

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T/A No..... 293/2006

R.A/C.P No.....

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SECTION OFFICER (Judl.)

FROM NO. 4
 SEE RULE 24)
 CENTRAL ADMINISTRATIVE TRIBUNAL
 CALCUTTA BENCH:

1. Original Application No. 243/06
 2. Misc Petition No. _____
 3. Contempt Petition No. _____
 4. Review Application No. _____

Applicant(s) A. K. Miller

Respondent(s) W.O. I. term

Advocate for the Applicant(s) M. Chanda, S. Nath
G. N. Chakrabarty, Mrs. M. Miller

Advocate for the Respondent(s) M. U. Das
G. Basappa, S. C. S.

Notes of the Registry	Date	Order of the Tribunal
1. The application is in form is filed C.V. for Rule 14 deposited value Rs. 100/- No. 286932877 Dated 12.10.06 Mr. D. Registrar PAC.	5.12.06 <i>11/12/06</i>	This O.A. has been filed against punishment imposed vide Annexure-9 order dated 17.10.2005 by the President of India reducing the pay to one lower stage in the time scale of pay for a period of one year for the one year with the stipulation that he will not earn any increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing his future increments of pay. The proceeding has been initiated against the appl under Rule 14 of the CCS (CCA) Rule
		Heard Mr M. Chanda, learned coun appearing for the applicant and Mi Das, learned Addl.C.G.S.C for the r ents. When the matter came up it is seen that penalty order was passed on 17.10.2005 and the same was communicated by the applicant on 27.10.05 27.10.05. Taking that date into account he shou have filed the applicant within 27.11 but which was not filed within that Therefore, the O.A. is barred by

OA 293/06

5.12.06 limitation as pleaded by learned addl. C.G.S.C. Learned counsel for the applicant on the other hand submitted that the order was received by the applicant only on 31.5.06. Counsel for the applicant is directed to produce supporting documents or to file an affidavit to that effect. Post on 11.12.06 for admission.

Received
Usha Das
Addl C.G.S.C.
6/12/06

L
Lalit
Biswak
8/12

pg

L
Vice-Chairman

11.12.06 Applicant has challenged the Memo of charge sheet dated 29.08.2003 and the order of penalty dated 17.0.2005 imposed upon the applicant by reducing one increment. The finding of the Enquiry Officer is that the applicant was vested with required financial power, but the said financial power, even though vested with the DCM, was not utilized in a prudent manner. According to the applicant the exercise of such power is admissible by procedure of Rules.

I have heard Mr.M.Chanda learned counsel for the applicant and Ms.U.Das learned Addl.C.G.S.C. for the Respondents. The counsel for the Respondents has submitted that penalty order was passed on 17.10.2005 and the same was communicated to the applicant on 27.10.05. Taking that date

L
Contd/-

293/06

- 3 -

4

11.12.06

into account he should have filed the application within 27.11.06 but it was not filed within that time. Therefore the O.A. is barred by limitation for two months. The counsel for the applicant has submitted that the applicant had not received the order of penalty dated 17.10.05, which was communicated to the applicant only on 27.10.2005, and the same was duly received by the applicant on 31.05.2006. The Court directed the counsel for the applicant to produce supporting document or to file an affidavit of that effect. The counsel for the respondents would like to take instructions. However, from the documents (Annexure A series) it is quite obvious that the applicant had received the order on 31.05.2006. Therefore, the O.A. is not barred by limitation and the question of limitation does not arise.

Considering the entire facts and circumstances I am of the view that the application has to be admitted.

Application is admitted. Issue notice on the respondents. Post the matter on 24.1.07.

Vice-Chairman

lm

Service of notice
to be filed on 24.1.07

At the request of learned counsel for the respondents four weeks time is granted to file written statement.

Post the matter on 27.2.07.

Vice-Chairman

27.2.07.

Counsel for the respondents prays for further time to file written statement. Four weeks time is granted to file written statement. Post the matter on 29.3.07.

Vice-Chairman

CL
Number

6A 250/07-4
29.3.07. Counsel for the respondents want to file written statement. Let it be done. Matter of 3.5.07.

1-5-07
no w/s firm.
b.

lm

Vice-Chairman

3.5.2007 Four weeks' time is granted to the Respondents to file reply statement.

Post the case on 05.06.2007.

No w/s has been filed.

3
1-6-07.

/bb/

Vice-Chairman

5.6.2007

Ms.U.Das, learned Addl.C.G.S submitted that reply statement has been filed. Copy of the same has furnished the learned counsel for the Applicant.

Post on 5.7.2007. In the meantime

Applicant is at liberty to file rejoinder.

Written statement
has been filed for the
respondents.

1-5-07

Vice-Chairman

Rejoinder not filed.

3
2-7-07.

/bb/

5.7.2007 Two weeks time is allowed to the learned counsel for the Applicant to file rejoinder.

Post on 20.7.2007.

Vice-Chairman

OA-293/06

20.7.2007

Two weeks further time is granted
the Applicant to file rejoinder.

Post on 7.8.2007.

Rejoinder not filed.

22
27.8.07

/bb/

Vice-Chairman

Rejoinder not
filed.

23
12.9.07

28.8.07 Two weeks further time is granted to
the applicant to file rejoinder.

Post the matter on 13.9.07.

17.9.07

pg

Rejoinder filed
by the Applicant.
copy served.

Off

The case is ready
for hearing.

3
4.10.07

13.9.07 Counsel for
submitted that, in
rejoinder.

Post on

Vice-Cha

pg

05.10.2007

In this case, reply and rejoinder
already been filed and this
otherwise ready for hearing.

Call this matter on 06.11
hearing.

In the meantime,
learned Addl Standing
Union a should
depart al proceed
end, proceeding file
which departmental p

04-293/06

20.7.2007 Two weeks further time is granted
the Applicant to file rejoinder.
Post on 7.8.2007.

Rejoinder not filed.

27.8.07

/bb/

VI

Rejoinder not
filed.

27.8.07

28.8.07 Two weeks further time is granted

the applicant to file rejoinder.

Post the matter on 13.9.07

pg.

17.9.07
Rejoinder filed
by the Applicant.
Copy served.

PA.

13.9.07 Counsel for
submitted the
rejoinder
Post on 17.9.07

The case is ready
for hearing.

30.9.07

05.10.2007 In this case, reply and rejoinder
already been filed and this
otherwise ready for hearing.

Call this matter on 06.10.2007
hearing.

In the meantime,
learned Addl. Standing
Union
defant
entity
which

Notes on the Registry

Date

Order of the Tribunal

24.12.07

Reply to the Regd. No. ^{23.01.2008} filed by the Respondents.
Copy served.

RM

The case is ready
for hearing.

22/1/08

The case is ready ^{21.02.2008} for hearing.

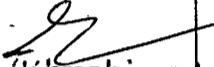
23/1/08

The case is ready
for hearing.

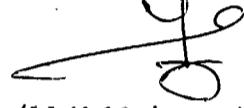
24/1/0828.3.08

On the request of Mr. M. Chanda learned counsel appearing for the Applicant (made in presence of Ms. Usha Das, learned Addl. Standing Counsel for the Union of India) this case stands adjourned to 01.02.2008 for hearing.

Call this matter on 01.02.2008.


(K. Krishnamoorthy)
Member(A)

Lm

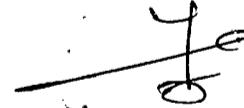

(M. R. Mohanty)
Vice-Chairman

On the prayer of Mr. M. Chanda, learned counsel appearing for the Applicant, this case stands adjourned ~~and~~ to be taken up for hearing on 11.03.2008, alongwith O.A.No.32 of 2006 of the same Applicant. Ms. U.Das, learned Addl. Standing Counsel appearing for the respondents (who is present in Court) has no objection.

Call this matter on 11.03.2008.


(K. Krishnamoorthy)
Member (A)

Lm


(M. R. Mohanty)
Vice-Chairman

11.03.2008 Call this Division Bench matter on
31st March, 2008

Lm


(M. R. Mohanty)
Vice-Chairman

O.A.No. 293/2008

31.03.2008 By filing M.P.No.50/2008 the Applicant has sought amendment of the O.A..

Heard. Prayer for amendment is hereby allowed. The Applicant is permitted to incorporate amendments in the O.A. by adding new paragraphs and new annexures to the O.A. Consolidated copy of the O.A. incorporating the added paragraphs and annexures should be filed by 04.04.2008. A copy of the amended O.A. be supplied to Mr G. Baishya, learned Sr. Standing Counsel for the Union of India by 04.04.2008.

5 (five) extra copies of the consolidated O.A. and required postages should be filed by the Applicant for issuance of fresh notices (of the amended O.A.) to all the Respondents by 04.04.2008.

Registry to issue notice (alongwith copies of the amended O.A.) to the Respondents requiring them to file the additional reply, if any, by 09.05.2008.

Call this matter on 09.05.2008.


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

31.3.08.
Pl. issue Notices
of 5 copies of amended
O.A. to the Respondents
requiring them to file
addl reply if any.

31/3/08

Dt= 16/4/08

As per Court's order

Dt. 31/3/08, learned
advocate for the applicant
deposit Rs=500/- only vide
receipt No - 2644, Dt. 16/4/08 - nkm
for issuing fresh notices
to the resp. no. 1 to 5.

16/4/08

Notice & order send
to Direction for issuing
to respondents by speed.
post A/D.

16/4/08 D/A No - 1796 to 1800
Dt= 22/4/08

O.A. 293/06

-9-

9

Notes of the Registry

Page

Order of the Tribunal

1.5.08

Amended petition
filed by the Applicant
copy served.

Ans.

09.05.2008

Mr. M. Chanda, learned counsel appearing for the Applicant is present. None appears for the Respondents. On the prayer of Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Union of India, call this matter on 11.6.2008.

Y

25.6.08

Additional Rejoinder
submitted by the
Applicant. Copy
served.

Ans.

11.06.2008

No additional counter has yet been filed to the amended portion of the O.A. However, regular counter and rejoinder having been filed, this case is otherwise ready for hearing. Call on 8th August, 2008, for hearing.

Additional counter, if any, may be filed by 25th July, 2008.

Call this matter for hearing on 08.08.2008.

The case is ready-
for hearing.

M
7.8.08

lml

R
(Khushiram
Member(A))

Y
(M. R. Mohanty
Vice-Chairman)

Notes of the Registry

10
08.08.2008

Mrs. U. Dutta learned counsel appearing for the Applicant is present. Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Respondents is on accommodation.

Call this matter on 17.09.2008 for hearing before Division.

2m
16/9/08

Y
(M.R. Mohanty)
Vice-Chairman

lm

17.09.2008 On the prayer of Mr M. Chanda, learned Counsel appearing for the Applicant (made in presence of Mr G. Baishya, learned Sr. Standing Counsel for the Union of India), hearing of this matter stands adjourned to be taken up on 17.11.2008.

2m
14.11.08

Y
(Khushiram)
Member(A)

Y
(M.R. Mohanty)
Vice-Chairman

nkm

17.11.2008 Mr M. Chanda, learned Counsel appearing for the Applicant, is present. Mr G. Baishya, learned Sr. Standing Counsel for the Union of India, is also present.

Call this matter on 05.01.2009.

nkm

SN
(S.N. Shukla)
Member (A)

Y
(M.R. Mohanty)
Vice-Chairman

2m
2.1.09

05.01.2009 Mrs. U. Dutta, learned Counsel appearing for the Applicant, is present. Mr G. Baishya, learned Sr. Standing Counsel for the Union of India, is not present.

Call this matter on 10.02.2009.



(M.R. Mohanty)
Vice-Chairman

The case is ready
for hearing. nkm

10.02.2009

Call this matter on 26.03.2009 for hearing.

23
25.3.09

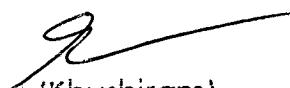


(M.R. Mohanty)
Vice-Chairman

/bb/

26.03.2009

For the reasons recorded separately this
O.A. stands disposed of.


(Khushiram)
Member (A)


(A.K. Gaur)
Member (J)

/bb/

21.5.09

Copy of the order
sent to the D/see
for same the same
to the parties.



9

13

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A No. 293 of 2006

DATE OF DECISION: 26.03.2009

Shri Anjan Kumar Dutta

.....Applicant/s.

Mr.M.Chanda

..... Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors

.....Respondent/s

Ms.Usha Das, Addl. C.G.S.C.

.....Advocate for the
Respondents

CORAM

THE HON'BLE MR.A.K.GAUR, JUDICIAL MEMBER

THE HON'BLE MR.KHUSHIRAM, ADMINISTRATIVE MEMBER

4.	Whether Reporters of local newspapers may be allowed to see the Judgment?	Yes/No
5.	Whether to be referred to the Reporter or not?	Yes/No
6.	Whether their Lordships wish to see the fair copy of the Judgment?	Yes/No

Judgment delivered by

Anjan
Anjan
Judicial Member

M

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.293 of 2006.

Date of Order : This, the 26th day of March, 2009.

THE HON'BLE MR. A.K.GAUR, JUDICIAL MEMBER

THE HON'BLE MR. KHUSHIRAM, ADMINISTRATIVE MEMBER

Shri Anjan Kumar Dutta
S/o Late N.G.Dutta
Working as Deputy General Manager, BSNL
Tezpur, Assam Circle
Triveni Complex, Kacharigaon
Tezpur – 784 001, Assam.

...Applicant.

By Advocates: Mr.M.Chanda, Mr.S.Nath & Mr.G.N.Chakraborty.

- Versus -

1. The Union of India represented by the
by the Secretary to the Govt. of India
Ministry of Communication and
Information Technology
Department of Telecommunication
(Vigilance -II Section)
Sanchar Bhavan, 20 Ashoka Road
New Delhi – 110 001.
2. Bharat Sanchar Nigam Limited
(A Govt. of India Enterprise)
Represented by the Chairman and
Managing Director, BSNL
Registered Office- Statement House,
Barakhamba Road
New Delhi – 110 001.
3. The Director (VA)
Vigilance II Section
Department of Telecommunication
Sanchar Bhavan, Room No.909
20 Ashoka Road
New Delhi – 110 001.
4. The Desk Officer (Vig-II)
Govt. of India
Ministry of Communication and
Information Technology

Department of Telecommunication
 Vigilance II Section, Sanchar Bhavan
 20 Ashoka Road, New Delhi-100 001.

5. Union Public Service Commission
 Represented by it's Secretary
 Dholpur House, Shahjahan Road
 New Delhi - 110 011.

... Respondents.

By Ms. Usha Das, Addl. C.G.S.C.

O R D E R (ORAL)

A.K.GAUR, MEMBER (J) :

We have heard Mr.M.Chanda, learned counsel for the Applicant and Ms.Usha Das, learned Addl. Standing counsel for the Government of India.

2. Mr. M. Chanda stated that none of articles of charges are fully proved in the matter. On our query as to whether Applicant has filed review petition under Rule 29-A of CCS (CCA) Rules, he declined. Accordingly, we hereby direct the Applicant to file a review petition within a period of one month from the date of receipt of a copy of this order. If such a review petition is preferred by the Applicant, the same shall be considered and disposed of by the competent authority within a period of four months from *u/s receipt of u/s* the date of such representation.

3. With the above observations and direction, the O.A. is disposed of as above.

Khushiram
 26.3.09
 (KHUSHIRAM)
 ADMINISTRATIVE MEMBER

Anil Gaur
 (A.K.GAUR)
 JUDICIAL MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

AMENDED APPLICATION

O.A. No.293/2006

Sri Anjan Kumar Dutta
-Vs-
Union of India & Ors.

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

- 1 MAY -

गुवाहाटी न्यायालय
Guwahati Bench

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

29.08.2003- Applicant is presently working as DGM, BSNL, Tezpur, Assam. He was served with a memo of charge sheet issued by the Govt. of India, Ministry of Telecommunication and Information Technology, Dept. of Telecommunication where it has been alleged that while he was functioning as DCM (Planning) in the office of the G.M, Nasik Telecom District from July 1997 to February 98, the applicant approved the procurement of non stock items, beyond delegated financial power, without inviting tenders and the department has been denied the benefit of competitive rates showing undue favour to the private party.
(Annexure-1)

15.10.2003- Applicant submitted his reply denying the article of charge.
(Annexure-2 series)

07.01.2004- Applicant prayed for supply of 14 additional documents for the purpose of examining the same in the inquiry proceeding.
(Annexure-3)

30.12.2003- Preliminary inquiry was held at New Delhi and thereafter regular hearing was conducted on 6, 7 and 8th May of 2004 at the office of the CMT, Raigad, Mumbai.

22.01.2004- Inquiry officer raised an objection regarding production of some additional documents as prayed by the applicant. (Annexure-4)

31.01.2004- Applicant submitted representation to the inquiry officer explaining the relevancy of the documents requisitioned by him. Inquiry Officer accepted the representation and directed the presenting officer to make the documents available. (Annexure-5)

03.03.2004- Commissioner for Departmental inquires also allowed the prayer of the applicant for examination of the additional witnesses.

21.02.2004- Applicant requested through his representation for examination of 2 additional witnesses.

- 1 MAY -

08.05.2004- Applicant was examined in the inquiry proceeding. गुवाहाटी न्यायपीठ
Guwahati Bench

10.07.1997- Applicant submitted defence brief before the Commissioner of Departmental Inquiries stating that the Presenting Officer suppressed the material facts before the Inquiry Officer and as such the factual position has not been projected. Applicant further submitted in his written brief that the purchase has been made by DE (CC) office of the GMT, Nasik with full and complete financial approval by the head of the District during the management meeting held on 10.07.1997. Applicant also stated in defence brief that if there is a violation of rule and guideline then Sri M.N. Punde and his successor M.D. Gosavi, CAO, IFA should be held responsible in terms of the rule cited in the defence brief.

05.07.2004- Inquiry report was communicated to the applicant. In the inquiry report after analysis of the evidence, conclusion reached by the inquiry officer that the article of charge is partly proved but the findings of the inquiry officer is contradictory and findings based on no evidence. (Annexure-7)

27.09.2004- Applicant after receipt of the inquiry report submitted a detailed representation to the disciplinary authority, pointing out the irregularities and infirmities in the departmental proceeding, it was also stated that disciplinary authorities views should be made available to the applicant when the said view communicated to the commission for getting advice has been systematically suppressed and reasonable opportunity is denied to the applicant in defending his case. It is also stated by the applicant that the inquiry report is self-contradictory. (Annexure-8)

05.06.2003- Applicant also pointed out that CVC has not appreciated the evidence properly while tendering 2nd stage of advice. Applicant also pointed out that he has approved purchase within his financial power and the proposal was approved by the CAO/IFA and he has simply followed the precedent set by the CAO/IFA.

17.10.2005, 27.10.2005 Applicant was imposed the penalty order dated 17.10.2005, for reduction of one stage in the time scale of pay for a period of one year and the same was communicated to the applicant. (Annexure-9 series)

31.05.2006 Applicant was duly received the penalty order dated 17.10.2005, which was given effect w.e.f 01.04.2006. (Annexure-10)

Hence this application before this Hon'ble Tribunal.

- 1 MAY / / 08

गुवाहाटी न्यायालय
Guwahati Bench

PRAYERS

1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned memorandum of charge sheet issued vide letter bearing No. 8/248/2003-Vig. II dated 29.08.2003 (Annexure-1) as well as the impugned order of penalty bearing letter No. 8/248/2003-Vig. II dated 17.10.2005 which was communicated to the applicant vide letter No. Vig/Assam/43 Pt-VI/12 dated 27.10.2005 (Annexure- 9 Series).
2. That the Hon'ble Tribunal be pleased to set aside and quash the consequential impugned order bearing No. X-1/Disc/Rule-14/06-07 dated 31.05.2006 and further be pleased to direct the respondents to restore the applicant to his original position and also to refund the amount due to the applicant in the event of such restoration."
3. That the Hon'ble Tribunal be pleased direct respondents to restore the pay of the applicant with arrear monetary benefits.
4. Costs of the application.
5. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for.

During pendency of this application, the applicant prays for the following interim relief: -

1. That the Hon'ble Tribunal be pleased to observe that the pendency of this application shall not be bar for the respondents to consider the representations of the applicant for his exoneration from the charges and his promotion.

19

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

AMENDED APPLICATION

Title of the case : O. A. No. 293 /2006
 Shri Anjan Kumar Dutta. : Applicant
 - Versus -
 Union of India & Others. : Respondents.

केन्द्रीय प्रशासनिक अधिकारपा
Central Administrative Tribunal

- 1 MAY 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

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Filed by

Dutta
Advocate

Date:

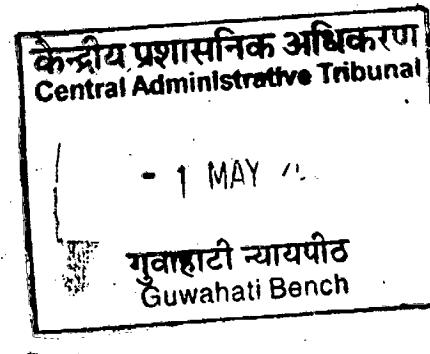
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

AMENDED APPLICATIONO. A. No. 293 /2006**BETWEEN:****Shri Anjan Kumar Dutta,**

S/o Late N.C. Dutta,
 Working as Deputy General Manager, BSNL,
 Tezpur, Assam Circle,
 Triveni Complex, Kacharigaon
 Tezpur-784001, Assam.

...Applicant.**-AND-****1. The Union of India,**

Represented by the Secretary to the
 Government of India,
 Ministry of Communications and Information Technology,
 Department of Telecommunication, (Vigilance - II section),
 Sanchar Bhavan, 20 Ashoka Road,
 New Delhi- 110001.

2. Bharata Sanchar Nigam Limited.

(A Govt. of India Enterprise)
 Represented by the Chairman and Managing Director, BSNL.
 Registered Office- Statesman House, Barakhamba Road.
 New Delhi- 110001.

3. The Director, (VA)

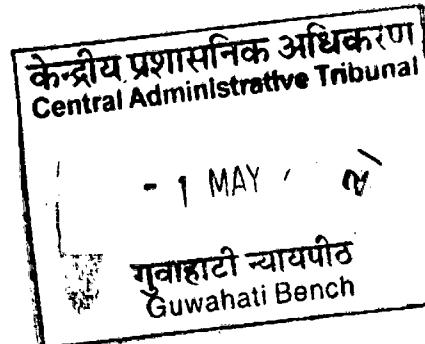
Vigilance II Section,
 Department of Telecommunication,
 Sanchar Bhavan,
 Room No. 909,
 20 Ashoka Road,
 New Delhi- 110001.

4. The Desk Officer (Vig-II),

Govt. of India,
 Ministry of Communication and Information Technology,
 Department of Telecommunication,
 Vigilance- II Section
 Sanchar Bhavan, 20 Ashoka Road,
 New Delhi-110001.

Filed by the applicant
 through LL.B. Dutta, advocate
 on

Anjan Kumar Dutta



5. Union Public Service Commission.
Represented by it's Secretary,
Dholpur House,
Shahjahan Road,
New Delhi- 110011.

... Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made against the memo of charge sheet dated 29.08.2003 (Annexure-1) and the order of penalty dated 17.10.2005 (Annexure- 9 Series), and further it is prayed that the Hon'ble Tribunal be pleased to direct the respondents to restore the applicant to his original position.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation.

The applicant further declares that this application is filed within the period of limitation prescribed under Section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case.

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2 That your applicant is presently working as DGM, BSNL Tezpur, Assam Circle, Tezpur. The applicant while working as DGM, Maharashtra Telecom Circle, he was served with a memo of chargesheet under Rule 14 of the CS (CCA) Rules, 1965 vide letter bearing no. 8/248/2003-Vig.II dated 29.08.2003 issued by the Govt. of India, Ministry of Telecommunication and Information Technology, Department of

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Telecommunication, New Delhi wherein it has been alleged that the applicant while functioning as DCM (planning) in the office of the C.M. Nasik, Telecom District during the period from July 1997 to February, 1998 in connivance with Shri B. Prasad, C.M. Sri N.C. Kamala Purkar, Asstt. C.M (Planning), Sri M.D. Gosavi, Chief Accounts officer and Sri A.K. Pathak, SDE (planning) of Nasik, Telecom District, approved the procurement of non-stocked items viz. cable route tracers, pulse reflectometers, battery voltage monitoring systems and digital earth resistance testers, from M/S Hi-Tech Telecom Systems, Hyderabad for a total of Rs. 4,63,032/-, on the said basis of quotations, without inviting tenders as required, though the equipments were not proprietary items, far in excess of the delegated financial powers of the Deputy General Manager/General Manager and without ascertaining the specific requirements of the field units, in violation of the general provisions of the General Financial Rules, 1963.

The applicant after receipt of the memorandum of chargesheet dated 29.08.2003, the applicant in terms of the direction contained therein submitted his reply specifically denying the article of charge vide his reply dated 15.10.2003.

(Copy of the memo of chargesheet dated 29.08.2003 and his reply dated 15.10.2003 alongwith forwarding letter dated 15.10.2003 are enclosed as Annexure-1 and 2 series respectively).

4.3 That it is stated that after receipt of the reply dated 15.10.2003, the disciplinary authority appointed Sri N.K. Ghose, Commissioner for departmental inquiries, Satarkta Bhawan, GPO Complex, INA, New Delhi-110023, as the inquiring authority to inquire into the charges framed against the applicant. Similarly Sri A.K. Sahu, C.M (Operations) office of the CCM, Telecom Building No. 2 Fort, Mumbai-400001, as the Presenting officer to present the case in support of the articles of charge against the applicant. The applicant right from the beginning of the Disciplinary Proceeding extended his best co-operation in the inquiry proceeding.



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4.4 That your applicant vide his letter dated 07.01.2004 addressed to Inquiry Officer, prayed for supply of additional documents for the purpose of examining the same in the investigation proceeding. In the said additional list of documents in as much as 14 documents were requested for supply and examination.

(A copy of the letter dated 07.01.2004 is enclosed and marked as Annexure-3).

4.5 That it is stated that preliminary hearing was held on 30.12.2003 at New Delhi, and thereafter regular hearing was conducted on 6th, 7th and 8th of May 2004 at the office of the CMT, Raigad, Santacruz (W), Mumbai. It would be relevant to mention here that the Inquiry Officer raised an objection regarding production of some of the additional documents as prayed by the applicant on the alleged ground that document No. 17 and 18 are not considered appropriate for production and inspection and accordingly rejected the prayer of the applicant for production of the aforesaid 2 documents indicated at sl. No. 17 and 18 of the additional list of documents which would be evident from the order sheet dated 22.01.2004. However, the I.O has permitted the nominated Defence Assistant to plead for and on behalf of the applicant in Inquiry proceeding. The applicant however submitted representation to the inquiry officer explaining the relevancy of the documents, requisitioned by him vide his letter dated 31.01.2004. however, the I.O, i.e the Commissioner for Departmental Inquiry (CDI) accepted the explanation given by the applicant and directed the Presenting Officer to make the documents available to the extant possible to the charged officer for specification. It would be evident from the representation dated 31.01.2004 that similar purchase were also made by the Ahmedabad District, in the same manner and method as Nasik SSA done. The applicant also stated in his representation that the SSA's like pune, kalyan, Kothapur also made similar purchases as reflected in reply by the DCM (plg), office of the CMT, Nasik in reply to the Director of Audit, office of the P & T nagpur letter no. A 023/Audit note/99-00/2 dated 18.05.1999 in his letter no. S-

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12/3/audit/April-99/99-2000/40 dated 27.05.1999 also clarified regarding TAM 20 and 24.

(Copy of the daily order sheet dated 22.01.2004, representation dated 31.01.2004 and the order sheet dated 17.03.2004 are enclosed and marked as Annexure- 4, 5 and 6 respectively).

4.6 That it is stated that the Commissioner for Departmental inquiries also allowed the prayer of the applicant for examination of Additional witness which would be evident from daily order sheet dated 03.03.2004. In this connection it may be stated that the applicant i.e the charged official requested through his representation dated 21.02.2004 for examination of 2 additional defence witnesses in the inquiry proceeding in order to defend his case adequately, and the same was permitted by the commissioner for departmental inquiries.

4.7 That it is stated that Sri P.R. Sulcy, an officer of the Department who was not a listed witness but he was examined in the inquiry proceeding at the instance of the inquiry authority, Sri M.N. Punde, the then Chief Accounts Officer, Nasik Telecom District, who was a listed witness examined in the inquiry proceeding and made deposition against the applicant, whereas said Sri M.N. Punde although not involved in the instant proceeding but he was involved in another proceeding of irregular purchase of materials to the extent of Rs. 1,33,000/- for purchase one cable locator, where no objection was raised by said M.N. Punde, C.O, Nasik Telecom District against such irregular purchase but made deposition against the applicant in the instant proceeding. It is stated that the applicant i.e charged official was examined on 08.05.2004 in the inquiry proceeding.

It is categorically submitted that some of the very relevant documents could not be produced before the inquiry proceeding inspite of repeated approach.

4.8 That it is stated that the applicant submitted defence brief before the Commissioner of Departmental Inquiry, CVC, New Delhi. In the said defence brief the applicant inter alia stated that the presenting officer has

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deliberately suppressed the material facts before the Inquiry officer and as a result the factual position has not been projected before the Inquiry officer. The applicant further submitted in the said defence brief that the purchase by DE (CC), Office of the CMT, Nasik with full and complete financial approval by CAO/IFA and administrative approval by the Head of the district was discussed during the following management meeting held 10.07.1997 where other D.E's having known the utility of these sophisticated instrument, made on immediate demand for the need of this instrument on the same reason as put forth by the DE (CC) and Sri Padegaokar, DCM (NU) Nasik Telecom for their respective area.

There is no violation of rule or guideline by the applicant and assuming if there is any violation, then it would be Sri M.N. Punde and his successor Sri M.D. Gosavi, CAO/IFA after 19.06.97 to be held responsible in terms of the rule cited in the defence brief. The applicant further stated in his defence brief as follows:

“.... that it is proved beyond any shadow and doubt that five other SSA's of MH Circle operated on the Accepted Tender of Ahmedabad Telecom District of 1996. Their respective CAO gave the Tender process a go byc and acted on quotation or canvas basis of the company Agents who promoted the new Instruments. The respective CAO and Finacial Advisor advised the respective Executive Head to act upon for Nasik SSA also fill in tune with other five SSA's to procure one Instrument for DE (CC) Nasik at the cost of 1.33 lakh + 4% S.T. Here all CAOs appear to have acted the same way including the CAO of Nasik Telecom District after the note of DE (Extl) E-10B Nasik quoting Ahmedabad Tender extended up to 5/3/98 by extending the contract for one year thereby violating the alleged sanctity of rules which nobody observed or insisted despite their personal/individual knowledge or RULES or responsibility.

This case against Nasik was singled out with vengeance by the Nagpur Audit Officer though they authorized or un-authorised condoned the action of non-Tendering and purchasing on

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quotation of the other SSA to which Nasik SSA fell and easy victim.

The Nasik CAO (Shri Punde) was a Engineer by degree and having opted for Accountant a profession in no way related to the Engineering Branch. He was a direct recruit to Telecom Accountant Services is presently CM (Finance) in Maharashtra Circle, District with his knowledge of circulars at S-7 & S-8 he miserably failed to implement the provision of the Circulars and allowed his SSA along the lines of Kolhapur, Nanded, Latur, Jalgaon, Ahmednagar much against the established Rules which according to him were obligatory or mandatory and not discretionary despite Rule 60 (S-10) requires the Govt. amounts to be spent as a man of normal prudence who spends his own money. This Rule 60 gives some discriminatory power to the purchasing Authority.

The CAO is the Head of the District for Financial Rules as quoted in earlier paras of this brief. During the cross examination, he refused to comment on his status as Head of the Office of Financial Rules when he was specially asked for his status in Q.A. 20.

To that extent, he was pioneer in allowing the executives to purchase without calling for Tenders and according his prior financial Approval (S-1) and proved himself untrustworthy witness, not honest to his position."

The applicant further states as follows in his defence brief which is relevant and as such quoted below for perusal of the Hon'ble Court.

"I cleared the proposal for Technical approval while the CAO cleared it for financial purposes being the Head for Financial Rules. The Administrative approval can also be given by the DCM who is administrative officer of JAC cadre and during the period I was the only DCM in whole of SSA unit of Nasik. On cross examination, the Vigilence Officer fares still worse. He raised another controversy that a DCM of a SSA unit has no Financial Power by saying that the powers were transgressed. DCM does not come

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under the category of Area Directors/TDM. They were independent SSA Heads. However Rule 5 of P&T Manual Vol. X, about 'the duties and power of different officers, it is stated that the Head of Circle are assisted by Directors of Telegraph who will normally act for Heads of Circles in all Engineering matters but their existence will not relieve the Head of Circle of their primary responsibility of insuring that of engineering branch in their circle

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is efficiently performed.'

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The applicant further stated as follows:

"In this clearing the first irregular purchase side tracking imposition of tendering process after knowing the noting by Shri Padegaonkar, DCM (NU) in S-1 quoting that they will be operating on the Tenders approved by Ahmedabad Telecom District and as operated on the same by five other SSA's of MH Telecom Circle like Kolhapur, Jalgaon, Latur, Nanded, Ahmednagar. Though that the CAO talked of the Financial Rules as mandatory and obligatory and yet despite his knowledge of Rules he allowed Financial clearance for purchase as was done by other CAOs attached to 5 other SSA's. Confirming that all intelligent people think alike the departmental has not lost anything of competitive Rates and no undue favour was shown to any above seen party on the contrary a good amount was saved by me. Item to the extent of Rs. 49,000/- against the purchase made by the five SSA's of adjoining SSA's. This is also confirmed by the CMT Nasik to the CM (Finance) MH Telecom Circle, Mumbai in para 6 of his letter at Exhibit D -2 saying 'moreover no favoritism was shown to any particular agency'.

With this Sir, I close my defence brief with a hope that the charges leveled against me be assessed in proper perspective as explained above to say that the only article of charge is not proved on the basis of precedence and practice followed in Maharashtra Telecom Circle and as followed by other SSA like Latur, Sawantwadi,

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Kolhapur, Nanded, Wardha, Aurangabad without discrimination since it was Nasik SSA only that was discriminated against on basis of faulty and jaundiced investigation by the most non-vigilant vigilance officer and on passing all proposals by Financial concurrence by the CAO despite his knowledge of Financial Rules and propriety thereof admitted by him in his cross examination like other CAO's of adjoining five Districts of Kohapur, Jalgaon, Ahmedabad, Nanded and Latur.

The Presenting Officer in his brief has also not refuted any of my pleas in my statement of defence submitted on 07/05/2004 as to how they were illogical and hence unacceptable and beyond the evidence adduced during the inquiry."

In view of the grounds assigned by the applicant in his defence brief, he is entitled to be exonerated from charges labeled against him. The applicant urge to produce a copy of the defence brief at the time of hearing of the case for perusal of the Hon'ble Tribunal.

4.9. That your applicant further begs to state that inquiry report dated 05.07.2004 communicated vide letter bearing No. KYN/VIC/AKD-14/2004-05/14 dated 13.09.2004 and also vide memorandum bearing No. 8/248/2003-Vig. dated 25.08.2004 and the same was duly received by the applicant. In the inquiry report it would be evident from the analysis of evidence as well as conclusion reached by the inquiry officer that the findings of the inquiry officer is contradictory. On a mere reading of the concluding paragraphs of the inquiry report, it would be evident that the inquiry officer could not take a firm decision, as to whether the applicant i.e. the charged official is vested with the delegation of financial power or not, regarding the purchases now in question in the instant proceeding.

The relevant portion of the inquiry report is quoted below:

"There is one important question of delegated financial powers of the CO. The defence has stated that the purchases made were within the delegated financial power of the CO. In his written brief also, the CO has stated that DCM was within the power to make

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purchases up to two lacs. Defence has stated that CO had power concurrent with CM which was not used routinely. That is why the purchase order in the name of CMT, Nasik was given. Defence has also stated that the notings between CAO and CMT, Nasik regarding passing of bills also indicate that DCM namely the CO had such financial power. However, prosecution has stated that CO had no financial power as he was not the independent SSA Head or Area Director. This has been confirmed by the prosecution witness SW-2 also. This can be argued both ways. Defence contention that if DCM had no financial power why the CAO allowed day to day expenditures after the approval of the DCM/CO has some weight. However, defence has produced a document D-9 which clearly indicates that financial powers rest with CCM, CM, Area Manager/TDM, SDE etc. not to those DCMs who are not independent SSA head. As regards the contention of the defence regarding internal arrangement of delegation of financial powers of DCM given by SSA head i.e. CMT, Nasik nothing has come on record except the clarification of CAO to CM during passing of bills. Even if DCM had such financial powers, the power was not utilized in prudent manner that has come quite clearly through the evidences on record. All concerned did not follow the existing guidelines/rules including the CO."

It is quite clear from above, that Inquiry officer could not take a firm decision regarding exercise of financial power by the applicant in the matter of purchase at the relevant point of time in his official capacity. But it appears from the conclusion reached by Inquiry Officer that the present applicant was vested with required financial power, but the said financial power, even though vested with the DCM, but the was power "was not utilized in prudent manner" which according to the inquiry officer which has come quite clearly through the evidences on record.

The Inquiry officer further observed that all concerned did not follow the existing guidelines rules including the C.O.

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Therefore, it can rightly be said that the inquiry officer could not able to take a firm decision as to whether the applicant is vested with the financial power but revealed to the conclusion that the said power was not utilized in a "prudent manner". When the inquiry officer came to such finding that the financial power was not utilized in a prudent manner then such finding of the inquiry officer definitely does not logically reach to the conclusion that the alleged article of charge against the applicant is partly proved to the effect that the Telecom department has been deprived of the benefit of non-stocked items i.e. cable route, traces, pulse reflectometers, battery voltage monitoring system and digital earth testers from M/S Hi-tech Telecom system, Hyderabad for a total of Rs. 4,63,032/- on the basis of quotations, without inviting tenders as alleged in the memorandum of charge sheet. But surprisingly the inquiry officer although in his concluding part specifically held that the allegation of connivance with Sri B. Prasad the then C.M. Shri N.C. Kamalpurkar ACM (Planning), Sri M.D. Gosavi (CAO) and Sri A.K. Pathak, SDE (Planning) of Nasik Telecom District has not been proved or established. But surprisingly the inquiry officer held that the alleged charge against the applicant has been partly proved. There is only one article of charge and it has not been specified by the inquiry officer that which part of the article of charge is partly proved. By no stretch of imagination on a mere reading of the findings, reflected in the concluding part of the inquiry report, it can be said that the charge labeled against the applicant is partly proved, rather in view of the observation and finding of the inquiry officer, the applicant is entitled to be exonerated from the charges.

Copy of the inquiry report dated 05.07.04 is enclosed herewith as
Annexure- 7.

4.10 That it is stated that when the inquiry officer specifically held that the financial power was not utilized by the applicant in a prudent manner, that finding itself is sufficient to exonerate the applicant from the article of charge brought against him. In this connection it may be stated that the allegation of non-utilisation of financial power in a "prudent manner"



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does not fall within the meaning of misconduct for the purpose of disciplinary proceeding.

It is further stated that once the inquiry officer came to the conclusion that there was connivance with the then other authorities of the Nasik Telecom District and it is also observed that the said allegation was not pleaded in the inquiry proceeding by the prosecution side, after giving such finding by the inquiry officer and again holding that the charge is partly proved is self contradictory and under any circumstances, such conclusion of the inquiry officer is not maintainable in view of the observation and findings recorded in the inquiry report and as such the applicant is liable to be exonerated from the charges labeled against him, in the impugned memorandum of charge sheet dated 29.08.2004 and therefore the orders of the impugned penalty is liable to be set aside and quashed.

4.11 That it is stated that in the memorandum of chargesheet dated 29.08.2003, the only article of charge that has been brought against the applicant is that, the applicant in connivance with the then other authorities of Nasik Telecom District has approved the procurement of certain items from M/S Hitech Telecom System, Hyderabad, On the basis of quotations without inviting tenders, though equipments were not proprietary items, far in excess of the delegated financial powers of the DCM/CM and also without ascertaining the specific requirements of the field units in violation of Rule 6 of CFR 1963 and Dept. Circular letter dated 12.01.1993, 09.12.97 and Rule 60 of P& T Financial Handbook Vol. I thereby depriving the department of the benefit of competitive rates and showing undue favour to the aforesaid private party and thereby it has been alleged that the applicant has contravened the Rule 3 (1) (i), (ii), and (iii) of the CCS (Conduct) Rules 1964. But inquiry officer in his finding in the inquiry report nowhere stated that the department has been denied benefit of competitive rates of the alleged materials purchased in the Nasik Telecom District and also there is no finding on the part of the inquiry officer in his inquiry report to the effect that the applicant has shown undue favour to the concerned private parties and the very

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allegation labeled against the applicant in the article of charge that the applicant in connivance with the then other authorities of the Nasik Telecom District has approved the purchase, as such the very charge that has been labeled against the applicant has not been proved at all, more so in view of the fact that inquiry officer has very categorically held that the applicant has not utilized the financial power in "prudent manner" which has come clearly through evidence on record and further observed that the evidence on record would reveal that there was no such compelling reasons that warranted deviation from the regular rules/guidelines/procedures, but very categorically further held that "on the basis of the notings of the CAO and CM regarding passing of the bills, it appears improbable that the CO had connived with the CMT, Nasik."

In view of the above categorical finding of the inquiry officer, in the concluding part of the inquiry report the conclusion of the inquiry officer is that the charge against the applicant is "partly proved" is contrary to the entire findings of the inquiry officer and on that score alone such decision of the inquiry officer that the charge is partly proved is not sustainable in the eye of law.

It is humbly submitted that even assuming that the applicant has not utilized the financial power vested on him in the expected manner or "in prudent manner", as the words used by the inquiry officer, therefore by no stretch of imagination, it could be held by the inquiry officer that the charge labeled against the applicant is partly proved. It is specifically stated that non-utilisation of financial power in a prudent manner or in the process of discharge of duties by a Govt. servant if there is any deviation from the Rules/guidelines/procedures due to lack of efficiency, lack of foresight due to deficiencies in personal ability, such act or omission on the part of a Govt. employee definitely would not constitute misconduct for the purpose of disciplinary proceeding. More so when there is a definite finding given by the inquiry officer in his inquiry report, that there is no connivance, as such his acts of deviation from the Rules/guidelines/procedure in the process of discharge of his duties do not constitute any misconduct which warrant imposition of any penalty under the relevant provision of the CCS

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(CCA) Rules 1965. Therefore, there is nothing in the findings of the inquiry officer to hold that the applicant is guilty of any misconduct.

4.12 That it is stated that the inquiry officer also restrained himself from giving any findings to the effect that the applicant is not vested with any financial power for according approval of the alleged purchases rather he has categorically stated that the financial power was not utilized in prudent manner by the applicant. Therefore, it is quite clear from such finding of the inquiry officer that the DCM has exercised the financial power delegated to him. There is also no finding of the inquiry officer to the effect that the department of Telecom has incurred any financial loss or denied the benefit of competitive rates in the process of alleged purchase of materials/equipments, as such conclusion of the inquiry officer that the article of charge is partly proved is contrary to his own findings. The only findings which is arrived at by the inquiry officer on the basis of the evidences on record that the applicant has not utilized the financial power in a prudent manner. Such finding of the inquiry officer at any rate does not lead to the conclusion that the charge is partly proved. Rule 3 of the Conduct Rule is of general nature which provides that every member of the service shall at all times maintain absolute integrity and devotion to duty but failure to duty, but failure to come up to the highest expectations of an officer holding responsible post to non-utilise the financial power in a prudent manner would not constitute as failure to maintain devotion to duty. As such findings of the inquiry officer do not specify any act or omission in derogation of or contrary to Conduct Rules save General Rule 3 prescribing the devotion to duty. Moreover, it is specifically stated that on a mere reading of the findings or concluding part of the inquiry report, it does not reveal that the applicant with any ill motive or in connivance with any other official has accorded sanction for alleged purchase in question and as such the act or omission on the part of the applicant in the instant proceeding does not constitute any misconduct specially in view of the categorical findings arrived at by the inquiry officer. But the conclusion reached by the inquiry

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officer to the effect that the charge is partly proved is contrary to the findings of the inquiry officer.

4.13 That it is stated that there is only one article of charge and as such there is no scope on the part of the inquiry officer to arrive at a decision that the charge is partly proved when there is specific findings of the inquiry officer that the financial power has not been utilized in prudent manner as revealed from the record of the evidences and there was further findings that the allegation of connivance of the applicant with other telecom authorities has not been pleaded by the prosecution side and the same also has not been proved in the inquiry proceeding, as such the decision that the charge is partly proved is contrary to the record of the inquiry proceeding and also contrary to the finding of the inquiry officer himself.

4.14 That it is stated that in the memorandum of charge sheet dated 29.08.03, there is no allegation of misappropriation of Govt. money and there is no allegation of discrepancy either in the stock or in the purchase of the materials or equipments but the only allegation is that as a result of non-invitation of tenders the department has been deprived of the benefit of competitive rates and undue favour has been shown to the private party but none of this allegation is established or proved in the inquiry proceeding and as such findings of the inquiry officer that the charge is partly proved is contrary to the inquiry report. Therefore there is no justification of imposition of penalty upon the applicant for alleged purchase of telecom equipments in the facts and circumstances of the case. It is further submitted that it is the duty of the inquiry officer to reach to the conclusion whether the charge is proved or not proved, more so when there is only one article of charge but in the instant case the inquiry officer held that the charge is partly proved, as such the aforesaid conclusion of the inquiry officer is contrary to the findings as well as the records of the inquiry proceedings.

4.15. That your applicant after receipt of the inquiry report submitted a detailed representation on 27.09.2004 addressed to the disciplinary authority, pointing out the irregularities and infirmities in the departmental



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proceeding. In the said representation the applicant specifically stated that there was a clear direction that the disciplinary authorities views should be made available to the applicants when the said view communicated to the Commission, but unfortunately the views communicated to the Commission in getting its advise (2nd stage) has been systematically suppressed and has not enclosed the relevant papers and thereby reasonable opportunity and principle of natural justice has been denied to the applicant in defending the case of the applicant effectively and such action and inaction has earned great prejudice to the applicant, when it is mandatory on the part of the disciplinary authority to make its view available to the charges official, but the said direction of the CVC has not been followed deliberately in the instant case of the applicant, and on that score alone the impugned order of penalty issued by the disciplinary authority is liable to be set aside and quashed. The applicant further pointed out that mind of the inquiry officer has been influenced following the advice given by the CVC at the first stage, in view of the fact that the O.M bearing No. 033/P&T/142 dated 05.06.2003 of the CVC have been forwarded to the inquiry officer on his appointment on 05.12.2003 in order to influence the mind of the inquiry officer in favour of the prosecution side and the inquiry officer therefore had started the inquiry proceeding with a bias mind which caused that prejudice to the applicant and as a result he has been denied fair inquiry and natural justice which would be evident from the decision of the inquiry officer reflected in the inquiry report. The applicant has also pointed out that CVC has not appreciated the evidence properly while tendering 2nd stage of advice. The applicant has also stated in the said representation that he has approved purchase to the extent below his financial power of Rs. 2 lacs and other financial aspects are to be approved by the CAO/IFA and he has simply followed the precedent set by the CAO/IFA. The applicant also pointed out that observance of the Financial Rules was the primary responsibility of CAO/IFA and accordingly inquiry officer has held in his inquiry report to the effect that "all concerned did not did NOT follow the existing guidelines" but the said finding/observation of the inquiry officer has not been appreciated by the CVC while tendering it's advice. The applicant

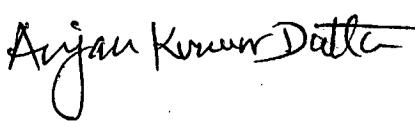


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also specifically stated in his representation that no one has suggested the applicant for inviting tenders. The applicant also specifically pointed out that he has been meted out with hostile discrimination in the matter of initiation of disciplinary proceeding in as much as because Mr. Padgaonkar, DCM, who has also followed the similar procedure in the matter of purchase without inviting tenders of materials for the use of the Telecom department, but surprisingly no proceeding was initiated against said Sri Padgaonkar, DCM. As such action of the respondents so far initiation of disciplinary proceeding against the applicant is concerned, the same is in violation of Article 14 of the Constitution of India and on that score alone the memorandum of charge sheet dated 29.08.2003, the inquiry proceeding as well as the inquiry report and the impugned order of penalty dated 17.10.2005 are liable to be set aside and quashed.

4.16 That your applicant specifically pointed out that findings of the inquiry officer to the effect that materials were purchased after monsoon is contrary to the records as because the said materials were purchased on 05.08.1997 and on 28.07.97 only and the said materials were used during the monsoon season, hence the findings of the inquiry officer is contrary to the records and as such the said finding is not maintainable, as because the findings of the Inquiry officer are perverse and not in conformity with the evidences recorded in the inquiry proceeding and the ultimate findings of the inquiry officer to the effect is partly proved, when there is only one article of charge brought against the applicant held to be partly proved is unknown to the service jurisprudence. More so when there is no finding at all regarding allegation of deprivation of competitive rate to the respondent department while proposal for purchase was approved by the applicant without inviting tender as alleged in the memorandum of charge sheet and on that score alone the entire inquiry proceeding is liable to be set aside and quashed. The specific finding of the inquiry officer to the effect that "all concerned did not follow the existing guideline" definitely includes the concerned CAO who is also involved in the process of alleged approval and purchase of the materials. The applicant also pointed out in his representation that in a similar fact situation the



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concerned CAO/IFA never suggested for inviting tenders for purchase of materials for Rs. 1.33 lacs + 4% S.T but in the instant proceeding the said CAO made deposition against the applicant in the instant inquiry proceeding but surprisingly no action was initiated against Shri Punde, the then CAO who has participated in the proceeding as SW 1, as such action of the respondents for initiation of a disciplinary proceeding only against the applicant without implicating Shri Punde, the then CAO is highly arbitrary, illegal and such action is also in violation of Article 14 of the Constitution. The applicant also narrated in detail the nature of evidence that has been recorded in the inquiry proceeding wherein the applicant categorically stated that at the relevant point of time the applicant was holding two additional full time charges of DCMs with their financial and administrative powers at the time of monsoon and almost 1 lac telephones were faulted and the applicant was extremely busy for maintenance of telephone system to telephones working since the same was his primary duty but such heavy workload also not been considered by the respondents Union of India while initiated the disciplinary proceeding against the applicant. The disciplinary authority also failed to consider the fact that the then CAO of Nasik SSA was the head of office for purposes of financial roles as codified in FHB Vol. III Rule 15 and all expenditure was done on his behalf (in terms of Rule 11) but surprisingly the disciplinary authority, presenting officer/inquiry officer and the investigating officer has ignored such basic fact and responsibility if any now sought to be fixed upon the shoulder of the applicant by initiating the disciplinary proceeding under Rule 14 of the CCS (CCA) Rules 1965. The applicant also drawn the attention of the disciplinary authority to the following fact in his representation dated 27.09.2004:

- 1) In terms of relevant rule the then CAO was the head of office (Finance), as such a responsibility is vested upon the CAO to raise objection if the DCM incurring any irregular expenditure to the Circle office but in the absence of anything contrary it can rightly be said that the CAO had approved all expenditure on behalf of the DCM in terms of



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Rule 23 of the FHB Vol. III and the then CAO Shri Punde (SW 1) of the instant proceeding had already set a precedence in allowing expenditure for purchase of instrument to the extent of 1.33 lac + 4% S.T and Shri Cosavi, succeeding CAO had followed the said precedence in the instant case of alleged irregular purchase.

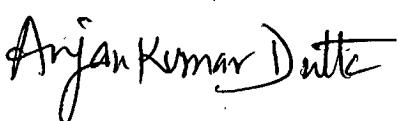
- 2) Sri Punde, CAO (SW 1) allowed the then DCM Shri Padegonkar to operate on the tender of Ahmedabad Telephone District which form the further basis on behalf of the CAO Shri Cosavi to follow such precedence. It is further to be noted that following such precedence as indicated above almost 30 CAOs allowed purchases to the tune of Rs. 1.33 lacs through out India, even in Maharashtra Telecom Circle, Latur Aurangabad, Kolhapur, Ahmednagar, Jalgaon and subsequently Nasik also (with Punde as CAO) also purchased without inviting tenders. Neither Sri Punde nor Sri Cosavi, the succeeding CAO pressed for calling of tenders but surprisingly the applicant who was functioning as DCM in the Nasik Telecom district has been picked up for initiation of disciplinary proceeding under Rule 14 of the CCS (CCA) Rules, when the purchase approved by the applicant within the financial limits of 2 lacs and the same was duly approved/sanctioned and paid by the CAO and in the process the applicant has saved the government money to the extent of Rs. 49,000 when much higher price paid by the SSAs. There was no evidence recorded to the effect that any private party has approached the applicant for purchase of their products at anytime before or after the purchase as alleged in the article of charge.
- 3) The applicant has specifically stated in the said representation that he has given approval of the alleged purchase within his powers of financial limits of Rs. 2 lacs



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then as existed and the CAO has admitted all such technical approvals and settled the accounts. Applicant also pointed out that he has submitted 15 defence documents but surprisingly only 4 documents namely; D-1, D-2, D-9 and D-10 have been examined but the other similar documents have been deliberately ignored by the inquiry officer in the inquiry proceeding which were very much relevant to arrive a correct finding of the charges but denial of those documents by the inquiry authority is amount to denial of reasonable opportunity to the applicant to defend his case adequately and on that score alone the entire inquiry proceeding is liable to be set aside and quashed. The analysis of the evidence also did not show that the applicant had saved Govt. money to the extent of Rs. 49,000/- The applicant also explained the deposition made by the then GM Nasik (DW-2) which also support the action of the applicant in the matter of purchase of the materials questioned in the instant proceeding. It is pertinent to mention here that the applicant also categorically stated in his representation that decision to procure or purchase was taken in the management meeting which the I.O also has agreed and the same has settled the doubts about the urgency of the requirements for purchase of materials. The prosecution side miserably failed to produce any evidence to say that the instruments purchased are lying idle or not utilized rather it has been confirmed that the instruments have been put to use and not lying unutilized since their purchase which was explained by the CM himself. As a result of such purchase subscribers pending complain have reduced quickly and the department have saved lot of man power, time material, and there were no loss of revenue as a result of quick restoration of the subscribers lines. It is also pointed out by the applicant in his representation that the I.O has erred in his observation that the specific



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requirements were not assessed when C.M categorically admitted that a specific requirement were given to him but no evidence contrary to the same could be produced by the presenting officer.

