

30/10/00
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 253/2003

R.A/C.P No.

E.P/M.A No. 102/04

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SECTION OFFICER (Judl.)

Shilpa
20/11/07

FROM NO. 4 . . .

(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: 253/103

Misc Petition No: _____/

Contempt Petition No: _____/

Review Application No: _____/

Applicants: H. Singh Sandhu

Respondents: LOP & ORS.

Advocate for the Applicants: - Mr. S. Sarma, Miss U. Das.

Advocate for the Respondents: - Cuse. A.K. Chaudhury

Notes of the Registry	Date	File	Order of the Tribunal
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Application is in but not in time	31.10.2003	Heard Mr. S. Sarma, learned counsel for the applicant.
Rs. 0/- deposited		Issue notice on the respondents to show cause as to why the application shall not be admitted.
IPO/BP No 96703886		Also issue notice on the respondents to show cause as to why interim order as prayed for shall not be granted, returnable by four weeks.
Filed 30/10/03		List the case on 11.12.2003 for admission.
Sd/- B. Deyma		
Notice and order dt- 31/10/03, Sent to D/Section for issuing to respondent No-1 to 4. bb	5.1.2004	List it on 27.1.2004 for admission.
31/10/03 D/No 2214 to Dt. 02/11/03		
	mb	

K. D. Deka
Member (A)

16.2.2004 Heard Mr. S. Sarma, learned counsel for the applicant.

The O.A. is admitted. Four weeks time is allowed to the respondents to file written statement.

List on 17.3.2004 for orders.

3.3.04

WJS Submitted
by the Respondent Nos.
1, 2, 3 & 4.

K. Deodhar
Member (A)

mb

17.3.2004 Heard Mr. S. Sarma, learned counsel for the applicant and also Mr. A.K. Chaudhury, learned Addl. C.G.S.C. for the respondents.

Four weeks time is given to the applicant to file rejoinder. List on 21.4.2004 for orders.

K. Deodhar
Member (A)

mb

29.4.2004 Written statement has been filed by the respondents. On the plea of counsel for the applicant four weeks time is given to the applicant to file rejoinder. List on 28.5.2004 for hearing.

No rejoinder
has been filed.

My
27.5.04

K. Deodhar
Member (A)

mb

28.5.2004 Learned counsel for the applicant Ms. U. Das states that connected matter is pending in Delhi High Court. Therefore, list on 12.8.2004 for hearing.

25-8-04
WJS has been filed

A.

K. Deodhar
Member (A)

mb

(3)

3

26.8.04. Present: Hon'ble Mr. D. C. Verma, Vice-Chairman.

Hon'ble Mr. K. V. Prahladan, Administrative Member.

Heard learned counsel for the parties.

Ms. U. Das learned counsel for the applicant requests for adjournment on the ground that some connected matters is pending in Delhi High Court. On the same ground the adjournments was granted on previous date. The Respondents issued charge sheet against the applicant on 28.9.2003. However, the Delhi High Court's matter is connected with this O.A. & however the learned counsel for the applicant states that her Senior will argue the case and she prays for adjournment. Prayer is granted.

List the case before the next available Division Bench.


K. V. Prahladan
Member

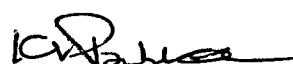

Vice-Chairman

1m

16.9.2004 Present: The Hon'ble Mr. Justice R. K. Batta Vice-Chairman.

The Hon'ble Mr. K. V. Prahladan Member (A).

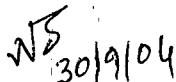
At the request of learned advocate for the applicant Ms. U. Das stand over to 23.9.2004. No further adjournment in the matter shall be granted.


K. V. Prahladan
Member (A)


Vice-Chairman

bb

As per court's order, 23.9.04 dated 23/9/04 passed in M.P. No. 102/04. The applicant is deposited Rs. 1000/- vide Receipt No. 1329 dated 30/9/04.


K. V. Prahladan
Member


K. V. Prahladan
Member


Vice-Chairman

1m

In view of the order passed in M.P. No. 102 of 2004 stand over to 6th October, 2004.

6.10.04. Present: Hon'ble Mr. R.K. Batta, Vice-Chairman.

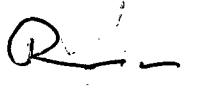
Hon'ble Mr. K.V. Prahladan, Administrative Member.

The learned counsel for the applicant states that in so far as prayer relating to enforcement of the order of the Principal Bench, the applicant would like to move the Principal Bench, if required, for enforcement of the order. In respect of the relief relating to question of charge sheet, it is contended that there are subsequent developments and in view of the same ^{above} above, the applicant is allowed to withdraw the application with liberty to approach appropriate Bench of this Tribunal.

Application is allowed as withdrawn in aforesaid terms and is accordingly disposed of with no order as to costs.


K.V. Prahladan

Member


R.K. Batta
Vice-Chairman

lm

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

D.A. No. ~~XXXXXXXXXX~~ of 2003

H.S.Sandhu

-vs-

U.O.I. & Ors.

GIST OF THE CASE.

The applicant in the instant application is aggrieved by the action of the respondents in issuing the (ANNEXURE-4) memorandum dated 30.8.2003 conveying the Presidential proposal to hold an enquiry against him under Rule 14 of CCS (CCA) Rules 1965. In the month of January 1996 CPWD was entrusted with the job of construction of New Jail No. 5 (Ph-1) at Tihar, New Delhi. At that relevant point of time the incumbent posted as Executive Engineer, Electrical, CPWD, New Delhi finalised the process of tender making all technical scrutiny and same were further forwarded to the competent authority for further necessary action. At that stage i.e. on 3.12.97 the present applicant joined as Executive Engineer, Electrical, CPWD, New Delhi and he worked there to 2.7.99. The respondents alleging some discrepancies in respect of said contract issued the above noted memorandum to the present applicant who was not at all connected with the allegations contained in the said memorandum dated 30.8.2003. It is pertinent to mention here that the applicant who was wrongly confined and thereafter was wrongly denied his promotion tot he rank of Superintending Engineer Electrical, preferred DA No. 17/2002

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before the Central Administrative Tribunal, Principal Bench, New Delhi. Hon'ble Principal Bench after hearing the parties to the proceeding on 13.2.2003 allowed the OA declaring the applicant to be confirmed in the cadre of Assistant Executive Engineer w.e.f. 9.8.89 i.e. the date on which he cleared the departmental examination and to treat him as a regular Executive Engineer (E) w.e.f 13.1.83/8.2.03 with a further direction to consider his case for promotion to the rank of Superintending Engineer (E) without taking into account the minor penalty order dated 4.5.98. Inspite of the aforesaid judgment the respondents have not yet implemented the same and pending implementation of the said judgment issued the impugned charge sheet dated 30.8.2003 which he received on 29.9.2003, only with the sole purpose to deny him the benefit of the judgment. The sole contention raised in the impugned charge sheet dated 30.8.2003 is pertaining to finalisation of the tender process initiated during 1976 i.e. prior to his joining in the said post. The applicant requested the authority concerned for implementation of the judgment passed by the Hon'ble Principal Bench but same yielded no result in positive. Situated thus the applicant has come before the protective hands of this Hon'ble Tribunal seeking redressal of his grievances.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the Central
Administrative Tribunal Act, 1985)

D. A. No. 353/03 of 2003

BETWEEN

1. Harvinder Singh Sandhu
Executive Engineer, CPWD
Central Electrical Circle, Guwahati
Bamunimaidan, Guwahati-21.

..... Applicant.

- AND -

1. The Union of India.
Represented by Secretary to the
Govt. of India.
Ministry of Urban Development & Poverty Alleviation
Nirman Bhawan
New Delhi - 11.

2. The Under Secretary to the Govt. of India
Ministry of Urban Development & Poverty Alleviation,
Nirman Bhawan
New Delhi - 11

3. The Director General (Works)
CPWD
Nirman Bhawan
New Delhi - 11

4. The Superintending Engineer (Electrical)
Central Electrical Circle, Guwahati
CPWD, Bamunimaidan, Guwahati-21

..... Respondents.

DETAILS OF THE APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION
IS MADE:

This application is directed against the memorandum issued under No. C-13815/4/2002 - AVIII dated 30.8.2003 issued by the Under Secretary to the Govt. of India, Ministry of Urban Development & Poverty Alleviation, New Delhi. The applicant through this application also prays

Filed by
the applicant through
Mr. Dr.

Advocate

31-10-03

for a direction towards the respondents for providing all consequential service benefits by setting aside the aforementioned memorandum dated 30.8.2003.

2. LIMITATION:

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act, 1985.

3. JURISDICTION:

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE:

4.1. That the applicant in the instant application is aggrieved by the action of the respondents in issuing the memorandum dated 30.8.2003 conveying the Presidential proposal to hold an enquiry against him under Rule 14 of CCS (CCA) Rules 1955. In the month of January 1996 as per the sanction conveyed by Deputy Secretary, Ministry of Home, Delhi Administration CPWD was entrusted with the job of construction of new jail No.5 (PH-1) in the firm land area at Tihar, New Delhi. At that relevant point of time the incumbent posted as Executive Engineer, Electrical, CPWD, New Delhi finalised the process of tender making all technical scrutiny and same were further forwarded to the Superintending Engineer for further necessary action. At that stage i.e. on 5.12.97 the present applicant joined as Executive Engineer, Electrical, CPWD, New Delhi and he

worked there to 2.7.99. The respondents alleging same discrepancies in respect of said contract issued the above noted memorandum to the present applicant who was not at all connected with the allegations contained in the said memorandum dated 30.8.2003. It is pertinent to mention here that the applicant who was wrongly confirmed and thereafter was wrongly denied his promotion to the rank of Superintending Engineer Electrical, preferred OA No.17/2002 before the Central Administrative Tribunal, Principal Bench, New Delhi. Hon'ble Principal Bench after hearing the parties to the proceeding on 13.2.2003 allowed the OA declaring the applicant to be confirmed in the cadre of Assistant Executive Engineer w.e.f. 9.8.83 i.e. the date on which he cleared the departmental examination and to treat him as a regular Executive Engineer (E) w.e.f 13.1.93/8.2.83 with a further direction to consider his case for promotion to the rank of Superintending Engineer (E) without taking into account the minor penalty order dated 4.5.90. Inspite of the aforesaid judgment the respondents have not yet implemented the same and pending implementation of the said judgment issued the impugned charge sheet dated 30.8.2003 which he received on 29.9.2003, only with the sole purpose to deny him the benefit of the judgment. The sole contention raised in the impugned charge sheet dated 30.8.2003 is pertaining to finalisation of the tender process initiated during 1996 i.e. prior to his joining in the said post. The applicant requested the authority concerned for implementation of the judgment passed by the Hon'ble Principal Bench but same yielded no result in positive. Situated thus the applicant has come before the protective hands of this Hon'ble Tribunal seeking appropriate remedy.

This is the crux of the matter for which the applicant has filed this OA.

2. That the applicant is citizen of India and as such he is entitled to all the rights, privileges and protection as guaranteed by the Constitution of India and laws framed thereunder.

3. That the applicant belongs to the 1976 batch of Central Electrical and Mechanical Engineering Service Group-A officer selected through combined Engineering Service (CES) Examination 1976 conducted by UPSC. Pursuant to the said selection applicant got his appointment as Assistant Executive Engineer (E) on 3.2.78 in Central Public Works Department (CPWD). The applicant after completion of satisfactory service completed his probationary period on 9.8.80. However the respondents have not yet issued any order of confirmation confirming the service of the applicant. The applicant by dint of his meritorious service earned promotion to the cadre of Executive Engineer (E) on adhoc basis. The respondents declared the applicant as a regular Executive Engineer (E) in the Assistant Executive Engineer's own quota w.e.f. 13.1.83/8.2.83 and he was posted at Zero, Arunachal Pradesh. In the year 1989 (27-7-89) the respondents issued a charge sheet and subsequently after a lapse of several years i.e. on 4.5.98 said proceeding came to an end with the issuance of an order dated 4.5.98 imposing penalty of reduction in pay by two stages without cumulative effect. After expiry of the currency of penalty period, the respondents issued an order dated 6.7.2001 confirming the applicant in the cadre of Assistant Executive Engineer (E) w.e.f 1.9.2000. The applicant preferred

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representation against the said order dated 6.7.2001 but his such representation was rejected by the respondents by a communication dated 20.11.2001. The applicant challenging the validity and legality of the said two orders dated 6.7.2001 and 20.11.2001 preferred OA No.17/2002 before the Central Administrative Tribunal, Principal Bench with a further prayer to declare him to be confirmed in the cadre of Assistant Executive Engineer (E) w.e.f. 9.8.80 and in the cadre of Executive Engineer (E) w.e.f. 13.1.83/8.2.83 and to consider his case for promotion in the cadre of Superintending Engineer with retrospective effect i.e. from the date in which his immediate junior was promoted to the said grade with all consequential service benefits.

