilance Commission. However, we find that the Union Public Service Commission in its advice dated 4-03-2005 (Annexure-A22), had considered the matter in detail and after referring to the findings in the inquiry report etc. had observed in paragraphs 8, 9, 10 and 11 of the advice thus:

"8. The Commission observe that the DA considered the points raised by the DO in his representation and held that the 10 conducted the inquiry as per the provisions and rules, extending opportunity to the CO to defend himself. The Co procured the equipment at a very high rate and the findings of the 10 have correctly established the same. M/s Compu Shop was not having any valid interface certificate. Even then its financial bid was opened. The DW-I deposed that M/s Compu Shop is a dealer of M/s Bay Talkitec (P) Limited and was selling equipment and software manufactured by M/s Bay Talkitec (P) Limited. M/s Compu Shop and M/s Bay Talkitec (P) Limited were one and the same firm. The TEC did not consider at all the reasonableness of rates quoted by M/s Bay Talkitec (P) Limited. The rates approved were highly inflated and much higher than the estimated cost and the rate offered by other bidders. No genuine reason had been assigned by the CO to purchase at this high rate and thus all financial norms were thrown to winds. The CO recommended on the note sheet the purchase of the equipment and also converted one of the IVRS as a Call Centre at the behest of the supplier. There were no Departmental instructions in this regard. The equipment

procured was utilized for the Call Centre, thus enriching the firm at the cost of the Government.

9. The Commission observed that the tenders and the price paid for the purchase of IVRS were manipulated in favour of *M/s Bay Talkitec (P) Limited*. The rejection of *M/s ECIL's* bid without assigning any reason was highly improper. The financial bid of *M/s Compu Shop* was opened unjustifiably. The TEC failed to give any reason for acceptance of the offer rate of *M/s Bay Talkitec (P) Limited* which was 15001'0 higher than the estimated rate. The security deposit was waived in respect of *M/s Bay Talkitec (P) Limited* in an irregular manner. Despite there being complaints, the purchase orders were issued in favour of *M/s Bay Talkitec (P) Limited*.

10. The Commission observe that the fact mentioned in the TEE report dated 29-05-2000 that all the bidders were administratively and technically acceptable cannot be ignored. The financial bid of *M/s ECIL* was seen and signed by the TEC members and it was included in the IVRS Bid. It establishes that the TEC was well aware of the rate offered by *M/s ECIL*. It was debarred despite quoting the lowest rate in this case and no reasons were recorded. This was done with an intention to extend undue benefit to *M/s Bay Talkitec (P) Limited*. The infirmities assigned to *M/s ECIL* appeared to be an after thought. The CO, as a member of the TEC failed to reject the tender of *M/s Compu Shop* which had not submitted a valid Interface Approval Certificate in its name. He, on his own, provided for the Call Centre which was not covered by the tender in hand.

11. The Commission thus observe that the charge against the CO to recommend irregularly the rejection of the lowest tender of *M/s ECIL* (Rs.5,33,720/- per system) and acceptance of the second lowest tender at the cost of Rs.12,35,000/- per system is fully established."

Thereafter in paragraph 12 the findings are rendered as follows:-

12. In the light of their findings as discussed above and after taking into account all other aspects relevant to the case, the Commission consider that the ends of justice would be met in this case if a Penalty of reduction by five stages in the time scale of pay for a period of three years be imposed on Shri A.P.Bhat (Staff No.8124), the CO, with further direction that he will not earn increments of pay during the period of such reduction and on the expiry of this period, the reduction will have the effect of postponing his future increments of pay. The advise accordingly."

It is seen that the findings of the UPSC as above has been accepted by the President of India and without any detailed consideration of the matter the penalty suggested by the OPSC has been imposed on the applicant. Though, we have referred to various exhibits produced by the applicant, we have not dealt with

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the depositions of the parties so far, since, according to us, there is not much relevance for those documents for adjudication of the matter on hand. In this context it is also relevant to refer to one letter dated 2.09.2003 (Annexure-A4) issued by the General Manager Telecom to the 2Dd respondent while forwarding the reply to the memo of charges submitted by the applicant. Therein it is stated thus:

"The above case in which Tender Evaluation Committee is being issued charge sheet for disqualifying bid of *M/s* ECIL, even though the Committee had scrupulously followed tender conditions, has created great confusion in the minds of our staff. All current tender related works are now being handled with great fear and with a feeling of uncertainty.