The applicant also pointed out that being a technical officer he has chosen M/S Hi Tech for their lowest price of Rs. 84,000 after having satisfactory field performance and thereby he has saved at least Rs. 49,000 per piece in comparison to the price of M/S Aplab Tester of Rs. 1.33 lacs, though tender process were not initiated but the competitive rates were available by June 1997 from M/S Aplab and M/S Hi Tech and out of which the price of M/S Hi Tech was lowest and other farms which came into the field in the year 1998, 1999 and 2000 and a chart of competitive price have been prepared and appended with the defence brief also but surprisingly the same have been deliberately ignored by the inquiry officer. On a mere perusal of the competitive rates annexed with the defence brief it would be evident that the M/S Hi Tech offered the lowest price and therefore the department has not been denied the benefit of competitive rates rather the department has saved Rs. 49,000. As such assessment of evidence made by the inquiry officer is contrary to the records of the inquiry proceeding and the I.O has made the assessment of the evidence with a preconceived mind and deliberately ignored the comparative chart/table given by the applicant in his defence brief. The applicant also elaborately discussed the relevant financial rules in his representation and the relevant provision of the Rule 14 of the CCS (CCA) Rules and elaborately explained how he was prejudiced in the inquiry proceeding due to non-consideration of relevant defence documents, evidences recorded in the inquiry proceeding and also for non-consideration relevant financial rule which supports the contention of the applicant and pleaded in his defence brief and thereby he has been denied reasonable opportunity and the findings of the inquiry officer is totally perverse and contrary to the evidence recorded in the inquiry proceeding and on that score alone the entire findings of the inquiry officer is liable to be set aside and quashed.



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A copy of the representation dated 27.09.2004 is enclosed herewith for perusal of the Hon'ble Tribunal as Annexure- 8.

4.17 That your applicant further begs to state that he has received the impugned order of penalty bearing letter No. 8/248/2003-Vig. II dated 17.10.2005 which was communicated to the applicant vide letter No. Vig/Assam/43 Pt-VI/12 dated 27.10.2005 and the said penalty order was duly received by the applicant on 31.05.2006. By the impugned penalty order the disciplinary authority has imposed the penalty of "reduction to one lower stage in the time scale of pay for a period of one year with the stipulation that he will not earn any increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing his future increments of pay" upon the applicant. It has been stated in the impugned order of penalty dated 17.05.2005 that the disciplinary authority has considered the findings of the inquiry officer and submission made by the applicant in his representation dated 27.09.2004 and also considered the advise tendered by the UPSC in their letter dated 08.09.2005 and after consideration of all relevant facts and circumstances the competent authority accepted the advise of the CVC and imposed the aforesaid penalty upon the applicant. On a mere reading of the order of penalty issued by the disciplinary authority it would be evident that the disciplinary authority has acted in a very mechanical manner without application of mind independently and also without taking into consideration the relevant arguments, grounds assigned by the applicant in his defence brief as well as in the representation dated 27.09.2004. The disciplinary authority also miserably failed to take into consideration the allegation brought in the article of charge, the evidences recorded in the inquiry proceeding, the assessment of the evidences made by the inquiry officer and thereafter the findings arrived by the inquiry officer in his inquiry report dated 05.07.2004 while imposed the penalty by the impugned order dated 17.10.2005. On a mere reading of the impugned order it appears that the disciplinary authority has influenced by the advise tendered by UPSC in their communication dated 08.09.2005 but at the same time lost the sight of the fact that the



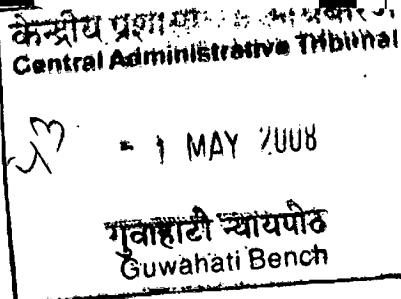
actual findings of the inquiry officer runs contrary to his conclusion arrived at by him in his inquiry report, wherein inquiry officer held that the alleged charge against the applicant is "partly proved". It is interesting to note that neither the inquiry officer nor the disciplinary authority has carefully gone through the alleged article of charge but mechanically taken a view that the charge has been partly proved. When the inquiry officer himself is of the opinion that the financial power vested upon the applicant has not been utilized by the applicant in a prudent manner and while the inquiry officer categorically disapproved the charge of connivance with other authorities of the Nasik Telecom District and when there is no finding of the inquiry officer to the effect that the department of Telecom has been deprived of the benefit of competitive rate and the allegation of showing undue advantage to the private party, therefore there is no cogent reason on the part of the disciplinary authority to

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applicant in the inquiry report dated 05.07.04 submitted by the inquiry officer as such the ultimate conclusion reached by the inquiry officer is perverse contrary to the evidences recorded in the inquiry proceeding and as such the disciplinary authority has no jurisdiction to impose any penalty on the basis of such findings of the inquiry officer. It is pertinent to mention her that the inquiry officer himself specifically stated in the concluding paragraph of the inquiry report that the allegation of connivance has not been pleaded by the prosecution side at any stage of the inquiry proceeding after such fair admission on the part of the inquiry officer how he has reached to the conclusion that the inquiry has been partly proved and such aspect has not been considered at all by the disciplinary authority without taking into consideration the evidences recorded in the inquiry proceeding which is mandatory on the part of the disciplinary authority and on the basis of such infirmity the impugned order of penalty dated 17.10.2005 is liable to be set aside and quashed.

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A copy of the penalty order dated 17.10.05 along with letter dated 27.10.05 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 9 series.

4.18 That it is stated that the Inquiry Officer came to the conclusion that the alleged Article of Charge is partly proved, therefore it is mandatory on the part of the disciplinary authority to issue a second show cause notice in order to enable providing opportunity before imposition of penalty but in the instant case disciplinary authority did not provide any such opportunity of second show cause notice inviting his explanation, therefore on that score alone the impugned order of penalty dated 17.10.2005 is liable to be set aside and quashed.

4.19 That it is stated that in paragraph 2 of the impugned penalty order dated 17.10.2005 it has been stated by the disciplinary authority that the Central Vigilance Commission vide ID Note No. 003/P&T/114/2397 dated 2nd August 2004 has advised imposition of a suitable major penalty on the applicant. Again in para 3 of the said impugned penalty order the disciplinary authority has quoted the advice rendered by the UPSC in their letter bearing No. F.3/461/04-S.I dated 08.09.05 whereby the UPSC interalia observed that the allegation of procurement of material was approved on the basis of quotation without inviting tenders has been conclusively proved against the charged officer. Further it was observed by the Commission that the applicant has gone beyond the delegation of financial power of the DCM/GM and thereby he has abused his power since he was not independent SSA Head or Area Director. The Commission is also of the opinion that I.O is rightly proved that the applicant was not vested with any financial power, the Commission also of the view of the allegation that specific requirement were not ascertained is also proved and the allegation of violation of provision contained in para 28 of Chapter G.F.R and instruction/guideline of the D.O.T dated 08.11.1995 and thereby depriving the department of the competitive rate has been proved. Commission also expressed its view that the ends of justice would be made if the penalty of reduction of one lower stage in the

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time scale of pay for a period of 1 year with the stipulation that applicant would not earn any increment of pay during the period of such reduction and on the expiry of such period the reduction would have effect of postponing of applicant's future increment of pay may be imposed. Following the advice of the UPSC without any application of mind the disciplinary authority mechanically has imposed the aforesaid penalty in a most arbitrary manner when the very advice of the UPSC is totally contrary to the findings of the inquiry officer and on that score alone the impugned order of penalty dated 17.10.2005 is liable to be set aside and quashed.

4.20 That it is stated that it is surprised to note that the UPSC has tendered its advice without properly consulting the records of the inquiry proceeding and also without considering the findings of the inquiry officer arrived in his inquiry report. It is categorically stated that on a mere reading of the inquiry report none of the allegation as alleged in the communication dated 08.09.05 of the UPSC in fact proved by the inquiry officer in his inquiry report, as such advise of the UPSC is just contrary to the evidence recorded in the inquiry proceeding and also contrary to the findings recorded by the inquiry officer, therefore it is mandatory on the part of the disciplinary authority at least to go through the inquiry report carefully before imposition of any penalty, when the very findings of the inquiry officer supports the exoneration of the applicant from the charge labeled against him but interestingly following the advise of the Commission the disciplinary authority in a most arbitrary and unfair manner has imposed the penalty order without any authority of law under the relevant provision of CCS (CCA) Rule 1965 and on that score the impugned letter of penalty of penalty dated 17.10.2005 is liable to be set aside and quashed.

4.21 That it is a statutory duty on the part of the disciplinary authority to make a further assessment of the evidence recorded in the inquiry proceeding before imposition of any penalty whether it is minor or major. But in the instant case of the applicant the disciplinary authority while imposing the penalty did not examine the evidence available in record and also failed to



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examine the findings of the inquiry officer in the manner it is required in other words it can be said that the disciplinary authority failed to examine evidences on the records by applying the mind independently rather the disciplinary authority was influenced following the advise rendered by the UPSC as well as CVC, whereas the disciplinary authority cannot impose penalty only on following the dictation of UPSC or CVC but required to examine the evidence recorded the inquiry proceeding independently. It is categorically stated that the advise rendered by the CVC or UPSC without properly examining the records of the inquiry proceeding. It is surprising to note that an organization like UPSC has tendered its advise without properly consulting records and also without taking into consideration the relevant findings of the inquiry officer. The entire observation and advise of the UPSC is just contrary to the findings of the inquiry officer but no reason has been assigned in its communication dated 08.09.2005 as to why the UPSC has arrived such a decision holding that the charge against the applicant is proved. Therefore the advise tendered by the UPSC or CVC are not sustainable in the eye of law in the given facts and circumstances of the case of the applicant. But surprisingly the advise tendered by the CVC/UPSC has been followed by the disciplinary authority mechanically and on their dictation penalty has been imposed upon the applicant and on that score alone the order of penalty dated 17.10.2005 is liable to be set aside and quashed.

4.21 A That it is stated that after passing of the impugned penalty order dated 17.10.2005 (Annexure- 9) by the disciplinary authority imposing penalty of reduction of pay, subsequently a formal order effecting the penalty was issued by the CM, Telecom District, BSNL, Tezpur vide impugned letter bearing No. X-1/Disc/Rule-14/06-07 dated 31.05.2006 pursuant to the order of penalty dated 17.10.2005 issued by the CM, Telecom District, BSNL, Tezpur since the order of penalty dated 17.10.2005 is not sustainable in the eye of law on the grounds explained in the Original Application. As such the impugned consequential order dated 31.05.2006 is also liable to be set aside and quashed.



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4.21 B That it is stated that after issuance of the letter dated 25.11.2003 by the Govt. of India restraining the authorities in the matter of initiating any disciplinary proceeding and following such instruction containing in the letter dated 25.11.2003, no disciplinary proceeding was initiated against any of the officers except the applicant on the alleged ground of local purchases made by the Field officers without following the prescribed procedure. It is relevant to mention here that similar local purchases were made by the authorities of different stations/circles throughout the country and it would be evident from Annexure- I in as many as 30 stations similar local purchases were made, but no disciplinary proceeding was initiated against those Field Officers following the instruction contained in the letter dated 25.11.03. It would be further evident from Annexure- 11 and 12 prepared by the applicant that the local purchases which were made during his tenure are in fact the lowest price in comparison to other companies as shown in the annexures indicated above. As such, the applicant has saved the Govt. money, moreover, since no disciplinary proceeding was initiated against the other officers who made such local purchases during 1996, 1997, 1998, 1999 and 2003, as such initiation of disciplinary proceeding against the applicant is in violation of Article 14 of the Constitution of India and on that score alone the impugned memorandum of charge sheet dated 29.08.03 as well as the penalty order dated 17.10.05, and also the consequential order dated 31.05.06 are liable to be set aside and quashed.

Copy of the letter dated 31.05.06, chart indicating similar local purchases made in other stations/circles and comparative price of cable route tracer and price of pulse reflectometer are enclosed as Annexure- 10, 11 and 12 respectively."

4.22 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

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- 5.1 For that, the article of charge brought against the applicant through memorandum dated 29.08.2003 has not at all been proved in the inquiry proceeding, as such imposition of penalty by the impugned order dated 17.10.2005 is not sustainable in the eye of law and the said order of penalty dated 17.10.2005 is liable to be set aside and quashed.
- 5.2 For that, on a mere reading of the findings/conclusion reached by the inquiry proceeding, thereafter holding the charge partly proved is contrary to the evidence recorded in the inquiry proceeding.
- 5.3 For that, there is no finding of the inquiry officer in his inquiry report that the applicant approved the procurement beyond the delegated financial power as alleged in the article of charge and also there is no findings of the inquiry officer in the inquiry report to the effect that the Department of Telecom has been deprived of the benefit of competitive rates and undue favour has been shown to the concerned private party as alleged in the article of charge rather the inquiry officer categorically exonerated the applicant from the allegation of connivance with the then other authorities of the Nasik Telecom District, as such impugned order of penalty dated 17.10.05 is liable to be set aside and quashed.
- 5.4 For that, there is no finding of the inquiry officer in the inquiry report dated 05.07.2004 to the effect that the applicant is not vested with any financial power save and except the findings to the effect that "Even if DCM had such financial power, the power was not utilized in prudent manner that has come quite clearly through the evidences on record. All concerned did not follow the existing guidelines/rules including the C.O." Such findings of the inquiry officer established beyond all doubts that the applicant was vested with the required financial power but such power was not utilized in prudent manner and the said findings of the inquiry officer does not fall within the meaning of misconduct for the purpose of disciplinary proceeding and on that score alone the impugned order of penalty dated 17.10.05 is liable to be set aside and quashed.

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5.5 For that, there is only one article of charge and when the ~~संदर्भ~~ not been proved on the inquiry proceeding, more so in view of the assessment of evidence made by the inquiry officer. As such there is no scope on the part of the inquiry officer to hold the said charge or penalty as partly proved.

5.6 For that, the decision of the inquiry officer to the effect that the charge is partly proved, such decision is highly arbitrary, illegal and contrary to the evidence recorded in the inquiry proceeding as well as contrary to the findings of the inquiry officer. Therefore, the order of penalty dated 17.10.05 is liable to be set aside and quashed.

5.7 For that the disciplinary authority did not issue any second show cause notice to the applicant before imposition of penalty, since the alleged Article of Charge is partly proved, therefore the order of penalty dated 17.10.2005 is liable to be set aside and quashed.

5.8 For that out of the very relevant defence documents only 4 defence documents have been examined and considered in the inquiry proceeding but the inquiry authority deliberately ignored the other relevant defence documents and thereby denied reasonable opportunity to the applicant to defend his case adequately in the inquiry proceeding and on that score alone the entire inquiry proceeding as well as impugned penalty order dated 17.10.2005 is liable to be set aside and quashed.

5.9 For that the disciplinary authority while communicated the tentative views to the Commission for getting its advice (2nd stage) has systematically suppressed the material facts and did not enclosed the representation and other relevant papers to the Commission and as a result the applicant has been denied opportunity to effectively represent his views before the Commission.

5.10 For that fair enquiry has been denied to the applicant in a very planned manner by the disciplinary authority by influencing the mind of the



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inquiry officer by forwarding the CVC office memorandum dated 05.06.03.

5.11 For that both the CVC as well as UPSC tendered their advice in each stage without properly consulting evidence recorded in the inquiry proceeding as well as without considering the relevant findings recorded in the inquiry report but surprisingly without independently applying it's mind and also without discussing the evidences recorded in the inquiry proceeding as required under the rule followed the dictation of the CVC and UPSC and accordingly imposed the penalty mechanically by the impugned order dated 17.10.05 and on that score alone the impugned order of penalty dated 17.10.05 is liable to be set aside and quashed.

5.12 For that the inquiry officer erred both in facts and law as because he has failed to appreciate the evidence recorded in the inquiry proceeding to the effect that the procurement of material is made in the month of August 1997 i.e. during the monsoon season but contrary finding is recorded in the inquiry proceeding. Moreover, inquiry officer also failed to appreciate the relevant provisions of the financial rules while given his findings in the inquiry report.

5.13 For that the inquiry officer, disciplinary authority, CVC as well as UPSC failed to appreciate the effort of the applicant whereby he has saved Govt. money to the extent of Rs. 49,000 while accorded his approval for procurement of non stock materials when other 30 assesses purchased the said instrument with much higher rates.

5.14 For that the inquiry officer and disciplinary authority did not take into consideration the vital role of the then CAO of the Nasik Telecom District who has in fact approved the procurement of non stock instruments but awarded the penalty upon the applicant in spite of saving of Govt. money to the tune of Rs. 49,000 per piece.

5.15 For that the applicant has been meted out with hostile discrimination in the matter of initiation of disciplinary proceeding as because similar

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purchase were made in other Telecom Districts, namely, Latur, Aurangabad, Kolhapur, Ahmednagar, Jalgaon where similar purchase has been made without inviting tenders therefore action of the respondents Union of India initiating disciplinary proceeding against the applicant is in violation of Article 14 of the Constitution of India.

5.16 For that the findings or conclusion reached by the inquiry officer does not warrant imposition penalty upon the applicant rather the applicant is liable to be exonerated from the charge brought against him vide memorandum dated 29.08.03 in view of the assessment of evidence made by the inquiry officer in his inquiry report dated 05.07.2004.

5.17 For that non utilization of financial power in a "prudent manner" does not warrant initiation of any disciplinary proceeding and the said allegation does not warrant imposition of any penalty as because the said allegation does not fall within the meaning of misconduct for the purpose of disciplinary proceeding. Therefore, the memorandum of charge sheet dated 29.08.03 as well as the order of penalty dated 17.10.05 is liable to be set aside and quashed.

5.18 For that in view of the grounds explained in para 5.1 to 5.17 the impugned consequential order issued vide letter dated 31.05.06 is also liable to be set aside and quashed."

6. Details of remedies exhausted.

That the applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

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8. Relief(s) sought for:

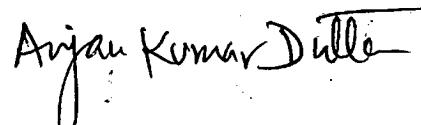
Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

- 8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned memorandum of charge sheet issued vide letter bearing No. 8/248/2003-Vig. II dated 29.08.2003 (Annexure-1) as well as the impugned order of penalty bearing letter No. 8/248/2003-Vig. II dated 17.10.2005 which was communicated to the applicant vide letter No. Vig/Assam/43 Pt-VI/12 dated 27.10.2005 (Annexure- 9 Series).
- 8.1 A That the Hon'ble Tribunal be pleased to set aside and quash the consequential impugned order bearing No. X-1/Disc/Rule-14/06-07 dated 31.05.2006 and further be pleased to direct the respondents to restore the applicant to his original position and also to refund the amount due to the applicant in the event of such restoration."
- 8.2 That the Hon'ble Tribunal be pleased direct respondents to restore the pay of the applicant with arrear monetary benefits.
- 8.3 Costs of the application.
- 8.4 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for:

During pendency of this application, the applicant prays for the following interim relief: -

- 9.1 That the Hon'ble Tribunal be pleased to observe that the pendency of this application shall not be bar for the respondents to consider the



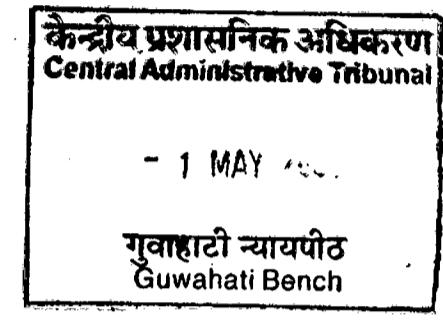
representations of the applicant for his exoneration from the charges and his promotion.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

- i) I. P. O. No. :
- ii) Date of Issue :
- iii) Issued from :
- iv) Payable at :



12. List of enclosures.

As given in the index.

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VERIFICATION

I Shri Anajn Kumar Dutta, S/o Late N.C.Dutta, aged about 49 years, serving as DCM, B.S.N.L, Tezpur, Assam Circle, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 13th day of April, 2008.

Anjan Kumar Dutta

No.8/248/2003-VIG-II
GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATIONS & INFORMATION TECHNOLOGY
DEPARTMENT OF TELECOMMUNICATIONSकेन्द्रीय व्यापार व वित्त विभाग
Central Administrative TribunalWEST BLOCK # 1, WING # 2,
R K PURAM, NEW DELHI-66
Dated the 29th August, 2003गुवाहाटी अधीक्षण
Guwahati BenchMEMORANDUM29th August, 2003

The President proposes to have an inquiry held against Shri A.K. Dutta (Staff No.8188) & Deputy General Manager, Maharashtra Telecom Circle, under Rule 14 of the CCS (CCA) Rules, 1965. The substance of the imputations of misconduct or misbehavior in respect of which the enquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A Statement of the imputations of misconduct 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 (Annexures III & IV).

2. Shri A.K. Dutta 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. He 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 A.K. Dutta 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 CCS (CCA) 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 A.K. Dutta is invited to Rule 20 of the CCS (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 interests 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 with in these proceedings, it will be presumed that Shri B. Prasad is aware of such a representation and that

Concl. 2

Letter to
Shri A.K. Dutta
by Mr. B. PrasadTomar

has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS(Conduct) Rules, 1964.

6. Receipt of this Memorandum along with a copy of I.D. Note No.003/P&T/142 dated 5.6.2003 of the Central Vigilance Commission, shall be acknowledged.

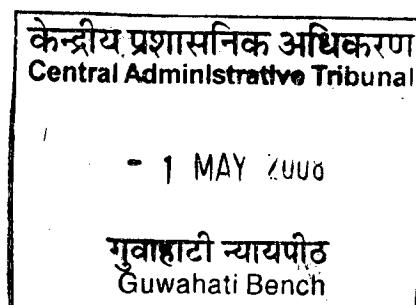
By Order and in the name of the President.

John Mathew

(John Mathew)
Under Secretary to Government of India

✓ **Shri A.K. Dutta, (Staff No.8188)**
Deputy General Manager Telecom,
Maharashtra Telecom Circle,
Mumbai 400 001

(Through the Chief General Manager Telecom, Maharashtra Telecom Circle,
Mumbai 400 001.)



5
ANNEXURE - I

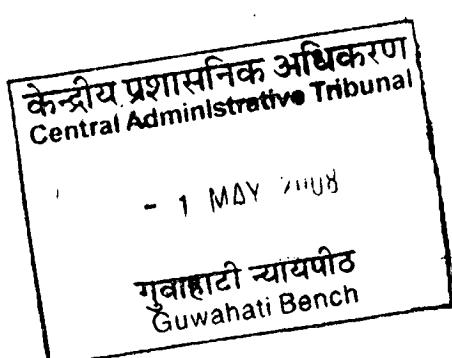
Statement of Articles of Charge framed against Shri A.K. Dutta, (Staff No.8188), Deputy General Manager, Maharashtra Telecom Circle.

ARTICLE:

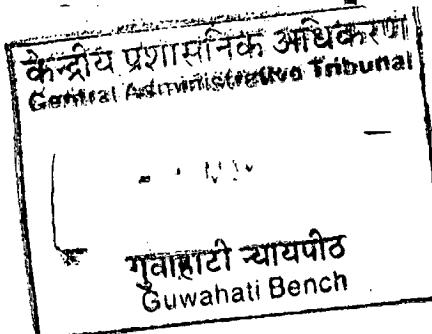
That the said Shri A.K. Dutta, while functioning as Deputy General Manager (Planning), Office of the General Manager, Nasik Telecom District, during the period from July, 1997, to February, 1998, in connivance with Shri B. Prasad, General manager, Shri N.G. Kamalpurkar, Assistant General Manager (Planning), Shri M.D. Gosavi, Chief Accounts Officer, and Shri A.K. Pathak, Sub-Divisional Engineer (Planning), all of Nasik Telecom District, approved the procurement of non-stocked items viz. Cable Route Tracers, Pulse Reflectometers, Battery Voltage Monitoring Systems, and Digital Earth Resistance Testers, from M/s Hi-Tech Telecom Systems, Hyderabad, for a total of Rs.4,63,032/-, on the basis of quotations, without inviting tenders as required though the equipments were not proprietary items, far in excess of the delegated financial powers of the Deputy General Manager/General Manager, and without ascertaining the specific requirements of the field units in violation inter alia of Rule-6, and Para 28 of Annexure to Chapter-8, of General Financial Rules, 1963, Department of Telecom Circular letters No.51-6/91-MMC/Pt dated 12.1.93 and No.305-2/95-MMS dated 8.11.95, letter No.BGT/3-9/97-98/13 dated 9.12.97 from General Manager (Finance), Maharashtra Telecom Circle, addressed to Shri B. Prasad, General Manager, Nasik Telecom District, and Rule-60 of P&T Financial Handbook Volume-1, thereby depriving the Department of the benefit of competitive rates and showing undue favour to the aforesaid private party.

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

By order and in the name of the President.



JOHN MATHEW
UNDER SECRETARY TO THE GOVT. OF INDIA



Statement of Imputations of misconduct or misbehaviour in support of the Articles of Charge framed against Shri A.K. Dutta, (Staff No.8188), Deputy General Manager, Maharashtra Telecom Circle.

That the said Shri A.K. Dutta, was functioning as Deputy General Manager (Planning), Office of the General Manager, Nasik Telecom District, during the period from July, 1997, to February, 1998.

2. During the aforesaid period, the delegated financial powers of the Deputy General Manager/General Manager for purchase of stores on the basis of quotations, were limited to only Rs 5000/- As per the instructions issued vide Department of Telecom Circular letters No. 51-6/91-MMC/Pt. dated 12.1.93 and No.305-2/95-MMS dated 8.11.95, which were reiterated vide letter No.BGT/3-9/97-98/13 dated 9.12.97 from General Manager (Finance), Maharashtra Telecom Circle, Mumbai, addressed to Shri B. Prasad, General Manager, Nasik Telecom District, purchases were not to be made on the basis of tenders finalized by other Secondary Switching Areas, and purchases of value exceeding Rs 50,000 were to be made only on the basis of open tenders. It is laid down in Para 28 of Annexure to Chapter-8 of General Financial Rules, 1963, that the open tender system, that is, Invitation to Tender by public advertisement should be used as a general rule and must be adopted in all cases, in which the estimated value of the demand is Rs 50,000/- and above.

3. The said Shri A.K. Dutta, as the Deputy General Manager, approved the purchase of Pulse Reflectometers, Cable Route Tracers, Battery Voltage Monitoring Systems, and Digital Earth Resistance Testers, from M/s Hi-Tech Telecom Systems Hyderabad, without ascertaining the specific requirements of the field units. Purchase Orders were accordingly placed on the said firm, and payments were released, as follows:

Item	Purchase Order No.	Invoice No. & Date And Date	Amount (Rs.)	Date of Pay- ment
(1)	(2)	(3)	(4)	(5)
One Cable Route Tracer and One Pulse Reflectometer	N-2/2/5/97-98/4	Dated 22.8.97 dated 26.8.97	1,40,610/-	1.9.97

Contd...

(1)	(2)	(3)	(4)	(5)
Two Pulse Reflectometers and Two Cable Route Tracers	N-2/2/4/97-98/5 Dated 5.8.97	28 dated 11.8.97	2,81,220/-	14.8.97
Two Battery Voltage Monitoring Systems and one Digital Earth Resistance Tester	N-2/2/4/97-98/6 dated 5.8.97	29 dated 11.8.97	41,202/-	14.8.97
		Total	4,63,032/-	

4. Though the aforesaid equipments were not proprietary items, and were not covered by DGS & D rate contracts or any tender finalized by the O/o Chief General Manager Telecom, Maharashtra Telecom Circle, Mumbai; the purchases were made on the basis of quotations, without inviting tenders as required.

5. The said Shri A.K. Dutta, as the Deputy General Manager, thus, in connivance with Shri. B. Prasad, the then General Manager, Shri N.G. Kamalapurkar, Assistant General Manager (Planning), Shri M.D. Gosavi, Chief Accounts Officer, and Shri A.K. Pathak, Sub-Divisional Engineer (Planning) all of Nasik Telecom District, approved the procurement of the aforesaid equipments which were non-stocked items, for a total of Rs.4,63,032/- on the basis of quotations, without inviting tenders as required, though the equipments were not proprietary items, far in excess of the delegated financial powers of the Deputy General Manager/General Manager, and without ascertaining the specific requirements of the field units, in violation inter alia of Rule-6, and Para 28 of Annexure to Chapter-8, of General Financial Rules, 1963; Department of Telecom Circular letters No.51-6/91-MMC/Pt. dated 12.1.93 and No.305-2/95-MMS dated 8.11.95, letter No. BGT/3-9/97-98/13 dated 9.12.97 from General Manager (Finance), Maharashtra Telecom Circle, addressed to Shri B. Prasad, General Manager, Nasik Telecom District, and Rule 60 of P&T Financial Handbook Volume I, thereby depriving the Department of the benefit of competitive rates, and showing undue favour to the aforesaid private party.

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

.....

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

1 MAY 2008

गुवाहाटी न्यायालय
Guwahati Bench

Annexure III

List of documents by which the Articles of Charge framed against Shri A.K. Dutta (Staff No.8188), Deputy General Manager, Maharashtra Telecom Circle, are proposed to be sustained.

S-27

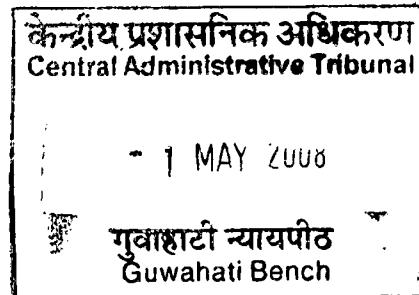
1. File No.N-2/2/7/97-98, containing 43 pages and 7 Note Sheets.
2. File No.N-2/2/4/97-98, containing 40 pages and 3 Note Sheets.

S-37

3. File No.N-2/2/5/97-98, containing 21 pages and 2 Note Sheets.
4. File No.N-2/2/6/97-98, containing 53 pages and 9 Note Sheets.
5. Letter No.BGT/3-9/97/98/13 dated 9.12.97 from General Manager (Finance), Maharashtra Telecom Circle, Mumbai, addressed to Shri B. Prasad, General manager, Nasik Telecom District

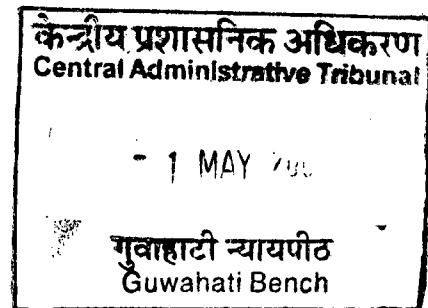
~~6.~~

6. Statement of Shri M.N. Kunde, the then Chief Accounts Officer, Nasik Telecom District.
7. Department of Telecom Circular Letter No 51-6/91-MMC/Pt. dated 12.1.93
8. Department of Telecom Circular Letter No 305-2/95-MMS dated 3.11.95.
9. General Financial Rules, 1963.
10. Rule-60 of P&T Financial Handbook Volume I



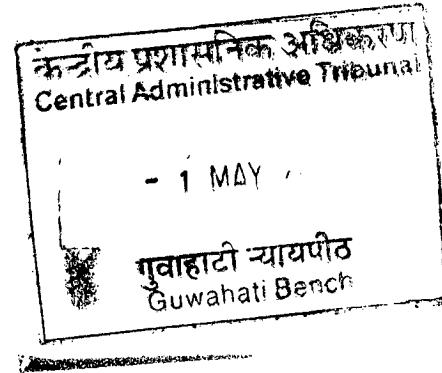
List of Witnesses by whom the Articles of Charge framed against Shri A.K. Dutta (Staff No.8188), Deputy General Manager, Maharashtra Telecom Circle, are proposed to be sustained.

1. Shri R.S. Natarajan, the then Vigilance Officer, O/o the CGMT, Maharashtra Telecom Circle, Mumbai.
2. Shri M.N. Kunde, the then Chief Accounts Officer, Nasik Telecom District.
3. Shri A.S. Walia, AGM (Planning), Nasik Telecom District.



Bharat Sanchar Nigam Limited
(A Govt. of India Enterprise)
Office of Principal General Manager
Kalyan Telecom District

To,
Principal General Manager,
Kalyan Telecom District,
Kala Talao, Kalyan.



Respected Sir,

Kindly find enclosed herewith my representation against Memo
No.8/248/2003-Vig.II Dated the 29.8.2003 from Shri. John Mathew, Under Secretary to
the Govt. of India.

My representation may kindly be forwarded through proper channel to Shri. John
Mathew with your appropriate comment.

The receipt of this letter may kindly be acknowledge.

Thanking You,

Encl : My Representation.

Date : 15th October 2003
Place : Kalyan.

Yours sincerely,


(A. K. Dutta) 15.10.2003
Area Manager (Kalyan)
Kalyan Telecom District.

Attested
Dutta
Advocate

मंडळ अधियक्ष (सत्रकारा)
दधान यहाप्रबंधक का कार्यालय
भारत संचार निगम लि. कल्याण ४२९३०९
Divisional Engineer (Vigilance)
Old Principal General Manager
BSNL Kalyan 421 301

From : A. K. Dutta
 Staff No. 8188
 Deputy General Manager, Maharashtra Telecom Circle

To,

HIS EXCELLENCY THE HON'BLE PRESIDENT OF INDIA

Kind Attention : Sh. John Mathew,
 Under Secretary to the Govt. of India
 Ministry of Communication & Information Technology,
 R. K. Puram, New Delhi.

(Through Proper Channel)

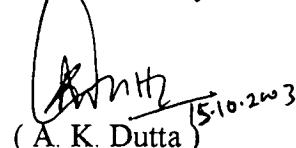
Respected Sir,

I respectfully acknowledge the receipt of Memorandum
 No. 8/248/2003-Vig.II dated 29th August 2003.

2. At the outset, I submit that I did not commit any irregularities what so ever to call up such adverse remark against me. I, therefore deny all the charges.
3. I, therefore humbly request that the proposal for holding an inquiry may kindly be dropped for which act of kindness, I shall be ever grateful to you.
4. In the event of further proceeding against me, I humbly request that I may kindly be heard in person.

Sir, I remain,

Yours faithfully,


 (A. K. Dutta) 15.10.2003

Date : 15th October 2003.

Place : Kalyan.

Attested
 A. K. Dutta
 Advocate

From : A. K. Dutta
Dy. G.M., BSNL, Kalyan.
Maharashtra Circle.

To,
Shri. N. K. Ghosh,
Inquiry Officer,
CDI, CVC, New Delhi-23.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

- 1 MAY -

गुवाहाटी न्यायपीठ
Guwahati Bench

Sub : List of additional documents and witnesses.
Case of Shri. A. K. Dutta, Dy.G.M., BSNL, Kalyan.

Ref : Daily Order Sheet dated 30.12.2003.

R/Sir,

As directed by you in the proceeding held on 30.12.2003, kindly find enclosed herewith the list of additional documents required to base my defence. The list contains Description of documents, Relevance to defence documents and Custodian of documents.

Further, I may kindly be allowed any other documents found to be relevant during the coarse of Regular Hearing.

Kindly acknowledge.

Thanking you,

Encl : As above.(Containing 4 pages)

Date : 07.01.2004

Place : Kalyan.

Yours faithfully,

(A. K. Dutta)

q.c

Copy to : Shri. A. K. Sahu, P.O., for kind information and n/a pl.

Attested
A. K. Dutta
Advocate

List of Additional Documents required to base my Defence upon

Sl.No.	Description of documents	Relevance to defence	Custodian
1.	Rule, Instruction or Authority prohibiting operating on tenders of other SSA/Circles	Referring to documents listed at Sl.No.5 of the Memo of charges at Appendix-III thereof it is noted that operation of tenders of other SSA/Circles as also extending the period of Tenders beyond what is legitimate. Hence the necessities of this Rule, Instructions or Authority are necessary.	
2.	Rule, Instruction or Authority prohibiting period of operation on tenders beyond what is legitimate.		GMT Nashik
3.	Rule, Instruction or Authority under which the DGM/GM are delegated financial powers for purchase of stores on basis of quotation limited to Rs.5000/-.	As per para-1 of Annexure-II of the Memo as it is stated that the DGMs and GMs are delegated financial power for purchase of store on the basis of the quotation limited to Rs.5000/- which does not appear to be a fact. These documents are required to refute the imputation as included in Annexure-II para-1 of the Memo.	GMT Nashik
4.	File no.S-12/3/Audit/April'99/99-2000 of the office of GMT Nashik.	i) It appears that the genesis of this case lies in the Audit para raised by the Audit Officer P&T and the whole case arises out of the alleged irregularities noted for issuing the Memo of charges. This case of irregularities pointed out by the Audit where adequately replied by the GM from this file. While no action was reportedly taken against Aurangabad, Ahmedabad, Nalgonda, Guntur, Latur, Nanded and Sawantwadi SSA but only Nashik and Nanded SSAs are being	
5.	D.O.No.S-12/Audit/99-2000/49 dt.1/10/99 address to GM(Finance), O/o.CGMT Mumbai by the GMT Nashik.	ii)	GMT Nashik

6

targeted. Such targeting is basically against constitution and equality before law amounting to rank of discrimination. Details of all these are available in the file and become a prime importance to my defence.

GM (Fin)
O/o.CGMT
Mumbai

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

- 1 MAY 2000

7

Copy of CGMT Mumbai MH Circle letter no.BGT/3-9/97-98/13 dt.9/12/97.

These Memo's pertain to the purchase of cable fault locator etc. by Nashik, Nanded and Aurangabad SSAs while Item (6) & (7) pertains to the Nashik SSA, Item (8) and (9) pertains to the TDM Nanded and GMT, Aurangabad respectively with similar purchases have been done by the GMT, Nasik and hence required to base the defence upon for showing the comparative position with respect to the purchase of Stores.

Relevance for all the four documents is the same since the Audit Check for the same purpose at Nashik, Aurangabad and Nanded. All the Test Audit Memo are done by the Audit Officer, P&T, Nagpur reported as Key Documents.

GMT
Nashik

Guwahati Bench

8

Copy of Test Audit Memo no. 20 dated 15/4/99 and TAM no.24 dated 19/4/99 alongwith the document issued at GMT Nashik by the Audit Officer, P&T, Nagpur at Nashik during Audit Inspection

9

Test Audit Memo no.44 dt.6/10/99 issued at TDM Nanded with reply thereon.

10

TAM no.22 dated 25/11/99 issued at GMT Aurangabad by the Audit Officer, (P&T), Nagpur.

File no.S-14/LP/CP/CP.(Part-II)/00-2000 and file no.S-14/LP/CP/99-2000

----- do -----

TDM Nanded

GMT
Aurangabad
These documents 7,8 & 9 could also be available with the Audit Officer, P&T Nagpur.

GMT
Aurangabad

४८

11.	File no.NND/Eng-7/1/P.O./99-2000	----- do -----	TDM Nanded
12.	Letter no.F/IA/DAP-35/01-9/2 dated 21/6/02 regarding Submission of Action Taken Note on C&AG Para contained in the report of C&AG of India(P&T) for the year ended 31.3.2001 [No. 6 of 2002] on Para-47 on irregular expenditure on procurement of Cable route tracer and Cable fault locator. This letter is addressed to GM Telecom Nashik and Nanded by GM(Finance)	The letter was addressed by the GM(Finance) to GM(Nanded) and GM(Nashik) for clarification on Audit para no.6 of 2002. These letter throws sufficient light on the Audit Para particularly para- 47 regarding the alleged irregularity.	GM (Finance) O/o.CGMT MH Circle, Mumbai
13.	Schedule of financial powers as issued by the MH Telecom Circle vide endorsement no.BGT/AO-2/RLG/Vol.V/4 dated 2/1/91 for circulation under DE(Admn) Nashik no.Y/G/31/90-91/23 dt.28/1/91.	To show that no financial powers were violated by me	DET(Admn) Nashik Telecom
14.	Disciplinary proceeding-Initiation thereof vide F.No.17-4/2003-VM-II, Govt. of India, DOT, Vigilance Monitoring-II dated 25/11/03 and endorsement by CGMT MH circle vide No. T/VIG/CCS/CCA/Rules /XI/53 dated 29/12/03.	Guidelines are issued by the Govt. of India, DOT, Vigilance Monitoring-II so as to keep in view while investigating the complaints for Local Purchase made by the field officers like Aplab Testers etc. having limited suppliers	AGM (VIG-I) O/o.CGMT.MH Circle, Mumbai-1

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

- 1 MAY -

गुवाहाटी न्यायपीठ
Guwahati Bench

15.	Any other documents to be found relevant during the course of Inquiry.			
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केंद्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

* 1 MAY 2005

गुवाहाटी न्यायपीठ
Guwahati Bench

LIST OF WITNESSES FOR DEFENCE

List of witnesses to be examined on my behalf for defence : NIL
I may not also examine myself as my own witness.

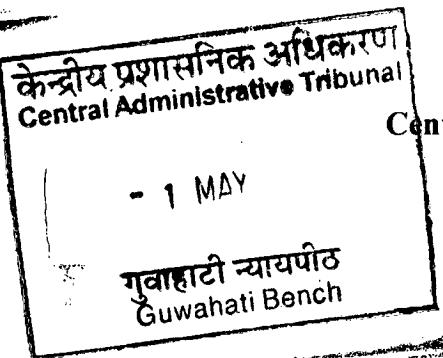
By Speed Post

NO.123/NKG/29 / 138

Government of India

Central Vigilance Commission

66

Satarkata Bhavan, INA,
New Delhi, dt. 22.1.2004ORDER SHEET

Subject: Departmental Inquiry against Sh. AK Dutta, the then AGM, Telecom.

Reference CO's letters dt.7.1.2004 and 10.1.2004 requesting for additional documents, assistance of defence assistant and also raising objection about admissibility of a prosecution document listed at S.No.6 of annexure III of the chargesheet. Additional documents vide said letter at S.No.3, 4, 5, 6, 7, 12, 13,14,16 and 19 are permitted. Documents at S.No.8, 9, 10 and 11 relate to other circle/place, namely, Nanded and Aurangabad. The documents at S.No.1 and 2 also inter-alia relates to prohibiting operating on tenders of other SSA/Circles. As regards documents 1, 2, 8, 9, 10, 11, CO is directed to clarify explicitly how these documents are specifically related to his defence. The reasons giving the relevance of documents at S.No.17 and 18 are not considered appropriate for requisitioning of these documents for the defence of the CO. PO and CO are directed to take necessary action for inspection of permitted documents as per order sheet dt. 30.12.04.

IO does not have any objection in accepting the request of the CO regarding defence assistant

As regards the admissibility of the prosecution documents at S.No.6 of annexure III, the objection of the CO noted. The said document will be taken on record as per extant rules and guidelines.

Copy of the ordersheet sent to the PO and CO for strict compliance.

(N.K. GHOSH)

COMMISSIONER FOR DEPARTMENTAL INQUIRIES

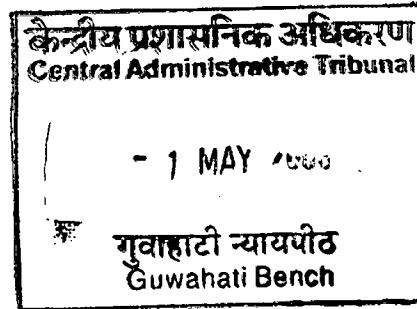
1. Shri AK Sahu (PO), General Manager (Operations), O/o CGM Telecom, Maharashtra Telecom Circle, Fountain Telecom Building No.2, 8th Floor, Mahatma Gandhi Road, Fort, Mumbai-400001.

2. Shri AK Dutta, (CO), Dy. GM, BSNL Kalyan, Telephone Bhavan, Kala Talao, Kalyan (West), Kalyan-421 003, District Thane(Maharashtra).

Attested
Dutta
Advocate

From:
Shri A.K.Dutta,
DGM, BSNL Kalyan,
Kalyan-421 301

TO:
Shri N.K.Ghosh,
Commissioner for Departmental Inquiries,
C.V.C. New Delhi-110 023



SUB: Departmental Inquiry against Shri A.K.Dutta, DGM, BSNL Kalyan
REF: Your order sheet no.123/NKG/29/1312 dated 22-1-2004 with reference
to my letter dated 7-1-2004 and 10-1-2004 requested for additional
documents.

Respected Sir,

As per directed by you in your order sheet dated 22-1-2004 to clarify
explicitly how the documents listed at Sl.no.1,2,8,9,10,11 as also for 17 & 18 of the
above list are related to my defence. It is hereby clarified as follows.

Item no. 1 & 2 :-

This relates to the listed documents at Sl.no.5 of the Memo of charges at
Annexure III, which states at para (ii) while pointing out Irregularities in
purchase/contract works.

- i) Tender of other SSA's/Circles are being operated, and
- ii) Extending the period of operations of tenders beyond what is legitimate.

To my knowledge there was no specific Rule/Instructions not prohibiting
operations on other SSA's/Circles being operated or in extending the period of operation
of tenders beyond what was legitimate. This practice was being followed in the whole of
DOT and was perhaps followed in this case also.

Disc. Authority while putting Rule 60 at Sl.no.10 of Annexure III of the
Memo, has NOT put the rules relevant to above item (i) & (ii) in the list of documents
though now quoted in item 5 of the listed documents. In the absence of this to effectively
defend against the charge it was requested that the Rules 101 to 105 and Appendix 8 to
the General Financial Rules should also have been put in evidence at least at this stage of
inquiry and hence requested to know the specific Rules/Instructions on the point that
Tenders of other SSA's/Circles and also extending the period of operation of Tender
beyond what is legitimate.

My case is that the Nasik SSA operated on the precedence of purchases
made by the adjoining SSA's/circles for the purchases of the item. Hence it is kindly
requested to allow these documents requested for.

Officer
A.K.Dutta
Advocate

: 2 :

Item no.8,9,10 & 11 in the list the additional documents

The relevance for these has already given in the earlier letter. It is reiterated here in now as additional clarification how the relevance thereof is still valid. Nasik was not only the SSA, which purchased these items. This were also purchased by the adjoining SSA's and even by the Ahmedabad District in the same manner and method as Nasik SSA done. Other SSA's like Poona, Kalyan, Kolhapur also made similar purchases as reflected in reply by the DGM (Plg), O/o.GMT Nasik in reply to the Director of Audit, Office of the P&T Nagpur letter no.AO23/Audit note/99-00/2 dated 18-5-1999 is his letter no S-12/3/Audit/April-99/99-2000/40 dated 27-05-1999 also clarified regarding TAM 20 and 24.

Therein it is also clarified at para 2. TAM/PLG 22 IVRS that the DOT had instructed Rajasthan Circle in early 1996 to float tender and firm up specifications of IVRS. The Rajasthan Circle has evaluated and approved the equipment supplied by M/s. Bay Talktec, Chennai with whom inquiries were also made who had in turn informed that equipment can be purchased through there Authorized dealers M/s. Compushop, Mumbai.

Latur SSA made similar purchase also but none from that unit was proceeded against.

Amongst all the above quoted SSA's units only offers from Nasik and Nanded were proceeded against.

From the records made available to me, it is amply clear that prior permission was given by GMT Nasik on concurrence of the CAO and IFA also.

As such the documents requested herewith may kindly be accepted to defend my case suitably since the documents requested may give me a way to have the charges dropped by the D.A. or may be able to explain my conduct effectively in a better position.

Also subsequent to this purchases there appears to be a hue and cry against discrimination resulting in action against only Nasik and Nanded Officers and the DOT, Govt. of India, suo moto reopened the cases subsequently to issue clear guide lines vide their letter no. F no.17-4/2003-VM-II dated 25-11-2003 issued by the Director (VM), Vigilance Monitoring-II, DOT, New Delhi requested at Sl.no.14 in the list of additional documents by me and also permitted by you as a possible defence documents.

: 3 :

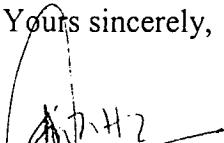
Along with this justification and relevance as clarified, it is kindly requested to review the request for requested documents at Sl.no.17 & 18 on the ground that the GMT Aurangabad had faced similar Test Audit Memos for the purchases made by their SSA's in a very similar way for the similar items for similar purpose and perhaps very effectively pleaded there case for these purchases to get the objection raised by the Audit waived. Perhaps these details as requested under Sl.No.17 & 18 may help me to get similarly plead the case for the above objection which may be dropped at the inquiry stage, justifying my purchase like the once they had for Aurangabad.

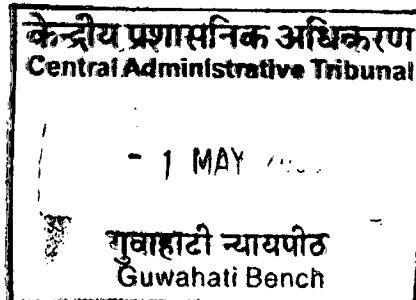
With this, Sir and with the revised relevance as above it is kindly requested that these documents requested at Sl.no.1,2,8,9,10,11,17 & 18 may kindly be admitted.

The inconvenience caused to you is highly regretted please.

Kindly acknowledge.

Thanking you,

Yours sincerely,

(A.K.DUTTA)



Date: 31-01-2004

Place: Kalyan

Copy to;

Shri A.K.Sahu, P.O : - for his kind information and further action to supply the above documents please.

- 53 -
By Regd. Post
NO.123/NKG/29-488
Government of India
Central Vigilance Commission

ANNEXURE - 6

Satarkata Bhavan, INA,
New Delhi, dt. 12.3.2004

17 MAR 2004

Subject: Departmental Inquiry against Sh. AK Dutta, the then AGM, Telecom.

ORDER SHEET

Reference CO's letter dt.31.1.04 with reference to ordersheet dt.22.1.04 and further request of the CO for additional documents vide CO's letter dt.25.2.04. In view of the reasons explained in the CO's letter dt.31.1.04 and his subsequent letter, PO is directed to make the documents available to the extent possible to the CO and take necessary action for inspection.

Copy of ordersheet sent to PO and CO.



(N.K. Ghosh)

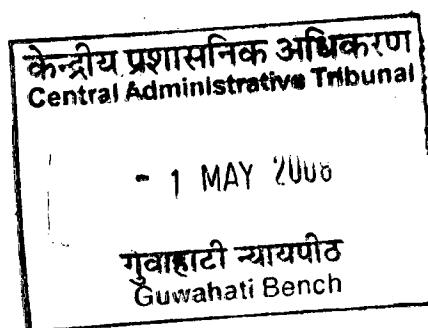
Commissioner for Departmental Inquiries

Phone: 2465 1086

1. Shri AK Sahu (PO), General Manager (Operations), O/o CGM Telecom,
Maharashtra Telecom Circle, Fountain Telecom Building No.2, Fort, Mumbai-400001.

✓ 2. Shri AK Dutta, Dy. GM, BSNL Devi Bhavan. Near Dr. Acharya Hospital, Kalyan.-
421 301 (Maharashtra).

Attested
Mitali
Advocate



A9

F.No.123/NKG/29
 Government of India
 Central Vigilance Commission

Satarkata Bhawan, INA,
 New Delhi-110023

केन्द्रीय प्रशासनिक अधिकारी
 Central Administrative Officer

- 1 MAY 2008

गुवाहाटी न्यायपीठ
 Guwahati Bench

INQUIRY REPORT

Name of the CO : A.K. DUTTA, DGM, Maharashtra Telecom Circle.
 Organisation : DEPARTMENT OF TELECOMMUNICATIONS
 Reference : CVC's OM No.003/P&T/142 dt.5.6.2003

I. Introduction

I was appointed as Inquiring Authority vide Ministry of Communications & Information Technology, Department of Telecommunications order No.8/248/2003-Vig.II(i) dated 5.12.2003 to inquire into the charges framed against Shri AK Dutta, area Manager, O/o Principal General Manager, Kalyan Telecom District, (hereinafter called as CO), Sh. AK Sahu, GM(Operations), DOT, was appointed as Presenting Officer(PO) to present the case in support of the charges. Sh. P.G. Deshkar acted as Defence Assistant on behalf of the CO. The Preliminary Hearing in this case was held on 30.12.2003 at New Delhi. After the completion of formalities of inspection of documents and other connected matters as recorded in the Daily Order Sheets, the Regular Hearing in this case was fixed and held on 6th, 7th and 8th of May, 2004 at the Office of GMT, Raigad, Santacruz(W), Mumbai. The PO placed on record 10 prosecution documents, which were marked as S-1 to S-10. There were three management witnesses i.e. SW-1 to SW-3. The CO produced 15 additional documents, which were also taken on record and marked as D-1 to D-15. After taking on record prosecution and defence documents, prosecution case was taken up. Prosecution witnesses were examined-in-chief by PO and cross examined by CO/DA. After closure of prosecution case CO filed statement of defence denying the charges. After that defence case was taken up. There were two defence witnesses (DW-1 and DW-2) who were examined-in-chief by the CO/DA and cross examined by PO. As the CO did not offer himself as defence witness, the IO generally

Attested
 Akash Dutta
 Advocate

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examined him on the circumstances appearing against him during the Inquiry. PO's written brief was received on 26.5.2004 whereas defence written brief was received on 23.6.04. These are duly taken on record. Other details are in Daily Order Sheets.

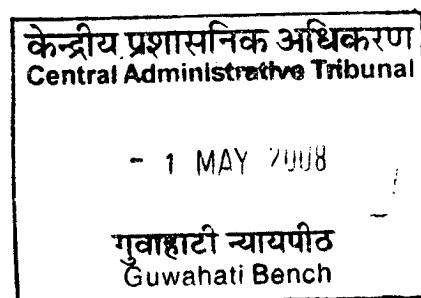
II. Article of Charge

That the said Sh. A.K. Dutta, while functioning as Deputy General Manager(Planning) Office of the General Manager, Nasik Telecom District, during the period from July, 1997 to February, 1998, in connivance with Sh. B. Prasad(Planning), Sh. NG Kamalapurkar, Assistant General Manager(Planning), Sh. MD Gosavi, Chief Accounts Officer, and Sh. AK Pathak, Sub-Divisional Engineer(Planning) all of Nasik Telecom District, approved the procurement of non-stocked items viz. cable route tracers, Pulse Reflectometers, Battery Voltage Monitoring Systems, and Digital Earth Resistance Testers from M/s Hi-Tech Telecom Systems, Hyderabad, for a total of Rs.4,63,032 on the basis of quotations, without inviting tenders as required, though the equipments were not proprietary items, far in excess of the delegated financial powers of the Deputy General Manager/General manager, and without ascertaining the specific requirements of the field units; in violation inter alia of Rule-6, and Para 28 of Annexure to Chapter-8 of General Financial Rules, 1963, Department of Telecom Circular letters No.51-6/91-MMC/Pt. Dt.12.1.93 and No.305-2/95-MMS dt.8.11.95, letter No.BGT/3-9/97-98/13 dt.9.12.97 from General Manager(Finance), Maharashtra Telecom Circle, addressed to Sh. B. Prasad, General Manager, Nasik Telecom District. and Rule-60 of P&T Financial Handbook Volume-1; thereby depriving the Department of the benefit of competitive rates and showing undue favour to the aforesaid private party.