4.4. That the aforesaid OA 17/2002 was taken up for hearing by the Hon'ble Principal Bench on 13.2.2003 and after hearing the parties to the proceeding the Hon'ble Tribunal was pleased to allow the said OA by setting aside and quashing the orders dated 6.7.2001 and 20.11.2001, declaring the applicant to be confirmed as Assistant Executive Engineer (E) w.e.f. 9.8.98 (the date on which he cleared the departmental examination for such confirmation) and as regular Executive Engineer in his own quota effective from 13.1.83/8.2.83. The said Hon'ble Tribunal vide its Judgment dated 13.2.2003 also directed the respondents to consider the case of the applicant for his promotion to the rank of Superintending Engineer (E) without taking into the order of penalty dated 4.5.98, w.e.f the date on which his immediate junior got such promotion or even prior to such date i.e. when the applicant was due for such promotion with all consequential service benefits including arrears etc.

the said Hon'ble Tribunal directed the respondents to complete the process within a stipulated time frame of 3 months.

A copy of the judgment and order dated 13.2.2003 is annexed herewith and marked as Annexure-1.

5. That the applicant was pursuing his matter before the respondents for implementation of the said judgment and to the best of his knowledge he could gather the information that the authorities of CPWD and Urban Development agreed to the proposal and to implement the judgment dated 13.2.2003 within the said stipulated time. However the respondents later on decided against it and preferred writ petition before the Hon'ble High Court. The applicant having no other alternative preferred a Misc Application before the Hon'ble Principal Bench which was registered as MA No.1398/2003 praying for implementation of the judgment and order dated 13.2.2003 passed in OA No. 17/2002. The Hon'ble Principal Bench Central Administrative Tribunal on 29.9.2003 disposed of the said MA directing the respondents to comply with direction contained in the said judgment within a stipulated timeframe of 4 weeks. The applicant immediately communicated the said order dated 29.9.2003 passed in MA No.1398/2003 through his Council's letter dated 16.10.2003 to the respondent No.1.

Copies of the said communication dated 16.10.2003 and the order dated 29.9.2003 are annexed herewith and marked as Annexure 2 & 3 respectively.

4.6. That the respondents however with an intention to delay the matter issued the impugned memorandum dated 30.8.2003 enclosing a statement of imputation of misconduct in the form of a chargesheet under Rule 14 of CCS(CCA) Rules, 1965. The sum and substance of the charges are pertaining to the settlement of tender for the purpose of construction New Jail No.5 (PH-1) in the farmed land area at Tihar, New Delhi as per the sanction conveyed by the Dy. Secretary, Home, Delhi Administration vide letter dated 10.8.98. The respondents initiated the process of tender much earlier to the period, of his service under CPWD, New Delhi. It is pertinent to mention here that during the period from 3.12.97 to 2.7.99 the applicant was working as a SW(E), PWD-EC-II, New Delhi and by that time the process for finalisation of the said tender was handed by the incumbent holding the said post prior to him and as such he was no way connected with the charges leveled against him.

A copy of the chargesheet is enclosed herewith and marked as Annexure-4.

4.7. That the applicant begs to state that prior to issuance of the chargesheet the Vigilance Unit of the respondents issued a Memorandum dated 6.11.2001 relating to the allegations reflected in the Annexure-4 chargesheet. The applicant immediately on receipt of the said Memorandum submitted his reply vide his letter dated 24.12.2001 dealing elaborating with the matter.

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The applicant craves leave of this Hon'ble Tribunal to rely and refer upon the contentions made in the said reply dated 24.12.2001 at the time of the hearing of this case with a prayer to treat the said to be a part of the OA.

Copies of the said Memorandum dated 6.11.2001 and the reply dated 24.12.2001 are annexed herewith and marked as Annexure-5 & 6 respectively.

4.8 That the respondents once again issued another memorandum dated 29.5.2002 pertaining to the same charges as reflected in the Annexure-4 charges dated 30.8.2003 and the memorandum dated 6.11.2001 (Annexure-5). The applicant on receipt of the same preferred reply vide his letter dated 19.6.2002 reiterating and reaffirming his earlier stand.

Copies of the said memorandum dated 29.5.2002 and the reply dated 19.6.2002 are annexed herewith and marked as Annexure-7 & 8 respectively.

4.9. That the applicant immediately on receipt of the Annexure-4 chargesheet dated 28.9.2003 preferred a representation dated 6.10.2003 praying for sometime to submit his reply and the respondents acting on his request extended the time for submission of reply to the Annexure-4 chargesheet till 31.10.2003.

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A copy of the communication dated 6.10.2003 is annexed herewith and marked as Annexure-9.

4.10. That the applicant begs to state that inspite of his best afford he could not prepare the effective reply to the Annexure-4 chargesheet dated 28.9.2003 as it contains various dates pertaining to different point of time. Although prayer has been made for further extension but the respondents rejected his prayer. It is therefore the applicant though this application prays for an appropriate order from the Hon'ble Tribunal for extension of further 45 days time to file his reply against the said chargesheet dated 28.9.2003 apart from his main relief regarding quashing of the Annexure-4 chargesheet along with other consequential benefit.

4.11. That the applicant begs to state that the charges leveled against the Annexure-4 chargesheet dated 28.9.2003 is totally baseless as the process of tender was initiated much prior to his joining in the post in question and the process was duly approved by the competent authority in respect of technical sanction etc. It is noteworthy to mention here that the administrative approval and expenditure sanction was made by the concerned authority during the year 1990 whereas the process of tendering initiated in a much later date taking into consideration the market rate for high mast during the period of 1987-88. The notice inviting tender (NIT) was submitted by Executive Engineer one Mr. S. Khan during January 1996 and the quotations were received from M/S Phillips India, M/s Bajaj

Electrical Ltd. etc. and the lowest rate was taken into consideration. Due to delay in execution of the work for about 6 years there has been difference in cost on the tender items in comparison to the All India Consumer Price index pertaining to the period of June 1987. As per the CPWD Manual the Expenditure exceeds by 10% per year but in the instant case if the comparison is taken into consideration same indicates 3.6% during these 6 years for which perhaps it was not made any revision by the authority finalising the tender. However, the respondents with an intention to entangle the applicant and with an intention to delay the process of implementation of the judgment dated 13.2.2003 issued the impugned the Annexure-4 'chargesheet' dated 28.9.2002 which is not sustainable as the applicant is in no way connected with the said charge.

4.12. That the applicant begs to state that admittedly the applicant who was not at all responsible for finalising the process of tender as he joined in a later date and as such the respondent ought not to have charge sheeted him for the alleged misconduct. Apart from that since the applicant ought to have been confirmed in his service w.e.f. 9.8.86, the date on which he cleared the departmental examination for such confirmation the present chargesheet ought not to have been treated as a statutory bar for such confirmation. On the other hand his subsequent confirmation in the cadre of Executive Engineer (E) is pertaining to the year 1983 ought not to have been a bar taking into consideration the present chargesheet are now sought to delay the matter pertaining to his confirmation and subsequent promotion to the cadre of Supdt. Engineer for

which he was due in the year 1996 itself. It is pertinent to mention here that almost all the junior the applicant now have been promoted cadre of Supdt. Engineer (E) and the respondents, taking into consideration the dispute relating to his confirmation in the cadres of Asstt. Executive Engineer (E) and Executive Engineer (E) delayed the matter of promotion of the applicant to the cadre of Supdt. Engineer (E) without any reason. It is therefore the applicant now has come before this Hon'ble Tribunal challenging the legality and validity of the chargesheet (Annexure-4) with a further prayer to the respondents to act upon the Annexure-1 judgment dated 13.2.2003 and the subsequent order dated 29.9.2003 passed MA 1398/03 in OA 17/82 providing all the consequential reliefs.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the action/inaction on the part of the Respondents in issuing the Annexure-4 chargesheet dated 26.9.2003 is per-se illegal arbitrary and violative of settle provisions of law and as such same is liable to be set aside and quash.

5.2. For that the respondents have acted contrary to the directive contained in the judgment and order dated 13.2.2003 passed in OA No. 17/82 and the order dated 29.9.2003 passed in MA 1398/03 and for that they are liable to punished for their willful and deliberate violation.

5.3. For that the respondents have acted contrary to settled provision of law in issuing the Annexure-4

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chargesheet dated 28.9.2003 as the applicant with no way connected with the aforesaid charges and as such same is liable to be set aside and quash as same has been issued with an ulterior motive and with malafide intention by the respondents.

5.4. For that the respondents ought not to have linked up the matter pertaining to his confirmation for which he was due during the period 1980-83 and for his subsequent promotion to the cadre of Supdt. Engineer (E) for which he was due in the 1996 only on the count of issuance of annexure-4 chargesheet which is a subsequent development.

5.6. For that in any view of the matter the impugned action of the respondents are not sustainable in the eye of law and liable to be set aside and quashed.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

5. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to them and there is no alternative remedy available to him.

5. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER

COURT:

The applicant further declares that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other court or any other

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Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

8.1. To set aside and quash the impugned chargesheet dated 28.9.2003 (Annexure-4) providing all consequential service benefits as indicated in the Annexure-1 and judgment dated 13.2.2003.

8.2. Cost of the application.

8.3. Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

Under the facts and circumstances of the case the applicants prays for an interim order directing the Respondents ~~not to act upon~~ to the

(a) the Annexure 4 chargesheet dated 28.9.2003 with a further direction to the respondents to act upon to the judgment dated 13.2.2003 (Annexure-1) and Annexure-3 order dated 29.9.2003.

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11. PARTICULARS OF THE I.P.O.:

1. I.P.O. No. 90c 703886

2. Date 30-10-03

3. Payable at Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

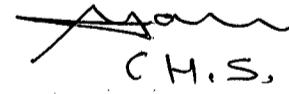
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VERIFICATION

I, Harvinder Singh Sandhu, aged about 52 years, at present working as Executive Engineer(E) CPWD, Bamunimaidan, Guwahati-21, do hereby solemnly affirm and verify that the statements made in paragraphs 4:1, 4:2, 4:3, 4:10, 4:11, 4:12 are true to my knowledge and those made in paragraphs 4:4-4:9 are also true to my legal advice and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 31st day of Oct. of 2003.

Signature.


(H.S. SANDHU)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. 100-1172007

On the 13th day of February, 2003

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

HON'BLE SHRI KULDIP SINGH, MEMBER (C)

Haryinder Singh Sandhu,
B-570/14, Kondriya Vihar-11,
Sector 46, Noida.

(By) Shri G.K. Aggarwal, Advocate

Case Application

-VERGUS-

Union of India through
Secretary, Ministry of
Urban Development & Poverty
Alleviation, Nirman Bhawan,
New Delhi-110011.

Director General Works,
Central Public Works Department,
Nirmal Bhawan, New Delhi-110011.

Secretary,
Union Public Service Commission,
Shahjahan Road,
New Delhi-110011.

Vijender K. Mittal,
Superintending Engineer (Electrical),
Electrical Circle-IV,
Y-Shaped Building, IP Bhawan,
New Delhi-110002.

... Respondents

(By Shri K.R.Sachdeva, Advocate)

D.R.D.E.R

Hon'ble Shri V.K.Mujotra, Member (A) :

A circular library stamp with the text "Central Adminstration Library" around the top and "1959" at the bottom.

Anasazi

✓
Advocacy

17-
94.

respondents stating that a specific order of confirmation has not been issued in this regard. He was promoted as ad hoc Executive Engineer (Electrical) [EE(E)] w.e.f. 30.9.1982. He was declared a regular EE(E) in AEEB's own quota from 13.1.1983/8.2.1983. A memorandum of charge was issued against him for major penalty proceedings under rule 14 of CCS (CCA) Rules, 1965 on 27.7.1989. While applicant's juniors were promoted as EE(E) on 29.7.1992 on regular basis, applicant was bypassed. A penalty of reduction in pay by two steps without cumulative effect was imposed upon applicant on 4.5.1998. After expiry of the penalty period, impugned order Annexure A-1 was issued on 6.7.2001 confirming applicant as EE(E) effective from 1.9.2000. Applicant's representation, therewith, was rejected vide Annexure A-2, dated 20.11.2001. Applicant has sought quashing and setting aside of Annexures A-1 and A-2 and declaration that, he was confirmed as AEE(E) effective from 9.8.1980 and EE(E) from 13.1.1983/8.2.1983 and entitled to be considered for regular promotion before or along with his juniors to the post of Superintending Engineer (Elect.) [SE(E)] with or without taking into account the minor penalty order dated 4.5.1998, with consequential arrears and other benefits.

2. We have gone through the material on record and heard the learned counsel on either side.

3. The learned counsel of applicant contended that applicant had been appointed on 8.2.1978 as AEE(E) against a permanent post on the basis of CES Examination.

Agreed

JK
CDS/CS

1976. As per Annexure A-3 dated 23.2.1982, among others, applicant was declared to have satisfactorily completed the period of probation of two years from 9.8.1980, while as per Annexure A-4 dated 4.9.1982 he was appointed to officiate as EE(E) on ad hoc basis. In the revised seniority list of EEs(Civil/Elec.) dated 23.7.1984 (Annexure A-5) prepared on the directions of the Hon'ble Supreme Court vide judgment of 23.5.1984 in CWP No. 157-162 of 1970 in the case of P.S. Nahal & Ors., applicant's date of actual promotion as EE(E) shown as 8.2.1983. His date of regular promotion within the quota was shown as 8.2.1983/13.1.1983. In the seniority list of EEs(E) dated 18.9.1989 (Annexure A-6) dates of actual and regular promotion to the grade of EEs(E) within the quota relating to applicant were reiterated. Applicant's date of regular promotion within the quota was shown as 8.2.1983. Annexures A-4, A-5 and A-6 have never been cancelled till date. The learned counsel stated that respondents have taken into consideration a charge of misconduct and the penalty of reduction in pay by two stages without cumulative effect imposed on applicant on 4.6.1988 (Annexure A-9) for confirming him in the grade of AEEs(E) w.e.f. 1.9.2000, while as per Annexure A-1 dated 6.7.2001 several juniors belonging to subsequent batches have been confirmed in the grade of AEEs(E) during the period 1995-1998. The learned counsel contended that a misconduct or charge after applicant's promotion as EE(E) on regular basis should have no effect on his date of confirmation as AEE(E), seniority and further promotions. The learned counsel relied on Union of India v. K.V. Janki ~~1991~~ 1991 (2) SCALE 423 SC

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for
Advocate.