As stated in the representation enclosed, that the work has been carried out by following Tender guidelines in the interest of Department, without any mala fide intention. The way Shri Bhat has been carrying out his duties and responsibilities gives, complete credence to this statement.

Sincerity and dedication of Shri A.P.Bhat is exemplary and his promotion as recommended by D.P.C. is held up owing to issuance of D.O.T. Memorandum under reference to him, which is really unfortunate.

I, herewith strongly recommend that this representation be considered for favourable decision, by re-examining the issues involved through CVC."

Here it must be noted that as per the statement of imputations the General Manager Telecom who issued this letter was also involved in and that the applicant in his reply has mentioned something against the General Manager. Notwithstanding the above, the General Manager has made the comments extracted above in so far as the applicant is concerned.

7. The charge against the applicant, as already noted, is that while he was functioning as Deputy General Manager (HQ) 0/0 General Manager, Ahmednagar Telecom District during the period 1999-2000 and as a member of the TEC he irregularly recommended (i) the acceptance of the second lowest tender of *M/s* Bay Talkitec (P) Limited for the work of Supply, Installation, Testing and Commissioning of Interactive Voice Response Systems and (ii) rejection of the lowest tender of *M/s* ECIL on untenable grounds in gross violation inter alia of (a) Rule 429 of P & T Manual Volume-II and (b) Rule 60 of the P & T Financial Hand Book Volume-I and that this led to placement of purchase order on *M/s* Bay Talkitec (P) Limited at exorbitant rates and caused undue pecuniary advantage of Rs.55,80,240 / - to the said firm and corresponding loss to the Government. Thus, the charge in short is that the applicant as a member of the TEC had irregularly recommended the acceptance of the second lowest tender of *M/s* Bay Talkitec (P) Limited for the work in question and also irregularly recommended rejection of the lowest tender of *M/s* ECIL on untenable grounds in violation of the rules. Let us see whether there is any basis for these two allegations.



8. Before proceeding to consider this aspect since there is reference to Rule 429 of P&T Manual Volume II and Rule 60 of P&T Financial Handbook Volume-I let us see those rules which are extracted below:

"Para 429 of P & T Manual Volume-2:

Usually the lowest tender should be accepted, unless, there is some objection to the capability of the contractor, the security offered by him or his execution of former work. In case where the lowest tender is not accepted, reasons should be recorded confidentially in writing and prior approval of competent authority next higher than the one competent to accept the tender, should be obtained. Exceptions: It will, however not be necessary to obtain the approval of the next higher authority in the following cases:

(a) In cases of purchase of stores in both stores and workshop organizations. where prior or post-facto approval of the store purchase committee is necessary while making direct purchases i.e., other than through DG S & D/other Government departments/public sector factories/State Governments.

(b) In cases where Heads of Circles are themselves the sanctioning authority for purchase of stores, for carrying out works, hiring repairing etc. and the orders for acceptance/ rejections are passed personally by them. In such cases the report should be invariably be sent to the DG P&T.

Rule 60 FBB V.I: Standards of financial propriety:

Every officer is incurring or authorizing expenditure from public funds should be guided by high standards of financial propriety. Every officer should also enforce financial order and strict economy at every step and see that all relevant financial rules and regulations are observed, by his own office and by subordinate disbursing officers. Among the principles on which emphasis is generally laid are as following:

1. Every officer is expected to exercise the same vigilance in respect of expenditures incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.
2. The expenditure should not be prima facie more than the occasion demands.
3. No authority should exercise its powers of sanctioning expenditures to pass an order, which will be directly, or indirectly to its own advantage.
4. Expenditure from Public moneys should not be incurred for the benefit of particular person or section of the people unless -

1. A claim of the amount could be enforced in a court of law.



Or

II. The expenditure is in pursuance of a recognized policy or customs.

5. The amount of allowances granted to meet the expenditure of a particular type should be so regulated that the allowances are not on the whole a source of profit to the recipients.

6. The responsibility and accountability of every authority delegated with financial powers to procure any item or service on government account is total and indivisible. Government expects that the authority concerned will have the public interest uppermost in its mind while making procurement decision. This responsibility is not discharged merely by the selection of the cheapest offer but must confirm to the following yardsticks of financial propriety:

1) Whether the offers have been invited in accordance with governing rules and after following a fair and reasonable procedure in the prevailing circumstances.

2) Whether the authority is satisfied that the selected offer will adequately meet the requirement for which it is being procured.

3) Whether the price on offer is reasonable and consistent with the quality required.