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

III. Statement of Imputation

Statement of Imputation in support of the Article of Charge is annexed to this Report.



- 1 MAY 11

गुवाहाटी न्यायपीठ
Guwahati Bench

IV. Prosecution Case

Various arguments and contentions of PO, in support of the Article of Charge, are mentioned as below:

As per the guidelines prevalent at the time of purchase of the testers, the purchase of items costing beyond Rs.50,000 were to be made on the basis of open tender (Para 28 of Annex to Chapter 8 of GFR i.e. Exhibit S-9). This guideline was fully violated as the three testers whose prices were Rs.1, 40,610 per testers were purchased from a single supplier without inviting open tender resulting in irregular expenditure of Rs.4, 63,032/- The rates were fixed on the basis of orders placed by other SSA/Circle. This was in violation of existing guidelines (Sl.No.iii of Exhibit S-7 and S.No.4 of Exhibit S-8). This procedure was further reiterated vide Exhibit S-5.

The testers purchased by the Charged Officer were not propriety items and were not covered by any DGS&D rate contracts or any tender finalized by CGMT MH Circle Mumbai. Purchases were made on the basis of quotations from M/s Hitech, Hyderabad. but there is no evidence to call any quotation or tender in the files Exhibits S-2 and S-3. As can be seen from Exhibits S-2 and S-3, the supplier M/s Hitech approached the Charged Officer with purchase order of other units. Subsequently, field trials were arranged and purchases were made on the rates quoted by M/s Hitech without verifying reasonableness of the rates. Statement of SW-1 also confirms these facts.

The procurements were approved by the Charged Officer in spite of the objections raised by the then Chief Accounts Officer for calling open tender. (Corr. Sheet No.14 of Ex.S-3). Objections raised by the IFA were not fully cleared (as per SW-1) and procurement was approved by the CO in spite of the fact that the CO was not competent to approve the purchases. The approving authority was SSA Head i.e. GMT (as per SW-2 and SW-3)

It is therefore observed that though CO was not delegated with any financial powers as per schedule of financial powers (Ex.D-9). Schedule of Financial powers

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केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal
Stocked items. This power was delegated to GMT/Area Director/TDM who are
independent in charge of SSA/Area. As DGM (Plg.) the CO was functioning under ^{1 MAY 2000}
Nasik, hence he was subordinate officer and not SSA head.

गुवाहाटी न्यायपीठ
Guwahati Bench

The requirements projected by the field units were primarily based on the results of field trials and do not mention anything about high fault rates or number of accumulated faults (Corr. 13 and 14 of Ex.S-3 and Corr.19 to S-22 to Ex.S-2). This clearly indicates that there was no urgency or genuine requirement and the requirements were projected simply because the supplier had approached the CO. The questions regarding urgency of testers were not answered satisfactorily by defence witnesses. The defence witness DW-1 mentioned that these testers are required for smooth maintenance of network which is a regular phenomena. It is therefore observed that the procurements were made by creating artificial urgency on the plea of rainy season.

The defence witnesses could not establish the nature of urgency and explain the reasons for violating the departmental procedures during procurement of the testers. Both the defence witnesses DW-1 and DW-2 have accepted that requirements were submitted after successful completion of field trial by M/s Hitech which resulted in irregular purchases.

Considering the above facts, it is established that the CO had approved purchases in violation of delegated financial powers and had failed in observing necessary formalities. The charges as per the charge sheet are therefore fully sustained.

V. Defence Case

Various arguments/contentions of the defence are given as under:

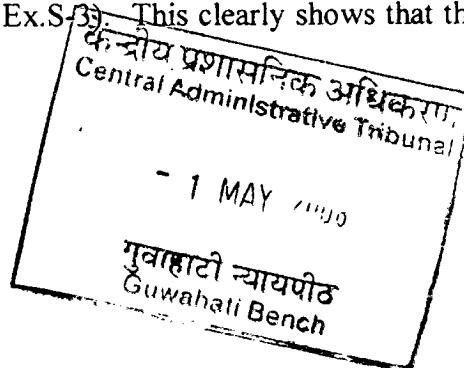
Defence has stated that the prosecution has ignored and did not put in evidence, the System of Accounts and Responsibility of a Divisional Officer. According to this the Accounts Officer is the head of the office for purposes for financial rules. Citing Rules 11,15, 16, 17, 21 and 23 the defence has made the case that CAO or IFA to GM Nasik was primarily responsible for the acts of omission and commission in this case.

(Signature)

Ex.S-7 and Ex.S-9 are all attributed to CAO who was head of the SSA for financial rules. Defence has further argued that such purchases were made by the other SSAs on the basis of tender floated by Ahmedabad Telecom district.

The said purchase attributed to be made by the CO was on the basis of Management Meeting held on 10.7.97, chaired by the then GM in which various field units (DEs) pressed for purchase of the instruments due to higher utility and urgency. In fact, no purchase of Testers made by the CO. It was purchased by AGM (Plg.) under his signatures/authority on the purchase order placed in the name of GM, Nasik. Since these testers were newly introduced, there were no DGS&D rate besides tender rates not at all called by CGM MH Circle, Mumbai. Defence has further argued that M/s Hi-Tech rates from which testers were purchased were lowest. M/s Hi-Tech had earlier supplied such type of instruments to Nanded and Latur. With the onset of monsoon in July/Aug. all knew necessity, desirability and utility as also the urgency for procurement. The case was fully discussed in the management meeting on 10.7.97. There were precedents when DE (CC) purchased the similar items to the tune of Rs.1.33 lakhs after obtaining the financial concurrence from earlier CAO. Party did not approach the CO. Quotations were addressed to the GM, Nasik. Purchase order was placed on behalf of GM by AGM(Plg.). In fact, the proposal attributed to the CO was cleared by the succeeding CAO of the SW-1.

Prosecution has not put anything in evidence to show that the CO as DGM(Plg) or otherwise was not competent to approve the purchase. CO's financial power for purchase was concurrent with the GM up to 2 lakhs on each occasion. The onus of proving urgency not only lies with defence but disproving the same also lies with prosecution. CO was having the financial power as delegated in the Circular at D-9 and as accepted by the CAO for day-to-day administration. However, during passing the bills on 4.9.97, the GM called for the explanation of CAO. The CAO's explanation says that, "Necessary instructions issued to all concerned. This is the case prior to the issue of Revised Delegation of Powers." (Note sheet N/3 in Ex.S-2) and (Note sheet N/2 in Ex.S-3). This clearly shows that there existed a power more



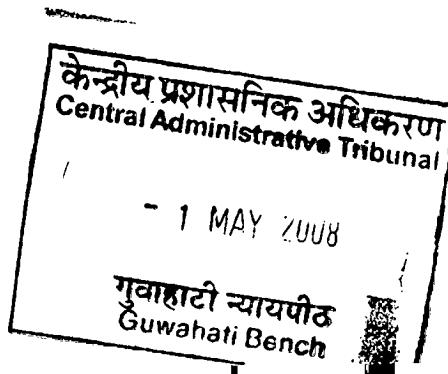
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than 1 lakh for DGM to pass the bill. The powers were revised on up gradation of Division downgrading DGM's powers to 1 lakh. Since the party introduced himself, there was no need for any quotation to be called for as argued by the PO. The rate for Aplab Tester was Rs.1.33 lakh while the same type, same technology and same utility from M/s Hi-Tech their price was Rs.84,000 per piece. Thereby actually a saving was recorded for Rs.49,000 much cheaper than what others have purchased as mentioned at Ex.S-1 and S-4.

It is a fact that the procurement was approved by the CO for its technical feasibility and usefulness. Any proposal to mature three approvals are required as per Rule 147 of P&T Manual Vol.X : 1)Technical, 2)Financial, 3)Administrative. Technical approval was given by the CO while the financial approval was given by the CAO. As regards the administrative approval such an approval was already accorded by the GM in the Management meeting on 10.7.97. CO being an administrative officer of JAG rank had full authority on behalf of the GM as an attached officer looking after the charge of DGM(Plg.). In this regard DG P&T letter No43/17/57-PE/CI dt.4.1.58 states that powers to lower other to decide the cases and convey sanction/orders of the Head of the Circle/Director of Telecom has been entirely left to the discretion of the Head of the Circle/Director of Telecom.

Procurement was technically approved by the CO in a normal official routine, after the financial concurrence/approval given by the CAO/IFA without pressing further for tendering process in view of my logical reply submitted on his suggestion of the remark.

Again, if no powers are delegated to the CO as a DGM, it was up to the CAO to raise objection on that serious infirmity and report the matter to the Circle Finance under Rules 20, 21 And 23 quoted earlier to regularize or to modify the schedule to categorically state whether the DGM of Nasik SSA had any financial power or not and it was also not upto the investigating officer to say that the schedule under D-9 was not vesting any financial power with the DGM. There is definitely a merit and



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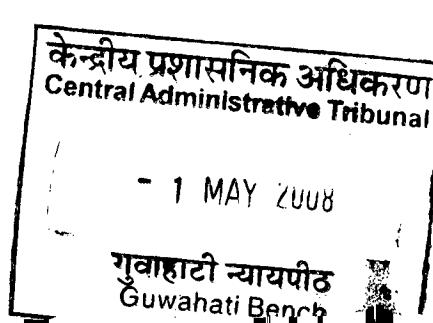
truth in the two notes exchanged between CAO and GM Nasik querying to the CAO to explain on 4.9.97 when the bill already passed by SDE and DE to which the CAO replied. "Necessary instruction issued to all concerned. This is the case prior to issue of revised delegation of power w.e.f. 1.9.97. No purchase was made when on upgradation of the districts the financial limit of DGM was downgraded to Rs.1 lakh on each occasion.

CO was functioning under GMT Nasik and he was subordinate officer and not SSA Head. It does not automatically mean that DGM(Plg.) or for that purpose any DGM of Nasik SSA, the financial powers were not delegated.

The PO has not shown any documentary or oral evidence to show that DGM has not financial power and did not show what the financial power of DGM was passing of an estimate to an extent of Rs.1.33 lakh for purchase of such instrument by Sh. Padegaonkar, then DGM during 1997-98 and getting it approved financially by the CAO clearly shows that the DGM was delegated some financial power at least to sanction some estimate for amount at least Rs.1.33 lakh excluding 4% S.T. thereon. This power could be about 2 lakhs only.

The schedule of financial power D-9 shows that the Area Director and TDM having the power of approving detailed estimate upto 3 crores in each case. It was under these powers that Sh. Padegaonkar, then DGM Nasik having charge of DGM(Plg.) Nasik had approved the estimate to an extent of 1.33 lakhs + 4% S.T.

The urgency of required instruments by field units were projected in the Management Meeting of 10.7.97 where the possession of the such instruments by DE(CC) Nasik was projected for its utility, usefulness urgency for other units also. This was agreed to by the GM for similar purchases on similar grounds and similar proprietors. He also directed the DEs to submit their requirement to the AGM(Plg.) or to him. Accordingly, the requirement of the respective DEs have been placed and the requisition was sent to GM and other to AGM(Plg.) O/o GMT, Nasik.



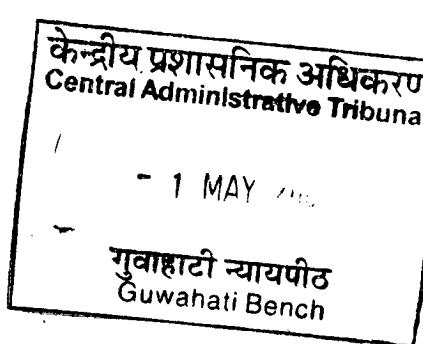
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It is a matter of record on S-2 and S-3 on page 22 and 13 respectively. It was on these requirements the proposals were considered upon by obtaining prior approval by the CAO and the Purchase Orders have been placed by the AGM(Plg.), O/o GMT Nasik on behalf of GM within delegated financial power of GM. The powers of DGM were not utilized by AGM (Plg.) O/o GMT, Nasik.

The urgency was accepted by the GM in the Management Meeting on 10.7.97 and asked the field DEs to place their requirements though this was not mentioned in the meeting records. The GMT had asked the AGM(Plg.) to further process the case for the procurement of these equipments immediately postponing the tendering process. This is amply reflected in the 6th para of D-2 letter No.S-12/Audit/99-2000/49 dt.1.10.99 quoting, "The tender formalities were postponed for the above reasons only." The PO has failed to prove that there was no urgency.

The requirements were not projected simply because the supplier approached the CO as contended by the PO. The PO has not put forth any evidence to prove that CO was approached by anybody. However, it is on record that the quotations were issued in the name of GM, Nasik and were put in file. The quotations were received on 22.7.97 and the requirement along with demonstration report were received on 31.7.97 and the proposal was mooted on 1.8.97 and purchase order was placed by the AGM(Plg.) O/o GMT, Nasik on 5.8.97 in the name of GMT, Nasik within the GM's financial power.

It has to be primarily understood that CO's first duty was to maintain cables where the faults incident had alarmingly increased due to cable faults in the monsoon season. Dry paper core cables having been punctured in the Dry season during the road expansion and digging work by other public utility concern like Municipal Corporation, PWD etc. the faults occurred only after the monsoon had set. CO's work as a GM (Plg.) was only secondary yet on attending office late in the evening he cleared the file on 5.8.97 itself on the basis of proposal, requirements, urgency, the

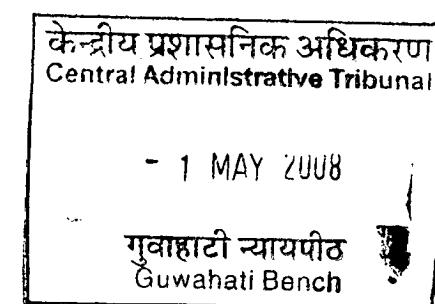


CAO's note, AGM(Plg.) explanation and CAO's clearance allowing financial sanction/approval for purchase on the basis of quotation available and the copy of the purchase order placed by other SSA earlier to this case without advising tendering process. This chain of events shows that the procurement was more urgent to cut down duration of faults by quick and correct location and tracing the faulty cables fast.

It was noticed that the cost of saving revenue loss due to quick and early restoration of cable faults in the monsoon season was much more than the cost of the newly sophisticated cable fault testers by utilizing it. The whole case cropped up due to audit objection for several SSA's including Nasik. Others except Nasik perhaps satisfied the audit Para against them or if any Para was contemplated subsequently explanation caused dropping of audit para. With the type of non-vigilant Vigilance Officer and their lack of knowledge for fair investigation has also not understanding the duties and responsibilities of the CAO. the report went against the Nasik SSA. Surprisingly also the Vigilance Officer admitted in QA-15 that he has not verified the Schedule of Financial Power as prevalent those days and whether at all the DGM had any financial powers. These factors did not reflect perhaps in his report and hence only the officers of Nasik SSA have charge sheeted of which unfortunately CO was one. Only singling out Nasik SSA was ranked discriminatory and against equality before rules.

The PO has not pointed any rule to show that bars use of tender of other SSA/Circles for being operated upon and secondly this point was for the consideration and operation of the CAO who incidentally happens to be the head of the units for financial rules.

According to the Vigilance Officer SW-2, the DGM attached to the district has no financial power. If this were true how was it that the DGM were incurring expenditure without authority and CAO/IFA allowing such gross irregularities and not bringing to the notice of second head and Telecom Circle, Headquarter. But in view of two noting between the CAO and GM at NS-3 in S-2 and at NS-2 in S-3



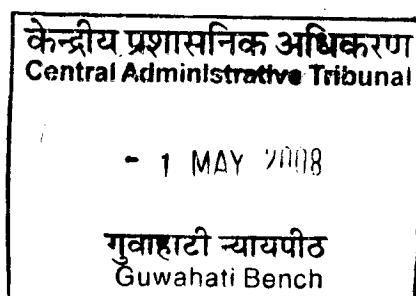
clears that the DGM had powers upto Rs.2 lakhs as per the schedule of the power then existing before 1/9/97 when up gradation of districts, the power of DGM degraded to Rs.1 lakh only. Thus, the contention of the investigating officer was wrong and misleading and hence arguments of the PO on this point could misguide the IO. The DGM did have powers over Rs.1 lakhs before 1.9.97.

The latest circular (D-18) issued by the Director (VM), VIG Monitoring-II Department of Telecom, Govt. of India, F.No. /17/4/2003-VM-II dgt.25.11.2003 in Para 22 for local purchases had specifically mentioned that the local purchase of Aplab Testers etc. made by the field officers which are having very limited suppliers and the department is also aware of the cost in such type of purchases if there is no malafide intention behind the purchases the disciplinary action should not be started. However, the concerned officers should be warned to follow the prescribed method of purchases. This circular is prospective and not retrospective otherwise this case could not have come. However, the IO may kindly take note of exonerate CO on the basis of above circular.

Since some 30 units all over India resorted to such purchases and they could not be much wrong in view of respective CAO's authorizing purchases without calling for tenders and bypassing rules on the subject. All 30 CAOs and equal number of office could not go wrong. Here the circular does not lay stress that the prescribed process is a must and should not be condoned at all. This gives a safety valve.

The PO did not produce any evidence for CO's connivance with his superior and the subordinates as mentioned in the charge sheet.

It was also wrong to say that the specific requirements of the field units were not ascertained before resorting to local purchase. These requirements are part of the record, namely, sheet No.22 (Ex.S-2), sheet No.21 (Ex.S-2) and page No.30 (Ex.S-3). Besides, the DOT circular 51-6/91-MM:C/Pt. Dt.12.1.93 at S-7 is not applicable in this case for the CO since the commitment register and periodical information for



material are maintained by the CAO or AO before the commitment are honored and amount are paid. Since the amounts are paid before the end of financial year in March 1998 this can be safely presumed that funds for this payment were already allotted and available.

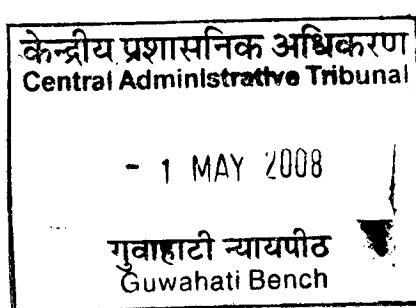
The DOT circular letter No.305-2/95-MMS dt.8.11.95 at Ex.S-8 were addressed to all CGMTs and it appears that these circulars are not circulated below the level of CGM and GM. Had they been circulated it should be for the CAO or the AO to abide by it and see that these subordinates units including the GM adhered to it and implement. Here the CAO would have advised the GM suitably. The circular No.BGT/3-9/97-98/13 dt.9.12.97 though clear but it was issued after the purchase were over. Since, the purchases were already made as concurred by the CAO/IFA, the question of observing the instruction contained in DOT circular No.305-2/95-MMS dt.8.11.95 does not arise. No purchases were approved after 9.12.97. Therefore, Rule 60 of P&T Financial Handbook Vol.I was not violated at all either by me or by the GM.

Moreover, vide Ex.D-2 it can be seen that GMT. Nasik had written to GM(Finance) MH Telecom Circle, Mumbai saying.. "Moreover, no favoritism was shown to any particular agency."

Defence concluded their brief by saying that article of charge is not proved on the basis of precedence and practice followed in Maharashtra Telecom Circle.

VI. Analysis of Evidence

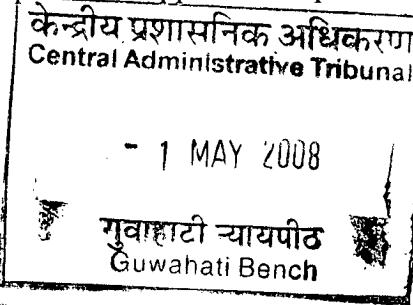
It has been alleged that Sh. AK Dutta, Dy. General Manager, Telecom Maharashtra Telecom Circle, while functioning as Deputy General Manager (Planning), O/o the GM, Nasik Telecom District, Nasik during the period from July 1997 to February 1998 in connivance with Sh. B. Prasad, GM, Sh. NG Kamlapurkar, AGM(Planning) and others all of Nasik Telecom District approved the procurement of non-stocked items namely, Cable Route Tracers, Cable Fault Locators, Pulse



Reflectometers, etc. from M/s Hi-Tech Telecom Systems, Hyderabad for a total of Rs. 4,63,032/- on the basis of quotations without resorting to proper tender procedure though the equipments were not proprietary items. The CO is also alleged to have exceeded his delegated financial powers in the said purchases. The specific requirements from the field units were also not ascertained in violation of existing rules/regulations for such cases. All such irregularities resulted in depriving the department for the benefit of competitive rates and showing undue favour to the aforesaid private party. Thus by his above acts, the said Sh. AK Dutta committed grave misconduct, failed to maintain absolute integrity and devotion to duty, and acted in a manner unbecoming of a Government Servant, thereby contravening Rule 3 (1) (i),(ii) & (iii) of the CCS(Conduct Rules, 1964).

The prosecution has argued that according to the prevalent guidelines/instructions issued vide various department of Telecom Circulars/letters at the time of purchases of the said items costing beyond Rs. 50,000/- were to be made on the basis of open tender. The said guidelines were violated as the cost of the items purchased was Rs.4,63,032. These items were purchased from a single supplier without inviting open tender on the basis of the rate on which other SSAs/Circles placed orders. The Prosecution has referred exhibits S-5, S-7, S-8 and S-9 to substantiate their arguments. Prosecution has further argued that items were not proprietary items. Nor it was covered by DGS&D rate contract or any tender finalized by CGMT MH Circle, Mumbai. There is no record that would suggest that quotations or tenders were called. In fact, through exhibit S2 and S3, it is obvious that supplier M/s Hi-Tech approached the CO with purchase orders of the other units. Subsequently, field trials were arranged and purchases were made on the rates quoted by M/s Hi-Tech without verifying the reasonableness of the rates. SW-1 has confirmed to this effect.

The procurements were made by the Charged Officer in spite of the objection raised by the then Chief Accounts Officer for calling tender. SW-1 has confirmed this in his deposition. The Chief Accounts Officer also made suggestion for calling open tender that was ignored (Ex.S-3). Procurement was approved by the charged officer despite the fact that he was not competent to approve the purchases. In such cases, approving



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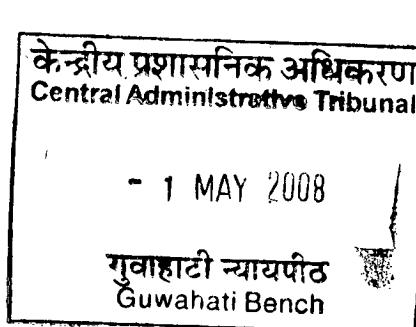
authority was SSA Head. viz. GMT. This has been deposed by SW-2 and SW-3 also. The CO i.e. DGM (Plg.) was not delegated with financial powers for procurement of non-stocked items. Apart from this, there was no urgency for procurement and requirements projected by the field units were primarily based on field trials and do not mention anything about high fault rates or number of accumulated faults (Ex.S-2 and S-3). There was no genuine requirement. DW-1 and DW-2 have not satisfactorily answered about the urgency of such purchases. Defence witness DW-1 mentioned that these items are required for smooth maintenance of network which was a regular phenomena. Therefore, the procurements were made by creating artificial urgency on the plea of rainy season. Both the defence witnesses DW-1 and DW-2 have accepted that requirements were submitted after successful completion of field trials by M/s Hi-Tech which resulted in irregular purchases. Prosecution has concluded by stating that the CO had approved the purchases in violation of delegated financial powers and had failed in observing necessary formalities and, therefore, charges as per charge sheet are fully sustained.

Defence on the other hand has stated that the purchase of testers inter-alia were discussed in detail in monthly management meeting dt.10.7.97 and looking to precedence a tentative decision was taken to going for purchase of such instruments. However, this was not minuted. The urgency and requirements inter alia were also discussed and it was decided that each unit should give their requirements to Planning Section (DW-2). Accordingly, the cases were dealt in Planning Unit.

Defence has defended the case mainly on the ground of urgency and the also that the procurement were made by the other SSAs/Circle. CO had not connived with his superior nor he made purchases far in excess of his delegated financial powers. Defence further argued that all the other SSAs were not targeted for irregularities by the Department whereas the Nasik Telecom District was targeted by the Department for serving charge sheets on the concerned officers which is rank discrimination.

The points of determination in the present case are :-

- Whether the purchases were as per the requirement and within the financial powers of the Dy. General Manager, namely, the CO.



- b) Items purchased were proprietary and as such due procedures were followed in the said purchases.
- c) Whether there was urgency as stated by the defence due to rainy season.

The defence has accepted that the CO had approved purchases made of certain items vide Ex. S2 and S3. However, it was a technical approval not the administrative approval. The GMT Nasik in management meeting dt. 10.7.97 gave administrative approval. Defence has also stated that it is clear from the Purchase Order placed by the AGM (Plg.) which clearly states that the purchase is with the authority of GM. On going through the Ex. S-2 and S-3, it is clear that the CO had returned the file to AGM (Plg.) after signing. He should have put up the file himself to GM for approval rather than returning the file to AGM (Plg.). Even if he had returned the file to AGM (Plg.) he should have given specific instructions to him to put up the file again for administrative approval to GMT. Therefore, the contention of defence in this regard cannot be accepted. He had himself approved. SW2 and SW3 have also deposed that the said cases dealt in Exhibits S2 and S3 were approved by the CO not the GMT, Nasik. Now the question is whether he was competent to accord such approval or not. This would be examined in due course. It is also on record that the then GM had questioned the passing of bills for some purchases.

On going through the Ex. D1 that also contained Minutes of the management meeting dt. 10.07.97 which inter alia mentions "case of purchase of Aplab Cable Route Locator and MRCP Low Insulation Tester" should be processed. Nothing has been mentioned in this regarding urgency due to rainy season. DW-2 however deposed that there was urgency due to widening of road and damage of the cable due to drainage in city area. DW-1 has also mentioned that there was urgency. The prosecution has stated that there was no urgency or genuine requirements and the requirements were projected simply because the supplier had approached the CO. Procurements were made by creating artificial urgency on the plea of rainy season. The testers were received in October and November

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that is after the rainy season was over. This has been confirmed by the SW-2. Therefore, the reason given by the CO that purchases were made in the urgency for rainy seasons is not tenable.

SW-2 has deposed that purchases were made after the rainy season in Nasik that is why the urgency of the purchases during the rainy season does not hold good. He has further deposed after seeing Ex.S-2 that in the said proposal there is no urgency to purchase the instruments on quotation basis. Even if there was urgency the procurement could have been followed by calling limited tender instead of open tender. SW-3 has also stated that vide Ex.S-2 urgency has not been mentioned in the proposal. The above discussions shows that there was no urgency in the purchase as mentioned by the defence on account of ensuing monsoon. Therefore, to dispense with usual procedure required to be followed in such purchases in the name of urgency as contended by the defence cannot be accepted.

According to prosecution, para 28 to Anxx. to chapter 8 of GFR and also Ex S5; in case of the purchases of the items of estimated value to the tune of Rs. 50,000/- and above; open tender system should have been resorted to. This has been deposed by SW-2. SW-2 has also deposed that the procurement was in violation of the DOT guidelines as per Ex.S-8. In the instant purchases approved by the CO (SW-2 and SW-3), the value is more than this limit. The prosecution has also stated that items were not the proprietary item. Defence has not rebutted this fact. Therefore, it has also become quite obvious that the items were not proprietary and there were more than one firm who could have supplied the purchased materials. In fact, Defence has admitted that later few more firms also became suppliers of these instruments.

As regards specific requirements not received from the field units for such items vide Ex.S-2 and S-3 would reveal that requests along with report of the field trials were sent together after demonstration by the units. This has been deposed

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by the defence witness also. Defence has argued that after discussion in the management meeting, it was not necessary to send the requests in advance or justification of such purchases. DW-2 has also deposed that after management meeting, requirements were sent to Planning Section by field units. However, DW-1 has deposed he submitted his requirements/requisition to GM, Nasik along with other papers. From this, it is clear that requirements were decided in the management meeting not earlier by the field units. Be as the case may be, it is clear that proper procedure were not followed in the said purchases. Defence has admitted that meanwhile four five more firms started supplying the items and they saved about Rs.49,000 of the govt. expenditure by placing the orders to the firm, named M/s Hi-Tech. It means that there was possibility of further reduction in the rate if some other firm would have been selected. By floating open tender perhaps the department could have got more competitive rates. There is merit in the deposition of SW-2 in this regard that if not open tender limited tender could have been resorted to.

Defence has cited a particular case of Rs.1.33 lakhs in which financial concurrence was given without resorting to open tender in case of other DGM Sh. Padegaonkar. However, as per the deposition of SW-1 in this case the approval was proper as the purchase was to be made within contract period and there was provision in the budget for the purchase of the instruments. The contention of defence that since other SSA/Circle also purchased such items, they in Nasik were justified in their actions is not tenable in the light of various circulars/letters/guidelines prohibiting the SSAs/Circles for such purchases.

There is one important question of delegated financial powers of the CO. The defence has stated that the purchases made were within the delegated financial power of the CO. In his written brief also, the CO has stated that DGM was within the power to made purchases up to two lacs. Defence has stated that CO had power concurrent with GM which was not used routinely. That is why the purchase order in the name of GMT, Nasik was given. Defence has also stated that the notings between CAO and GMT, Nasik regarding passing of bills also indicate that DGM namely the CO had such financial power. However,

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prosecution has stated that CO had no financial power as he was not the independent SSA Head or Area Director. This has been confirmed by the prosecution witness SW-2 also. This can be argued both ways. Defence contention that if DGM had no financial power why the CAO allowed day to day expenditures after the approval of the DGM/CO has some weight. However, defence has produced a document D-9 which clearly indicates that financial powers rest with CGM, GM, Area Manager/TDM, SDE etc. not to those DGMs who are not independent SSA head. As regards the contention of the defence regarding internal arrangement of delegation of financial powers to DGM given by SSA head i.e. GMT, Nasik nothing has come on record except the clarification of CAO to GM during passing of bills. Even if DGM had such financial powers, the power was not utilized in prudent manner that has come quite clearly through the evidences on record. All concerned did not follow the exiting guidelines/rules including the CO.

On the evidences on records it would reveal that there was no such compelling reasons that warranted deviation from the regular rules/guidelines/procedures in the present case. However, prosecution has not deliberated during the course of inquiry or in their brief regarding connivance aspect of the case. However, on the basis of the notings of the CAO and GM regarding passing of the bills, it appears improbable that the CO had connived with the GMT, Nasik.

On facts and circumstances of the case and also based on evidences adduced before me, I held the charge against the CO as partly proved.

VII. Findings

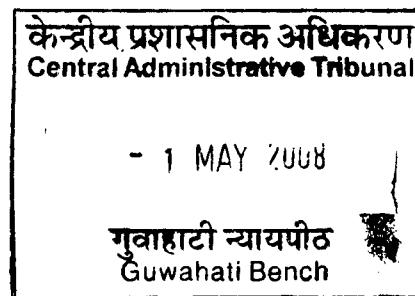
Article of Charge: Partly Proved.

Dated: 30.6.2004

57. 
(NK GHOSH)

Commissioner for Departmental Inquiry

Mr. Datta
Advocate



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No. 8/248/2003-Vig.
Government of India
Ministry of Communications & Information Technology
Department of Telecommunications
(Vigilance-II Section)

915, Sanchar Bhawan, 20-Ashoka Road.
New Delhi-110066

Dated the 25-8-2004

MEMORANDUM

A copy of the Inquiry Report dated 5.7.2004 submitted by Shri N.K. Ghosh, Commissioner for Departmental Inquiries, New Delhi, who was appointed as the Inquiring Authority to inquire into the charges framed against Shri A.K. Dutta, (Staff No. 8188), Dy. G.M., Maharashtra Telecom Circle, Mumbai is forwarded herewith. A copy of ID Note No. 00/P&T/142-2397 dated 2.8.2004 of the Central Vigilance Commission (CVC), is also forwarded herewith.

2. Shri A.K. Dutta is hereby informed that he may make such representation as he may wish to make in the matter. Such representation, if any, shall be made in writing within fifteen days of the receipt of this Memorandum, failing which it will be presumed that he has no representation to make, and further necessary action in the matter is liable to be taken accordingly.
3. The receipt of this Memorandum, alongwith a copy each of the Inquiry Report and CVC's advice, shall be acknowledged by Shri A.K. Dutta.

By order and in the name of the President.

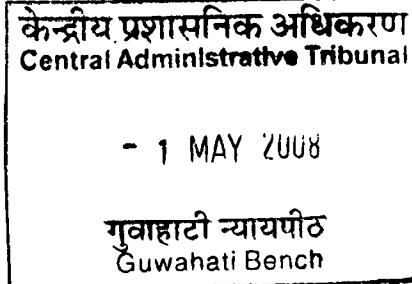
/ *Mohinder Singh*
(Mohinder Singh),
Director(VA)

Encl.: 1. Copy of Inquiry Report.
2. Copy of CVC's advice ID Note No. 00 P&T 142-2397 dated 2.8.2004

Shri A.K. Dutta,
(Staff No. 8188),

Dy. General Manager,
Maharashtra Telecom Circle,
Mumbai.

(Through the CGM Telecom, Maharashtra Telecom Circle, Mumbai).



*Attested
Dutta
Advocate*

From:

A.K.DUTTA,
D.G.M. B.S.N.L,
Kalyan, MH Telecom Circle,
KALYAN-421 301.

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TO:

His Excellency,
The President,
Union of India.

Kind attention: Shri Mohinder Singh, Director (VA)

**SUB: Representation against the Inquiry Report,
case of Shri A.K.DUTTA, DGM, MH Circle.**

REF: Your office Memorandum no. 8/248/2003-VIG dated 25/8/2004

Your Excellency,

In acknowledging herewith the receipt on your memorandum quoted above alongwith the copy of the inquiry report and CVC advice, it is represented as follows:

This representation consists of four Parts on the different deals of the case.

Part-I:

Attention of the Disc.Authority (DA) is invited to the DIRECTIVE issued by the CVC in their memo no. 99/VGL/66 dated 28/9/2000 (para-5), the provision of this para is NOT complied with.

At the outset, I may submit that I did not commit any irregularities whatsoever to call upon disciplinary action against me. The Circular-F.No./17-4/2003-VM-II dated 25/11/2003 from Director (VM), DOT, New Delhi(D-10) clearly absolves me from the charges framed against me (copy enclosed). However as directed by you, I may deal with the Inquiry Report as follows:

*Attested
Munshi
Advocate*

“ The DA may after examination of the inquiry report communicate its tentative views to the commission. The commission would therefore communicate its advice. THIS alongwith the disciplinary authority's VIEWS may be made available to the concerning employee”.

This is given a GO BYE by the DA in as much as the VIEWS as communicated to the commission in getting its advice (2nd stage) is systematically suppressed, and not enclosed alongwith papers sent to base my representation upon.

This has resulted in **denial** of natural justice and an opportunity to me to effectively represent my views. This denial itself will be Potent enough to set aside the action to follow as of grave prejudice. In FACT this DIRECTIVE of the CVC is followed in breach than its observance/compliance, which is mandatory on the DA as CVC, is NOW a Statutory body.

Part-II:

The inquiry report F NO.123/NKG/29 dated 5/7/04 as submitted by the Inquiry Officer Shri N.K.Ghosh, CDI is also faulted on the ground that it is a DOCTORED one in as much as the I/O held a REFERENCE LEVEL in it.

REFERENCE- CVC'S OM (actually it should be ID) No 003/P&T/142 dated 5.6.2003. This is a blatant denial of a FAIR Enquiry as the contents of OM where only REFERRED TO and the mind of the I/O was obsessed and clouded by the advice given by the CVC (1st stage advice). This OM apparently could not have been furnished to the I/O by the CVC. BUT in forwarding the papers to the I/O on his appointment on 5/12/2003 under Sub Rule-6 of Rule-14 of the CCS(CCA) Rules 1965 MUST have forwarded the CVC advice (OM) to I/O in blatant disregard to Rules by the Disc-Authority himself to Prejudice the MIND and cloud I/O's judgment in the case. The I/O here starts with BIASED mind even before he starts the oral hearing and quoting the same as REFERENCE. The OM itself is the basis of the inquiry. This BIAS and PREJUDICE strikes at the very ROOT of FAIR Inquiry and natural justice.

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In referring to the OM, the Inquiry Officer was WELL AWARE that the Bench

OM was not a part of the case of DA and I/O was BARRED from considering Extraneous papers/documents to get referring to Judgement got clouded by the OM of the CVC, which was I/O's Pay Master and higher officer of the CDI as he was designated. I/O was a part of CVC itself and he got himself bound by (referring to) OM of his higher ups. To that extent, the I/O was very Honest and he did NOT hide as he was referring to the (OM of CVC). The DA blundered in providing the I/O with extraneous matter/documents for I/O's consideration albeit un-authorizedly and the I/O fell an easy pray to the Tactic's of the DA which denied a fair Enquiry. Having got the OM (as supplied to him) he himself should have been honest enough not to take up the assigned job of I/O as offered to him by the DA on the ground that DA has tried to influence his mind/judgement by supplying him extraneous matter not connected with the charge. AND that too of the CVC advice where he was working as subordinate to CVC.

The action of the DA and I/O become suspect to ensure that the report of the I/O conforms to the advice of the CVC only as given at initial stage.

The CVC also GROSSELY IGNORED the point of extraneous consideration jeopardizing the case while considering the Inquiry Report. The CVC could NOT oblivious to this FACT. Here the gets completed of the TRIO-I/O-DA/-CVC to acts in Tandem only and definitely acted in League.

This is second point that is also more potent to set aside the whole process of Oral Hearings in this as wholly and whole heartily Prejudicial and against the very basis of a FAIR deal/inquiry and natural justice.

Part-II-A:

As regards CVC's Second Stage advice, I am sorry to state that even the CVC has not appreciated evidence properly when they say, that: I have gone beyond the Rules/Guidance/Procedure. I have done nothing of the SORT.

Observance of the Financial Rules was the primarily responsibility of CAO/IFA which he felt as per the V.O. and I.O also who has found that "all concerned did NOT follow the existing guidelines". There is good distinction between purchase and approval for purchase. I have only approved purchase to the extent below my Financial Power of Rs.2 lacks. Other Financial aspects are to be approved by the CAO/IFA only. I only followed the "procedure" as prevailed THEN having precedence set by the CAO/IFA Punde(SW-1) in case originally settled by CAO/GM. Podegaonkar, DGM also approved purchase only with the financial aspects set by CAO/GM. I only followed the procedure. Other aspects to see was NOT sphere to intrude into.

The material approved was USED during the Monsoon season since purchased on 5/8/97 and 28/7/97 only. The findings that they were purchased after Monsoon is the freak of I/O's biased mind and are NOT supported by any evidence. The observation of CVC in this regard is not based on evidence, which they (CVC) have not checked.

The onus of inviting Tenders was not on me. Nobody said that I should call for Tenders. If this was the case why was Padegaonkar, DGM spared. He too did not set the Tendering process. The CVC can not have two different standards.

Un-reasonability of ratios is yet another finding which the CVC should have refrained from connecting when 30 CAO's/SSA's purchased at Rs.1.33 lack. I advice purchase at Rs.84,000/- with the same utility saving Rs.49,000/- which was not a small achievement. The observation of CVC in advising is without based on facts hence the D.A should have rejected. If not, now at least the UPSC on a reference may concede my points on reference to them.

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Part-III:-

The findings of I/O are perverse and do not confirm to the Law of Land.

There is noting in law to hold that the charge is PARTLY PROVED. Case law on this point is clearly laid down in the judgement pronounced by the CAT bench of Jodhpur in case of Ramdas Singh Vs Union of India and others as back as (1990) 13 ATC 136 Jodhpur that:-

"There can not be any distinction between the charge as having not been proved and having not been conclusively proved. The charge has to be HELD EITHER PROVED OR NOT PROVED. There is NO middle course"(Copy of the circular is enclosed herewith for ready reference).

Under these circumstances, the charge as PARTLY Proved Loses its MEANING and NO finding at ALL. This judgement was passed in 1990 but neither the DA nor the CVC has taken this into account at any stage so far. Though slow to act or react the CVC has taken cognizance of the Supreme Court Judgement in case of SBI Vs DC Agrawal and other, Date of Judgement 13/10/92 regarding non supply of CVC's instruction after about 8 years (CVC letter no.99 VGL/66 dt.28.9.2000) the CVC may take yet another 8 years to recognize the judgement of Jodhpur CAT to accept that the Charge is required to be just proved or not proved with no via media taken as Partly Proved. But the cases onward wait that long. Such judgement in REM have to be recognized for General application/applications in all similar cases and specially so when the law of the land does NOT recognize any such finding as PARTLY PROVED.

Para-III- A:-

The Prejudice of the I/O manifests itself in his analysis of evidence, when he concludes at page-17 of his report, that:

"All concerned did NOT follow the existing guidelines/Rules including the CO".

This he concluded without clarifying who those "All concerned" were. This perhaps includes the CAO also as the head of the office for Financial Rules and also primarily

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disbursing officer of Engg.Divn. ALL REALISATION OF REVENUE OR Disbursement of Expenditure made by Subordinate office/units ARE MADE ON HIS BEHALF. (As per Rule-15 and 11 of the FHB Vol-III Engg- 3rd Edition respectively). This the I/O accepted in evidence at page-5 last para of his report. If the Rules accept and mandate that "All expenditure is made on His Behalf (i.e. of AO/CAO)". Then what is the case against ME, and Question of any involvement of Engg. Officers coming IN? These basics are ignored by the VO, the DA/PO/CVC and everybody that matters V.O. also blames the CAO in this case. It is all irony that the Investigating Non vigilant vigilance officer involved the succeeding CAO Shri Gosavi (since retired and escaped the drudgery of going through the trauma of facing charge sheet). Involvement of Shri Gosavi is also reflected in the "Reference" part of the IO's report. But (in CVC ID) under similar circumstances why was PUNDE(SW-1), the CAO/IFA who actually initiated the work by not even suggesting any tendering process for Rs.1.33 lacs + 4% ST did not act to get the tendering processes initiated, but APPROVED the expenditure "On His behalf" (Rule-11 of the Manual FHB-Voll-III). Was Shri Punde less culpable and allowed promotions from CAO to DGM (Finance) than Shri Gosavi His successor who was named in the Vigilance and CVC Report (ID)? With this impeachment of the I/O of "All concerned" the DA/CVC should review their actions to bring Shri Punde, CAO(SW-1) also in line with others who were charge sheeted because of WRONGS and acts of Omission/Commission of the Head of the OFFICE for Financial Rules. Though I NOW crave for an action. I am equally sure neither the DA nor the CVC will raise their little Finger to act.

Part-IV:-FACTS IN EVIDANCE:-

(1) At the concerned time, I was the Only DGM in the Nashik Telecom District, the other two having relieved either on promotion or transfer. I was DGM (Rural/Urban/Planning/Mtce. & Inst.) ALL IN ONE. I was actually holding two additional full time charges of other DGMs with all their financially/Administrative* powers, (combined together or even severely). With Monsoon sets in, faults

increasing in a telephone system having over one lack telephones with a vast cable network. Maintenance of telephone system to keep telephones working was my primarily duty that time requiring my full attention.

This load of work did not weigh with anybody for any consideration.

(2) CAO was the head of the office (Nashik SSA) for purposes of Financial Rules as codified in FHB Vol-III Rule-15 and all expenditures were done on his behalf (Rule-11 thereof). The DA/PO/IO and the Investigating VO all ignored this Basic fact.

(3) Schedule of Financial Powers IGNORED:

The DGM did HAVE all Financial powers to APPROVE expenditure on behalf of the Head of Office(Power delegating Authority) who also was the head of office (finance) while the GM and the Engg. Officers were the Executive Officers. If NOT the CAO should have objected to the DGM's incurring any expenditure on "His Behalf" and report the matter to the Circle Office of any irregular expenditure done by the DGM. In absence of anything to the contrary, the CAO approved all expenditure on "His Behalf". This has a particular reference to Rule-20 and 23 of the FHB Vol-III.

The investigating officer was IGNORANT of these Rules. While he named Shri Gosavi, the succeeding CAO to Shri Punde (SW-1), he allowed Shri Punde to go free despite his setting a precedence in allowing expenditure on "His Behalf" for purchase of instruments to the extent of Rs.1.33 lack + 4% S.T. This perhaps became precedence for succeeding CAO Shri Gosavi to follow.

- (4) Shri. Punde (SW-1) CAO allowed Padegaonkar, the then DGM Nasik to OPERATE on the Tender of Ahmedabad Telephone District which formed the further BASIS of purchases on behalf of the CAO Shri Gosavi, CAO to follow.
- (5) Based on such conceptions (common to all) some 30 CAO's allowed purchases to the tune of Rs.1.33 lacks (at least) through out India (enclosed details at Annexure-I).
- (6) Even in Maharashtra Telecom Circle, Latur, Aurangabad, Kolhapur, Ahmednagar, Nanded, Jalgaon and subsequently Nasik also(with Punde as CAO) also purchased

similar instruments as the Head of the office for Financial Rules without any noting or say to call for Tenders or initiate Tendering process (Notes in Exh-S-1 page-6). Did the CAO(Punde) had any Authority to call off Tendering Process or give a Go Bye. No Rule is shown that he had any such Authority but only to follow the Rules more in letter and spirit thereof.

(7) Neither Shri Punde nor Shri Gosavi, the succeeding CAO PRESSED for calling for Tenders, or tried to initiate the Tendering process suo-moto as the Head of the office for Financial Rules and particularly so when the expenditure was being incurred On His Behalf.

(8) Purchase made on Behalf of the CAO and expenditure incurred after Approval by CAO by the AGM (Plg) or DE(CC) were NOT Objected to nor reported to Circle Office.

Even under similar circumstances expenditure incurred by the Ahmednagar, Latur, Nanded, Jalgaon, Kolhapur SSA's were NOT objected to by the Head of Circle/or his IFA even when the audit objected in Draft Audit Para were BROUGHT to their Notice by Audit Officer(detail in D-1).

Only Nashik SSA and its Officers were targeted and deputed by Circle Head SW-2/SW-3 for investigation with perhaps a special order to IGNORE other SSA's action and NOT even look into them but target only Nashik SSA.

(9) Purchases approved by me were within the Financial Limits of Rs.2 lacks when the Purchase Order was placed by the AGM (Plg) and expenditure WAS Approved/sanctioned and paid by the CAO/his A.O duly providing requisite FUNDS.

(10) Purchases approved by me were for Testers + Route Indicators where a saving was made to the extent of Rs. 49,000/- against the price paid by OTHER SSA'S for Rs.1.33 lack almost uniformly.

(11) There is NO EVIDENCE to show that any party approached me for purchase of their products at any time before or after the purchases were approved.

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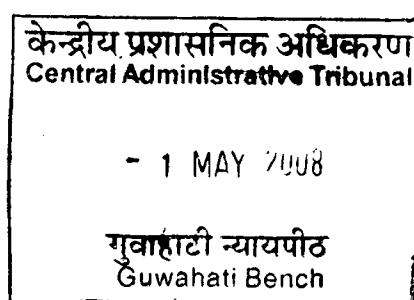
(12) It is a matter of RECORD and Evidence that the demands by the two DE's DW-1 and DW-2 were DIRECTLY placed with the GM on one case and with AGM (Plg) in the second case as directed by the GM in the Management Meeting of 10/7/97 where it is said that (Page 14 of Inquiry Report last para) Exh D-1 quoted by I/O) as "Case of purchase of Aplab Cable Route Locator and MRPC Low Insulation Tester SHOULD be processed." The word verb SHOULD as used is very important and was an ORDER. The CAO Gosavi also attended this Management Meeting.

If there was NO urgency, why should the GM desire and use SHOULD as minuted in D-11 {Annexure-A, 4(m)}. Urgency was there on 10.7.97 when Monsoon break and it pours in Nashik Area by July First Week every year. It does not require any weather Pandit to confirm. Much has been made of Urgency. Urgency did Exist. The P.O. has put no evidence to show the instruments supplied by M/s. Hi-Tech were lying IDLE and were NOT used. In fact, it is confirmed by the DGM (Plg) Nashik in D-11 (Annexure-B, para-2) which is stated as "The Instrument have been put to use and not lying unutilized since there purchase". Who was the Authority to decide Urgency, Not the V.O. It is not mandatory or codified anywhere the urgency SHOULD be shown in the proposal for purchase. Urgency there of was decided by the G.M. Head of the SSA as discussed and Approved in the MEETING itself where also directed to place demand with GM or AGM (PLg) directly.

(13) The I/O erroneously quotes purchase/supply date as Oct/November when they were actually supplied and received on 11/8/97 and 26/8/97 (page 14 last para of I/O report). The details of supply enclosed again with this at Annexure-II. This is also confirmed in the Form 'D' available at page 39 (S-2) and page 20 (S-3) respectively.

(14) The I/O-DA-CVC are all under a misapprehension about the terminology's of approval and purchase.

Any proposal to mature for purchase requires 3 approval as per Rule 147 of the P&T Manual Vol-X :



(i) Technical (ii) Financial (iii) Administrative:

I gave Technical approval for the purchase within my powers of Financial Limits of Rs.2 lacks then as existed. Despite of the blabber of PO & V.O. that DGM had no financial powers, the CAO himself admitted all expenditures done by me on his behalf and settled accounts. There by he was not risking his career as a CAO, he did not report anything adverse to the Circle IFA thereby ONLY confirming that the DGM was empowers within the limits as KNOWN to him while he was a CAO in Nashik SSA. HAD I NO powers he would not and did dare to stop purchases approved on his behalf, as he was the Head of Office (NASHIK SSA) for implementing Financial Rules. The CAO Punde's background was solid. An Engineer by qualification entered All India Services while the succeeding CAO was a matured ranker having completed number of years of services in the Accounts Department to come to the level of CAO. Both had full knowledge as to what they were doing and what they did, but the background for the I/O and VO was poor as far as accounts are concerned as both started their careers at JTO levels only, and both were acting under instructions of their Masters. There was NO such compulsion for any of the two CAO's. The I/O-DA-CVC did not take this factor in to consideration when the VO admitted that he did not consider the schedule of Financial Powers even at the investigation stage.

(15) I submitted 15 Defence documents. In his I/Report the I/O has considered only four D-1, D-2, D-9 & D-10. Other documents he did NOT consider. His bias clearly shows his mind set.

The P.O used the Defence documents in his brief which the I/O had mentioned in his Report at page 3 & 17.

As per the caption of Annexure-III and IV of the Memo of charges, the P.O was required to base his case only on the State documents and his 3 witnesses he examined. In these documents the scheduled of financial powers of DGM were only conspicuous by absence as the VO (SW-2) did not know its value and its utility also.

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Even while charging of Financial Proprieties, the DA did not put the schedule of Financial Powers in his evidence as the chargesheet is only based on the Vig. Officers Report, **which is also NOT a State document.** This document was a part of Prosecution documents in case of Mr. B.Prasad (the then GM Nashik) case conducted by the same I/O. Hence in dealing with this case in his report, he concludes at page 17 in his report that, "All concerned did Not follow the existing guide lines/Rules including the CO"

I discussed each of the 15 documents in my Defence brief between pages 33 to 39.

The I/O ignored 11 Defence documents and has not even referred to in his report. These documents were earlier considered as RELEVANT to the Defence when they were summoned from their respective Custodians.

Suddenly during the assessment of EVIDENCE he ignored 11 Defence documents ignoring almost 73% why? The DA/CVC have no comments for ignoring out right 73% of Defence documents. This reduces the inquiry and its report a mere show of Enquiry that too to find the charge only PARTLY PROVED. Why were 73% of Defence document were ignored. The DA may have to clarify and reconsider its decision.

In addition I appended to my brief two sheets evaluating evidence how the Six SSA's of Maharashtra Circle ignored the PROCESS/Rules before I approved these procurements, as also how some 30 SSA's all over India also followed Suit.

All these evidences were only ignored by I/O-DA and CVC. This makes a Mockery of the Enquiry where One did NOT see, the second did not hear and third did not speak.

(16) The assessment of the evidence Does NOT SHOW that I did effect a saving of Rs. 49,000/- over all the 30 SSA's purchasing the instrument while one unit purchased the same item at Rs.1.75 lacks against the market rate of Rs.1.33 lacks from M/s.

Kendriya Bhandar, Hyderabad (D-15)

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(17) The purchases were approved by me on two Engg.27. All proposals in Eng-27 are required to be approved by the A.O / CAO and on their approval Funds are required to be allotted for payments of the bills (para-264, 265 & 266 of P&T Manual Vol-X)

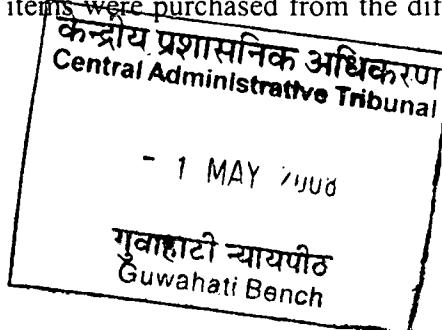
At the time of approving Eng-27 and allotting funds thereof the CAO, the Head of the office did not raise any objections during procurement but approved the same.

(18) As noted in the Inquiry Report page-12 last para the CAO only made a suggestion and it was NOT an objection. That suggestion was adequately replied. He was satisfied, and accorded Financial Sanction as the Head of the SSA for Finance. Had he disagreed with my Note on dated 22/8/97 in S-3, page-14 he COULD have also suggest the Executive Head of the unit to call for a regular Tendering process as it was the SSA Head who was authorized to call for the Tenders on behalf of the President of India. He did not press it and allowed which is a PROOF enough to say that every thing was Right & OK in the Nashik SSA.

It is a matter on record the suggestor, himself was silence on the suggestion and he did NOT PRESS for it. It was upto him to COMPLAIN and not the DA/VO/ to evoke up the long dead issues after a lapse of five years only because the Audit Para was raised which Nashik could not effectively replied while the same Audit Para of the other SSA's like Kolhapur, Ahmednagar, Nanded, Jalgaon, Latur were CONDONED. The Head of the Circle specially asked the VO to ONLY look into Nashik case ignoring what happened in other SSA's though everybody was well Aware.

GM Nashik helplessly pleaded and explained later also that (D-2):-

- (i) More over no favoritism was shown to any particular agency.
- (ii) These items are absolutely essential in the rectification of faults thereby reducing the revenue loss and avoiding public complaints. The actual requirement was from each Divisional Engineer to reduce the Cable Fault and the same was discussed in the monthly Management Meeting (10/7/97) and accordingly only one or two items were purchased from the different vendors



to evaluate the utmost usefulness in the field. The Tender formalities were postponed for the above reason only.

NOW finally as regards the points of the determination in the present case as set out of the I/O at page-13 para-V, it is represented as:

(a) Whether the purchases were as per the requirements and within the financial power of Dy. General Manager, namely the CO.

The I/O has still a confusion in his mind between "Purchases: and approval". They are two separate issues.

I only Approved the purchase/procurement on Technical Feasibility basis only.