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by [unclear]
[unclear] J. Dated [unclear]
[unclear] Admin. Officer

contending that when he had completed the probationary period (as AEE(E) and eligibility period of five years as EE(E)), for further promotion in terms of CES Group 'A' Recruitment Rules much prior to the incidence of misconduct for which he was punished at a much later stage, it cannot adversely affect his confirmation, seniority and further promotions.

The learned counsel of respondents, first of all raised his objection as to limitation. According to him, cause of action for applicant had arisen on 12.3.1990, when a number of officers of his batch as well as batches of subsequent years were confirmed w.e.f. 1.9.1990. In this regard, the learned counsel of respondent stated that cause of action for applicant had arisen only on 20.11.2001 when his representation regarding his confirmation from 1.9.2000 vide Annexure A-1 (1.9.2000 United-6.7.2001) was rejected. The learned counsel stated that in Annexure A-1 whereas applicant has been confirmed from 1.9.2000 taking into consideration the penalty imposed upon him for a misconduct which had taken place much after the completion of his probation and regularisation as EE, several other personnel belonging to subsequent batches have been confirmed from dates several years prior to the date of confirmation of applicant. We are in agreement with the learned counsel of applicant and in the backdrop of facts and circumstances, reject the objection regarding limitation.

5. The learned counsel of respondents have next raised the contention that confirmation pre-supposes

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...il Adreßwelt.

issuance of specific orders. He relied on High Court of M.P. through Registrar & Ors. v Satya Narayan Jhaveri (2001) SCC (L&S) 1087 stating that completion of the period of probation does not culminate in deemed confirmation of the probationer. A specific order regarding confirmation is a condition pre-requisite. The learned counsel further stated that in terms of DOP&T OM dated 28.3.1988 (Annexure R-1) confirmation is made only once in the service of an official and that too in the entry grade. He further stated that confirmation is de-linked from the availability of permanent vacancies in the grade. An officer who has successfully completed the probation may be considered for confirmation by a DPC and a specific order of confirmation has to be issued when the incumbent is clear from vigilance angle etc. He stated that conditions for confirmation are : (1) passing of prescribed departmental test; (2) satisfactory completion of probationary period; (3) clearance from vigilance angle; and (4) satisfactory record of service. The learned counsel stated that confirmation of AEEs(E) of 1976 batch onwards could not be considered for several years on account of non-availability of permanent posts in the grade. Vide OM dated 28.3.1988 confirmation was de-linked from the availability of permanent posts and applicant who belongs to 1976 batch was also considered for confirmation by the DPC held on 12.4.1990. However, he could not be cleared as he had been charged with in July, 1989 for major penalty and as such he was not cleared from vigilance angle and the DPC's recommendations were kept in a sealed cover. Several others belonging to his batch and subsequent batches were also not cleared from vigilance angle.

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confirmed w.e.f. 1.4.1988 vide notification dated
3.12.1980.

6. The learned counsel of applicant maintained that OM dated 28.3.1988 is not applicable to applicant's case, this OM can have only prospective application. Instructions prior to 1988 only are applicable to applicant's case. We are convinced that instructions contained in OM dated 28.3.1988 relating to confirmation of officers in a particular grade are not applicable to the present case, applicant having completed his probation w.e.f. 9.8.1980 as per Annexure A-3.

7. Specific Government instructions on the subject of confirmation of probationers have not been brought to our notice despite our asking. In any case, instructions dated 28.3.1988 are certainly not applicable to the facts of the present case. Applicant had been appointed on probation of two years on 8.2.1970. He completed the prescribed two years of probation satisfactorily on 9.8.1980 vide Annexure A-3 dated 23.2.1982. He was promoted to AEE on ad hoc basis vide Annexure A-4 w.e.f. 30.9.1982. He was also declared regular AEE in AEE's own quota vide Annexure A-5 dated 23.7.1983 from 13.1.1983/16.2.1983. This position was re-confirmed vide revised seniority list dated 10.9.1989 (Annexure A-6). On the basis of CES Examination, 1976 applicant had been appointed as AEE against a permanent post. He had successfully completed his probation. In the absence of any other conditions for confirmation even if specific orders were to be issued

Wt

Amritpal Singh

Amritpal Singh

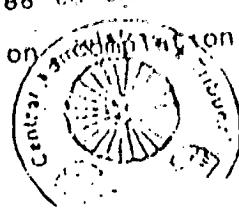
the learned judge

17 May 1990

During his confirmation, it would have been a mere
formality, MHA OM dated 15.4.1969 on the subject of
Confirmation of probationers states:

"Confirmation of probationers. A person appointed against a permanent post as a direct recruit with definite conditions of probation is to be confirmed in the grade with effect from the date on which he successfully completes the period of probation. The decision whether he should be confirmed or his probation extended should be taken soon after the expiry of the initial probationary period, ordinarily within 6 to 8 weeks and communicated to the employee together with the reasons in case of extension. There are no general orders providing for convening of DPC at specified intervals to consider cases of confirmation of direct recruits placed on probation. However, even though the meetings of the DPC may be held after the termination of the period of probation of direct recruits, a person appointed against a permanent post with definite conditions of probation is to be confirmed in the grade with effect from the date on which he successfully completes the period of probation. A probationer who is not making satisfactory progress or who shows himself to be inadequate for the service should be informed of his shortcomings well before the expiry of the original probationary period so that he can make severe efforts at self-improvement."

The above instructions have not clearly laid down that specific orders of confirmation have to be issued after the successful completion of the period of probation. Applicant was appointed against a permanent post as a direct recruit with definite conditions of probation and respondents had declared that he had successfully completed the period of probation. He was promoted as EE initially on ad hoc basis and later on, on regular basis. Respondents have wrongfully applied the instructions dated 20.3.1988 to the present case. At the appropriate time, when on confirmation of probationary period,



Attested

[Signature]

Advocate.

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applicant's confirmation was to be considered, no charge of any misconduct was pending against him." In the case of Satya Narayan Jhaver (supra), the relevant rule provided for a maximum period of probation for judicial officers appointed after training, with the further stipulation that, at the end of the probationary period the appointee could be confirmed subject to his fitness and passing of departmental examination. After being found unfit for confirmation during the probation period the judicial officer concerned was given a further opportunity for improving himself but he failed to improve himself. In such circumstances, it was held that the mere grant of such opportunity to continue in service after the expiry of maximum period of probation did not culminate in deemed confirmation of the probationer, more so, when the relevant rules permitted exercise at any time of the power to dispense with the service of such a probationer. The facts of the present case are clearly distinguishable from those of Satya Narayan Jhaver (supra). "In that case orders for successful completion of probation were not there. In the present case applicant had been declared to have completed his probation successfully. Nothing has been brought to our notice which existed against applicant at the appropriate time. Applicant had been appointed against a permanent post. He had completed his probationary period successfully. No instructions have been shown requiring issuance of specific orders of confirmation. In these circumstances, confirmation can be deemed to have occurred immediately on 9.8.1980 when applicant satisfactorily completed his period of probation."

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Further, respondents have themselves declined application's date of regular promotion as EE(E) within quota w.e.f. 02.02.1983. He has a right to be considered for further promotion, when it was due before occurrence of such event in the light of the above observations.

8. Having regard to the above discussion, Annexure A-1 dated 6.7.2001 and Annexure A-2 dated 20.11.2001 are quashed and set aside. Applicant is declared to have been confirmed as Assistant Executive Engineer (Electrical) effective from 9.8.1980 and as a regular Executive Engineer (Electrical) in his own quota effective from 13.1.1983/02.02.1983. We further hold that he is entitled to be considered for regular promotion before or along with his juniors from the post of Executive Engineer (Electrical) to Superintending Engineer (Electrical) without taking into account the minor penalty order dated 4.5.1998 and promoted, if recommended, with arrears and all benefits. Respondents are directed to take all steps in implementation of these directions within a period of three months from the date of communication of these orders.

9. The OA is allowed in the above terms. No costs.

(Kuldip Singh)
Member (J)

(V. K. Majotra)
Member (A)

/as/

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ANNEXURE 2
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-25-
GK Aggarwal
ME, LLB
ADVOCATE

G-82, Ashok Vihar-I,
DEHLI-110052 (55158313)
1610/HSS/03, dt 16.10.03

The Secretary,
Ministry of Urban Development &
Poverty alleviation, Nirman Bhawan
NEW DELHI-110011

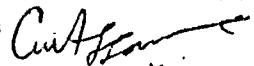
The DG(w), CPWD, Nirman Bhawan, New Delhi-11

Ref: Hon'ble G.A.T (PB), New Delhi
Final Order dt 29.09.03 in
M.A. 1398/03 in OA: 17/02
(copy enclosed)

Sir,

You are requested to please ensure full and
faithful compliance of the aforesaid Order within
specified time, failing which civil contempt
petition, without further notice to you, shall be
filed, besides other remedy sought in law. Copy kept

Yours faithfully,


Counsel for Mr HS Sandhu
GK Aggarwal, Advocate

Encl.- As above

Attested


Advocate.

CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH.

Regd. AD/Dasti

61/35, Copernicus Marg,
New Delhi - 110 001.

Date :

6.10.2003

From

The Pr. Registrar
Central Administrative Tribunal
Principal Bench, New Delhi.

1. Shri G.K. Aggarwal, Counsel for the applicant,
CAT., Bar Room, New Delhi

2. Shri K.R. Sachdeva, Counsel for the respondents,
CAT., Bar Room, New Delhi

17/2002, MA 1398/03.

Regn. No. O.A.....

H.S. Sandhu Applicant

Versus

UOI & Ors. Respondent

Sir,

I am directed to forward herewith a copy of Judgement/Order
29.9.2003
Dt. passed by this Tribunal in the above mentioned
case for information and necessary action, if any.

Please acknowledge the receipt.

Yours faithfully,

.....
(SECTION OFFICER)

JUDL.-II

FOR PRINCIPAL REGISTRAR

Encl. : As above.

XJ-II>



TC
6/10/03
Attestation

Advocate

Present : Sh. G.K. Aggarwal, counsel for applicant.
Sh. K.R. Sachdeva, counsel for respondents.

1. Despite expiry of time granted to the respondents to comply with our directions dated 13-2-2003, directions are yet to be complied with. However, Sh. K.R. Sachdeva, Id. counsel states that as the matter is sub-judice before the High Court and is coming up for hearing on stay on 2-12-2003, the matter may be adjourned beyond 2-12-2003.

2. On the other hand, Sh. G.K. Aggarwal, Id. counsel states that as the order passed by this Court has not been stayed, the same be complied with.

3. Considering the contentions of the rival parties, we direct the respondents, as there is no stay, to comply with the directions of this Tribunal dated 13-2-2003 within four weeks from the date of receipt of a copy of this order.

4. MA is accordingly disposed of.

(R.K. Upadhyaya)
Member (A)

(Shanker Raju)
Member (J)

vks/

6/10/03

IC
CWP

Attested

by

Advocates

- 28 -

No.C-13015/6/2002-AVIII

Government of India

Ministry of Urban Development & Poverty Alleviation
(Shahari Vikas Avam Gharibi Upshaman Mantralaya)Recd.
29/9/03New Delhi, Dt. August 3rd, 2003.MEMORANDUM

The President proposes to hold an inquiry against Shri H.S. Sandhu, Executive Engineer (E) under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of mis-conduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A Statement of the imputations of mis-conduct or misbehavior in support of each article of charge is enclosed (Annexure II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure III & IV).

2. Shri H.S. Sandhu, Executive Engineer (E) is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. Shri H.S. Sandhu, Executive Engineer (E) is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri H.S. Sandhu, Executive Engineer (E) is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the C.C.S (C.C.A) Rules 1965 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him ex- parte.

5. Attention of Shri H.S. Sandhu, Executive Engineer (E) is invited to Rule 20 of the Central Civil Services (Conduct) Rules 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Shri H.S. Sandhu, Executive Engineer (E) is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the C.C.S. (Conduct) Rules, 1964.

Amritpal

Advocate.

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The Copy of CVC's advice No. 002-W&H-12 dated the 14th February, 2003 is enclosed.

7. The receipt of this Memorandum and the CVC's U.O. No. 002-W&H-12 dated the 14th February, 2003 may be acknowledged.

By order and in the name of the President.

Encls: As above

Lalitha Das
(Lalitha Das)
Under Secretary to the Govt. of India

To,

Shri H.S. Sandhu,
Executive Engineer (E)

Through
DG (W),CPWD
[SH.J.M.RAJ,CE (VIG)]
NIRMAN BHAWAN
NEW DELHI-110 011

Advocate
P
Advocate

STATEMENT OF ARTICLE OF CHARGES FRAMED AGAINST
SH. H.S. SANDHU EE (E)

Shri H.S. Sandhu, EE (E) while working as SW (E), PWD EC-II, New Delhi during the period 5.12.97 to 2.7.99 committed the following lapses in respect of the work of "c/o New Jail No.5 (Phase-I) in the farm land at Tihar, New Delhi (SH: Providing, installing, testing and commissioning of High Mast light)".