4) Above all, whether the offer being accepted is most appropriate one taking all relevant factors into account and in keeping with the standards of financial propriety.

7. Whenever called for, the concerned authority must place on record in precise terms, the considerations which weighed with it while taking the procurement decisions."

9. Rule 429 of P & T Manual only states that usually the lowest tender should be accepted unless there is some objection to the capability of the contractor, the security offered by him or his execution of former work. If the lowest tender is not accepted, reasons must be recorded and approval of competent authority next higher than the one competent to accept the tender should be obtained. Exception to this procedure "are also provided under clause (b) which provides that if the sanctioning authority is Heads of Circles and orders are passed by them personally only a report has to be sent to DG, P & T.

10. This shows that Rule 429 of P & T Manual is applicable only to the authority who is to accept the tender. In this case the applicant was only a member of the TEC and not the authority to accept the tender.

11. Let us now see whether the tender submitted by M/s Bay Talkitec (P) Ltd. was the lowest or not. The TEC report dated 4.08.2000 considers the matter thus:

"M/s ECIL is not having credentials hence as decided in earlier meeting financial bid of M/s Compu Shop M/s Bay



Talkitec has been opened and studied by TEC. TEC observed that *M/s Bay Talkitec*, Chennai has given slightly lower rate than *M/s Compu Shop*. Since the IVRS introduction is time bound programme as per circle office so it is decided to take 800/o of the estimated talukas such as Sangamner/Akole/Shevagon/Pathardi/Newasa/Shirgonda/Patner/Karjat."

12. This reveals that, of the two financial bids considered the tender of *M/s Bay Talkitec* is the lowest. It further reveals the introduction of IVRS was a time bound programme as per circle office and so it is decided to take 80% of the estimated talukas such as Sangamner etc. Thus, it is very clear that Rule 429 of P&T Manual has no application, for, only the lowest tender was recommended for acceptance. In that view of the matter, the allegation that the second lowest tender was irregularly recommended has no base. Here it must be noted that there is no charge that the tender submitted by *Mis Compu Shop* was defective in the sense that it did not satisfy the tender conditions or that it was irregularly entertained. We note that in the statement of imputation paragraph 5 it is stated that the tender of *Mis Compu Shop* ought to have been rejected. The Inquiry Officer has also entered a finding that since *Mis Compu Shop* was not having valid Interface Approval Certificate in its own name its bid should have been rejected. In the absence of a charge in regard to the entertainment of the financial bid of *M/s Compu shop* the finding entered by the Inquiry Officer as above has only to be ignored. It is all the more so when the charge itself proceeds on the basis of second lowest' tender. 13. Now comes the application of Rule 60 of the P & T Financial Hand Book Vol.1 which deals with 'Standards of Financial Propriety' which we have already extracted. Clause 6 refers to the responsibility and accountability of every authority delegated with financial powers to procure any item or service on Government account and states that it is total and indivisible. It further says that the Government expects that the authority concerned will have the public interest uppermost in its mind while making procurement decision and that this responsibility is not discharged merely by the selection of the cheapest offer but must conform to certain yardsticks which are specified in sub clauses (1) to (4) of Clause 6. All these provisions, according to us, are meant for the persons to whom the financial power is delegated to be applied before accepting the tender of the selected persons. See the expression "the authority is satisfied that the selected offer" occurring in clause 6(2). For instance clause 7 is also significant, for it says~ the concerned authority must place on record in precise terms, the considerations which weighed with it while taking the procurement decisions. The concerned authority, it must be noted is the accepting authority. Even assuming that these provisions are applicable to the TEC, while considering the financial bids of *M/s Compu Shop* and *M/s Bay Talkitec (P) Limited* the TEE had compared the rates offered by them and had decided to accept the lowest tender of *MI s Bay Talkitec (P) Ltd.* in view of the urgency which would show that the norms have been complied with. Thus it is clear that the alleged irregularity in recommending the tender of *MI s Bay Talkitec (P) Limited* for acceptance is

without any substance.

14. Now comes the second allegation viz., irregularly recommended rejection of the lowest tender of M/s ECIL on untenable grounds. We have perused the tender Notification (Annexure-A8), General Instructions and Conditions for Works attached to it. We find that experience and the requirement of submission of experience certificate at the time of applying for tender form are specified in the Notification itself [See the opening page and clause (2)]. Further, Clause 4 of General Conditions and instructions regarding experience states thus:

"EXPERIENCE: The works/ tender are classified in following categories as per their value.