Decision to procure or purchase was taken in the Management Meeting of 10/7/97 which the I/O has agreed that it was minuted that "Case of purchase of Aplab Cable Route Locator and MRPC: Low Insulation Tester SHOULD be processed".

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This was definitely an ORDER when qualified by the verb SHOULD. This also sets at rest any doubts about the Urgency of Requirements. The urgency was discussed in the Management Meeting during the Monsoon only on 10/7/97 when Monsoon usually break in Nashik region by end of June every year. The VO (SW-2) was NO authority to decide the Urgency. GM was the proper authority. The power for calling the Tender was with the GM, Head of SSA on behalf of President of India. This was subsequently confirmed by him in (D-2) where the GM Nashik has clearly mentioned that these items are absolutely essential in the rectification of faults thereby reducing the revenue loss and avoiding Public Complaints. The question of urgency was well settled in the Management Meeting of 10/7/97. It was due to urgency that the GM decided to process and directed that it SHOULD be processed. The Tender formalities were postponed by the GM Nashik for the above reason only.

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I only approved the purchase of two items only out of 8 listed in Annexure-II. On my approval, the question of calling limited Tenders or open Tenders etc. did not pressurized by the CAO/IFA and approved purchase without Tendering Process. In view of the decision taken to postpone the Tender by the GM Nashik in the Management Meeting on 10/7/97 the VO should not link purchases made by other than me to prove anything against me. Both VO and I/O erred in co-relating case of other purchases approved by me or purchased. I also did not have powers to call for any Tenders. The powers for calling the Tender VESTED with the GM (Head of SSA) only on behalf of President of India and the decision of GM subsequently confirmed by him in **D-2**. The decision to process was emphasized by the verb SHOULD.

Nobody in Nashik SSA had any doubts about the urgency including the CAO who attended the Management Meeting. The delay of processing was also cut down when it was told by the GM as Head of the SSA that the requirements to be forwarded to the GM or AGM (Plg) (DIRECT NOT through DGM's).

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The doubting THOMAS's cropped up much later when all the papers had already been considered off the records. The urgency of required Instruments by field units were projected in the Management Meeting on 10/7/97 for its utility and usefulness. The requirement were placed by the field is directly to GM or AGM (Plg) as per GM's directive. It was on this requirement, the proposal was considered upon obtaining the approval/sanction of the CAO/IFA on whose behalf the expenditure was incurred. It was the CAO who was controlling the FUNDS and made them available for the Purchase Orders which were placed by the AGM (Plg), O/o.GMT Nashik on behalf of G.M. The AGM (Plg) process the purchase order under GM's order in the minutes of the meeting. Item

4(m) in Annexure-A (Minutes of the Meeting) in D-9 mentioned only to DGM (Plg)/AGM (Plg) for "ACTION BY". The approval/order of GM Nashik was already recorded in the Minutes. No separate orders were necessary by again putting file to G.M. No specific instruction by me to the AGM (Plg) were necessary as the AGM (Plg) was well aware of the order of G.M's Administrative Approval in the Management Meeting on 10/7/07 which is confirmed in the D-11 (Annexure-A, (Minutes of Meeting), item(m), page -2). Later on subsequently confirmed in D-2. This clearly shows that PURCHASES were NOT made by me.

I only Technically approved the proposal which had a sanction/approval of GM as minuted and taken note of the I/O hence the I.O's argument that I should put up the file to G.M. for approval is wrong.

(b) Items purchased were definitely NOT Proprietary. The procedure followed was SIMPLE and Routinely followed by Nashik SSA earlier by Shri Padegaonkar, the then DGM. When the DGM purchased one instrument for Rs.1.33 lacks + 4% S.T. on the following points or grounds:

- (1) Acting on the Tender approved by Ahmedabad Telecom District (the CAO had No Objection to this) The cost being 1.33 lakhs + 4% S.T. The Tender was approved on 6/3/96 by Ahmedabad Telecom District.
- (2) Padegaonkar has also quoted as a precedence that the following SSA's of Maharashtra Circle had also ventured on the purchases.

(1) Kolhapur	22/10/96	Almost one month after Monsoon
(2) Ahmednagar	22/4/97	Two months before Monsoon
(3) Nanded	17/12/96	Three months after Monsoon
(4) Jalgaon	10/4/97	Two months before Monsoon
(5) Latur	12/6/97	Just before the Monsoon
(6) Padgaonkar's	20/6/97	Just at the onset of Monsoon in

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Purchased before Management Mtg.	the Nashik area.
(7) Purchased in Nashik SSA After Management Meeting held on 10/7/97.	On 5/8/97 and 22/8/97 when Monsoon were in full swing and the requirements was essential

All the above purchases were NOT for any Proprietary items and the procedure followed were the same.

- (a) Collecting requirements
- (b) Processing on basis of quotations supplied by the Manufacturers or their agents and copies of previous purchase orders.
- (c) Field trials of their utility/usefulness. - based on the satisfactory field report of the instruments.
- (d) Technical, Financial, Administrative approval by the respective DGM/CAO/GM's

All this on basis on Tenders approved by Ahmedabad Telecom District. No separate Tenders were called by anybody in all these cases (despite instruction in S-5).

Precedence & Procedure only.

URGENCY was definitely there:

- (1) Earlier purchased by Nashik SSA on 20/6/97 just when the Monsoons were about to Break.

The rules of finance and the so called financial proprietors of FSR's was given a GO BYE by the CAO, Punde (SW-1) himself when without even mentioning of Tendering process, HE approved purchase of ONE instrument for Rs.1.33 lacks + 4% S.T. He was the authority and Head of office for financial rules, controlling and allotting funds for purchases approved by HIM. Nobody should be BLAMED for the acts of Omission/Commission of such Head of the office who admitted that the

deal had his approval. The question HE should answer was whether he had Authority to Bypass any Financial Rules.

Already justified in D-2 which the I/O did not go though seen. HE Ignored the other 11 Defence documents which went unseen/uncovered and Did NOT apply His mind for the 11 documents submitted by Defence. The question of calling Tender was Not raised by PUNDE (SW-1) at any time when he was CAO/IFA. The succeeding CAO/IFA Gosavi suggested but did not press on going the precedence set by Punde(SW-1).

(2) Discussed in Management Meeting of 10/7/97 when Monsoon already set in. Urgency was discussed in the Meeting. The CAO/IFA was also present in the Meeting. The Trial of the instruments purchased by Nashik SSA was quite satisfactory as reported by the DE (CC) and it was minuted that:

- (i) cases of purchase SHOULD be processed
- (ii) requirement to be placed by the Divisional Engineer direct to GM/AGM (Plg).
- (iii) Requirements were placed for the instruments by the DW-1 & DW-2 directly to GM and to AGM (Plg) respectively recorded in S-2 page-22 and S-3 page-13.
- (iv) Processed Financial approval sought- order placed by AGM (Plg) and the Item supplied and received on 11/8/97 for DE Nashik Road and 26/8/97 for DE(Cable & Mtce.) Nashik during the rainy season when the Monsoon was in full swing and NOT in October/November as erroneously stated at page-14 & 15 by the I/O in his report. This has also NOT confirmed by SW-2 in his deposition. Here the I/O is under a wrong impression that it was I who processed the case for Malgaon, Ambad, Dhule, Panchwati or Manmad. This was done by

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G.M. himself though I was completely unaware about those cases, it seems to be hangover of the I/O from Prasad's case (the then G.M. Nashik) dealt earlier (file S-1). A comparative table is enclosed at Annexure-II to give the details of my approval for purchase stands only at Sl.No.2 & 3 of the Statement for Nashik, Nashik Road and Deolali only. The Items were supplied and received on 11/8/97 and 26/8/97 as detailed therein. There were in all 8 purchases, out of which 1st was by DE(CC) approved by Punde (SW-1), Padegaonkar/ G.M. Item 2 & 3 were approved by me while others at Sl.No.4,5,6,7 & 8 were approved by G.M. himself. I did not approve any of these Items. The I/O some where and some how got a wrong impression not based on facts in evidence. The reason given by me is that Purchase was made in the urgency for rainy season was absolutely correct. The I/O is wrong in this respect.

(v) No Evidence by the P.O. to say that the instruments purchased were lying idle or not utilized. The DGM in his report in D-11 (Annexure-B, para-2) confirmed that the Instruments have been put to use and not lying unutilized since their purchase. Finally after Audit Objection after their Draft Para, GM himself explained in D-2 as.

- 1) "More over no favoritism was shown to any particular agency.
- 2) These items are absolutely essential in the rectification of faults there by reducing the revenue loss and avoiding public complaints. The actual requirement was from each Divisional Engineer to reduce the Cable Fault and the same was discussed in the monthly Management Meeting (10/7/97) and accordingly only one or two items were purchased from the different vendors

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to evaluate the utmost usefulness in the field. The Tender formalities were postponed for the above reasons only."

The deposition of SW-2 that purchase were made after the rainy season in Nashik is not correct. The Purchase Order placed on 5/8/97 for the requirement placed by DE(Nashik Road) on 31/7/97 to GM Nashik and the Item was supplied and received on 11/8/97. Similarly, the Purchase Order placed on 22/8/97 for the requirement placed by DE(Cable & Mtce.) Nashik on 7/8/97 to AGM (Plg), O/o.GMT Nashik and the Item were supplied and received on 26/8/97. From this it clearly shows that the Item have been supplied and received in the rainy season only. The V.O. should not link purchases made by other than me to prove any thing against me. Both V.O. and I.O. erred in correlating case of other purchases approved by me or purchased.

(c)The urgency of demand of the Instruments was definitely there since a large number of subscriber's lines were out of order due to cable faults those taken place since the monsoon started. Prior to utilization of this sophisticated Instrument, the cable faults were restored on trial and error basis, which used to take much time. After the utilization of sophisticated Instruments, the pending faults, which were lying since Monsoon, had been restored quickly in less than 1/10th of the time taken by the earlier method. The subscriber's lines have been restored quickly. Thus not only the subscriber's pending complaints have been reduced quickly but also the department have saved lot of man power, time, material and most important is revenue loss which could have taken place due to subscriber's lines became out of order due to faults. The Amount saved due to quick restoration of the subscriber's lines by the use of this sophisticated Instruments was much more than the cost of the Instruments. The factor of No Urgency can not be decided in the year 2004 when the Instruments were purchased under discretion of the General Manager Nashik, Head of SSA who was very much impressed by the performance report given to him by DE(CC) Nashik on his use to the new Instruments. DW-1 & DW-2 have deposed that there

was urgency due to widening of the road and drainage work carried by the Municipal Corporation in the important city area and consequently the damage of the cable had occurred which were come under cable fault on the onset of Monsoon in July/August'1997. This fact has also mentioned by the I/O in his report. The cases were approved technical suitability for the purchase by me.

The I.O. due to his pre-conceived idea's in the B.Prasad's case turned a blind eye to blame me for not calling for Tender which is to be done by the SSA Head, G.M. Nashik on behalf of President of India.

If G.M. has dispensed, he was responsible to answer perhaps he did in his case against him. Both the Head of Offices for Finance and Administration did not pressed for Tendering process and kept away with it. The I.O. has picked up a wrong notion that the procurement approved by me was not based on urgency. Of course urgency was there, as discussed in the Management Meeting on 10/7/97 and primarily it was on the "ORDER" of the G.M., Head of the SSA to process the purchase demands for which the requirement were directly placed with him and his Assistant AGM (PLg), O/o.GM Nashik. I approved Technical worth of the outlets to purchase.

To observe the financial Rule para-28 to Annexure and chapter-8 of GFR and Ex-S-5 where the primarily responsibility of the Head of the office for Financial Rules. This duty was not delegated to me. The CAO was well aware that open Tender system should be resorted to the tune of Rs.50,000/- and above. It was Shri PUNDE (SW-1) who himself approved the purchase of Rs.1.33 lacks + 4% S.T. Now if it was a contention of the P.O that Tender should have been called for, he was barking a wrong tree on me. His own witness is at fault Shri Punde (SW-1) did not even remotely suggest to call for Tender when he approved the purchase approved by Shri Padegaonkar for DE (CC) Nashik. On the note of DE (Extl) E 10B, Nashik who was also working as DE (CC) Nashik, the CAO approved

With a note that "GM may kindly see above note, one Cable Route Locator of Aplab make costing Rs.1.33,000 + 4% S.T. may be purchased from M/s. Aplab Electronics Pune (in S-1, page-5)". Here he did not even suggest calling for Tender nor did he submit the proposal for approval. Straightway as the head for Financial Rules, he noted, "May be purchased" and submitted the proposal for purchase which was approved

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by the GM. Punde had cleared the proposal thereby giving GO BYE to all the Financial Rules known to him alongwith his knowledge that any proposal of worth of Rs.50,000/- and above requires a Tendering process to follow. If Head of office concurs, the subordinate has NO say in the matter. That is why Padegaonkar, DGM also did not suggest any Tendering process with his limited knowledge of GFR or contract procedure.

The Presenting Officer could not impeach his own witness on the points of calling for Tender as per rules quoted from GFR or S-5. Perhaps due to his ignorance of the Rules. Of course the V.O did not apply any rules on the subject, where the V.O. castigates one CAO but lets off the other who set Precedence and ball rolling is the way investigated by V.O. OR was having specific instruction only to target NASIK SSA.

The I.O erred in his observation that specific requirements were not assessed. It is a matter on record that the GM directed that the specific requirement were given to him or AGM (Plg) directly (mentioned as to page 21 & 22 in S-2 and page-13 in S-3). No proof was presented by the Presenting Officer to show that the specific requirement was not assessed before resorting to local purchase. It is a matter on record that they were ascertained as per the following documents.

- (i) DE Nasik Road letter no. S-2/Genl/192 dated 31/7/97 addressed to GM Nasik indicated the requirement of Nasik Road Division placed alongwith demonstration report in S-2 on page no.22 and page no.21.
- (ii) Similarly the letter no.NCT/N-6/97-98/17 dated 7/8/97 from DE(Cable & Mtce.) Nasik addressed to AGM(Plg), O/o.GMT Nasik after satisfactory demonstration test in S-3 on page no.13 indicated the requirement of Nasik city area.

There were different models too of M/s.Aplab @ Rs.1.33 lacks; M/s.Aishwarya Telecom @ Rs.1.1 lacks and @ Rs.1.72 lacks; M/s Hi-Tech for Rs.84,000/-; Kendriya Bhandar for Rs.1.95 lacks and M/s.MRPC Hyderabad for Rs.3.95 lacks as details in Annexure-III. Technically all were the same meant for Cable Route Tracing, but one of M/s Aishwarya Telecom was having one Cable Test set at a price of Rs.1.72 lacks and of M/s.MRPC Hyderabad had Audio Visual Cable Set with EC/RT and compulsory

accessories having price of Rs.3.95 lacks. I being a Technical Officer choose to suggest M/s. Hi-Tech for their lowest price of Rs.84,000/- after having the satisfactory field performance report thereby saving at least Rs.49,000/- per piece in comparison to the price of M/s. Aplab Tester of Rs.1.33 lacks. Though Tender process were not initiated but the competitive rates were available by June'1997 for Aplab and M/s Hi-Tech. Out of which the price of M/s Hi-Tech was the lowest. Other firms came up in 1998 and 1999 and 2001 etc. A tabulated sheet at Annexure-III is enclosed herewith and was appended to my defence brief also. The I.O's mindset was closed as he did neither see the comparative rates nor noted the column of price/dates as noted therein. The Management Meeting for Monsoon precaution held on 10/7/97 and DE (CC) gave details of usefulness of instruments purchased by the DE(CC) Nasik to locate the Cable Routes and Cable Faults. The other DE's present in the meeting also desired to have such useful sophisticated instruments for their Division. The GM Nasik has directed the DE's to send their minimum requirement directly to him or AGM(Plg). It is a thought of the I.O. that such cases should have been requested before the Management Meeting on 10/7/97. In this respect, it is again clarified that all the attendees available in the Meeting did not know about such sophisticated instruments which was purchased by DE(CC) few days before. This was only known to the GM and CAO who approved the expenditure without calling Tender as head of the Financial Rules. After knowing the usefulness of the sophisticated instruments as highlighted by the DE(CC) in the meeting, the other DE's had demanded one set of each to their sub-division. In the month of July another Manufacturer M/s. Hi-Tech has come up with the same type of the Instruments and same utility and presented the satisfactory demonstration of Instruments in Nashik Road, Devolali and Nasik City. After satisfactory demonstration, the DE(Nashik Road) and DE (Cable & Mtce.) Nasik City had placed their demands for their sub-division to the GM Nasik and AGM (Plg), O/o.GMT Nashik respectively in order to restore the cable faults which had occurred due to onset of heavy monsoon and interrupted the telecom services to the subscribers. The urgency of demand of the Instruments was definitely there since a large number of subscriber's lines were out of order due to cable faults taken place since the monsoon started. DW-1 & DW-2 have deposed that there was urgency due to widening of the road and drainage work carried by the Municipal Corporation in the

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important city area the damage of the cable had occurred which were come under cable fault on the onset of Monsoon in July/August' 1997. This fact has also mentioned by the I/O in his report. The cases were approved technical suitability for the purchase by me. Upto July 1997 the following firms were in the market providing such instruments as per enclosure to my defence brief I have already indicated as follows:

1. M/s. Aplab Seba Electronics Limited	-	June'1997
2. M/s. Hi-Tech Telecom Hyderabad	-	July 1997
3. All other out of these come up	-	after August 1997

(details of these were already enclosed in my Defence brief at Annexure-I)

Therefore, looking to this table and if the I/O has really seen this table at Annexure-I & III he would not has ventured to pen what he has said in the page-16 of I/Report that possibility of further reduction in the rate if some other firm would have been selected. At that time there was only four firms known to the deal such Instruments.

The comparative rates are as follows:-

i) M/s Aplab	-	Rs.1.33 lacks
ii) M/s. Aishwarya Telecom	-	Rs.1.1 lacks & Rs.1.72 lacks for comprehensive Test set
iii) M/s.MRPC, Hyderabad	-	Rs.3.95 lacks of Audio/Visual Cable Test Set with EC/RT
iv) M/s. Hi-Tech Telecom Hyderabad	-	Rs.84,000/- for the same purpose and utility.

No other firms had come up.

With the data available quotation could not have come below Rs.84,000/- which was the lowest rate of M/s Hi-Tech Hyderabad. It is apparent that by floating any number of Tenders, the rates could not have gone below Rs.84,000/- which I approved for the purchase.

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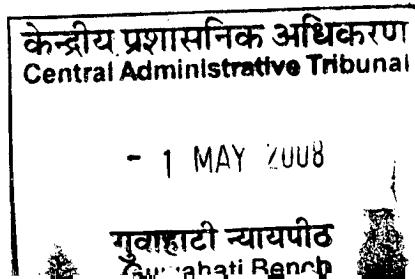
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Secondly, a duty is CAST on the Accounts Officer to maintain a Register of comparative cost for different items of supplier. Since this was a new item in the market and all the five SSA's of Maharashtra Circle viz. (i) Ahmednagar (ii) Latur (iii) Kolhapur (iv) Jalgaon (v) Nanded and later Nashik itself as (vi)th purchases at the standard rate of Rs.1.33 lacks + 4% S.T. based on the accepted and valid Tender of Ahmedabad Telecom District in June'97. The action of Nashik Telecom was perfectly tenable in recommending purchase of M/s. Hi-Tech. Instrument for its lowest price of Rs.84,000/- against the statement of the CAO/IFA that in his view the approval was proper and the purchase was to be made within the contract period and there was provision in the budget for purchase of instrument (as per Rule 60- using sense as a prudent person).

These expenditure for Instruments as per records of the case were debited to maintenance and the I/O has to accept his statement out of contest to examine whether the CAO/IFA Punde (SW-I) had powers to bye pass the rules to operate on a Tender accepted by the other Divisions or the other units as per S-5 item (i) procurement worth Rs.50,000/- and above are being finalized without regular Tender. (ii) Tender of other SSA/Circles are being operated.

These two Basics, the CAO Shri Punde (SW-1) had not followed, he allowed to operate the Ahmedabad Tender and cost of item to be purchased is approximately 2.5 times the limit of Rs.50,000/. Does the I/O really think that the CAO Shri Punde has any powers to bye pass any points when the V.O. puts forth his arguments for purchase of item without calling for Tender? The P.O. also is silent on the action of CAO Shri Punde (SW-1) but blames me for not calling Tender for items above Rs.50,000/- while condoning the action of other DGM and justifying the same in case of purchase suggested by Padegaonkar the then DGM in S-1, page-6. The CAO has not been delegated any powers to condone or use his discretion specifically when the CAO was the Head of the office of Financial Rules. The whole malady started because the CAO was neither unaware nor ignorant of his status as head of the office for Financial Rules. He was duty bound to implement the Financial Rules and not allowed them to bye pass any of the



Financial Rules. Shri Punde CAO contended that the Ahmedabad Tender was valid upto 5/3/98 (QA-13 of SW-1) in the purchases suggested by him, the same Tender was still valid in July'97 but the V.O. completely ignored that and the succeeding CAO Shri Gosavi could have been right on the same ground of validity of Tender upto 5/3/98. In Account matter, one man's meal can't be others man's poison. Because what is meal and what is poison are clearly defined in the Account course of which A.O. and CAO should be well aware and paid for. This WAS DESPITE instructions contained in S-5 which were to follow as the Rules already codified.

In the purchase recommended in my case one Fault Locator each approved against Engg-27 for which the CAO has passed the Engg-27 and placed the funds at the A.O's disposal for purchase. But the I.O. due to his pre-conceived idea's in the B.Prasad's case turned a blind eye to these details to blame me for not calling for Tender (this is to be done by the SSA Head , GM Nashik) and exceeding the Financial Limits which were not proved by the P.O. but approved by the succeeding CAO to Shri Punde who under similar circumstances allowed, passed and paid a bill for Rs.1,33 lacks + 4% S.T. and yet the I.O. accept the testimony of Shri Punde, CAO/IFA(SW-1) to blame me.

Referring to QA-20 of Punde (SW-1) on the provision of Financial Volume-3 whether Financial Advisor has still the status of the Divisions or SSA for Financial Rules, his reply was "he can't comment on the question". If the CAO does not know his status in SSA, his testimony is worth scrapping for all practical purposes and need not be considered or relied upon. To that extent, the deposition of the status of CAO Shri Punde (SW-1) is wrong and I.O. should have decided whether to accept oral deposition of the CAO (SW-1) or accept the position of CAO cum financial advisor in view of Rule-15 of FHB Vol-III. Rules do not lies, CAO can. The same can be in view by the Disc-Authority in accepting the I.O's report based on misconceived ideas of the CAO's Shri Punde (SW-1) as he also the DA for the CAO (SW-1).

The Disc-Authority has to select and accept the Rule rather than what CAO (SW-1) says. The CAO has definitely erred in view of the Rules which should not be easily pardoned by the DA when he set a wrong precedence and practice for his successor to follow who was recommended for action by the V.O. while not even of mentioning the acts of omission and commission by Punde (SW-1) in whom the I.O.

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believed and made basis his report against me when I had no control over him on any financial matters of Nashik SSA I only technically approved the feasibility of use of newly introduced sophisticated instrument like the one Shri Punde authorized to purchase and blame others were wrong and he was right.

There is a element of charge that the expenditure incurred was far in excess of delegated financial power of Dy.GM/GM. To clarify this, it is stated that being a part of the charge it was the duty and responsibility of the Disc-Authority to prove that element of charge that Dy.GM had no financial power in SSA but both the Disc-Authority and the P.O. on his part failed to prove whether a DGM attached to a SSA had financial power or not.

As a part of defence I had requested the schedule of Financial Power issued by the Maharashtra Telecom Circle, Mumbai vide endorsement no.BGT/AO-2/Rlg/Vol.V/4 dated 2/1/91 for circulation under DE (Admn) Nashik no.Y/G/31/90-91/23 dated 28/1/91. This was to show that no financial power were violated by me. The same was supplied by the custodian but this D-9 documents was shown to witness SW-2 and SW-3 who intern attempted to prove that schedule of financial power does not empowers the DGM. In this two question arises, whether the interpretation of V.O. is right that DGM did not have any financial power in Nashik SSA and (ii) whether the P.O. can used defence document (D-9) to prove his case.

As per the caption Annexure-III and Annexure-IV of the Memo of charges, it was proposed by the Disc-Authority to sustain the Article of Charge by 10 documents listed therein and through 3 witnesses listed at Annexure-IV through whom the charges were proposed to be sustained. With these captions, neither the P.O. nor the Disc-Authority had mandate to use and put in evidence the schedule of financial power as supplied by the custodian; as an additional documents to prove his case. But here again the mandate that P.O. used D-9 as prosecution documents to prove that the DGM had no financial power. If this was really true how was it that Shri Padegaonkar a DGM in Nashik SSA was allowed to use the financial power for sanctioning a Estimate or incurring expenditure by sanctioning purchase to the extent of Rs.1.33 lacks + 4% S.T. and I also was allowed to exercise purchase from time to time to run the areas under me by incurring expenditure to the extent of Rs.2 lacks at the time for sanctioning purchase of petty items, stocked or

non-stocked Item and the CAO / A.O. in their wisdom and knowledge of the rules allowed the purchases and incorporating these expenditures in the books of Nashik SSA. The action of CAO is allowing expenditure was keeping in conformity with some circulars or Authority under which the two DGM's myself and Padegaonkar exercised their Financial Powers. This is further confirms by noting between GM and CAO on NS-2 in S-3 when the GM raised the quarry "CAO may please explain how the bill has been passed/paid when it is exceeding one lack inspite of my instructions to submit it to GM" which the CAO replied, "this is the case prior to the issue of the revised delegation of power", showing that I had powers at least over 1 lack prior to 1/7/97 when the new delegation of powers were revised on formation of GM incharge of Nashik SSA by upgrading the district. In upgrading the District, the powers of DGM were degraded to Rs.1 lack. This against all the oral evidences of V.O's and shows that the DGM had power for authorizing local purchases of Non stocked item over Rs.1 lack, the higher limit it no where on record but the then CAO/IFA had a definite idea that a DGM had definite power upto the extent to pass the bill submitted by the supplier M/s. Hi-Tech supplied to the extent of 1,40,000/- and yet the I.O. perhaps does not agrees and raises the doubt whether the DGM had power or not. Partially accepting the DGM's powers on clarification of the CAO, the IO. had the audacity to say that the power was not utilized in prudent manner. What is prudent manner, the I.O. has not explained but if the CAO's contention is to be accepted, he was of the opinion (and advised the GM accordingly) shows that the amount was utilized in a prudent manner that is why he passed and paid it. As regards the passing the expenditure earlier before placing the orders for purchase by the AGM (Plg), what was not prudent for the I.O. was prudent enough for the CAO to approve or passed and paid amount. Between the I.O. and the CAO, the action of the CAO/IFA was more Authentic and should be acceptable against the side remark by the I.O. that the power was not utilized in a prudent manner which came out in a prejudices manner and mind set by the I.O. because:

- (i) He had earlier dealt the case of Shri B.Prasad, the then GM Nashik when the same portion for investigation came before him where the same set of charge was leveled against him also. As it is clear from the elements of charge that both the

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DGM/GM approved expenditure far in excess of delegated financial power without specifying what the financial power of DGM and GM.

(ii) He has also considered the opinion and advice given by the CVC in their OM No.(it was I.D. not O.M.) 003/P&T/142 dated 5.6.2003 which was advertently or inadvertently furnished by the Disc-Authority along the papers and documents supplied to the I.O. under sub-Rule-6 of Rule-14 of CCS(CCA) conduct Rule-1965. s This prejudice I.O's mind against me particularly so when the O.M. referred to above was not part of the charge or part of the proceedings where the CVC explained the opinion and was extensively considered by the I.O. Therefore the prejudice caused by any documents weighed heavily with the I.O. to further conclude "all concerned did not follow the existing guidelines/Rules including CO". Normally the side line remark are taken cognizance of Disc-Authority but here again the I.O. failed to say who those all concerned were unless he has named in the O.M. listed for initiation of major penalty proceedings and including Shri B.Prasad, the then GM, myself A.K.Dutta, the then DGM, Shri M.G.Kamlapurkar, the then AGM (Plg), and Shri A.K.Pathak, the then SDE (Plg) as well as Shri M.D.Gosavi, the then CAO/IFA but excludes the another name Shri Punde, CAO Preceding to Shri Gosavi, CAO who initially acted against all the rules and norms and set a precedence to Gosavi to follow. Even the CVC were not fair in excluding Punde from disciplinary action in the same way as it suggested action against Gosavi. In short, with the five points of this representation, it should be clear to the DA to conclude that the I.O's report was not report at all within the area of Sub-Rule of Rule-14 of the CCS(CCA) conduct Rule-1965.

Attention of the DA is also invited to the **Local Purchases: General Guidelines** coded at 4.1 in the page no. 124 in the Hand Book on TELECOM CIVIL WORKS & ACCOUNTS (Revised and Enlarged Edition 2000) by C.V.R.Reddy is enclosed at **Annexure-IV** herewith at para (2) it is stated that the purchases are to be approved only by Officers who are vested within financial powers and

the purchase proposal: Duties of IFA/AO as codified at 4.1.2. in page no.124 mentioned in the enclosed Annexure-IV. This is as per the D.G's letter no.15-214/82-TA(IC), dt.17/12/83.

In deciding this case, the DA is requested to consider this representation in Proper prospective and it is necessary that all points raised and summarized in the order and also discuss logically to show how they are not tenable and acceptable to it.

Attention of the Disciplinary Authority is also invited to the ratio laid down by the Hon'ble Supreme Court in case of Satyendra Chander Jain Vs. Punjab National Bank 1998 SCC(L&S)211, Date of judgement 15/2/96 as reported in Swamy's Case law Digest 1997/2 at Sl.131 at page-145 thereof stated as " Disc-Authority should exercise their judicial discretion having regard to the facts of the case and can not act on the dictates of third party like Government or Vigilance Commission".

Again mentioned in Swamy's case Law Digest 1972/2 Sl.No.132, the ratio laid down by the Central Administrative Tribunal (CAT), Guwahati Bench in the case of C.Shullai Vs. Union of India and others in O.A No.213 of 1994, Date of Judgment 8/7/97, it is clearly stated thereof "The Disc-Authority must consider the case on his own definite finding on the basis of charges proved and he can not simply accept the findings of the Enquiry Officer".

When the I.O's comments as a side remarks that all concerned did not follow the existing rules including the CO. No action is warranted against me in particular when I did not handle any of finance or independently approved any expenditures without prior consent of the CAO who was the head of the office of Financial Rules. It was the duty of the CAO to guide the subordinate officers on Financial Rules and matters and if any of the subordinate officer violates any of the Financial Rules, he was again duty bound to bring to the notice of the head of the administrative units.(GM Nashik in this case) for remedial measures or action as deemed fit (Rule 17 & 21 of FHB Vol-III). In case the GM over rule the CAO or in case of serious financial irregularities, a report at once should be sent to the Circle Accountant (Higher Office) even though the irregularities were set right under the orders of the Competent Authority (Rule 23 of FHB Vol-III). The

CAO has done nothing in this case since as per his Financial Rules & and his eyes there was no Financial irregularities much less to serious to report. Under these circumstance even in the eyes of the Financial Rules, I have not committed any irregularities despite whatever the I.O. says as proved and partly proved.

With this, Your Excellency, I close this representation.. At least now to get this examined in proper prospective by the Engg/Accounts Authorities to set if there is still any case against me regarding the whole affairs as charged for. Keeping in view:

- 1) The bias of I/O as referred by him in the opening para of his report where he reference to the CVC advice primary and CVC's OM (actually it was ID) NO.003/P&T/142 dated 5/6/03 which was extraneously considered by him without giving me a chance to defend against.
- 2) Judgement of Jodhpur Bench of CAT to consider if the charge was PROVED or Not proved against partly proved as concluded by I/O. Since the judgement says that there is "No Middle Course" and finally
- 3) Of course on FACT as shown in this representation when 30 CAO's out of which 6 of them from Maharashtra Telecom Circle processed similarly without calling Tenders and approved the purchases as the Heads of the Units for Financial Rules. The different standards are NOW being applied for Nashik SSA only to blatantly discriminate between purchases under the same and similar circumstances within the same powers by the DGM's/GM's who approve purchases.

I hope for clear reason verdict to show as it is necessary that all the points raised by me hearing by me as CO or summarized in the order and or also logically discussed to show how they are NOT TENABLE or acceptable.

Particularly with the following glaring disparities.

(1) In the same district	But I am faulted under similar circumstances
Padegaonkar is not faulted	
(2) CAO Punde is not faulted	But his successor Gosavi is faulted and CVC advised him Govt.displeasure since he retired.

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(3) 30 CAO's not faulted

But Nasik SSA officers are faulted under all circumstances common to all.

(4) Even 6 SSA's (including of Maharashtra Circle itself not is faulted.

But only Nasik SSA targeted for.

(5) Even Audit Inspection Report faulted 3 other SSA's But were PARDONED

Only Nasik SSA was targeted.

The recent circular (D-10) issued by the Director (VM), VIG Monitoring-II Dept. of Telecom, Govt. of India, F.No./17/4/2003-VM-II dt.25/11/2003 regarding Local Purchases can also be kept for kind consideration to see if the case could be dropped at this stage.

And your Excellency, if this is dispensing of justice as penned by DA/CVC and I/O, I would Pray to God to pardon all as they do not know what they are Doing and Save Me.

In view of above circumstances, I request your goodself to be kind enough to Exonerate me from the charges leveled vide Memorandum no.8/248/2003-VIG II dated 29/8/2003.

I remain,

Thanking you,

Yours faithfully,

Date: 27th September, 2004

(A.K.DUTTA)

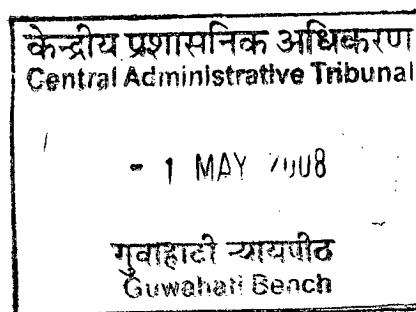
Place: Kalyan

Enclosures:

1. List of All India Purchases for the above Instruments/Testers were already submitted with my Defence brief and enclosed herewith for ready reference as **Annexure-I**.

2. List of equipment purchased during 1997-98 by Nasik Telecom District as **Annexure-II.**
3. Comparative charges as to cost of the Testers/Instruments available during the period is enclosed herewith as **Annexure-III & III-A.**
4. Local Purchases: General Guidelines & Purchase Proposal: Duties of IFA/AO. At page no. 123 & 124 from Hand Book on Telecom Civil Works & Accounts (Revised and Enlarged Edition 2000) – Copy enclosed at **Annexure-IV.**
5. Copy of the (i) Supreme Court Judgment in Swamy's CL Digest 1997/2 at Sl.131 and (ii) CAT Guwahati Bench in Swamy's CL Digest 1997/2 at Sl.132 and (iii) Judgment pronounce by the CAT Bench of Jodhpur in case of Ramdas Singh Vs. Union of India and others.

*Subhash
Dutta
Advocate*



No. 8/248/2003-Vig.II
 Government of India
 Ministry of Communications and Information Technology
 Department of Telecommunications
 (Vigilance-II Section)

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915, Sanchar Bhawan, 20-Ashoka Road,
 गवाहालय न्यायपीठ
 Guwahati Bench
 New Delhi-110001.

ORDER

Dated, the 17/10/2005

WHEREAS major penalty proceedings under Rule 14 of the CCS (CCA) Rules, 1965 were instituted against A.K. Dutta (Staff No. 8188), Area Manager, Kalyan Telecom District, Maharashtra vide Memorandum No. 8/248/2003-Vig.II dated 29.8.2003 on the following article of charge :

"That the said Shri A.K. Dutta, while functioning as Deputy General Manager(Planning), O/o GM, Nasik Telecom District during the period from July, 1997, to February, 1998 in connivance with Shri B. Prasad, GM, Shri N.G. Kamalpurkar, AGM(Planning), Shri M.D. Gosavi, CAO and Shri A.K. Pathak, SDE(Planning) all of Nasik Telecom District, approved the procurement of non-stocked items viz Cable Route Tracers, Pulse Reflecometers, Battery Voltage Monitoring Systems and Digital Earth Resistance Tester from M/s. Hi-Tech Telecom Systems, Hyderabad, for a total of Rs.4,63,032/- on the basis of quotations, without inviting tenders as required, though the equipments were not proprietary items, far in excess of the delegated financial powers of the DGM/GM and without ascertaining the specific requirements of the field units; in violation inter alia of Rule-6, and Para 28 of Annexure to Chapter-8, of General Financial Rules, 1963, Department of Telecom Circular letters No.51-6/91-MMC/Pt dated 12.1.93 and No.305-2/95-MMS dated 8.11.95, letter No.BGT/3-9/97-98 dated 09.12.97 from General Manager(Finance), Maharashtra Telecom Circle, addressed to Shri B. Prasad, General Manager, Nasik Telecom District, and Rule-60 of P&T Financial Handbook Volume-I; thereby depriving the Department of the benefit of competitive rates and showing undue favour to the aforesaid private party.

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

2. WHEREAS Shri A.K. Dutta vide his representation dated 15.10.2003 denied the charges and desired to be heard in person. An inquiry was, therefore, ordered in this case. Shri N.K. Ghosh, CDI, nominated by the CVC, and Shri A.K. Sahu, General Manager (Operations), O/o CGM Telecom, Maharashtra Telecom Circle, Mumbai were appointed as the Inquiring Authority and Presenting Officer, respectively. The Inquiring Authority has submitted its report dated 05.07.2004 holding the charge as partly proved. The CVC, vide ID Note No. 003/P&T/114/2397 dated 2nd August, 2004 advised imposition of a suitable major penalty on Shri A.K. Dutta. With the approval of Competent Disciplinary Authority, a copy of Inquiry Report was furnished to the Charged Officer alongwith a copy of CVC's advice, to enable him to make such representation as he wished to make, Shri A.K. Dutta has submitted his representation dated 27th September 2004, wherein he could not bring out any new facts to rebut the findings of the IO. Therefore, with the approval of the Competent Disciplinary Authority, the case was referred to the UPSC for their statutory advice as to the quantum of punishment that may be imposed on Shri A.K. Dutta, DGM.

[Contd.....]

3. WHEREAS the UPSC have tendered their advice in this matter vide their letter No.F.3/461/04-S.I. dated 08.09.2005 (Copy enclosed). The Commission have, inter-alia observed the following :

- (a) the allegation that procurement of material was approved on the basis of quotation without inviting tenders is conclusively proved against the Charged Officer.
- (b) As regards component of charge that the Charged Officer has gone beyond the delegated financial power of the DGM/GM it is evident that he abused his powers. Though Charged Officer has claimed that as DGM it was within his powers to make purchases upto Rs.2 lakh, prosecution stated that as he was not independent SSA Head or Area Director he had no power. Relying on the details of financial powers reflected in EX.D9, the IO has held that the financial powers rest with CGM, GM, Area Manager, TDM, SDE etc, and not with those DGMs who were not independent SSA head. Charged Officer was functioning as DGM at the relevant time and as per the delegations shown in D9 against S.No.4.1.2 (Non stocked items) and other categories of purchases he was not vested with any financial power. Since, category of officers delegated with financial powers, as shown in D9, does not include or mention the designation of DGM, the Commission are of the view that the IO is right, thereby proving this component of the charge also.
- (c) The allegation that specific requirements were not ascertained is also proved. It is also proved that the Charged Officer's action was in violation of provisions contained in para 28 of Chapter 8 of GFR and instructions/guidelines of DoT dated 8.11.1995 and thereby depriving the Department of the element of competitive rates.

4. AND WHEREAS the Commission are of the view that the ends of justice would be met in this case if the penalty of "reduction to one lower stage in the time scale of pay for a period of one year with the stipulation that he will not earn any increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing his future increments of pay" is imposed on Shri A.K. Dutta, DGM.

5. NOW THEREFORE, after careful consideration of the findings of the Inquiry Officer, submissions made by Shri A.K. Dutta, DGM, the Charged Officer, in his representation dated 27th September 2004, the advice tendered by the UPSC, vide their aforesaid letter dated 08.09.2005 and all relevant facts and circumstances of the case, the President, the competent Disciplinary Authority, accepts the advice of the UPSC and hereby imposes on Shri A.K. Dutta, the penalty of "reduction to one lower stage in the time scale of pay for a period of one year with the stipulation that he will not earn any increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing his future increments of pay" on Shri A.K. Dutta, DGM.

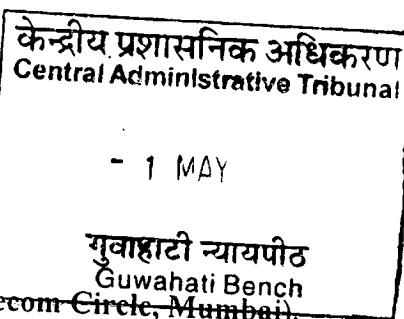
6. The receipt of this Order shall be acknowledged by Shri A.K. Dutta, DGM.

By order and in the name of the President.

Encl : Copy of UPSC's letter No.3/461/04-S.I dated 08.09.05

Shri A.K. Dutta,
(Staff No.8188),
Deputy General Manager,
O/o GM, Tezpur Telecom District,
Assam Telecom Circle,
Guwahati.

(Through the CGM, Maharashtra Telecom Circle, Mumbai).




(A.K. Patro)
Desk Officer (Vig.II)

BHARAT SANCHAR NIGAM LIMITED
(A GOVT. OF INDIA ENTERPRISE)
O/O CHIEF GENERAL MANAGER
ASSAM TELECOM CIRCLE, GUWAHATI-07.

No. Vig/Assam/43 Pt-VI/12

Dated, 27-10-05.

To,

The General Manager Telecom
BSNL Tezpur.

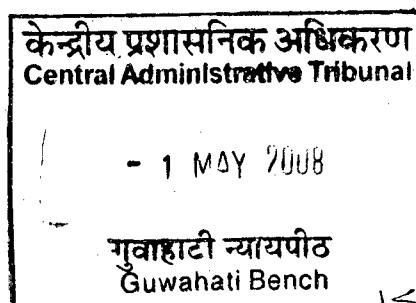
Sub :- Final order in respect of disciplinary proceedings against shri A.K.Dutta, DGM Tezpur.

Ref :- Order No. 8/248/2003-Vig.II dtd. 17-10-05.

As directed, kindly find enclosed herewith order No. cited above alongwith the advice of UPSC in the disciplinary proceedings against Shri A.K.Dutta, the then Area Manager Kalyan Telecom District Maharashtra, now DGM Tezpur wherein penalty has been imposed under Rule-14 against shri A.K.Dutta. As such you are requested kindly to serve the order to shri A.K.Dutta and his dated acknowledgement receipt may be sent to this office for onward transmission to TCHQ New Delhi. The order should be implemented immediately please.

Enclo :- As above.

*Attn: Shri
A.K. Dutta
Advocate*



Sardar B 27/X/2005
Dy. General Manager (Vig.)
O/O Chief General Manager
Assam Telecom Circle, GH-07.

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Bharat Sanchar Nigam Limited
Office of The General Manager Telecom District
Tezpur - 784 001

No. X-1/Disc/Rule-14/06-07/

Dtd at Tezpur, the 31-05-06

**SUB:- DISCIPLINARY PROCEEDING AGAINST SHRI A.K.Dutta
 D.G.M. Tezpur.**

As per the Telecom Commission, New Delhi vide order No.8/248/2003-Vig.II dated 17-10-2005 Penalty has been imposed for reduction by one stage in the time scale of pay for a period of one year with effect from 01-04-2006 on Shri A.K.Dutta, D.G.M. Tezpur (Date of Birth 27-10-1939) which is conveyed by DGM(Vig) O/O CGMT Assam Circle, Guwahati, vide his letter No.Vig/Assam/43 Pt-VI/12 dated 27-10-2005.

IT IS THEREFORE ORDERED THAT THE PAY OF SHRI A.K.DUTTA, DGM, TEZPUR BE REDUCED BY ONE STAGE FROM RS.17500.00 TO RS.17100.00 IN THE TIME SCALE OF PAY (Rs.14300.00 to 18300 FOR PERIOD OF 12 (TWELVE) MONTHS WITH EFFECT FROM 01-04-2006. IT IS FURTHER DIRECTED THAT SHRI A.K.DUTTA, DGM, TEZPUR WILL NOT EARN INCREMENT OF PAY DURING THE PERIOD OF REDUCTION AND THAT ON THE EXPIRY THIS PERIOD, THE REDUCTION WILL HAVE THE EFFECT OF POSTPONING THE DUE PAY INCREMENT OF PAY.

A. K. Dutta
 General Manager Telecom District
 BSNL, Tezpur - 784 001

Copy to:

1. The A.O(Cash), O/O GM TD TEZPUR
2. The SDE(IRD), O/O GM TD TEZPUR
3. Shri A.K.Dutta, DGM, TEZPUR.

A. K. Dutta
 General Manager Tele Dist
 BSNL, Tezpur - 784001

*Attested
 Dutta
 Advocate*

केन्द्रीय प्रशासनिक अधिकरण
 Central Administrative Tribunal

- 1 MAY 2006

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 Guwahati Bench

From:- Sh. A.K.Dutta,
D.G.M, B.S.N.L.,
Tezpur-784001.

To,

The General Manager Telecom
B.S.N.L., Tezpur-784001

Sub:- Disciplinary Proceeding against Sh. A.K.Dutta D.G.M, Tezpur.

R/Sir,

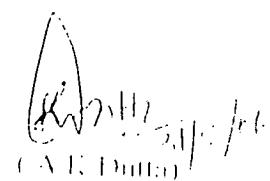
The receipt of the Letter No. X-1/Disc/Rule-14/06-07 dated 31/05/2006
issued by GMTD Tezpur is hereby acknowledged by the undersigned.

Thanking You.

Yours faithfully,

31/05/2006

Tezpur.


A.K. Dutta

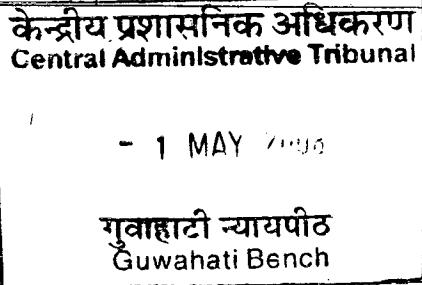
केन्द्रीय प्रशासनिक अधिकरण
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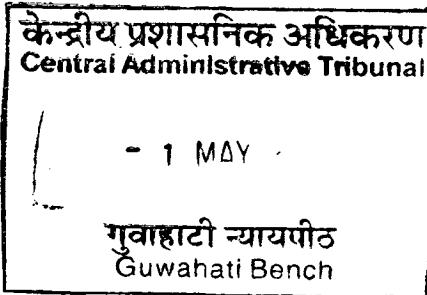
ANNEXURE-II-AComparative Price of Cable Route Tracer

Sl.No.	Name of Manufacturer/Supplier	Price of Item	Period / Date	Item Name	Remark
1	M/s. Aplab Ltd. , Pune	Rs.1,33,000/-	June/Dec 1997	Cable Route Tracer	
2	M/s Aplab Seba Electronics Ltd.	Rs.1,33,000/-	June/Dec 1997	-do-	
3	M/s. Aishwarya Telecom Pvt. Ltd. Hyderabad	Rs.1,10,000/-	Oct/Nov 1998	-do-	
4	M/s. Aishwarya Telecom Pvt. Ltd. Hyderabad	Rs.1,72,000/-	October 1997	Comprehensive Cable Test set	
5	M/s. Kendriya Bhandar	Rs.1,95,000/-	June 2001	Cable Route Tracer	
6	M/s. Hi-Tech Telecom Pvt. Ltd. Hyderabad	Rs.84,000/-	July/August 1997	-do-	Lowest Price
7	M/s. MRPC Hyderabad	Rs.3,94,000/-	Oct/Nov 1999	Audio Visual Cable Set (MRPC Automatic Model Master) with EC-RT with compulsory Accessories	



ANNEXURE-II-BComparative Price of Pulse Reflectometer

Sl.No.	Name of Manufacturer/Supplier	Price of Pulse Reflectometer or Equivalent Tester	Period / Date	Item Name	Remark
1	M/s. Sebatel Telekommunikation Technik GmbH supplied by M/s. Aplab Ltd. Thane	Rs.85,000/-	June/July 1997	Cable Fault Locator (BARTECH-5T)	
2	M/S. Aishwarya Telecom Pvt. Ltd. Hyderabad	Rs.89,000/-	July/August 1997	Cable Fault Locator & Low Insulation Tester	
3	M/s. Advanced Electronics & Communication System, Hyderabad-4	Rs.1,95,000/-	August/September 1999	Cable Fault Locator with Accessories	
4	M/s. Hi-Tech Telecom System Hyderabad	Rs.45,000/- + Tax	July/August 1997	Pulse Reflectometer	Lowest Price
5	M/s. Advanced Electronics & Communication System, Hyderabad	Rs.1,95,000	August 1999	Cable Fault Locator with Accessories (TEC Approved)	



ANNEXURE-I

Sr. No.	Station	Circle	P.O.No.	P.O. Date	Item Name	Qty.	Supplier	Cost/Price
1	Ahmedabad	Gujarat	Tender ATD/MM/T-55/94-95/61	6.3.96	Cable Route Tracer	-	M/s. V.B. Electronics, Ahmedabad	Rs.1,33,000/-
1	Latur	Maharashtra	S- 10/GM/Pos/96-97/16 from TDE Latur	12.6.96	Cable Route Tracer	01	M/s. Aplab Ltd. Thane (Mumbai)	Rs.1,33,000/-
2	Vijawada	Karnataka	SDOP-I/Cables/96-97 from SDOT Vijaywada	26.7.96	Low Insulation Fault Locator	01	Aishwarya Telecom Pvt. Ltd., Hyderabad	Rs.89,000/-
3	Visakapatnam	-do-	TAV/Genl/1-32/95-96 from GM Visakapatnam	10.9.96	-do-	01	-do-	-do-
4	Guntur	Karnataka	TDG/MM/5-4/Qty/III/96-97/36 from GM Guntur	13.9.96	Low Insulation Fault Locator	01	-do-	Rs.89,000/-
5	Sawantwadi	Maharashtra	TDE/SNDG/S-7/96-97/17 from TDE Sawantwadi	8.10.96	Battery Voltage Monitor System	02	M/s. Hi-Tech Telecom System, Hyderabad	Rs.11,900/-
					Digital Earth Resistance Tester	01		Rs.14,000/- each + Tax
6	Kolhapur	Maharashtra	KTD/TP-II/32/III/134 from	22.10.96	Cable Route Tracer	01	M/s. Aplab Seba Electronics Ltd. Pune	Rs.1,33,000/-

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

- 1 MAY

गुवाहाटी न्यायपीठ
Guwahati Bench

7	Nalgonda	Karnataka	G-1/96-97/21 from TDM Nolgonda	6.11.96	Low Insulation Fault Locator	01	Aishwarya Telecom Pvt. Ltd., Hyderabad	Rs.89,000/-
8	Sangareddy	Karnataka	S/TDM/SGD/96-97/65 from TDM Sangareddy	19.11.96	-do-	01	-do-	-do-
9	Nanded	Maharashtra	W-62/96/97 from GM Nanded	17.12.96	Battery Voltage Monitor System Digital Earth Resistance Tester	03 01	M/s.Hi-Tech Telecom System, Hyderabad	Rs.11,900/- Rs.14,000/- each + Tax
10	Ahmedabad	Gujarat	ATD/MMT-55/94-95/76 from SDE(MM) O/o.ATD Ahmedabad	25.4.97	Cable Route Tracer	01	M/s. V.B. Electronics Ahmedabad	Rs.1,33,000/-
11	Latur	Maharashtra	S-10/POS/97-98/LTR/7 from TDM Latur	16.5.97	Battery Voltage Monitor System Digital Earth Resistance Tester	04 03	M/s.Hi-Tech Telecom System, Hyderabad	Rs.11,900/- Rs.14,000/- each + Tax
12	Latur	Maharashtra	S-10/POS/97-98/LTR	23.6.97	Cable Route Tracer Pulse Reflecto Meter	01 01	M/s.Hi-Tech Telecom System, Hyderabad	Rs.84,000/- Rs.45,000/- + other Tax
13	Calcutta	West Bengal	DE/DD/53 from DEP/DD Ext.I Calcutta	28.10.98	Comprehensive Cable Test Set	01	Aishwarya Telecom Pvt. Ltd. Hyderabad	Rs.1,72,000/- + Tax
	Wardha	Maharashtra	W-12-43/T Eqpts/98-99/67 from TDM Wardha	21.12.98	Digital Cable Fault Locator Cable Route Tracer	01 01	Aishwarya Telecom Pvt. Ltd. Hyderabad	Rs.89,000/- Rs.1,10,000/-

केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal

- 1 MAY

गुवाहाटी न्यायपीठ
Guwahati Bench

15	Gaya	Bihar	WP-23/Engg-27/Part/52 from GMT(s) Gaya	22.12.98	Comprehensive Cable Test Set	01	Aishwarya Telecom Pvt. Ltd. Hyderabad	Rs.1,72,000/- + Tax
16	Sasaram	-do-	W-5/Part/389 from TDE Sasaram	22.12.98	Cable Test Set	01	-do-	Rs.1,72,000/- + Tax
17	Daltonganj	-do-	C-16/DTJ from Daltonganj	6.1.99	Cable Test Set	01	-do-	Rs.1,72,000/- + Tax
18	Jind	Rajasthan	JD/Tender/TS-INS/3/98/26 from TDM Jind	5.2.99	Digital Earth Resistance Tester Cable Fault Locator	04 03	Aishwarya Telecom Pvt. Ltd. Hyderabad	Rs.39,952/- Rs.1,18,228/-
19	Nanded	Maharashtra	NND/ENG-7/1/PO/IV/139 from Area G.M. Marathawad, Nanded	9.4.99	Cable Fault Locator (Audio Visual Cable Test Set) with Compulsory Accessories	01 set	M.R.P.C. Hyderabad	Rs.3,94,000/-
20	-do-	-do-	NND/ENG-7/1/PO/99-2000/4 from Area G.M. Marathawad area, Nanded	31.5.99	-do-	01 set	-do-	-do-
21	-do-	-do-	NND/ENG-7/1/PO/99-2000/7 from Area G.M. Marathawad area Nanded	21.6.99	-do-	01 set	-do-	-do-
			NND/ENG-7/1/PO/99-2000/8	22.6.99	-do-	01 set	-do-	-do-

केन्द्रीय प्रशासनिक
Central Administrative Tribunal
22 अप्रैल 2001

- 1 MAY 2001

गुवाहाटी न्यायपीठ
Guwahati Bench

23	Nanded	Maharashtra	NND/ENG-7/1/PO/99-2000/10	15.7.99	Cable Fault Locator (Audio Visual Cable Test Set) with Compulsory Accessories	01 set	M.R.P.C. Hyderabad	Rs.3,94,000/-
24	Aurangabad	Maharashtra	S-14/LP/CP/99-2000/100 from AGM(Plg), O/o.GMT Aurangabad	19.8.99	TEC Approved Low Insulation Fault Locator with Accessories	02	Aishwarya Telecom Pvt. Ltd. Hyderabad	Rs.3,98,000/-
25	-do-	-do-	S-14/LP/CP(Part-II)/99-2000/03 from AGM(Plg), O/o.GMT Aurangabad	19.8.99	TEC Approved Cable Fault Locator with Accessories	02	Advanced Electronics & Communication System, Hyderabad	Rs.3,90,000/-
26	-do-	-do-	S-14/LP/CP/99-2000/105 from AGM (Plg), O/o.GMT Aurangabad	3.11.99	MRPC Automatic Model Master (Audio Visual Cable Test Set) with Compulsory Accessories	01 set	MRPC (Market Research & Project Consulting Services Hyderabad	Rs.1,99,000/- + Rs.1,95,100/- Total.. Rs.3,94,100/-
27	-do-	-do-	S-14/LP/CP/Part-II/99-2000/07 from AGM(Plg), O/o.GMT Aurangabad	12.11.99	TEC Approved Cable Fault Locator with Accessories	01	Advanced Electronics & Communication System, Hyderabad	Rs.1,95,000/-
28	Jhansi	Uttar Pradesh	G-10/Cable Route Tracer/2001-2002/3 from AGM (Staff) O/o.GM, BSNL, Jhansi	7.6.2001	Cable Route Tracer	01	M/s.Kendriya Bhandar, Hyderabad	Rs.1,95,000/-

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

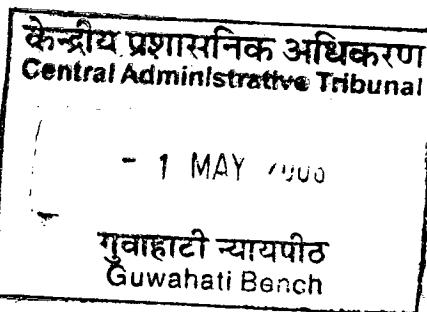
गुवाहाटी न्यायपीठ
Guwahati Bench

1 MAY

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29	Calcutta	West Bengal	W-8/02-03/23 from DE(MM) O/o.GMT Calcutta	25.2.03	Cable Route Tracer(Model Aishwarya SILI COM PCT-01)	05	M/s.Kendriya Bhandar, Hyderabad	Rs.9,75,000/-
30	Pathankot	Punjab	No.MM/Procurement/ Cable Route Tracer/ITI/PKT- SSA/02-03/3	11.3.03	Cable Route Tracer (TEC Approved) Make PCT-01	01	M/s.Kendriya Bhandar, Hyderabad	Rs.1,95,000/-

Attested
Ranita
Advocate



NOTICE

From

U. Dutta
Advocate

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To,

Smt. Usha Das
Addl. C.G.S.C.