ARTICLE - I

An Administrative Approval and Expenditure Sanction for the work of "Construction of New Jail No.5 (Ph. - I) in the farm land area at Tihar, New Delhi" was conveyed by the Dy. Secretary, Home, Delhi Administration vide letter No.F-9/129-86/Home(G) dt. 10.8.90 for Rs.4,77,53,400/- which contained a provision of Rs.18,12,800/- (after including contingencies at 3%) for the subhead of Pdg. of 4 Nos. High Mast light.

Against a provision of Rs.18,12,800/- the lowest tender of M/s Varuns Associates was approved by the SE (E), PWD EC-II vide letter No.23(137)/PWD EC-II/GOD/110 dated 22.1.98 for Rs.36,36,100/- which was 100% above the sanctioned provision. Sh. H.S. Sandhu, EE (E) while processing the tender failed to bring to the notice of SE (E), PWD EC-II that the rates quoted by the lowest firm were 100% above the provision in the administrative Approval & Expenditure Sanction and prior approval from the competent authority was required in terms of Para 20.1.17.5 of CPWD Manual Vol. II, thereby permitting expenditure which beyond the provision of administrative approval. In this manner, Sh. H.S. Sandhu, EE (E) failed in his primary responsibility of technical scrutiny of tenders.

ARTICLE - II

The Chief Engineer, PWD Zone-II gave approval for issuing of tenders to four firms namely (i) M/s Genclec (ii) M/s Bajaj Electricals Ltd. (iii) M/s Crompton Greaves and (iv) M/s Philips India Ltd.

Sh. H.S. Sandhu, EE(E) while processing the tender of M/s Varuns Associates for the above work failed to check the approval of CE, PWD Zone II regarding sale of tenders to the firm. He recommended for acceptance of technical bid of M/s Varuns Associates who was not approved for issue of tender by CE, PWD Zone - II. M/s Varuns Associates were ultimately awarded the work.

Sh. H.S. Sandhu, EE(E) is as such responsible for award of work to an unauthorized agency who was not approved for sale of tenders by the CE, PWD Zone-II.

Attested

Advocate.

ARTICLE - III

The detailed estimate for the above work was prepared on the basis of quotation of M/s Philips India Limited and was technically sanctioned by SE(E), PWD EC-II for Rs.22,92,273/- However, Sh. H.S. Sandhu, EE (E) while processing the technical bids for the above work, recommended for rejecting the technical bid of M/s Philips India Ltd. on the grounds that their offer was for Six Section High Mast against three section high masts being offered by the other two bidders namely M/s Bajaj Electricals Ltd., and M/s Varuns Associates. Nothing was brought on record to establish that the offer of six section high mast made by M/s Philips India Ltd. was structurally unsound.

ARTICLE - IV

The said Sh. H.S. Sandhu, EE (E) while processing the price bids recommended for acceptance of tender of M/s Varun Associates (the firm which was not approved by the competent authority) for the above work, at a very high rate. Sh. H.S. Sandhu, EE (E) knew that the justification of rates for High Mast Tower was manipulated and was based on the quotation of M/s Bajaj Electricals Ltd who were pooling the tender in association of their sub-contractor M/s Varuns Associates. The justified rates for different items were arbitrarily taken to justify the high rates quoted by M/s Varuns Associates. In a similar work of High Mast executed by EE (E) PWD ED-IX vide agreement No.19/EE/EDIX/98-99 for the work of C/o three level grade separator at Ring Road, Rohtak Road intersection, the work of 10 sets of High mast was awarded in the period of September 98, to M/s Bajaj Electricals for Rs.57,00,160, In this contract the item of high mast without the power tool was awarded for Rs.4,47,500/- per tower as against Rs.6,98,000/- for the Tihar jail work. The technical specifications of both the works are quite identical to each other.

The said Sh. H.S. Sandhu, EE (E) by recommending acceptance of tender of M/s Varuns Associates at a very high rates caused a loss of more than Rs.13 lacs to the government.

Thus the said, Sh. H.S. Sandhu, EE (E) by his above acts failed to maintain absolute integrity and exhibited lack of devotion to duty, thereby contravening Rules 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules-1964.

Attested


Advocate.

STATEMENT OF IMPUTATIONS OF MISCONDUCT OR
MISBEHAVIOUR IN SUPPORT OF THE ARTICLE OF CHARGES
FRAMED AGAINST SH. H.S. SANDHU, EE (E)

Shri H.S. Sandhu, EE (E) while working as SW (E), PWD EC-II, New Delhi during the period 5.12.97 to 2.7.99 committed the following lapses in respect of the work of "c/o New Jail No. 5 (Phase - I) in the farm land at Tihar, New Delhi (SH: Providing, installing, testing and commissioning of High Mast light)".

ARTICLE - I

An Administrative Approval and Expenditure Sanction for the work of "Construction of New Jail No.5 (Ph. - I) in the farm land area at Tihar, New Delhi" was conveyed by the Dy. Secretary, Home, Delhi Administration vide letter No.E-9/129-86/Home(G) dt. 10.8.90 for Rs.4.77.53.400/- which contained a provision of Rs.17,60,000/- (Rs.18,12,800/- after including contingencies at 3%) for the subhead of Pdg. of 4 Nos. High Mast light.

Against a provision of Rs.18,12,800/- (including 3% contingencies) the lowest tender of M/s Varuns Associates was approved by the SE (E), PWD EC-II vide letter No.23(137)/PWD EC-II/GOD/110 dated 22.1.98 for Rs.36,36,100/- which was 100% above the sanctioned provision. Sh. H.S. Sandhu, EE (E) while processing the tender failed to bring to the notice of SE (E), PWD EC-II that the rates quoted by the lowest firm were 100% above the provision in the administrative Approval & Expenditure Sanction and prior approval from the competent authority was required in terms of Para 20.1.17.5 of CPWD Manual Vol. II, thereby permitting expenditure much beyond the provisions of administrative approval. In this manner, Sh. H.S. Sandhu, EE (E) failed in his primary responsibility of technical scrutiny of tenders.

ARTICLE - II

As per notings at NP - 7 of File No.1/8/97-A&C(7-II) of Chief Engineer, PWD Zone-II following four firms were approved for the sale of tenders for the above work by CE, PWD zone - II.

- (1) M/s Genelec
- (2) M/s Bajaj Electrical
- (3) M/s Crompton Greaves and
- (4) M/s Philips India Ltd.

Sh. H.S.Sandhu, EE(E) while processing the tenders of M/s Varuns Associates for the above work failed to check the approval of CE, PWD Zone II

Attested

[Signature]
Advocate.

regarding sale of tenders to the firm for the above work. He recommended for acceptance of technical bid of M/s Varuns Associates who was not approved for issue of tender by CE, PWD Zone - II. M/s Varun Associates were ultimately awarded the work.

Sh.H.S.Sandhu, EE(E) is as such responsible for award of work to an unauthorized agency who was not approved for sale of tenders by the CE, PWD Zone-II.

ARTICLE - III

Technical bids of the following three firms were sent by the EE (E), PWD ED-VIII to SE (E), PWD EC-II for approval.

1. M/ Philips India
2. M/s Bajaj Electricals Ltd.
3. M/s Varuns Associates.

The detailed estimate for the above work was prepared on the basis of quotation No.30 : 40 ; 250 dated 30.08.1996 of M/s Philips India Limited and was technically sanctioned by SE(E), PWD EC-II for Rs.22,92,273/- vide memo No.19/SE(E)/PWDEC-II/GOD/96-97 issued vide 23(327)PWDEC-II/GOD/2861-Hindi dated 18.12.1996. The design and structure of High Mast offered by M/s Philips India Ltd., in their technical bid submitted vide letter dt. 27.8.1997 was same as offered by them vide their quotation dt. 30.8.1996. Further the design and structure of High Mast was conforming to relevant BIS Specifications. Even the construction details given under technical specifications of approved NIT provided that the high mast shall be fabricated in sections, preferably in 3-sections. Thus a 6-section high mast was not technically ruled out. However, Sh. H.S. Sandhu, EE (E) while processing the technical bids for the above work, recommended for rejecting the technical bid of M/s Philips India Ltd. on the grounds that their offer was for Six Section High Mast against three section high masts being offered by the other two bidders namely M/s Bajaj Electricals Ltd., and M/s Varuns Associates. Nothing was brought on record to establish that the offer of six section high mast made by M/s Philips India Ltd. was structurally unsound. This is particularly significant since the high mast being offered by M/s Philips was more sturdier in comparison to one being offered by M/s Varuns Associates & M/s Bajaj Electricals Ltd as per following details:

Parameter	As offered by M/s Philips India Ltd	As offered by M/s Varuns Associates/ M/s Bajaj Electricals Ltd
Overall weight	3000 Kg	1480 Kg
Base Diameter	630 mm	520 mm

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Top Diameter	153.2 mm	150 mm
Thickness of mast	8/6 mm	5/4 mm

Further the letter dated 24.12.97 seeking clarifications from M/s Philips India Ltd. were sent by ordinary post and the receipt of these letters by the firm was not ensured.

ARTICLE - IV

The said Sh. H.S. Sandhu, EE (E) failed to verify and correct the justification submitted by the EE (E), PWD ED-VIII for the above work leading to the work being awarded to M/s Varun Associates, the firm who was not approved by the competent authority for sale of tender for the above work, at a very high rate. Sh. H.S. Sandhu, EE (E) knew that the justification of rates for High Mast Tower was manipulated and was based on the quotation of M/s Bajaj Electricals Ltd who were pooling the tender in association of their sub-contractor M/s Varuns Associates. The justified rates for different items were arbitrarily taken to justify the high rates quoted by M/s Varuns Associates. M/s Bajaj Electricals Ltd. in their letter No.252/TC/NR dt. 21.1.98 addressed to SE (E), PWD EC-II had given the break-up of cost for High Mast and its foundation. In the break-up the cost of foundation was given as Rs.40,000/- However for this item estimated cost of Rs.60,000/- was taken as justified cost. The justified cost adopted was 50% above the cost of foundation given by M/s Bajaj Electricals Ltd. Similarly for fittings, M/s Bajaj in their offer dt. 22.8.96 had quoted rate of Rs.11,000/- for 1 No. luminaire type BGENF-22 with two Nos: 400 W SON-T lamps and C.G. Boxes. However for this item Rs.15,135/- was taken as justified rate for fittings and Rs.1,017/- was taken as justified rate for lamp. The justified rate adopted for 1 No. fitting and 2 Nos. lamps was worked out to Rs.15,135/- + 2 x Rs.1,017/- = Rs.17,169/- which was 56.08% above the rates quoted by M/s Bajaj Electrical around a year back. The tender was recommended for acceptance by Sh. H.S. Sandhu, EE (E) based on manipulated justified rates adopted to justify the rates of M/s Varuns Associates. In a similar work of High Mast executed by EE (E) PWD ED-IX vide agreement No.19/EE/EDIX/98-99 for the work of C/o three level grade separator at Ring Road, Rohtak Road intersection, the work of 10 sets of High mast was awarded in the period of September 98, to M/s Bajaj Electricals for Rs.57,00,160. In this contract the item of high mast without the power tool was awarded for Rs.4,47,500/- per tower as against Rs.6,98,000/- for the Tihar jail work. The technical specifications of both the works are quite identical to each other. The technical comparison and comparison of rates of the two works of High Mast Lighting awarded for Tihar Jail and Ring Road crossing Punjabi Bagh are given in Appendix - I & II respectively. It is note worthy that M/s Bajaj Electricals Ltd. who quoted Rs.4,47,500/- per tower for EE, PWD ED-IX had quoted 7,15,000/-

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per tower for the Tihar Jail work just 8 months earlier taking full advantage of pooled tenders.

The said Sh. H.S. Sandhu, EE (E) thus caused a loss of more than Rs. 13 lacs to the government as per details given in Appendix - III.

Thus the said, Sh. H.S. Sandhu, EE (E) by his above acts failed to maintain absolute integrity and exhibited lack of devotion to duty thereby contravening Rules 3(1)(i) and 3(1)(ii) of COS (Conduct) Rules-1964.

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ANNEXURE-III

**LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGES FRAMED
AGAINST SHRI H.S. SANDHU, EXECUTIVE ENGINEER (ELECT) IS
PROPOSED TO BE SUSTAINED.**

1. For the Work of "C/o New Jail No.5 (Phase I) in the farm land area at Tihar, New Delhi (SH: Providing Installation, Testing and Commissioning of High mast light)".
 - (a) Original NIT No.8/SE(E)/PWD/EC-II/96-97.
 - (b) Original Agreement No.24/EE/PWD EDVIII /DA/97-98.
 - (c) PQ application of M/s Varuns Associates no. nil dated 17.1.1997
 - (d) PQ application of M/s Bajaj Electrical I.T.D. no. DL:3168:AB:MCK dated 17.1.1997
 - (e) PQ application of M/s Shaka Electrical (India) No. nil dt. 17.1.97
 - (f) PQ application of M/s Gonenlee Ltd. No. nil dt. 18.1.97
 - (g) Justification & analysis of rates prepared by EE(E)PWD ED VIII for Rs. 40,67,540/- and further scrutinized in the office of SE (E), PWD EC-II
 - (h) Copies of final bill.
 - (i) Detailed estimate for Rs.22,92,273/-
 - (j) Technical bid of M/s Philips India Ltd. submitted vide letter dated 27.8.1997.
 - (k) Noting of Sh. H.S. Sandhu, EE (E) recommending acceptance of technical bid of M/s Varuns Associates and M/s Bajaj Electricals Ltd.,
 - (l) Comparative statement
 - (m) Scrutiny notes of O/o SE (E), PWD EC-II for acceptance of tenders.
2. Memo No.19/SE(E) / PWDEC-II/GOD/96-97 issued by Sh. Anil Puri, SE (E) vide No.23(327)/PWDEC-II/GOD/2861 (Hindi) dt. 18.12.1996.
3. File No.1/8/97-A&C/Z-II of CE PWD Zone-II
4. Letter No. F.1-1/2001-NVS(GM) dated 24/12/2001 from Sh. A.K. Sarin, C.E (Civil)
5. Quotation No.30:40:250 dated 30.8.1996 of M/s Philips India Ltd.,
6. Letter No.20(5)/DB/PWDEC8/GOD/3168 dt. 9.9.96 issued by EE (E), PWD ED-VIII addressed to SE (E), PWD EC-II.
7. Letter No.23(327)/PWDEC-II/GOD/697 dt. 23.10.97 issued by SE (E), PWD EC-II addressed to M/s Philips India Ltd.
8. Letter No.23(327)/PWDEC-II/GOD/1012 dt. 3.12.97 issued by SE (E), PWD EC-II addressed to M/s Philips India Ltd.
9. Letter No.23(327)/PWDEC-II/GOD/1087 dt. 24.12.97 issued by SW (E), PWD EC-II addressed to M/s Philips India Ltd.
10. Original Agreement No.19/EE(E)/PWD ED IX/98-99 for the work of C/O THREE LEVEL GRADE SEPARATOR AT RING ROAD, ROHTAK ROAD INTERSECTION AT PUNJABI BAGH, NEW DELHI (SH: HIGH MAST LIGHTING)".
11. Despatch register (English) PWD EC-II from 1.1.97 to 4.11.97

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12. Despatch register (English) PWD EC-II from 5.11.97 to 30.6.98

13. Letter No.23(327)/PWD/EC-II/GOD/110 dt. 22.1.1998 from SW (E) PWD EC-II addressed to EE (E) PWD ED-VIII.

14. Letter No.23(327)/PWD/EC-II/GOD/27 dt. 6.1.1998 from SW (E) PWD EC-II addressed to EE (E) PWD ED-VIII.

15. Letter No. 252/TC/NR dt 21/1/98 from M/s Bajaj Elect. addressed to SE PWD EC-II

16. Quotation No.EPD/TIM/DEL-IV/IIHAR-Jail Dt. 22.8.1996 from M/s Bajaj Electricals Ltd. addressed to EE (E), PWD ED-VIII.

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LIST OF WITNESSES BY WHOM THE ARTICLE OF CHARGES FRAMED
AGAINST SHRI H.S.SANDHU, EXECUTIVE ENGINEER (ELECT), IS
PROPOSED TO BE SUSTAINED.

1. Shri A.K.Sarin, CE(C) [Presently working as General Manager (Constrn.), Navodaya Vidayala Samiti]
2. Shri Aryind Garg, Executive Engineer (E).

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APPENDIX - I

TECHNICAL COMPARISON OF THE TWO WORKS OF HIGH
MAST LIGHTING AWARDED FOR TIHAR JAIL AND RING ROAD
CROSSING AT PUNJABI BAGH, BASED ON THE
NIT'S AGREEMENTS OF BOTH WORKS

S.No.	ITEM	PWD ED-VIII, Tihar Jail	PWD ED-LX, Punjabi Bagh	Remarks
I.	HIGHMAST STRUCTURE			
1)	Height of mast (Mtrs)	30 Mtr.	30 Mtr.	
	Permissible Projected area	3.1 Sq. Mtrs.	3.1 Sq. Mtrs.	
	Make	C.U. Lighting Ltd., UK	C.U. Lighting Ltd., UK	
2)	Material construction	BS-EN10025	BS-EN10025	
3)	Thickness (in mm)	Top 4 Middle 4 Bottom 5	Top 4 Middle 4 Bottom 5	
4)	Cross Section of Mast in Polygon (number of sides)	20 sides	20 sides	
5)	Length of individual section	Top 9.45 app Middle 10.85 app Bottom 10.85 app	Top 9.45 app Middle 10.85 app Bottom 10.85 app	
6)	Base dia and top diameter	Base diameter 520 mm Top diameter 150 mm	Base diameter 520 mm Top diameter 150 mm	
7)	Type of joints	Stress fit side joints	Stress fit side joints	
8)	Length of overlap	0.75 to 0.85 Mtr.	0.75 to 0.85 Mtr.	
9)	Metal protection treatment for Mast section	Hot Dipped Galvanised	Hot Dipped Galvanised	
10)	Thickness of galvanization (min)	85 Micron Bottom 65 Micron Top and Middle	85 Micron Bottom 65 Micron Top and Middle	
11)	Size of opening and door at base	950 x 180 mm	950 x 180 mm	
12)	Type of locking arrangement and door panel	2 Heavy duty self locking.	2 Heavy duty self locking.	
13)	Details of slack board inside the base compartment	Resin bonded plywood 200 mm x 500 mm x 8 mm	Resin bonded plywood 200 mm x 500 mm x 8 mm	
14)	Size material and thickness of cable termination box	Depends upon circuit suitability	Depends upon circuit suitability	
15)	Size of base plate (mm) Diameter and thickness	Dia 650 Thick 25	Dia 650 Thick 25	
16)	Size of anchor plate and thickness	700x700x8mm approx.	700x700x8mm approx.	
17)	Details of template	Uniform PCD of 650	Uniform PCD of	

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	mm	650 mm	
18) Weight in kgs of 30 mtr mast including base, place, door, head frame	1480 kgs	1480 kgs	
19) Lightning protection finial	provided	provided	

II DYNAMIC LOADING AS PREVAILING AT SITE

1) Max. wind speed	50 mtr/sec (As per IS:875:1987)	50 mtr/sec (As per IS:875:1987)	
2) Max. gust speed time	3 seconds	3 seconds	
3) Height above ground level these two factors are measured	10 Mt.	10 Mt.	
4) Factor of safety for wind load	1.25	1.25	
5) Factor of safety for other load	1.15 (1.0) as per TR NO-7)	1.15 (1.0) as per TR NO-7)	
6) Factor of safety for tower	1.5	1.5	

III FOUNDATION DETAILS

1) Type of foundation	Open raft shallow footing	Open raft shallow footing	
2) Size of foundation	3.0 x 3.0 Mtr.	3.0 x 3.0 Mtr.	
3) Designed load, ... bearing capacity	As confirmed by you from soil investigation	As confirmed by you from soil investigation	
4) Design safety factor	> 2.0	> 2.0	
5) Considered wind pressure (Kg/M ²)	As per IS-875-1987	As per IS-875-1987	
6) Considered wind speed (Km/hr)	As per IS-875-1987	As per IS-875-1987	
7) Depth foundation	Max 1.5 Mtr. below G.L	Max 1.5 Mtr. below G.L	
8) Average soil bearing capacity	As confirmed.	As confirmed.	
9) Number of foundation bolts	10 Nos.	10 Nos.	
10) PCD of foundation bolts	650 mm	650 mm	
11) Type of foundation bolts	High yield tensile Cold Rolled pitched threads	High yield tensile Cold Rolled pitched threads	
12) Bolt diameter	27 mm	30mm	Size Differs

IV LANTERN CARRIAGE

1) Material of construction	Class B - M S Tubes	Class B - M S Tubes	
2) Diameter of carriage ring (mm)	750 mm	750 mm	
3) Construction	Double tier with double	Double tier with	

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		deck	double deck	
4)	Number of joints	2	2	
5)	Buffer arrangement between Carriage and Masts	PVC sleeve on carriage	PVC sleeve on carriage	
6)	Load carrying capacity	750 Kgs	750 Kgs	
7)	Total weight of assembly with fittings	Approx 450 Kg	Approx 450 Kg	
8)	Number of fittings	*9 Nos. + 2 Nos. aviation fittings	16 Nos. + 2 Nos. aviation fittings	As per site Reqtnt
9)	Type of fittings/fixtures	BGENF 22 & BJAOL-1 Aviation	BGENF 22 & BJAOL-1 Aviation	

* The actual quantity differs from tender qty as per the final bill.

V WINCH

1)	Make of winch Number of drums/winch	Bajaj - CU Double drum type	Bajaj - CU Double drum type
2)	Gear Ratio	53 : 1	53 : 1
3)	Capacity	750 kgs	750 kgs
4)	Operating speed	180 RPM on full load	180 RPM on full load
5)	Individual Drum rotation	Easily possible	Easily possible
6)	Method of operation	Manual/Electrical	Manual/Electrical
7)	Lubrication arrangement	Permanent oil bath	Permanent oil bath
8)	Type of lubricant	GARLEX C 11/SAE 90	GARLEX C 11/SAE 90
9)	Gear material	Cast Iron	Cast Iron
10)	Tested load per drum (kg)	750 kg. Per drum 1500 kgs. For winch	750 kg. Per drum 1500 kgs. For winch
11)	SWL of winch at 200 rpm	750 kg.	750 kg.

VI STAINLESS STEEL WIRE ROPE

1)	make	B.W. LTD	B.W. LTD
2)	Grade	AISI 316	AISI 316
3)	Number of ropes	2 continuous ropes	2 continuous ropes
4)	Construction	7/19	7/19
5)	Centre core materials	Stainless steel core	Stainless steel core
6)	Diameter (mm)	6 mm	6 mm
7)	Thimbles & Terminals	Aluminium terminal SS Thimble	Aluminium terminal SS Thimble
8)	Braking load capacity	2350 kgs	2350 kgs
9)	Factor safety (specified not	5 for system full load	5 for system full

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less than 5)		load
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VII CABLE

1)	Type	5 core flexible PCP/EPR	5 core flexible PCP/EPR
2)	Material	EPR coated PCP Sheathed.	EPR coated PCP Sheathed.
3)	Make	As per our spl. Design.	As per our spl. Design.
4)	Current carrying capacity (Trailing cable only)	28 Amp.	28 Amp.
5)	Conductor size	2.5 sq.mm	2.5 sq.mm
6)	No. of cores	5 nos.	5 nos.
7)	No. of circuits	Single	Single

VIII POWER TOOL

1)	Model	HD/TP/001	HD/TP/001
2)	Input supply	440 Volts.	230 V
3)	Wattage/HP	0.85 HP	0.65 HP
4)	Number of speeds	Single speed	Single speed
5)	Reversible/non-reversible	Reversible with remote C/R switch	Mechanically reversible
6)	Operating speed	180 rmp at F.L.	180 rmp at F.L.
7)	Remote control switch	Push button with cords 5/6 Mt.	Push button with cords 5/6 Mt.
8)	Max time taken for - i) Raising ii) Lowering	20 Minutes 18 Minutes	20 Minutes 18 Minutes

IX TORQUE LIMITER

1)	Model	BJ/HID/1	BJ/HID/1
2)	Listing capacity	Upto 750 kgs.	Upto 750 kgs.
3)	Adjustable/Non-adjustable	Adjustable	Adjustable

X MAINTENANCE

1)	Size	To suit 2 people	To suit 2 people
2)	Material	M.S. & Hot Dipped Galvanised	M.S. & Hot Dipped Galvanised
3)	Construction	Cage type	Cage type
4)	Working load	SWL of 250 kgs.	SWL of 250 kgs.
5)	Safety device in case of failure	Gravity activated pawls on dd winch.	Gravity activated pawls on dd winch.
6)	Buffer arrangement	PVC Tubular liner	PVC Tubular liner

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COMPARISON BETWEEN THE AWARDED RATES OF VARIOUS ITEMS IN THE HIGH MAST WORK AT
TIHAR JAIL AND PUNJABI BAGH.

S. No.	Item description	High Mast work at Tihar Jail Agreement No. 24/EE/ PWD ED-VIII/DA/97-98			High Mast work at Punjabi Bagh Agreement No.19/EE(E)PWD ED IX/98-99			Remarks
		Qty.	Rate	Amount	Qty.	Rate	Amount	
I.	Supply and installation (on existing foundation) of steel mast of 30 m height for area lighting. Installation as per detailed specifications and comprising broadly of the following.							
i)	Galvanised steel mast circular / polygonal in section with base plate and made up of detachable hot dipped galavanised sections for ease of transportation.							
ii)	Sliding lantern carriage capable of moving up and down the mast complete with self aligning mechanism, guides and capable of receiving 9 Nos. luminaries as per item No.3.							
iii)	Electrically operated raising and lowering gear for lantern carriage.							
iv)	Set of hoisting ropes made of stainless steel wires.							

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v)	Attachment to received safety maintenance equipment.						
vi)	Drum for winding of wire ropes.						
vii)	Double drum winch without power unit.	4 sets	69800/-	2792000/-	10 sets	447500/- 4475000/-	
viii)	Multicore copper flexible power trailing cable and wiring in lantern carriage for luminaries.						
ix)	Termination box for incoming mains complete with 32 amps TPN MCB (ISI marked) and timer & contactor.						
x)	Galvanised holding down/ foundation bolts with nuts and washers and stainless steel earthing terminal with nuts & washers.						
xi)	Pulley assembly and canopy.						
xii)	Providing heavy duty electric power drive, for raising and lowering lantern carriage with luminaries.	1 Set	51500/-	51500/-	2 sets	29080/- 58160/-	
2.	Designing, casting and making of 4 jobs suitable RCC foundation for above high masts including excavation, disposal of surplus earth and curing etc. as required. Note:- (Bearing capacity of soil is minimum 6 T/sqm).		50,000/-	200000/-	10 sets	46700/- 467000/-	
3.	Supplying high mast flood light 36 Nos. with assymetric beam Nos. 13750/-		495000/-	80 Nos.	7250/- 580000/-		

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	distribution suitable for 2 x 400 w high pressure sodium vapour lamp complete with individual ballast, ignitor, capacitor, lamp holder etc. but without lamp as per specifications and installation of the same, testing and commissioning on the lantern carriage making connection etc. as reqd.						
4.	Supplying and fixing of 400 W HPSV lamp for luminaries at item No.3 (18 Nos. Nos. for each mast).	1000	72,000/-	160	750-	12000/-	
5.	Providing multi core copper flexible power cable for use when raising and lowering the lantern carriage complete with necessary end coupler as required.	Included in item of power tool	--	60 m	Already included.		
6.	Providing and fixing twin dome neon cold cathode aviation obstruction light fitting on the top of the high mast tower complete with accessories as required.	3100/-	24800/-	Included in item No.1			
7.	Providing and fixing of lightening conductor finial made of 25 mm dia 300 mm long G.I. tube having single prong at top with 85 mm dia 6 mm thick G.I. base plate i/c holes etc. complete as required.	200/-	800/-	-do-			
			3636100/-		5700160/-		

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ESTIMATED SAVINGS IN COST HAD THE HIGH MAST WORK AT
TIHAR JAIL BEEN AWARDED AT RATES OF PUNJABI BAGH WORK

S. No.	Item description	High Mast work at Tihar Jail (Agreement No. 24/EE(PWD ED-VIII/DA/97-98)			Rates from Agreement No. 19/EE(E)/PWD ED-LX/98-99 for Punjabi Bagh work.	Remarks
		Qty.	Rate	Amount		
1	Supply and installation (on existing foundation) of steel mast of 30 m height for area lighting. Installation as per detailed specifications and comprising broadly of the following.					
i)	Galvanised steel mast circular / polygonal in section with base plate and made up of detachable hot dipped galvanised sections for ease of transportation.					

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i)	Sliding lantern carriage capable of moving up and down the mast complete with self aligning mechanism, guides and capable of receiving 9 Nos. luminaries as per item No.3.	4 sets	698000/-	27,92,000/-	447500/-	17,90,000/-	Difference of Rs.10,02,000/- in original tender.
ii)	Electrically operated raising and lowering gear for lantern carriage.						
iv)	Set of hoisting ropes made of stainless steel wires.						
v)	Attachment to received safety maintenance equipment.						
vi)	Drum for winding of wire ropes.						
vii)	Double drum winch without power unit.						

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Multicore copper flexible power trailing cable and wiring in lantern carriage for luminaries.						
ix) Termination box for incoming mains complete with 32 amps TPN MCB (ISI marked) and timer & contactor.						
x) Galvanised holding down/foundation bolts with nuts and washers and stainless steel earthing terminal with nuts & washers.						
xi) Pulley assembly and canopy.						
xii) Providing heavy duty electric power drive, for raising and lowering lantern carriage with luminaries.	1 Set	51500/-	51,500/-	29080/-	29080/-	The specification of the power tool differs slightly in the two works.

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2.	Designing, casting and making of suitable RCC foundation for above high masts including excavation, disposal of surplus earth and curing etc. as required. Note:- (Bearing capacity of soil is 25 mm and 6T/sqm)	4 jobs	50,000/-	2,00,000/-	46700/-	186800/-	No significant difference in cost.
3.	Supplying high mast flood light luminaries with assymetric beam distribution suitable for 2 x 400 w high pressure sodium vapour lamp complete with individual ballast, ignitor, capacitor, lamp holder etc. but without lamp as per specifications and installation of the same, testing and	36 Nos.	13750/-	495000/-	7250/-	261000/-	Difference of Rs.2,34,000/- in the original tender.

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	commissioning on the lantern carriage making connection etc. as reqd.						
4.	Supplying and fixing of 400 W HPSV lamp for luminaries at item No.3 (18 Nos. for each mast).	72 Nos.	1000/-	72,000/-	750/-	54000/-	Difference of Rs. 16,000/- in the original tender
5.	Providing multi core copper flexible power cable for use when raising and lowering the lantern carriage complete with necessary end coupler as required.	40 m	Included in item of power tool	--	Already included		
6.	Providing and fixing twin dome neon cold cathode aviation obstruction light fitting on the top of the high mast tower complete with accessories as required.	8 Nos.	3100/-	24800/-	Already included		Difference of Rs. 24800/- in the Original tender.
7.	Providing and fixing of lightening conductor finial made of	4 Nos.	200/-	800/-	Already included		Negligible amount.

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25 mm dia 300 mm long G.I. tube, having single prong at top, with 85 mm dia 6 mm thick G.I. base plate i/c holes, etc, complete as required.						
Total for original agreement			3636100/-		2320880/-	

The difference in cost for the two main items (a) High Mast - Item No. 1 (i) to xi) and (b) HPSV fittings - Item No. 3, comes to Rs.12,36,000/- for the original tender.

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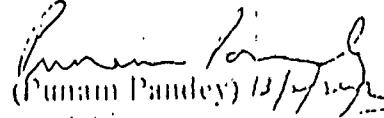
ConfidentialCentral Vigilance Commission

This has reference to Ministry of Urban Development & Poverty Alleviation's note dated 8.1.2003, dealt on file no. C-13015-1/2002-W.VIII seeking Commission's 1st stage advice against S. Shri H.S. Sandhu, E.E. & others.

2. On examination of the case it is observed that the acts of omission and commission prima facie on the part of all the officials are serious enough to warrant major penalty action. Therefore, the Commission would advise initiation of major penalty proceedings against S. Shri Anil Puri, SE(E), H.S. Sandhu, E.E., M.L.A. Khan, E.E., Y.K. Gupta, AE. A caution memo may be given to Shri A.K. Sarin, CT and Shri S.P. Sinha, E.O.

3. Ministry of Urban Development & Poverty Alleviation is also advised to appoint its own RO for conducting the oral inquiry in the case, if it becomes necessary and refer the case back to the Commission for its second stage advice. The Commission had desired that there may be one RDA for all the officers involved.

4. Ministry's file alongwith its relevant documents, are returned herewith (as per list attached). Action taken in pursuance of the Commission's advice may please be intimated to the Commission at the earliest.


(Punam Pandey) B.P.Tech
Director

Ministry of Urban Development & Poverty Alleviation, (Shri P.K. Hota, CVO),
Nirman Bhawan, New Delhi.

CVC's U.O. No. 002-W&H-12 dated the

Encl: As above.

11 FEB 2003

1. CVO
2. Director
3. 17/2/2003

PTO

No. 15/6/2000-V.S.I
GOVERNMENT OF INDIA
DIRECTORATE GENERAL OF WORKS
(VIGILANCE UNIT)
CENTRAL PUBLIC WORKS DEPARTMENT
NIRMAN BHAWAN, NEW DELHI-110011.

Dated the 6 October, 2001
New.

MEMORANDUM

Shri H.S. Sandhu, EE (E) while working as SW (E) PWD EC-II, New Delhi during the period 4.12.97 to 3.7.99 appears to have committed the following lapses in respect of the work of "C/o New Jail No.5 (Phase I) in the farm land at Tihar, New Delhi (SH: Providing installing, testing and commissioning of High mast light)".

1. Shri H.S. Sandhu failed to bring to the notice of SE (E), PWD EC-II that the rates quoted by the lowest firm for the above mentioned work were about 100% above the provision of the corresponding item in the AA&ES and prior approval from the competent administrative authority was required in terms of Para 20.1.17.5 of CPWD Manual Vol. II, thereby permitting expenditure much beyond the allocated funds.
2. Shri H.S. Sandhu, failed to bring to the notice of SE (E), PWD EC-II in relation to the acceptance of the above work, that one of the two competing firms was the principal supplier / manufacturer and the other was its authorized contractor thereby no competition could virtually be ensured.
3. Shri H.S. Sandhu failed to verify and correct the justification of rates submitted by the EE (E), PWD ED-VIII for the above work leading to the work being awarded to M/s Varuns Associates at rates much higher than the prevailing market rates thus causing substantial loss to the government exchequer.

Shri H.S. Sandhu, SW (E) is hereby called upon to explain the reasons for the above lapses committed by him. His explanation should reach this office within 10 days of the receipt of this memorandum failing which it will be presumed that he has no explanation to offer and further action shall be taken in the matter as deemed fit without making further correspondence with him.

(A.K. MURARKA)
SUPERINTENDING ENGINEER (VIGI) E

Shri H.S. Sandhu,
EE (E)

Through

Sh. J.B. Fadia,
SE (E) PWD EC-II (DA)
MSO Building, ITO,
New Delhi.

APPROVED
Advocate

PLAYERS' BUILDING PROJECT
 PUBLIC WORKS DEPARTMENT ZONE - II
 I.G. Stadium Complex, New Delhi
 PH: - 3392192.

No. 8(1)/EE(E)/PBP/PWD/2001/1187

Dated: 24/12/01

To,

2 199 D-19.6.01

Sh. A.K. Murarka
 Superintending Engineer (Vigilance) (E)
 C.P.W.D. Vigilance Unit
 Nirman Bhawan
 New Delhi - 110011.

SUB: C/o New Jail No. 5 (Ph. I) in the farm land at Tihar, New Delhi.

SH : Providing, Installing, Testing & Commissioning of High Mast light.

Ref: Your office Memorandum vide No. 15/6/8/2000 - VSI dated 6.11.2001.

Sir,

I am in receipt of the above memorandum issued by your office on 6.11.2001 and received by me on 16/11/2001 and to make the following submissions:

I emphatically deny all charges contained in the Memorandum. It is to intimate that undersigned had joined PWD Electrical Circle II on 5.12.97 and this case had already made lot of progress prior to my joining. The A/A & E/S, approval of NIT, accord of Technical Sanction and invitation/ approval of PQ Application had already been dealt at Circle/zonal Level. However the parawise replies are furnished as under.

1. It is gathered from the Staff of PWD ED-VIII that the P.E. for Rs. 4,72,3,800/- was sent to I.G. Prison/Dy Secretary (Home) sometimes during 1986-87 for the construction of New Jail No. 5 - Ph-I. The Chief Engineer, PWD Zone - II, Sh. S.R. Gool sent a reminder to the Jail Authorities/ Deputy Secretary (Home) during 1988 for early accord of

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the Administrative Approval and expenditure sanction, since the matter was already delayed. The A/A & E/S was received for Rs. 4,72,53,800/- during 1990 & was issued by Deputy Secretary (Home Affairs), New Delhi vide his letter No.F-9/129-86/MHA (G) dated 10.8.90. In the P.E., the provision of Rs. 17,60,000 was kept for 4 Nos. High Mast by Executive Engineer (E)/PWD ED VIII as per the market rates for high mast prevailing during 87-88. The job of High Mast was covered under S.H. 5 :- Bulk Electrical Services i/c St. light for Rs. 36.55 Lacs. The draft NIT was submitted by EE(E), Sh. S. Khan PWD ED VIII to Circle Office during January 1996 based on quotation received from M/s. Philips India for Rs. 22,25,500/-; although M/s. Bajaj Electrical Ltd. had offered the rates Rs. 32,58,700/- for 4 Nos. High Mast at that time. As per the practice in the Department, since lowest rates are to be followed for the preparation of NIT, rates of M/s. Philips India was taken and Detailed Estimate was accorded Technical Sanction by Circle for Rs. 22,92,273/- vide Technical Sanction issued vide No. 23(327)/PWD EC II/GOD/286 for Rs. 22,92,293/-. The time delay of 6 years between issue of A/A & E/S during 1990 & approval of NIT during 1996 is perhaps due to delay in Civil Work as work for Jail No. 5 started around in 1996 as intimated by EE (E) PWD ED VIII. The cost indices are issued by Civil Wing of the Department from time to time to watch the escalation in cost: The difference of Rs. 5.50 lacs exist due to this time period difference. If we look at the All India Consumer Price Index, it was 157 during June 1987 & during January 1998 it was 384 (Copy of indices enclosed). Therefore the item which cost Rs. 17.60 lacs during 1987 shall cost around Rs. 43.00 lacs during January 98 (at the time of Award) as per the escalation of the All India Consumer Price Index. As per CPWD Manual Revised A/A & E/S is required only when expenditure exceeds P.E. by 10%, but since the overall increase was not more than 10 % as such the Revised A/A & E/S was not submitted. The amount of Rs. 17.60 lac, which increased to Rs. 22.92 Lac is only 3.60% of the total PE as such does

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not need any revision. It is also brought to notice that the job of 4 Nos. High Mast was never carried out through a separate estimate meant only for High Mast and was a small component of the total P.E. comprising of Civil and Electrical job for Jail No. 5. Therefore, there is no violation of the Para 20.1.17.5 of CPWD Manual Volume-II & no excess expenditure thus incurred. The expenditure of Rs. 35.50 Lacs incurred for 4 Nos. high Mast was well within the overall P.E. provisions & cannot be accepted as expenditure incurred much in excess of A/A & E/S amount. The A/A & E/S for 2 Nos. additional High Mast for Jail No. 6 A was issued at the cost of Rs. 23.42 Lacs i/c 'Dep. Charges by Dy. Secretary (Home) vide his letter No. D.15/136/PWD/97/3676 -86 dated 25.2.98. The Jail Authorities were very well in the knowledge of the rates of each High Mast, since they conveyed the sanction for the 2 Nos. Additional High Mast at higher rate in comparison to rates in the P.E. for High Mast.

2. The P.Q. applications were invited by the Executive Engineer (E)/PWD EP VIII sometimes during January- February 97 and sent to the Superintending Engineer (E) and later on received in Chief Engineer/PWD Zone-II office during February 97. Initially CE conveyed approval for 3 Nos. firms for issue of tender papers on PQ Criteria on 20.2.97.

- (i) M/s. Bajaj Electrical Ltd., New Delhi.
- (ii) M/s. Varuns Associates, Delhi.
- (iii) M/s. Genelec Ltd., New Delhi.

Later, on Chief Engineer during 8/97 approved 3 more firms for issue of tender paper since these 3 firms were the leading firms dealing with High-Mast. The Chief Engineer has approved the name as per the recommendation of the Superintending Engineer (E), PWD EC-II. The names of the added firms were M/s. Philips India, M/s. Crompton Greaves & M/s. Shaka Electrical. When Undersigned joined the Circle office, the Technical bids of the 3 firms (i) M/s. Bajaj Electrical (ii) M/s. Philips India (iii) M/s. Varuns Associates which was sent by EE (E), ED VIII on 7.10.97 to Circle

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Office had already been scrutinized by ASW (E), Draughtsman etc. It may please be noted that during scrutiny of Technical Bid few queries were raised to M/s. Philips India, M/s. Bajaj Electrical & M/s. Varuns Associates. M/s. Varuns Associates and M/s. Bajaj Electrical replied to the queries.

The reminders were sent to M/s. Philips India vide letter No. 23(327)/PWD ECII/GOD/627 dated 23.10.97, 1012 dated 3/12/97 and 1087 dated 14.12.97 of even file to furnish the replies to the queries but they never responded. Since M/s. Philips India Ltd. had not shown any interest with the Department, as such it appears they were not interested in the execution of job. The Executive Engineer (E), PWD ED VIII has also recorded on note sheet in Circle Office that EE, Air port Authority has reported that Philips make high mast are a defective one and are not found to be linear and structurally sound and stable because of 6 sections as against 3 sections supplied by M/s. Bajaj Electrical. The adverse impact of wind velocity of 50 M/ sec. at a height of 10 mt is more on Philips and they have failed at certain locations. The Air Port Authority EE also intimated that hardly any Mast of Philips make has been erected in Delhi. The No. of fittings that can be mounted on lantern carriage for Philips is only 5-8 Nos. where as for Bajaj it can be 24 Nos. i/c 2 Nos. aviation lights. The Philips make High Mast were manufactured in India, whereas M/s. Bajaj make High Mast were imported from U.K. having Tech. Collaboration with C.U. lighting U.K. Because of failures reports from field M/s. Philips India has discontinued the production at Calcutta of such Mast and has started importing from Malaysia under the name LYSAT. On one side M/s. Philips India was not responding to the queries and on other side failures reports were received, then how the Department could have technically cleared their bid. The rope lantern carriage system used by Philips was not very stable as the carriage tilts on one side. The procedure as per Manual only has been followed by Division as well as Circle. The Minutes of Meetings with I.G. (Prison) on 28.1.98 (copy enclosed) shows that every thing was in the

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knowledge of I.G and urgency was felt by Jail Authority to execute the job w/o further delay because of Security reasons.

3. The allegation that undersigned failed to correct the A/R and justification is totally incorrect, since if we look at the completion certificate submitted by M/s. Bajaj Electrical/ their authorized dealers alongwith their PQ application, it will reveal that their rates for 30 mtr High Mast at other places are almost same as offered in this tender. The details are as under:-

- i) The job carried out in Haridwar during 12/97 is for Rs. 8.98 lacs (Details available in records in PQ case).
- ii) The job of providing 6x30m High Mast at Road Over Bridge 22 by PWD ED II by M/s. Shaka Electrical through W.O. No. 70(6)/PWD ED II/DA/522 dated 9.12.91 is Rs. 6.5 lac/ each Mast.
- iii) The job carried out at Maharashtra by M/s. Bajaj is also done at the same rates.
- iv) The job awarded to M/s Bajaj Electrical Ltd. for providing High Mast at Punjabi Bagh Flyover also cost around Rs. 6.80 Lacs/ each Mast if we installed 18 Nos. fittings on the Mast as we did at Tihar Jail (details of work done at Punjabi Bagh Flyover is attached).

The Detailed A/R submitted by the Executive Engineer (E)/ED VIII for Rs. 7,11,656 is attached and fully justifies the rates offered by M/s. Varuns Associates at that time. Suitable negotiation for items like High Mast, HPSV lamp 400 W, Aviation light and Earth finial has been conducted on 20.1.98 where it was felt necessary to reduce the rates. The heavy-duty power tool (Rev. Type) was also supplied to raise/lower the lantern with remote switch. The heavy-duty power tool had to be provided as against normal one due to 2 Tier carriage used for installation of 18 Nos. fitting at Tihar Jail. The detailed specification of High Mast is also enclosed, which was found technically

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much superior to M/s. Philips India. It may also be seen that the construction of flyovers in Delhi is a recent phenomena only and now only, the High Masts are used in huge quantity and earlier the quantity used and required for high mast was very less. With more growing demand and more firm added like M/s. Keselec shredder etc. the cost has come down. Initially. The item was available like a monopoly item as it was an item of import only. Analysis of rates never follows a uniform trend; cost reduces with more production and Indigenous components/production. The mobile phones used to cost Rs. 30-35,000 is easily available for Rs. 7000-10,000/-.

Therefore in view of the above explanation I hereby submit that the rates approved for M/s. Varuns Associates for Bajaj Make High Mast are not at all higher rates prevailing at the time of award and therefore no loss has been incurred to the department.

Encl :- As Stated above.

(H.S. SANDHU)
EXECUTIVE ENGINEER (E)
PLAYERS' BUILDING PROJECT
I.G. STADIUM COMPLEX
NEW DELHI-- 110002.

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Attested

Advocate.

CONFIDENTIAL

No.15/3/1/2002-VS.I

GOVERNMENT OF INDIA
 DIRECTORATE GENERAL OF WORKS
 CENTRAL PUBLIC WORKS DEPARTMENT
 (VIGILANCE UNIT)
 NIRMAN BHAWAN, NEW DELHI-110 011

Dated the 24 May, 2002.

MEMORANDUM

Explanation of Sh. H.S. Sandhu, EE(E) was called vide this office Memorandum No.15/6/8/2000-VS.I dated 6.11.2001 for certain lapses appears to have been committed by him while working as SW (E), PWD EC-II, New Delhi during the period 4.12.93 to 3.7.99 in respect of the work of "C/o New Jail No.5(Phase I) in the farm land at Tihar, new delhi (SH: Providing, installing, testing and commissioning of High mast light)". In continuation to the above Sh. H.S. Sandhu is hereby asked to explain following additional lapses which he appears to have committed in the above stated work.

1. Four firms, namely, (i) M/s Philips India, (ii) M/s Crompton Greaves, (iii) M/s Genelec, (iv) M/s Bajaj Electrical were approved by CE PWD Zone-II, as per his notings dated 1.8.97 on CE's file No.1/8/97-A&V/Z-II. Though the formal approval for issue of tenders to these four firms was yet to be communicated by CE, PWD Zone-II, 6 firms, namely, (i) M/s Philips India, (ii) M/s Crompton Greaves, (iii) M/s Genelec, (iv) M/s Bajaj Electrical (v) M/s Varun Associates (vi) M/s Shaka Electrical India, were invited for purchase of tenders by EE(E), PWD ED-VIII vide his office letter No.54(871)/PWD/EDVIII/DA/268, dated 6.8.97.
2. Technical bids of 3 of these firms, namely, (i) M/s Varun Associates (ii) M/s Bajaj Electrical (iii) M/s Philips India were sent by EE (E), PWD ED-VIII to the office of SE (E), PWD EC-II for approval. Sh. H.S. Sandhu failed to examine the written approval and formal communication of CE, PWD Zone-II regarding sale of tenders to the firms for the above work leading to acceptance of technical bid of M/s Varun Associates who was not approved for issue of tenders by CE, PWD Zone-II. Ultimately the work was awarded to M/s Varun Associates.

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3. Sh. H.S. Sandhu, EE(E) is hereby called upon to explain the reasons for the aforesaid lapses committed by him. His explanation should reach this office within 7 days from the date of receipt of this memorandum failing which it shall be presumed that he has nothing to say in the matter and further action shall be taken as deemed fit, without making any further correspondence with him.

A.K. MURARKA (S)
SUPERINTENDING ENGINEER (VIG) E

Sh. H.S. Sandhu,
EE(E)

THROUGH

Shri J.B. Fadia,
SE (E), PWD EC-II, (GoD),
New Delhi.

Arrested
Advocate

PLAYERS' BUILDING PROJECT
 PUBLIC WORKS DEPARTMENT ZONE - II
 I.G. Stadium Complex, New Delhi
 PH: - 3392192.

No. 8(1)/EE(E)/PBP/PWD/2001/199

Dated: 19/6/2002

To,

Sh. A.K. Murarka
 Superintending Engineer (Vigilance) (E)
 C.P.W.D. Vigilance Unit
 Nirman Bhawan
 New Delhi - 110011.

SUB: C/o New Jail No. 5 (Ph. I) in the farm land at Tihar, New Delhi.

SH: Providing, Installing, Testing & Commissioning of High Mast light.

Ref: Your office memorandum issued vide No. 15/3/1/2002-VSI dated 29/5/2002.

Please refer to the above mentioned subject and reference. Although the detailed reply has been furnished by the undersigned vide T.O. letter No. 8(1) /EE(E) /PBP /PWD / 2001 /1187 dated 24/12/2001, however as desired the following clarifications is furnished as under.

1. The period of my working as SW (E) in PWD EC-II has been written wrong. It is from 5/12/97 to 2/7/99. Undersigned was relieved from DCEC II, CPWD on 3/12/97 and 4/12/97 being a Gazetted holiday in Govt. of Delhi. I joined in PWD EC-II on 5/12/97 and not on the date mentioned in your letter.
2. I have repeatedly told that the above case was already half dealt at Circle/ Zonal level when I joined at that place. It is not understood how the Executive Engineer can change the decision of the Superintending Engineer (E) or Chief Engineer which was taken 10 months earlier to the joining the self. It is out of place to mentioned that Sh. I.M. Singh not only worked as Chief Engineer, PWD Zone-II but also occupied the chair of Engineer - in- Chief, PWD for nearly one year. Executive Engineer (E), PWDEDVIII might have

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issued the tenders to the approved firms on getting approval from the office of Chief Engineer/ Superintending Engineer (E). It is however noticed that because of rush of work in PWD the approval is sometimes communicated through the Photocopy of the note sheet of the file maintained at Zonal/Circle level. If the office of Chief Engineer has not communicated the approval properly, where Executive Engineer (E) / SW(E) are at fault and approval takes some time and thus the process of photocopying the note sheets is followed sometimes in PWD.

3. The Inspector General (Prison), Tihar Jail vide minutes of meeting issued on 28/1/98 also expressed the urgency to carry out the job of High Mast in Tihar Jail without further delay and upto March 98 on account of security reasons of Jail. The CE PWD Zone II had initially approved the name of three firms i/c M/s. Varun Associates. On recommendation of the Superintending Engineer (E) the name of three more firms were approved who were leading in the field of High Mast lighting. It is also out of placeto mention that the work load of PWD Divisions/ Circle is nearly two times the work load of CPWD Division/Circle and it is also seen that the representation of Electrical Engineers is nearly Nil at the Zonal Level and therefore the approvals are not communicated properly. Please note that the name of M/s. Varun Associates has been very much approved by the office of Chief Engineer ab-initio., as can be seen from the file of the Chief Engineer office which lies in your office.

I hope this explanation will suffice your observations of Memo.

(H.S. SANDHU)
EXECUTIVE ENGINEER (E)
PLAYERS' BUILDING PROJECT
I.G. STADIUM COMPLEX
NEW DELHI - 110002.

Attested


Advocate.

Govt. of India
Central Public Works Dept.
No.5(1)/GEDI/Conf/2003/ 1354 Dt 6/10/03 Conf.

To
Sh Lalitha Das

Under Secretary to the Govt Of India
Min Of Urban Dev. and Poverty Alleviation
Room No.C-337
Nirman Bhawan New Delhi 110011

**Subject:-Issue of Charge Sheet to Sh H S Sandhu ,Ex.
Engineer(E) CPWD under Rule 14.**

Please refer to your office Memo issued Vide no, C-13015/4/2002/AVIII dt 30.8.03 to undersigned which was recd by me on 28.09.03.

Kindly grant me extension upto 31.10.2003 for submission of reply since I have to see/consult the O/O SE(Elec) PWDEC-II and O/O C.E. PWD Zone -II .Please note that this much min.time is needed because Guwahati is 2500 Km is away from Delhi.

Executive Engineer(E)
Guwahati Central Electrical Div.
CPWD Bamunimaidan GHY 21

Copy to:
1. The Chief Engineer(Vig.), CPWD Vigilance Unit, Room No. Nirman Bhawan, New Delhi 110011 for favour of information please.

Executive Engineer(E)

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[Signature]
Advocate

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THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH, GUWAHATI

In the matter of

O.A. NO.253 of 2003

SHRI HARVINDER SINGH SANDHU

.....Applicant

Vs.

Union of India and others

..... Respondents

WRITTEN STATEMENT FOR AND ON BEHALF
OF RESPONDENTS 1,2,3 & 4

I, Pyare Lal, working as Superintending Engineer (Electrical), Guwahati Central Electrical Circle, CPWD, Guwahati under the Office of Director General of Works, CPWD, of the Ministry of Urban Development & Poverty Alleviation, New Delhi do hereby solemnly affirm and state as under :-

1. That I am the Superintending Engineer (Electrical) Guwahati Central Electrical Circle, CPWD, Guwahati under the office of the Director General of Works, CPWD of the Ministry of Urban Development & Poverty Alleviation, New Delhi and has been authorised to file the counter reply on behalf of Respondents and that the deponent is also fully acquainted with the facts of the case. I have gone through the application and have understood the contents thereof. The Statement and contention made in the application which are not specifically admitted, are deemed to have been denied.

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*Union of India & others - Respondents
through :
Shri Pyare Lal
Guwahati Central Electrical Circle*

Addl. Central Govt. Standing Counsel
C. A. T.
11/3/04

2. That the deponent begs to state that in order to have proper appreciation of the facts of the case, the Respondents beg to submit the following Preliminary objections and brief facts of the case before giving the detailed parawise reply to the application.

Preliminary Objections.

(i) That the Applicant after receipt of the impugned charge memo , dated 30-08-2003 requested for extension of time to submit the statement of defence. He has not mentioned anything about legality or validity of the charge memo and has approached the Hon'ble Tribunal directly without exhausting the remedies available to him. He was, however, granted time upto 31-10-2003 by the Ministry of Urban Development for submitting his statement of defense.

3. That the deponent begs to place the Background of the Case as follows for perusal of the Hon'ble Tribunal :-

That a reference was received from CBI on 10.10.2001 for investigation of a case regarding alleged malpractises in award of a contract for installing high mast lighting in Jail No.5 at Tihar by PWD Electrical Division(ED)-VIII. It was alleged that the cost of work incurred by the PWD ED-VIII, was much higher than the comparable work carried out at Punjabi Bagh by PWD Electrical Division-IX. Vigilance Unit of CPWD investigated the matter and the role of officials involved in call of tenders/approval of Pre-qualification Applications/ Scrutiny of tenders and subsequent award was examined in detail.

The investigation report was submitted to the Ministry of Urban Development & Poverty Alleviation. After the receipt of the CVC advice a Major Penalty chargesheet was issued to the applicant vide the impugned memo dated 30-08-2003.

4. That with regard to the statement made in paragraph 1 of the application the deponent begs to state that the contents of this para are wrong and denied in view of the submissions made in the background as stated above. The impugned Memorandum dated 30-08-2003 is a Presidential Order whereby a Major Penalty Charge sheet has been issued to the Applicant for certain lapses committed by the Applicant during the period 5.12.97 to 2.7.99, when he was posted as Surveyor of Works (Electrical) in PWD, Electrical Circle-II, New Delhi. The impugned Memo has been issued in accordance with the instructions and rules of the Government on the subject and is fully valid and proper and does not suffer from any infirmity justifying intervention of this Hon'ble Tribunal.
5. That with regard to the statement made in paragraph 4.1 of the application the deponent begs to state that the contents of this para except matter of record are wrong and denied. As already submitted in the Background of the case, the Major Penalty Charge sheet has been issued to the Applicant vide impugned Memo dated 30-08-2003 after receipt of the advice of the CVC in the matter.

The action of the Respondents in issuing the impugned Memo has nothing to do with the action being taken by the Respondents in pursuance of the order and judgement dated 13.2.2003, passed by the Principal Bench of this Hon'ble Tribunal in OA No.17/2002 in which the Applicant has sought entirely different relief regarding his confirmation as Assistant Executive Engineer (AEE) (Electrical), and regular promotion to the next higher grades of Executive Engineer (EE) (Electrical) and Superintending Engineer (SE) (Electrical). It is respectfully submitted that the Respondents have gone in appeal against the order of the Tribunal dated 13.2.2003, by filing a Civil Writ Petition bearing CWP No.4398/2003 in the Hon'ble High Court of Delhi. A Miscellaneous Petition CMP No.7525/2003 has also been filed with the CWP for stay of operation of the said order. The Hon'ble High Court on 2.12.2003 has directed the Respondents to implement the order of the Tribunal and has further listed the matter for hearing on 17.2.2004.

6. That with regard to the statement made in paragraph 4.2 of the application the deponent begs to state that the respondent have no comments to the statement made in paragraph 4.2 of the application.

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7. That with regard to the statement made in paragraph 4.3 of the application the deponent begs to state that the same are wrong and denied. In reply it is respectfully submitted that the Applicant was charge sheeted under Rule 14 of the CCS (CC&A) Rules by Memo dated 27.7.1989. The vigilance case initiated against the Applicant pursuant to the Memo dated 27.7.89, concluded with the imposition on the Applicant, the penalty of reduction of pay by two stages from his pay in the existing time scale of pay, for a period of two years without cumulative effect. Vide Order No.C-13015/12/87-AVI dated 4th May 1998. It is submitted that the Applicant was actually considered for confirmation in the entry grade of AEE(Electrical) and also for regular promotion to the next higher grade of EE(Electrical) along with his batch mates by the duly constituted DPCs held by the Respondents from time to time between 1989 and 1998 but under the extant instructions of the Government on the subject, recommendations of the DPC in respect of the Applicant were kept in sealed covers because of the afore stated vigilance case. Since on conclusion of the vigilance case the Applicant was not exonerated, the sealed covers containing the recommendations of the DPCs regarding his confirmation as AEE (Electrical) and regular promotion as EE(Electrical) were not opened as per the extant rules.

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After the vigilance case against the Applicant concluded in May, 1998 the Applicant was considered for confirmation by the next DPC held on 26.6.2001. This DPC recommended him for confirmation w.e.f. 1.9.2000 after the expiry of currency of the period of penalty imposed on him. The necessary Notification in this regard was issued on 6.7.2001. The Applicant's case for regular promotion to the grade of EE(Electrical) was last considered by the DPC held on 20.5.99, which then decided to consider his case for promotion after the penalty period of two years was over. In this connection it is further submitted that the Applicant's name was only tentatively included as adhoc EE in the seniority lists of EE(E) dated 23.7.84/18.9.89 or 25.11.94. However, it was excluded from the seniority list dated 6.7.99 which was issued after the seniority list dated 25.11.94 was quashed by the Tribunal Chennai Bench order dated 4.9.97 in A.S.Anandram's case. Therefore, the contention of the Applicant that he has been declared as a regular EE(E) in the AEEs own quota with effect from 13.1.83/8.2.83 is wrong and hence denied.

8. That with regard to the statement made in paragraph 4.4 of the application the deponent begs to state that the OA No.17/2002 filed by the Applicant before the Principal Bench of this Hon'ble Tribunal and the final order/Judgement dated 13.2.2003, passed by the Hon'ble Tribunal in the said OA is a matter of record.

9. That with regard to the statement made in paragraph 4.5 of the application the deponent begs to state that the contents of this para except matter of record are wrong and denied. In reply it is respectfully submitted that the Respondents have gone in appeal against the order of the Tribunal dated 13.2.2003, in OA No. 17/2002 by filing a Civil Writ Petition bearing CWP No.4398/2003 in the Hon'ble High Court of Delhi. A Miscellaneous Petition CMP No.7525/2003 has also been filed with the CWP for stay of operation of the said order.

The Respondents have also filed another Civil Miscellaneous Petition in the High Court of Delhi, for grant of stay on the operation of the Tribunal order dated 29.9.2003 in MA No.1398/03 in OA No.17/2002. The matter came up before the Hon'ble High Court on 2.12.2003 when it directed the Respondents to implement the order of the Tribunal and further listed the matter for hearing on 17.2.2004.

10. That with regard to the statement made in paragraph 4.6 of the application the deponent begs to state that the role of the officers involved in call of tenders/approval of Pre-qualification Applications/Scrutiny of tenders and subsequent award was examined in detail. The Applicant was working as Surveyor of Works (Electrical) in the office of Superintending Engineer, PWD Electrical Circle II where the applications for sale of tender and subsequently the tenders received were scrutinized. It has been charged that

- (i) The Applicant failed in his primary responsibility of technical scrutiny of tenders.
- (ii) The Applicant was responsible for award of work to an agency who was not approved for sale of tenders.
- (iii) The Applicant was responsible for recommending rejection of the offer of M/S Philips, which was otherwise well placed in terms of specifications.
- (iv) The Applicant failed to verify and correct the justification prepared by EE(E), PWD ED-VIII leading to award of work at very high rates and causing a loss of more than Rs.13 lacs to the Govt. Hence the averments of Applicant in this para are denied.

11 That with regard to the statement made in paragraph 4.7, 4.8 & 4.9 of the application the deponent begs to state that the contents of these paras are matter of record and hence no comments.

12 That with regard to the statement made in paragraph 4.10 of the application the deponent begs to state that the contents of this para are wrong and hence Denied. The Applicant at his request was granted extension of time upto 31.10.2003 by the Ministry of Urban Development and Poverty Alleviation, the disciplinary authority. He has not submitted his reply by the extension of time and instead has filed the present OA . The OA is liable to be dismissed as premature.

13. That with regard to the statement made in paragraph 4.11 of the application the deponent begs to state that the contents of this para are wrong and denied. As already submitted in the Background of the case herein above, the matter was referred by CBI and investigated in detail by the Respondents 1-3. The chargesheet was issued only after the Respondents and the CVC were convinced of lapses on part of the Applicant. Though the allegations against the Applicant are to be inquired by the suitable authority, it may be mentioned here that accepted rates for the high mast for flyover at Punjabi Bagh were Rs.4,47,500/- as compared to rates of Rs.7,15,000/- recommended by the Applicant.

14. That with regard to the statement made in paragraph 4.12 of the application the deponent begs to state that the contents of this para are wrong and hence denied. In fact, the Applicant was responsible for processing of the technical bids of the work and he recommended rejection of otherwise technically sound offer of M/S Philips. He cannot, therefore, just throw the blame on others and go scot-free. It is further respectfully submitted that the Applicant is deliberately trying to confuse this Hon'ble Tribunal by linking the action of the Respondents in issuing the impugned memo dated 30.8.2003 to the judgement and order of the Principal Bench of this Hon'ble Tribunal dated 13.2.2003 in OA No.17/2002.

As already submitted the Respondents have gone in appeal against the order of the Tribunal dated 13.2.2003 by filing a Civil Writ Petition bearing CWP No.4398/2003 in the Hon'ble High Court of Delhi. A Miscellaneous Petition CMP No.7525/2003 has also been filed with the CWP for stay of operation of the said order. The Hon'ble High Court on 2.12.2003 has directed the Respondents to implement the order of the Tribunal and has further listed the matter for hearing on 17.2.2004. Hence averments are denied.

15. In view of the position explained in the 'Background of the Case' and submissions made herein above, none of the grounds mentioned by the Applicant in paras 5.1. to 5.6, is maintainable under the law and the present OA being devoid of any merit is liable to be dismissed with costs in favour of the Respondents.
16. The contents of this para 6 are wrong and denied. As already submitted at Sl. No.12 in reply to para 4.10 above, the Applicant at his request, was granted extension of time upto 31.10.2003, by the disciplinary authority for submitting his reply to the charged Memo dated 30.8.2003. However instead of submitting his reply to the charged memo he has filed the present OA. The OA is thus liable to be dismissed as premature.
17. The contents of this para 7 are denied for want of knowledge.

18. In view of the factual position submitted in the background of the case and reply on merits furnished herein above, with legal submissions made therein, none of the reliefs sought for by the Applicant in para 8 and para 9 is legally admissible to him. The present OA being devoid of any merit is liable to be dismissed with costs. It is prayed accordingly.

19. These paras 10, 11 & 12 need no reply being formal in nature.

VERIFICATION

I, *Pyare Lal* working as Superintending Engineer (Electrical), Guwahati Central Electrical Circle, CPWD, Guwahati under the office of Director General of Works, CPWD, under Ministry of Urban Development & Poverty Alleviation, Nirman Bhawan, New Delhi do hereby verify that the contents of the above counter reply are true and correct to my knowledge which is derived from the office records and upon information contained therein and is believed to be true and correct. Nothing material has been concealed therefrom.

Verified at Guwahati on this *14th* day of February, 2004.



DEPONENT