Sl.No. No.	Value of Work	Woks/ Tenders
Category		
1.	Rs.30 lakh and above xx xx	(A) xx

In order to be technically eligible for work/ tender of category (A), (B), (C) & (D) the contractor should have completed at least three works in same and or higher category and/or in immediately below category in last five years."

It clearly provides that in order to be technically eligible for work/tender of category-A the contractor should have completed at last three works in same and/or higher category in the last five years. There is no case for anybody that the aforesaid condition has been satisfied by M/s ECIL. There appears to have no complaint- for M/s ECIL in rejecting its tender. The respondents in their reply say that the aforesaid condition can only be called a condition to be administratively eligible to bid for the tender and that it could have been rejected only on valid grounds other than non-availability of TEC approval. We have only to say that the aforesaid stand is against clause 4 of the tender condition mentioned above. True in the TEC report Annexures-A11 and A12 it is stated that the tender of M/ECIL is also administratively and technically acceptable. However, in the detailed reports (Annexures A-13 and A15) it is clearly stated that the tender of M/s ECIL is not technically acceptable.

15. The case of the respondents based on the enquiry report and the advise of the UPSC is that the TEC in its reports have categorically taken the view that the tender of M/ s ECIL was acceptable both administratively and technically but they refused to consider the financial bid of M/s ECIL subsequently which is the result of an after thought. They further took the view that the requirement of experience in Clause 4 of the tender condition is only for the administrative approval and not for the technical approval and that the financial bid of M/s ECIL should have been

considered by the TEC. As already observed, the aforesaid findings are contrary to law and are perverse. The decision of the TEC to reject the Technical bid of *M/s ECIL* according to us, is perfectly in order though for the different reasons dealt with above.

16. The further case of the respondents was that the TEC after coming to know of the rates quoted by *Mis ECIL* for the various items, ought to have considered the reasonableness of the rates quoted by *M/s Bay Talkitec (P) Limited* in its tender which is more than double the rates quoted by *Mis ECIL*. The respondents themselves admit that as per the tender condition that if the technical bid of a tenderer is not accepted the financial bid of the said party should not be opened and the same has to be returned to the tenderer. It was erroneously opened, of course not by the TEC. *M/s ECIL*, it does not appear has raised any complaint at all. According to us, the financial bid of such a party should not have been opened. Even if the said bid is erroneously opened, the contents of the said bid cannot be referred or relied on for any purpose. Rightly, the TEC did not note or deal with the contents of the said bid for any purpose. The respondents case is that the reasonableness of the rates offered by *Mis Bay Talkitec (P) Limited* should have been compared with the rates for similar articles offered by *Mis ECIL*. According to the respondents the failure on the part of the TEC to do so has resulted in undue gain to *Mis Bay Talkitec (P) Limited* whose tender was accepted and loss to the Government. With great respect, we cannot agree with the finding of the authorities to the said effect. The said stand of the respondents was on the hypothesis that the quality of the goods offered by *M/s Talkitec (P) Limited* and *M/s ECIL* is one and the same. No efforts have been made by anyone of the respondents towards the said direction. Since the financial bid of *M/s ECIL* cannot be taken note of for any purpose whatsoever the attempted comparison of rates made by the Inquiry Officer and by the UPSC and for that matter by the respondents is baseless and perverse. As already noted the TEC has made a comparison of the rates quoted by the two tenderers who were found to be technically qualified and whose financial bids were considered by the TEC and observed that the rates offered by *M / s Bay Talkitec (P) Ltd.* is the lowest which can be accepted. The TEC has clearly stated that there was due deliberations before recommending to award the work to *M/s Bay Talkitec (P) Ltd.* Chennai at its quoted rates. They have also mentioned the urgency in the matter. We do not find any illegality in the procedure adopted by the TEC as above. At the most it could have been said that some more consideration regarding the rates quoted by *M/s Bay Talkitec (P) Ltd.* independent of the rates quoted by *M/s ECIL* was desirable. TEC said they have deliberated. Only thing is that such deliberation is not recorded in full. In the absence of any mala fides failure to do so is not a ground for initiating disciplinary proceedings against the members of TEC.