Name,

Please find herewith a copy of the amendment application filed in O.T. No. 293/2006, A.K. Dutta vs- Union of India & ors. for your kind perusal.

Kindly acknowledge the receipt of the same.

Received

(U. Das)

Thanking you
Dutta
(U. Dutta)

I undertake to serve a copy
to Smt. U. Das Addl. C.G.S.C.

Dutta
04/03/08

Tele Mil : 6937

2502/14

Central Administrative Tribunal केन्द्रीय प्रशासनिक अधिकरण
- 5 JUN 2007
Guwahati Bench. गुवाहाटी न्यायपीठ

Mr. Gautam Baishya,
Senior Govt Standing Counsel,
CAT,
Guwahati-781005

REGISTERED

132 Station Health Organization(L)
PIN-903132
C/O 99 APO

31 May 2007

OA 56/2007 FILED BY SHRI SIDHESWAR DAS, MAZDOOR VS
UOI AND OTHERS IN CAT GUWAHATI

1. Please refer to this office letter No 2502/14 dated 18 May 2007.
2. A fresh counter affidavit duly vetted by Ministry of Defence / LA (Def) against the OA No 56/2007 filed by Shri Sidheswar Das, Mazdoor vs Union of India and Other in CAT Guwahati is being sent for filing on due date.
3. It is requested to file the counter affidavit as early as possible.

to file for 21/6/2007
Encls : - As above

Copy to :-

✓
(Omra Shakti)
Major
Offg Officer Commanding

MA Sultan
NT
5-6-07
Integrated HQ of MOD (Army)
Adjutant General's Branch
DGMS -3B
L' Block, New Delhi-110001

HQ Eastern Command (Med),
Fort William, Kolkata-21

HQ 101 Area (Med)
PIN-908101
C/O 99 APO

Legal Cell, HQ 51 Sub-Area,
PIN-908051
C/O 99 APO

CAT,
Guwahati-781005

{ - for your info please:-

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
~~GUWAHATI~~.

It is prayed that following matter may be permitted to be listed on 05/12/06 (Tuesday) eve for admission.

O.A. NO. — /2006

Sri Angan Kr. Datta
— VB —

v. O.I & ORS

of tomorrow
Dr. S. I. 2/86

1 CM
9/12

Sudarshan
04/12 Advocate

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORIGINAL APPLICATION NO.

293166

1. a) Name of the Applicat:- A. K. Datta
b) Respondants:- Union of India & Ors
c) No. of Applicant(S) :-

2. Is the application in the proper form:- Yes/No.

3. Whether name & description and address of the all papers been furnished in cause title :- Yes/ No.

4. Has the application been duly signed and verified :- Yes/ No.

5. Have the Copies duly signed :- Yes / No.

6. Have sufficient number of copies of the application been filed :- Yes/ No.

7. Whether all the annexure parties are impleaded :- Yes/ No.

8. Whether English translation of documents in the Language : Yes/ No.

9. Is the application in time :- Yes/No.

10. Has the Vakalatnama/Memo of appearance/Authorisation is filed:- Yes/ No.

11. Is the application by IFO/BD/For Rs: 5/- 286932877

12. Has the application is maintainable :- Yes/ No.

13. Has the Impugned order original duly attested been filed :- Yes/ No.

14. Has the legible copies of the annexures duly attested filed:- Yes/ No.

15. Has the Index of documents been filed all available:- Yes/ No.

16. Has the required number of enveloped bearing full address of the respondents been filed:- Yes/ No.

17. Has the declaration as required by item 17 of the form:- Yes/ No.

18. Whether the relief sought for arises out of the single :- Yes/ No.

19. Whether the interim relief is prayed for :- Yes/ No.

20. In case of condonation of delay is filed is it supported :- Yes/ No.

21. Whether this Case can be heard by Single Bench/Division Bench:

22. Any other point:-

23. Result of the Scrutiny with initial of the Scrutiny clerk the application is in order:-
The application is in order

11/2/06
SECTION OFFICER(J)

DEPUTY REGISTRAR

Par

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

O.A. No. 293 /2006

Sri Anjan Kumar Dutta

-Vs-

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

29.08.2003- Applicant is presently working as DGM, BSNL, Tezpur, Assam. He was served a memo of charge sheet issued by the Govt. of India, Ministry of Telecommunication and Information Technology, Dept. of Telecommunication where it has been alleged that while he was functioning as DGM (Planning) in the office of the G.M, Nasik Telecom District from July 1997 to February 98, it is alleged that the applicant approved the procurement of non stock items, beyond delegated financial power, without inviting tenders and the department has been denied the benefit of competitive rates showing undue favour to the private party.

(Annexure-1)

15.10.2003- Applicant submitted his reply denying the article of charge.
(Annexure-2 series)

07.01.2004- Applicant prayed for supply of 14 additional documents for the purpose of examining the same in the inquiry proceeding.
(Annexure-3)

30.12.2003- Preliminary inquiry was held at New Delhi and thereafter regular hearing was conducted on 6, 7 and 8th May of 2004 at the office of the GMT, Raigad, Mumbai.

22.01.2004- Inquiry officer raised an objection regarding production of some additional documents as prayed by the applicant. (Annexure-4)

31.01.2004- Applicant submitted representation to the inquiry officer explaining the relevancy of the documents requisitioned by him. Inquiry Officer accepted the representation and directed the presenting officer to make the documents available. (Annexure-5)

03.03.2004- Commissioner for Departmental inquires also allowed the prayer of the applicant for examination of the additional witnesses.

2003

29/3/03

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21.02.2004- Applicant requested through his representation for examination of 2 additional witnesses.

08.05.2004- Applicant was examined in the inquiry proceeding.

10.07.1997- Applicant submitted defence brief before the Commissioner of Departmental Inquiries stating that the Presenting Officer suppressed the material facts before the Inquiry Officer and as such the factual position has not been projected. Applicant further submitted in his written brief that the purchase has been made by DE (CC) office of the GMT, Nasik with full and complete financial approval by the head of the District during the management meeting held on 10.07.1997. Applicant also stated in defence brief that if there is a violation of rule and guideline then Sri M.N. Punde and his successor M.D. Gosavi, CAO, IFA should be held responsible in terms of the rule cited in the defence brief.

05.07.2004- Inquiry report was communicated to the applicant. In the inquiry report after analysis of the evidence, conclusion reached by the inquiry officer that the article of charge is partly proved but the findings of the inquiry officer is contradictory and findings based on no evidence. (Annexure-7)

27.09.2004- Applicant after receipt of the inquiry report submitted a detailed representation to the disciplinary authority, pointing out the irregularities and infirmities in the departmental proceeding, it was also stated that disciplinary authorities views should be made available to the applicant when the said view communicated to the commission for getting advice has been systematically suppressed and reasonable opportunity is denied to the applicant in defending his case. It is also stated by the applicant that the inquiry report is self-contradictory. (Annexure-8)

05.06.2003- Applicant also pointed out that CVC has not appreciated the evidence properly while tendering 2nd stage of advice. Applicant also pointed out that he has approved purchase within his financial power and the proposal was approved by the CAO/IFA and he has simply followed the precedent set by the CAO/IFA.

17.10.2005- Applicant has received the order of penalty dated 17.10.05, which was communicated to the applicant on 27.10.2005 but the same was duly received by the applicant on 31.05.2006. The impugned order of penalty has been passed by the disciplinary authority without application of mind, independently and also without discussion of

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evidence recorded in the inquiry proceeding as required under the rule but on the dictation of the Commission.

(Annexure 9 series)

Hence this application before this Hon'ble Tribunal.

PRAYERS

1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned memorandum of charge sheet issued vide letter bearing No. 8/248/2003-Vig. II dated 29.08.2003 (Annexure-1) as well as the impugned order of penalty bearing letter No. 8/248/2003-Vig. II dated 17.10.2005.
2. That the Hon'ble Tribunal be pleased direct respondents to restore the pay of the applicant with arrear monetary benefits.
3. Costs of the application.
4. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for.

During pendency of this application, the applicant prays for the following interim relief: -

1. That the Hon'ble Tribunal be pleased to observe that the pendency of this application shall not be bar for the respondents to consider the representations of the applicant for his exoneration from the charges and his promotion.

- 1 DEC 2006

गुवाहाटी न्यायपीठ

Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case

O. A. No. 293 /2006

Shri Anjan Kumar Dutta. : Applicant

- Versus -

Union of India & Others. : Respondents.

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04.	2 (Series)	Copy of reply dated 15.10.03.	44 - 45
05.	3	Copy of letter dated 07.01.2004.	46 - 50
06.	4	Copy of daily order sheet dated 22.01.04.	- 51 -
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08.	6	Copy of order sheet dated 17.03.2004.	- 55 -
09.	7	Copy of inquiry report dated 05.07.04.	56 - 72
10.	8	Copy of representation dated 27.09.04.	73 - 103
11.	9 (Series)	Copy of penalty order dated 17.01.05 along with letter dated 27.10.05.	104 - 106

Filed by

U. Dutta
Advocate

Date: 1.12.2006

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 293 /2006

BETWEEN:

Shri Anjan Kumar Dutta,
S/o- Late N.G. Dutta,
Working as Deputy General Manager, BSNL,
Tezpur, Assam Circle, Triveni Complex, Kacharigaon
Tezpur-784001.
Assam.

-AND-

...Applicant.

1. The Union of India,

Represented by the Secretary to the
Government of India,
Ministry of Communications and Information Technology,
Department of Telecommunication, (Vigilance - II section),
Sanchar Bhavan, 20 Ashoka Road,
New Delhi- 110001.

2. Bharata Sanchar Nigam Limited,
(A Govt. of India Enterprise)

Represented by the Chairman and Managing Director, BSNL.
Registered Office- Statesman House, Barakhamba Road,
New Delhi- 110001.

3. The Director, (VA)
Vigilance II Section,
Department of Telecom,
Sanchar Bhavan,
Room No. 909,
20 Ashoka Road,
New Delhi- 110001.

4. The Desk Officer (Vig-II),
Govt. of India,

Ministry of Communication and Information Technology,
Department of Telecommunication,
Vigilance- II Section
Sanchar Bhavan, 20 Ashoka Road,

Filed by the applicant
through Mr. Dutta, Advocate
on 1.12.2006

A K Dutta

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New Delhi-110001.

5. Union Public Service Commission.
Represented by it's Secretary,
Dholpur House,
Shahjahan Road,
New Delhi- 110011.

... Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made against the memo. of charge sheet dated 29.08.2003 (Annexure-) and the order of penalty dated 17.10.2005 (Annexure-), and further it is prayed that the Hon'ble Tribunal be pleased to direct the respondents to restore the applicant to his original position.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation.

The applicant further declares that this application is filed within the period of limitation prescribed under Section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case.

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2 That your applicant is presently working as DGM, BSNL Tezpur, Assam Circle, Tezpur. The applicant while working as DGM, Maharashtra

(b)

Telecom Circle, he was served with a memo of chargesheet under Rule 14 of the CS (CCA) Rules, 1965 vide letter bearing no. 8/248/2003-Vig.II dated 29.08.2003 issued by the Govt. of India, Ministry of Telecommunication and Information Technology, Department of Telecommunication, New Delhi, wherein it has been alleged that the applicant while functioning as DGM (planning) in the office of the G.M, Nasik, Telecom District during the period from July 1997 to February, 1998 in connivance with Shri B. Prasad, G.M, Sri N.G. Kamala Purkar, Asstt. G.M (Planning), Sri M.D. Gosavi, Chief Accounts officer and Sri A.K. Pathak, SDE (planning) of Nasik, Telecom District, approved the procurement of non-stocked items viz. cable route tracers, pulse reflectometers, battery voltage monitoring systems and digital earth resistance testers, from M/S Hi-Tech Telecom Systems, Hyderabad for a total of Rs. 4,63,032/-, on the said basis of quotations, without inviting tenders as required, though the equipments were not proprietary items, far in excess of the delegated financial powers of the Deputy General Manager/General Manager and without ascertaining the specific requirements of the field units, in violation of the general provisions of the General Financial Rules, 1963.

The applicant after receipt of the memorandum of chargesheet dated 29.08.2003, the applicant in terms of the direction contained therein submitted his reply specifically denying the article of charge vide his reply dated 15.10.2003.

(Copy of the memo of chargesheet dated 29.08.2003 and his reply dated 15.10.2003 alongwith forwarding letter dated 15.10.2003 are enclosed as Annexure-1 and 2 series respectively).

4.3 That it is stated that after receipt of the reply dated 15.10.2003, the disciplinary authority appointed Sri N.K. Ghose, Commissioner for departmental inquiries, Satarkta Bhawan, GPO Complex, INA, New

A.K.Dutt

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Delhi-110023, as the inquiring authority to inquire into the charges framed against the applicant. Similarly Sri A.K. Sahu, G.M (Operations) office of the CGM, Telecom Building No. 2 Fort, Mumbai-400001, as the Presenting officer to present the case in support of the articles of charge against the applicant. The applicant right from the beginning of the Disciplinary Proceeding extended his best co-operation in the inquiry proceeding.

4.4 That your applicant vide his letter dated 07.01.2004 addressed to Inquiry Officer, prayed for supply of additional documents for the purpose of examining the same in the investigation proceeding. In the said additional list of documents in as much as 14 documents were requested for supply and examination.

(A copy of the letter dated 07.01.2004 is enclosed and marked as Annexure-3).

4.5 That it is stated that preliminary hearing was held on 30.12.2003 at New Delhi, and thereafter regular hearing was conducted on 6th, 7th and 8th of May 2004 at the office of the GMT, Raigad, Santacruz (W), Mumbai. It would be relevant to mention here that the Inquiry Officer raised an objection regarding production of some of the additional documents as prayed by the applicant on the alleged ground that document No. 17 and 18 are not considered appropriate for production and inspection and accordingly rejected the prayer of the applicant for production of the aforesaid 2 documents indicated at sl. No. 17 and 18 of the additional list of documents which would be evident from the order sheet dated 22.01.2004. However, the I.O. has permitted the nominated Defence Assistant to plead for and on behalf of the applicant in Inquiry proceeding. The applicant however submitted representation to the inquiry officer explaining the relevancy of the documents, requisitioned by him vide his letter dated 31.01.2004, however, the I.O. i.e the

A K Sahu

Commissioner for Departmental Inquiry (CDI) accepted the explanation given by the applicant and directed the Presenting Officer to make the documents available to the extant possible to the charged officer for specification. It would be evident from the representation dated 31.01.2004 that similar purchase were also made by the Ahmedabad District, in the same manner and method as Nasik SSA done. The applicant also stated in his representation that the SSA's like pune, kalyan, Kothapur also made similar purchases as reflected in reply by the DGM (plg), office of the GMT, Nasik in reply to the Director of Audit, office of the P & T nagpur letter no. A 023/Audit note/99-00/2 dated 18.05.1999 in his letter no. S-12/3/audit/April-99/99-2000/40 dated 27.05.1999 also clarified regarding TAM 20 and 24.

(Copy of the daily order sheet dated 22.01.2004, representation dated 31.01.2004 and the order sheet dated 17.03.2004 are enclosed and marked as Annexure- 4, 5 and 6 respectively).

- 4.6 That it is stated that the Commissioner for Departmental inquiries also allowed the prayer of the applicant for examination of Additional witness which would be evident from daily order sheet dated 03.03.2004. In this connection it may be stated that the applicant i.e the charged official requested through his representation dated 21.02.2004 for examination of 2 additional defence witnesses in the inquiry proceeding in order to defence his case adequately, and the same was permitted by the conumissioner for departmental inquiries.
- 4.7 That it is stated that Sri P.R. Suley, an officer of the Department who was not a listed witness but he was examined in the inquiry proceeding at the instance of the inquiry authority, Sri M.N. Punde, the then Chief Accounts Officer, Nasik Telecom District, who was a listed witness examined in the inquiry proceeding and made deposition against the applicant, whereas

AKDutta

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said Sri M.N. Punde although not involved in the instant proceeding but he was involved in another proceeding of irregular purchase of materials to the extent of Rs. 1.33,000/- for purchase one cable locator, where no objection was raised by said M.N. Punde, C.O. Nasik Telecom District against such irregular purchase but made deposition against the applicant in the instant proceeding. It is stated that the applicant i.e charged official was examined on 08.05.2004 in the inquiry proceeding.

It is categorically submitted that some of the very relevant documents could not be produced before the inquiry proceeding inspite of repeated approach.

4.8 That it is stated that the applicant submitted defence brief before the Commissioner of Departmental Inquiry, CVC, New Delhi. In the said defence brief the applicant inter alia stated that the presenting officer has deliberately suppressed the material facts before the Inquiry officer and as a result the factual position has not been projected before the Inquiry officer. The applicant further submitted in the said defence brief that the purchase by DE (CC), Office of the GMT, Nasik with full and complete financial approval by CAO/IFA and administrative approval by the Head of the district was discussed during the following management meeting held 10.07.1997 where other D.E's having known the utility of these sophisticated instrument, made on immediate demand for the need of this instrument on the same reason as put forth by the DE (CC) and Sri Padegaokar, DGM (NU) Nasik Telecom for their respective area.

There is no violation of rule or guideline by the applicant and assuming if there is any violation, then it would be Sri M.N. Punde and his successor Sri M.D. Gosavi, CAO/IFA after 19.06.97 to be held responsible in terms of the rule cited in the defence brief. The applicant further stated in his defence brief as follows:

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.... that it is proved beyond any shadow and doubt that five other SSA's of MH Circle operated on the Accepted Tender of Ahmedabad Telecom District of 1996. Their respective CAO gave the Tender process a go bye and acted on quotation or canvas basis of the company Agents who promoted the new Instruments. The respective CAO and Financial Advisor advised the respective Executive Head to act upon for Nasik SSA also fill in tune with other five SSA's to procure one instrument for DE (CC) Nasik at the cost of 1.33 lakh + 4% S.T. Here all CAOs appear to have acted the same way including the CAO of Nasik Telecom District after the note of DE (Extl) E-10B Nasik quoting Ahmedabad Tender extended up to 5/3/98 by extending the contract for one year thereby violating the alleged sanctity of rules which nobody observed or insisted despite their personal/individual knowledge or RULES or responsibility.

This case against Nasik was singled out with vengeance by the Nagpur Audit Officer though they authorized or un-authorized condoned the action of non-Tendering and purchasing on quotation of the other SSA to which Nasik SSA fell and easy victim. The Nasik CAO (Shri Punde) was a Engineer by degree and having opted for Accountant a profession in no way related to the Engineering Branch. He was a direct recruit to Telecom Accountant Services is presently CM (Finance) in Maharashtra Circle, District with his knowledge of circulars at S-7 & S-8 he miserably failed to implement the provision of the Circulars and allowed his SSA along the lines of Kolhapur, Nanded, Latur, Jalgaon, Ahmednagar much against the established Rules which according to him were obligatory or mandatory and not discretionary despite Rule 60 (S-10) requires the Govt. amounts to be spent as a man of normal

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prudence who spends his own money. This Rule 60 gives some discriminatory power to the purchasing Authority.

The CAO is the Head of the District for Financial Rules as quoted in earlier paras of this brief. During the cross examination, he refused to comment on his status as Head of the Office of Financial Rules when he was specially asked for his status in Q.A. 20.

To that extent, he was pioneer in allowing the executives to purchase without calling for Tenders and according his prior financial Approval (S-1) and proved himself untrustworthy witness, not honest to his position."

The applicant further states as follows in his defence brief which is relevant and as such quoted below for perusal of the Hon'ble Court.

"I cleared the proposal for Technical approval while the CAO cleared it for financial purposes being the Head for Financial Rules. The Administrative approval can also be given by the DGM who is administrative officer of JAG cadre and during the period I was the only DGM in whole of SSA unit of Nasik. On cross examination, the Vigilence Officer fares still worse. He raised another controversy that a DGM of a SSA unit has no Financial Power by saying that the powers were transgressed. DGM does not come under the category of Area Directors/TDM. They were independent SSA Heads. However Rule 5 of P&T Manual Vol. X, about 'the duties and power of different officers, it is stated that the Head of Circle are assisted by Directors of Telegraph who will normally act for Heads of Circles in all Engineering matters but their existence will not relieve the Head of Circle of their primary responsibility of insuring that of engineering branch in their circle is efficiently performed.'

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The applicant further stated as follows:

"In this clearing the first irregular purchase side tracking imposition of tendering process after knowing the noting by Shri Padegaonkar, DGM (NU) in S-1 quoting that they will be operating on the Tenders approved by Ahmedabad Telecom District and as operated on the same by five other SSA's of MH Telecom Circle like Kolhapur, Jalgaon, Latur, Nanded, Ahmednagar. Though that the CAO talked of the Financial Rules as mandatory and obligatory and yet despite his knowledge of Rules he allowed Financial clearance for purchase as was done by other CAOs attached to 5 other SSA's. Confirming that all intelligent people think alike the departmental has not lost anything of competitive Rates and no undue favour was shown to any above seen party on the contrary a good amount was saved by me. Item to the extent of Rs. 49,000/- against the purchase made by the five SSA's of adjoining SSA's. This is also confirmed by the GMT Nasik to the GM (Finance) MH Telecom Circle, Mumbai in para 6 of his letter at Exhibit D -2 saying 'moreover no favoritism was shown to any particular agency'.

With this Sir, I close my defence brief with a hope that the charges leveled against me be assessed in proper perspective as explained above to say that the only article of charge is not proved on the basis of precedence and practice followed in Maharashtra Telecom Circle and as followed by other SSA like Latur, Sawantwadi, Kolhapur, Nanded, Wardha, Aurangabad without discrimination since it was Nasik SSA only that was discriminated against on basis of faulty and jaundiced investigation by the most non-vigilant vigilance officer and on passing all proposals by Financial concurrence by the CAO despite his knowledge of Financial Rules

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and propriety thereof admitted by him in his cross examination like other CAO's of adjoining five Districts of Kohapur, Jalgaon, Ahmedabad, Nanded and Latur.

The Presenting Officer in his brief has also not refuted any of my pleas in my statement of defence submitted on 07/05/2004 as to how they were illogical and hence unacceptable and beyond the evidence adduced during the inquiry."

In view of the grounds assigned by the applicant in his defence brief, he is entitled to be exonerated from charges labeled against him. The applicant urge to produce a copy of the defence brief at the time of hearing of the case for perusal of the Hon'ble Tribunal.

4.9. That your applicant further begs to state that inquiry report dated 05.07.2004 communicated vide letter bearing No. KYN/VIG/AKD-14/2004-05/14 dated 13.09.2004 and also vide memorandum bearing No. 8/248/2003-Vig. dated 25.08.2004 and the same was duly received by the applicant. In the inquiry report it would be evident from the analysis of evidence as well as conclusion reached by the inquiry officer that the findings of the inquiry officer is contradictory. On a mere reading of the concluding paragraphs of the inquiry report, it would be evident that the inquiry officer could not take a firm decision, as to whether the applicant i.e. the charged official is vested with the delegation of financial power or not, regarding the purchases now in question in the instant proceeding. The relevant portion of the inquiry report is quoted below:

"There is one important question of delegated financial powers of the CO. The defence has stated that the purchases made were within the delegated financial power of the CO. In his written brief also, the CO has stated that DGM was within the power to make purchases up to two lacs. Defence has stated that CO had power

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concurrent with GM which was not used routinely. That is why the purchase order in the name of GMT, Nasik was given. Defence has also stated that the notings between CAO and GMT, Nasik regarding passing of bills also indicate that DGM namely the CO had such financial power. However, prosecution has stated that CO had no financial power as he was not the independent SSA Head or Area Director. This has been confirmed by the prosecution witness SW-2 also. This can be argued both ways. Defence contention that if DGM had no financial power why the CAO allowed day to day expenditures after the approval of the DGM/CO has some weight. However, defence has produced a document D-9 which clearly indicates that financial powers rest with CGM, GM, Area Manager/TDM, SDE etc. not to those DGMs who are not independent SSA head. As regards the contention of the defence regarding internal arrangement of delegation of financial powers of DGM given by SSA head i.e. GMT, Nasik nothing has come on record except the clarification of CAO to GM during passing of bills. Even if DGM had such financial powers, the power was not utilized in prudent manner that has come quite clearly through the evidences on record. All concerned did not follow the existing guidelines/rules including the CO."

It is quite clear from above, that Inquiry officer could not take a firm decision regarding exercise of financial power by the applicant in the matter of purchase at the relevant point of time in his official capacity. But it appears from the conclusion reached by Inquiry Officer that the present applicant was vested with required financial power, but the said financial power, even though vested with the DCM, but the was power "was not utilized in prudent manner" which according to the inquiry officer which has come quite clearly through the evidences on record.

The Inquiry officer further observed that all concerned did not follow the existing guidelines rules including the C.O.

Therefore, it can rightly be said that the inquiry officer could not able to take a firm decision as to whether the applicant is vested with the financial power but revealed to the conclusion that the said power was not utilized in a "prudent manner". When the inquiry officer came to such finding that the financial power was not utilized in a prudent manner then such finding of the inquiry officer definitely does not logically reach to the conclusion that the alleged article of charge against the applicant is partly proved to the effect that the Telecom department has been deprived of the benefit of non-stocked items i.e. cable route, traces, pulse reflectometers, battery voltage monitoring system and digital earth testers from M/S Hi-tech Telecom system, Hyderbad for a total of Rs. 4,63,032/- on the basis of quotations, without inviting tenders as alleged in the memorandum of charge sheet. But surprisingly the inquiry officer although in his concluding part specifically held that the allegation of connivance with Sri B. Prasad the then G.M, Shri N.G. Kamalpurkar AGM (Planning), Sri M.D. Gosavi (CAO) and Sri A.K. Pathak, SDE (Planning) of Nasik Telecom District has not been proved or established. But surprisingly the inquiry officer held that the alleged charge against the applicant has been partly proved. There is only one article of charge and it has not been specified by the inquiry officer that which part of the article of charge is partly proved. By no stretch of imagination on a mere reading of the findings, reflected in the concluding part of the inquiry report, it can be said that the charge labeled against the applicant is partly proved, rather in view of the observation and finding of the inquiry officer, the applicant is entitled to be exonerated from the charges.

Copy of the inquiry report dated 05.07.04 is enclosed herewith as
Annexure- 7.

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4.10 That it is stated that when the inquiry officer specifically held that the financial power was not utilized by the applicant in a prudent manner, that finding itself is sufficient to exonerate the applicant from the article of charge brought against him. In this connection it may be stated that the allegation of non-utilisation of financial power in a "prudent manner" does not fall within the meaning of misconduct for the purpose of disciplinary proceeding.

It is further stated that once the inquiry officer came to the conclusion that there was connivance with the then other authorities of the Nasik Telecom District and it is also observed that the said allegation was not pleaded in the inquiry proceeding by the prosecution side, after giving such finding by the inquiry officer and again holding that the charge is partly proved is self contradictory and under any circumstances, such conclusion of the inquiry officer is not maintainable in view of the observation and findings recorded in the inquiry report and as such the applicant is liable to be exonerated from the charges labeled against him, in the impugned memorandum of charge sheet dated 29.08.2004 and therefore the orders of the impugned penalty is liable to be set aside and quashed.

4.11 That it is stated that in the memorandum of chargesheet dated 29.08.2003, the only article of charge that has been brought against the applicant is that, the applicant in connivance with the then other authorities of Nasik Telecom District has approved the procurement of certain items from M/S Hitech Telecom System, Hyderabad. On the basis of quotations without inviting tenders, though equipments were not proprietary items, far in excess of the delegated financial powers of the DGM/GM and also without ascertaining the specific requirements of the field units in violation of Rule 6 of GFR 1963 and Dept. Circular letter dated 12.01.1993, 09.12.97 and Rule 60 of P& T Financial Handbook Vol. I, thereby depriving the department of the benefit of competitive rates and showing

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undue favour to the aforesaid private party and thereby it has been alleged that the applicant has contravened the Rule 3 (1) (i), (ii), and (iii) of the CCS (Conduct) Rules 1964. But inquiry officer in his finding in the inquiry report nowhere stated that the department has been denied benefit of competitive rates of the alleged materials purchased in the Nasik Telecom District and also there is no finding on the part of the inquiry officer in his inquiry report to the effect that the applicant has shown undue favour to the concerned private parties and the very allegation labeled against the applicant in the article of charge that the applicant in connivance with the then other authorities of the Nasik Telecom District has approved the purchase, as such the very charge that has been labeled against the applicant has not been proved at all, more so in view of the fact that inquiry officer has very categorically held that the applicant has not utilized the financial power in "prudent manner" which has come clearly through evidence on record and further observed that the evidence on record would reveal that there was no such compelling reasons that warranted deviation from the regular rules/guidelines/procedures, but very categorically further held that "on the basis of the notings of the CAO and GM regarding passing of the bills, it appears improbable that the CO had connived with the CMT, Nasik."

In view of the above categorical finding of the inquiry officer, in the concluding part of the inquiry report the conclusion of the inquiry officer is that the charge against the applicant is "partly proved" is contrary to the entire findings of the inquiry officer and on that score alone such decision of the inquiry officer that the charge is partly proved is not sustainable in the eye of law.

It is humbly submitted that even assuming that the applicant has not utilized the financial power vested on him in the expected manner or "in prudent manner", as the words used by the inquiry officer, therefore by no stretch of imagination, it could be held by the inquiry officer that the charge labeled against the applicant is partly proved. It

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is specifically stated that non-utilisation of financial power in a prudent manner or in the process of discharge of duties by a Govt. servant if there is any deviation from the Rules/guidelines/procedures due to lack of efficiency, lack of foresight due to deficiencies in personal ability, such act or omission on the part of a Govt. employee definitely would not constitute misconduct for the purpose of disciplinary proceeding. More so when there is a definite finding given by the inquiry officer in his inquiry report, that there is no connivance, as such his acts of deviation from the Rules/guidelines/procedure in the process of discharge of his duties do not constitute any misconduct which warrant imposition of any penalty under the relevant provision of the CCS (CCA) Rules 1965. Therefore, there is nothing in the findings of the inquiry officer to hold that the applicant is guilty of any misconduct.

4.12 That it is stated that the inquiry officer also restrained himself from giving any findings to the effect that the applicant is not vested with any financial power for according approval of the alleged purchases rather he has categorically stated that the financial power was not utilized in prudent manner by the applicant. Therefore, it is quite clear from such finding of the inquiry officer that the DGM has exercised the financial power delegated to him. There is also no finding of the inquiry officer to the effect that the department of Telecom has incurred any financial loss or denied the benefit of competitive rates in the process of alleged purchase of materials/equipments, as such conclusion of the inquiry officer that the article of charge is partly proved is contrary to his own findings. The only findings which is arrived at by the inquiry officer on the basis of the evidences on record that the applicant has not utilized the financial power in a prudent manner. Such finding of the inquiry officer at any rate does not lead to the conclusion that the charge is partly proved. Rule 3 of the Conduct Rule is of general nature which provides that every member of the service shall at all times maintain

absolute integrity and devotion to duty but failure to duty, but failure to come up to the highest expectations of an officer holding responsible post to non-utilise the financial power in a prudent manner would not constitute as failure to maintain devotion to duty. As such findings of the inquiry officer do not specify any act or omission in derogation of or contrary to Conduct Rules save General Rule 3 prescribing the devotion to duty. Moreover, it is specifically stated that on a mere reading of the findings or concluding part of the inquiry report, it does not reveal that the applicant with any ill motive or in connivance with any other official has accorded sanction for alleged purchase in question and as such the act or omission on the part of the applicant in the instant proceeding does not constitute any misconduct specially in view of the categorical findings arrived at by the inquiry officer. But the conclusion reached by the inquiry officer to the effect that the charge is partly proved is contrary to the findings of the inquiry officer.

- 4.13 That it is stated that there is only one article of charge and as such there is no scope on the part of the inquiry officer to arrive at a decision that the charge is partly proved when there is specific findings of the inquiry officer that the financial power has not been utilized in prudent manner as revealed from the record of the evidences and there was further findings that the allegation of connivance of the applicant with other telecom authorities has not been pleaded by the prosecution side and the same also has not been proved in the inquiry proceeding, as such the decision that the charge is partly proved is contrary to the record of the inquiry proceeding and also contrary to the finding of the inquiry officer himself.
- 4.14 That it is stated that in the memorandum of charge sheet dated 29.08.03, there is no allegation of misappropriation of Govt. money and there is no allegation of discrepancy either in the stock or in the purchase of the materials or equipments but the only allegation is that as a result of non-

invitation of tenders the department has been deprived of the benefit of competitive rates and undue favour has been shown to the private party but none of this allegation is established or proved in the inquiry proceeding and as such findings of the inquiry officer that the charge is partly proved is contrary to the inquiry report. Therefore there is no justification of imposition of penalty upon the applicant for alleged purchase of telecom equipments in the facts and circumstances of the case. It is further submitted that it is the duty of the inquiry officer to reach to the conclusion whether the charge is proved or not proved, more so when there is only one article of charge but in the instant case the inquiry officer held that the charge is partly proved, as such the aforesaid conclusion of the inquiry officer is contrary to the findings as well as the records of the inquiry proceedings.

4.15. That your applicant after receipt of the inquiry report submitted a detailed representation on 27.09.2004 addressed to the disciplinary authority, pointing out the irregularities and infirmities in the departmental proceeding. In the said representation the applicant specifically stated that there was a clear direction that the disciplinary authorities views should be made available to the applicants when the said view communicated to the Commission, but unfortunately the views communicated to the Commission in getting its advise (2nd stage) has been systematically suppressed and has not enclosed the relevant papers and thereby reasonable opportunity and principle of natural justice has been denied to the applicant in defending the case of the applicant effectively and such action and inaction has earned great prejudice to the applicant, when it is mandatory on the part of the disciplinary authority to make its view available to the charges official, but the said direction of the CVC has not been followed deliberately in the instant case of the applicant, and on that score alone the impugned order of penalty issued by the disciplinary authority is liable to be set aside and quashed. The applicant further

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pointed out that mind of the inquiry officer has been influenced following the advice given by the CVC at the first stage, in view of the fact that the O.M bearing No. 033/P&T/142 dated 05.06.2003 of the CVC have been forwarded to the inquiry officer on his appointment on 05.12.2003 in order to influence the mind of the inquiry officer in favour of the prosecution side and the inquiry officer therefore had started the inquiry proceeding with a bias mind which caused that prejudice to the applicant and as a result he has been denied fair inquiry and natural justice which would be evident from the decision of the inquiry officer reflected in the inquiry report. The applicant has also pointed out that CVC has not appreciated the evidence properly while tendering 2nd stage of advice. The applicant has also stated in the said representation that he has approved purchase to the extent below his financial power of Rs. 2 lacs and other financial aspects are to be approved by the CAO/IFA and he has simply followed the precedent set by the CAO/IFA. The applicant also pointed out that observance of the Financial Rules was the primary responsibility of CAO/IFA and accordingly inquiry officer has held in his inquiry report to the effect that "all concerned did not did NOT follow the existing guidelines" but the said finding/observation of the inquiry officer has not been appreciated by the CVC while tendering it's advice. The applicant also specifically stated in his representation that no one has suggested the applicant for inviting tenders. The applicant also specifically pointed out that he has been meted out with hostile discrimination in the matter of initiation of disciplinary proceeding in as much as because Mr. Padegaonkar, DGM, who has also followed the similar procedure in the matter of purchase without inviting tenders of materials for the use of the Telecom department, but surprisingly no proceeding was initiated against said Sri Padegaonkar, DGM. As such action of the respondents so far initiation of disciplinary proceeding against the applicant is concerned, the same is in violation of Article 14 of the Constitution of India and on

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that score alone the memorandum of charge sheet dated 29.08.2003, the inquiry proceeding as well as the inquiry report and the impugned order of penalty dated 17.10.2005 are liable to be set aside and quashed.

4.16 That your applicant specifically pointed out that findings of the inquiry officer to the effect that materials were purchased after monsoon is contrary to the records as because the said materials were purchased on 05.08.1997 and on 28.07.97 only and the said materials were used during the monsoon season, hence the findings of the inquiry officer is contrary to the records and as such the said finding is not maintainable, as because the findings of the Inquiry officer are perverse and not in conformity with the evidences recorded in the inquiry proceeding and the ultimate findings of the inquiry officer to the effect is partly proved, when there is only one article of charge brought against the applicant held to be partly proved is unknown to the service jurisprudence. More so when there is no finding at all regarding allegation of deprivation of competitive rate to the respondent department while proposal for purchase was approved by the applicant without inviting tender as alleged in the memorandum of charge sheet and on that score alone the entire inquiry proceeding is liable to be set aside and quashed. The specific finding of the inquiry officer to the effect that "all concerned did not follow the existing guideline" definitely includes the concerned CAO who is also involved in the process of alleged approval and purchase of the materials. The applicant also pointed out in his representation that in a similar fact situation the concerned CAO/ IFA never suggested for inviting tenders for purchase of materials for Rs. 1.33 lacs + 4% S.T but in the instant proceeding the said CAO made deposition against the applicant in the instant inquiry proceeding but surprisingly no action was initiated against Shri Punde, the then CAO who has participated in the proceeding as SW 1, as such action of the respondents for initiation of a disciplinary proceeding only

against the applicant without impleading Shri Punde, the then CAO is highly arbitrary, illegal and such action is also in violation of Article 14 of the Constitution. The applicant also narrated in detail the nature of evidence that has been recorded in the inquiry proceeding wherein the applicant categorically stated that at the relevant point of time the applicant was holding two additional full time charges of DGMs with their financial and administrative powers at the time of monsoon and almost 1 lac telephones were faulted and the applicant was extremely busy for maintenance of telephone system to telephones working since the same was his primary duty but such heavy workload also not been considered by the respondents Union of India while initiated the disciplinary proceeding against the applicant. The disciplinary authority also failed to consider the fact that the then CAO of Nasik SSA was the head of office for purposes of financial roles as codified in FHB Vol. III Rule 15 and all expenditure was done on his behalf (in terms of Rule 11) but surprisingly the disciplinary authority, presenting officer/inquiry officer and the investing vigilance officer has ignored such basic fact and responsibility if any now sought to be fixed upon the shoulder of the applicant by initiating the disciplinary proceeding under Rule 14 of the CCS (CCA) Rules 1965. The applicant also drawn the attention of the disciplinary authority to the following fact in his representation dated 27.09.2004:

- 1) In terms of relevant rule the then CAO was the head of office (Finance), as such a responsibility is vested upon the CAO to raise objection if the DGM incurring any irregular expenditure to the Circle office but in the absence of anything contrary it can rightly be said that the CAO had approved all expenditure on behalf of the DGM in terms of Rule 23 of the FHB Vol. III and the then CAO Shri Punde (SW 1) of the instant proceeding had already set a

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precedence in allowing expenditure for purchase of instrument to the extent of 1.33 lac + 4% S.T and Shri Gosavi, succeeding CAO had followed the said precedence in the instant case of alleged irregular purchase.

- 2) Sri Punde, CAO (SW 1) allowed the then DGM Shri Padegonkar to operate on the tender of Ahmedabad Telephone District which form the further basis on behalf of the CAO Shri Gosavi to follow such precedence. It is further to be noted that following such precedence as indicated above almost 30 CAOs allowed purchases to the tune of Rs. 1.33 lacs through out India, even in Maharashtra Telecom Circle, Latur Aurangabad, Kolhapur, Ahmednagar, Jalgaon and subsequently Nasik also (with Punde as CAO) also purchased without inviting tenders. Neither Sri Punde nor Sri Gosavi, the succeeding CAO pressed for calling of tenders but surprisingly the applicant who was functioning as DGM in the Nasik Telecom district has been picked up for initiation of disciplinary proceeding under Rule 14 of the CCS (CCA) Rules, when the purchase approved by the applicant within the financial limits of 2 lacs and the same was duly approved/sanctioned and paid by the CAO and in the process the applicant has saved the government money to the extent of Rs. 49,000 when much higher price paid by the SSAs. There was no evidence recorded to the effect that any private party has approached the applicant for purchase of their products at anytime before or after the purchase as alleged in the article of charge.
- 3) The applicant has specifically stated in the said representation that he has given approval of the alleged

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purchase within his powers of financial limits of Rs. 2 lacs then as existed and the CAO has admitted all such technical approvals and settled the accounts. Applicant also pointed out that he has submitted 15 defence documents but surprisingly only 4 documents namely; D-1, D-2, D-9 and D-10 have been examined but the other similar documents have been deliberately ignored by the inquiry officer in the inquiry proceeding which were very much relevant to arrive a correct finding of the charges but denial of those documents by the inquiry authority is amount to denial of reasonable opportunity to the applicant to defend his case adequately and on that score alone the entire inquiry proceeding is liable to be set aside and quashed. The analysis of the evidence also did not show that the applicant had saved Govt. money to the extent of Rs. 49,000/-. The applicant also explained the deposition made by the then GM Nasik (DW 2) which also support the action of the applicant in the matter of purchase of the materials questioned in the instant proceeding. It is pertinent to mention here that the applicant also categorically stated in his representation that decision to procure or purchase was taken in the management meeting which the LO also has agreed and the same has settled the doubts about the urgency of the requirements for purchase of materials. The prosecution side miserably failed to produce any evidence to say that the instruments purchased are lying idle or not utilized rather it has been confirmed that the instruments have been put to use and not lying unutilized since their purchase which was explained by the GM himself. As a result of such purchase subscribers pending complain have

reduced quickly and the department have saved lot of man power, time material, and there were no loss of revenue as a result of quick restoration of the subscribers lines. It is also pointed out by the applicant in his representation that the I.O has erred in his observation that the specific requirements were not assessed when G.M categorically admitted that a specific requirement were given to him but no evidence contrary to the same could be produced by the presenting officer.

The applicant also pointed out that being a technical officer he has chosen M/S Hi Tech for their lowest price of Rs. 84,000 after having satisfactory field performance and thereby he has saved at least Rs. 49,000 per piece in comparison to the price of M/S Aplab Tester of Rs. 1.33 lacs, though tender process were not initiated but the competitive rates were available by June 1997 from M/S Aplab and M/S Hi Tech and out of which the price of M/S Hi Tech was lowest and other farms which came into the field in the year 1998, 1999 and 2000 and a chart of competitive price have been prepared and appended with the defence brief also but surprisingly the same have been deliberately ignored by the inquiry officer. On a mere perusal of the competitive rates annexed with the defence brief it would be evident that the M/S Hi Tech offered the lowest price and therefore the department has not been denied the benefit of competitive rates rather the department has saved Rs. 49,000. As such assessment of evidence made by the inquiry officer is contrary to the records of the inquiry proceeding and the I.O has made the assessment of the evidence with a preconceived mind and deliberately ignored the comparative chart/table given by the applicant in his defence brief. The applicant also elaborately discussed the relevant financial rules in his representation and the relevant provision of the Rule 14 of the CCS (CCA) Rules and elaborately explained how he was prejudiced in the inquiry

proceeding due to non-consideration of relevant defence documents, evidences recorded in the inquiry proceeding and also for non-consideration relevant financial rule which supports the contention of the applicant and pleaded in his defence brief and thereby he has been denied reasonable opportunity and the findings of the inquiry officer is totally perverse and contrary to the evidence recorded in the inquiry proceeding and on that score alone the entire findings of the inquiry officer is liable to be set aside and quashed.

A copy of the representation dated 27.09.2004 is enclosed herewith for perusal of the Hon'ble Tribunal as Annexure- 8.

4.17 That your applicant further begs to state that he has received the impugned order of penalty bearing letter No. 8/248/2003-Vig. II dated 17.10.2005 which was communicated to the applicant vide letter No. Vig/Assam/43 Pt-VI/12 dated 27.10.2005 and the said penalty order was duly received by the applicant on 31.05.2006. By the impugned penalty order the disciplinary authority has imposed the penalty of "reduction to one lower stage in the time scale of pay for a period of one year with the stipulation that he will not earn any increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing his future increments of pay" upon the applicant. It has been stated in the impugned order of penalty dated 17.05.2005 that the disciplinary authority has considered the findings of the inquiry officer and submission made by the applicant in his representation dated 27.09.2004 and also considered the advise tendered by the UPSC in their letter dated 08.09.2005 and after consideration of all relevant facts and circumstances the competent authority accepted the advise of the CVC and imposed the aforesaid penalty upon the applicant. On a mere reading of the order of penalty issued by the disciplinary authority it would be evident that the disciplinary authority has acted in a

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very mechanical manner without application of mind independently and also without taking into consideration the relevant arguments, grounds assigned by the applicant in his defence brief as well as in the representation dated 27.09.2004. The disciplinary authority also miserably failed to take into consideration the allegation brought in the article of charge, the evidences recorded in the inquiry proceeding, the assessment of the evidences made by the inquiry officer and thereafter the findings arrived by the inquiry officer in his inquiry report dated 05.07.2004 while imposed the penalty by the impugned order dated 17.10.2005. On a mere reading of the impugned order it appears that the disciplinary authority has influenced by the advise tendered by UPSC in their communication dated 08.09.2005 but at the same time lost the sight of the fact that the actual findings of the inquiry officer runs contrary to his conclusion arrived at by him in his inquiry report, wherein inquiry officer held that the alleged charge against the applicant is "partly proved". It is interesting to note that neither the inquiry officer nor the disciplinary authority has carefully gone through the alleged article of charge but mechanically taken a view that the charge has been partly proved. When the inquiry officer himself is of the opinion that the financial power vested upon the applicant has not been utilized by the applicant in a prudent manner and while the inquiry officer categorically disapproved the charge of connivance with other authorities of the Nasik Telecom District and when there is no finding of the inquiry officer to the affect that the department of Telecom has been deprived of the benefit of competitive rate and the allegation of showing undue advantage to the private party, therefore there is no cogent reason on the part of the disciplinary authority to impose penalty upon the applicant, merely on the advise of the UPSC as well as on the advise of the CVC as indicated on the impugned order of penalty when the very charge has not been established against the applicant in the inquiry report dated 05.07.04 submitted by the inquiry

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officer, as such the ultimate conclusion reached by the inquiry officer is perverse contrary to the evidences recorded in the inquiry proceeding and as such the disciplinary authority has no jurisdiction to impose any penalty on the basis of such findings of the inquiry officer. It is pertinent to mention her that the inquiry officer himself specifically stated in the concluding paragraph of the inquiry report that the allegation of connivance has not been pleaded by the prosecution side at any stage of the inquiry proceeding after such fair admission on the part of the inquiry officer how he has reached to the conclusion that the inquiry has been partly proved and such aspect has not been considered at all by the disciplinary authority without taking into consideration the evidences recorded in the inquiry proceeding which is mandatory on the part of the disciplinary authority and on the basis of such infirmity the impugned order of penalty dated 17.10.2005 is liable to be set aside and quashed.

A copy of the penalty order dated 17.10.05 along with letter dated 27.10.05 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 9 series.

- 4.16 That it is stated that the Inquiry Officer came to the conclusion that the alleged Article of Charge is partly proved, therefore it is mandatory on the part of the disciplinary authority to issue a second show cause notice in order to enable providing opportunity before imposition of penalty but in the instant case disciplinary authority did not provide any such opportunity of second show cause notice inviting his explanation, therefore on that score alone the impugned order of penalty dated 17.10.2005 is liable to be set aside and quashed.
- 4.19 That it is stated that in paragraph 2 of the impugned penalty order dated 17.10.2005 it has been stated by the disciplinary authority that the Central Vigilance Commission vide ID Note No. 003/R&T/114/2397 dated 2nd

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August 2004 has advised imposition of a suitable major penalty on the applicant. Again in para 3 of the said impugned penalty order the disciplinary authority has quoted the advice rendered by the UPSC in their letter bearing No. F.3/461/04-S.I dated 08.09.05 whereby the UPSC interalia observed that the allegation of procurement of material was approved on the basis of quotation without inviting tenders has been conclusively proved against the charged officer. Further it was observed by the Commission that the applicant has gone beyond the delegation of financial power of the DGM/GM and thereby he has abused his power since he was not independent SSA Head or Area Director. The Commission is also of the opinion that I.O is rightly proved that the applicant was not vested with any financial power, the Commission also of the view of the allegation that specific requirement were not ascertained is also proved and the allegation of violation of provision contained in para 28 of Chapter G.F.R and instruction/guideline of the D.O.T dated 08.11.1995 and thereby depriving the department of the competitive rate has been proved. Commission also expressed its view that the ends of justice would be made if the penalty of reduction of one lower stage in the time scale of pay for a period of 1 year with the stipulation that applicant would not earn any increment of pay during the period of such reduction and on the expiry of such period the reduction would have effect of postponing of applicant's future increment of pay may be imposed. Following the advice of the UPSC without any application of mind the disciplinary authority mechanically has imposed the aforesaid penalty in a most arbitrary manner when the very advice of the UPSC is totally contrary to the findings of the inquiry officer and on that score alone the impugned order of penalty dated 17.10.2005 is liable to be set aside and quashed.

4.20 That it is stated that it is surprised to note that the UPSC has tendered it's advice without properly consulting the records of the inquiry proceeding

and also without considering the findings of the inquiry officer arrived in his inquiry report. It is categorically stated that on a mere reading of the inquiry report none of the allegation as alleged in the communication dated 08.09.05 of the UPSC in fact proved by the inquiry officer in his inquiry report, as such advise of the UPSC is just contrary to the evidence recorded in the inquiry proceeding and also contrary to the findings recorded by the inquiry officer, therefore it is mandatory on the part of the disciplinary authority at least to go through the inquiry report carefully before imposition of any penalty, when the very findings of the inquiry officer supports the exoneration of the applicant from the charge labeled against him but interestingly following the advise of the Commission the disciplinary authority in a most arbitrary and unfair manner has imposed the penalty order without any authority of law under the relevant provision of CCS (CCA) Rule 1965 and on that score the impugned letter of penalty of penalty dated 17.10.2005 is liable to be set aside and quashed.

4.21 That it is a statutory duty on the part of the disciplinary authority to make a further assessment of the evidence recorded in the inquiry proceeding before imposition of any penalty whether it is minor or major. But in the instant case of the applicant the disciplinary authority while imposing the penalty did not examine the evidence available in record and also failed to examine the findings of the inquiry officer in the manner it is required in other words it can be said that the disciplinary authority failed to examine evidences on the records by applying the mind independently rather the disciplinary authority was influenced following the advise rendered by the UPSC as well as CVC, whereas the disciplinary authority cannot impose penalty only on following the dictation of UPSC or CVC but required to examine the evidence recorded in the inquiry proceeding independently. It is categorically stated that the advise rendered by the CVC or UPSC without properly examining the records of the inquiry proceeding. It is surprising to note that an organization like UPSC has

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tendered its advise without properly consulting records and also without taking into consideration the relevant findings of the inquiry officer. The entire observation and advise of the UPSC is just contrary to the findings of the inquiry officer but no reason has been assigned in its communication dated 08.09.2005 as to why the UPSC has arrived such a decision holding that the charge against the applicant is proved. Therefore the advise tendered by the UPSC or CVC are not sustainable in the eye of law in the given facts and circumstances of the case of the applicant. But surprisingly the advise tendered by the CVC/UPSC has been followed by the disciplinary authority mechanically and on their dictation penalty has been imposed upon the applicant and on that score alone the order of penalty dated 17.10.2005 is liable to be set aside and quashed.

4.22 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

5.1 For that, the article of charge brought against the applicant through memorandum dated 29.08.2003 has not at all been proved in the inquiry proceeding, as such imposition of penalty by the impugned order dated 17.10.2005 is not sustainable in the eye of law and the said order of penalty dated 17.10.2005 is liable to be set aside and quashed.

5.2 For that, on a mere reading of the findings/conclusion reached by the inquiry proceeding, thereafter holding the charge partly proved is contrary to the evidence recorded in the inquiry proceeding.

5.3 For that, there is no finding of the inquiry officer in his inquiry report that the applicant approved the procurement beyond the delegated financial power as alleged in the article of charge and also there is no findings of the inquiry officer in the inquiry report to the effect that the Department of Telecom has been deprived of the benefit of competitive rates and

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undue favour has been shown to the concerned private party as alleged in the article of charge rather the inquiry officer categorically exonerated the applicant from the allegation of connivance with the then other authorities of the Nasik Telecom District, as such impugned order of penalty dated 17.10.05 is liable to be set aside and quashed.

5.4 For that, there is no finding of the inquiry officer in the inquiry report dated 05.07.2004 to the effect that the applicant is not vested with any financial power save and except the findings to the effect that "Even if DGM had such financial power, the power was not utilized in prudent manner that has come quite clearly through the evidences on record. All concerned did not follow the existing guidelines/rules including the C.O." Such findings of the inquiry officer established beyond all doubts that the applicant was vested with the required financial power but such power was not utilized in prudent manner and the said findings of the inquiry officer does not fall within the meaning of misconduct for the purpose of disciplinary proceeding and on that score alone the impugned order of penalty dated 17.10.05 is liable to be set aside and quashed.

5.5 For that, there is only one article of charge and when the said charge has not been proved on the inquiry proceeding, more so in view of the assessment of evidence made by the inquiry officer. As such there is no scope on the part of the inquiry officer to held the said charge or penalty as partly proved.

5.6 For that, the decision of the inquiry officer to the effect that the charge is partly proved, such decision is highly arbitrary, illegal and contrary to the evidence recorded in the inquiry proceeding as well as contrary to the findings of the inquiry officer. Therefore, the order of penalty dated 17.10.05 is liable to be set aside and quashed.

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- 5.7 For that the disciplinary authority did not issue any second show cause notice to the applicant before imposition of penalty, since the alleged Article of Charge is partly proved, therefore the order of penalty dated 17.10.2005 is liable to be set aside and quashed.
- 5.8 For that out of the very relevant defence documents only 4 defence documents have been examined and considered in the inquiry proceeding but the inquiry authority deliberately ignored the other relevant defence documents and thereby denied reasonable opportunity to the applicant to defend his case adequately in the inquiry proceeding and on that score alone the entire inquiry proceeding as well as impugned penalty order dated 17.10.2005 is liable to be set aside and quashed.
- 5.9 For that the disciplinary authority while communicated the tentative views to the Commission for getting its advice (2nd stage) has systematically suppressed the material facts and did not enclosed the representation and other relevant papers to the Commission and as a result the applicant has been denied opportunity to effectively represent his views before the Commission.
- 5.10 For that fair enquiry has been denied to the applicant in a very planned manner by the disciplinary authority by influencing the mind of the inquiry officer by forwarding the CVC office memorandum dated 05.06.03.
- 5.11 For that both the CVC as well as UPSC tendered their advice in each stage without properly consulting evidence recorded in the inquiry proceeding as well as without considering the relevant findings recorded in the inquiry report but surprisingly without independently applying it's mind and also without discussing the evidences recorded in the inquiry proceeding as required under the rule followed the dictation of the CVC and UPSC and accordingly imposed the penalty mechanically by the

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impugned order dated 17.10.05 and on that score alone the impugned order of penalty dated 17.10.05 is liable to be set aside and quashed.

- 5.12 For that the inquiry officer erred both in facts and law as because he has failed to appreciate the evidence recorded in the inquiry proceeding to the effect that the procurement of material is made in the month of August 1997 i.e. during the monsoon season but contrary finding is recorded in the inquiry proceeding. Moreover, inquiry officer also failed to appreciate the relevant provisions of the financial rules while given his findings in the inquiry report.
- 5.13 For that the inquiry officer, disciplinary authority, CVC as well as UPSC failed to appreciate the effort of the applicant whereby he has saved Govt. money to the extent of Rs. 49,000 while accorded his approval for procurement of non stock materials when other 30 assesses purchased the said instrument with much higher rates.
- 5.14 For that the inquiry officer and disciplinary authority did not take into consideration the vital role of the then CAO of the Nasik Telecom District who has in fact approved the procurement of non stock instruments but awarded the penalty upon the applicant in spite of saving of Govt. money to the tune of Rs. 49,000 per piece.
- 5.15 For that the applicant has been meted out with hostile discrimination in the matter of initiation of disciplinary proceeding as because similar purchase were made in other Telecom Districts, namely; Latur, Aurangabad, Kolhapur, Ahmednagar, Jalgaon where similar purchase has been made without inviting tenders therefore action of the respondents Union of India initiating disciplinary proceeding against the applicant is in violation of Article 14 of the Constitution of India.

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5.16 For that the findings or conclusion reached by the inquiry officer does not warrant imposition penalty upon the applicant rather the applicant is liable to be exonerated from the charge brought against him vide memorandum dated 29.08.03 in view of the assessment of evidence made by the inquiry officer in his inquiry report dated 05.07.2004.

5.17 For that non utilization of financial power in a "prudent manner" does not warrant initiation of any disciplinary proceeding and the said allegation does not warrant imposition of any penalty as because the said allegation does not fall within the meaning of misconduct for the purpose of disciplinary proceeding. Therefore, the memorandum of charge sheet dated 29.08.03 as well as the order of penalty dated 17.10.05 is liable to be set aside and quashed.

6. Details of remedies exhausted.

That the applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on

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perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

- 3.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned memorandum of charge sheet issued vide letter bearing No. 8/248/2003-Vig. II dated 29.08.2003 (Annexure-) as well as the impugned order of penalty bearing letter No. 8/248/2003-Vig. II dated 17.10.2005 which was communicated to the applicant vide letter No. Vig/Assam/43 Pt-VI/12 dated 27.10.2005 (Annexure-).
- 3.2 That the Hon'ble Tribunal be pleased direct respondents to restore the pay of the applicant with arrear monetary benefits.
- 3.3 Costs of the application.
- 3.4 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicant prays for the following interim relief: -

- 9.1 That the Hon'ble Tribunal be pleased to observe that the pendency of this application shall not be bar for the respondents to consider the representations of the applicant for his exoneration from the charges and his promotion.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I.P.O. No.	:	28 G 93 2341
ii) Date of Issue	:	12.10.06.

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iii) Issued from : G.P.O. Guwahati
iv) Payable at : G.P.O. Guwahati

12. List of enclosures.

As given in the index.

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VERIFICATION

I, Shri Anajn Kumar Dutta, S/o Late N.G.Dutta, aged about 47 years, serving as DGM, B.S.N.L, Tezpur, Assam Circle, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 28th day of November, 2006.



No.8/248/2003-VIG.II
GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATIONS & INFORMATION TECHNOLOGY
DEPARTMENT OF TELECOMMUNICATIONS

WEST BLOCK # 1, WING # 2,
R K PURAM, NEW DELHI-66

Dated the July, 2003.

29th August, 2003

MEMORANDUM

The President proposes to have an inquiry held against Shri A.K. Dutta (Staff No. 8188), Deputy General Manager, Maharashtra Telecom Circle, under Rule 14 of the CGS (CCA) Rules, 1965. The substance of the imputations of misconduct or misbehavior in respect of which the enquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A Statement of the imputations of misconduct 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 (Annexures III & IV).

2. Shri A.K. Dutta 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. He 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 A.K. Dutta 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 CCS (CCA) 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 A.K. Dutta is invited to Rule 20 of the CCS (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 interests 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 with in these proceedings, it will be presumed that Shri B. Prasad is aware of such a representation and that it

Contd., 2/-

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attested
by Dr.
Shukla

has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS(Conduct) Rules, 1964.

6. Receipt of this Memorandum along with a copy of I.D. Note No.003/P&T/142 dated 5.6.2003 of the Central Vigilance Commission, shall be acknowledged.

By Order and in the name of the President:

John Mathew

Under Secretary to Government of India

✓
Shri A.K. Dutta, (Staff No.8188)
Deputy General Manager Telecom,
Maharashtra Telecom Circle,
Mumbai 400 001

(Through the Chief General Manager Telecom, Maharashtra Telecom Circle, Mumbai 400 001.)

ANNEXURE - I

9A

Statement of Articles of Charge framed against Shri A.K. Dutta, (Staff No.8188), Deputy General Manager, Maharashtra Telecom Circle.

ARTICLE:

That the said Shri A.K. Dutta, while functioning as Deputy General Manager (Planning), Office of the General Manager, Nasik Telecom District, during the period from July, 1997, to February, 1998, in connivance with Shri B. Prasad, General manager, Shri N.G. Kamalpurkar, Assistant General Manager (Planning), Shri M.D. Gosavi, Chief Accounts Officer, and Shri A.K. Pathak, Sub-Divisional Engineer (Planning), all of Nasik Telecom District, approved the procurement of non-stocked items viz. Cable Route Tracers, Pulse Reflectometers, Battery Voltage Monitoring Systems, and Digital Earth Resistance Testers, from M/s Hi-Tech Telecom Systems, Hyderabad, for a total of Rs.4,53,032/-, on the basis of quotations, without inviting tenders as required, though the equipments were not proprietary items, far in excess of the delegated financial powers of the Deputy General Manager/General Manager, and without ascertaining the specific requirements of the field units, in violation inter alia of Rule-6, and Para 28 of Annexure to Chapter-8, of General Financial Rules, 1963, Department of Telecom Circular letters No.51-6/91-MMC/Pt. dated 12.1.93 and No.305-2/95-MMS dated 8.11.95, letter No.BGT/3-9/97-98/13, dated 9.12.97 from General Manager (Finance), Maharashtra Telecom Circle, addressed to Shri B. Prasad, General Manager, Nasik Telecom District, and Rule-60 of P&T Financial Handbook Volume- I; thereby depriving the Department of the benefit of competitive rates and showing undue favour to the aforesaid private party.

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

By order and in the name of the President.

Attested
John Matthe
Advocate

John Matthe

(JOHN MATHEW)
UNDER SECRETARY TO THE GOVT. OF INDIA

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ANNEXURE - II

Statement of Imputations of misconduct or misbehaviour in support of the Articles of Charge framed against Shri A.K. Dutta, (Staff No.8188), Deputy General Manager, Maharashtra Telecom Circle.

That the said Shri A.K. Dutta, was functioning as Deputy General Manager (Planning), Office of the General Manager, Nasik Telecom District, during the period from July, 1997, to February, 1998.

2. During the aforesaid period, the delegated financial powers of the Deputy General Manager/General Manager for purchase of stores on the basis of quotations, were limited to only Rs.5000/- As per the instructions issued vide Department of Telecom Circular letters No. 51-6/91-MMC/Pt. dated 12.1.93 and No.305-2/95-MMS dated 8.11.95, which were reiterated vide letter No.BGT/3-9/97-98/13 dated 9.12.97 from General Manager (Finance), Maharashtra Telecom Circle, Mumbai, addressed to Shri B. Prasad, General Manager, Nasik Telecom District, purchases were not to be made on the basis of tenders finalized by other Secondary Switching Areas, and purchases of value exceeding Rs.50,000 were to be made only on the basis of open tenders. It is laid down in Para 28 of Annexure to Chapter-8 of General Financial Rules, 1963, that the open tender system, that is, Invitation to Tender by public advertisement should be used as a general rule and must be adopted in all cases, in which the estimated value of the demand is Rs.50,000/- and above.

3. The said Shri A.K. Dutta, as the Deputy General Manager, approved the purchase of Pulse Reflectometers, Cable Route Tracers, Battery Voltage Monitoring Systems, and Digital Earth Resistance Testers, from M/s Hi-Tech Telecom Systems, Hyderabad, without ascertaining the specific requirements of the field units. Purchase Orders were accordingly placed on the said firm, and payments were released, as follows:

Item (1)	Purchase Order No. And Date (2)	Invoice No.& Date (3)	Amount (Rs.) (4)	Date of Pay- ment (5)
One Cable Route Tracer and One Pulse Reflectometer	N-2/2/5/97-98/4 Dated 22.8.97	30 dated 26.8.97	1,40,610/-	1.9.97

T. M. S. A.

Attested
A. Dutta
Advocate

Contd...

(1)	(2)	(3)	(4)	(5)
Two Pulse Reflectometers and two Cable Route Tracers	N-2/2/4/97-98/5 Dated 5.8.97	28 dated 11.8.97	2,81,220/-	14.8.97
Two Battery Voltage Monitoring Systems and one Digital Earth Resistance Tester	N-2/2/4/97-98/6 dated 5.8.97	29 dated 11.8.97	41,202/-	14.8.97
		Total	4,63,032/-	

4. Though the aforesaid equipments were not proprietary items, and were not covered by DGS & D rate contracts or any tender finalized by the O/o Chief General Manager Telecom, Maharashtra Telecom Circle, Mumbai; the purchases were made on the basis of quotations, without inviting tenders as required.

5. The said Shri A.K. Dutta, as the Deputy General Manager, thus, in connivance with Shri B. Prasad, the then General Manager, Shri N.G. Kamalapurkar, Assistant General Manager (Planning), Shri M.D. Gosavi, Chief Accounts Officer, and Shri A.K. Pathak, Sub-Divisional Engineer (Planning), all of Nasik Telecom District, approved the procurement of the aforesaid equipments which were non-stocked items, for a total of Rs.4,63,032/- on the basis of quotations, without inviting tenders as required, though the equipments were not proprietary items, far in excess of the delegated financial powers of the Deputy General Manager/General Manager, and without ascertaining the specific requirements of the field units, in violation *intef alia* of Rule-6, and Para 28 of Annexure to Chapter-8, of General Financial Rules, 1963, Department of Telecom Circular letters No.51-6/91-MMC/Pt. dated 12.1.93 and No.305-2/95-MMS dated 8.11.95, letter No.BGT/3-9/97-28/13 dated 9.12.97 from General Manager (Finance), Maharashtra Telecom Circle, addressed to Shri B. Prasad, General Manager, Nasik Telecom District, and Rule 60 of P&T Financial Handbook Volume I; thereby depriving the Department of the benefit of competitive rates, and showing undue favour to the aforesaid private party.

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

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Annexure III

List of documents by which the Articles of Charge framed against Shri A.K. Dutta (Staff No.8188), Deputy General Manager, Maharashtra Telecom Circle, are proposed to be sustained.

1. File No.N-2/2/7/97-98, containing 43 pages and 7 Note Sheets.
2. File No.N-2/2/4/97-98, containing 40 pages and 3 Note Sheets.
3. File No.N-2/2/5/97-98, containing 21 pages and 2 Note Sheets.
4. File No.N-2/2/6/97-98, containing 58 pages and 9 Note Sheets.
5. Letter No.BGT/3-9/97/98/13 dated 9.12.97 from General Manager (Finance), Maharashtra Telecom Circle, Mumbai, addressed to Shri B. Prasad, General manager, Nasik Telecom District.
6. Statement of Shri M.N. Kunde, the then Chief Accounts Officer, Nasik Telecom District.
7. Department of Telecom Circular Letter No.51-6/91-MMC/Pt. dated 12.1.93
8. Department of Telecom Circular Letter No.305-2/95-MMS dated 8.11.95.
9. General Financial Rules, 1963.
10. Rule-60 of P&T Financial Handbook Volume I.

Attested
Datta
Advocate

Signature

Annexure IV

List of Witnesses, by whom the Articles of Charge framed against Shri A.K. Dutta (Staff No.8188), Deputy General Manager, Maharashtra Telecom Circle, are proposed to be sustained.

1. Shri R.S. Natarajan, the then Vigilance Officer, O/o the CGMT, Maharashtra Telecom Circle, Mumbai.
2. Shri M.N. Kunde, the then Chief Accounts Officer, Nasik Telecom District.
3. Shri A.S. Wale, AGM (Planning), Nasik Telecom District.

Attested
Dhruv
Advocate

Swami

Bharat Sanchar Nigam Limited
(A Govt. of India Enterprise)
Office of Principal General Manager
Kalyan Telecom District

To,

Principal General Manager,
Kalyan Telecom District,
Kala Talao, Kalyan.

Respected Sir,

Kindly find enclosed herewith my representation against Memo
No.8/248/2003-Vig.II Dated the 29.8.2003 from Shri. John Mathew, Under Secretary to
the Govt. of India.

My representation may kindly be forwarded through proper channel to Shri. John
Mathew with your appropriate comment.

The receipt of this letter may kindly be acknowledge.

Thanking You,

Encl : My Representation.

Date : 15th October 2003
Place : Kalyan.

Yours sincerely,


(A. K. Dutta) 15.10.2003

Area Manager (Kalyan)
Kalyan Telecom District.

Attested
A. K. Dutta
Advocate

भारत संचार निगम लिमिटेड (सरकारी)
दृष्टान्त महाप्रबंधक का कार्यालय
भारत संचार निगम लि. कल्याण ४२९३०९
Divisional Engineer (Vigilance)
Old Principal General Manager
BSNL, Kalyan 421 301

From : A. K. Dutta
Staff No. 8188
Deputy General Manager,
Maharashtra Telecom Circle.

To,
HIS EXCELLENCY THE HON'BLE PRESIDENT OF INDIA

Kind Attention : Sh. John Mathew,
Under Secretary to the Govt. of India
Ministry of Communication & Information Technology,
R. K. Puram, New Delhi.

(Through Proper Channel)

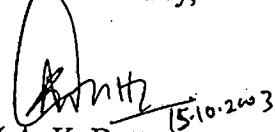
Respected Sir,

I respectfully acknowledge the receipt of Memorandum
No. 8/248/2003-Vig.II dated 29th August 2003.

2. At the outset, I submit that I did not commit any irregularities what so ever to call up such adverse remark against me. I, therefore deny all the charges.
3. I, therefore humbly request that the proposal for holding an inquiry may kindly be dropped for which act of kindness, I shall be ever grateful to you.
4. In the event of further proceeding against me, I humbly request that I may kindly be heard in person.

Sir, I remain,

Yours faithfully,


(A. K. Dutta) 15.10.2003

Date : 15th October 2003.
Place : Kalyan.

*Subested
Dutta
Advocate*

From : A. K. Dutta
Dy. G.M., BSNL, Kalyan.
Maharashtra Circle.

To,
Shri. N. K. Ghosh,
Inquiry Officer,
CDI, CVC, New Delhi-23.

Sub : List of additional documents and witnesses.
Case of Shri. A. K. Dutta, Dy.G.M., BSNL, Kalyan.

Ref : Daily Order Sheet dated 30.12.2003.

R/Sir,

As directed by you in the proceeding held on 30.12.2003, kindly find enclosed herewith the list of additional documents required to base my defence. The list contains Description of documents, Relevance to defence documents and Custodian of documents.

Further, I may kindly be allowed any other documents found to be relevant during the coarse of Regular Hearing.

Kindly acknowledge.

Thanking you,

Encl : As above.(Containing 4 pages)

Date : 07.01.2004

Place : Kalyan.

Yours faithfully,

(A. K. Dutta)

qc

Copy to : Shri. A. K. Sahu, P.O., for kind information and n/a pl.

Attested
A. K. Dutta
Advocate

List of Additional Documents required to base my Defence upon

Sl.No.	Description of documents	Relevance to defence	Custodian
1.	Rule, Instruction or Authority prohibiting operating on tenders of other SSA/Circles	Referring to documents listed at Sl.No.5 of the Memo of charges at Appendix-III thereof it is noted that operation of tenders of other SSA/Circles as also extending the period of Tenders beyond what is legitimate. Hence the necessities of this Rule, Instructions or Authority are necessary.	GMT Nashik
2.	Rule, Instruction or Authority prohibiting period of operation on tenders beyond what is legitimate.		
3.	Rule, Instruction or Authority under which the DGM/GM are delegated financial powers for purchase of stores on basis of quotation limited to Rs.5000/-.	As per para-1 of Annexure-II of the Memo as it is stated that the DGMs and GMs are delegated financial power for purchase of store on the basis of the quotation limited to Rs.5000/- which does not appear to be a fact. These documents are required to refute the imputation as included in Annexure-II para-1 of the Memo.	GMT Nashik
4.	File no.S-12/3/Audit/April'99 /99-2000 of the office of GMT Nashik.	i) It appears that the genesis of this case lies in the Audit para raised by the Audit Officer P&T and the whole case arises out of the alleged irregularities noted for issuing the Memo of charges. This case of irregularities pointed out by the Audit where adequately replied by the GM from this file.	GMT Nashik
5.	D.O.No.S-12/Audit/99-2000/49 dt.1/10/99 address to GM(Finance), O/o.CGMT Mumbai by the GMT Nashik.	ii) While no action was reportedly taken against Aurangabad, Ahmedabad, Nalgonda, Guntur, Latur, Nanded and Sawantwadi SSA but only Nashik and Nanded SSAs are being	

		<p>targeted. Such targeting is basically against constitution and equality before law amounting to rank of discrimination. Details of all these are available in the file and become a prime importance to my defence.</p>	GM (Fin) O/o.CGMT Mumbai
6	Copy of CGMT Mumbai MH Circle letter no.BGT/3-9/97-98/13 dt.9/12/97.	These Memo's pertain to the purchase of cable fault locator etc. by Nashik, Nanded and Aurangabad SSAs while Item (6) & (7) pertains to the Nashik SSA, Item (8) and (9) pertains to the TDM Nanded and GMT, Aurangabad respectively with similar purchases have been done by the GMT, Nasik and hence required to base the defence upon for showing the comparative position with respect to the purchase of Stores.	GMT Nashik
7	Copy of Test Audit Memo no. 20 dated 15/4/99 and TAM no.24 dated 19/4/99 alongwith the document issued at GMT Nashik by the Audit Officer, P&T, Nagpur at Nashik during Audit Inspection	Relevance for all the four documents is the same since the Audit Check for the same purpose at Nashik, Aurangabad and Nanded. All the Test Audit Memo are done by the Audit Officer, P&T, Nagpur reported as Key Documents.	TDM Nanded
8	Test Audit Memo no.44 dt.6/10/99 issued at TDM Nanded with reply thereon.		GMT Aurangabad
9	TAM no.22 dated 25/11/99 issued at GMT Aurangabad by the Audit Officer, (P&T), Nagpur.		These documents 7,8 & 9 could also be available with the Audit Officer, P&T Nagpur.
10.	File no.S-14/LP/CP/CP.(Part-II)/00-2000 and file no.S-14/LP/CP/99-2000	----- do -----	GMT Aurangabad

11.	File no.NND/Eng-7/1/P.O./99-2000	----- do -----	TDM Nanded
12.	Letter no.F/IA/DAP-35/01-9/2 dated 21/6/02 regarding Submission of Action Taken Note on C&AG Para contained in the report of C&AG of India(P&T) for the year ended 31.3.2001 [No. 6 of 2002] on Para-47 on irregular expenditure on procurement of Cable route tracer and Cable fault locator. This letter is addressed to GM Telecom Nashik and Nanded by GM(Finânce)	The letter was addressed by the GM(Finance) to GM(Nanded) and GM(Nashik) for clarification on Audit para no.6 of 2002. These letter throws sufficient light on the Audit Para particularly para- 47 regarding the alleged irregularity.	GM (Finance) O/o.CGMT MH Circle, Mumbai
13.	Schedule of financial powers as issued by the MH Telecom Circle vide endorsement no.BGT/AO-2/RLG/Vol.V/4 dated 2/1/91 for circulation under DE(Admn) Nashik no.Y/G/31/90-91/23 dt.28/1/91.	To show that no financial powers were violated by me	DET(Admn) Nashik Telecom
14.	Disciplinary proceeding-Initiation thereof vide F.No:17-4/2003-VM-II, Govt. of India, DOT, Vigilance Monitoring-II dated 25/11/03 and endorsement by CGMT MH circle vide No. T/VIG/CCS/CCA/Rules /XI/53 dated 29/12/03.	Guidelines are issued by the Govt. of India, DOT, Vigilance Monitoring-II so as to keep in view while investigating the complaints for Local Purchase made by the field officers like Aplab Testers etc. having limited suppliers	AGM (VIG-I) O/o.CGMT.MH Circle, Mumbai-1

15.	Any other documents to be found relevant during the course of Inquiry.		
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LIST OF WITNESSES FOR DEFENCE

List of witnesses to be examines on my behalf for defence : NIL

I may not also examine myself as my own witness.

----- X -----

By Speed Post

NO.123/NKG/29 / 132

Government of India
Central Vigilance CommissionSatarkata Bhavan, INA,
New Delhi, dt. 22.1.2004ORDER SHEET**Subject:** Departmental Inquiry against Sh. AK Dutta, the then AGM, Telecom.

Reference CO's letters dt.7.1.2004 and 10.1.2004 requesting for additional documents, assistance of defence assistant and also raising objection about admissibility of a prosecution document listed at S.No.6 of annexure III of the chargesheet. Additional documents vide said letter at S.No.3, 4, 5, 6, 7, 12, 13,14,16 and 19 are permitted. Documents at S.No.8, 9, 10 and 11 relate to other circle/place, namely, Nanded and Aurangabad. The documents at S.No.1 and 2 also inter-alia relates to prohibiting operating on tenders of other SSA/Circles. As regards documents 1, 2, 8, 9, 10, 11, CO is directed to clarify explicitly how these documents are specifically related to his defence. The reasons giving the relevance of documents at S.No.17 and 18 are not considered appropriate for requisitioning of these documents for the defence of the CO. PO and CO are directed to take necessary action for inspection of permitted documents as per order sheet dt. 30.12.04.

IO does not have any objection in accepting the request of the CO regarding defence assistant

As regards the admissibility of the prosecution documents at S.No.6 of annexure III, the objection of the CO noted. The said document will be taken on record as per extant rules and guidelines.

Copy of the ordersheet sent to the PO and CO for strict compliance.


(N.K. GHOSH)**COMMISSIONER FOR DEPARTMENTAL INQUIRIES**

1. Shri AK Sahu (PO), General Manager (Operations), O/o CGM Telecom, Maharashtra Telecom Circle, Fountain Telecom Building No.2, 8th Floor, Mahatma Gandhi Road, Fort, Mumbai-400001.
2. Shri AK Dutta, (CO), Dy. GM, BSNL Kalyan, Telephone Bhavan, Kala Talao, Kalyan (West), Kalyan-421 003, District Thane(Maharashtra).

*Attested
Mills
Advocate*

From:

Shri A.K.Dutta,
DGM, BSNL Kalyan,
Kalyan-421 301

TO:

Shri N.K.Ghosh,
Commissioner for Departmental Inquiries,
C.V.C. New Delhi-110 023

SUB: Departmental Inquiry against Shri A.K.Dutta, DGM, BSNL Kalyan

REF: Your order sheet no.123/NKG/29/1312 dated 22-1-2004 with reference to my letter dated 7-1-2004 and 10-1-2004 requested for additional documents.

Respected Sir,

As per directed by you in your order sheet dated 22-1-2004 to clarify explicitly how the documents listed at Sl.no.1,2,8,9,10,11 as also for 17 & 18 of the above list are related to my defence. It is hereby clarified as follows.

Item no. 1 & 2 :-

This relates to the listed documents at Sl.no.5 of the Memo of charges at Annexure III, which states at para (ii) while pointing out Irregularities in purchase/contract works.

- i) Tender of other SSA's/Circles are being operated, and
- ii) Extending the period of operations of tenders beyond what is legitimate.

To my knowledge there was no specific Rule/Instructions not prohibiting operations on other SSA's/Circles being operated or in extending the period of operation of tenders beyond what was legitimate. This practice was being followed in the whole of DOT and was perhaps followed in this case also.

Disc. Authority while putting Rule 60 at Sl.no.10 of Annexure III of the Memo, has NOT put the rules relevant to above item (i) & (ii) in the list of documents though now quoted in item 5 of the listed documents. In the absence of this to effectively defend against the charge it was requested that the Rules 101 to 105 and Appendix 8 to the General Financial Rules should also have been put in evidence at least at this stage of inquiry and hence requested to know the specific Rules/Instructions on the point that Tenders of other SSA's/Circles and also extending the period of operation of Tender beyond what is legitimate.

My case is that the Nasik SSA operated on the precedence of purchases made by the adjoining SSA's/circles for the purchases of the item. Hence it is kindly requested to allow these documents requested for.

...2/-

*Attested
Mukul
Advocate*

: 2 :

Item no.8,9,10 & 11 in the list the additional documents

The relevance for these has already given in the earlier letter. It is reiterated here in now as additional clarification how the relevance thereof is still valid. Nasik was not only the SSA, which purchased these items. This were also purchased by the adjoining SSA's and even by the Ahmedabad District in the same manner and method as Nasik SSA done. Other SSA's like Poona, Kalyan, Kolhapur also made similar purchases as reflected in reply by the DGM (Plg), O/o.GMT Nasik in reply to the Director of Audit, Office of the P&T Nagpur letter no.AO23/Audit note/99-00/2 dated 18-5-1999 is his letter no S-12/3/Audit/April-99/99-2000/40 dated 27-05-1999 also clarified regarding TAM 20 and 24.

Therein it is also clarified at para 2. TAM/PLG 22 IVRS that the DOT had instructed Rajasthan Circle in early 1996 to float tender and firm up specifications of IVRS. The Rajasthan Circle has evaluated and approved the equipment supplied by M/s. Bay Talktec, Chennai with whom inquiries were also made who had in turn informed that equipment can be purchased through there Authorized dealers M/s. Compushop, Mumbai.

Latur SSA made similar purchase also but none from that unit was proceeded against.

Amongst all the above quoted SSA's units only offers from Nasik and Nanded were proceeded against.

From the records made available to me, it is amply clear that prior permission was given by GMT Nasik on concurrence of the CAO and IFA also.

As such the documents requested herewith may kindly be accepted to defend my case suitably since the documents requested may give me a way to have the charges dropped by the D.A. or may be able to explain my conduct effectively in a better position.

Also subsequent to this purchases there appears to be a hue and cry against discrimination resulting in action against only Nasik and Nanded Officers and the DOT, Govt. of India, suo moto reopened the cases subsequently to issue clear guide lines vide their letter no. F no.17-4/2003-VM-II dated 25-11-2003 issued by the Director (VM), Vigilance Monitoring-II, DOT, New Delhi requested at Sl.no.14 in the list of additional documents by me and also permitted by you as a possible defence documents.

: 3 :

Along with this justification and relevance as clarified, it is kindly requested to review the request for requested documents at Sl.no.17 & 18 on the ground that the GMT Aurangabad had faced similar Test Audit Memos for the purchases made by their SSA's in a very similar way for the similar items for similar purpose and perhaps very effectively pleaded there case for these purchases to get the objection raised by the Audit waived. Perhaps these details as requested under Sl.No.17 & 18 may help me to get similarly plead the case for the above objection which may be dropped at the inquiry stage, justifying my purchase like the once they had for Aurangabad.

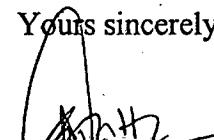
With this, Sir and with the revised relevance as above it is kindly requested that these documents requested at Sl.no.1,2,8,9,10,11,17 & 18 may kindly be admitted.

The inconvenience caused to you is highly regretted please.

Kindly acknowledge.

Thanking you,

Yours sincerely,


(A.K.DUTTA)

Date: 31-01-2004

Place: Kalyan

Copy to;

Shri A.K.Sahu, P.O : - for his kind information and further action to supply the above documents please.

By Regd. Post

NO.123/NKG/29-4808

Government of India
Central Vigilance Commission

2/3

... Satarkata Bhavan, INA,
New Delhi, dt. 12.3.2004

17 MAR 2004

Subject: Departmental Inquiry against Sh. AK Dutta, the then AGM, Telecom.

ORDER SHEET

Reference CO's letter dt.31.1.04 with reference to ordersheet dt.22.1.04 and further request of the CO for additional documents vide CO's letter dt.25.2.04. In view of the reasons explained in the CO's letter dt.31.1.04 and his subsequent letter, PO is directed to make the documents available to the extent possible to the CO and take necessary action for inspection.

Copy of ordersheet sent to PO and CO.



(N.K. Ghosh)

Commissioner for Departmental Inquiries

Phone: 2465 1086

1. Shri AK Sahu (PO), General Manager (Operations), O/o CGM Telecom,
Maharashtra Telecom Circle, Fountain Telecom Building No.2, Fort, Mumbai-400001.

2. Shri AK Dutta, Dy. GM, BSNL Devi Bhavan, Near Dr. Acharya Hospital, Kalyan,-
421 301 (Maharashtra).

Attested
AK Dutta
Advocate

F.No.123/NKG/29
Government of India
Central Vigilance Commission

✓
Satarkata Bhawan, INA,
New Delhi-110023

INQUIRY REPORT

Name of the CO : A.K. DUTTA, DGM, Maharashtra Telecom Circle.
Organisation : DEPARTMENT OF TELECOMMUNICATIONS
Reference : CVC's OM No.003/P&T/142 dt.5.6.2003

I. Introduction

I was appointed as Inquiring Authority vide Ministry of Communications & Information Technology, Department of Telecommunications order No.8/248/2003-Vig.II(i) dated 5.12.2003 to inquire into the charges framed against Shri AK Dutta, area Manager, O/o Principal Gneral Manager, Kalyan Telecom District, (hereinafter called as CO), Sh. AK Sahu, GM(Operations), DOT, was appointed as Presenting Officer(PO) to present the case in support of the charges. Sh. P.G. Deshkar acted as Defence Assistant on behalf of the CO. The Preliminary Hearing in this case was held on 30.12.2003 at New Delhi. After the completion of formalities of inspection of documents and other connected matters as recorded in the Daily Order Sheets, the Regular Hearing in this case was fixed and held on 6th, 7th and 8th of May, 2004 at the Office of GMT, Raigad, Santacruz(W), Mumbai. The PO placed on record 10 prosecution documents, which were marked as S-1 to S-10. There were three management witnesses i.e. SW-1 to SW-3. The CO produced 15 additional documents, which were also taken on record and marked as D-1 to D-15. After taking on record prosecution and defence documents, prosecution case was taken up. Prosecution witnesses were examined-in-chief by PO and cross examined by CO/DA. After closure of prosecution case CO filed statement of defence denying the charges. After that defence case was taken up. There were two defence witnesses (DW-1 and DW-2) who were examined-in-chief by the CO/DA and cross examined by PO. As the CO did not offer himself as defence witness, the IO generally

Self tested
Akash
Advocate

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examined him on the circumstances appearing against him during the Inquiry. PO's written brief was received on 26.5.2004 whereas defence written brief was received on 23.6.04. These are duly taken on record. Other details are in Daily Order Sheets.

II. Article of Charge

That the said Sh. A.K. Dutta, while functioning as Deputy General Manager(Planning) Office of the General Manager, Nasik Telecom District, during the period from July, 1997 to February, 1998, in connivance with Sh. B. Prasad(Planning), Sh. NG Kamalapurkar, Assistant General Manager(Planning), Sh. MD Gosavi, Chief Accounts Officer, and Sh. AK Pathak, Sub-Divisional Engineer(Planning) all of Nasik Telecom District, approved the procurement of non-stocked items viz. cable route tracers, Pulse Reflectometers, Battery Voltage Monitoring Systems, and Digital Earth Resistance Testers from M/s Hi-Tech Telecom Systems, Hyderabad, for a total of Rs.4,63,032 on the basis of quotations, without inviting tenders as required, though the equipments were not proprietary items, far in excess of the delegated financial powers of the Deputy General Manager/General manager, and without ascertaining the specific requirements of the field units; in violation inter alia of Rule-6, and Para 28 of Annexure to Chapter-8 of General Financial Rules, 1963, Department of Telecom Circular letters No.51-6/91-MMC/Pt. Dt.12.1.93 and No.305-2/95-MMS dt.8.11.95, letter No.BGT/3-9/97-98/13 dt.9.12.97 from General Manager(Finance), Maharashtra Telecom Circle, addressed to Sh. B. Prasad, General Manager, Nasik Telecom District, and Rule-60 of P&T Financial Handbook Volume-1; thereby depriving the Department of the benefit of competitive rates and showing undue favour to the aforesaid private party.

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

III. Statement of Imputation

Statement of Imputation in support of the Article of Charge is annexed to this Report.

*Attested
Vikas
Advocate*

IV. Prosecution Case

Various arguments and contentions of PO, in support of the Article of Charge, are mentioned as below:

As per the guidelines prevalent at the time of purchase of the testers, the purchase of items costing beyond Rs.50,000 were to be made on the basis of open tender (Para 28 of Annex to Chapter 8 of GFR i.e. Exhibit S-9). This guideline was fully violated as the three testers whose prices were Rs.1, 40,610 per testers were purchased from a single supplier without inviting open tender resulting in irregular expenditure of Rs.4, 63,032/-. The rates were fixed on the basis of orders placed by other SSA/Circle. This was in violation of existing guidelines (S1.No.iii of Exhibit S-7 and S.No.4 of Exhibit S-8). This procedure was further reiterated vide Exhibit S-5.

The testers purchased by the Charged Officer were not propriety items and were not covered by any DGS&D rate contracts or any tender finalized by CGMT MH Circle Mumbai. Purchases were made on the basis of quotations from M/s Hitech, Hyderabad, but there is no evidence to call any quotation or tender in the files Exhibits S-2 and S-3. As can be seen from Exhibits S-2 and S-3, the supplier M/s Hitech approached the Charged Officer with purchase order of other units. Subsequently, field trials were arranged and purchases were made on the rates quoted by M/s Hitech without verifying reasonableness of the rates. Statement of SW-1 also confirms these facts.

The procurements were approved by the Charged Officer in spite of the objections raised by the then Chief Accounts Officer for calling open tender. (Corr. Sheet No.14 of Ex.S-3). Objections raised by the IFA were not fully cleared (as per SW-1) and procurement was approved by the CO in spite of the fact that the CO was not competent to approve the purchases. The approving authority was SSA Head i.e. GMT (as per SW-2 and SW-3)

It is therefore observed that though CO was not delegated with any financial powers as per schedule of financial powers (Ex.D-9). Schedule of Financial powers

Attested
With
Advocate

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clearly indicates that DGM (Plg.) was not delegated any power for procurement of non-stocked items. This power was delegated to GMT/Area Director/TDM who are independent in charge of SSA/Area. As DGM (Plg.) the CO was functioning under GMT Nasik, hence he was subordinate officer and not SSA head.

The requirements projected by the field units were primarily based on the results of field trials and do not mention anything about high fault rates or number of accumulated faults (Corr. 13 and 14 of Ex.S-3 and Corr.19 to S-22 to Ex.S-2). This clearly indicates that there was no urgency or genuine requirement and the requirements were projected simply because the supplier had approached the CO. The questions regarding urgency of testers were not answered satisfactorily by defence witnesses. The defence witness DW-1 mentioned that these testers are required for smooth maintenance of network which is a regular phenomena. It is therefore observed that the procurements were made by creating artificial urgency on the plea of rainy season.

The defence witnesses could not establish the nature of urgency and explain the reasons for violating the departmental procedures during procurement of the testers. Both the defence witnesses DW-1 and DW-2 have accepted that requirements were submitted after successful completion of field trial by M/s Hitech which resulted in irregular purchases.

Considering the above facts, it is established that the CO had approved purchases in violation of delegated financial powers and had failed in observing necessary formalities. The charges as per the charge sheet are therefore fully sustained.

V. Defence Case

Various arguments/contentions of the defence are given as under:

Defence has stated that the prosecution has ignored and did not put in evidence, the System of Accounts and Responsibility of a Divisional Officer. According to this the Accounts Officer is the head of the office for purposes for financial rules. Citing Rules 11,15, 16, 17, 21 and 23 the defence has made the case that CAO or IFA to GM Nasik was primarily responsible for the acts of omission and commission in this case.

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Ex.S-7 and Ex.S-9 are all attributed to CAO who was head of the SSA for financial rules. Defence has further argued that such purchases were made by the other SSAs on the basis of tender floated by Ahmedabad Telecom district.

The said purchase attributed to be made by the CO was on the basis of Management Meeting held on 10.7.97, chaired by the then GM in which various field units (DEs) pressed for purchase of the instruments due to higher utility and urgency. In fact, no purchase of Testers made by the CO. It was purchased by AGM (Plg.) under his signatures/authority on the purchase order placed in the name of GM, Nasik. Since these testers were newly introduced, there were no DGS&D rate besides tender rates not at all called by CGM MH Circle, Mumbai. Defence has further argued that M/s Hi-Tech rates from which testers were purchased were lowest. M/s Hi-Tech had earlier supplied such type of instruments to Nanded and Latur. With the onset of monsoon in July/Aug. all knew necessity, desirability and utility as also the urgency for procurement. The case was fully discussed in the management meeting on 10.7.97. There were precedents when DE (CC) purchased the similar items to the tune of Rs.1.33 lakhs after obtaining the financial concurrence from earlier CAO. Party did not approach the CO. Quotations were addressed to the GM, Nasik. Purchase order was placed on behalf of GM by AGM(Plg.). In fact, the proposal attributed to the CO was cleared by the succeeding CAO of the SW-1.

Prosecution has not put anything in evidence to show that the CO as DGM(Plg) or otherwise was not competent to approve the purchase. CO's financial power for purchase was concurrent with the GM up to 2 lakhs on each occasion. The onus of proving urgency not only lies with defence but disproving the same also lies with prosecution. CO was having the financial power as delegated in the Circular at D-9 and as accepted by the CAO for day-to-day administration. However, during passing the bills on 4.9.97, the GM called for the explanation of CAO. The CAO's explanation says that, "Necessary instructions issued to all concerned. This is the case prior to the issue of Revised Delegation of Powers." (Note sheet N/3 in Ex.S-2) and (Note sheet N/2 in Ex.S-3). This clearly shows that there existed a power more

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than 1 lakh for DGM to pass the bill. The powers were revised on up gradation of Division downgrading DGM's powers to 1 lakh. Since the party introduced himself, there was no need for any quotation to be called for as argued by the PO. The rate for Aplab Tester was Rs.1.33 lakh while the same type, same technology and same utility from M/s Hi-Tech their price was Rs.84,000 per piece. Thereby actually a saving was recorded for Rs.49,000 much cheaper than what others have purchased as mentioned at Ex.S-1 and S-4.

It is a fact that the procurement was approved by the CO for its technical feasibility and usefulness. Any proposal to mature three approvals are required as per Rule 147 of P&T Manual Vol.X : 1)Technical, 2)Financial, 3)Administrative. Technical approval was given by the CO while the financial approval was given by the CAO. As regards the administrative approval such an approval was already accorded by the GM in the Management meeting on 10.7.97. CO being an administrative officer of JAG rank had full authority on behalf of the GM as an attached officer looking after the charge of DGM(Plg.). In this regard DG P&T letter No43/17/57-PE/CI dt.4.1.58 states that powers to lower other to decide the cases and convey sanction/orders of the Head of the Circle/Director of Telecom has been entirely left to the discretion of the Head of the Circle/Director of Telecom.

Procurement was technically approved by the CO in a normal official routine, after the financial concurrence/approval given by the CAO/IFA without pressing further for tendering process in view of my logical reply submitted on his suggestion of the remark.

Again, if no powers are delegated to the CO as a DGM, it was up to the CAO to raise objection on that serious infirmity and report the matter to the Circle Finance under Rules 20, 21 And 23 quoted earlier to regularize or to modify the schedule to categorically state whether the DGM of Nasik SSA had any financial power or not and it was also not upto the investigating officer to say that the schedule under D-9 was not vesting any financial power with the DGM. There is definitely a merit and

(A)

truth in the two notes exchanged between CAO and GM Nasik querying to the CAO to explain on 4.9.97 when the bill already passed by SDE and DE to which the CAO replied. 'Necessary instruction issued to all concerned. This is the case prior to issue of revised delegation of power w.e.f. 1.9.97. No purchase was made when on upgradation of the districts the financial limit of DGM was downgraded to Rs.1 lakh on each occasion.

CO was functioning under GMT Nasik and he was subordinate officer and not SSA Head. It does not automatically mean that DGM(Plg.) or for that purpose any DGM of Nasik SSA, the financial powers were not delegated.

The PO has not shown any documentary or oral evidence to show that DGM has not financial power and did not show what the financial power of DGM was passing of an estimate to an extent of Rs.1.33 lakh for purchase of such instrument by Sh. Padegaonkar, then DGM during 1997-98 and getting it approved financially by the CAO clearly shows that the DGM was delegated some financial power at least to sanction some estimate for amount at least Rs.1.33 lakh excluding 4% S.T. thereon. This power could be about 2 lakhs only.

The schedule of financial power D-9 shows that the Area Director and TDM having the power of approving detailed estimate upto 3 crores in each case. It was under these powers that Sh. Padegaonkar, then DGM Nasik having charge of DGM(Plg.) Nasik had approved the estimate to an extent of 1.33 lakhs + 4% S.T.

The urgency of required instruments by field units were projected in the Management Meeting of 10.7.97 where the possession of the such instruments by DE(CC) Nasik was projected for its utility, usefulness urgency for other units also. This was agreed to by the GM for similar purchases on similar grounds and similar proprietors. He also directed the DEs to submit their requirement to the AGM(Plg.) or to him. Accordingly, the requirement of the respective DEs have been placed and the requisition was sent to GM and other to AGM(Plg.) O/o GMT, Nasik.

It is a matter of record on S-2 and S-3 on page 22 and 13 respectively. It was on these requirements the proposals were considered upon by obtaining prior approval by the CAO and the Purchase Orders have been placed by the AGM(Plg.), O/o GMT Nasik on behalf of GM within delegated financial power of GM. The powers of DGM were not utilized by AGM (Plg.) O/o GMT, Nasik.

The urgency was accepted by the GM in the Management Meeting on 10.7.97 and asked the field DEs to place their requirements though this was not mentioned in the meeting records. The GMT had asked the AGM(Plg.) to further process the case for the procurement of these equipments immediately postponing the tendering process. This is amply reflected in the 6th para of D-2 letter No.S-12/Audit/99-2000/49 dt.1.10.99 quoting, "The tender formalities were postponed for the above reasons only." The PO has failed to prove that there was no urgency.

The requirements were not projected simply because the supplier approached the CO as contended by the PO. The PO has not put forth any evidence to prove that CO was approached by anybody. However, it is on record that the quotations were issued in the name of GM, Nasik and were put in file. The quotations were received on 22.7.97 and the requirement along with demonstration report were received on 31.7.97 and the proposal was mooted on 1.8.97 and purchase order was placed by the AGM(Plg.) O/o GMT, Nasik on 5.8.97 in the name of GMT, Nasik within the GM's financial power.

It has to be primarily understood that CO's first duty was to maintain cables where the faults incident had alarmingly increased due to cable faults in the monsoon season. Dry paper core cables having been punctured in the Dry season during the road expansion and digging work by other public utility concern like Municipal Corporation, PWD etc. the faults occurred only after the monsoon had set. CO's work as a GM (Plg.) was only secondary yet on attending office late in the evening he cleared the file on 5.8.97 itself on the basis of proposal, requirements, urgency, the

CAO's note, AGM(Plg.) explanation and CAO's clearance allowing financial sanction/approval for purchase on the basis of quotation available and the copy of the purchase order placed by other SSA earlier to this case without advising tendering process. This chain of events shows that the procurement was more urgent to cut down duration of faults by quick and correct location and tracing the faulty cables fast.

It was noticed that the cost of saving revenue loss due to quick and early restoration of cable faults in the monsoon season was much more than the cost of the newly sophisticated cable fault testers by utilizing it. The whole case cropped up due to audit objection for several SSA's including Nasik. Others except Nasik perhaps satisfied the audit Para against them or if any Para was contemplated subsequently explanation caused dropping of audit para. With the type of non-vigilant Vigilance Officer and their lack of knowledge for fair investigation has also not understanding the duties and responsibilities of the CAO, the report went against the Nasik SSA. Surprisingly also the Vigilance Officer admitted in QA-15 that he has not verified the Schedule of Financial Power as prevalent those days and whether at all the DGM had any financial powers. These factors did not reflect perhaps in his report and hence only the officers of Nasik SSA have charge sheeted of which unfortunately CO was one. Only singling out Nasik SSA was ranked discriminatory and against equality before rules.

The PO has not pointed any rule to show that bars use of tender of other SSA/Circles for being operated upon and secondly this point was for the consideration and operation of the CAO who incidentally happens to be the head of the units for financial rules.

According to the Vigilance Officer SW-2, the DGM attached to the district has no financial power. If this were true how was it that the DGM were incurring expenditure without authority and CAO/IFA allowing such gross irregularities and not bringing to the notice of second head and Telecom Circle, Headquarter. But in view of two noting between the CAO and GM at NS-3 in S-2 and at NS-2 in S-3

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clears that the DGM had powers upto Rs.2 lakhs as per the schedule of the power then existing before 1/9/97 when up gradation of districts, the power of DGM degraded to Rs.1 lakh only. Thus, the contention of the investigating officer was wrong and misleading and hence arguments of the PO on this point could misguide the IO. The DGM did have powers over Rs.1 lakhs before 1.9.97.

The latest circular (D-18) issued by the Director (VM), VIG Monitoring-II Department of Telecom, Govt. of India, F.No. /17/4/2003-VM-II dgt.25.11.2003 in Para 22 for local purchases had specifically mentioned that the local purchase of Aplab Testers etc. made by the field officers which are having very limited suppliers and the department is also aware of the cost in such type of purchases if there is no malafide intention behind the purchases the disciplinary action should not be started. However, the concerned officers should be warned to follow the prescribed method of purchases. This circular is prospective and not retrospective otherwise this case could not have come. However, the IO may kindly take note of exonerate CO on the basis of above circular.

Since some 30 units all over India resorted to such purchases and they could not be much wrong in view of respective CAO's authorizing purchases without calling for tenders and bypassing rules on the subject. All 30 CAOs and equal number of office could not go wrong. Here the circular does not lay stress that the prescribed process is a must and should not be condoned at all. This gives a safety valve.

The PO did not produce any evidence for CO's connivance with his superior and the subordinates as mentioned in the charge sheet.

It was also wrong to say that the specific requirements of the field units were not ascertained before resorting to local purchase. These requirements are part of the record, namely, sheet No.22 (Ex.S-2), sheet No.21 (Ex.S-2) and page No.30 (Ex.S-3). Besides, the DOT circular 51-6/91-MM:C/Pt. Dt.12.1.93 at S-7 is not applicable in this case for the CO since the commitment register and periodical information for

material are maintained by the CAO or AO before the commitment are honored and amount are paid. Since the amounts are paid before the end of financial year in March 1998 this can be safely presumed that funds for this payment were already allotted and available.

The DOT circular letter No.305-2/95-MMS dt.8.11.95 at Ex.S-8 were addressed to all CGMTs and it appears that these circulars are not circulated below the level of CGM and GM. Had they been circulated it should be for the CAO or the AO to abide by it and see that these subordinates units including the GM adhered to it and implement. Here the CAO would have advised the GM suitably. The circular No.BGT/3-9/97-98/13 dt.9.12.97 though clear but it was issued after the purchase were over. Since, the purchases were already made as concurred by the CAO/IFA, the question of observing the instruction contained in DOT circular No.305-2/95-MMS dt.8.11.95 does not arise. No purchases were approved after 9.12.97. Therefore, Rule 60 of P&T Financial Handbook Vol.I was not violated at all either by me or by the GM.

Moreover, vide Ex.D-2 it can be seen that GMT, Nasik had written to GM(Finance) MH Telecom Circle, Mumbai saying, "Moreover, no favoritism was shown to any particular agency."

Defence concluded their brief by saying that article of charge is not proved on the basis of precedence and practice followed in Maharashtra Telecom Circle.

VI. Analysis of Evidence

It has been alleged that Sh. AK Dutta, Dy. General Manager, Telecom, Maharashtra Telecom Circle, while functioning as Deputy General Manager (Planning), O/o the GM, Nasik Telecom District, Nasik during the period from July 1997 to February 1998 in connivance with Sh. B. Prasad, GM, Sh. NG Kamlapurkar, AGM(Planning) and others all of Nasik Telecom District approved the procurement of non-stocked items namely, Cable Route Tracers, Cable Fault Locators, Pulse

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Reflectometers, etc. from M/s Hi-Tech Telecom Systems, Hyderabad for a total of Rs. 4,63,032/- on the basis of quotations without resorting to proper tender procedure though the equipments were not proprietary items. The CO is also alleged to have exceeded his delegated financial powers in the said purchases. The specific requirements from the field units were also not ascertained in violation of existing rules/regulations for such cases. All such irregularities resulted in depriving the department for the benefit of competitive rates and showing undue favour to the aforesaid private party. Thus by his above acts, the said Sh. AK Dutta committed grave misconduct, failed to maintain absolute integrity and devotion to duty, and acted in a manner unbecoming of a Government Servant, thereby contravening Rule 3 (1) (i), (ii) & (iii) of the CCS(Conduct Rules, 1964).

The prosecution has argued that according to the prevalent guidelines/instructions issued vide various department of Telecom Circulars/letters at the time of purchases of the said items costing beyond Rs. 50,000/- were to be made on the basis of open tender. The said guidelines were violated as the cost of the items purchased was Rs.4,63,032. These items were purchased from a single supplier without inviting open tender on the basis of the rate on which other SSAs/Circles placed orders. The Prosecution has referred exhibits S-5, S-7, S-8 and S-9 to substantiate their arguments. Prosecution has further argued that items were not proprietary items. Nor it was covered by DGS&D rate contract or any tender finalized by CGMT MH Circle, Mumbai. There is no record that would suggest that quotations or tenders were called. In fact, through exhibit S2 and S3, it is obvious that supplier M/s Hi-Tech approached the CO with purchase orders of the other units. Subsequently, field trials were arranged and purchases were made on the rates quoted by M/s Hi-Tech without verifying the reasonableness of the rates. SW-1 has confirmed to this effect.

The procurements were made by the Charged Officer in spite of the objection raised by the then Chief Accounts Officer for calling tender. SW-1 has confirmed this in his deposition. The Chief Accounts Officer also made suggestion for calling open tender that was ignored (Ex.S-3). Procurement was approved by the charged officer despite the fact that he was not competent to approve the purchases. In such cases, approving



authority was SSA Head, viz. GMT. This has been deposed by SW-2 and SW-3 also. The CO i.e. DGM (Plg.) was not delegated with financial powers for procurement of non-stocked items. Apart from this, there was no urgency for procurement and requirements projected by the field units were primarily based on field trials and do not mention anything about high fault rates or number of accumulated faults (Ex.S-2 and S-3). There was no genuine requirement. DW-1 and DW-2 have not satisfactorily answered about the urgency of such purchases. Defence witness DW-1 mentioned that these items are required for smooth maintenance of network which was a regular phenomena. Therefore, the procurements were made by creating artificial urgency on the plea of rainy season. Both the defence witnesses DW-1 and DW-2 have accepted that requirements were submitted after successful completion of field trials by M/s Hi-Tech which resulted in irregular purchases. Prosecution has concluded by stating that the CO had approved the purchases in violation of delegated financial powers and had failed in observing necessary formalities and, therefore, charges as per charge sheet are fully sustained.

Defence on the other hand has stated that the purchase of testers inter-alia were discussed in detail in monthly management meeting dt.10.7.97 and looking to precedence a tentative decision was taken to go for purchase of such instruments. However, this was not minuted. The urgency and requirements inter alia were also discussed and it was decided that each unit should give their requirements to Planning Section (DW-2). Accordingly, the cases were dealt in Planning Unit.

Defence has defended the case mainly on the ground of urgency and the also that the procurement were made by the other SSAs/Circle. CO had not connived with his superior nor he made purchases far in excess of his delegated financial powers. Defence further argued that all the other SSAs were not targeted for irregularities by the Department whereas the Nasik Telecom District was targeted by the Department for serving charge sheets on the concerned officers which is rank discrimination.

The points of determination in the present case are :-

- Whether the purchases were as per the requirement and within the financial powers of the Dy. General Manager, namely, the CO.

*Substantiating
not known*

Of

b) Items purchased were proprietary and as such due procedures were followed in the said purchases.

c) Whether there was urgency as stated by the defence due to rainy season.

The defence has accepted that the CO had approved purchases made of certain items vide Ex. S2 and S3. However, it was a technical approval not the administrative approval. The GMT Nasik in management meeting dt.10.7.97 gave administrative approval. Defence has also stated that it is clear from the Purchase Order placed by the AGM (Plg.) which clearly states that the purchase is with the authority of GM. On going through the Ex.S-2 and S-3, it is clear that the CO had returned the file to AGM (Plg.) after signing. He should have put up the file himself to GM for approval rather than returning the file to AGM (Plg.). Even if he had returned the file to AGM (Plg.) he should have given specific instructions to him to put up the file again for administrative approval to GMT. Therefore, the contention of defence in this regard cannot be accepted. He had himself approved. SW2 and SW3 have also deposed that the said cases dealt in Exhibits S2 and S3 were approved by the CO not the GMT, Nasik. Now the question is whether he was competent to accord such approval or not. This would be examined in due course. It is also on record that the then GM had questioned the passing of bills for some purchases.

On going through the Ex. D1 that also contained Minutes of the management meeting dt. 10.07.97 which inter alia mentions "case of purchase of Aplab Cable Route Locator and MRCP Low Insulation Tester" should be processed. Nothing has been mentioned in this regarding urgency due to rainy season. DW-2 however deposed that there was urgency due to widening of road and damage of the cable due to drainage in city area. DW-1 has also mentioned that there was urgency. The prosecution has stated that there was no urgency or genuine requirements and the requirements were projected simply because the supplier had approached the CO. Procurements were made by creating artificial urgency on the plea of rainy season. The testers were received in October and November

that is after the rainy season was over. This has been confirmed by the SW-2. Therefore, the reason given by the CO that purchases were made in the urgency for rainy seasons is not tenable.

SW-2 has deposed that purchases were made after the rainy season in Nasik that is why the urgency of the purchases during the rainy season does not hold good. He has further deposed after seeing Ex.S-2 that in the said proposal there is no urgency to purchase the instruments on quotation basis. Even if there was urgency the procurement could have been followed by calling limited tender instead of open tender. SW-3 has also stated that vide Ex.S-2 urgency has not been mentioned in the proposal. The above discussions shows that there was no urgency in the purchase as mentioned by the defence on account of ensuing monsoon. Therefore, to dispense with usual procedure required to be followed in such purchases in the name of urgency as contended by the defence cannot be accepted.

According to prosecution, para 28 to Anxx. to chapter 8 of GFR and also Ex S5; in case of the purchases of the items of estimated value to the tune of Rs. 50,000/- and above; open tender system should have been resorted to. This has been deposed by SW-2. SW-2 has also deposed that the procurement was in violation of the DOT guidelines as per Ex.S-8. In the instant purchases approved by the CO (SW-2 and SW-3), the value is more than this limit. The prosecution has also stated that items were not the proprietary item. Defence has not rebutted this fact. Therefore, it has also become quite obvious that the items were not proprietary and there were more than one firm who could have supplied the purchased materials. In fact, Defence has admitted that later few more firms also became suppliers of these instruments.

As regards specific requirements not received from the field units for such items vide Ex.S-2 and S-3 would reveal that requests along with report of the field trials were sent together after demonstration by the units. This has been deposed

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by the defence witness also. Defence has argued that after discussion in the management meeting, it was not necessary to send the requests in advance or justification of such purchases. DW-2 has also deposed that after management meeting, requirements were sent to Planning Section by field units. However, DW-1 has deposed he submitted his requirements/requisition to GM, Nasik along with other papers. From this, it is clear that requirements were decided in the management meeting not earlier by the field units. Be as the case may be, it is clear that proper procedure were not followed in the said purchases. Defence has admitted that meanwhile four five more firms started supplying the items and they saved about Rs.49,000 of the govt. expenditure by placing the orders to the firm, named M/s Hi-Tech. It means that there was possibility of further reduction in the rate if some other firm would have been selected. By floating open tender perhaps the department could have got more competitive rates. There is merit in the deposition of SW-2 in this regard that if not open tender limited tender could have been resorted to.

Defence has cited a particular case of Rs.1.33 lakhs in which financial concurrence was given without resorting to open tender in case of other DGM Sh. Padegaonkar. However, as per the deposition of SW-1 in this case the approval was proper as the purchase was to be made within contract period and there was provision in the budget for the purchase of the instruments. The contention of defence that since other SSA/Circle also purchased such items, they in Nasik were justified in their actions is not tenable in the light of various circulars/letters/guidelines prohibiting the SSAs/Circles for such purchases.

There is one important question of delegated financial powers of the CO. The defence has stated that the purchases made were within the delegated financial power of the CO. In his written brief also, the CO has stated that DGM was within the power to make purchases up to two lacs. Defence has stated that CO had power concurrent with GM which was not used routinely. That is why the purchase order in the name of GMT, Nasik was given. Defence has also stated that the notings between CAO and GMT, Nasik regarding passing of bills also indicate that DGM namely the CO had such financial power. However,

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prosecution has stated that CO had no financial power as he was not the independent SSA Head or Area Director. This has been confirmed by the prosecution witness SW-2 also. This can be argued both ways. Defence contention that if DGM had no financial power why the CAO allowed day to day expenditures after the approval of the DGM/CO has some weight. However, defence has produced a document D-9 which clearly indicates that financial powers rest with CGM, GM, Area Manager/TDM, SDE etc. not to those DGMs who are not independent SSA head. As regards the contention of the defence regarding internal arrangement of delegation of financial powers to DGM given by SSA head i.e. GMT, Nasik nothing has come on record except the clarification of CAO to GM during passing of bills. Even if DGM had such financial powers, the power was not utilized in prudent manner that has come quite clearly through the evidences on record. All concerned did not follow the exiting guidelines/rules including the CO.

On the evidences on records it would reveal that there was no such compelling reasons that warranted deviation from the regular rules/guidelines/procedures in the present case. However, prosecution has not deliberated during the course of inquiry or in their brief regarding connivance aspect of the case. However, on the basis of the notings of the CAO and GM regarding passing of the bills, it appears improbable that the CO had connived with the GMT, Nasik.

On facts and circumstances of the case and also based on evidences adduced before me, I held the charge against the CO as partly proved.

VII. Findings

Article of Charge: Partly Proved.

Dated: 30.6.2004

5.1.


(NK GHOSH)

Commissioner for Departmental Inquiry

From:
A.K.DUTTA,
D.G.M. B.S.N.L,
Kalyan, MH Telecom Circle,
KALYAN-421 301.

TO:
His Excellency,
The President,
Union of India.

Kind attention: **Shri Mohinder Singh, Director (VA)**

**SUB: Representation against the Inquiry Report,
 case of Shri A.K.DUTTA, DGM, MH Circle.**

REF: Your office Memorandum no. 8/248/2003-VIG dated 25/8/2004

Your Excellency,

In acknowledging herewith the receipt on your memorandum quoted above alongwith the copy of the inquiry report and CVC advice, it is represented as follows:

This representation consists of four Parts on the different deals of the case.

Part-I:

Attention of the Disc.Authority (DA) is invited to the DIRECTIVE issued by the CVC in their memo no. 99/VGL/66 dated 28/9/2000 (para-5), the provision of this para is NOT complied with.

At the outset, I may submit that I did not commit any irregularities whatsoever to call upon disciplinary action against me. The Circular-F.No./17-4/2003-VM-II dated 25/11/2003 from Director (VM), DOT, New Delhi(D-10) clearly absolves me from the charges framed against me (copy enclosed). However as directed by you, I may deal with the Inquiry Report as follows:

*Attested
 Dutta
 Advocate*

" The DA may after examination of the inquiry report communicate its tentative views to the commission. The commission would therefore communicate its advice. THIS alongwith the disciplinary authority's VIEWS may be made available to the concerning employee".

This is given a GO BYE by the DA in as much as the VIEWS as communicated to the commission in getting its advice (2nd stage) is systematically suppressed, and not enclosed alongwith papers sent to base my representation upon.

This has resulted in denial of natural justice and an opportunity to me to effectively represent my views. This denial itself will be Potent enough to set aside the action to follow as of grave prejudice. In FACT this DIRECTIVE of the CVC is followed in breach than its observance/compliance, which is mandatory on the DA as CVC, is NOW a Statutory body.

Part-II:

The inquiry report F NO.123/NKG/29 dated 5/7/04 as submitted by the Inquiry Officer Shri N.K.Ghosh, CDI is also faulted on the ground that it is a DOCTORED one in as much as the I/O held a REFERENCE LEVEL in it.

REFERENCE- CVC'S OM (actually it should be ID) No 003/P&T/142 dated 5.6.2003. This is a blatant denial of a FAIR Enquiry as the contents of OM where only REFERRED TO and the mind of the I/O was obsessed and clouded by the advice given by the CVC (1st stage advice). This OM apparently could not have been furnished to the I/O by the CVC. BUT in forwarding the papers to the I/O on his appointment on 5/12/2003 under Sub Rule-6 of Rule-14 of the CCS(CCA) Rules 1965 MUST have forwarded the CVC advice (OM) to I/O in blatant disregard to Rules by the Disc-Authority himself to Prejudice the MIND and cloud I/O's judgment in the case. The I/O here starts with BIASED mind even before he starts the oral hearing and quoting the same as REFERENCE. The OM itself is the basis of the inquiry. This BIAS and PREJUDICE strikes at the very ROOT of FAIR Inquiry and natural justice.

In referring to the OM, the Inquiry Officer was WELL AWARE that the OM was not a part of the case of DA and I/O was BARRED from considering. Extraneous papers/documents to get referring to Judgement got clouded by the OM of the CVC, which was I/O's Pay Master and higher officer of the CDI as he was designated. I/O was a part of CVC itself and he got himself bound by (referring to) OM of his higher ups. To that extent, the I/O was very Honest and he did NOT hide as he was referring to the (OM of CVC). The DA blundered in providing the I/O with extraneous matter/documents for I/O's consideration albeit un-authorizedly and the I/O fell an easy pray to the Tactic's of the DA which denied a fair Enquiry. Having got the OM (as supplied to him) he himself should have been honest enough not to take up the assigned job of I/O as offered to him by the DA on the ground that DA has tried to influence his mind/judgement by supplying him extraneous matter not connected with the charge. AND that too of the CVC advice where he was working as subordinate to CVC.

- The action of the DA and I/O become suspect to ensure that the report of the I/O conforms to the advice of the CVC only as given at initial stage.

The CVC also GROSSELY IGNORED the point of extraneous consideration jeopardizing the case while considering the Inquiry Report. The CVC could NOT oblivious to this FACT. Here the gets completed of the TRIO-I/O-DA-/CVC to acts in Tandem only and definitely acted in League.

This is second point that is also more potent to set aside the whole process of Oral Hearings in this as wholly and whole heartily Prejudicial and against the very basis of a FAIR deal/inquiry and natural justice.

Part-II-A:

As regards CVC's Second Stage advice, I am sorry to state that even the CVC has not appreciated evidence properly when they say, that:

I have gone beyond the Rules/Guidance/Procedure. I have done nothing of the SORT.

Observance of the Financial Rules was the primarily responsibility of CAO/IFA which he felt as per the V.O. and I.O also who has found that "all concerned did NOT follow the existing guidelines". There is good distinction between purchase and approval for purchase. I have only approved purchase to the extent below my Financial Power of Rs.2 lacks. Other Financial aspects are to be approved by the CAO/IFA only. I only followed the "procedure" as prevailed THEN having precedence set by the CAO/IFA Punde(SW-1) in case originally settled by CAO/GM. Podegaonkar, DGM also approved purchase only with the financial aspects set by CAO/GM. I only followed the procedure. Other aspects to see was NOT sphere to intrude into.

The material approved was USED during the Monsoon season since purchased on 5/8/97 and 28/7/97 only. The findings that they were purchased after Monsoon is the freak of I/O's biased mind and are NOT supported by any evidence. The observation of CVC in this regard is not based on evidence, which they (CVC) have not checked.

The onus of inviting Tenders was not on me. Nobody said that I should call for Tenders. If this was the case why was Padegaonkar, DGM spared. He too did not set the Tendering process. The CVC can not have two different standards.

Un-reasonability of ratios is yet another finding which the CVC should have refrained from connecting when 30 CAO's/SSA's purchased at Rs.1.33 lack. I advice purchase at Rs.84,000/- with the same utility saving Rs.49,000/- which was not a small achievement. The observation of CVC in advising is without based on facts hence the DA should have rejected. If not, now at least the UPSC on a reference may concede my points on reference to them.

Part-III:-

The findings of I/O are perverse and do not confirm to the Law of Land. There is noting in law to hold that the charge is PARTLY PROVED. Case law on this point is clearly laid down in the judgement pronounced by the CAT bench of Jodhpur in case of Ramdas Singh Vs Union of India and others as back as (1990) 13 ATC 136 Jodhpur that:-

"There can not be any distinction between the charge as having not been proved and having not been conclusively proved. The charge has to be HELD EITHER PROVED OR NOT PROVED. There is NO middle course"(Copy of the circular is enclosed herewith for ready reference).

Under these circumstances, the charge as PARTLY Proved Loses its MEANING and NO finding at ALL. This judgement was passed in 1990 but neither the DA nor the CVC has taken this into account at any stage so far. Though slow to act or react the CVC has taken cognizance of the Supreme Court Judgement in case of SBI Vs DC Agrawal and other, Date of Judgement 13/10/92 regarding non supply of CVC's instruction after about 8 years (CVC letter no.99 VGL/66 dt.28.9.2000) the CVC may take yet another 8 years to recognize the judgement of Jodhpur CAT to accept that the Charge is required to be just proved or not proved with no via media taken as Partly Proved. But the cases onward wait that long. Such judgement in REM have to be recognized for General application/applications in all similar cases and specially so when the law of the land does NOT recognize any such finding as PARTLY PROVED.

Para-III- A:-

The Prejudice of the I/O manifests itself in his analysis of evidence, when he concludes at page-17 of his report, that:

"All concerned did NOT follow the existing guidelines/Rules including the CO".

This he concluded without clarifying who those "All concerned" were. This perhaps includes the CAO also as the head of the office for Financial Rules and also primarily

disbursing officer of Engg.Divn. ALL REALISATION OF REVENUE OR Disbursement of Expenditure made by Subordinate office/units ARE MADE ON HIS BEHALF. (As per Rule-15 and 11 of the FHB Vol-III Engg- 3rd Edition respectively). This the I/O accepted in evidence at page-5 last para of his report. If the Rules accept and mandate that "All expenditure is made on His Behalf (i.e. of AO/CAO)". Then what is the case against ME, and Question of any involvement of Engg. Officers coming IN? These basics are ignored by the VO, the DA/PO/CVC and everybody that matters V.O. also blames the CAO in this case. It is all irony that the Investigating Non vigilant vigilance officer involved the succeeding CAO Shri Gosavi (since retired and escaped the drudgery of going through the trauma of facing charge sheet). Involvement of Shri Gosavi is also reflected in the "Reference" part of the IO's report. But (in CVC ID) under similar circumstances why was PUNDE(SW-1), the CAO/IFA who actually initiated the work by not even suggesting any tendering process for Rs.1.33 lacs + 4% ST did not act to get the tendering processes initiated, but APPROVED the expenditure "On His behalf" (Rule-11 of the Manual FHB-Voll-III). Was Shri Punde less culpable and allowed promotions from CAO to DGM (Finance) than Shri Gosavi His successor who was named in the Vigilance and CVC Report (ID)? With this impeachment of the I/O of "All concerned" the DA/CVC should review their actions to bring Shri Punde, CAO(SW-1) also in line with others who were charge sheeted because of WRONGS and acts of Omission/Commission of the Head of the OFFICE for Financial Rules. Though I NOW crave for an action. I am equally sure neither the DA nor the CVC will raise their little Finger to act.

Part-IV:-

FACTS IN EVIDANCE:-

- (1) At the concerned time, I was the Only DGM in the Nashik Telecom District, the other two having relieved either on promotion or transfer. I was DGM (Rural/Urban/Planning/Mtce. & Inst.) ALL IN ONE. I was actually holding two additional full time charges of other DGMs with all their financially/Administrative powers, (combined together or even severely). With Monsoon sets in, faults

increasing in a telephone system having over one lack telephones with a vast cable network. Maintenance of telephone system to keep telephones working was my primarily duty that time requiring my full attention.

This load of work did not weigh with anybody for any consideration.

(2) CAO was the head of the office (Nashik SSA) for purposes of Financial Rules as codified in FHB Vol-III Rule-15 and all expenditures were done on his behalf (Rule-11 thereof). The DA/PO/IO and the Investigating VO all ignored this Basic fact.

(3) Schedule of Financial Powers IGNORED:

The DGM did HAVE all Financial powers to APPROVE expenditure on behalf of the Head of Office(Power delegating Authority) who also was the head of office (finance) while the GM and the Engg. Officers were the Executive Officers. If NOT the CAO should have objected to the DGM's incurring any expenditure on "His Behalf" and report the matter to the Circle Office of any irregular expenditure done by the DGM. In absence of anything to the contrary, the CAO approved all expenditure on "His Behalf". This has a particular reference to Rule-20 and 23 of the FHB Vol-III.

The investigating officer was IGNORANT of these Rules. While he named Shri Gosavi, the succeeding CAO to Shri Punde (SW-1), he allowed Shri Punde to go free despite his setting a precedence in allowing expenditure on "His Behalf" for purchase of instruments to the extent of Rs.1.33 lack + 4% S.T. This perhaps became precedence for succeeding CAO Shri Gosavi to follow.

(4) Shri. Punde (SW-1) CAO allowed Padegaonkar, the then DGM Nasik to OPERATE on the Tender of Ahmedabad Telephone District which formed the further BASIS of purchases on behalf of the CAO Shri Gosavi, CAO to follow.

(5) Based on such conceptions (common to all) some 30 CAO's allowed purchases to the tune of Rs.1.33 lacks (at least) through out India (enclosed details at Annexure-I).

(6) Even in Maharashtra Telecom Circle, Latur, Aurangabad, Kolhapur, Ahmednagar, Nanded, Jalgaon and subsequently Nasik also(with Punde as CAO) also purchased

similar instruments as the Head of the office for Financial Rules without any noting or say to call for Tenders or initiate Tendering process (Notes in Exh-S-1 page-6). Did the CAO(Punde) had any Authority to call off Tendering Process or give a Go Bye. No Rule is shown that he had any such Authority but only to follow the Rules more in letter and spirit thereof.

(7) Neither Shri Punde nor Shri Gosavi, the succeeding CAO PRESSED for calling for Tenders, or tried to initiate the Tendering process suo-moto as the Head of the office for Financial Rules and particularly so when the expenditure was being incurred On His Behalf.

(8) Purchase made on Behalf of the CAO and expenditure incurred after Approval by CAO by the AGM (Plg) or DE(CC) were NOT Objected to nor reported to Circle Office.

Even under similar circumstances expenditure incurred by the Ahmednagar, Latur, Nanded, Jalgaon, Kolhapur SSA's were NOT objected to by the Head of Circle/or his IFA even when the audit objected in Draft Audit Para were BROUGHT to their Notice by Audit Officer(detail in D-1).

Only Nashik SSA and its Officers were targeted and deputed by Circle Head SW-2/SW-3 for investigation with perhaps a special order to IGNORE other SSA's action and NOT even look into them but target only Nashik SSA.

(9) Purchases approved by me were within the Financial Limits of Rs.2 lacs when the Purchase Order was placed by the AGM (Plg) and expenditure WAS Approved/sanctioned and paid by the CAO/his A.O duly providing requisite FUNDS.

(10) Purchases approved by me were for Testers + Route Indicators where a saving was made to the extent of Rs. 49,000/- against the price paid by OTHER SSA'S for Rs.1.33 lack almost uniformly.

(11) There is NO EVIDENCE to show that any party approached me for purchase of their products at any time before or after the purchases were approved.

(12) It is a matter of RECORD and Evidence that the demands by the two DE's DW-1 and DW-2 were DIRECTLY placed with the GM on one case and with AGM (Plg) in the second case as directed by the GM in the Management Meeting of 10/7/97 where it is said that (Page 14 of Inquiry Report last para) Exh D-1 quoted by I/O) as "Case of purchase of Aplab Cable Route Locator and MRPC Low Insulation Tester SHOULD be processed." The word verb SHOULD as used is very important and was an ORDER. The CAO Gosavi also attended this Management Meeting.

If there was NO urgency, why should the GM desire and use SHOULD as minuted in D-11 {Annexure-A, 4(m)}. Urgency was there on 10.7.97 when Monsoon break and it pours in Nashik Area by July First Week every year. It does not require any weather Pandit to confirm. Much has been made of Urgency. Urgency did Exist. The P.O. has put no evidence to show the instruments supplied by M./s. Hi-Tech were lying IDLE and were NOT used. In fact, it is confirmed by the DGM (Plg) Nashik in D-11 (Annexure-B, para-2) which is stated as "The Instrument have been put to use and not lying unutilized since there purchase". Who was the Authority to decide Urgency, Not the V.O. It is not mandatory or codified anywhere the urgency SHOULD be shown in the proposal for purchase. Urgency there of was decided by the G.M. Head of the SSA as discussed and Approved in the MEETING itself where also directed to place demand with GM or AGM (PLg) directly.

*in case
B...
Present,*

(13) The I/O erroneously quotes purchase/supply date as Oct/November when they were actually supplied and received on 11/8/97 and 26/8/97 (page 14 last para of I/O report). The details of supply enclosed again with this at Annexure-II. This is also confirmed in the Form 'D' available at page 39 (S-2) and page 20 (S-3) respectively.

(14) The I/O-DA-CVC are all under a misapprehension about the terminology's of approval and purchase.

Any proposal to mature for purchase requires 3 approval as per Rule 147 of the P&T Manual Vol-X :

(i) Technical (ii) Financial (iii) Administrative:

I gave Technical approval for the purchase within my powers of Financial Limits of Rs.2 lacks then as existed. Despite of the blabber of PO & V.O. that DGM had no financial powers, the CAO himself admitted all expenditures done by me on his behalf and settled accounts. There by he was not risking his career as a CAO, he did not report anything adverse to the Circle IFA thereby ONLY confirming that the DGM was empowers within the limits as KNOWN to him while he was a CAO in Nashik SSA. HAD I NO powers he would not and did dare to stop purchases approved on his behalf, as he was the Head of Office (NASHIK SSA) for implementing Financial Rules. The CAO Punde's background was solid. An Engineer, by qualification entered All India Services while the succeeding CAO was a matured ranker having completed number of years of services in the Accounts Department to come to the level of CAO. Both had full knowledge as to what they were doing and what they did, but the background for the I/O and VO was poor as far as accounts are concerned as both started their careers at JTO levels only, and both were acting under instructions of their Masters. There was NO such compulsion for any of the two CAO's. The I/O-DA-CVC did not take this factor in to consideration when the VO admitted that he did not consider the schedule of Financial Powers even at the investigation stage.

(15) I submitted 15 Defence documents. In his I/Report the I/O has considered only four D-1, D-2, D-9 & D-10. Other documents he did NOT consider. His bias clearly shows his mind set.

The P.O used the Defence documents in his brief which the I/O had mentioned in his Report at page 3 & 17.

As per the caption of Annexure-III and IV of the Memo of charges, the P.O was required to base his case only on the State documents and his 3 witnesses he examined. In these documents the scheduled of financial powers of DGM were only conspicuous by absence as the VO (SW-2) did not know its value and its utility also.

Even while charging of Financial Proprieties, the DA did not put the schedule of Financial Powers in his evidence as the chargesheet is only based on the Vig. Officers Report, which is also NOT a State document. This document was a part of Prosecution documents in case of Mr. B.Prasad (the then GM Nashik) case conducted by the same I/O. Hence in dealing with this case in his report, he concludes at page-17 in his report that, "All concerned did Not follow the existing guide lines/Rules including the CO"

I discussed each of the 15 documents in my Defence brief between pages 33 to 39.

The I/O ignored 11 Defence documents and has not even referred to in his report. These documents were earlier considered as RELEVANT to the Defence when they were summoned from their respective Custodians.

Suddenly during the assessment of EVIDENCE he ignored 11 Defence documents ignoring almost 73% why? The DA/CVC have no comments for ignoring out right 73% of Defence documents. This reduces the inquiry and its report a mere show of Enquiry that too to find the charge only PARTLY PROVED. Why were 73% of Defence document were ignored. The DA may have to clarify and reconsider its decision.

In addition I appended to my brief two sheets evaluating evidence how the Six SSA's of Maharashtra Circle ignored the PROCESS/Rules before I approved these procurements, as also how some 30 SSA's all over India also followed Suit.

All these evidences were only ignored by I/O-DA and CVC. This makes a Mockery of the Enquiry where One did NOT see, the second did not hear and third did not speak.

(16) The assessment of the evidence Does NOT SHOW that I did effect a saving of Rs. 49,000/- over all the 30 SSA's purchasing the instrument while one unit purchased the same item at Rs.1.75 lacks against the market rate of Rs.1.33 lacks from M/s. Kendriya Bhandar, Hyderabad (D-15)

(17) The purchases were approved by me on two Engg.27. All proposals in Eng-27 are required to be approved by the A.O / CAO and on their approval Funds are required to be allotted for payments of the bills (para-264, 265 & 266 of P&T Manual Vol-X)

At the time of approving Eng-27 and allotting funds thereof the CAO, the Head of the office did not raise any objections during procurement but approved the same.

(18) As noted in the Inquiry Report page-12 last para the CAO only made a suggestion and it was NOT an objection. That suggestion was adequately replied. He was satisfied, and accorded Financial Sanction as the Head of the SSA for Finance. Had he disagreed with my Note on dated 22/8/97 in S-3, page-14 he COULD have also suggest the Executive Head of the unit to call for a regular Tendering process as it was the SSA Head who was authorized to call for the Tenders on behalf of the President of India. He did not press it and allowed which is a PROOF enough to say that every thing was Right & OK in the Nashik SSA.

It is a matter on record the suggestor, himself was silence on the suggestion and he did NOT PRESS for it. It was upto him to COMPLAIN and not the DA/VO/ to evoke up the long dead issues after a lapse of five years only because the Audit Para was raised which Nashik could not effectively replied while the same Audit Para of the other SSA's like Kolhapur, Ahmednagar, Nanded, Jalgaon, Latur were CONDONED. The Head of the Circle specially asked the VO to ONLY look into Nashik case ignoring what happened in other SSA's though everybody was well Aware.

GM Nashik helplessly pleaded and explained later also that (D-2):-

- (i) More over no favoritism was shown to any particular agency.
- (ii) These items are absolutely essential in the rectification of faults thereby reducing the revenue loss and avoiding public complaints. The actual requirement was from each Divisional Engineer to reduce the Cable Fault and the same was discussed in the monthly Management Meeting (10/7/97) and accordingly only one or two items were purchased from the different vendors

to evaluate the utmost usefulness in the field. The Tender formalities were postponed for the above reason only.

NOW finally as regards the points of the determination in the present case as set out of the I/O at page-13 para-V, it is represented as:

(a) Whether the purchases were as per the requirements and within the financial power of Dy. General Manager, namely the CO.

The I/O has still a confusion in his mind between "Purchases: and approval". They are two separate issues.

I only Approved the purchase/procurement on Technical Feasibility basis only.

Decision to procure or purchase was taken in the Management Meeting of 10/7/97 which the I/O has agreed that it was minuted that "Case of purchase of Aplab Cable Route Locator and MRPC: Low Insulation Tester SHOULD be processed".

This was definitely an ORDER when qualified by the verb SHOULD. This also sets at rest any doubts about the Urgency of Requirements. The urgency was discussed in the Management Meeting during the Monsoon only on 10/7/97 when Monsoon usually break in Nashik region by end of June every year. The VO (SW-2) was NO authority to decide the Urgency. GM was the proper authority. The power for calling the Tender was with the GM, Head of SSA on behalf of President of India. This was subsequently confirmed by him in (D-2) where the GM Nashik has clearly mentioned that these items are absolutely essential in the rectification of faults thereby reducing the revenue loss and avoiding Public Complaints. The question of urgency was well settled in the Management Meeting of 10/7/97. It was due to urgency that the GM decided to process and directed that it SHOULD be processed. The Tender formalities were postponed by the GM Nashik for the above reason only.

I only approved the purchase of two items only out of 8 listed in Annexure-II. On my approval, the question of calling limited Tenders or open Tenders etc. did not pressurized by the CAO/IFA and approved purchase without Tendering Process. In view of the decision taken to postpone the Tender by the GM Nashik in the Management Meeting on 10/7/97 the VO should not link purchases made by other than me to prove anything against me. Both VO and I/O erred in co-relating case of other purchases approved by me or purchased. I also did not have powers to call for any Tenders. The powers for calling the Tender VESTED with the GM (Head of SSA) only on behalf of President of India and the decision of GM subsequently confirmed by him in D-2. The decision to process was emphasized by the verb SHOULD.

Nobody in Nashik SSA had any doubts about the urgency including the CAO who attended the Management Meeting. The delay of processing was also cut down when it was told by the GM as Head of the SSA that the requirements to be forwarded to the GM or AGM (Plg) (DIRECT NOT through DGM's).

The doubting THOMAS's cropped up much later when all the papers had already been considered off the records. The urgency of required Instruments by field units were projected in the Management Meeting on 10/7/97 for its utility and usefulness. The requirement were placed by the field is directly to GM or AGM (Plg) as per GM's directive. It was on this requirement, the proposal was considered upon obtaining the approval/sanction of the CAO/IFA on whose behalf the expenditure was incurred. It was the CAO who was controlling the FUNDS and made them available for the Purchase Orders which were placed by the AGM (Plg), O/o.GMT Nashik on behalf of G.M. The AGM (Plg) process the purchase order under GM's order in the minutes of the meeting. Item

4(m) in Annexure-A (Minutes of the Meeting) in D-9 mentioned only to DGM (Plg)/AGM (Plg) for "ACTION BY". The approval/order of GM Nashik was already recorded in the Minutes. No separate orders were necessary by again putting file to G.M. No specific instruction by me to the AGM (Plg) were necessary as the AGM (Plg) was well aware of the order of G.M's Administrative Approval in the Management Meeting on 10/7/07 which is confirmed in the D-11 (Annexure-A, (Minutes of Meeting), item(m), page -2). Later on subsequently confirmed in D-2. This clearly shows that PURCHASES were NOT made by me.

I only Technically approved the proposal which had a sanction/approval of GM as minuted and taken note of the I/O hence the I.O's argument that I should put up the file to G.M. for approval is wrong.

(b) Items purchased were definitely NOT Proprietary. The procedure followed was SIMPLE and Routinely followed by Nashik SSA earlier by Shri Padgaonkar, the then DGM. When the DGM purchased one instrument for Rs.1.33 lacks + 4% S.T. on the following points or grounds:

- (1) Acting on the Tender approved by Ahmedabad Telecom District (the CAO had No Objection to this) The cost being 1.33 lakhs + 4% S.T. The Tender was approved on 6/3/96 by Ahmedabad Telecom District.
- (2) Padgaonkar has also quoted as a precedence that the following SSA's of Maharashtra Circle had also ventured on the purchases.

(1) Kolhapur	22/10/96	Almost one month after Monsoon
(2) Ahmednagar	22/4/97	Two months before Monsoon
(3) Nanded	17/12/96	Three months after Monsoon
(4) Jalgaon	10/4/97	Two months before Monsoon
(5) Latur	12/6/97	Just before the Monsoon
(6) Padgaonkar's	20/6/97	Just at the onset of Monsoon in

Purchased before Management Mtg.	the Nashik area.
(7) Purchased in Nashik SSA After Management Meeting held on 10/7/97.	On 5/8/97 and 22/8/97 when Monsoon were in full swing and the requirements was essential

All the above purchases were NOT for any Proprietary items and the procedure followed were the same.

- (a) Collecting requirements
- (b) Processing on basis of quotations supplied by the Manufactures or their agents and copies of previous purchase orders.
- (c) Field trials of their utility/usefulness. - based on the satisfactory field report of the instruments.
- (d) Technical, Financial, Administrative approval by the respective DGM/CAO/GM's

All this on basis on Tenders approved by Ahmedabad Telecom District. No separate Tenders were called by anybody in all these cases (despite instruction in S-5).

Precedence & Procedure only.

URGENCY was definitely there:

- (1) Earlier purchased by Nashik SSA on 20/6/97 just when the Monsoons were about to Break.

The rules of finance and the so called financial proprietors of FSR's was given a GO BYE by the CAO, Punde (SW-1) himself when without even mentioning of Tendering process, HE approved purchase of ONE instrument for Rs.1.33 lacks + 4% S.T. He was the authority and Head of office for financial rules, controlling and allotting funds for purchases approved by HIM. Nobody should be BLAMED for the acts of Omission/Commission of such Head of the office who admitted that the

deal had his approval. The question HE should answer was whether he had Authority to Bypass any Financial Rules.

Already justified in D-2 which the I/O did not go though seen. HE Ignored the other 11 Defence documents which went unseen/uncovered and Did NOT apply His mind for the 11 documents submitted by Defence. The question of calling Tender was Not raised by PUNDE (SW-1) at any time when he was CAO/IFA. The succeeding CAO/IFA Gosavi suggested but did not press on going the precedence set by Punde(SW-1).

(2) Discussed in Management Meeting of 10/7/97 when Monsoon already set in. Urgency was discussed in the Meeting. The CAO/IFA was also present in the Meeting. The Trial of the instruments purchased by Nashik SSA was quite satisfactory as reported by the DE (CC) and it was minuted that:

- (i) cases of purchase SHOULD be processed
- (ii) requirement to be placed by the Divisional Engineer direct to GM/AGM (Plg).
- (iii) Requirements were placed for the instruments by the DW-1 & DW-2 directly to GM and to AGM (Plg) respectively recorded in S-2 page-22 and S-3 page-13.
- (iv) Processed Financial approval sought- order placed by AGM (Plg) and the Item supplied and received on 11/8/97 for DE Nashik Road and 26/8/97 for DE(Cable & Mtce.) Nashik during the rainy season when the Monsoon was in full swing and NOT in October/November as erroneously stated at page-14 & 15 by the I/O in his report. This has also NOT confirmed by SW-2 in his deposition. Here the I/O is under a wrong impression that it was I who processed the case for Malgaon, Ambad, Dhule, Panchwati or Manmad. This was done by

G.M. himself though I was completely unaware about those cases, it seems to be hangover of the I/O from Prasad's case (the then G.M. Nashik) dealt earlier (file S-1). A comparative table is enclosed at Annexure-II to give the details of my approval for purchase stands only at Sl.No.2 & 3 of the Statement for Nashik, Nashik Road and Deolali only. The Items were supplied and received on 11/8/97 and 26/8/97 as detailed therein. There were in all 8 purchases, out of which 1st was by DE(CC) approved by Punde (SW-1), Padegaonkar/ G.M. Item 2 & 3 were approved by me while others at Sl.No.4,5,6,7 & 8 were approved by G.M. himself. I did not approve any of these Items. The I/O some where and some how got a wrong impression not based on facts in evidence. The reason given by me is that Purchase was made in the urgency for rainy season was absolutely correct. The I/O is wrong in this respect.

(v) No Evidence by the P.O. to say that the instruments purchased were lying idle or not utilized. The DGM in his report in D-11 (Annexure-B, para-2) confirmed that the Instruments have been put to use and not lying unutilized since their purchase. Finally after Audit Objection after their Draft Para, GM himself explained in D-2 as.

- 1) "More over no favoritism was shown to any particular agency.
- 2) These items are absolutely essential in the rectification of faults there by reducing the revenue loss and avoiding public complaints. The actual requirement was from each Divisional Engineer to reduce the Cable Fault and the same was discussed in the monthly Management Meeting (10/7/97) and accordingly only one or two items were purchased from the different vendors

to evaluate the utmost usefulness in the field. The Tender formalities were postponed for the above reasons only."

The deposition of SW-2 that purchase were made after the rainy season in Nashik is not correct. The Purchase Order placed on 5/8/97 for the requirement placed by DE(Nashik Road) on 31/7/97 to GM Nashik and the Item was supplied and received on 11/8/97. Similarly, the Purchase Order placed on 22/8/97 for the requirement placed by DE(Cable & Mtce.) Nashik on 7/8/97 to AGM (Plg), O/o.GMT Nashik and the Item were supplied and received on 26/8/97. From this it clearly shows that the Item have been supplied and received in the rainy season only. The V.O. should not link purchases made by other than me to prove any thing against me. Both V.O. and I.O. erred in correlating case of other purchases approved by me or purchased.

(c)The urgency of demand of the Instruments was definitely there since a large number of subscriber's lines were out of order due to cable faults those taken place since the monsoon started. Prior to utilization of this sophisticated Instrument, the cable faults were restored on trial and error basis, which used to take much time. After the utilization of sophisticated Instruments, the pending faults, which were lying since Monsoon, had been restored quickly in less than 1/10th of the time taken by the earlier method. The subscriber's lines have been restored quickly. Thus not only the subscriber's pending complaints have been reduced quickly but also the department have saved lot of man power, time, material and most important is revenue loss which could have taken place due to subscriber's lines became out of order due to faults. The Amount saved due to quick restoration of the subscriber's lines by the use of this sophisticated Instruments was much more than the cost of the Instruments. The factor of No Urgency can not be decided in the year 2004 when the Instruments were purchased under discretion of the General Manager Nashik, Head of SSA who was very much impressed by the performance report given to him by DE(CC) Nashik on his use to the new Instruments. DW-1 & DW-2 have deposed that there

was urgency due to widening of the road and drainage work carried by the Municipal Corporation in the important city area and consequently the damage of the cable had occurred which were come under cable fault on the onset of Monsoon in July/August'1997. This fact has also mentioned by the I/O in his report. The cases were approved technical suitability for the purchase by me.

The I.O. due to his pre-conceived idea's in the B.Prasad's case turned a blind eye to blame me for not calling for Tender which is to be done by the SSA Head, G.M. Nashik on behalf of President of India.

If G.M. has dispensed, he was responsible to answer perhaps he did in his case against him. Both the Head of Offices for Finance and Administration did not pressed for Tendering process and kept away with it. The I.O. has picked up a wrong notion that the procurement approved by me was not based on urgency. Of course urgency was there, as discussed in the Management Meeting on 10/7/97 and primarily it was on the "ORDER" of the G.M., Head of the SSA to process the purchase demands for which the requirement were directly placed with him and his Assistant AGM (PLg), O/o.GM Nashik: I approved Technical worth of the outlets to purchase.

To observe the financial Rule para-28 to Annexure and chapter-8 of GFR and Ex-S-5 where the primarily responsibility of the Head of the office for Financial Rules. This duty was not delegated to me. The CAO was well aware that open Tender system should be resorted to the tune of Rs.50,000/- and above. It was Shri PUNDE (SW-1) who himself approved the purchase of Rs.1.33 lacks + 4% S.T. Now if it was a contention of the P.O that Tender should have been called for, he was barking a wrong tree on me. His own witness is at fault Shri Punde (SW-1) did not even remotely suggest to call for Tender when he approved the purchase approved by Shri Padegaonkar for DE (CC) Nashik. On the note of DE (Extl) E 10B, Nashik who was also working as DE (CC) Nashik, the CAO approved

With a note that "GM may kindly see above note, one Cable Route Locator of Aplab make costing Rs.1.33,000 + 4% S.T. may be purchased from M/s. Aplab Electronics Pune (in S-1, page-5)". Here he did not even suggest calling for Tender nor did he submit the proposal for approval. Straightway as the head for Financial Rules, he noted, "May be purchased" and submitted the proposal for purchase which was approved

by the GM. Punde had cleared the proposal thereby giving GO BYE to all the Financial Rules known to him alongwith his knowledge that any proposal of worth of Rs.50,000/- and above requires a Tendering process to follow. If Head of office concurs, the subordinate has NO say in the matter. That is why Padegaonkar, DGM also did not suggest any Tendering process with his limited knowledge of GFR or contract procedure.

The Presenting Officer could not impeach his own witness on the points of calling for Tender as per rules quoted from GFR or S-5. Perhaps due to his ignorance of the Rules. Of course the V.O did not apply any rules on the subject, where the V.O. castigates one CAO but lets off the other who set Precedence and ball rolling is the way investigated by V.O. OR was having specific instruction only to target NASIK SSA.

The I.O erred in his observation that specific requirements were not assessed. It is a matter on record that the GM directed that the specific requirement were given to him or AGM (Plg) directly (mentioned as to page 21 & 22 in S-2 and page-13 in S-3). No proof was presented by the Presenting Officer to show that the specific requirement was not assessed before resorting to local purchase. It is a matter on record that they were ascertained as per the following documents.

- (i) DE Nasik Road letter no. S-2/Genl/192 dated 31/7/97 addressed to GM Nasik indicated the requirement of Nasik Road Division placed alongwith demonstration report in S-2 on page no.22 and page no.21.
- (ii) Similarly the letter no.NCT/N-6/97-98/17 dated 7/8/97 from DE(Cable & Mtce.) Nasik addressed to AGM(Plg), O/o.GMT Nasik after satisfactory demonstration test in S-3 on page no.13 indicated the requirement of Nasik city area.

There were different models too of M/s.Aplab @ Rs.1.33 lacks; M/s.Aishwarya Telecom @ Rs.1.1 lacks and @ Rs.1.72 lacks; M/s Hi-Tech for Rs.84,000/-; Kendriya Bhandar for Rs.1.95 lacks and M/s.MRPC Hyderabad for Rs.3.95 lacks as details in Annexure-III. Technically all were the same meant for Cable Route Tracing, but one of M/s Aishwarya Telecom was having one Cable Test set at a price of Rs.1.72 lacks and of M/s.MRPC Hyderabad had Audio Visual Cable Set with EC/RT and compulsory

accessories having price of Rs.3.95 lacks. I being a Technical Officer choose to suggest M/s. Hi-Tech for their lowest price of Rs.84,000/- after having the satisfactory field performance report thereby saving at least Rs.49,000/- per piece in comparison to the price of M/s. Aplab Tester of Rs.1.33 lacks. Though Tender process were not initiated but the competitive rates were available by June'1997 for Aplab and M/s Hi-Tech. Out of which the price of M/s Hi-Tech was the lowest. Other firms came up in 1998 and 1999 and 2001 etc. A tabulated sheet at Annexure-III is enclosed herewith and was appended to my defence brief also. The I.O's mindset was closed as he did neither see the comparative rates nor noted the column of price/dates as noted therein. The Management Meeting for Monsoon precaution held on 10/7/97 and DE (CC) gave details of usefulness of instruments purchased by the DE(CC) Nasik to locate the Cable Routes and Cable Faults. The other DE's present in the meeting also desired to have such useful sophisticated instruments for their Division. The GM Nasik has directed the DE's to send their minimum requirement directly to him or AGM(Plg). It is a thought of the I.O. that such cases should have been requested before the Management Meeting on 10/7/97. In this respect, it is again clarified that all the attendees available in the Meeting did not know about such sophisticated instruments which was purchased by DE(CC) few days before. This was only known to the GM and CAO who approved the expenditure without calling Tender as head of the Financial Rules. After knowing the usefulness of the sophisticated instruments as highlighted by the DE(CC) in the meeting, the other DE's had demanded one set of each to their sub-division. In the month of July another Manufacturer M/s. Hi-Tech has come up with the same type of the Instruments and same utility and presented the satisfactory demonstration of Instruments in Nashik Road, Devolali and Nasik City. After satisfactory demonstration, the DE(Nashik Road) and DE (Cable & Mtce.) Nasik City had placed their demands for their sub-division to the GM Nasik and AGM (Plg), O/o.GMT Nashik respectively in order to restore the cable faults which had occurred due to onset of heavy monsoon and interrupted the telecom services to the subscrbes. The urgency of demand of the Instruments was definitely there since a large number of subscriber's lines were out of order due to cable faults taken place since the monsoon started. DW-1 & DW-2 have deposed that there was urgency due to widening of the road and drainage work carried by the Municipal Corporation in the

important city area the damage of the cable had occurred which were come under cable fault on the onset of Monsoon in July/August 1997. This fact has also mentioned by the I/O in his report. The cases were approved technical suitability for the purchase by me. Upto July 1997 the following firms were in the market providing such instruments as per enclosure to my defence brief I have already indicated as follows:

1. M/s. Aplab Seba Electronics Limited	June'1997
2. M/s. Hi-Tech Telecom Hyderabad	July 1997
3. All other out of these come up	after August 1997

(details of these were already enclosed in my Defence brief at Annexure-I)

Therefore, looking to this table and if the I/O has really seen this table at Annexure-I & III he would not has ventured to pen what he has said in the page-16 of I/Report that possibility of further reduction in the rate if some other firm would have been selected. At that time there was only four firms known to the deal such Instruments.

The comparative rates are as follows:-

i) M/s Aplab	Rs.1.33 lacks
ii) M/s. Aishwarya Telecom	Rs.1.1 lacks & Rs.1.72 lacks for comprehensive Test set
iii) M/s.MRPC, Hyderabad	Rs.3.95 lacks of Audio/Visual Cable Test Set with EC/RT
iv) M/s. Hi-Tech Telecom Hyderabad	Rs.84,000/- for the same purpose and utility.

No other firms had come up.

With the data available quotation could not have come below Rs.84,000/- which was the lowest rate of M/s Hi-Tech Hyderabad. It is apparent that by floating any number of Tenders, the rates could not have gone below Rs.84,000/- which I approved for the purchase.

Secondly, a duty is CAST on the Accounts Officer to maintain a Register of comparative cost for different items of supplier. Since this was a new item in the market and all the five SSA's of Maharashtra Circle viz. (i) Ahmednagar (ii) Latur (iii) Kolhapur (iv) Jalgaon (v) Nanded and later Nashik itself as (vi)th purchases at the standard rate of Rs.1.33 lacks + 4% S.T. based on the accepted and valid Tender of Ahmedabad Telecom District in June'97. The action of Nashik Telecom was perfectly tenable in recommending purchase of M/s. Hi-Tech. Instrument for its lowest price of Rs.84,000/- against the statement of the CAO/IFA that in his view the approval was proper and the purchase was to be made within the contract period and there was provision in the budget for purchase of instrument (as per Rule 60- using sense as a prudent person).

These expenditure for Instruments as per records of the case were debited to maintenance and the I/O has to accept his statement out of contest to examine whether the CAO/IFA Punde (SW-1) had powers to bye pass the rules to operate on a Tender accepted by the other Divisions or the other units as per S-5 item (i) procurement worth Rs.50,000/- and above are being finalized without regular Tender. (ii) Tender of other SSA/Circles are being operated.

These two Basics, the CAO Shri Punde (SW-1) had not followed, he allowed to operate the Ahmedabad Tender and cost of item to be purchased is approximately 2.5 times the limit of Rs.50,000/. Does the I/O really think that the CAO Shri Punde has any powers to bye pass any points when the V.O. puts forth his arguments for purchase of item without calling for Tender? The P.O. also is silent on the action of CAO Shri Punde (SW-1) but blames me for not calling Tender for items above Rs.50,000/- while condoning the action of other DGM and justifying the same in case of purchase suggested by Padegaonkar the then DGM in S-1, page-6. The CAO has not been delegated any powers to condone or use his discretion specifically when the CAO was the Head of the office of Financial Rules. The whole malady started because the CAO was neither unaware nor ignorant of his status as head of the office for Financial Rules. He was duty bound to implement the Financial Rules and not allowed them to bye pass any of the

Financial Rules. Shri Punde CAO contended that the Ahmedabad Tender was valid upto 5/3/98 (QA-13 of SW-1) in the purchases suggested by him, the same Tender was still valid in July'97 but the V.O. completely ignored that and the succeeding CAO Shri Gosavi could have been right on the same ground of validity of Tender upto 5/3/98. In Account matter, one man's meal can't be others man's poison. Because what is meal and what is poison are clearly defined in the Account course of which A.O. and CAO should be well aware and paid for. This WAS DESPITE instructions contained in S-5 which were to follow as the Rules already codified.

In the purchase recommended in my case one Fault Locator each approved against Engg-27 for which the CAO has passed the Engg-27 and placed the funds at the A.O's disposal for purchase. But the I.O. due to his pre-conceived idea's in the B.Prasad's case turned a blind eye to these details to blame me for not calling for Tender (this is to be done by the SSA Head , GM Nashik) and exceeding the Financial Limits which were not proved by the P.O. but approved by the succeeding CAO to Shri Punde who under similar circumstances allowed, passed and paid a bill for Rs.1,33 lacks + 4% S.T. and yet the I.O. accept the testimony of Shri Punde, CAO/IFA(SW-1) to blame me.

Referring to QA-20 of Punde (SW-1) on the provision of Financial Volume-3 whether Financial Advisor has still the status of the Divisions or SSA for Financial Rules, his reply was "he can't comment on the question". If the CAO does not know his status in SSA, his testimony is worth scrapping for all practical purposes and need not be considered or relied upon. To that extent, the deposition of the status of CAO Shri Punde (SW-1) is wrong and I.O. should have decided whether to accept oral deposition of the CAO (SW-1) or accept the position of CAO cum financial advisor in view of Rule-15 of FHB Vol-III. Rules do not lies, CAO can. The same can be in view by the Disc-Authority in accepting the I.O's report based on misconceived ideas of the CAO's Shri Punde (SW-1) as he also the DA for the CAO (SW-1).

The Disc-Authority has to select and accept the Rule rather than what CAO (SW-1) says. The CAO has definitely erred in view of the Rules which should not be easily pardoned by the DA when he set a wrong precedence and practice for his successor to follow who was recommended for action by the V.O. while not even of mentioning the acts of omission and commission by Punde, (SW-1) in whom the I.O.

believed and made basis his report against me when I had no control over him on any financial matters of Nashik SSA I only technically approved the feasibility of use of newly introduced sophisticated instrument like the one Shri Punde authorized to purchase and blame others were wrong and he was right.

There is a element of charge that the expenditure incurred was far in excess of delegated financial power of Dy.GM/GM. To clarify this, it is stated that being a part of the charge it was the duty and responsibility of the Disc-Authority to prove that element of charge that Dy.GM had no financial power in SSA but both the Disc-Authority and the P.O. on his part failed to prove whether a DGM attached to a SSA had financial power or not.

As a part of defence I had requested the schedule of Financial Power issued by the Maharashtra Telecom Circle, Mumbai vide endorsement no.BGT/AO-2/Rlg/Vol.V/4 dated 2/1/91 for circulation under DE (Admn) Nashik no.Y/G/31/90-91/23 dated 28/1/91. This was to show that no financial power were violated by me. The same was supplied by the custodian but this D-9 documents was shown to witness SW-2 and SW-3 who intern attempted to prove that schedule of financial power does not empowers the DGM. In this two question arises, whether the interpretation of V.O. is right that DGM did not have any financial power in Nashik SSA and (ii) whether the P.O. can used defence document (D-9) to prove his case.

As per the caption Annexure-III and Annexure-IV of the Memo of charges, it was proposed by the Disc-Authority to sustain the Article of Charge by 10 documents listed therein and through 3 witnesses listed at Annexure-IV through whom the charges were proposed to be sustained. With these captions, neither the P.O. nor the Disc-Authority had mandate to use and put in evidence the schedule of financial power as supplied by the custodian, as an additional documents to prove his case. But here again the mandate that P.O. used D-9 as prosecution documents to prove that the DGM had no financial power. If this was really true how was it that Shri Padegaonkar a DGM in Nashik SSA was allowed to use the financial power for sanctioning a Estimate or incurring expenditure by sanctioning purchase to the extent of Rs.1.33 lacks + 4% S.T. and I also was allowed to exercise purchase from time to time to run the areas under me by incurring expenditure to the extent of Rs.2 lacks at the time for sanctioning purchase of petty items, stocked or

non-stocked Item and the CAO / A.O. in their wisdom and knowledge of the rules allowed the purchases and incorporating these expenditures in the books of Nashik SSA. The action of CAO is allowing expenditure was keeping in conformity with some circulars or Authority under which the two DGM's myself and Padegaonkar exercised their Financial Powers. This is further confirms by noting between GM and CAO on NS-2 in S-3 when the GM raised the quarry "CAO may please explain how the bill has been passed/paid when it is exceeding one lack inspite of my instructions to submit it to GM" which the CAO replied, "this is the case prior to the issue of the revised delegation of power", showing that I had powers at least over 1 lack prior to 1/7/97 when the new delegation of powers were revised on formation of GM incharge of Nashik SSA by upgrading the district. In upgrading the District, the powers of DGM were degraded to Rs.1 lack. This against all the oral evidences of V.O's and shows that the DGM had power for authorizing local purchases of Non stocked item over Rs.1 lack, the higher limit it no where on record but the then CAO/IFA had a definite idea that a DGM had definite power upto the extent to pass the bill submitted by the supplier M/s. Hi-Tech supplied to the extent of 1,40,000/- and yet the I.O. perhaps does not agrees and raises the doubt whether the DGM had power or not. Partially accepting the DGM's powers on clarification of the CAO, the IO. had the audacity to say that the power was not utilized in prudent manner. What is prudent manner, the I.O. has not explained but if the CAO's contention is to be accepted, he was of the opinion (and advised the GM accordingly) shows that the amount was utilized in a prudent manner that is why he passed and paid it. As regards the passing the expenditure earlier before placing the orders for purchase by the AGM (Plg), what was not prudent for the I.O. was prudent enough for the CAO to approve or passed and paid amount. Between the I.O. and the CAO, the action of the CAO/IFA was more Authentic and should be acceptable against the side remark by the I.O. that the power was not utilized in a prudent manner which came out in a prejudices manner and mind set by the I.O. because:

- (i) He had earlier dealt the case of Shri B.Prasad, the then GM Nashik when the same portion for investigation came before him where the same set of charge was leveled against him also. As it is clear from the elements of charge that both the

DGM/GM approved expenditure far in excess of delegated financial power without specifying what the financial power of DGM and GM.

(ii) He has also considered the opinion and advice given by the CVC in their OM No.(it was I.D. not O.M.) 003/P&T/142 dated 5.6.2003 which was advertently or inadvertently furnished by the Disc-Authority along the papers and documents supplied to the I.O. under sub-Rule-6 of Rule-14 of CCS(CCA) conduct Rule-1965. This prejudice I.O's mind against me particularly so when the O.M. referred to above was not part of the charge or part of the proceedings where the CVC explained the opinion and was extensively considered by the I.O. Therefore the prejudice caused by any documents weighed heavily with the I.O. to further conclude "all concerned did not follow the existing guidelines/Rules including CO". Normally the side line remark are taken cognizance of Disc-Authority but here again the I.O. failed to say who those all concerned were unless he has named in the O.M. listed for initiation of major penalty proceedings and including Shri B.Prasad, the then GM, myself A.K.Dutta, the then DGM, Shri M.G.Kamlapurkar, the then AGM (Plg), and Shri A.K.Pathak, the then SDE (Plg) as well as Shri M.D.Gosavi, the then CAO/IFA but excludes the another name Shri Punde, CAO Preceding to Shri Gosavi, CAO who initially acted against all the rules and norms and set a precedence to Gosavi to follow. Even the CVC were not fair in excluding Punde from disciplinary action in the same way as it suggested action against Gosavi. In short, with the five points of this representation, it should be clear to the DA to conclude that the I.O's report was not report at all within the area of Sub-Rule of Rule-14 of the CCS(CCA) conduct Rule-1965.

Attention of the DA is also invited to the Local Purchases: General Guidelines coded at 4.1 in the page no. 124 in the Hand Book on TELECOM CIVIL WORKS & ACCOUNTS (Revised and Enlarged Edition 2000) by C.V.R.Reddy is enclosed at Annexure-IV herewith at para (2) it is stated that the purchases are to be approved only by Officers who are vested within financial powers and

the purchase proposal: Duties of IFA/AO as codified at 4.1.2. in page no.124 mentioned in the enclosed Annexure-IV. This is as per the D.G's letter no.15-214/82-TA(IC), dt.17/12/83.

In deciding this case, the DA is requested to consider this representation in Proper prospective and it is necessary that all points raised and summarized in the order and also discuss logically to show how they are not tenable and acceptable to it.

Attention of the Disciplinary Authority is also invited to the ratio laid down by the Hon'ble Supreme Court in case of Satyendra Chander Jain Vs. Punjab National Bank 1998 SCC(L&S)211, Date of judgement 15/2/96 as reported in Swamy's Case law Digest 1997/2 at Sl.131 at page-145 thereof stated as " Disc-Authority should exercise their judicial discretion having regard to the facts of the case and can not act on the dictates of third party like Government or Vigilance Commission".

Again mentioned in Swamy's case Law Digest 1972/2 Sl.No.132, the ratio laid down by the Central Administrative Tribunal (CAT), Guwahati Bench in the case of C.Shullai Vs. Union of India and others in O.A No.213 of 1994, Date of Judgment 8/7/97, it is clearly stated thereof "The Disc-Authority must consider the case on his own definite finding on the basis of charges proved and he can not simply accept the findings of the Enquiry Officer".

When the I.O's comments as a side remarks that all concerned did not follow the existing rules including the CO. No action is warranted against me in particular when I did not handle any of finance or independently approved any expenditures without prior consent of the CAO who was the head of the office of Financial Rules. It was the duty of the CAO to guide the subordinate officers on Financial Rules and matters and if any of the subordinate officer violates any of the Financial Rules, he was again duty bound to bring to the notice of the head of the administrative units.(GM Nashik in this case) for remedial measures or action as deemed fit (Rule 17 & 21 of FHB Vol-III). In case the GM over rule the CAO or in case of serious financial irregularities, a report at once should be sent to the Circle Accountant (Higher Office) even though the irregularities were set right under the orders of the Competent Authority (Rule 23 of FHB Vol-III). The

CAO has done nothing in this case since as per his Financial Rules & and his eyes there was no Financial irregularities much less to serious to report. Under these circumstance even in the eyes of the Financial Rules, I have not committed any irregularities despite whatever the I.O. says as proved and partly proved.

With this, Your Excellency, I close this representation. At least now to get this examined in proper prospective by the Engg/Accounts Authorities to set if there is still any case against me regarding the whole affairs as charged for. Keeping in view:

- 1) The bias of I/O as referred by him in the opening para of his report where he reference to the CVC advice primary and CVC's OM (actually it was ID) NO.003/P&T/142 dated 5/6/03 which was extraneously considered by him without giving me a chance to defend against.
- 2) Judgement of Jodhpur Bench of CAT to consider if the charge was PROVED or Not proved against partly proved as concluded by I/O. Since the judgement says that there is "No Middle Course" and finally
- 3) Of course on FACT as shown in this representation when 30 CAO's out of which 6 of them from Maharashtra Telecom Circle processed similarly without calling Tenders and approved the purchases as the Heads of the Units for Financial Rules. The different standards are NOW being applied for Nashik SSA only to blatantly discriminate between purchases under the same and similar circumstances within the same powers by the DGM's/GM's who approve purchases.

I hope for clear reason verdict to show as it is necessary that all the points raised by me hearing by me as CO or summarized in the order and or also logically discussed to show how they are NOT TENABLE or acceptable.

Particularly with the following glaring disparities.

(1) In the same district	But I am faulted under similar circumstances
Padegaonkar is not faulted	
(2) CAO Punde is not faulted	But his successor Gosavi is faulted and CVC advised him Govt.displeasure since he retired.

(3) 30 CAO's not faulted	But Nasik SSA officers are faulted under all circumstances common to all.
(4) Even 6 SSA's(including of Maharashtra Circle itself not is faulted.)	But only Nasik SSA targeted for.
(5) Even Audit Inspection Report faulted 3 other SSA's But were PARDONED	Only Nasik SSA was targeted.

The recent circular (D-10) issued by the Director (VM), VIG Monitoring-II Dept. of Telecom, Govt. of India, F.No./17/4/2003-VM-II dt.25/11/2003 regarding Local Purchases can also be kept for kind consideration to see if the case could be dropped at this stage.

And your Excellency, if this is dispensing of justice as penned by DA/CVC and I/O, I would Pray to God to pardon all as they do not know what they are Doing and Save Me.

In view of above circumstances, I request your goodself to be kind enough to Exonerate me from the charges leveled vide Memorandum no/8/248/2003-VIG II dated 29/8/2003.

I remain,

Thanking you,

Yours faithfully,

Date: 27th September, 2004

(A.K.DUTTA)

Place: Kalyan

Enclosures:

1. List of All India Purchases for the above Instruments/Testers were already submitted with my Defence brief and enclosed herewith for ready reference as Annexure-I.

*Attested
A.K.Dutta
Advocate*

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No. 8/248/2003-Vig.II
 Government of India
 Ministry of Communications and Information Technology
 Department of Telecommunications
 (Vigilance-II Section)

915, Sanchar Bhawan, 20-Ashoka Road,
 New Delhi-110001.

Dated, the 17/10/2005

ORDER

WHEREAS major penalty proceedings under Rule 14 of the CCS (CCA) Rules, 1965 were instituted against A.K. Dutta (Staff No. 8188), Area Manager, Kalyan Telecom District, Maharashtra vide Memorandum No. 8/248/2003-Vig.II dated 29.8.2003 on the following article of charge :

"That the said Shri A.K. Dutta, while functioning as Deputy General Manager(Planning), O/o GM, Nasik Telecom District during the period from July, 1997, to February, 1998 in connivance with Shri B. Prasad, GM, Shri N.G. Kamalpurkar, AGM(Planning), Shri M.D. Gosavi, CAO and Shri A.K. Pathak, SDE(Planning) all of Nasik Telecom District, approved the procurement of non-stocked items viz Cable Route Tracers, Pulse Reflecometers, Battery Voltage Monitoring Systems and Digital Earth Resistance Tester from M/s. Hi-Tech Telecom Systems, Hyderabad, for a total of Rs.4,63,032/- on the basis of quotations, without inviting tenders as required, though the equipments were not proprietary items, far in excess of the delegated financial powers of the DGM/GM and without ascertaining the specific requirements of the field units; in violation inter alia of Rule-6, and Para 28 of Annexure to Chapter-8, of General Financial Rules, 1963, Department of Telecom Circular letters No.51-6/91-MMC/Pt dated 12.1.93 and No.305-2/95-MMS dated 8.11.95, letter No.BGT/3-9/97-98 dated 09.12.97 from General Manager(Finance), Maharashtra Telecom Circle, addressed to Shri B. Prasad, General Manager, Nasik Telecom District, and Rule-60 of P&T Financial Handbook Volume-I; thereby depriving the Department of the benefit of competitive rates and showing undue favour to the aforesaid private party.

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

2. WHEREAS Shri A.K. Dutta vide his representation dated 15.10.2003 denied the charges and desired to be heard in person. An inquiry was, therefore, ordered in this case. Shri N.K. Ghosh, CDI, nominated by the CVC, and Shri A.K. Sahu, General Manager (Operations), O/o CGM Telecom, Maharashtra Telecom Circle, Mumbai were appointed as the Inquiring Authority and Presenting Officer, respectively. The Inquiring Authority has submitted its report dated 05.07.2004 holding the charge as partly proved. The CVC, vide ID Note No. 003/P&T/114/2397 dated 2nd August, 2004 advised imposition of a suitable major penalty on Shri A.K. Dutta. With the approval of Competent Disciplinary Authority, a copy of Inquiry Report was furnished to the Charged Officer alongwith a copy of CVC's advice, to enable him to make such representation as he wished to make, Shri A.K. Dutta has submitted his representation dated 27th September 2004, wherein he could not bring out any new facts to rebut the findings of the IO. Therefore, with the approval of the Competent Disciplinary Authority, the case was referred to the UPSC for their statutory advice as to the quantum of punishment that may be imposed on Shri A.K. Dutta, DGM.

[Contd.....]

S. H. T. S.
Advocate

3. WHEREAS the UPSC have tendered their advice in this matter vide their letter No.F.3/461/04-S.I. dated 08.09.2005 (Copy enclosed). The Commission have, inter-alia observed the following :

- (a) the allegation that procurement of material was approved on the basis of quotation without inviting tenders is conclusively proved against the Charged Officer.
- (b) As regards component of charge that the Charged Officer has gone beyond the delegated financial power of the DGM/GM it is evident that he abused his powers. Though Charged Officer has claimed that as DGM it was within his powers to make purchases upto Rs.2 lakh, prosecution stated that as he was not independent SSA Head or Area Director he had no power. Relying on the details of financial powers reflected in EX.D9, the IO has held that the financial powers rest with CGM, GM, Area Manager, TDM, SDE etc, and not with those DGMs who were not independent SSA head. Charged Officer was functioning as DGM at the relevant time and as per the delegations shown in D9 against S.No.4.1.2 (Non stocked items) and other categories of purchases he was not vested with any financial power. Since, category of officers delegated with financial powers, as shown in D9, does not include or mention the designation of DGM, the Commission are of the view that the IO is right, thereby proving this component of the charge also.
- (c) The allegation that specific requirements were not ascertained is also proved. It is also proved that the Charged Officer's action was in violation of provisions contained in para 28 of Chapter 8 of GFR and instructions/guidelines of DoT dated 8.11.1995 and thereby depriving the Department of the element of competitive rates.

4. AND WHEREAS the Commission are of the view that the ends of justice would be met in this case if the penalty of "reduction to one lower stage in the time scale of pay for a period of one year with the stipulation that he will not earn any increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing his future increments of pay" is imposed on Shri A.K. Dutta, DGM.

5. NOW THEREFORE, after careful consideration of the findings of the Inquiry Officer, submissions made by Shri A.K. Dutta, DGM, the Charged Officer, in his representation dated 27th September 2004, the advice tendered by the UPSC, vide their aforesaid letter dated 08.09.2005 and all relevant facts and circumstances of the case, the President, the competent Disciplinary Authority, accepts the advice of the UPSC and hereby imposes on Shri A.K. Dutta, the penalty of "reduction to one lower stage in the time scale of pay for a period of one year with the stipulation that he will not earn any increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing his future increments of pay" on Shri A.K. Dutta, DGM.

6. The receipt of this Order shall be acknowledged by Shri A.K. Dutta, DGM.

By order and in the name of the President.

Encl : Copy of UPSC's letter No.3/461/04-S.I dated 08.09.05


(A.K. Patro)
Desk Officer (Vig.II)

Shri A.K. Dutta,
(Staff No.8188),
Deputy General Manager,
O/o GM, Tezpur Telecom District,
Assam Telecom Circle,
Guwahati.

(Through the CGM, Maharashtra Telecom Circle, Mumbai).

27/10/05

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BHARAT SANCHAR NIGAM LIMITED
(A GOVT. OF INDIA ENTERPRISE)
O/O CHIEF GENERAL MANAGER
ASSAM TELECOM CIRCLE, GUWAHATI-07.

No. Vig/Assam/43 Pt-VI/12

Dated, 27-10-05.

To,

The General Manager Telecom
BSNL Tezpur.

Sub :- Final order in respect of disciplinary proceedings against shri A.K.Dutta, DGM Tezpur.

Ref :- Order No. 8/248/2003-Vig.II dtd. 17-10-05.

As directed, kindly find enclosed herewith order No. cited above alongwith the advice of UPSC in the disciplinary proceedings against Shri A.K.Dutta, the then Area Manager Kalyan Telecom District Maharashtra, now DGM Tezpur wherein penalty has been imposed under Rule-14 against shri A.K.Dutta. As such you are requested kindly to serve the order to shri A.K.Dutta and his dated acknowledgement receipt may be sent to this office for onward transmission to TCHQ New Delhi. The order should be implemented immediately please.

Enclo :- As above.

Attested
A.K.Dutta
Advocate

Sainjee B 27/X/2005
Dy. General Manager (Vig)
O/O Chief General Manager
Assam Telecom Circle, GH-07.

Document received
Date received
Comm. Name

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Adv Duttar

VAKALATNAMA

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH: GUWAHATI

O. A. No. 293 /2006

Sri Angarr Kumar Dutta ...Applicant(s)

-Vs-

Union of India & others ...Respondent(s)

Know all men by these presents that the above named Applicant do hereby appoint, nominate and constitute Sri Manik Chanda, Sri S. Nath Sri MRS. U. Dutta and G. N. Chakraborty, Advocate(s) and such of below mentioned Advocate(s) as shall accept this VAKALATNAMA to be my/our true and lawful Advocate(s) to appear and act for me/us in the above noted case and for that purpose to do all acts whatsoever in that connection including depositing or drawing money, filing in or taking out papers, deeds of composition etc. for me/us and on my/our behalf and I/We agree to ratify and confirm all such acts to be mine/our for all intents and purposes. In case of non-payment of the stipulated fee in full, no Advocate(s) shall be bound to appear and/or act on my/our behalf.

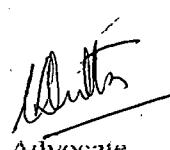
In witness whereof, I/We hereunto set my/our hand on this the 28th day of November 2006.

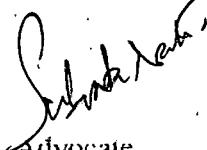
Received from the Executant, Mr.

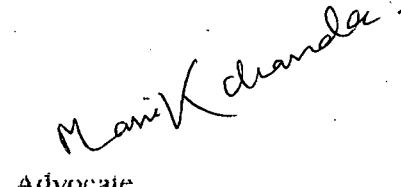
And accepted

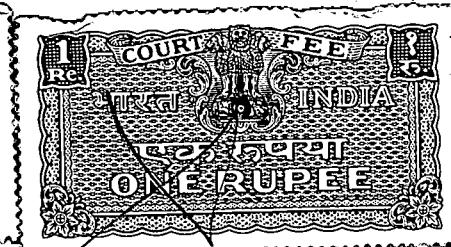
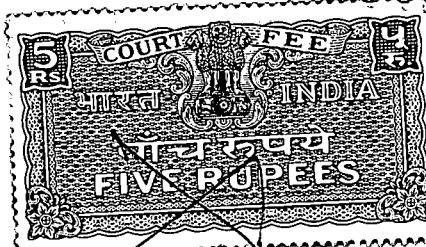
satisfied and accepted.

Senior Advocate will lead me/us in the case.


Advocate


Advocate


Advocate



NOTICE

From

U. Dutta
Advocate

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To

Sri Gautam Baishya

Sr. C. G. S. C.

Central Administrative Tribunal
Gauhati Bench, Guwahati.

Sir,

Please find herewith a copy of the or
application, O. A. NO _____ /2006, Sri Anjan
Dutta -vs- Union of India & ors, for
kind and necessary action. Kindly
receipt of the same.

Received

(G. Baishya)

Yours sinc
U. Dutta

U. Dutta

2200102

गवाहारी व्यायधीठ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

filed by the applicant
through: S. Nath.
A. Felicite
M. 12, 2006

In the matter of :-

O.A. No 293/2006.

Sri Anjan Kumar Dutta
... Applicant.

-Versus-

Union of India and Others.

... Respondents.

-And-

In the matter of: -

An additional affidavit submitted by the applicant in support of the contention raised by the applicant in the original application.

The applicant most humbly and respectfully begs to state as under: -

1. That your applicant approached this Hon'ble Tribunal by filing an original application which is registered as O.A. No. 293/2006, praying interalia for setting aside the impugned penalty order dated 17.10.2005. The said original application is now pending before the learned Tribunal for consideration for admission. It is pertinent to mention here that the impugned order of penalty dated 17.10.2005 was received by the applicant only on 31.05.2006 and to that effect the applicant also wrote a letter to the

General Manager, BSNL, Tezpur, acknowledging the receipt of the said penalty order on 31.05.2006 itself. It would further be evident from the letter bearing No. X-1/disc/Rule-14/06-07 dated 31.05.2006 of the General Manager Telecom District, BSNL, Tezpur, whereby General Manager issued the consequential order dated 31.05.2006 with a copy to the applicant from the same day on 31.05.2006. Therefore it is quite clear that the impugned letter dated 17.10.2005 in fact served upon the applicant on 31.05.2006, as such the original application filed by the applicant is well within the period of limitation. However as an abundant caution the applicant also prayed for condonation of delay, if any, in filing the original application for redressal of his grievances.

(Copy of the letter dated 31.05.2006 is enclosed herewith and marked as Annexure-A series).

2. That this application is filed bonafide and for the ends of justice.

In the facts and circumstances stated above Hon'ble Tribunal be pleased to condone the delay, if any, and further be pleased to admit the original application and be pleased to pass any other order or orders as your lordship deem fit and proper.

And for this act of kindness the applicant as in duty bound shall every pray.

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VERIFICATION

I, Shri Anajn Kumar Dutta, S/o Late N.G. Dutta, aged about 47 years, serving as DGM, B.S.N.I., Tezpur, Assam Circle, do hereby verify that the statements made in Paragraph 1 to 2 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 10th day of December 2006.

AK Dutta.

Bharat Sanchar Nigam Limited
Office of The General Manager Telecom District
Tezpur - 784 001

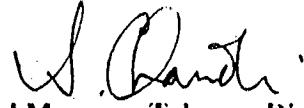
No. X-1/Disc/Rule-14/06-07/

Dtd at Tezpur, the 31-05-06

**SUB :- DISCIPLINARY PROCEEDING AGAINST SHRI A.K.Dutta
D.G.M. Tezpur.**

As per the Telecom Commission, New Delhi vide order No.8/248/2003-Vig.II dated.17-10-2005 Penalty has been imposed for reduction by one stage in the time scale of pay for a period of one year with effect from 01-04-2006 on Shri A.K.Dutta, D.G.M. Tezpur(Date of Birth 27-10-1959) which is conveyed by DGM(Vig) O/O CGMT Assam Circle, Guawahati. vide his letter No.Vig/Assam/43 Pt-VI/12 dated 27-10-2005.

IT IS THEREFORE ORDERED THAT THE PAY OF SHRI A.K.DUTTA, DGM.TEZPUR BE REDUCED BY ONE STAGE FROM RS.17500.00 TO RS.17100.00 IN THE TIME SCALE OF PAY Rs.14300-400-18300 FOR PERIOD OF 12 (TWELVE) MONTHS WITH EFFECT FROM 01-04-2006. IT IS FURTHER DIRECTED THAT SHRI A.K.DUTTA, DGM TEZPUR WILL NOT EARN INCREMENT OF PAY DURING THE PERIOD OF REDUCTION AND THAT ON THE EXPIRY THIS PERIOD, THE REDUCTION WILL HAVE THE EFFECT OF POSTPONING THIS FUTURE INCREMENT OF PAY.


**General Manager Telecom District
BSNL, Tezpur - 784 001**

Copy to :

1. The A.O(Cash), O/O GMTD TEZPUR.
2. The SDE(HRD), O/O GMTD TEZPUR.
3. Shri A.K.Dutta, DGM TEZPUR.


**General Manager Tele Dist
BSNL, Tezpur - 784001.**

31-5-06
17/10/05

*Attested
Smt.
Advocate*

271

From:- Sh. A.K.Dutta,
D.G.M. B.S.N.L.
Tezpur-784001.

To:-

The General Manager Telecom
B.S.N.L. Tezpur-784001

Sub:- Disciplinary Proceeding against Sh. A.K.Dutta D.G.M. Tezpur.

R/Sir,

The receipt of the Letter No. X-1/Disc/Rule-14/06-07 dated 31-05-2006
issued by GMTD Tezpur is hereby acknowledged by the undersigned.

Thanking You.

Your's faithfully,

31-05-2006
Tezpur.


A.K. Dutta
31/5/06

Attested
Law
Advocate

297

NOTICE

From: S. Nath.
Advocate.

To: Miss U. Das.
Addl. G.G.S.C.

Sub:- Additional Statement in O.A. No. 293/2006

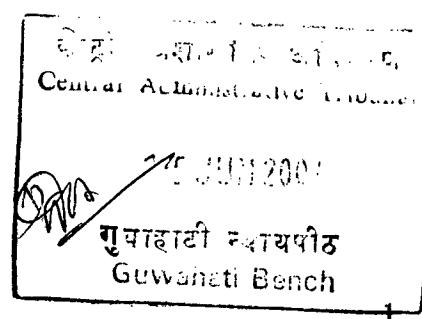
Madam, Find please enclosed herewith a copy of the additional statement, which is being filed on today. This is for your information and necessary action.
Please acknowledge receipt.

Received

Usha Das
(U. Das) 11/12/06
Addl. G.G.S.C.

Yours sincerely

S. Nath
Advocate
11.12.06.



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH GUWAHATI

OA NO. 293/2006

SHRI ANJAN KUMAR DUTTA

.....APPLICANT

-VERSUS-

UNION OF INDIA & OTHERS

.....RESPONDENTS

IN THE MATTER OF

Written statement submitted by the respondents

- 1) That the respondents have received copy of the OA, have gone through the same and understood the contentions made therein. Save and except, the statements, which are specifically admitted herein below, rests may be treated as total denial. The statements, which are not borne on records, are also denied and the applicant is put to the strictest proof thereof.
- 2) That with regard to the statement made in paragraph 1 to 3 of the OA, the respondents beg to offer no comment.
- 3) That with regard to the statement made in paragraphs 4.1 to 4.6 of the OA, the respondents beg to offer no comment.
- 4) That with regard to the statement made in paragraph 4.7 of the OA, the respondents beg to submit that the inquiry authority is vested with the powers, under the statutory rules to allow, turn down, introduce examination of any document or witness. All the listed documents were produced during the inquiry. Hence the allegation of the applicant is denied in toto.
- 5) That with regard to the statement made in paragraph 4.8 of the OA, the respondents beg to submit that it is mere reproduction of the defence brief furnished by the applicant before the IO, which is a matter of record. It is submitted that the IO has made a thorough analysis of the evidence on record, both oral and written, the brief submitted

by the prosecution and the defence before arriving at his findings holding the charge against the applicant as partly proved.

- 6) That with regard to the statement made in paragraph 4.9 of the OA, the respondents beg to submit that the applicant has merely reproduced the discussion made by the IO in his inquiry report. It is submitted that the IO has made a thorough analysis of the evidence on record, both oral and written, the brief submitted by prosecution and the defence before arriving at his findings holding the charge against the applicant as partly proved. The findings of the IO are logical which were considered and accepted by the disciplinary authority.
- 7) That with regard to the statement made in paragraphs 4.10 to 4.14 of the OA, the respondents beg to submit that it has been imputed in the charge-sheet that the applicant in connivance with Shri B. Prasad, GM, Shri N. G. Kamalpurkar, AGM (Planning), Shri M. D. Gosavi, CAO and Shri A. K. Pathak, SDE (Planning) all of Nasik Telecom District, approved the procurement of non-stocked items viz Cable Route Tracers, Pulse Reflectometers, Battery Voltage Monitoring Systems and Digital Earth Resistance Tester from M/S Hi-Tech Telecom System, Hyderabad, for a total of Rs. 4,63,032/- on the basis of quotations, without inviting tenders as required, though the equipments were not proprietary items, far in excess of the delegated financial powers of the DGM/GM and without ascertaining the specific requirements of the field units; in violation inter alia of Rule-6, and Para 28 of Annexure to Chapter-8, of General Financial Rules, 1963 Department of Telecom Circular letters No. 51-6/91-MNC/Pt dated 12.1.1993 and No. 305-2/95-MNS dated 8.11.1995, letter No. BGT/3-9/97-98 dated 9.12.1997 from General Manager (Finance), Maharashtra Telecom Circle, addressed to Shri B. Prasad, General Manager, Nasik Telecom District, and Rule-60 of P & T Financial Handbook Volume-I, thereby depriving the Department of the benefit of competitive rates and showing undue favour to the aforesaid private party. Hence the findings of the IO are well within the scope of the charge. Therefore the statements made by the applicant is not acceptable.

The inquiry authority after conducting a detailed inquiry and analyzing of the evidence, depositions of the witnesses etc. has held the charges leveled against the applicant, as partly proved. The applicant is trying to mislead the Hon'ble Tribunal by wrong representation of the facts. The disciplinary authority has considered the entire

penalty. Hence the allegation of the applicant that the authorities did not take cognizance of the facts is not correct and therefore, the same is denied. The inquiry authority held the inquiry as per procedure laid down in the statutory rules and there has been no violation of the same. Even the applicant during the course of inquiry has not raised any point regarding any violation of the procedure by the inquiry authority. The irregularities committed by the applicant, as alleged in the charge sheet, have been held as partly proved by the inquiry authority.

8) That with regard to the statement made in paragraph 4.15 of the OA, the respondents beg to submit that the submission of the applicant is having no merit since the procedure prescribed in the statutory rules has been followed and full opportunity was given to the applicant by the inquiry authority as well as the disciplinary authority to defend himself. The delinquent officials are proceeded against as and when irregularities committed by them come to notice and after an investigation is conducted. The advice of the CVC, which is competent authority to tender such advice, is also obtained before initiating such proceedings. The disciplinary proceedings are quasi-judicial in nature and prescribed procedure has been followed as per the provisions of the statutory rules. Hence the allegation of the applicant is denied. He has been awarded the penalty for the irregularities observed and subsequently established on his part. The case of the applicant has been dealt with strictly in accordance with the prescribed procedure. There has been no violation of the procedure, as laid down in the statutory rules. Hence, there is no merit in the submissions made by the applicant. It is, therefore, prayed that the Hon'ble Tribunal may be pleased to dismiss the OA.

9) That with regard to the statement made in paragraph 4.16 of the OA, the respondents beg to submit that the consultation with the CVC and UPSC are mandatory as per the provisions of the rules. After the inquiry, the disciplinary authority consulted the CVC and the UPSC as required under the provisions of the statutory rules. Thereafter the disciplinary authority considered the records of the case, submission of the applicant, advice of CVC and UPSC and took a conscious decision to impose the impugned penalty. It is also mentioned that advice of CVC and UPSC are only at its own conclusion regarding the quantum of penalty on the delinquent official. UPSC, which is an independent statutory body under the Constitution of India, examines the entire records of the case dispassionately before tendering their advice. Hence the submission

of the applicant that the UPSC did not consider the records of the case is devoid of any truth and hence denied. The disciplinary authority after taking into account all the factors such as the statement of the imputations, records of inquiry, advice of CVC, submission of the applicant, advice of UPSC etc, exercised its own wisdom and arrived at its own conclusion that the lapses committed by the applicant constituted grave misconduct. Accordingly the disciplinary authority took the decision to impose the said penalty on the applicant. The penalty imposed on the applicant, after following the prescribed procedure, is as per the relevant statutory rules and there has been no violation of any of the rules.

10) That with regard to the statement made in paragraph 4.17 of the OA, the respondents beg to submit that the inquiry authority gave its findings on the article of charge. UPSC, which is an independent constitutional body, was consulted in the matter regarding the quantum of punishment that may be imposed on the applicant. The Commission tendered its advice after a through, judicious and independent consideration of all the relevant facts and circumstances of the case, findings of the inquiry officer, the evident on record, documents made available by the Ministry, representation of the charged officer etc. The advice of the Commission is self-contained and self-explanatory. The Commission after examining all the records of the case in detail gave their advice to impose a statutory penalty on the applicant. The competent authority accepted the aforesaid advice of the UPSC after due consideration and application of mind and ordered for imposition of the penalty of reduction to one lower stage in the time scale of pay for a period of one year with the stipulation that he will not earn any increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing his future increments of pay on the applicant.

11) That with regard to the statement made in paragraph 4.18 of the OA, the respondents beg to submit that as per the provisions of the statutory rules, a copy of the UPSC 's advice, if any has to be furnished to the delinquent official along with the final order passed by the competent authority. The provisions of the rule were complied with and a copy of the UPSC 's advice was furnished to the applicant along with the final order. It is submitted that either the applicant is not aware of the provisions of the statutory rules or he is trying to mislead the Hon'ble Tribunal.

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12) That with regard to the statement made in paragraph 4.19 to 4.21 of the OA, the respondents beg to submit that the Commission tendered its advice after judicious and independent consideration of all the relevant facts and circumstances of the case, findings of the inquiry officer, the evidence on record, documents made available by the Ministry and representations of the charged officer etc. The advice of the Commission is self-contained and self-explanatory and as an aid to the Disciplinary Authority to arrive at a judicious decision.

13) That with regard to the statement made in paragraph 4.22 of the OA, the respondent beg to submit that present application is devoid of merit hence liable to be dismissed with cost.

14) That with regard to the statement made in paragraph 5.1 to 5.6 of the OA, the respondents beg to submit that the applicant has merely reproduced the discussion made by the IO in his inquiry report. It is submitted that the IO has made a thorough analysis of the evidence on record, both oral and written, the brief submitted by the prosecution and the defence before arriving at his findings of the IO are logical which were considered and accepted by the disciplinary authority.

15) That with regard to the statement made in paragraph 5.7 of the OA, the respondents beg to submit that there is no provision in the statutory rules for issue of any second show cause notice before issue of the order of penalty. Hence the ground taken by the applicant is not tenable. Article 311 of the Constitution of India was amended through the 42nd amendment taking away the provision of 2nd show cause notice.

16) That with regard to the statement made in paragraph 5.8 to 5.10 of the OA, the respondent beg to submit that the departmental proceedings were instituted against the applicant for the irregularities committed by the applicant while discharging his duties which were noticed during the investigation. The proceedings were held as per the prescribed procedure and the orders were passed in accordance with the statutory rules. Consultation with the CVC and UPSC were also made as required under the procedure. Hence the allegations of the applicant that the action of the respondents is against the provisions of the Constitution are denied. UPSC, an independent Constitutional body,

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was consulted in the matter regarding the quantum of punishment that may be imposed on the applicant. The Commission after examining all the records of the case in detail gave their advice to the competent authority to impose a statutory penalty on the applicant. The Competent authority accepted the aforesaid advice of the UPSC and after due consideration and application of mind ordered for imposition of the penalty on the applicant. There was no arbitrariness on the part of the disciplinary authority. In the instant case, UPSC have tendered their advice after a thorough examination of all the records. The service particulars and the CR dossier were also furnished to UPSC along with the case records, which were perused by UPSC before tendering their advice. The competent authority examined all the records and the advice tendered by UPSC and decided to accept the advice of UPSC and after due consideration and proper application of mind. Therefore, the allegation of the applicant that there was arbitrariness on the part of the disciplinary authority is not correct and hence denied.

17) That with regard to the statements made in paragraphs 5.11 to 5.14 of the OA, the respondents beg to submit that the Commission tendered its advice after a thorough judicious and independent consideration of all the relevant facts and circumstances of the case, findings of the inquiry officer, the evidence on records, documents made available by the Ministry and representations of the applicant etc. The advice of the Commission is self-explanatory and self-contained.

It is submitted that the IO has made a thorough analysis of the evidence on records, both oral and written, the brief submitted by prosecution and the defence before arriving at his findings holding the charge against the applicant as partly proved. The findings of the IO are logical which were considered and accepted by the disciplinary authority.

The inquiry authority after conducting a detailed inquiry and analyzing of the evidences, depositions of the witnesses etc. has held the charges leveled against the applicant, as partly proved. The applicant is trying to mislead the Hon'ble Court by wrong presentation of the facts. The disciplinary authority had considered all the facts, submissions of the applicant and all the relevant records before imposing the penalty. Hence the allegation of the applicant that the authorities did not take cognizance of the facts is not correct and therefore, the same is denied.

18) That with regard to the statements made in paragraph 5.15 to 5.17 of the OA, the respondents beg to submit that the departmental proceedings were instituted against the applicant for the irregularities committed by him while discharging his duties, which were noticed during the investigation. The proceedings were held as per the prescribed procedure and the orders were passed in accordance with the statutory rules. Consultation with the CVC and UPSC were also made as required under the procedure. Hence the allegation of the applicant that the action of the respondents is against the provisions of the Constitution is denied. UPSC, which is an independent Constitutional body was consulted in the matter regarding the quantum of punishment that may be imposed on the applicant. The Commission after examining all the records of the case in detail gave their advice to the competent authority to impose statutory penalty on the applicant. The Competent authority accepted the aforesaid advice of the UPSC and after due consideration and application of mind ordered for imposition of the penalty on the applicant. There was no arbitrariness on the part of the disciplinary authority. In the instant case, UPSC has tendered their advice after a thorough examination of all the records. The service particulars and the CR dossier were also furnished to UPSC along with the case records, which were perused by UPSC before tendering their advice. The competent authority examined the advice of UPSC after due consideration and proper application of mind. Therefore, the allegation of the applicant that there was arbitrariness on the part of the disciplinary authority is not correct and hence denied. The order imposing penalty on the applicant has been passed by the component authority in accordance with the provisions of the statutory rules. The same is legal and constitutional. There was no violation of the principles of natural justice.

19) That with regard to the statement made in paragraph 6 of the OA, the respondents beg to submit that the applicant had not exhausted all the remedies available to him. A remedy is still available to the applicant under Rule 29 (A) of CCS (CCA), Rules, 1965 to seek a review of the orders passed by the disciplinary authority, if any new fact or material which has potential to change the complexion of the case, is available with the applicant. The applicant has not preferred any petition seeking the review of the said punishment order in accordance with the provisions of Rule 29 (A) of CCS(CCA), Rules, 1965.

20) That with regard to the statement made in paragraph 7 of the OA, the respondents beg to offer no comment.

21) That with regard to the statement made in paragraph 8 to 9 of the OA, the respondents beg to submit that the relief sought by the applicant is devoid of any merit as there is no violation of rules and procedures. Hence, it is prayed that it may be dismissed with cost.

22) That with regard to the statement made in paragraph 10 to 12 of the OA, the respondents offer no comment.

23) That in view of the above facts and circumstances of the case and the submissions made by the respondents it is prayed that the Hon'ble Tribunal may be pleased to dismiss the OA with cost.

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VERIFICATION

I Md. Abdur Hamid, aged about 57 years at present working as Dy. Controller of Communication Accounts, who is one of the respondents and taking steps in this case, being duly authorized and competent to sign this verification for all respondents, do hereby solemnly affirm and state that the statement made in paragraph 3, 1, 2, 22, 23 are true to my knowledge and belief, those made in paragraph 3 to 21 being matter of records, are true to my information derived there from and the rest are my humble submission before this Humble Tribunal. I have not suppressed any material fact.

And I sign this verification this 25th day of May 2007 at Guwahati

DEPONENT

उप नियन्त्रक संचार लेखा
Dy. C.C.A.
कार्या. नियन्त्रक संचार लेखा,
O/o the C.C.A.
असम दूरसंचार परिषद
Assam Telecom Circle
गुवाहाटी-781001
Guwahati-781001

25/5/07

Notice

28

Date - 5/6/07.

From,

Usha Das
Addl. Cuse

To,

Mr. M. Chender
Mr. S. Naith
Advocates

Sub: OA No. 293/06

Sir,
Please find herewith a
copy of WS being filed today.
Kindly acknowledge the receipt
thereof.

Thanking You

Sincerely Yours

Usha Das
Addl. Cuse

Received copy

Metta
05/06/07
Advocate

14 SEP 2001

गुवाहाटी न्यायपीठ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

283

Filed by the applicant
through M. Dutta,
Advocate, on 13.09.07

In the matter of:-

O.A.No 293/2006.

Sri A.K.Dutta

... Applicant

-Versus-

Union of India and Others.

... Respondents.

-And-

In the matter of:-

Rejoinder filed by the applicant against
the written statement submitted by the
respondents.

The applicant most humbly and respectfully beg to state as under:-

1. That your applicant carefully gone through the written statement submitted by the respondents and specifically deny the statements made in paragraph 4,5,6 and 7 of the written statement and further reiterates the statement made in the original application. It is specifically denied that all the listed documents were produced and examined before the enquiry proceeding. The applicant also deny the correctness of the statement that the inquiry officer has made through analysis of the evidence on record before arriving at his findings and the findings of the inquiry officer cannot be termed as logical, moreover the contention of the respondents to the effect that the applicant have purchased the materials, for in excess of the delegated financial power of DGM/GM and the further allegation that the said purchase were made without ascertaining the specific requirement of the field unit. The allegation of depriving the department

of the benefit of competitive rates and the allegation of showing undue favour to the private party is specifically denied, and as such the findings of the inquiry officer is contrary to the records. In the circumstances explained above, the findings of the inquiry officer, that the charges have been partly proved, is not at all sustainable in the eye of law. Moreso, in view of the fact that the Govt. of India, Dept. of Telecommunications, vigilance Monitoring II dated 25.11.2003 bearing letter no. F.No./17-4/2003-VM-II, whereby it has been instructed that local purchases made by the field officers like Aplab Testers etc. which are having very limited supplier and the department is also aware of the cost in such type of purchases, the disciplinary action should not be started, however it is directed that the concerned officers should be warned follow the prescribed procedure.

It is relevant to mention here that in the memo of charge sheet, there is a specific allegation that the department has been deprived from the benefit of competitive rates, showing undue favour to the private party. But in the inquiry report, none of those allegation have been established, as such the applicant is also entitled to the benefit of the circular dated 25.11.2003 issued by the Govt. of India, Department of Telecommunication and as such the very initiation of the disciplinary proceeding is contrary to the direction contained in the letter dated 25.11.2003 and on that score alone the entire enquiry proceeding, order of penalty are liable to be set aside and quashed.

(A copy of the letter dated 25.11.2003 is annexed hereto and marked as Annexure-A).

2. That with regard to the statement made in para 8,9,10,11 and 12 of the written statement, the applicant denies the correctness of the statement except which are specifically admitted and further reiterates the statements made in the original application.

The contention of the respondents that the applicant "has been awarded penalty for the irregularities observed". Therefore it is quite clear that what has been established in the enquiry proceeding is nothing but "irregularities" and mere "irregularities" does not fall within the purview of "misconduct" under CCS (CCA) Rule, 1965, as such under the

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circumstances, imposition of any penalty is unwarranted. The contention raised in para 9 and 10 of the written statement is denied and further stated that full records were not placed before the commission, otherwise the advised tendered by the Commission would have been different, even with the materials on record the advise of the commission is unwarranted. Moreover, the penalty have been imposed without independent application of mind as because there is nothing adverse in the findings of the inquiry officer, but his conclusion to the effect that the charges have been partly proved, is just contrary to the findings of the inquiry officer and on that score alone the order of penalty is liable to be set aside and quashed.

3. That your applicant also deny the correctness of the statement made in para 13, 14, 15, 16 and 17 of the written statement and further reiterates the statements made in the original application and the same has been adequately explained in the proceeding paragraph of the instant rejoinder. Mere irregularity does not fall within the purview of misconduct and as such imposition of penalty is not sustainable in the facts and circumstances of the instant case.
4. That your applicant categorically denies the statements made in para 18, 19, 21 and 23 of the written statements and further reiterates the statements made in the original application. Moreover, there is no bar or restriction under the rule and law in force to approach the Learned Tribunal against the impugned order of penalty dated 17.10.2005.

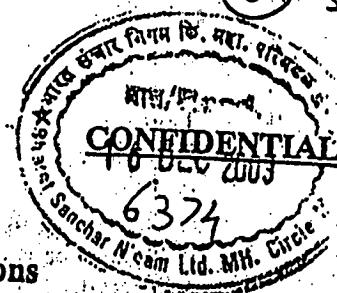
In the facts and circumstances stated above, the O.A deserves to be allowed with cost.

VERIFICATION

I Sri Anjan Kumar Dutta, S/O Late N.G.Dutta, , aged about 47 years, working as Deputy General Manager, BSNL, Tezpur, Assam Circle, Tezpur, Assam, do hereby verify that the statements made in Paragraph 1 to 4 of the rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 9th day of September 2007.

A handwritten signature in black ink, appearing to read "AK Dutta".



F No. 17-4/2003-VM-II
 Government of India
 Department of Telecommunications
 24/74 Vigilance Monitoring-II
 MH: Telecom, Mumbai

To,

All chief General Manager
 BSNL/MTNL
 (By Name)

Sub: Disciplinary proceedings - initiation thereof

Dated: 25th November, 2003

I am directed to say that during inspection of various circles and cases referred by circles to the DOT Hq., it has been observed that disciplinary cases are initiated in the cases whose administrative warning can be given. The matter has been examined in DOT (Hq.) and following guidelines are issued so as to keep in view while investigating the complaints and forwarding the case to this office.

i) Non intimation of properties acquired/disposed off by the officers

The case of non-intimation of transaction in movable/immovable property by the officers/officials should be regarded as a case of warning provided there is no case of possession of disproportionate assets acquired by means of corruption.

ii) Local purchases.

Local purchases made by the field officers like Aplab Testers etc. which are having very limited supplier and the department is also aware of the cost, in such type of purchases if there is no malafide intention behind the purchases, the disciplinary action should not be started. However, the concerned officers should be warned to follow the prescribed methods of purchases.

iii) Departmental Vehicle

Many cases of use of departmental vehicle in jurisdiction area and beyond jurisdiction area are received. In such cases non entitled journey charges should be recovered from the officers and give either administrative warning or initiate disciplinary proceedings under Rule 16 only. However in all such cases the officer should not have misused the vehicle with malafide intentions.

335
 18/12/03

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 25.12.03

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 18/12/03

BCW

iv) Tenders

In cases of extension of validity of tender agreements at existing rates for expediting the works or for completion of targets, the realities of the field must be kept in mind. In all such cases warning should be issued to officers/officials so that in future they take necessary action for retendering well in time.

It is requested that the above guidelines may be forwarded to Circle Vigilance officers for necessary action

B.Nath
25/11/03

(B.K.Nath)

Director(VM)

Copy to:

- 1) Sr.DDC(Vigilance, DoT)
- 1) All Directors and ADGs, Vigilance Wing, DoT

No.T/VIG/CCS/CCA/RULES/XI/53

Dated at Mumbai, the 29.12.2003

Copy forwarded for information and necessary action to:

1. Pr. General Manager Telecom Pune/Kalyan/Nagpur.
2. All General Manager Telecom, MH. Circle.
3. Pr. General Manager (Dev.) Mumbai.
4. All TDM MH. Circle.
5. CE (Civil & Elect.)

A. J. P. M.
Asstt. General Manager (Vig-1)
O/o CGMT, MH. Circle,
Mumbai - 1.

No. KYN/VIG/Circular/03-04/85 dated at KYN 21-01-04

Copy forwarded for information and necessary action to -

1) All Gms (Vasai/Kalyan/Dev)

2) All DGMs

3) All AMs (DBL/UNR/KYN/TRPR/13wD)

Assistt. General Manager (Vigilance)
महाल अभियंता (सतर्कता)
पर्यान महाप्रबंधक का कार्यालय
महाल संचार निगम लि. फ़ॉल्याप ४२९३०९
Divisional Engineer (Vigilance)
O/o Principal General Manager
BSNL, Kalver 421 301

NOTICE

89
2

From

U. Dutta
Advocate

To, U. Das
Adv. C.C.S.C.

Sir,
Please find herewith a copy of the rejoinder
in O.A. 293/2006, A.K. Dutta -vs- U.O.I. Corp
for your kind perusal. Kindly acknowledge
my receipt of the same.

Thanking you

Dutta
13/9
(U. Dutta)

Received

Alibhasan
Adv. C.C.S.C.
13/9/07

290

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

OA NO. 273 /200 L

.....A. K. Dutta.....APPLICANT (S)
-VS-

.....U. O. T. J.RESPONDENT (S)

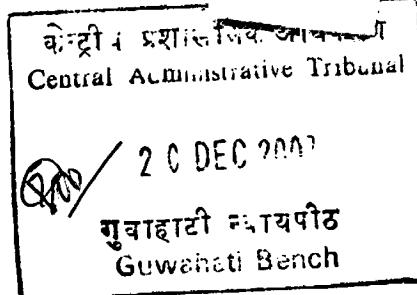
MEMO OF APPEARANCE

I, USHA DAS having been authorized by Govt. of India, Ministry of Law and Justice, Department of Legal Affairs, hereby appear for respondents No..... and undertake to plead and act for them in all matters in the aforesaid case.

Place: Guwahati
Date: 06/12/07

Usha Das
Addl Cll C

Signature and Designation of the Counsel



1

291
Filed by
Globa Dan
Advocate
18/12/07

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI

OA NO 293/06

SHRI A. K. Dutta

.....Applicant

-VERSUS-

UNION OF INDIA & ORS

...Respondents

REPLY TO THE REJOINDER FILED BY THE RESPONDENTS

- 1) That the respondents have received copy of the rejoinder and have gone through the same. Save and except the statements, which are specifically admitted herein below, rest may be treated as total denial. The statements, which are not borne on records, are also denied and the applicant is put to the strictest proof thereof.
- 2) That with regard to the statement made in paragraph 1 of the rejoinder, the respondents beg to state that the submissions made by the applicant are his opinion. The comments made in the Written Statement to the O.A. are correct and hence reiterated.
- 3) That with regard to the statement made in paragraph 2 of the rejoinder, the respondents beg to submit that it is on record that while referring the case to the Union Public Service Commission (UPSC) all the records of the case were made available to them. The inquiring authority gave its findings on the article of charge. The UPSC, which is an independent constitutional body, was consulted in the matter regarding the quantum o punishment that may by be

Received
on 29/12/07
A. K. Dutta

A. K. Dutta
18/12/07

20 DEC 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

292

2

imposed on the applicant. The Commission tendered its advice after a through, judicious and independent consideration of all the relevant facts and circumstances of the case, findings of the inquiry officer, the evidence on record, documents made available by the Ministry, representation of the charged officer etc. The advice of the Commission is self-contained and self-explanatory. The Commission after examining all the records of the case in detail gave their advice to impose a statutory penalty on the applicant. The Competent authority accepted the aforesaid advice of the UPSC after due consideration and application of minds and ordered for imposition of the penalty of reduction to one lower stage in the time scale of pay for a period of one year with stipulation that he will not earn any increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing his future increments of such pay on the applicant.

- 4) That with regard to the statement made in paragraphs 3 and 4 of the rejoinder the respondents while denying the contentions made therein beg to state that the submissions made by the applicant are his opinion. The comments made in the Written Statement to the O.A. are correct and hence reiterated.
- 5) That in view of the facts and circumstances of the case the respondents pray that the Hon'ble Tribunal may be pleased to dismiss the OA with cost.

Ab 13/12/07

20 DEC 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

✓

VERIFICATION

I Md. A.B.M. Hamid aged
about 58 years at present working as
Dy. C.C.A. to the Controller of Communication Accounts
Guwahati, who is one of the respondents and taking steps in this case, being
duly authorized and competent to sign this verification for all respondents,
do hereby solemnly affirm and state that the statement made in paragraph

1, 5

are true

to my knowledge and belief, those made in paragraph

2, 3, 4

being matter of records, are

true to my information derived there from and the rest are my humble
submission before this Humble Tribunal. I have not suppressed any material
fact.

And I sign this verification this 13 th day of December 2007 at Guwahati


DEPONENT 13/12/07

Notice

Date - 18/12/07

29/12/07

From,

Usha Das
Addl Cus C

To, Mr. M. Chander

Mrs. U. Dutta

Advocate

Sub: Reply to the rejoinder filed in
OA No. 293/06

Sir/Madam,

Please find herewith a copy of
rejoinder being filed today.
Kindly acknowledge the receipt thereof.

Thanking You

Sincerely Yours

Usha Das

Addl Cus C

Received copy

Dutta
20/12/07

Advocate

NOTICE

From

U. Dutta
Advocate

To,
Sri G. Baishya
Sr. C.G.S.C

Sir,

Please find herewith a copy of the misc. petition, M. P. NO. 50 /2008, Anjan kr. Dutta vs. U.O.I & ors in O.A. NO. 293/06, praying for amendment of the original application. Kindly acknowledge the receipt of the same.

Received

G. Baishya
12.03.08

(G. Baishya)

Thanking you,
Dutta
(U. Dutta)

File in Court on 11/6/08..

1


Court Officer.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

296

Filed by the applicant
through u. Dutta, advocate
on 11.06.08

In the matter of:-

O.A.No. 293 / 2006.

Shri A.K.Dutta.

-Versus-

Union of India and others.

-And-

In the matter of:-

Additional rejoinder submitted by the applicant against the written statements submitted by the respondents.

The applicant above named most respectfully begs to state as follows:-

1. That your applicant categorically denies the allegation that he has violated the provisions laid down in Rule 6 of the CFR, which contains essential conditions governing expenditures from public funds, subject to the provisions of Art. 266 (3), 267 (1) and 283 (1) of the Constitution, rather the applicant has exercised all sorts of precautions and also observed all relevant financial rules and regulations and also exercised strict economy at every stage while approving the proposal for purchasing equipments in question, which were not stock item in the division and the expenditure has been incurred from public money as a person of ordinary prudence and the expenditure is not more than the occasion demanded at the relevant point of time. The expenditure has infact incurred pursuant to the existing/organized policy of the department and the said expenditure has been incurred within the delegated financial power to procure such non-

*Amend
Gopinath Sircar
11.06.08*

गुवाहाटी बैचन्स

Guwahati Bench

stocked item on Govt. account keeping in public interest upper most in the mind and the expenditure has been incurred in a very fair and reasonable manner following the proper procedure in the then prevailing circumstances, and the price which was offered in purchasing the equipment is very reasonable and consistent with the quality required. Moreover, the applicant has approved the proposal for purchase taking into account all relevant factors and in keeping with the standards of financial propriety. As such question of violation of Rule 6 of CFR does not arise at all in the instant case of the applicant. The general instruction contained in the DOT letter no. 51-6/91-MMC/Pt. dated 12.1.93 and 18.6.93 has been followed by the applicant in toto. There is no violation of the instruction contained in the aforesaid letter by the applicant, moreover no objection was raised by the financial advisor of the division i.e by the then CAD.

It is humbly submitted that the purchase in question was made on 5.08.1997 and 28.07.1997. So, for instruction contained in the letter dtd. 08.11.1995 alleged to have been violated by the applicant is categorically denied. It is relevant to mention here that the letter dtd. 08.11.1995 issued by the DOT addressed to CCM, Maharashtra Telecom Circle, Bombay was never served upon the applicant for guidance. But even then none of the guidelines were violated by the applicant contained in the letter dtd. 08.11.1995.

2. That your applicant further beg to say that it is alleged in the memo. Of chargesheet that the applicant has violated the instruction contained in the letter dtd. 09.12.1997, which is categorically denied, as because the alleged purchase is made on 05.08.1997 as well as on 28.07.1997. Therefore violation of circular dtd. 09.12.1997 does not arise at all. Since the circular was issued on a subsequent date i.w on 09.12.1997, it is also categorically submitted that none of the provisions laid down in circular dtd. 09.12.1997 has not been violated by the applicant. In fact none of the provisions of the

पुनर्वाप्ती आवश्यक

Constitution of India

conduct rule is violated by the applicant as alleged in the intimation of charge sheet, as such the impugned order of penalty is liable to be set aside and quashed.

3. In the facts and circumstances stated above, the applicant most humbly and respectfully prays that the application be allowed with costs.

AK Dutta

गुवाहाटी न्यायपीठ
Guwahati Bench

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VERIFICATION

I Sri Anjan Kumar Dutta, S/O Late N.C.Dutta, aged about 47 years, working as Deputy General Manager, BSNL, Tezpur, Assam Circle, Tezpur, Assam, do hereby verify that the statements made in Paragraph 1 to 4 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 7th day of June 2008.

Anjan Kumar Dutta
(AKD Dutta.)

NOTICE

From

U. Dutta
Advocate

306

To

Sri G. Baishya
Snr. C.G.S.C.

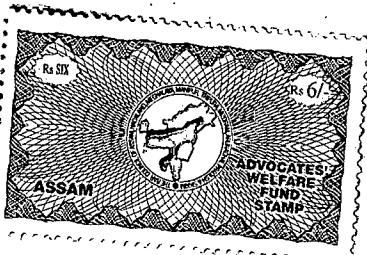
Sir,

Please find herewith a copy of the addl. reboinder filed in O.A. NO. 293/2006, Sri A.R. Dutta vs. U.O. I & ors. for your kind perusal. Kindly acknowledge the receipt of the same.

Received

Gautam Baishya
Snr. C.G.S.C
(G. Baishya) 11.06.08

Thanking you,
Dutta



File in Court on.....

Court Officer.

FORM NO. 11

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

OAR/AMP/PT NO. 293 OF 2006

A. K. Datta

Applicant(S)

-vs-

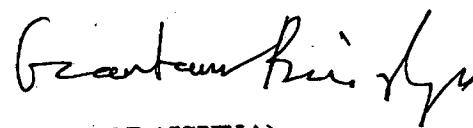
Union of India

Respondent(S)

I, Sri Gautam Baishya having been authorized by
Ministry of Law by the Central Government /Government Servant
..... Authority/Corporation /Society notified under section 14
of the Administrative Tribunals Act, 1985, hereby appear for applicant
no...../Respondent no..... and undertake to plead and act
for them in all matters in the aforesaid case.

Place: Guwahati

Date: 11.06.08


(GAUTAM BAISHYA)
SR.CGSC.,CAT.