17. Here arises the question of bona fides of the members of the TEC. There is no whisper either in the charge memo and statement of imputation and in the findings of the I.O., CVC and UPSC that the applicant committed the alleged charge mala fide or with ulterior motive or that the bona fides of the applicant is doubtful. In this context it is very pertinent to refer to the

recommendations made by the General Manager Telecom, Ahmednagar to the second respondent in his letter dated 2-09-2003 (Annexure-A4) while forwarding the reply to the memo of charges submitted by the applicant for dropping the charges against the applicant. We have already extracted the same earlier in this order. It is stated that the committee had scrupulously followed the tender conditions in the interest of Department without any mala fide intention. It is also stated that the way the applicant has been carrying out his duties and responsibilities gives, complete credence to this statement. It was further stated that sincerity and dedication of the applicant is exemplary and his promotion as recommended by the DPC is held up owing to issuance of D.O.T. memorandum under reference to him, which is really unfortunate.

18. We find that though the applicant has taken up all the aforesaid matters before the Inquiry Officer all those contentions were either ignored or rejected by her. What weighed with the Inquiry Officer is that though the TEC had found the tenders submitted by all the three contractors including *Mis* ECIL, a Government of India undertaking are administratively and technically acceptable the financial bid submitted by *Mis* ECIL was not considered on the ground that its technical bid was rejected. The Inquiry Officer took the view that the financial bid of *Mis* ECIL also should have been considered and at any rate reasonableness of the rates offered by *M/s* Bay Talkitec (P) Limited should have been tested on the basis of the rates offered by *M/s* ECIL. There is also a case that the financial bid of *M/s* Compu Shop also should have been rejected in which case it was a case of single tender for the acceptance of which the approval of the higher authorities should have been obtained. Many of the findings, it is to be noted, do not relate to the charge.

19. None of the findings in the inquiry report can be sustained for the reasons which we have stated in the earlier part of this order. Here, it must be noted, that there is no allegation regarding the consideration of the financial bid of *M/s* Compu Shop in the charge. In short we find that the Inquiry Officer took in to account only irrelevant materials and eschewed relevant materials in arriving at the conclusion that the charge against the applicant is proved.

20. We find that the CVC to which the inquiry report and the records were sent for its advice has simply agreed with the Inquiry Officer and recommended a major penalty. However, we find that the UPSC from whom advice was sought on the inquiry report had considered the inquiry report with reference to the various findings in the report and agreed with those findings and advised to impose the punishment.

21. What we find is that both these authorities have committed the same mistake viz., taking into account irrelevant materials and eschewing relevant material while agreeing with the finding of the Inquiry Officer. Many of the findings of the UPSC are unrelated to the charge. The advice of these two authorities also cannot be sustained for these reasons.

22. We find that the Disciplinary Authority reposed its trust on the advice given by the UPSC and without anything more had imposed the punishment suggested by the UPSC. Thus this order

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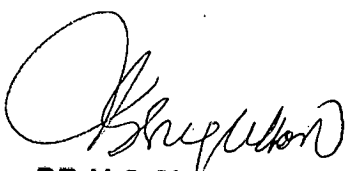
is also vitiated for the reasons already stated.

23. For all these reasons the charges levelled against the applicant cannot be sustained and consequently the impugned order dated 10-03- 2005 (Annexure-A21) also cannot be sustained. It is accordingly quashed. Since the promotion granted to the applicant to the post of Senior Administrative Grade of Indian Telecommunication Service Group-A as per order dated 21-07-2003 (Annexure-A1) is not effected due to the pendency of the disciplinary proceedings and since the applicant is now exonerated from the charges, we direct the respondents to implement the promotion order urgently, if no other disabling circumstances exist.

24. We make it clear that in view of the orders as above we did not consider the question of jurisdiction pleaded by the applicant.

25. The O.A is allowed as above. In the circumstances there will be no order as to costs."

12. We have heard Shri TC Govindaswamy, counsel for applicant and Shri TPM Ibrahimkhan, SCGSC for respondents. In our considered opinion, it is not necessary for us to go into the merits of this case separately as the present case is identical to the case of O.A.356/2005 decided by the Bangalore Bench of this Tribunal. The co-ordinate Bench has analyzed the entire aspects of the case in detail and came to the conclusion that the charges levelled against the applicant therein Shri A.P.Bhat as well as the impugned order of penalty imposed on him cannot be sustained. Since the charge against the applicant in this O.A is exactly same as that of the charge levelled against Shri A.P.Bhat, we do not find any reason to deviate from the order of the co-ordinate Bench of this Tribunal. Accordingly, we allow this O.A. The impugned Annexure A-1 penalty order dated 22.7.2005 is quashed and set aside. We direct the respondents to give all consequential benefits to the applicant as if the aforesaid Annexure A-1 penalty order was not issued. There is no order as to costs.


DR K.S.SUGATHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER