

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 313/2006

R.A./C.P No.

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SECTION OFFICER (Judl.)

Sahib
31.10.17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

CHARGE SHEET

1. Original Application No. 313 / 2006
2. Misc Petition No. _____
3. Contempt Petition No. _____
4. Review Application No. _____

Applicant(s) M.C. Gupta VS Union of India & Ors

Advocate for the Applicant(s) Mr M. Chanda, S. Nath
Smt. U. Dutta, G. N. Chakrabarty.

Advocate for the Respondent(s) Adv. C.G.S.C. M. L. Ahmed

Notes of the Registry	Date	Order of the Tribunal
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This application is in form
is filed, C.F. for Rs. 50/-
deposited vide IPO/ED
No. 289 932-623-
Dated 1.11.06-

[Signature]
Dy. Registrar

21.12.06

The issue involved in this case is that the applicant while he was serving as Superintending Engineer, MES he was served with a show cause notice for certain irregularities of overpayment on 19.11.2000. He has given a reply to the show cause on 30.11.2000. Charge sheet was served on the applicant vide order dated 12.6.2002 and the penalty of censure has been imposed. Review petition filed by the applicant has also been rejected. Result of the DPC was published but the result of the applicant was kept in sealed cover. Applicant filed a representation to open the seal cover and grant him promotion with retrospective effect. Hence this application.

Heard Mr M.Chanda, learned counsel for the applicant and Mr M.U. Ahmed, learned Addl.C.G.S.C for the respondents.

pto

- 1) No steps has been filed by the applicant.
- 2) pages 27, 28, 30 and 31 not legible.

[Signature]
20.12.06

21.12.06

Considering the issue involved the O.A. is admitted. Issue notice to the respondents. The question now to be decided is whether sealed cover be opened and antedated promotion can be granted to the applicant.

post on 7.2.07 for order.

Vice-Chairman

Pl. comply order dated 21.12.06.
NTS
22.12.06

Notice & order sent to D/Section for issuing to R-1 to 3 by regd. A/D post.

pg

7.2.2007

Further time of four weeks is granted for filing of reply statement.

Post the case on 8.3.2007.

Vice-Chairman

/bb/

8.3.2007

No reply filed. Four weeks further time is granted for filing of reply statement.

Post on 10.04.2007.

Vice-Chairman

/bb/

8.5.2007

Post the case on 11.06.2007 granting Mr.M.U.Ahmed, learned Addl.C.G.S.C. four weeks' time to file reply statement.

Vice-Chairman

/bb/

Notice duly served on R-3

13/2/07

No W/Ls have been filed.

7.3.07

No W/Ls have been filed.

7.5.07

No W/Ls have been filed.

8.6.07

O.A. 313/06

-3-

11.6.07. Counsel for the respondents prays for time to file written statement. Let it be done. Post the matter on 12.7.07.

Vice-Chairman

lm

Wls not filed.

11.7.07.

12.7.07. Counsel for the respondents wanted time to file written statement. Let it be done Post the matter on 13.8.07.

Vice-Chairman

7-9-07
Wls filed.
by

10.9.2007

Mr. M. U. Ahmed, learned Addl. C.G.S.C. is granted four weeks time to file reply statement.

Post on 10.10.2007.

Vice-Chairman

No- Wls filed.

9.10.07.


/bb/

10.10.2007

No Written Statement has been filed as yet in this 2006 matter. Call this matter on 15.11.2007 awaiting reply from the Respondents.

Send copies of this order to the Respondents in the address given in the Original Application.


Khushiram
Member(A)


(M.R. Mohanty)
Vice-Chairman

lm

Order dt-10/10/07
sent to D/Section
for issuing to
R- 1 to 3 by regd.
A/D post.

D/No-1235 to
1237

Dt=14/11/07

10.10.07
Pl. send order copies
to the Respondents

14-11-07
Wls filed.
by

OA.313/2006

- 4 -

15.11.2007

No reply has been filed as yet despite several adjournments given to the Respondents in this 2006 matter. Mr.M.U.Ahmed, learned Addl. Standing counsel for the Union of India seeks an adjournment for filing reply.

Call this matter(as a last opportunity to the Respondents) on 08.01.2008 expecting reply from the Respondents.

Send copies of this order to all the Respondents in the addresses given in the Original Application.


(Khushiram)
Member (A)


(M.R.Mohanty)
Vice-Chairman

Dt. 15.11.07.

/bb/


Pl. Send order copies to all the Respondents.


th

08.01.2008

Mr M.U. Ahmed, learned Addl. Standing Counsel for the Union of India, undertakes to file the written statement ~~during the course of the day. It appears a~~ copy of the said written statement has already been supplied to Mrs U. Dutta, learned Counsel appearing for the Applicant.

Call this matter on 31.01.2008, awaiting rejoinder from the Applicant.


(Khushiram)
Member (A)


(M. R. Mohanty)
Vice-Chairman

W/s not filed

nkm

7.1.08.

16.1.08

W/s Submitted
by Repdt. Nos. 1 and 2.
Copy served.



31.01.2008 No rejoinder has yet been filed in this case. Call this matter on 22nd February, 2008 awaiting rejoinder from the Applicant.

Rejoinder not filed.

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

22.02.2008 Ms. U. Dutta learned counsel has filed rejoinder on behalf of the Applicant. Mr.M.U.Ahmed, learned Addl. Standing Counsel appearing for the Respondents wants six weeks

26.2.08
Rejoinder filed
copy served.

Do.

22.02.2008 Ms. U. Dutta learned counsel has filed rejoinder on behalf of the Applicant. Mr.M.U.Ahmed, learned Addl. Standing Counsel appearing for the Respondents wants six weeks time to get instructions in response to the rejoinder.

Call this matter on 09.04.2008.

Rejoinder filed.

8.4.08.

Lm

(Khushiram)
Member (A)

09.04.2008 In this case written statement has already been filed and rejoinder has also been filed.

Call this matter on 30.05.2008 for hearing.

(Khushiram)
Member(A)

(M.R. Mohanty)
Vice-Chairman

nkmm

29.5.08
W/s submitted by the Respondents. Undertaking given for service. Do.

4.7.08
Rejoinder filed by the Applicant. Copy served.

Do.

OA- 313/06

30.5.2008

Division Bench matter. Hence adjourned
to be taken up on 30.06.2008 for hearing.

20.6.08

Additional Respondent
submitted by the
Applicant. Copy
saved.


/bb/



(Khushiram)
Member (A)

30.06.2008

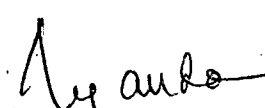
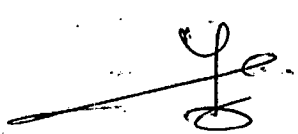
On the prayer of the learned Counsel
appearing for the parties, call this matter
on 07.07.2008 for hearing before the
Division Bench.


(M.R. Mohanty)
Vice-Chairman

nkm

07.07.08

On the prayer of Mr M.Chanda,
learned counsel for the Applicant and
also Mr M.U.Ahmed, learned
Addl.Standing counsel for the
Respondents, the case is adjourned to
25.08.2008.


(R.C. Panda)
Member(A)
(M.R. Mohanty)
Vice-Chairman

pg



25.08.2008 Heard Mr M. Chanda, learned Counsel appearing for the Applicant, and Mr M.U. Ahmed, learned Addl. Standing Counsel for the Union of India, in part.

In course of hearing, it appears the Respondents must produce all connected records to substantiate that penalty of censure was really warranted against the Applicant.

Mr M.U. Ahmed states that the Officer from Vishakapatnam was to come with all the records, but he failed to come because of the cancellation of the train. He seeks an adjournment.

Accordingly further hearing of this case stands adjourned to 29.08.2008.



(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

nkmm

29.08.2008 On the prayer of learned counsel appearing for both the parties, call this matter on 2nd September, 2008. Mr. M. U. Ahmed, learned Addl. Standing Counsel appearing for the Respondents department agrees to allow inspection of the records to Mr. M. Chanda, learned counsel for the Applicant, in his presence, and in ~~his~~ presence of the Officer of the Department


Call this matter on 2nd September 2008, for hearing.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

lm

The case is ready
for hearing.


1.9.08

01A 313/06

02.09.2008

Heard Mr M.Chanda, learned counsel for the Applicant and Mr M.U.Ahmed, learned Addl. C.G.S.C for the Respondents. Hearing concluded. Order reserved.

C. Copy of the order
collected by the L/Adv
for the applicant.

14.30/9/08

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

pg

Red copy of judgment
copy on behalf of
Respondent No 3.

(S. BORO)

B30.

LM (AD) Boro.

16/10/08.

19.09.2008

Judgment pronounced in open Court.
Kept in separate sheets. Application is
dismissed. No costs.

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

lm

26.11.08

Copy of the order
sent to the office.
for filing the line
to the Respondent No 1 & 2
Addl. C.G.S.C.

14.11.08 1005

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 313 of 2006

DATE OF DECISION: 19.09.2008

Sri Mahesh Chandra Gupta

.....Applicant/s

Mr. M.Chanda

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

- Versus -

Union of India & Others

.....Respondent/s

Mr. M. U. Ahmed, Addl. C.G.S.C.

.....Advocate for the
Respondents

CORAM

THE HON'BLE MR. MANORANJAN MOHANTY, VICE CHAIRMAN
THE HON'BLE MR. KHUSHIRAM, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/~~No~~
2. Whether to be referred to the Reporter or not? Yes/~~No~~
3. Whether their Lordships wish to see the fair copy of the Judgment? Yes/~~No~~

Vice-Chairman/ Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 313 of 2006

Date of Order: This, the 19th Day of September, 2008

HON'BLE SHRI MANORANJAN MOHANTY, VICE CHAIRMAN

HON'BLE SHRI KHUSHIRAM, ADMINISTRATIVE MEMBER

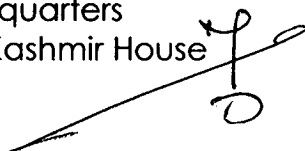
Sri Mahesh Chandra Gupta
S/o Shri Shanti Swarup Gupta
Working as Director
O/o Chief Engineer (AF), Shillong
Elephant Falls Camp
P.O: Nonglyer
Upper Shillong
Shillong-793 009.

... Applicant.

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

- Versus -

1. The Union of India
Represented by the Secretary
to the Government of India
Ministry of Defence, South Block
New Delhi – 110 001.
2. Engineer-in-Chief
Army Headquarters
DHQ Post, Kashmir House



12

New Delhi – 110 011.

3. Chief Engineer (AF), Shillong
Elephant Falls Camp P.O: Nonglyer
Upper Shillong
Shillong – 793 009.

... Respondents.

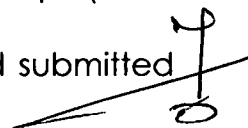
By Advocates: Mr. M.U.Ahmed, Addl. C.G.S.C.

ORDER
19.09.2008

MANORANJAN MOHANTY, (V.C.):

Facts of this case (as appears from the Original Application, Written Statement of the Respondents; Rejoinder & Additional Rejoinder of the Applicant and Replies filed by the Respondents) are as under: -

1. Applicant was functioning as Assistant Garrison Engineer (AGE for short) at G.E.(P) No.1 Naval Air Station, Arakonam. He worked as AGE B/R III in the Construction of Runway and allied works from October 1988 to April 1992. On 12.10.1988, a contract (with M/s. Atlanta Constructions Co. (I) Pvt. Ltd.) for construction of runway and allied works was accepted by the Respondent Department. Between 15.10.1991 to 02.03.1992, Running Account Receipt (RARs for short) Nos.59 to 63 were prepared by Contractor and submitted



to department. On 29.10.1991, the quantity of boulders was physically checked by a BOO (Board of Officers) detailed by CWE (NAS), Arakonam and certified that quantity of boulders paid in 59th RAR was available on ground. On 20.03.1992, the Chief Engineer of Southern Command constituted a Technical Court of Inquiry for the purpose of conducting inquiry regarding irregularities occurred prior to 59 RAR and on 16.04.1992, a Board of Officers (BOO) was detailed by Chief Engineer of Madras Zone to prepare the inventory of completed and incomplete works executed by the Contractor. According to this report, the quantity of boulders available on ground was shown as per 63rd RAR. On 20.05.1992, the Applicant handed over the charge (of AGE B/R/III under GE (P) No.1 Naval Air Station, Arakonam) to Sri S.K.Mishra; who never pointed out any shortage in quantity of boulders. On 15.08.1992, the Applicant was awarded Flag Officer Commanding (in Chief's Commendation) for the same work and the same was signed by V.S. Shekhawat, Vice Admiral, Flag Officer Commanding in Chief. Staff Court of Inquiry was asked (during 1997) by FOC-in-C (V) to investigate the circumstances under which certain irregularities in execution of contract were noticed (which resulted in over payment to M/s. Atlanta Construction (P) Ltd under contract agreement



No.CEMZ/ARK/07 of 88-89) and during November, 1997, G.E. Maintenance, Arakoram recovered the over payment from final bill of the Contractor.

2. On 19.11.2000, a show cause notice was issued to the Applicant to explain as to why a disciplinary action should not be taken against him. It is alleged in the said notice that Applicant, while serving as AGE at G.E. (P) No.1NAS/Arakkonam, it was found by the Board of Inquiry that:-

(a) While making payments in Running Account Receipt (for short RARs) i.e. 7th, 13th, 14th, 33rd, 40th, 54th, 56th and 58th that Applicant did not physically verified or checked the contractor's material lying at site and thus allowed over payment on boulder incorrectly and over assessed on lorry load basis and thus failed in his duties as Engineer-in-charge.

(b) Applicant prepared incorrect RAR from 59th to 63rd certifying that quantities of boulders lying at site correct without any documentation and improper application of rates for the white boulders lying at site.



✓

(c) The rates for blue boulders and white boulders were Rs.95/- and Rs.52.40 per cubic meters respectively whereas Applicant as Engineer-in-charge had made improper application of rates and paid at a uniform rate of Rs.95/- cubic meter even for white boulders, resulting in over payment.

(d) There was wide difference in the quantities mentioned in the cancellation board, tendered quantities of risk and cost, court commissioner report and quantities handed over to BRTF. This situation arisen and is attributed to the fact that right from arrival of boulder, no proper arrangement, organization and records existed for the boulder received at dumping site.

3. On 30.11.2000, the Applicant submitted reply to the above said show cause notice denying the charges. It was stated by the Applicant, in his reply, that he worked as AGE B/R III and all the RARs referred in para 2 (a), quantity of stone boulders were verified by AGE B/R II and not by him. It was, however, agreed by the Applicant that 33rd RAR was prepared by him at a point of time when AGE B/R II

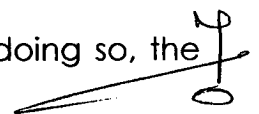


was on leave. As such he cannot be held responsible for the lapse, if any, of others. It was also stated by the Applicant that he was assigned the duty for accounting of boulders from RAR 59 to 63; when Shri Srinivasan was posted out and no over payment was resulted against 59 to 63 RAR.

4. On 03.01.2001, the Applicant was charge-sheeted (herein after described as 1st charge-sheet) and on 10.07.2001, the Applicant submitted a representation (addressed to the Respondent No.1) stating therein that after submission of show cause reply on the allegation of over payment, the case was not processed even after a long lapse and requested for expeditious decision on the matter from the end of the authority; as he will be in promotion zone for the post of Superintending Engineer and delay will affect his career.

5. On 12.06.2002, another memorandum of charge sheet (hereinafter described as 2nd charge-sheet) was issued to the Applicant proposing to take action under Rule 16 of the CCS (CCA) Rules.

In Article-I it was alleged that Applicant prepared incorrect RAR Nos.7, 13, 14, 33, 40, 43, 54, 56 and 58 and while doing so, the



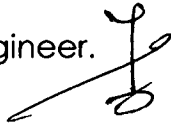
material lying at site was certified without any physical ground check.

In Article II it was alleged that Applicant failed to perform his duty in that he prepared incorrect RARs from 59th to 63rd RAR and certifying the quantities of boulders lying at site as correct without any proper documentation and improper application of rates for the white boulders lying at site.

It was charged that by the above act, Applicant failed to maintain devotion of duty, and thus contravened Rule 3(1) (ii) of CCS (Conduct) Rules, 1964.

On 24/31.10.2002, the Applicant submitted a detailed reply denying these charges.

6. On 23.07.2003, the result of DPC was published (where, the findings of the DPC in respect of the Applicant was kept under sealed cover) and ^{on} the basis of the said DPC, his immediate juniors were promoted subsequently to the cadre of Superintending Engineer.

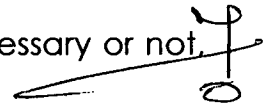


7. On 22.09.2003, the Applicant was, again, charge-sheeted (hereinafter described as 3rd charge-sheet).

8. On 07.02.2004, the Applicant was exonerated from 1st charge-sheet dated 03.01.2001.

9. On 19.11.2004, the Government of India (Ministry of Defence) vide order dated 19.11.2004, imposed penalty of Censure upon the Applicant on the alleged ground of incorrect preparation of RAR (from 59th to 63rd RAR) without proper documentation/transparent accounting of boulders and for releasing payments without conducting any physical ground check.

10. It is the case of the Applicant that nothing was stated about the allegation of overpayment (in the order of penalty); which was the basic ground for initiation of the disciplinary proceeding through Article of Charge No. I & II. It is also stated that prior to imposition of penalty under Rule 16 of CCS (CCA) Rules 1965, the Disciplinary Authority was to apply its mind to all the facts and circumstances after receiving the representation dated 24/31.10.2002 submitted by the Applicant against the charge-sheet dated 12.06.2002 and to form a definite opinion as to whether an enquiry is necessary or not.



and in case, the authorities decide not to hold an inquiry, it should say so in writing by giving reasons; but in the instant case of the Applicant, the disciplinary authority has never furnished such reasons to the Applicant before imposition of penalty of Censure under Order dated 19.11.2004. It has been alleged that without any evidence in support of the charges, the Respondents most arbitrarily issued the impugned penalty order dated 19.11.2004, which is contrary to the provision of Rule 16 of the CCS (CCA) Rule.

11. On 30.12.2004, the Applicant preferred a review petition praying for review of the penalty of Censure imposed on him. In his review petition (with lots of new grounds, facts, figures and quoting the relevant rules of MES) the Applicant stated that neither a single boulder had been received at site as can be verified from material register nor any fresh payment was released on account of boulder in any of RAR from 59th to 63rd by him for which he has been imposed penalty.

12. During 8th & 20th April, 2005, there were DPC for the year 2005-2006.



13. On 06.12.2005, the Applicant submitted a detailed representation to the Respondent No.2 requesting him for opening of the sealed cover (adopted by the DPC) and requested to grant him promotion with all financial benefits with retrospective effect; since Censure is no bar for promotion.

14. On 27.12.2005, the Applicant was exonerated from 3rd charge-sheet dated 22.09.2003.

15. On 27.12.2005, the Applicant submitted another review application stating that there was no over payment upto 63rd RAR. Non overpayment shows that RARs were prepared correctly with proper documentation and physical check of boulders at site. The materials (boulders) were lost after the 63rd RAR; when he left the station. It was also stated by the Applicant that the punishment (after 15 years of the incident) affecting him as a major penalty, since he was not promoted due to the punishment.

16. On 25.03.2006, the Headquarter-CE of Southern Command forwarded comments (on the above said review petition) to E-in-C's Branch; in which CWE agreed to the contention of the Applicant



(advanced in review petition) and the same was further agreed by the Chief Engineer.

17. On 18.08.2006, the Respondents rejected the review petition filed by the Applicant. It is alleged that without appreciating the grounds raised by the Applicant and upheld the penalty of Censure.

18. Thereafter, only on 16.11.2006, the Applicant was granted promotion to the cadre of Superintending Engineer in the Department of Military Engineer Services and he is presently working as Director in the Office of the Chief Engineer (Air Force) at Shillong.

[B] At the hearing, Mr.M.Chanda, learned counsel appearing for the raised the following contentions:-

(a) 14 years delay has caused serious prejudice in issuing charge sheet since the alleged incident related to the period 1988-1992.

(b) It is evident from the para 35 and 36 of Technical Court of Inquiry that the Applicant is held responsible for over payment in respect of 52nd RAR whereas 52nd RAR was paid by Sri S.D.K. Misra as Engineer-in-charge not by the Applicant but penalty was imposed for laxity in documentation whereas the Technical Court of Inquiry

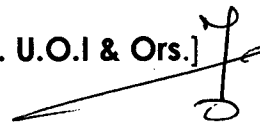


✓✓

held responsible Mr. V.O. Srinivasan, AGE B/R in para 36 of the report of the Technical Court of Inquiry. But the Disciplinary Authority imposed the penalty of Censure upon the Applicant on the alleged ground of laxity in documentation. As such, there is an error apparent on the decision making process while imposing penalty by the Disciplinary Authority.

(c) Witness in Staff Court of Inquiry has also agreed that the boulders on ground were lying in such a manner that it was not possible to measure the exact quantity. Mr. Srinavasan, AGE, B/R II was responsible to create such situation as the Applicant was given his responsibility from 59th RAR, Applicant while paying 59th RAR had assessed the quantity of boulders to the extent possible which was further verified by the BOO detailed by CWE and found correct.

(d) No detail enquiry procedure was followed even after repeated categorical denial of charges by the Applicant. [Applicant side relied upon the case reported in **(2005) 3 ATJ 487 CAT (Bombay Bench)** between **Shri G.S.Rathore vs. U.O.I & Ors.**]



(e) Charge not specific, definite or distinct since there is no indication of amount of over payment as alleged in the memorandum of charge-sheet dated 12.06.2002.

(f) None of the grounds raised by the Applicant in his written statement dated 24/31.10.2002 was considered by the Disciplinary Authority while passing the impugned order of penalty dated 19.11.2004.

(g) On a mere reading of the impugned order of penalty dated 19.11.2004, it is evident that there is no findings recorded by the Disciplinary Authority while imposing the impugned penalty. Moreover, there is no discussion of evidence as required under the rules. [Applicant side relied upon the case reported in **(2002) 10 SCC 351 State of Bihar & Ors. vs. Laxmi Shankar Prasad.**]

(h) Impugned order of penalty was vague, non-speaking and cryptic.

(i) There were no findings of Disciplinary Authority against the basic charge of alleged over payment as evident from the impugned order of penalty dated 19.11.2004.

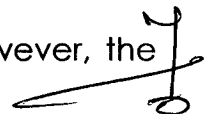


(j) It appears from the document annexed with the written statement of the Respondents that the CWE has agreed upon with the contention of the Applicant advanced in review petition, which was further agreed by the Chief Engineer so far the Article No. I is concerned, whereas penalty has been issued deliberately ignoring those findings of CWE and rejected the review arbitrarily.

(k) Penalty of Censure imposed upon the Applicant vide impugned order dated 19.11.2004 is not sustainable in view of the fact that there is no findings of alleged over payment as contended in the Article of Charges.

(l) Review petition preferred by the Applicant with lots of new grounds, figures, facts and also quoting relevant rules was rejected mechanically following the comments of Zonal Chief Engineer by the Command Chief Engineer without application of mind independently and also without following the relevant procedure of law. [Applicant relied upon the case reported in **(2006) 2 SC SLJ 21 Narinder Mohan Arya vs. United India Insurance Co. Ltd.**]

(m) The CVC in its 1st stage of advice vide letter dated 24.05.2002 advised to make recovery of alleged over payment. However, the



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Disciplinary Proceeding Rule 16 of the CCS (CCA) Rules 1965 while imposing penalty differed with 1st stage of CVC advice but 2nd stage advice was not supplied to the Applicant or it appears that 2nd stage advice was not obtained from the CVC which is mandatory in nature.

(n) It is a case of no evidence as evident from the impugned order of penalty dated 19.11.2004 where there is no discussion of evidence.

(o) Penalty of Censure imposed upon the Applicant vide impugned order dated 19.11.2004 cannot stand on the way of granting promotion to the Applicant at least from the date of his juniors, by opening sealed cover, but findings of the DPC held on 03.11.2004 kept in sealed cover whereas penalty of Censure deliberately delayed by the Disciplinary Authority and imposed on 19.11.2004.

(p) Alleged incident of over payment, incorrect preparation of RAR etc. relating to the year 1988-1992 whereas Technical Court of Inquiry held in the year 1992 and Staff Court of Inquiry held in the year 1997 but the show cause notice was issued for the first time in



the year 2000. Thereafter, charge-sheet was issued on 12.06.2002 and penalty was imposed after lapse of 2 years i.e. on 19.11.2004. Thereafter review petition was preferred by the Applicant on 30.12.2004 and 27.12.2005 but the same was rejected on 18.08.2006. Therefore, there was altogether lapse of about 4 years in confirming the impugned penalty of Censure. Such laches and delay in imposing the penalty in total violation of CVC guideline has caused serious prejudice to the promotion of the Applicant in the cadre of Superintending Engineer and it is going to cause prejudice for his posting in the Executive tenure and his future promotional prospect. [Applicant relied on the cases reported in **(2005) 6 SCC 636 (P.V.Mohadevan-Vs-M.D.T.N. Housing Board)** and **(2006) 2 SC SLJ 15 (M.V. Bijlani-Vs-U.O.I&Ors.)**

(q) Disciplinary Proceeding was initiated on 12.06.2002 when the Applicant was due for promotion to the grade of Superintending Engineer with a malafide intention to deny promotion to the Applicant in the cadre of Superintending Engineer on the alleged ground of pendency of a Disciplinary Proceeding. [Applicant relied on the case reported in **(1990) Sup SCC 738 Bani Singh-Vs-State of MP.**]

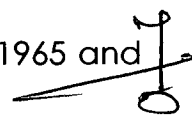


(r) Applicant was awarded Flag Officer Commanding in Chief's commendation for the same work which was signed by V.S. Shekhawat, Flag Officer Commanding in Chief on 15th August 1992. As such, Applicant cannot be held negligent to the work and penalty of Censure is not sustainable in the eye of law.

(s) Penalty of Censure that was imposed by the Disciplinary Authority not in conformity with the list of documents relied upon by the Disciplinary Authority in Annexure-III of the memorandum of charge-sheet dated 12.06.2002. Moreover, grounds relied upon by the Disciplinary Authority without discussion of evidence are contrary to the records/documents relied upon by the Disciplinary Authority.

(t) The penalty of Censure imposed upon the Applicant for laxity in document for which Shri V.O Srinivasan was held responsible by the Technical Court of Inquiry. (Para 35 and 36 of the report of Technical Court of Inquiry, quoted in the Rejoinder submitted by the Applicant). As such, penalty is liable to be set aside and quashed.

(u) Applicant handed over the charges on 20.05.1992, as such after lapse of 14 years Respondents were not entitled to initiate a Disciplinary Proceeding under Rule 16 of CCS (CCA) Rules 1965 and



accordingly penalty of Censure is also not sustainable in the eyes of law.

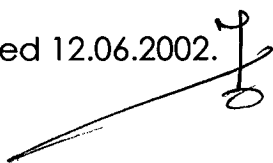
(v) All the alleged RARs have been prepared by the concerned contractor in terms of para 468 of MES Regulations, as such allegation of preparation of incorrect RAR is contrary to the records.

(w) The charges of improper application of rates also not available in the order of penalty dated 19.11.2004 issued by the Disciplinary Authority hence penalty is not sustainable.

(x) No consultation was made with the UPSC before imposition of penalty as required under the Rules.

(y) Articles of Charges are not specified for which, penalty of Censure is imposed.

(z) Impugned order of penalty has been issued without assigning any valid reasons and the penalty order is not in conformity with the allegation brought against the Applicant in memorandum of charge-sheet dated 12.06.2002.



[C] Mr.M.U.Ahmed, learned Addl. Standing counsel representing the Respondents, argued that not only penalty proceedings were initiated against the Applicant; but he was given chances to properly represent his case and, on consideration of the entire matter, the Applicant was exonerated in 2 cases and was just "Censured" in one case; and that had there been malafides in initiating the proceeding with an intent only to throttle his promotions, then the Applicant would not have been exonerated even in 2 proceedings and just "Censured" in one. He pointed out, at the hearing that the Applicant has not only been granted promotion on 16.11.2006 but his promotion (of November 2006) has been antedated to August 2005 i.e. to a date when his juniors got promotions superseding him. He pointed out that there were no delay in initiating proceeding and that no prejudice having been caused for delay, if any, the lowest punishment of "Censure" cannot be disturbed. With these submissions, Mr. M.U.Ahmed prayed to dismiss this case.

[D] Facing with the above counter argument, Mr. M. Chanda, learned counsel appearing for the Applicant, pressed vehemently that 'as penalty of "Censure" is not to stand on the way of grant of promotion', the views of the DPC, kept in sealed cover, ought to have been opened (by the Respondents) to grant him (Applicant) promotion in terms of the



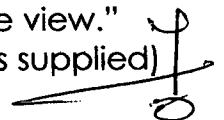
recommendation of the DPC. In order to substantiate his said stand, Mr. Chanda relied upon the case of **A.Verma Reddy vs. Controller Gen. of Defence Accounts** [reported in **2002 (1)ATJ 342**]; relevant portion of which Judgment of Andhra Pradesh High Court reads as under:-

"...the question that arises for consideration is whether the penalty of 'censure' imposed on the petitioner could be valid and good ground to deny promotion to the petitioner only on that count. We are of the considered opinion that the punishment of 'censure' imposed on the petitioner, by the proceedings of the 3rd respondent dated 27.11.1997, itself can not be valid and justifiable legal ground of overlooking the seniority of the petitioner in the matter of promotion. The Kerala High Court, in S. Mukandan Menon v. State of Kerala, 1970 Lab. IC 897 (Vol.3), dealing with the question whether punishment of 'censure' by itself can be valid ground for overlooking the seniority in matters relating to promotion ,held-

".....All that has been made out in this case is that a punishment of censure has been awarded to the petitioner by the District Collector, Trichur by his order dated 21.5.1965. The fact that there has been such an order is not denied. But censure by itself is not a ground for overlooking seniority in the matter of promotion; and the Government have no case that the petitioner was denied promotion on the several occasions when his juniors were promoted on account of the above punishment. In fact respondents 3 to 14 were promoted several months before the said punishment was awarded...."

We are in respectful agreement with the above view."

(emphasis supplied)

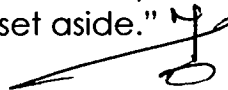


Applicant's Advocate also relied upon an order dated 18.06.2004 of Ernakulam Bench of this Tribunal (reported in 7.2005 Swamy's News) rendered in O.A. No.203 of 2002 (between **A.N.Mohanam vs. Union of India & Ors.**); in which a view was taken that "penalty of 'Censure' is not a bar for promotion". As it appears, Hon'ble High Court of Kerala approved the said view of CAT.

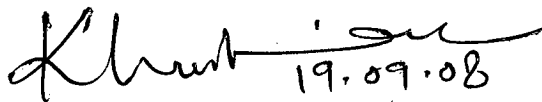
But we are fortified by the Judgment of the Apex Court rendered in the said case of **Union of India & Ors. vs. A.N.Mohanan [reported in (2007)5 SCC 425]**; in which Judgment (delivered by Dr. Justice Arijit Pasayat) it was held as under:-

"11. Awarding of censure, therefore, is a blameworthy factor. A bare reading of Para 3.1 as noted above makes the position clear that where any penalty has been imposed the findings of the sealed cover are not to be acted upon and the case for promotion may be considered by the next DPC in the normal course.

12. Having regard to the penalty imposed on him, undisputed the respondent has been given promotion with effect from 26-11-2001. His claim for promotion with effect from 1-11-1999 was clearly unacceptable and, therefore, the CAT and the High Court were not justified in holding that he was entitled to be promoted with effect from 1-11-1999. The order of the High Court affirming the view taken by the CAT cannot be sustained and is, therefore, set aside."



E. In the aforesaid view of the matter, the Applicant (despite the penalty of Censure) having got promotion retrospectively from the date of promotion of his juniors, there remains nothing more to be decided in this case. Question of delay etc., as raised by the Applicant, is not sustainable in the facts of this case. The Respondent Department, through various sources, verified the matter before charge-sheeting the Applicant departmentally, and, as such, there were no undue delay. No prejudice for such delay has been pointed out. This Tribunal not being an Appellate Authority, there is no scope to reassess evidences or the view taken (by the Disciplinary Authority of the Applicant) in the Departmental Proceeding; in which the lowest minor punishment was imposed. Nothing has been shown to us, so that we can hold that there has been a miscarriage of justice in decision making process leading to imposition of penalty of "Censure". Lastly, Mr. Chanda argued to remit this matter back to the Respondents to review the matter again. But we find no reason to do so. That will also help the Applicant in no way to get any greater relief. Finally, we dismiss this case, however, without imposing any order as to costs.


19.09.08
(KHUSHIRAM)
ADMINISTRATIVE MEMBER


19/09/08
(MANORANJAN MOHANTY)
VICE-CHAIRMAN

/bb/

37

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA
MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

(SHILLONG BENCH)

W.P.(C) No.350(SH) Of 2008

Shri Mahesh Chandra Gupta, SE.
S/o - Shri Shanti Swarup Gupta,
Superintending Engineer,
Technical Adviser,
Married Accommodation Project (AF),
Sahu Enclave,
Air Force, Jodhpur,
P.O-Jodhpur-11, Rajasthan

... PETITIONER

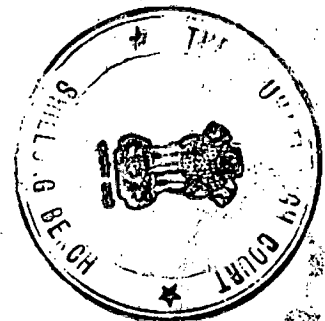
-Vs-

1. The Union of India, represented by the
Secretary to the Govt. of India, Ministry of Defence,
South Block, New Delhi - 110001.

2. Engineer-in-Chief,
Army Headquarters,
DHQ Post, Kashmir House,
New Delhi - 110011.

3. Chief Engineer(AF), Shillong,
Elephant Falls Camp,
P.O-Noglyer, Upper Shillong,
Shillong-793009.

4. The Central Administrative Tribunal,
Guwahati Bench,
Represented by the Registrar,
Rajgarh Road, Guwahati-5.



... RESPONDENTS

BEFORE

THE HON'BLE MR. JUSTICE B.K. SHARMA.

THE HON'BLE MR. JUSTICE A POTSANGBAM.

For the Petitioner : Mr. M Chanda, Advocate

For the Respondents : Mr. R. Deb Nath, CGSC

Date of hearing : 17.2.2010

Date of judgment : 18.2.2010

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JUDGMENT AND ORDER (CAV)

This writ petition is directed against the judgment and order dated 19.9.2008 passed by the Central Administrative Tribunal, Guwahati Bench (in short Tribunal) dismissing the original application being O.A No.313/2006 filed by the petitioner, by which, the penalty of censure imposed on him pursuant to a minor penalty charge sheet under Rule 16 of CCS(CCA) Rules, 1965 was put to challenge. According to the petitioner, because of the belated proceeding initiated against him and subsequent imposition of the said penalty, he has been deprived of his promotion from due date.

[2] We have heard Mr. M. Chanda, learned counsel for the petitioner as well as Mr. R. Deb Nath, learned CGSC. We have also considered the materials on record and have given our anxious considerations to the same.

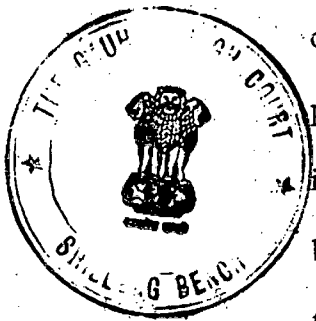
[3] The petitioner was issued with three charge sheets one after another, those being dated 10.7.2001, 12.6.2002 and 22.9.2003. All the charge sheets pertained to the incident which took place during the incumbency of the petitioner as Assistant Garrison Engineer(AGE) in the particular Station from October, 1988 to April, 1992. Since in due course of time the first and third charge sheets were dropped, the allegations made therein are not being referred to. Because of the initiation of such departmental proceedings against the petitioner, who was due for promotion to the cadre of Superintending Engineer, his case



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was kept under sealed cover by the DPC, the results of which were published on 23.7.2003. It is the case of the petitioner that but for the issuance of the said charge sheets, he would have been promoted to the cadre of Superintending Engineer in 2003 itself. Be it stated here that the petitioner has been promoted to the said cadre initially on 16.11.2006 subsequently antedated to August, 2005.

[4] As noted above, the petitioner having been exonerated from the first and third charge sheet by order dated 3.1.2001 and 22.9.2003, only the second charge sheet remained in the field, on the basis of which, the petitioner was imposed with the penalty of censure, as a consequence of which he was also deprived of his promotion to the cadre of Superintending Engineer on the basis of the results of the DPC published on 23.7.2003. According to the petitioner, he has been superseded by his juniors and that a wrong submission was made on behalf of the respondents that because of the ante-dating of the promotion of the petitioner from 16.11.2006 to August, 2005 he is at par with his juniors and that the said submission made on behalf of the respondents ought not to have been accepted by the learned Tribunal.



[5] Annexure-5 series is the memorandum of charge sheet under Rule 16 of the CCS(CCA) Rules, 1965. For a ready reference, the two articles of charge levelled against the petitioner are quoted below :

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"ARTICLE -1

MES-186749 Shri M C Gupta, AEE B/R while functioning as AGE B/R-III GE(P) No.1 Naval Air Station, Arakkonam during the period from Oct 88 to Apr 92 failed to perform his duty in that he prepared incorrect RAR Nos.7,13,14,33,40,43,54,56 and 58 whereby the material lying at the site was certified without any physical ground check. By this act, the said MES-186749 Shri M C Gupta, AEE B/R (now EE) failed to maintain devotion to duty, and thus contravened rule 3(1)(ii) of CCS(Conduct) Rules, 1964.

ARTICLE-II

MES-186749 Shri M C Gupta, AEE B/R (now EE) while functioning as AGE B/R-III GE(P) No.1 Naval Air Station, Arakkonam during the period from Oct. '88 to Apr '92 failed to perform his duty in that he prepared incorrect RARs from 59th RAR to 63rd RAR and certifying the quantities of boulders lying at site as correct without any proper documentation and improper application of rates for the while boulders lying at site. By this act, he failed to maintain devotion to duty, and thus contravened rule 3(1)(ii) of CCS(Conduct) Rules, 1964".

[6] In the statement of imputation of misconduct pertaining to the said two Articles of charge, it was stated that the petitioner prepared incorrect RARs and did not personally verify or check the contractor's material lying at the site resulting in incorrect and overpayment to the contractor. Further statement in respect of Article-II was that the petitioner failed to verify the quantity of boulders at site and there was no effort to check physically the quantity of boulders lying at site, which resulted overpayment to the contractor.

[7] On receipt of the memorandum of charge sheet, the petitioner denied the same by his reply dated 24/31-10-2002. In the reply, the petitioner meticulously dealt with all details relating to each one of the Articles of charge. He had also furnished all the required datas while denying both the charges.



Thereafter, the disciplinary authority passed the impugned order dated 19.11.2004 imposing the penalty of censure on the petitioner. For a ready reference the said order is quoted below:

"No.C13011/3/D(Vlg.II)/2002
Government of India
Ministry of Defence
New Delhi, the 19th November, 2004.

Order

WHEREAS disciplinary proceedings under Rule 16 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, were initiated against MES-186149 Shri M C Gupta, then AGE(B/R), now EE, vide Ministry of Defence Memorandum No.C-13011/3/D(Vlg.II)/2002, dated the 12th June 2002, whereunder the Statement of Articles of Charge and the Statement of Imputations of Misconduct or Misbehaviour were also served on him and he was afforded an opportunity to make a submission/statement of defence against the charges levelled against him;

AND WHEREAS on denial of charges by the said Shri M C Gupta and based on the submission made by him, it has transpired that the boulders were not stacked and measured and the payments were released without any physical ground check of the material lying at the site;

AND WHEREAS the President after a careful consideration of the Article of Charges, the submission made by the said Shri M C Gupta, the evidence on record and all the facts and circumstances of the case, has arrived at the conclusion that a minor penalty should be imposed on the said Shri MC Gupta, then AGE(B/R), now EE, MES, for incorrect preparation of RARs (from 59th RAR to 63rd RAR) without any proper documentation/transparent accounting of boulders and for releasing payments without conducting any physical ground check;

NOW, THEREFORE, the President imposes the penalty of 'Censure' on the said Shri MC Gupta, then AGE(B/R), now EE, MES.

BY ORDER AND IN THE NAME OF THE PRESIDENT

-Sd-

(Sunil Uniyal)

Under Secretary to the Govt. of India".



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[8] Being aggrieved by the aforesaid order, the petitioner preferred a review petition detailing various grounds. However, the review petition was also rejected by order dated 18.8.2006. Being aggrieved the petitioner approached the learned Tribunal by filing the aforesaid OA No.313 of 2006.

[9] Before the Tribunal the two fold contentions advanced by the petitioner were that the imposition of penalty of censure was *per-se*, illegal and that even if, the penalty of censure is upheld, same would not entail the denial of promotion as the penalty of censure does not debar an officer from earning due promotion. The learned Tribunal while taking note of both the contentions did not answer the first contention but answered the second contention in the negative. On perusal of the impugned judgement and order dated 19.9.2008 what has transpired is that the Tribunal was swayed by the submission made on behalf of the respondents that due to the ante-dating of the promotion of the petitioner from 16.11.2006 to August, 2005 he became at par with his immediate juniors, which, in fact was not correct.

[10] As noted above, the DPC results were published on 23.7.2003 and the case of the petitioner was kept under sealed cover because of pendency of the proceedings initiated against him one after another. While the first and third charge sheets were dropped but the respondents pursued the second charge sheet. The grounds on which the petitioner had contested the



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said charge sheet and the proceeding thereof had been duly taken note of by the learned Tribunal as will be evident from Paragraph-B of the impugned judgement and order. Some of the grounds urged and recorded by the Tribunal are as follows :

(1) There being no explanation of delay of 14 years in levelling the charges against the petitioner, the proceeding was liable to be interfered with;

(2) As per the report of the Technical Court of Enquiry the petitioner was not found responsible for any over-payment as the payment was made by one Sri S.D.K. Misra as he was In-charge in respect of 52nd RAR. Another officer held responsible was Mr. V.O Srinivasan, AHE B/R.

(3) It is in the evidence of the Technical Court of Enquiry that the boulders in question on ground were lying in such a manner that it was not possible to measure the exact quantity.

(4) In view of the clear and unambiguous denial of the charges levelled against the petitioner, it was incumbent to hold the regular enquiry.

(5) The grounds urged in the written statement of defence filed by the petitioner having not been discussed in the impugned order of penalty, same is liable to be set aside. There being no finding regarding alleged over-payment on account of any



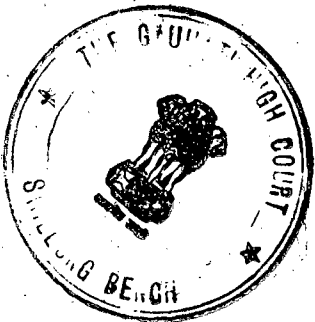
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failure on the part of the petitioner, the very charge and the penalty order are not sustainable.

(6) The contentions advanced by the petitioner in his review application having been agreed to by the CWE and the Chief Engineer, it was incumbent on the part of the disciplinary authority to consider the same before imposing the penalty of censure.

(7) If there was advice of the Central Vigilance Commission to impose the particular penalty upon the petitioner, it was incumbent on the part of the disciplinary authority to furnish a copy of the said advice entitling the petitioner to make comments on it.

(8) It being a case of no evidence, the disciplinary authority could not have imposed any penalty.

(9) The proceeding having been initiated just at the eve of promotion of the petitioner same was with the sole design to deprive the petitioner to earn his promotion in due time.



[11] Various other grounds had also been urged by the petitioner. Although the learned Tribunal duly took note of the aforesaid grounds in Para-B of the impugned judgment and order, but not a single word has been said in respect of those grounds. As noted above, the Tribunal simply by accepting the submissions made on behalf of the respondents that the

petitioner's promotion having been ante-dated to August, 2005 from 16.11.2006 at par with his juniors, nothing survived to be decided in the case. As regards the delay in initiation of the proceeding the simple observation made by the learned Tribunal is that the plea is not sustainable in the facts of the case without detailing any fact.

[12] We have considered the matter in its entirety. There is no dispute that the particular incident took place during the period from October, 1988 to April, 1992. The particular contract is dated 12.10.1988. Long 12 years thereafter, the petitioner was asked to show cause by show cause notice dated 19.11.2000 in respect of the charges pertaining to which, the formal charge sheet was issued only on 12.6.2002. In respect of the show cause notice, the petitioner made an exhaustive reply by his letter dated 30.11.2000 denying the allegations. In the reply, the petitioner had mentioned about award of the arbitrator in respect of the same very contract holding that the contractor in fact was under paid.

[13] After furnishing the reply, there was no response from the disciplinary authority and the petitioner by his letter dated 10.7.2001 apprised the authority about his due promotion to the rank of Superintending Engineer and the probable adverse effect due to the issuance of the show cause notice. It was only one year thereafter, the formal charge sheet (14.1.2002) was issued to the petitioner to which he submitted

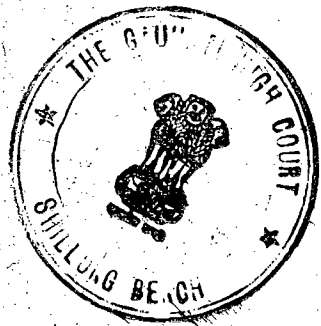


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his exhaustive reply giving all the particulars. The reply was submitted on 24/31.10.2002. However, the entire matter was disposed of the impugned order dated 19.11.2004 which, on the face of it is cryptic and non-speaking.

[14] On perusal of the impugned order dated 19.11.2004 it appears that the fault attributed to the petitioner is that the the particular boulders were not stacked and measured and the payments were released without any physical ground check of the material lying at the site. As per the impugned order such a position had transpired, but nothing has been discussed as to how the same has transpired.

[15] Further stand in the impugned order is that the petitioner should be imposed with the penalty of censure for incorrect preparation of RARs (from 59th RAR to 63rd RAR) without any proper documentation/transparent accounting of boulders and for releasing payments without conducting any physical ground check. The said conclusion is the charge levelled against the petitioner. The petitioner has been held responsible for the charge purportedly on the basis of the evidence on record and all the facts and circumstances of the case. However, there is no discussion of the said evidence and the purported facts and circumstances. It is on that basis the impugned order had been passed as a consequence of which the petitioner has been deprived of his promotion from the due date at par with his juniors.



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[16] There is no explanation on behalf of the respondents as to why the proceeding was initiated after long 14 years and that too by way of a minor penalty charge sheet where the task is easier for the disciplinary authority so much so that a penalty can be imposed solely on the basis of a charge sheet and the reply thereto. In case of a minor penalty charge sheet, there is no requirement of following the procedure envisaged for major penalty charge sheet. After long 14 years of unexplained delay and in view of the specific denial on behalf of the petitioner it was incumbent on the part of the authority to hold a regular enquiry if, at all, that was permissible after such delay.

[17] Another aspect of the matter is that by the first and the third charge sheet, similar kind of allegations were made against the petitioner from which he was exonerated. However, in respect of the second charge sheet the petitioner has been penalised by the aforesaid cryptic order.

[18] As noted above, the case of the petitioner was total denial of the charges. It is also on record that the Technical Court of Enquiry in fact held some others responsible for the payment made. Even otherwise also there is nothing to indicate that the petitioner was in any way connected with any over-payment. In the impugned order dated 19.11.2004, there is no allegation of loss of any amount because of the payments made.



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[19] As per the impugned order, the boulders in question were not stacked and measured but on the other hand there was no charge as such against the petitioner. The two Articles of charge have been noted above. As per the first charge, the petitioner prepared incorrect RARs certifying the materials in question. So far as the second charge is concerned, he had prepared incorrect RARs from 59th RAR to 63rd RAR and certified the quantities of boulders without any appropriate documentation. In the impugned order, the aforesaid two charges in the context of the contents thereof have not been held to have been established but the accusation made against the petitioner is that the boulders were not stacked and measured. So far as the second charge is concerned, the impugned order simply recites the charge with the observation that the same has been established on the basis of the evidence on record and the facts and circumstances involved without, however, highlighting anything as to what those evidences and facts and circumstances are.

[20] From the sequence of events it gives an impression that the petitioner was sought to be victimised just at the eve of his promotion by issuing three charge sheets consecutively. While he has been exonerated from two charge sheets, but in respect of impugned charge sheet, the disciplinary authority found an easy way out by imposing the penalty of censure without discussing anything on material particulars and thereby

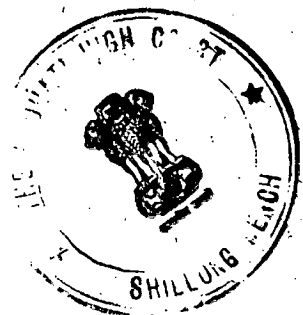


ensured deprivation of due promotion of the petitioner pursuant to the results of the DPC declared on 23.7.2003.

[21] So far as the impugned review order is concerned same is also not indicative of appreciating the grounds urged by the petitioner. The review order was passed solely on the basis of the comments obtained from the Zonal Chief Engineer and thus, there was no independent application of mind on the part of the reviewing authority.

[22] All the above aspects of the matter have not even obliquely been dealt with by the learned Tribunal and in fact, the OA has been disposed of on the erroneous presumption that the petitioner having got his promotion w.e.f August, 2005 in place of 16.11.2006, his entire grievance was redressed.

[23] For all the aforesaid reasons, we find sufficient force in the submission of the learned counsel for the petitioner. Accordingly, the writ petition is allowed by setting aside and quashing the impugned judgment and order dated 19.11.2004(Annexure-7); the review order dated 18.8.2006(Annexure-10) and the impugned judgment and order dated 19.9.2008 passed by the learned Tribunal in O.A. No.313 of 2006. Consequent upon such setting aside and quashing of all the impugned orders, the petitioner will be entitled to get consideration for his promotion to the rank of Superintending



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Engineer at par with his juniors on the basis of the results of the DPC dated 23.7.2003

[24] The case which was kept under sealed cover shall now be considered by the respondents and on the basis of the recommendation of DPC, if, it is found that the petitioner was recommended for promotion to the rank of Superintending Engineer, which according to the petitioner in fact, was so found and recommended, the respondents shall pass consequential order ante-dating the promotion of the petitioner at par with his juniors with all consequential service benefits.

[25] Let the entire exercise be carried out as expeditiously as possible preferably within a period of three months from today.

[26] The writ petition is allowed without however, any order as to costs.



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Court Master
Gauhati High Court
Shillong Bench

11/3/2010
No. NP(C) 350 (SH) 08/270 dtd 5.3.2010.
received from The Deputy Registrar
Gauhati High Court, Shillong Bench.

The DUC may kindly be kept,

Shri Mahesh Chandra Gupta the
applicant in OA No. 313/2006 has filed
NP(C) No. 350 (SH) of 2008 before The Hon'ble
Gauhati High Court, Shillong Bench, Shillong
against the judgment and order dated 19.9.08
passed by this Hon'ble Tribunal.


The Hon'ble High Court allowed
the NP(C) 350 (SH) 08 on 18.2.2010. That

"Accordingly the writ petition is allowed
by setting aside and quashing the impugned
judgment and order dated 19.11.2004 (Annexure-7),
the review order dated 18.8.2006 (Annexure-10) and
the impugned judgment and order dated 19.9.2008
passed by the H/Tribunal in OA No. 313 of 2006.
Consequent upon such setting aside and
quashing of all the impugned orders the
petitioner will be entitled to get consideration for
his promotion to the rank of Superintending
Engineer at par with his juniors on the
basis of the results of the DPC dtd 23.7.2008."

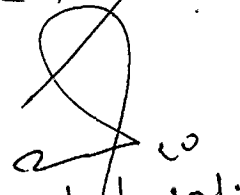
This may be placed before the Hon'ble
Member (J) and Member (A) for their Lordships'
kind perusal.

Submitted for favour of kind perusal.

11/3/2010


11/3/10
Sec (J)

Laid Before the Hon'ble Member (J)


11/3/2010

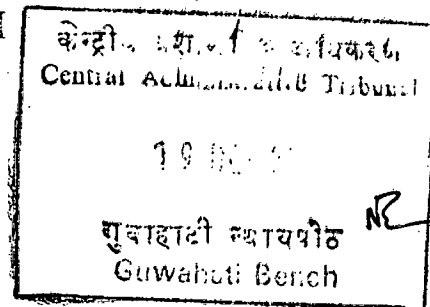
Sec (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

O.A. No. 313 /2006

Sri Mahesh Chandra Gupta
-Vs-
Union of India & Ors.



LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 16.11.2006- Applicant has been promoted to the cadre of Superintending Engineer in the department of Military Engineer Services and he is presently working as Director in the office of Chief Engineer (Air Force), Shillong. (Annexure- 1)
- 19.11.2000- Applicant while serving as Assistant Garrison Engineer at No. 1 Naval Air Station, Arakkonam, he was served with a show cause notice by the Chief Engineer, Northern Command, wherein it has been stated that a board of Inquiry was ordered by FOC-in-C (V) to investigate circumstances under which certain irregularities in execution of contract were noticed which resulted in overpayment to M/S Atlanta Construction. (Annexure- 2)
- 30.11.2000- Applicant submitted detailed reply to the show cause notice denying the charges. (Annexure- 3)
- 10.07.2001- Applicant submitted a representation addressed to the respondent No. 1 stating therein that after submission of show cause reply on the allegation of overpayment, the case was not processed even after along lapse and requested for expeditious decision on the matter from the end of the authority. (Annexure- 4)
- 12.06.2002- Applicant was served with a memorandum of charge sheet dated 12.06.02 under Rule 16 of the CCS (CCA) Rules. In the said charge sheet 2 article of charges has been brought against the applicant. Applicant received the charge sheet dated 12.06.02 on 07.08.02. (Annexure- 5 series)
- 24/31.10.2002- Applicant submitted detailed reply denying the alleged charges. (Annexure- 6)
- 19.11.2004- Govt. of India, Ministry of Defence, New Delhi vide impugned order dated 19.11.04 imposed the penalty of Censure upon the applicant on the alleged ground of incorrect preparation of RAR without proper documentation/transparent accounting of boulders

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and for releasing payments without conducting any physical ground check. But surprisingly the allegation of overpayment has not been mentioned in the impugned order of penalty which was the basic ground for initiation of the disciplinary proceeding through Article of charge No. 1 and 2. (Annexure- 7)

30.12.2004- Applicant preferred a review petition on 30.12.04 praying for review of the penalty of Censure imposed upon him.

(Annexure- 8)

18.08.2006- Respondents rejected the review petition filed by the applicant without appreciating the grounds raised by the applicant and arbitrarily upheld the penalty of Censure imposed upon the applicant.

(Annexure-10)

23.07.2003- Result of DPC was published, where findings of the DPC in respect of the applicant although kept under sealed cover but his immediate juniors were promoted to the cadre of Superintending Engineer.

(Annexure- 11)

06.12.2005- Applicant submitted a detailed representation to the respondent No. 2, requesting him for opening of the sealed cover adopted by the DPC and further requested to grant him promotion with all financial benefit with retrospective effect.

(Annexure- 12)

Hence this application.

P R A Y E R S

1. That the impugned memo of charge sheet bearing letter No. C-13011/3/D (Vig.II)/2002 dated 12.06.2002 (Annexure- 5), impugned penalty order bearing letter No. 42101/390/02/1 D (2) dated 19.11.2004 (Annexure- 7) as well as the impugned order of rejection bearing letter No. C-13011/3/D(Vig-II)/2002 dated 18.08.2006 (Annexure- 10) are liable to be set aside and quashed.

2. That the Hon'ble Tribunal be pleased to direct the respondents to open the sealed cover adopted by the DPC in respect of the applicant during the year 2003 against the vacancies for the year 2003-04 for promotion to the cadre of Superintending Engineer and further be pleased to give effect of the findings/recommendation, of the DPC and antedate the promotion of the applicant to the cadre of Superintending Engineer at least from the

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date of promotion of his immediate junior to the cadre of Superintending Engineer with all consequential service benefit with seniority.

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 relief: -

1. That the Hon'ble Tribunal be pleased to observe that the pendency of this Original Application shall not be a bar to grant the relief to the applicants as prayed above.

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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 313 /2006

Shri Mahesh Chandra Gupta. : Applicant

-Versus -

Union of India & Others. : Respondents.

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Filed by

S. Nath.
Advocate

Date: 19.12.06

Mahesh chandra Gupta

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O. A. No. 313 /2006

BETWEEN:

1. Shri Mahesh Chandra Gupta, SE.
S/o- Shri Shanti Swarup Gupta.
Working as Director
O/o- Chief Engineer (AF), Shillong.
Elephant Falls Camp
P.O- Nonglyer,
Upper Shillong, Shillong- 793009.

...Applicant.

-AND-

1. The Union of India,
Represented by Secretary to the
Government of India,
Ministry of Defence, South Block,
New Delhi- 110001.
2. Engineer-in-Chief
Army Headquarters,
DHQ Post, Kashmir House,
New Delhi - 110011.
3. Chief Engineer (AF), Shillong,
Elephant Falls Camp
P.O- Nonglyer,
Upper Shillong, Shillong- 793009.

... Respondents.

DETAILS OF THE APPLICATION

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

This application is made against the impugned memorandum of charge sheet dated 12.06.2002 (Annexure- 5 Series) penalty order dated 19.11.2004 and also against the impugned rejection order dated 18.08.2006 and also

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Filed by me applicant-
Mr. Nongli, S. Nanki.
Advocate
19.12.2006

praying for a direction upon the respondents to open the seal cover which was adopted by the DPC during the year 2003 and to give effect of promotion, antedating his promotion to the cadre of Superintending Engineer in the pay scale of Rs. 14,3000-400-18,300 in MES with all consequential benefit including seniority.

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 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 Superintending Engineer in Military Engineer Services in the pay scale of Rs. 14,300-400-18,300/-. He is promoted to the said cadre of Superintending Engineer vide letter bearing No. 70001/AC/30/2006 dated 16.11.2006 issued by the Directorate General of Personnel/E 1B, Army Head Quarter New Delhi.

Copy of the promotion order dated 16.11.2006 is annexed herewith for perusal of Hon'ble Tribunal as Annexure-1.

4.3 That your applicant while functioning as Assistant garrison Engineer B/R-III GE (P) No. 1 Naval Air Station, Arakkonam during 1988-92, he was served with a show cause notice by the Chief Engineer, Northern

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Command C/O 56 APO vide letter No. 42101/390/02/E I D (2) dated 19.11.2000, wherein it has been stated that a board of inquiry was ordered by FOC-in-C (v) to investigate circumstances under which certain irregularities in execution of contract were noticed which resulted in overpayment to M/S Atlanta Constructions CO. (I). It is alleged, while making payments in RARs i.e. 7th, 13th, 14th, 33rd, 40th, 54th, 56th and 58th, the applicant did not physically verify or check the contractors material lying at site and thus allowed over payment on boulder incorrectly and over assessed on lorry load and preparation of in-correct RAR from 59th to 63rd improper application of rates resulting in overpayment, no proper arrangement organization and records existed for the boulder received at dumping site which ultimately lead to over payment and other complications shortfall of material in four stages after 63rd RAR. Therefore asked the applicant to submit his explanation within 15 days of receipt of the letter. The applicant after receipt of the show cause notice dated 19.11.2000 he has submitted a detailed reply of the show cause notice on 30.11.2000. In the said reply the applicant specifically denied the charges and further submitted that as per Part-I order, details of physical verification and checking of stone boulders brought by contractor to be included in RAR of the project as a whole and all the RARs referred in para 2 (a), quantity of stone boulders was verified by AGE B/R II and as such it is contended by the applicant that he cannot be held responsible and he has fairly admitted that 33rd RAR was prepared by him, when AGE B/R II was on leave and also emphatically stated that it could be verified from record that quantity of stone boulder allowed by him in 33rd RAR was just equal to the quantity of stone boulder allowed in 32nd RAR and payment of new arrival of stone boulders was not allowed as material, lying at site in the RAR, applicant further admitted in his reply to the show cause notice that he was assigned with the duties of accounting the boulder from RAR 59 to RAR 63 when Sri Srinivasan was posted out. However to avoid any lapse or overpayment to contractors CWE,

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Arakkonam ordered a board of officers to verify the quantity of boulder lying at the site for the purpose of allowing payment in further RARs and also asserted that it can be verified from the records that quantity of stone boulders taken in subsequent RARs is as per findings of the board of Officers. The applicant further stated in his reply that he cannot be held responsible for overpayment in view of his explanation given in the said reply.

Copy of the show cause notice dated 19.11.2000 and reply dated 30.11.2000 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 2 and 3 respectively.

- 4.4 That it is stated that, after submission of the show cause reply dated 30.11.2000, the authority remained silent on the allegation of overpayment to M/S Atlanta Construction CO (I) Pvt. Ltd. Without initiation any final decision of the authority, in such circumstances, the applicant finding no other alternative, submitted another representation addressed to the respondent No. 1, wherein it was pointed out that after submission of show cause reply, on the allegation of overpayment, the case was not processed, even after a long lapse and requested for expeditious decision on the matter from the end of the authority, in view of the fact that the applicant would be within the zone of promotion for the post of Superintending Engineer and in that event, issue of any charge sheet on the question of alleged overpayment would effect his career and the applicant specifically stated that he is not a defaulter, and requested to take into consideration his reply before initiation of any disciplinary proceedings.

Copy of the representation dated 10.07.2001 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure-4.

- 4.5 That it is stated that a memorandum of charge sheet bearing letter No. C-13011/3/D (Vig-II) 2002 dated 12.06.2002 was served upon the applicant

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on 08.08.2002 under Rule 16 of the CCS (CCA) Rules. In the said memorandum of charge sheet, 2 article of charges brought against the applicant. In the Article of charge No. 1, it has been alleged that the applicant has prepared incorrect RARs bearing numbers 7, 13, 14, 33, 40, 43, 54, 65 and 58 wherein the material lying at site was certified without any physical ground check and the other allegation that the applicant while functioning as AGE B/R-III CE (P) No. 1, Naval Air Station, Arakkonam during the period from October' 88 to April' 92 failed to perform his duty, he prepared incorrect RARs from 59th to 63rd RAR without physical checking the quantities of boulders lying at site as correct without any proper documentations and improper application of rates for the white boulders lying at site and thereby the applicant has failed to maintain devotion to duty and thus contravened Rule 3 (1) (ii) of CCS (Conduct) Rules, 1964. The applicant immediately after receipt of the memorandum of chargesheet dated 12.06.2002 submitted his detailed reply dated 24/31/10/2002 denying the alleged charges. It is pertinent to mention here that the applicant against the Article of charge No. 1 as well as Article of charge No. 2, it is categorically stated that charge is neither correct nor it specifies the amount of the overpayment alleged to have been made by him in each RAR and also stated that charge should have been specific, clearly stating the amount of overpayment in each RAR so that specific reply could be given from his end. So far the Article of charge No. 1 is concerned, the applicant stated that he had not prepared any of these RAR and the responsibility of checking the materials lying at site for whole project was of AGE B/R II as per office order issued by the GE. However, applicant fairly admitted that RAR No. 33 was prepared by him as officiating AGE B/R II while he was on leave. The applicant very specifically stated in the reply that the responsibility of preparation of RAR and payment of material lying at site for whole project was of AGE B/R II. The applicant also stated that after 58th RAR, Sri V.O. Srinivasan AGE B/R II was relieved on permanent posting, and he handed over the

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charge to Sri S.K. Mishra ACE B/R I on 03.10.1991 without handing over boulders as has been agreed by him in his statement in staff court of inquiry also. The applicant further submitted that on 14.10.1991, the applicant was made responsible for measurement of boulders and on 07.10.1991 for preparation of RAR. Since the quantity of boulders were not handed over to the applicant he had to assume the charge of boulders based on records available and physical check to the extent possible. It is specifically stated by the applicant in his reply that since no material procured at site during the aforesaid period, maintenance of document was not required except the quantity of crushed material used in work done to reduce the quantity of boulders, which had been entered in register. Since no white boulders were available as per record and if it was supposed to be available, the rate paid was correct and explained in Article 2 of Annexure-2 at appendix-B and a further detailed para wise reply of the charges given by the applicant.

Copy of memo of charge-sheet dated 12.06.02, letter dated 07.08.02 and reply dated 24/31.10.02 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure-5 (series) and 6 respectively.

- 4.6 That it is stated that when the applicant submitted a detailed para wise reply against the memo of chargesheet dated 12.06.2002, which was initiated under Rule 16 of the CCS (CCA) Rule, 1965, the Disciplinary Authority ought to have conducted a detailed inquiry under the procedure laid down in Rule 14 of CCS (CCA) Rules 1965, as because each article of charge has been denied very specifically with necessary justification. The applicant repeatedly claimed in his reply that the whole responsibility for preparation of RAR and to check the material lying at site was vested upon the then AGE B/R II as per order of the Garrison Engineer, and no fresh material at site was paid during his period of payment and moreover the applicant also claimed that the rate paid was

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correct. In such circumstances it was obligatory upon the disciplinary authority to have a detailed inquiry following the procedure laid down in Rule 14 of the CCS (CCA) Rules, 1965 to ascertain the correctness of the statement of the applicant, but disciplinary authority did not adopt such procedure as prescribed in the instant case of the applicant.

It is surprised to note that the Article of Charges framed by the Disciplinary Authority and communicated to the applicant through memo dated 12.06.2002 is totally vague as because nowhere in the Article of Charge, the amount of overpayment made to the M/S Atlanta Construction, CO (I) Pvt. Ltd. is indicated and hence the article of charges are not specific and definite and on that score alone the impugned memo of charge sheet dated 12.06.2002 issued by the Govt. of India, Ministry of Defence is liable to be set aside and quashed.

- 4.7 That most surprisingly, Govt. of India, Ministry of Defence, New Delhi vide impugned order bearing letter No. C-13011/3/D (Vig. II)/2002 dated 19.11.2004 have imposed the penalty of censure upon the applicant on the alleged ground for incorrect preparation of RAR (from 59th to 63rd RAR) without any proper documentation/transparent accounting of boulders and for releasing payments without conducting any physical ground check. But surprisingly the allegation of overpayment has not been mentioned in the impugned order of penalty dated 19.11.2004 which was the basic ground for initiating the disciplinary proceeding through Article of charge No. 1 and 2. But the said allegation was not established as it appears from the impugned order of penalty dated 19.11.2004 issued in the name of the President on a careful scrutiny of the impugned order dated 19.11.2004, it appears that the article of charges now confined to incorrect preparation of RAR without any proper documentation/transparent accounting of boulders and for releasing payments without conducting any physical ground check. Therefore it appears that there was no overpayment made to any party as alleged in the memo of charge

sheet. It is also to be noted here at this stage that there is no discussion of the grounds or explanation given by the applicant in his reply against the memo of charge sheet dated 12.06.2006 as required under the rule, more so in view of the fact that no detailed enquiry has been conducted in the instant case following the procedure contained in Rule 14 of the CCS (CCA) Rules, 1965 and on that score alone the impugned order of penalty dated 19.11.2004 is non speaking, cryptic, arbitrary and as such same is liable to be set aside and quashed.

(Copy of the penalty order dated 19.11.2004 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure-7).

- 4.8 That your applicant thereafter being highly aggrieved by the impugned penalty order dated 19.11.2004 preferred a review petition dated 30.12.2004. In the said review petition the applicant categorically stated in para 2, wherein it is stated by the applicant that in spite of his sincere hard work, devotion, appreciation letter, availability of documents in favour of the applicant, he has been imposed penalty of censure for working as AGE B/R from 59th RAR to 63rd RAR on the alleged ground of incorrect preparation of RAR, improper documentation/transparent accounting of boulders, releasing payment without conducting any physical checks whereas factually no boulders had been received at site as can be verified from materials registered and no payment was released from 59th to 63rd by the applicant but for the same penalty have been imposed upon the applicant.

The applicant further submitted that relevant portion of para 4 and 5 of the review petition is quoted as below; -

"4. It is submitted that the basis on which my disciplinary case was initiated as itself not correct Disciplinary case against me was initiated on the recommendation of staff C of I. Staff C of I had made me responsible based on report of Tech C of I without going

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through the facts and figures, rules and regulations. In this regard following facts are produced for your consideration.

It is submitted that a huge quantity of boulders viz 40400 cum and 74110 cum were released in RAR No. 27 and 36 respectively (Ex-P-92). These RARs were processed by VO Srinivasan as AGE and paid by Maj VKP Singh as GE. Boulders quantities 13600 cum, 62400 cum and 31.500 cum respectively (ex P-93) were subsequently recovered in 52, 53 and 54th RAR (Ex P-38 to 48). Tech C of I had found an over payment of Rs. 16.72 lakhs on boulders made at 52nd RAR stage, refer para 28 of Tech C of I (Ex P-17). I was made responsible for this overpayment vide para 36 9 (a) (iii) (Ex P-20, 21) whereas 52nd RAR (Ex P-38 to 41) was processed and signed by Sh SK Mishra as Offg AGE (Ex P-40, 41) and passed by Maj VK P Singh as GE. Measurement and payment of boulders pertained to another sub-division headed by Sh VO Srinivasan and not mine. Therefore I was not at all associated with the payment of above RAR. It is also sad to note that the Tech C of I has factually erred on his account and had erroneously pointed out my name instead of SK Mishra in their report.

5. It is submitted that Tech C of I has seen the documents up to 63rd RAR (Ex P-19) before date of assembly of Tech C of I and arrived at conclusion that Sh VO Srinivasan, AGE was responsible for laxity in documentation. Refer para 36 (d) of C of I (Ex P-21). However I am surprised to see that charges of laxity in documentation as proved and recommended by Tech C of I for Sh VO Srinivasan, AGE (Ex P-21) has been attributed to me without any basis."

The applicant further submitted additional information against the allegation of incorrect preparation of RAR wherein it has been stated by the applicant that the responsibility for the preparation of RAR lies on

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contractor. Contractor is supposed to prepare the bill and claim the advance payment on IAFW 2263. In this connection para 460 & 468 (Ex. P-75) & Para (Ex P-76) of MES Regulation under Section 25. Bills and payments to contractors and para 64 of IAFW 2249 have been referred by the applicant and also cited the relevant rules for preparation of bills, claims for advance payment, and categorically stated that since no boulders arrived at site and only recovery of boulders was effected during these RARs as explained above, the documentation was more than adequate. The applicant in the review petition categorically stated as follows; -

" It is crystal clear that no payment had been released towards cost of boulders in RAR no 59th to 63rd but quantity of boulders lying at site and shown in previous RARs were reduced equivalent to crushing/consumed quantity of boulders after physical verification on ground."

Quantity of boulders lying at site shown in RAR 59th to 63rd were 111208 cum (Ex P-53), 95833 cum (Ex P-58), 93728 cum (Ex P-63), 89000 cum (Ex P-68) and 86000 cum (Ex P-73) respectively as shown in table 1 above whose cost @ Rs. 95 per cum was Rs. 105, 64760, Rs. 91,04,135, Rs. 89,04,160, Rs. 84,55,000, Rs. 81,70,000 respectively. The amount paid during these RARs was only for work done which is clear from cheque amounts (Ex P-51, 56, 61, 66, 71) issued to contractor as shown in table below:

SER No.	RAR No.	Cheque amount issued to contractor (in Rs.)	(Ex P-)
1.	59	5,56,874	51
2.	60	1,40,000	56
3.	61	6,80,000	61
4.	62	2,10,000	66
5.	63	23,456	71

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Cheque amounts and above details show that the payment for boulders lying at site was not released nor any material was procured during these RARs but payment of these boulders were released earlier to 58th RAR."

The applicant emphatically stated in the review petition as follows:-

"No boulder was procured nor any payment of boulders was ever released after RAR No. 54 and the quantity of boulders physically checked by vigilant officers were matching with the quantity of boulders available in material register/release for payment."

"Since no boulders were arrived at site and no payment was released for boulders after 54th RAR and boulders lying at site were physically checked on ground by me and so many engineer officers in addition to concerns AGEs and GE as explained in sub para 6 (c) (aa) and 6 (c) (ab) of review petition, the charge of releasing payment without conducting any physical check is not justified."

The applicant also specifically stated that RAR No. 7,13,14,40,43,54 has been processed by Sri V.O Srinivasan AGE and he has paid these RAR as officiating GE as per responsibility given in para 472 of RMES and also submitted that Supdt. B/R and AGE are responsible for measurement of boulders as per RMES regulation. The applicant given all further details regarding RAR 56 and 58 and ultimately prayed for review of the penalty of censure imposed on him after the lapse of 12 to 15 years of the alleged incident as because allegations were pertaining to the period from October' 88 to April' 92. But surprisingly the authority remained silent on the review petition preferred by the applicant on 30.12.2004. In such circumstances, the applicant again submitted another petition on 27.12.2005 in continuation of his earlier review petition giving some more

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detailed grounds in support of his argument and prayed for exoneration from the imposition of penalty.

Copy of the review petition dated 30.12.04 and the other petition dated 27.12.05 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure-8 and 9 respectively.

- 4.9 That the review petition preferred by the applicant has been rejected by the Govt. of India, Ministry of Defence, vide impugned order bearing letter No. C-13011/3/D (Vig-II)/2002 dated 18.08.2006. Whereby penalty of "censure" has been upheld solely on the basis of comments of Zonal Chief Engineer, which was blindly accepted by the Chief Engineer, Command without independent application of mind by the reviewing authority as required under the rule. Moreover, the grounds or explanation given by the applicant in his review application has not been appreciated in the manner it is required. It is reviewed in other words none of the grounds raised by the applicant in his review petition were considered by the reviewing authority, but rejected the prayer of the review petitioner on the basis of the comments of Zonal Chief Engineer and on that score alone the cryptic impugned order dated 18.08.2006 is liable to be set aside and quashed.

Copy of the impugned order dated 18.08.2006 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure-10.

- 4.10 That it is stated that the memo of charge sheet dated 12.06.2002 has been issued deliberately by the Disciplinary Authority after a lapse of about 14 years i.e. on 12.06.2002 with the sole intention to cause damage of the promotion prospect of the applicant as because the authority is well aware that the applicant was very much within the zone of consideration for his promotion to the cadre of Superintending Engineer, It is further submitted that the respondent U.O.I nowhere given any explanation of delay regarding initiation of the disciplinary proceeding under Rule 16 of the

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CCS (CCA) Rules, 1965 and as a result of such inordinate delay, the applicant has been seriously prejudiced at such a distinct point of time, and on the ground of inordinate delay, the memo of chargesheet dated 12.06.2002 is liable to be set aside and quashed.

It is further submitted that the applicant being an employee of the Govt. of India, Ministry of Defence, as such initiation of disciplinary proceeding under Rule 16 of the CCS (CCA) Rules, 1965 is not maintainable and on that score alone the impugned memo of chargesheet dated 12.06.2002 is liable to be set aside and quashed.

4.11 That it is stated that when the applicant repeatedly denied the Article of charges brought against him through memo dated 12.06.2002, the respondents ought to have followed the detailed procedure of inquiry in terms of Rule 14 of the CCS (CCA) Rules, 1965. But in the instant case, the authority deliberately did not follow the procedure and on that score alone the non-speaking, cryptic impugned order of penalty dated 19.11.2004 is liable to be set aside and quashed. More so in view of the fact, that none of the grounds raised by the applicant while denying the article of Charges were taken into consideration nor considered any evidence discussed in the impugned order of penalty dated 19.11.2004. As such the same is liable to be set aside and quashed.

4.12 That it is stated that after imposition of penalty of censure upon the applicant vide impugned order dated 19.11.2004 the applicant was promoted to the cadre of Superintending Engineer vide order dated 16.11.2006. Moreover, it is pertinent to mention here that DPC was held prior to July 2003 for filling up some vacancies in the cadre of Superintendent Engineer. The applicant was very much within the zone of consideration at the relevant point of time for promotion to the cadre of Superintendent Engineer, but the findings of the DPC in respect of the applicant is kept under sealed cover in view of the pendency of the disciplinary proceeding initiated against the applicant through

memorandum of charge sheet dated 12.06.2002. However, the said proceeding ended with imposition of penalty of censure on 19.11.2004. It is a settled position of law that censure is not a bar for consideration of promotion to the next higher grade. In such circumstances the applicant submitted a detailed representation on 06.12.2005 addressed to the respondent No. 2 (i.e. DGOP, Army H.Q, New Delhi). In the said representation, the applicant specifically requested for opening of the sealed cover adopted by the DPC against the vacancies for the year 2003-04 in the cadre of Superintendent Engineer and further requested to grant him promotion with all financial benefit with retrospective effect. In this connection it may be stated that the DPC which was held during the year 2003, the result of the said DPC was published on 23.07.2003, where findings of the DPC in respect of the applicant although kept under sealed cover but his immediate juniors namely;

- (1) Shri Dron Ahuja, 300215.
- (2) Shri Pyare Lal, 440323.
- (3) Sri Jagat Pal Ram, 194028.

Have been recommended by the DPC and included In the panel declared on 23.07.2003 along with other juniors whose names were indicated from Sl. No. 4 to 23 and in terms of the said panel dated 23.07.2003 issued under letter No. B/41023/SE/2003-2004/EIR, have been promoted to the cadre of Superintendent Engineer. The applicant accordingly in his representation dated 06.12.2005, prayed for opening of the sealed cover and to give effect of the findings of the DPC. But surprisingly no action has been taken by the respondents for opening of the sealed cover which was adopted by the DPC in the year 2003, as such findings no other alternative, the applicant approaching this Hon'ble Tribunal for setting aside of the impugned memorandum of chargesheet dated 12.06.2002, penalty order dated 19.11.2004 and the impugned rejection order dated 18.08.2006 and also for a direction upon the

Manish chandra Gupta

respondents to open the sealed cover adopted in the year 2003 in respect of the applicant by the DPC and to give effect of the same granting all consequential benefit including seniority in the cadre of Superintendent Engineer.

Copy of the letter dated 23.07.03 and representation dated 06.12.2005 are enclosed for perusal of Hon'ble Tribunal as Annexure-11 and 12 respectively.

- 4.13 That it is stated that the impugned order of penalty dated 19.11.2004 has been issued without recording necessary finding and reasoning and on that score alone the said order of penalty dated 19.11.2004 as well as the impugned review order dated 18.08.2006 is liable to be set aside and quashed.
- 4.14 That it is stated that the alleged charge of overpayment made to the party brought in the Article of Charge against the applicant has not been established and therefore the article of charges has not been established. Hence the penalty of censure cannot be imposed on the applicant.
- 4.15 That it is stated that mere incorrect preparation of RAR without proper documentation/transparent accounting of boulders, releasing payment without conducting physical ground check without any ill motive does not fall within the purview of misconduct for the purpose of disciplinary proceeding and on that ground alone the penalty of imposing punishment of Censure is liable to be set aside and quashed.
- 4.16 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 impugned memorandum of charge sheet dated 12.06.2002 is liable to set aside and quashed only on the ground of inordinate delay in

initiating the disciplinary proceeding under Rule 16 of the CCS (CCA) Rules, 1965.

- 5.2 For that, the alleged irregularities/article of charges brought against the applicant after a lapse of 14 years has seriously prejudiced the applicant at this distant point of time on that score alone the impugned memorandum of charge sheet dated 12.06.2002 is liable to set aside and quashed.
- 5.3 For that, the memorandum of charge sheet was issued deliberately at this distant point of time i.e. after a lapse of 14 years with a sole intention to cause injury to the promotion prospect of the applicant from the cadre of Executive Engineer to the cadre of Superintending Engineer as because a vested section of the authority is well aware that the applicant is well within the zone of consideration for promotion to the post of Superintending Engineer at the time of the initiation of disciplinary proceeding in the month of June 2002.
- 5.4 For that the alleged article of charges brought against the applicant is totally vague as because nowhere in the article of charge sheet the amount of over payment made to the M/S Atlanta Construction, CO (I) Pvt. Ltd. is indicated and hence the article of charges are not specific and definite and on that score alone the impugned memo of charge sheet dated 12.06.02 is liable to be set aside and quashed.
- 5.5 For that, the alleged article of charges brought against the applicant through memorandum dated 12.06.2002 has been specifically denied by the applicant with a detailed explanation, but without considering the said reply/grounds raised by the applicant the disciplinary authority without proper application of mind and also without taking into consideration the grounds raised by the applicant imposed the penalty of censure in a most arbitrary manner without following the procedure laid down in Rule 14 of CCS (CCA) Rules, 1965.

Mahesh chandra Gupta

- 5.6 For that, the penalty of censure has been imposed by the impugned order dated 19.11.2004 by the disciplinary authority without any discussion of evidence, grounds raised by the applicant and also without assigning any valid reasons and on that score alone the impugned order of penalty dated 19.11.2004 is liable to be set aside and quashed.
- 5.7 For that the applicant does not fall within the purview of CCS (CCA) Rules, 1965 being a civilian defence employee and as such initiation of a disciplinary proceeding under Rule 16 against the applicant in terms of CCS (CCA) Rules, 1965 is not sustainable in the eye of law.
- 5.8 For that the basic charge of overpayment made to the contractor has not been established as evident from the order of penalty dated 19.11.2004 and as such the said penalty order dated 19.11.2004 is liable to set aside and quashed.
- 5.9 For that no inquiry report has been served upon the applicant before imposition of penalty of censure and as such reasonable opportunity has been denied to the applicant and on that score alone the impugned order dated 19.11.2004 is liable to be set aside and quashed.
- 5.10 For that, the disciplinary authority imposed the penalty of "censure" without discussing the grounds raised by the applicant in his representation dated 24/31.10.2002, but arbitrarily reached to a conclusion that the applicant is guilty of charges without any finding and also without assigning any valid reasons for imposition any valid reasons for initiation of such penalty of censure after a lapse of 16 years from the date of alleged incident/irregularities.
- 5.11 For that, on a careful reading the impugned order of penalty dated 19.11.2004, it would be evident that the basic allegation of overpayment is missing from the conclusion reached by the disciplinary authority in the

Mahesh Chandra Gupta

impugned order dated 19.11.2004 and on that score alone, the impugned penalty order dated 19.11.2004 is liable to be set aside and quashed.

- 5.12 For that mere incorrect preparation of RAK without proper documentation/transparent accounting of boulders/releasing payment without conducting physical ground check does not fall within the purview of misconduct, and as such the impugned order of penalty dated 19.11.2004 is liable to be set aside and quashed.
- 5.13 For that review petition has been rejected by the impugned letter dated 18.08.2006 only on the basis of comments made by the Zonal Chief Engineer, which was followed mechanically by the Command Chief Engineer without proper consideration of the grounds raised by the applicant in his review petition as such the impugned order of rejection dated 18.08.2006 is not sustainable in the eye of law.
- 5.14 For that when a proceeding is initiated under Rule 16 of the CCS (CCA) Rules, 1965 in that event the disciplinary authority should take special care for consideration of the grounds assigned by the charged official, as because normal procedure of regular hearing is not followed in the cases of disciplinary proceeding initiated under Rule 16, so that grounds raised by the charged officer is duly considered before imposition of the penalty, but in the instant case, no such care has been taken, but the reviewing authority at the dictation of the Zonal Chief Engineer upheld the penalty of "censure" issued by the disciplinary authority. As such the impugned order dated 18.08.2006 is liable to be set aside and quashed.
- 5.15 For that the penalty order dated 19.11.2004 has been issued without recording necessary finding and reasoning and on that score alone the penalty order dated 19.11.2004 is liable to be set aside and quashed.
- 5.16 For that the basic charge of overpayment has not been established and as such not reflected in the impugned order of penalty dated 19.11.2004 and

Mahesh chandra Gupta

on that score alone the impugned order dated 19.11.2004 is liable to be set aside and quashed.

- 5.17 For that even the imposition of penalty of "censure" upon the applicant vide impugned order dated 19.11.2004 cannot stand on the way of promotion of the applicant to the cadre of Superintending Engineer pursuant to the findings of the DPC held in the year 2003 against the vacancies of 2003-04 which is kept under sealed cover.
- 5.18 For that the disciplinary authority initiated under Rule 16 of CCS (CCA) Rules 1965 against the applicant, ended with the imposition of penalty of "censure" as such the sealed cover adopted by the respondents during the year 2003 while DPC considered promotion of the applicant alongwith his juniors from the cadre of Executive Engineer to the cadre of Superintendent Engineer, but the findings of the DPC in respect of the applicant is kept under sealed cover on the ground of pendency of the disciplinary proceeding, as such the sealed cover is liable to be opened in view of imposition of penalty of "censure" on the ground that "censure" is not a bar for promotion.
- 5.19 For that large numbers of juniors of the applicant have been promoted to the cadre of Superintendent Engineer in the light of the recommendation of the DPC held in the year 2003 as such the applicant has acquired a valuable and legal right for consideration of promotion by opening the sealed cover adopted by the DPC during the year 2003.
- 5.20 For that, in view of the imposition of penalty of "censure" the sealed cover adopted by DPC in the year 2003 against the vacancies of 2003-04 is liable to be opened and also be given effect to.
- 5.21 For that the applicant has acquired a valuable right for antedating his promotion to the cadre of Superintending Engineer at least from the date of promotion of his immediate juniors in the cadre of Superintendent

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Engineer with all consequential benefit including seniority in the grade of Superintending Engineer.

- 5.22 For that even there is inordinate delay in completion of the disciplinary proceeding after issuance of the memorandum of charge sheet dated 12.06.2002, if the proceeding could have been completed within a period of 2 months from the date of submission of reply by the applicant in that event also applicant would have been recommended by the Department Promotion Committee in the year 2003 without resorting to the sealed cover procedure, as such even in delay in completion of proceeding also caused irreparable loss and injury to the applicant in the matter of promotion to the cadre of Superintending Engineer.
- 5.23 For that, in terms of guidelines prescribed by the CVC, the disciplinary proceeding ought to have been completed within a period of 2 months from the date of issuance of the charge sheet but due to laches and negligence on the part of the respondents the proceeding has taken inasmuch as 4 years time for completion which also caused prejudiced to the applicant.
- 5.24 For that delayed decision on the part of the disciplinary authority to impose penalty of Censure in fact cause damage to the promotion prospect on the applicant in the cadre of Superintending Engineer in the year 2003 which has caused serious and adverse effect like imposition of major penalty due to deliberate delay in communicating the decision for imposition of penalty by the disciplinary authority.
- 5.25 For that there was difference of opinion among the authorities regarding imposition of penalty upon the applicant.
- 5.26 For that, the findings of the reviewing authority are contradictory with the findings of the disciplinary authority so far the allegation of over payment is concerned.

Mahesh chandra Gupta

5.27 For that the respondent authority has initiated the disciplinary proceeding under Rule 16 of the CCS (CCA) Rule 1965 after a lapse of 14 years with a malafide intention to cause damage to the promotion prospect to the applicant.

6. Details of remedies exhausted.

That the applicant states that he has exhausted all the remedies available to them 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 did 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 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 impugned memo of charge sheet bearing letter No. C-13011/3/D (Vig.II)/2002 dated 12.06.2002 (Annexure- 5), impugned penalty order bearing letter No. 42101/390/02/1 D (2) dated 19.11.2004 (Annexure- 7) as well as the impugned order of rejection bearing letter No. C-13011/3/D(Vig-II)/2002 dated 18.08.2006 (Annexure- 10) are liable to be set aside and quashed.

Open Mr. Suresh Kumar

Mahesh Chandra Gupta

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to open the sealed cover adopted by the DPC in respect of the applicant during the year 2003 against the vacancies for the year 2003-04 for promotion to the cadre of Superintending Engineer and further be pleased to give effect of the findings/recommendation, of the DPC and antedate the promotion of the applicant to the cadre of Superintending Engineer at least from the date of promotion of his immediate junior to the cadre of Superintending Engineer with all consequential service benefit with seniority.

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 relief: -

9.1 That the Hon'ble Tribunal be pleased to observe that the pendency of this Original Application shall not be a bar to grant the relief to the applicants as prayed above.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.:

i)	I P. O. No.	: 28 G 93 2625.
ii)	Date of Issue	: 10.11.06.
iii)	Issued from	: G. P. O. Guwahati.
iv)	Payable at	: G. P. O. Guwahati.

12. List of enclosures.

As given in the index.

Mahesh chandra G4p5

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VERIFICATION

I, Shri Mahesh Chandra Gupta, SE, S/o- Shri Shanti Swarup Gupta, aged about 46 years, working as Director, in the O/o- Chief Engineer (AF), Shillong, Elephant Falls Camp, P.O- Nonglyer, Upper Shillong, Shillong- 793009, applicant in the instant application, 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 17th day of December 2006.

Mahesh chandra Gupta

Tele: 23019685

Directorate General of Personnel/ETH
 Engineer-in-Chief's Branch
 Army Headquarters
 DHQ PO, New Delhi-110011

70001/SE/30/2006

16 Nov 2006

- ✓ CE Southern Command, Pune
- ✓ CE Eastern Command, Kolkata
- ✓ CE Central Command, Lucknow
- ✓ CE Western Command, Chandimandir
- ✓ CE Northern Command, C/O 36 APO
- ✓ CE South Western Command
- DG MAP
- E-in-C's Branch (E Coord-1)

PROMOTION, TRANSFERS AND TERMINATED SERVICE

The following postings are hereby ordered:-				
Sl. No.	MES No Name and Grade	From	To	Remarks
PROMOTION-CUM-POSTINGS				
(a)	MC Gupta, EE	CE (AF) Shillong	CE (AF) Shillong as Dir	Move forthwith
(b)	MES-300220 Sh. Kulbhushan Goel, EE	CE Bhtinda Zone	MAP Aurangabad as Project Manager	Move forthwith
(c)	MES-186146 Sh. Sunil Mathur, EE	CWE (AF) Lohegam	CE North Command as Dir	Move forthwith
(d)	MES-300244 Sh. Ajaib Rajvanshi, EE	CE (CEC) Kolkata	CE Srinagar Zone as Dir	Move forthwith
(e)	MES-439084 Sh. Ved Kant Singh, EE	CE Bhopal Zone	CE Bhopal Zone as Dir	Move forthwith
(f)	MES-300233 Sh. Mayor Kumar, EE	E-in-C's Branch	CE DGNP Vizag as Dir	Move forthwith
(g)	MES-438454 Sh. Rajiv Khare, EE	CE Lucknow Zone	CE Lucknow Zone as Dir	Move forthwith

Auth: MCD ID No PC-II to 3(5)/2006/P(W-1)- dt: 6 Nov 2006

Dir Pers (M)

2/-

Mushtaq
Sgt. Akmal

26	471282	Uday Shankar Prasad	17 Jun 61
27	448671	Subodh Kumar	02 Jul 61
28	438448	Rameshwar	01 Jul 62
29	507786	Shiv Kumar	01 May 61
30	300250	Shree Mohan Kumar Sinha	12 Jul 63
31	192892	Rajesh Jain	20 Jan 61
32	300274	Sunil Agarwal	05 Sep 62
33	480033	Vipin Kumar	29 Mar 63
	425659	Manoj Kaushik	15 Jul 63
			04 Jul 61

(Thirty Three Officers Only)

(AK Bajaj, IDSE)

SE

Dir (Pers)/E1(DPC-1)
For Engineer-in-Chief

Tel: 23019685

Director General of Personnel/E1B

Engineer-in-Chief's Branch

Army Headquarters

PO. New Delhi-110011

70003/SE/30/2006

- ✓ CE Southern Command, Pune
- ✓ CE Eastern Command, Kolkata
- ✓ CE Central Command, Lucknow
- ✓ CE Western Command, Chandimandir
- ✓ CE Northern Command, C/O 56 APO
- ✓ CE South Western Command
- DC MAP
- E-in-C's Branch (E Coord-1)

Directorate General of Personnel/E1B
Engineer-in-Chief's Branch
Army Headquarters
PO. New Delhi-110011

J. 11 1111

PROMOTION-CUM-POSTINGS OF EEs TO SEs

42101/390/02 /E1D(2)

19 Nov 2000

MES-186749
Shri M C Gupta, AEE (Now EE)
SO-2 (Budget)

SHOW CAUSE NOTICE

1. A Board of Inquiry was ordered by FOC-in-C(V) to investigate the circumstances under which certain irregularities in execution of contract were noticed which resulted in over payment to M/s Atlanta Constructions Co, (I) Pvt Ltd, under Contract Agreement No CEMZ/ARK/07 OF 88-89. The contract was accepted on 12 Oct 88 for Rs 19,58,94,190/-.
2. While you were functioning as AGE B/R III of GE (P) No 1 NAS Arakkonam during the period from Oct 88 to Apr 92, it was found by the BOI that :-
 - (a) While making payments in RARs ie 7th, 13th, 14th, 33rd, 40th, 54th, 56th and 58th that you did not physically verify or check the contractor's material lying at site and thus allowed over payment on boulder incorrectly and over assessed on lorry load basis and thus failed in your duties as Engineer-in-Charge.
 - (b) You prepared in-correct RAR from 59th to 63rd certifying the quantities of boulders lying at site as correct without any documentation and improper application of rates for the white boulders lying at site.
 - (c) The rates for blue boulders and white boulders were Rs 95/- and Rs 52.40 per cubic metres respectively, whereas you as Engineer-in-Charge had made improper application of rates and paid at a uniform rate of Rs 95/- cubic metre even for white boulders, resulting in over payment.
 - (d) There was wide difference in the quantities mentioned in the cancellation board, tendered quantities of risk and cost, court commissioner report and quantities handed over to BRTF. This situation arisen and is attributed to the fact that right from arrival of boulder, no proper arrangement, organisation and records existed for the boulder received at dumping site. Thus it led ultimately to over payment and other complications.
3. By the above acts, you failed to maintain integrity and absolute devotion to duty and contravened rule 3 (1) (i) & (ii) of CCS (Conduct) Rules 1964.
4. You are therefore, hereby given this show cause notice to explain as to why disciplinary action should not be taken against you. Your explanation should reach this HQ within 15 days of receipt of this letter.

(JDS Bedi)
Maj Gen
Chief Engineer

*Attended
JDS
Advocate*

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M/ADPERS/SC/H/2

30 Nov 2000

From: MRS 186149

M C Gupta, EJE

HDSR

C/O CE Northern Command

C/O 56 APO.

To: CE Northern Command

C/O 56 APO.

REPLY OF SHOW CAUSE NOTICE

No

1. Ref your letter No. 12101/390/02/E11(2) dated 19 Nov 2000.

2. I had worked as AGE B/R III in GE(F) No. 1 Arakonam. As per written orders of GE I was detailed for supervision and execution of runway from chainage 0 to 2400. After Sh VO Shreenivasan AGE B/R II was posted out, I was asked to carry out part of his duties also. RAR No 33 was also prepared by me as offg AGE B/R II when Sh VO Shreenivasan was on leave.

3. I do not agree with the charges brought out in your above referred letter against me and pertinent replies to allegations are submitted as under:-

Para 2(a): As per para 1 order issued by GE (F) No 1, Sh VO Shreenivasan AGE B/R II was detailed for physical verification and checking of stone boulders brought by contractor to be included in RARs of the project as a whole. Accordingly in all the RARs referred in para 2(a), quantity of stone boulders was verified by AGE B/R II and not by me. As such I can not be held responsible for the lapse if any, of others.

It is noted that 33rd RAR was prepared by me when AGE B/R II was on leave. It can be verified from record that quantity of stone boulders allowed by me in 33rd RAR was not equal to the quantity of stone boulder allowed in 32nd RAR by Sh VO Shreenivasan. Payment for new arrival of stone boulders was not allowed as materially over to this RAR. In this connection Appdx 'A' enclosed may be referred.

In view of above the charges against me are baseless and hence denied.

Para 2(b): It is noted that I was assigned the duty for accounting of boulders from PAR 39 to PAR 64 when Sh Sreenivasan was posted out. Keeping into consideration my work load for supervision of runway from chainage 0 to 2400, given chainage for civil work, execution of an additional contract for civil work to electrification of runway, additional work of AGE B/R II and to avoid any lapse/overpayment to contractor, C/A Arakonam ordered a Board of officers to verify the quantity of boulders being allowed for the purpose of allowing payment in further RARs.

Attested
Sd/-
Admnk

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It can be verified from records that quantity of stone boulders taken in subsequent RARs is as per findings of Board of officers, quantity taken in last RAR and further reduction as per quantities utilised in work. Additional quantity of stone aggregates had not been allowed for new arrivals, if any during 59th to 63rd RARs. In this connection Appdx B enclosed may be referred.

It is also submitted that proper register was maintained by AGE B/R II Sh Sreenivasan for accounting of stone boulders. The same was handed over to Sh S K Mishra AGE B/R I by me before leaving the station on permanent posting.

In view of above my action has not resulted in any over payment from 59th to 63rd RAR. On the contrary the payment on account of stone boulders was restricted considerably and hence this charge is also denied.

Para (2c): Rate of boulders applied was based on quality of stone brought by the contractor. The Board of officers ordered by CWE Arakonam had certified one type of boulders only for which Rs 95/- per cum was being allowed in RARs prior to 59th RAR. The same rate was continued to be applied in subsequent RARs also. Further, checking of rates in RARs is the sole responsibility of SA I of GE office who has all powers to restrict the rates.

In view of above this charge is also without any basis and hence denied.

Para (2d): During assembly of cancellation board, finalisation of risk and cost, submission of court commissioner report and quantity handed over to BRTF, I was not in the station as I had already moved on permanent posting after handing over the charge to Sh S K Mishra AGE B/R I during April 92. The reason for wide variation can best be ascertained from the staff concerned thereafter.

The quantities of boulders assessed by various BOO as detailed by CE Madras Zone, CWE Arakonam and vigilance check detailed by CE Madras Zone were almost in par with the quantities paid in subsequent RARs.

However since I was not involved in payment of boulders since beginning except in few RARs mentioned in above paras, I can not be held responsible for the lapse, if any.

In view of the foregoing facts it may be seen that---

(a) RARs 33 and 59 to 63 only were prepared by me in the offg capacity and as an alternative arrangement on posting of concerned Engineer-in-charge.

(b) During all these RARs, there was no over payment involved as quantities of boulders had not increased in these RARs and quantity of boulders was matching with the quantities of boulders assessed by BOO convened by CWE.

(c) Boulders were paid based on quality of stones and further restricted after verification of vouchers by Sh Sreenivasan AGE B/R II and finalised in GE's office.

In view of above none of my action as Engineer in charge has resulted in any overpayment to the contractor and hence charges are denied.

It is submitted that I performed my duties with due diligence to the best of my knowledge and satisfaction of my senior officers. In this connection I would like to bring out that -----

(a) I was not held responsible for any overpayment by the technical BOO ordered by CE Southern Command to pin point the responsibility for over payment.

(b) I, as AGE B/R III, performed my duties in well organised manner for timely completion of runway from chainage 0 to 2400 whereas remaining work was lagging much behind schedule.

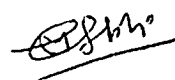
(c) ADGTE's branch has not pointed out any serious irregularity in my work during their visit to work.

(d) My performance was rewarded with appreciation and commendation card by FOC-IN-C.

(e) It will not be out of way to mention here that the arbitrator has allowed Rs 26 crore in the present CA against the claims of contractor indicating that the contractor was infact underpaid.

I therefore humbly request to consider the above explanation with due sympathy as I was not at all responsible for any over payment. On the contrary, I had helped the department in restricting the payments for materials lying at site in all RARs prepared by me as AGE B/R III.

Yours Sincerely



(M C Gupta, EE
IDSE)

Enclosure

Appx 'A'
Appx 'B'

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APPDX 'A'

POSITION REGARDING QUANTITY OF STONE BOULDERS
ALLOWED IN RARs PRIOR TO AND AFTER 33RD RAR

NO OF RAR	TOTAL QUANTITY OF BOULDERS CONSIDERED IN RAR IN (CUM)	INCREASE IN QUANTITY AS COMPARED TO LAST RAR In (Cum)
26	26,200	
27	1,36,600	40,400
28	1,48,400	11,800
29	1,53,600	5,200
30	1,59,600	6,000
31	1,87,900	28,300
32	2,11,550	23,650
33	2,11,550	NIL
34	2,11,550	NIL
35	2,26,890	15,340
36	3,01,000	74,110
37	3,06,000	5,000

From 26th RAR onwards the quantity of boulder at site taken for payment was on increase up to 33rd RAR. After 33rd RAR payment for boulder was restricted. Position remained the same till 36th RAR. After 36th RAR payment against boulder started increasing.

Attested by Advocate

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Appendix 'B'

COMPARISON BETWEEN AMOUNT OF BOULDERS CONSUMED IN WORK AND
AMOUNT OF BOULDERS RECOVERED IN 59TH TO 63RD RAR.

QUANTITY OF WORKDONE IN CUM TAKEN IN						
ITEM NO	DESCRIPTION	59 RAR	60 RAR	61 RAR	62 RAR	63 RAR
01	OF 121 CM					
02	OF 121 CM					
03	OF 121 CM					
04	OF 121 CM					
05	OF 121 CM					
06	OF 121 CM					
07	OF 121 CM					
08	OF 121 CM					
09	OF 121 CM					
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97	OF 121 CM					
98	OF 121 CM					
99	OF 121 CM					
100	OF 121 CM					
TOTAL QUANTITY OF WORKDONE IN CUM TAKEN IN						
101	OF 121 CM					
102	OF 121 CM					
103	OF 121 CM					
104	OF 121 CM					
105	OF 121 CM					
106	OF 121 CM					
107	OF 121 CM					
108	OF 121 CM					
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COMPARISON OF AMOUNTS IN S. NO. 14 & 15 ABOVE
FOR THE YEAR 1973-74 HAS BEEN EFFECTED IN EACH RAR TO
SEEK THE INTEREST.

09

(In lieu of Msg form)

Sigcen Srl No : 18 6533

DEFERRED

DTG : 181704

From : CE SOUTH COMD

UNCLAS

To : CE NAVY VISAKHAPATNAM

O 7338

INFO : E-IN-C.S BRANCH (E1D)

CE EAST COMD

CE NORTH COMD

BOI ALLEGED OVER PAYMENT TO THE CONTRACTOR IN CA NO CEMZ/ARK/07 OF 88/89. DISCP OFFICERS. REF YOUR LETTER NO 19003/51/86/E1D DT JAN 08. FWD PARAWISE COMMENTS/RECOMMENDATIONS ON VERSION SUBMITTED BY SHRI MC GUPTA EE IN TABULAR FORM ALONGWITH CHECK LIST AND RELEVANT DOCUMENTS INTERMS OF MOD ORDER DT 13 JUL 2000 CIRCULATED VIDE THIS HQ LETTER NO 130806/2/E1D DT 17 AUG 2000. ALSO TAKE EXPEDITIOUS ACTION TO OBTAIN VERSION FROM SHRI VO GREENIVASAN AE B/R AND FWD THE SAME WITH PARAWISE COMMENTS/RECOMMENDATIONS AS STATED ABOVE. AS REGARDS COL VKP SINGH FWD COMMENTS/RECOMMENDATIONS IN TABULAR FORM SEPERATELY. FOR E-IN-C.S BRANCH ONLY. REFER YOUR HQ SIG 391732/E1D DT JAN 11. CASE OF COL VKP SINGH ALREADY REFERRED TO HQ ATNKK AND G AREA WITH RELEVANT DOCUMENTS FOR FURTHER ACTION BY CE (NAVY) VIZAG ON DEC 07 LAST YEAR. CE EAST COMD BE ADVISED TO FWD VERSION OF SHRI SUDESH DHIMAN CE. CE EAST COMD ONLY. REQUEST REFER INDARMY SIG QUOTED ABOVE AND E1D DITE VERSION FROM SHRI SUDESH DHIMAN CE. CE NORTHERN COMD ONLY. REQUEST FWD SERVICE PARTICULARS AS PER FORMAT INRESPECT OF SHRI MC GUPTA EE MULTIPLEDATE. ALL ADD

ANALYSED BY :

B-KUMAR

CHECKED BY :

CE Anneenagar

Request refer our letter No 19003/51/49/E1D dated 02 Nov 2000, 19003/51/62/E1D dated 24 Nov 2000 and No 19003/51/65/E1D dated 30 Nov 2000

ad

10/07/01

From : MES 186149
M C Gupta, EE
IDSE
CE Northern Command
C/O 56 APO

To : Defence Secretary
Ministry of Defence
New Delhi.

(Through proper channel)

OVER PAYMENT TO M/S ATLANTA CONSTRUCTION CO. (I) PVT
LTD : CA NO CEMZ/ARK/07 OF 88-99 AT NAS ARAKONAM

Sir,

1. Show cause notice issued vide Chief Engineer (Navy) Visakhapatnam letter No. 10003/51/47/E1D dt 02 Nov 2000 was received by me on 21 Nov 2000 through Chief Engineer Northern Command vide their letter No. 42101/390/02/E1D(2) dt 19 Nov 2000 (Copy of receipt enclosed at Appdx 'A').
2. Reply to show cause notice was handed over to CE Northern Command on 30 Nov 2000 which was forwarded to CE (Navy) Visakhapatnam vide CE Northern Command letter No. 42101/390/06 dt 02 Dec 2000. (Copy of letter along with my reply on show cause notice is enclosed at Appdx 'B'.)
3. CE Southern Command vide their signal No. 07338 dt 18 Feb 2001 (Copy enclosed at Appdx 'C') had asked parawise comments/recommendations on version (reply) submitted by me from CE Navy Visakhapatnam.
4. It is understood that my version has not been processed so far even after lapse of about eight months from the date of submission of my reply. It may be presumed that I may get charge sheet without hearing my reply as my reply has not been processed.

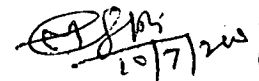
Alastin
Jaw.
Advocate

a/

5. It is for your kind information that by next year I shall be in promotion zone for the post of superintending engineer and issue of charge sheet will effect my carrier. In this I am not the defaulter which is clear from my reply enclosed.

6. May I request to consider my reply with sympathy before taking any decision for disciplinary action against me.

Yours Sincerely


10/7/201

(M C Gupta, EE
IDSE)

Encl : 1. Appdx 'A'
2. Appdx 'B'
3. Appdx 'C'

Copy to : 1. Advanced copy to Defence Secretary
Ministry of Defence
New Delhi.

2. Army HQ, E-in-C's Branch
EID, Kashmir House, New Delhi

3. CE SC. Pune

4. Chief Engineer (Navy)
Station Road
Visakhapatnam

5. CWE (Navy)
Chennai

: Along with Appdx A, B, C

: Along with Appdx A, B, C
with a request to direct
CE SC for processing my
version submitted.

: Along with Appdx A, B, C
with a request to direct
CE Visakhapatnam for
processing my version
With a request to process
my version submitted on
show cause notice

: With a request to process
my version on show
cause notice

ANNEXURE - 5 series

No.C-13011/3//D(Vig.II) /2002
Government of India
Ministry of Defence
New Delhi, the 12th June, 2002.

MEMORANDUM

MES-186749 Shri MC Gupta, AGE B/R (now EE), is hereby informed that it is proposed to take action against him under Rule 16 of the Central Civil Service (Classification, Control & Appeal) Rules, 1965. The substance of imputations of misconduct or misbehaviour, on which action is proposed to be taken as mentioned above, is set out in the enclosed articles of charge. (Annexure-I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure III and IV).

Shri MC Gupta is hereby given an opportunity to make such representation as he may wish to make against the proposal.

If Shri MC Gupta fails to submit his representation within 10 days of the receipt of this Memorandum, it will be presumed that he has no representation to make and orders will be liable to be passed against him ex-parte.

A copy of Central Vigilance Commission's UO No.001/DEF/103 dated 24th May 2002, communicating the Commission's first stage advice, is enclosed for information of Shri MC Gupta.

The receipt of this Memorandum should be acknowledged by Shri MC Gupta.

(By order and in the name of the President)

Suman K. Sharma
(Suman K. Sharma)

Under Secretary to the Government of India

Shri MC Gupta, EE
(MES-186749)

- Thro' E-in-C's Branch/E1D

Copy to:

DDGP(D&V)
E-in-C's Branch

Copy also for information to:

Shri R.K. Bajaj, Director
Central Vigilance Commission
Satarkata Bhavan, New Delhi.

- w.r.t. their UO mentioned above.

*Attended
Sat
Private*

ANNEXURE - I

**STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST
MES-186749 SHRI MC GUPTA, EE, FORMER AGE B/R-III
GE(P) NO.1 NAS ARAKKONAM**

ARTICLE - I

MES-186749 Shri MC Gupta, AEE B/R while functioning as AGE B/R-III GE (P) No.1 Naval Air Station, Arakkonam during the period from Oct 88 to Apr 92 failed to perform his duty in that he prepared incorrect RAR Nos. 7, 13, 14, 33, 40, 43, 54, 56 and 58 whereby the material lying at the site was certified without any physical ground check.

By this act, the said MES-186749 Shri MC Gupta, AEE B/R (now EE) failed to maintain devotion to duty, and thus contravened Rule 3(1)(ii) of CCS(Conduct) Rules, 1964.

ARTICLE - II

MES-186749 Shri MC Gupta, AEE B/R (now EE) while functioning as AGE B/R-III GE (P) No.1 Naval Air Station, Arakkonam during the period from Oct '88 to Apr '92 failed to perform his duty in that he prepared incorrect RARs from 59th RAR to 63rd RAR and certifying the quantities of boulders lying at site as correct without any proper documentation and improper application of rates for the white boulders lying at site. By this act, he failed to maintain devotion to duty, and thus contravened Rule 3 (1)(ii) of CCS(Conduct) Rules, 1964.

*Alfred
Jair
Advocate*

ANNEXURE - II

STATEMENT OF IMPUTATIONS OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF ARTICLES OF CHARGES FRAMED AGAINST MES -186749 SHRI MC GUPTA, EE, THEN AGE B/R-III, GE(P) No.1, NAS, ARAKKONAM

ARTICLE I

MES-186749 Shri MC Gupta, AE B/R (now EE), while functioning as AGE B/R-III GE (P) No.1 Naval Air Station, Arakkonam during the period from Oct 88 to Apr 92 as Engineer-in-Charge of CA No.CEMZ/Ark/07 of 1988-89, he prepared incorrect RARs bearing numbers 7, 13, 14, 33, 40, 43, 54, 56 and 58 wherein the material lying at site was certified without any physical check being carried out on ground, resulting in incorrect and overpayment being made to the contractor.

Shri MC Gupta, as offg GE/offg AGE made payments in 9 in number RARs ie., 7th RAR, 13th RAR and 14th RAR, 33rd RAR, 40th RAR 43rd RAR, 54th RAR, 56th RAR and 58th RAR. At no RAR stage, Shri MC Gupta did personally verify or check the contractor's material lying at site. He did not go to the site physically. He allowed the overpayment on boulders incorrectly/over assessed on lorry load basis by the Engineer in charges. Thus, he failed in his duties as an Engineer-in-Charge (offg capacity) and as an offg Garrison Engineer.

By this act, the said MES-186749 Shri MC Gupta, AEE B/R (now EE) failed to maintain devotion to duty, and thus contravened Rule 3(1) (ii) of CCS(Conduct) Rules, 1964.

ARTICLE - II

MES-186749 Shri MC Gupta, AEE B/R (now EE), while functioning as AGE B/R-III GE (P) No.1 Naval Air Station, Arakkonam during the period from Oct 88 to Apr 92 as Engineer-in-Charge of CA No.CEMZ/Ark/07 of 1988-89, he prepared incorrect RARs from 59th RAR to 63rd RAR, certifying the quantities of boulders lying at site as correct without any documentation and improper application of rates for the white boulders lying at site.

Shri MC Gupta compiled the RARs from 59th RAR to 63rd RAR. As per 63rd RAR, the payment was made for 86,000 Cubic metre of boulders lying at site. Shri MC Gupta failed to verify this quantity at the site. At no stage Shri MC Gupta did verify the contractor's material lying at the site from 59th to 63rd RAR. Had Shri MC Gupta made sincere efforts to check physically the quantity of boulders lying at site, the overpayment to the contractor could have been avoided. In the second vigilance check carried out by CEMZ it was observed that the quantity of white boulders and

*Alister
Jus
Advocate*

23

blue boulders at site was termed as 'hard granite' boulders and a uniform rate of Rs.95 per cubic metre was allowed.

'Blue boulders' were used in concreting and bituminous work, for which the contractor quoted percentage above SSR while 'white boulders' were used in WBM for which the contractor had quoted rates as per SSR. The rates for blue boulders and white boulders were Rs.95.00 and Rs.52.40 per cubic metre, respectively. Shri MC Gupta made improper application of rate and paid at a uniform rate of Rs.95 per cubic metre even for 'white boulders'.

By this act, the said MES-196749 Shri MC Gupta, AEE B/R (now EE) failed to maintain devotion to duty, and thus contravened Rule 3 (1) (ii) of CCS(Conduct) Rules, 1964.

9/b

ANNEXURE - III

**LIST OF DOCUMENTS BY WHICH THE ARTICLES OF CHARGES
FRAMED AGAINST MES -186749 SHRI MC GUPTA, EE, THEN AGE B/R-
III, GE(P) No.1, NAS ARAKKONAM**

1. Proceedings of the Board of Inquiry held at INS Rajali by the order FOC-in-C Eastern Naval Command, Vishakhapatnam to investigate alleged overpayment to contractor M/s Atlanta Construction Company (India) Pvt Ltd in respect of CA No.CEMZ/Ark/07 of 88-89.

ANNEXURE - IV

**LIST OF WITNESSES BY WHICH THE ARTICLES OF CHARGES
FRAMED AGAINST MES -186749 SHRI MC GUPTA, EE, THEN AGE B/R-
III, GE(P) No.1, NAS ARAKKONAM**

NIL

Alaska
Sauri
Kavate

50

Central Vigilance Commission

ONX

CONFIDENTIAL
Retirement Case
Out Today

In facts and circumstances of the case the Commission would concur with the proposal of the department and give its first stage advice to initiate penalty of token recovery of pecuniary loss in terms of item iii of Rule 11 of CCS (CCA) Rules, 1965 on Sh VO Srinivasan, AGE, B/R and Sh MC Gupta, EE.

2. Receipt of the Commission's advice, along with department's file C-13011/3/VIG-II/2002 and records of the case, may be acknowledged. Action taken in pursuance of the advice may be intimated to the Commission.

(Signature)
(RK Bajaj)
Director

Ministry of Defence (Sh RP Bagai, JS/CVO), North Block, New Delhi.

CVC's UO No. 001/DEF/103 dated 24 May 2002

24 MAY 2002

Encl: As above.

(+1 L/F + 2 Rep/B)
20/5/02

(Signature)
28/5

(Signature)
20/5/02
20/5/02
45/57

(Signature)
29/5

485/57
28/5/2002

CONFIDENTIAL

ANNEXURE - 5 series

C/102/Offrs/135/E1C

07 Aug 2002

E-1C SECTION

DISCP : MES-186149 SHRI MC GUPTA, AE
B/R (NOW EE)

1. MOD Memorandum No C-1304/3/D(Vig-II)/2002 dt 12 Jun 02 recd under Southern Command Pune letter No 130806/MZ/2/477/E1D dt 10 Jul 2002 through Western Command Chandimandir letter No 31000/972/8/E1D(I) dt 29 Jul 2002 alongwith CVC UO No 001/DEF/103 dt 24 Mar 2002 communicating the commission's first stage advice are forwarded herewith.

2. Dated ack in token of having recd above documents may please be sent to this sec in quadruplicate for ~~on~~ onward submission to CE Chandimandir as directed.

Shri MC Gupta, EE
DEVB CBR
CWB COR Palam

Encls : (As above)

Copy to :-

HQ CE(AF)WAC Palam

- For infor wrt HQ CE WC Chandimandir letter cited above please.

(Signature)
(AS Chandari)
Adm Officer
For CWE

CONFIDENTIAL

12/5

Attested
Sub.
Admiral

29

ANNEXURE - 6

MCG/ARK/ 12 /Pers

24 Oct 2002

From : MES-186149
MC Gupta, EE
IDSE, DCWE(B/R),
(Air Force) Palam, Delhi

(ON T/D TO CHINNAI)

31

To : CWE (AF) Palam
Delhi Cantt, Delhi-10

DISCP: MES-186149 SHRI MC GUPTA, AEE B/R (NOW EE): REPLY OF CHARGE SHEET
CONSTRUCTION OF RUNWAY AT NAS ARAKKONAM

Sir,

1. Refer your letter No C/102/Ofirs/135/EIC dated 07 Aug 2002 and movement order No 1565-A/312/E1B dated 09 Oct 2002 issued to see the documents at CWE (Navy) Chennai.

2. I do not accept the charges received vide your letter under reference. Upto now whatever reply I had given was based on my memory and some data's available with me. Since now I have studied the complete documents, I hereby submit my detailed comments on charge sheet served vide your letter under refer for your kind and sympathetic consideration.

3. It is requested that the charges may be settled in view of my detailed reply enclosed at Appx 'A' and 'B' alongwith supporting documents.

Thanks;

Yours faithfully,

Enclosure: (Appx 'A' Page Nos 02 only,
Appx 'B' Page Nos 01 to 19 &
Supporting documents P-01 to P-100)

(M C Gupta)

Copy in advance to :-

1. Secretary,
Govt of India
Ministry of Defence, New Delhi

- For info & necessary action alongwith enclosures as above

2. E-in-C's Branch, E1D(D&V)
Army HQ, DHQ PO
New Delhi - 11

- do -

3. CE Southern Command, Pune

- do -

4. Chief Engineer (Navy)
Station Road
Visakhapatnam -04

- do -

5. CWE(Navy) (By hand)
Chennai - 09

- do -

replied 9/11 33 RAR released 36 RAR

Attested
Full
Signature

APPX 'A'

PARAWISE REPLY OF ANNEXURE I OF CHARGE SHEET

CHARGES -	REPLY
1	2

ARTICLE - I

MES-186149 Shri MC Gupta, AEE B/R (now EE), while functioning as AGE B/R-III GE (P) No 1 NAS, Arakkonam during the period from Oct 88 to Apr 92 fail to perform his duty in that he prepared incorrect RARs No 7, 13, 14, 33, 40, 43, 54, 56 & 58 whereby the material lying at site was certified without any physical ground check.

By this act, the said MES-186149 Shri MC Gupta, AEE B/R (now EE) failed to maintain devotion to duty and thus contravened Rule 3 (1) (ii) of CCS(Conduct) Rules 1964.

1. I totally disagree with the charge. Charge is neither correct nor it specifies the amount of the over payment by me in each RAR. The charge should be specific and clearly stating the amount of over payment in each RAR so that specific reply can be given.

2. As AGE B/R-III I had not prepared any of the these RAR since the responsibility for preparation of RAR and to check the material lying at site for whole project was of AGE B/R-II as per office order issued by GE (Office order could not be provided to me during examining of documents as record of E1 during that period is neither available in GE office nor CWE office). However it is submitted that RAR No 33 was prepared by me as Offg AGE B/R-II while he was on leave.

3. For detailed reply please refer reply of article I of annexure II.

ARTICLE - II

MES-186149 Shri MC Gupta, AEE B/R (now EE), while functioning as AGE B/R - III, GE (P) No 1 NAS Arakkonam during the period from Oct 88 to Apr 92 failed to perform his duty in that he prepared incorrect RARs from 59th RAR to 63rd RAR and certifying the quantities of boulders lying at site as correct without any proper documentation and improper application of rates for the white boulders lying at site.

By this act, the said MES-186149 Shri MC Gupta, AEE B/R (now EE) failed to maintain devotion to duty and thus contravened Rule 3 (1) (ii) of CCS (Conduct) Rules 1964.

1. I totally disagree with the charge. Charge is neither correct nor it specifies the amount of the over payment by me in each RAR. The charge should be specific and clearly stating the amount of over payment in each RAR so that specific reply can be given.

*Attestd
Jain
Acharya*

100

1	2
	<p>2. It is submitted that the responsibility of preparation of RAR and payment of material lying at site for whole project was of AGE B/R-II. After 58th RAR Shri VO Sreenivasan, AGE B/R-II was relieved on permanent posting. He handed over the charge to Shri SK Mishra, AGE B/R-I on 03 Oct 91 without handing over of boulders specifically as has been agreed by him also (Refer P-69). On 14 Oct 91 I was made responsible for measurement of boulders and on 07th Oct 91 for preparation of RAR (Refer P-68). Therefore I had to ^{L assumed}assumed the charge of boulders based on records available and physical check by me to the extent possible. Since no material came at site during this period maintenance of document was not required except the quantity of crushed material used in work done to reduce the quantity of boulder, which had been entered in register. Since no white boulders was available as per record and if it was supposed to be available the rate paid was correct and explained in article-II of annexure-II at Appx 'B'.</p> <p>3. For detailed reply please refer reply of article II of annexure II.</p>

PARAWISE REPLY OF ANNEXURE II OF CHARGE SHEET

CHARGES	REPLY
1	2

ARTICLE - I

MES-186149 Shri MC Gupta, AEE B/R (now EE), while functioning as AGE B/R-III GE (P) No 1 NAS, Arakkonam during the period from Oct 88 to Apr 92 as Engineer-in-Charge of CA NO : CEMZ/ARK/07 of 1988-89, he prepared incorrect RAR's bearing No 7, 13, 14, 33, 40, 43, 54, 56 & 58 wherein the material lying at site was certified without any physical check being carried out on ground, resulting in incorrect and over payment being made to the contractor.

1. ^{a)} I totally disagree with the charge. Charge is neither correct nor it specifies the amount of the over payment by each RAR. The charge should be specific and clearly stating the amount of over payment in each RAR so that specific reply can be given.

b) Refer para 2 of Article I of Annexure I at appx 'A'

2. Before reply I want to submit the following about the responsibilities & Possibilities of physical measurement for your kind and sympathetic consideration: -

(a) Responsibilities assigned by GE (P) No 1 : When the work physically commenced, the responsibilities were distributed to three Sub Divns as under: -

(i) AGE B/R-I : Mr. N Sanjeev was the Engineer-in-Charge of Sub Div-I. He was made responsible for execution of portion of runway i.e., from chainage 2400 Mtrs onwards. He was also made responsible for the accounting of complete material lying at site including boulders and preparing RAR after taking work done statements from other two Sub Divns.

(ii) AGE B/R-II : Mr. VO Sreenivasan was the Engineer-in-Charge of Sub Div-II. He was made responsible for execution of full taxi-track and dispersals.

(iii) AGE B/R-III : I was the Engineer-in-Charge of Sub Divn-III. I was made responsible for execution of portion of runway i.e., from chainage 0 to 2400 Mtrs and drainage of whole runway area.

(iv) After commencement of work boulders lying at site in first. Six RARs were prepared by Mr. N Sanjeev, AGE B/R-I as per responsibility given in Para 2(a) (i) above. From seventh RAR, the responsibility for payment of boulders lying at site and preparation of RAR was transferred to AGE B/R-II Mr. VO Sreenivasan by GE (P) No 1. He continued to make payments for boulders till the 58th RAR, when he was posted out from Arakkonam. From 59th RAR onwards the responsibility of measuring the material lying at site and preparation of RAR was given to AGE B/R-III Shri MC Gupta vide office order No 45 dated 14 Oct 91 (copy enclosed P-68).

102

1	2
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(v) Thus I was only responsible for measuring material lying at site from 59th to 63rd RAR only as Engineer-in Charge as per office orders issued by GE (P) No 1.

In this connection Para 11, 12, 16 & 22 on pages 175 to 178 of proceedings of staff C of I may be referred (copy enclosed P 1 to P 4).

(b) Possibility of physical measurement during officiating capacity

The following is submitted for your kind consideration: -

- (i) Exhibit No 6 of staff C of I: Refer para 14 of BOO to prepare the inventory of completed and incomplete works executed by M/s Atlanta Constructions Co (I) Pvt Ltd (Copy enclosed P-5 to P-6) which is reproduced below:-

Details are attached at appx 'H' (Copy enclosed P-7). Quantity given against S.No 1 to 3 is based on the ~~est~~ considered for payment in last RAR. These actual measurement by board is not feasible unless these are properly stacked.

- (ii) Exhibit No 7 of staff C of I: Refer para 26 of court Commissioner report (copy enclosed P-8) line 3 onward is reproduced below :-

Since the boulders are found scattered, according to him it is impossible to get measured accurately and he requires one month time to stack the same.

- (iii) Exhibit No 20 of staff C of I: Vigilance check report at 52 & 53rd RAR: - The BOO of vigilance check took 16 days i.e., from 16 Jul 91 to 31 Jul 91 to measure the quantity of boulder at site.

- (iv) Exhibit No 25 of staff C of I: i.e., BOO convened by CWE (P), NAS, Arakkonam for assessment of boulder vide office order No 134 dated 29 Oct 91 :-

The BOO took 19 days i.e., from 30 Oct 91 to 18 Nov 91 to measure the quantity of boulder at site.

- (v) Question 113 of staff C of I proceedings from Shri K Thiruvengdam, SE (copy enclosed P-9 is reproduced below :-

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Q-113. What was the state of boulder ?

Ans When I reported the boulders were spread over an area approximately 500 Acres behind LRMR hanger and magazine area. It was not practicable to measure the quantity lying on ground, especially behind the crushers when the earth and the boulders were filled on site in erratic manner. It was not practicable to assess the quantity lying at site.

(vi) Question 458, 459 & 464 of staff C of I proceeding from Mr SK Mishra, EE(copy enclosed P-10 to P-11) is reproduced below :-

Q-458. Have you prepared any RAR during your tenure?

Ans Yes Sir, RAR No 50 and 52 were prepared in the capacity of Offg AGE B/R No II.

Q-459. Did you ensure that the contractor's material lying at site was actually there and what methods you adopted?

Ans. In this connection I would like to say that the boulders were lying in the form of irregular heaps. They were spread in appx 4 Km x 2 Km area and spread haphazardly and it was impossible to measure the quantity of boulders unless stacked in same measurable stack. It was ensured by me that no fresh advances are released to the contractor and recovery is made out of the existing advances on account of material lying at site. In this connection it is also elaborated that contract provided for fortnightly RAR and my Offg as AGE B/R II was without any formal handing/taking over and I have officiated for a few days in which the RARs incidentally fall in.

Q-464 of staff C of I(copy enclosed P-11) is reproduced below :-

Q-464. How were the boulders assessed in the court commissioner report?

L accurate measurement of the boulders unless stacked

Ans. As brought out in my earlier reply it was physically impossible to take properly as the same was scattered in large areas the court commissioner also did guess work and only assessed the approximate quantity as per my knowledge.

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(vii) Q-526 of staff C of I from Lt Col D Kundu (copy enclosed P-12) and reproduced below:-

Ans. The basic reason was that boulders were lying in most un-engineering way in thousands of number of heaps over a vast area of Naval Air Station which otherwise was humanly not possible to take proper stock of unless and until they were properly stacked as it was resorted to during handing/taking over between MES & BRO.

3. When every body speaks that it was not possible to measure the quantity of boulders at site how it was possible for me alone to verify physically the quantity of boulders in such a less officiating period when RAR was to pay fortnightly as per contract agreement and once RAR is submitted it is to be paid within 24 hrs as per instructions laid down. There used to be pressure from higher authority not to delay the payment to avoid delay of work as it is was prestigious and time bound project. A term of BOO detailed by CEMZ & CWE also took more than a fortnight period to assess the quantity. Physically measuring the boulders each time would have mean I had to suffer the quality of work which was going on in my sub division resulting failure of runway and more loss than this, causing another enquiry. Exact measurement of whole quantity which was earlier paid in last RAR by concerned AGE/GE was not possible and not required also since the concerned AGE/GE had already paid after ascertaining the quantity lying at site and there was no reason to doubt there accountability. The best alternative left with me was to restricted the quantity of boulders brought during that RAR and this could be reconciled by concern AGE/GE on their arrival and I paid the RARs accordingly.

4. As per the responsibility mentioned in Para (2) above the responsibility of preparation of RAR from 7th RAR to 58th RAR was of AGE B/R-II Mr VO Sreenivasan. I was supposed to forward the workdone statement of runway from chainage 0 to 2400 to AGE B/R-II for compilation as responsibility of preparation and compilation of RAR was with AGE B/R-II Shri VO Sreenivasan which I forwarded correctly in all the RARs and there is no observation on that. Further it was the responsibility of AGE B/R-II, Mr VO Sreenivasan for physical verification and checking of stone boulders brought by contractor to be included in RAR of the project as a whole. Accordingly in all the RARs referred on the charge, quantity of stone boulders was verified by AGE B/R-II and not by me as Engineer-in-Charge as AGE B/R-III. As such I cannot be held responsible for the lapse if any, of others.

5. RARs mentioned in this charge are not prepared by me as Engineer-in-Charge/Offg AGE except RAR No 33 which I prepared as Offg AGE B/R-II for few days when AGE B/R-II was on leave the detail reply for RAR No 33 is as follows: -

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RAR No 33 : This RAR was prepared by me as Offg AGE. No handing taking report was prepared nor the concerned AGE briefed me about the payment of boulder while going on leave. Earlier RAR I paid as Offg GE was RAR No 14 on 01 Aug 89. At that time boulders available as per register were 96735 Cum (copy enclosed P-13) and paid by me as Offg GE was 82036 Cum that is I did not pay any fresh arrival of material during that RAR. This RAR was prepared by me as Offg AGE. The quantity of material arrived during this RAR was not certified by me in the register as I was not sure about the quantity received during this RAR since it was not in stacked form nor it was possible for me to check on ground. The scene on ground of boulder collection was completely change from the 14th RAR paid by me as Offg-GE about ten and half month back. The quantity as per material register was increased upto $111275 + 134432 = 245698$ Cum in this RAR from 96735 Cum in 14th RAR. The boulders were spread over 1.5 Km x 3 Km Area. In this situation it was very difficult rather impossible for me to take decision as how to pay the material lying at site. The only alternative with me was that I should not pay the material brought at site during this RAR. The quantity of boulder as per register (copy enclosed P-14) is reproduce below:-

	White	Blue
(i) Fresh boulders received during RAR	$1200 \times 7.5 = 9000$ Cum	$1590 \times 7.5 = 11925$ Cum
(ii) Upto last RAR	= 102775 Cum	121125 Cum
(iii) Crushed	= (-) 500 Cum	(-) 4100 Cum
Net Total	= 111275 Cum	134423 Cum

I considered 101850 Cum of White boulder and 109700 Cum of Blue boulder i.e., total of 211550 Cum for payment (RAR copy enclosed P-15 to P-18) i.e., I restricted the quantity of boulder more than the arrival during this RAR. Since I had not considered any payment of fresh arrival of boulders during this RAR question of overpayment as boulders incorrectly over assessed on lorry load basis does not arise and the charge against me in this RAR are completely baseless.

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<p>Shri MC Gupta, as Offg GE/Offg AGE made payments in 9 in number RARs i.e., 7th RAR, 13, 14, 33rd, 40th, 43rd, 54th, 56th & 58th RAR. At no RAR stage, Shri MC Gupta did personally verify or check the contractor's material lying at site. He did not go to the site physically. He allowed the over payment on boulders incorrectly/over assessed on lorry load basis by the Engineer-in-Charges. Thus, he failed in his duties as an Engineer-in-Charge (Offg capacity) and as an Offg Garrison Engineer.</p>	<p>6. I totally disagree with the charge. Charge is neither correct nor it specifies the amount of the over payment by each RAR. The charge should be specific and clearly stating the amount of over payment in each RAR so that specific reply can be given.</p> <p>7. Refer Para 2 & 3 also.</p> <p>8. For reply of RAR No 33 which I prepared as Offg AGE B/R-II only please refer Para 4 & 5 above.</p> <p>9. I paid RAR No 7, 13, 14, 40, 43 & 54 in the capacity of Offg GE, I have not at all paid RAR No 56 and 58. Copy of RAR 56 & 58 are enclosed P-19 to P-22 which shows that these were paid by Mr VO Sreesimivasan as AGE and Major VKP Singh as GE. RAR wise reply are furnished below:-</p>
<p>By this act, the said MES-186149 Shri MC Gupta, AEE B/R (now EE) failed to maintain devotion to duty and thus contravened Rule 3 (1) (ii) of CCS(Conduct) Rules 1964.</p>	<p>(a) <u>RAR No 7</u> : This RAR was paid by me as Offg GE. I as Offg GE took a round and measured the quantity of boulders which were in stacked conditions. The quantity of boulders lying at site were matching with the quantity of boulders entered in material register maintained by AGE B/R-II but I restricted the quantity on safer side as follows: -</p>
	<p>(i) The material stacked upto 6th RAR was 22160 Cum. During 7th RAR as per record maintained by AGE B/R-II and checked by me 11025 Cum (copy enclosed P-23) which makes total of 33185 Cum of boulders. But quantity of boulders considered for payment in this RAR was 28280 Cum (RAR copy enclosed P-24 to P-28) on safer side.</p> <p>With the above facts it is stated that the charges against me in this RAR are completely false.</p>

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(b) RAR No 13 : This RAR was paid by me as Offg GE. No proper handing/taking over was done nor anything was briefed to me about boulders while going on leave by GE. Total quantity of boulders at site upto this RAR as per register maintained (copy enclosed P-29) by AGE B/R-II was as follows:-

(i)	Quantity of boulder brought during this RAR = 1650 load @ 7.5 Cum = 12375 Cum	
(ii)	Last RAR	= 81360 Cum
(iii)	Crushed quantity	= (-) 4500 Cum
	Net quantity	= <u>89235 Cum</u>

I took round of site to assess the quantity of boulder visually. I satisfied my self that this much of quantity is available on ground but exact measurement of whole quantity was not possible and not required also since concern AGE and GE's were suppose to check upto 12th RAR and there was no reason to doubt there accountability. The frequency for payment of RAR was fortnight and as per rule the payment has to be released within 24 hours and there was pressure from higher authority not to delay the RAR's to avoid delay of work as it was prestigious & time bound project. I considered 71200 Cum only (RAR copy enclosed P-30 to P-33) for payment i.e., less than the material received upto last RAR.

Therefore quantity of boulder brought during the RAR was not paid to contractor as per register maintain by AGE Mr VO Sreenivasan. With the above fact it is clear that I have not paid the fresh material brought during 13th RAR as per material register therefore question of overpayment on boulders incorrectly/over assessed on lorry load basis through this RAR does not arise and charges against me in this RAR are completely false.

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(c) RAR No 14 : This RAR was also paid by me as Offg GE. 13th RAR was also paid by me as offg GE when GE was on long leave. During 13th RAR I did not pay any material brought during that RAR and I asked contractor to stack the material to be brought in the future. Although the material entered in register is as per lorry load as per practice going on at that time, the material brought during that RAR was stacked in the area marked separately and was measured by me which was equal to the material entered in the register (Copy enclosed P-13) as follow :-

(i)	Fresh material brought during this RAR = 1600 load @ 7.5 Cum = 12000 Cum	
(ii)	Material upto last RAR =	89235 Cum
(iii)	Crushed quantity =	<u>(-) 4500 Cum</u>
	Net quantity available =	<u>96735 Cum</u>

Therefore I released 12000 Cum of boulders in this RAR.

The quantity of boulder considered for payment was 82036 Cum (copy of RAR enclosed P-34 to 37) with the above facts it is clear that during 14th RAR. I personally checked the material and did not allow the boulders incorrectly/over assessed on lorry load basis and the charges against me in this RAR are completely false.

(d) RAR No 33 : Para 5 above may please be referred.

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(e) RAR No 40th & 43rd : These RARs were paid by me as Offg GE. No proper handling/taking was done nor any thing was briefed about boulders while going on leave by GE. By now few RARs were paid by me as Offg GE/Offg AGE as stated above. I continued my way of payment that is not to pay any fresh arrival of boulders. The comparison of material as per register and considered for payment in this RARs are tabulated below (copy of RARs P-38 to P-45 and register P-46 & P-47 enclosed):-

RAR No	Boulders upto last RAR as per register (Cum)	Fresh boulder received during RAR (Cum)	Crushed quantity (Cum)	Net boulder available as per register (Cum)	Quantity of boulder consider for payment (Cum)
1	2	3	4	5	6
40	$176062 + 130425 = 306487$	825	$1900 + 1300 = 3700$	$174937 + 123625 = 303612$	$174900 + 123000 = 302900$
43	$169762 + 126425 = 296185$	1950	$2100 + 1900 = 4000$	$167662 + 125475 = 294137$	$165900 + 126100 = 292000$

From the above comparison it is clear that the fresh boulders brought during these RAR have not been considered by me for payment. When I have not paid fresh material at all question of allowing the overpayment on boulder incorrectly/over assessed on lorry load during these RARs do not arise and the charges against me in these RARs are completely false.

(f) RAR No 54th : This RAR was paid by me as Offg GE. No proper handling/taking was done nor any thing was briefed about boulders while going on leave by GE. It is pertinent to state that during 53rd RAR a huge quantity of boulders were recovered.

Quantity of boulder paid in 52nd RAR was $80600 + 138800 = 219400$ Cum.

Quantity of boulder paid in 53rd RAR was 157000 Cum.

The difference of above two RARs = 62400 Cum was recovered in 53rd RAR.

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Since no fresh material brought to site was paid instead the recovery from last RAR was made on advise of presiding officer of vigilance check question of allowing the overpayment on boulder incorrectly/over assessed on lorry load during this RAR does not arise and the charges against me in this RAR are completely false.

(g) RAR No 56 & 58 : These RARs were neither prepared by me as AGE nor paid by me as Offg GE. These RARs were prepared by Mr VO Sreenivasan as AGE & paid by Maj VKP Singh as GE. Copy of RAR signed by them is enclosed (P19 to P-22).

10(a). From the above detail it is clear that I had not at all paid any fresh material arrived during that RAR which was not in measurable condition. I restricted the payment in all the RARs paid by me as Offg capacity for few days in the interest of state which is summarized below: -

RAR No	Boulders upto last RAR as per register (Cum)	Fresh boulder received during RAR (Cum)	Crushed quantity (Cum)	Net boulder available as per register (Cum)	Quantity of boulder consider for payment (Cum)
1	2	3	4	5	6
7	22160	11025	-	33185	28280
13	81360	12375	4500	89235	71200
14	89235	12000	4500	96735	82036
33	121125+102775=223900	11400+9000= 20400	4100 + 500 = 4600	134425 + 111275 = 245698	109700 + 101850 = 211550
40	176062 + 130425 = 306487	825	1900 + 1300 = 3700	174937 + 128625 = 303612	174900 + 123000 = 302900
43	169762 + 126425 = 296185	1950	2100 + 1900 = 4000	167662 + 126475 = 294137	165900 + 126100 = 292000
54	157000	-	12250	144750	125500

(b) 56th & 58th RAR was not paid by me at all in either of capacity of Offg AGE/Offg GE.

(c) In each RAR I personally went to site and physically verified the contractors material of site but I did not allow the payment for material received during that RAR which was not in measurable condition. Therefore, I always under assessed the material.

(d) Charges therefore are incorrect and baseless.

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<p><u>ARTICLE - II</u></p> <p>MES-186149 Shri MC Gupta, AEE B/R (now EE), while functioning as AGE B/R - III, GE (P) No 1 NAS Arakkonam during the period from Oct 88 to Apr 92 as Engineer-in-Charge of CA No : CEMZ/ARK/07 of 1988-89 he prepared incorrect RARs from 59th RAR to 63rd RAR, certifying the quantities of boulders lying at site as correct without any documentation and improper application of rates for the white boulders lying at site.</p>	<p>1. I totally disagree with the charge. Charge is neither correct nor it specifies the amount of the over payment by each RAR. The charge should be specific and clearly stating the amount of over payment in each RAR so that specific reply can be given.</p> <p>5) Para 2 of Article II, Annexure I of Appx A' may also be referred.</p> <p>2. Para 2 & 3 of Article-I may also be referred.</p> <p>3. <u>Quantity of boulders :-</u></p> <p>(a) From 52nd to 54th RAR 84710 Cum of boulders were recovered from the quantity of boulders paid earlier (copy of RAR P-53 to P-60 & P-27 to P-30 & material register P-61 & P-52 enclosed). The detail of this quantity is given below: -</p> <table border="1"><thead><tr><th>RAR No</th><th>Boulders available as per material register maintained by AGE B/R-II (Cum)</th><th>Boulder paid in RAR (Cum)</th><th>Quantity of boulder restricted in RAR (Cum)</th><th>Remarks of AGE B/R-II on material register</th></tr><tr><th>1</th><th>2</th><th>3</th><th>4</th><th>5</th></tr></thead><tbody><tr><td>52</td><td>138800 + 88600 = 227400</td><td>138800 + 80600 = 219400</td><td>8000</td><td>Say 80600 Cum</td></tr><tr><td>53</td><td>137200 + 77260 = 214460</td><td>157000</td><td>57460</td><td>(i) Deduct for wastage and used at other places etc = 42200 Cum.</td></tr><tr><td>54</td><td>144750</td><td>125500</td><td>19250</td><td>(ii) Restricted to 157460.</td></tr><tr><td colspan="3">Total quantity restricted =</td><td>84710</td><td>(i) As advised by the vigilance check BOO.</td></tr></tbody></table>	RAR No	Boulders available as per material register maintained by AGE B/R-II (Cum)	Boulder paid in RAR (Cum)	Quantity of boulder restricted in RAR (Cum)	Remarks of AGE B/R-II on material register	1	2	3	4	5	52	138800 + 88600 = 227400	138800 + 80600 = 219400	8000	Say 80600 Cum	53	137200 + 77260 = 214460	157000	57460	(i) Deduct for wastage and used at other places etc = 42200 Cum.	54	144750	125500	19250	(ii) Restricted to 157460.	Total quantity restricted =			84710	(i) As advised by the vigilance check BOO.
RAR No	Boulders available as per material register maintained by AGE B/R-II (Cum)	Boulder paid in RAR (Cum)	Quantity of boulder restricted in RAR (Cum)	Remarks of AGE B/R-II on material register																											
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54	144750	125500	19250	(ii) Restricted to 157460.																											
Total quantity restricted =			84710	(i) As advised by the vigilance check BOO.																											

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(a) During 53rd RAR CEMZ detailed a BOO to Physically check the material at site. The material was physically checked repeat physically checked by presiding officer Shri Abhijit Niyogi, EE, members Shri CN Subramaniam, EE & Shri N Padmanabha, ASW alongwith the AGE B/R-II, Sri VO Sreenivasan continuously from 16 Jul 91 to 31 Jul 91. The BOO had certified that the quantity of boulder physically available at site on the date during 54th RAR was 123423.765 Cum (copy of BOO P-62 to P-67 enclosed) and the quantity of boulders paid in 54th RAR was 125500 Cum. The deficiency of boulder pointed out by BOO was already recovered in 52nd to 54th RAR as shown in Para (a) above. Therefore the quantity of boulder paid in RAR 54 was physically checked by BOO alongwith AGE B/R-II Shri VO Sreenivasan as mentioned in report also and was available on site.

(c) From 54th RAR onward no fresh material was paid in RAR instead the recovery was made by AGE B/R-II Shri VO Sreenivasan from 54th to 58th RAR as per work done.

(d) GE vide his office order No 45 dated 14 Oct 91 (copy enclosed P-68) assigned additional duties to me which is reproduced below: -

Hence forth the following duties will also be looked after by AGE B/R(P) No III: -

- (i) Measuring the material lying at site (except schedule 'B' materials) for consideration of payments in respective RARs in addition to duties assigned earlier.

(e) Since Shri VO Sreenivasan while handing over the charge to Shri SK Mishra did not hand over the charge of boulders specifically as was also agreed by Shri VO Sreenivasan during staff C of I vide Q No 389 (copy enclosed P-69) and by now he had left the station. I had to presume the charge of boulder. In the mean time contractor submitted his 59th RAR on 15th Oct 91 i.e., on very next day of GE's order by which I was assigned the duties of measuring boulders.

(f) Contractor vide above RAR claimed 126321.5 Cum of boulders. I tried to assess the quantity of boulder physically available on ground. I took around a weeks time to assess the quantity of boulder although these were lying in haphazard manner. The approx quantity of boulders available on ground was equal to the quantity of boulders paid in 58th RAR by Shri VO Sreenivasan. Therefore I restricted the quantity of boulder in this RAR after effecting the quantity of boulder consumed in work done from the boulder paid in 58th RAR i.e., 111208 Cum and submitted RAR to GE (Copy of 59th RAR enclosed P-70 to P-74) on 21 Oct 91.

(g) The quantity of boulders was again physically checked by a BOO detailed by CWE (NAS) Arakkonam vide his office order No 184 dated 29 Oct 91. Material was physically checked by presiding officer Shri B Sathiamurthy, EE, members Shri GK Srivastava, EE, Shri JK Kapoor, AGE B/R and Shri Sivadas, SA I (copy of BOO report enclosed P-75 to P-77).

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The report of BOO indicates that boulders at the end of 59th RAR available on site was equal to 111375 Cum whereas quantity of boulder Paid in 59th RAR was 111208 Cum (copy of 59th RAR enclosed P-74).

(h) After above check no material came on site nor any additional payment was done in any RAR for fresh material. The boulder was paid after recovering more than the quantity of boulder consumed in work done. Comparison between amount of boulders consumed in work and amount of boulders recovered in 59th to 63rd RAR is tabulated below: -

QUANTITY OF WORKDONE IN CUM TAKEN IN

Sl NO	Irwm No of Sch 'A' involving use of boulders	Description of items	59 RAR	60 RAR	61 RAR	62 RAR	63 RAR
1	2	3	4	5	6	7	8
1.	14	WBM 100	145	17	-	-	-
2.	17	WBM 75	112	83	-	-	-
3.	18	PQC 400 & PQC 200	319	338	203	-	-
4.	46	PCC 1:4:8	15	-	120	637	424
5.	47	PCC 1:3:6	-	-	28	13	-
6.	59	PQC 1:1 ½ :3	-	-	-	-	-
7.	29	BM 140	15	366	87	-	-
8.	30	BM 60	35	-	-	-	-
9.	31	BC 75	30	10	-	-	244
10.	33	AC 50	592	206	658	116	730
11.	34	AC 40	13	-	-	195	-
12.	35	PC 25	-	43	-	35	119
13.	Qty of boulders used in above works = 1.35(1.45 x WBM/WMM + 1.0 Concrete + 1.30 asphaltic work)		2156	1923	1781	1485	2491
14.	Amount of recovery due on account of boulders consumed in work @ of 95/- Per Cum.		204834/-	182654/-	169226/-	141049/-	236608/-
15.	Amount actually recovered in respective RARs		216095/-	713244/-	348014/-	602330/-	323200/-

Comparison of amounts in Sr No 14 & 15 above indicates that more recovery has been effected in each RAR to safeguard the Govt interest.

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(j) The quantity of boulder paid in 63rd RAR as 86000 Cum was finally handed over to AGE B/R I Shri SK Mishra Handing/Taking over note is enclosed (P-78 to P-81). Para 7 and item 36 & 37 of Handing/Taking report may be referred.

(k) Report of cancellation board also shows that boulder available on site was equal to 86000 Cum.

(l) After handing over the charge to Shri SK Mishra I shall be not held responsible for any deficiency/pilferage which took afterward.

4. Documentation :

Neither any fresh material came on site nor any payment for fresh material was made after 52nd RAR. Once the quantity of boulder was physically verified by vigilance board detailed by CEMZ, alongwith AGE B/R-II Shri VO Sreenivasan verified by me on ground & BOO detailed by CWE (NAS) Arakkonam and the material was available on ground, the recovery of boulders was effected more than the quantity of boulders consumed in the work done. The quantity of boulders crushed was entered in register. Other than this no documentation was required from 59th to 63rd RAR.

5. Application of rate for white boulders.

After payment of 53rd RAR there was no white boulder left out on ground. Therefore question of improper rate to white boulder does not arise. Following points may be considered for my justification as documentary proof:-

(a) Report of vigilance check ordered by CEMZ letter No 84022/1141/E8 dated 18 Jul 91 and 84022/1155/E8 dated 22 Jul 91(copy enclosed P-62 to P-67) shows only one type of boulder. The quantity of boulder measured by this BOO does not differentiate in white & blue.

(b) BOO detailed by CWE to measure quantity of boulder lying at site also specify only one type of boulder (copy enclosed P-75 to P-77).

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(c) Also as per material lying register quantity of blue boulder at the time of 52nd RAR was 138800 Cum and 1600 Cum was crushed during 53rd RAR i.e., balance blue boulder at 53rd RAR = 138800 - 1600 = 137200 Cum. Quantity crushed during 54th RAR was 12250 Cum therefore balance blue boulder at 54th RAR = 137200 - 12250 = 125500 Cum which was considered for payment @ 95/- per Cum in 54th and subsequent RARs upto cancellation of contract. Refer copy of material register for RAR 52nd to 54th (P-52 & P-61).

(d) Questions arise where the white boulder gone. For this, reply given on vigilance check vide CWE letter No 108/221/E1C dated 18 Nov 91 Copy enclosed P-82 to P-91 may be referred which shows that about 33163 Cum of boulders were wasted and 50, 246 Cum was lying scattered/embedded in ground (Para 'E' P-88). This has been explained in detail. Most of these quantities can be assumed as white boulder. This quantity was recovered in 53rd & 54th RAR. It is also pointed out that after cancellation of contract also only one type of boulder has been mentioned during:-

- (i) Risk & cost board. - Refer Appx 'H' of report (P-7).
- (ii) Court commissioner report. - Refer Para 33 of report (copy enclosed P-8A).
- (iii) While handing over the boulder to BRO.

(e) Therefore as per record also only blue boulder was lying on ground. Still it can be presumed that there may be some quantity of white boulder which has certainly paid @ 95/- per Cum by concerned AGE & GE. It was already decided during 53rd RAR by concerned GE & AGE to pay the boulder at uniform rate the reason of which had been justified in detail by GE during technical court of inquiry ordered by CESC Pune vide convening order No 260505/6/Con/E2W & P dated 20 Mar 92 (Copy enclosed P-92 to P-96) & reproduced below:-

Justification for change in rate of Boulders

Granite stone were being paid under two categories upto 52nd RAR.

- (a) Blue granite @ Rs.95.00 per Cum.
- (b) White granite @ Rs.52.40 per Cum.

The above rate at (a) is SSR rate + contractors percentage. The rate at (b) is only SSR rate, contractor % was not added because the white granite was originally meant for WBM and contractors quoted rate was more or less at par with SSR.

As per contract clause No 1 in PS section-II in page 117 of CA, the rates in SSR Part-II are not applicable to this contract. However, SSR rate was paid for white boulder so as to safeguard Govt interest.

Generally, nowhere the granite boulders are classified as Blue or white, SSR specifies quarried rubble stone only contract also, does not specify the boulders by colour. The contractor vide his letter dated 30 Jun 91 requested for payment of a uniform rate of Rs.95/- Cum for both types of boulders. As the WBM has been changed to WMM and the white boulders were being used for WMM and other concrete works also, contractor's demand for pay of the same rate for both type of boulders was considered genuine. The market enquiries for the rate of boulders were carried out. It was found that rate for Blue boulders was Rs.120/- per Cum and that for white boulders was in the range of Rs.90/- and above.

The quantity of white boulders lying at site was very less as compared to blue boulders. Average rate was worked out as $\frac{86 + 120}{2} = \text{Rs.103/- per Cum}$. The major work remaining at this stage was concrete and asphaltic concrete. Therefore application of contractors percentage over basic rate was considered justifiable.

In this connection, it is also brought out that SSR Part-II 1985, page 349 section - road work, item 3777 indicates that "quarried rubble stone or broken nullah boulders, in large pieces for soling/sub base of load" will cost Rs.58.80 per Cum. However, the contractor was being paid at a rate of Rs.52.40 as per item 568 of SSR Part-II for white boulders till 52nd RAR. The percentage over SSR was applied at Rs.52.40 and not Rs.58.80. The market rate of boulders kept on going up. However, these rates were not revised and rate paid was kept seem to safe guard Govt interest.

Average percentage over SSR 1985 rate as quoted by contractor for BM, AC, PCC and WMM were 112.02, 93.02, 39.63 & 21.77 respectively. These the average percentage over SSR rate works out to $\frac{112.02 + 93.02 + 39.63 + 21.77}{4} = 66.86\%$.

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Thus the rate for the combined boulder that could have been paid was $58.80 \times 1.6686 = \text{Rs.}98.11$. Though this cost of Blue and white boulders kept on going up, but the rates were not revised to safeguard Govt interest.

It is also submitted that the work was checked by technical examiner on 18 Jan 92 and subsequent dates and no observation with regard to rate applied for payment of boulders was raised by TE and therefore, it is implied that the TE has accepted the revised rate for boulders. In this connection it is also submitted that TE/ATE from STE, Southern Command Pune had visited the site on two occasions earlier. DDGTE from Army HQ had also visited the site.

The quantities of boulders were restricted to Rs.1,25,000/- during 54th RAR as per directions of vigilance check carried out by CE Madras Zone through a Board of officers. It is, however submitted that no directions were issued with regard to rate for boulders considered in 53rd RAR either by Board of Officers or Chief Engineer Madras Zone. While ascertaining the quantities of boulders, the vigilance board has not identified the Blue/White boulders, separately. Hence it is implied that this Board of Officers and Chief Engineer, Madras Zone had also agreed to the rate of Rs.95/- being for boulders during 53rd RAR.

A Board of Officers was ordered by CWE (P) NAS Arakkonam during Oct 91 for checking this quantity of boulders lying at site. This board also did not raise any objections upon the rate of boulder being paid after 53rd RAR.

(f) The rate of white boulder @ 95/- per Cum has also been justified by technical C of I detailed by CESC Pune convening order No 260505/6/Con/E-2W & P dated 20 Mar 92 in Para 15 to Para 19(copy enclosed P-97 to P-100). Para 19 of report is reproduced below: -

(i) "It can be seen that there is no excess rate allowed in the RARs upto 53rd RAR". In RAR 53 the white boulders were paid @ 95/- per Cum and the same rate was continued upto 63rd RAR i.e., upto cancellation of work.

(g) Hence, the rate applied for white boulder @ Rs.95/- Cum in these RARs were correct and in order where as contractor was paid less upto 52nd RAR.

(h) The above reply shows that charges are baseless.

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<p>Shri MC Gupta complied the RARs from 59th RAR to 63rd RAR. As per 63rd RAR, the payment was made for 86,000 Cum of boulders lying at site. Shri MC Gupta failed to verify this quantity at the site. At no stage Shri MC Gupta did verify the contractor's material lying at the site from 59th to 63rd RAR. Had Shri MC Gupta made sincere efforts to check physically the quantity of boulders lying at site, the overpayment to the contractor could have been avoided. In the second vigilance check carried out by CEMZ it was observed that the quantity of white boulders and blue boulders at site was termed as 'hard granite' boulders and a uniform rate of Rs.95 per Cum was allowed.</p>	<p>6. I totally disagree with the charge. Charge is neither correct nor it specifies the amount of the over payment by each RAR. The charge should be specific and clearly stating the amount of over payment in each RAR so that specific reply can be given.</p> <p>7. <u>Physical verification of quantity of boulders.</u></p> <p>(a) Para 2 & 3 of article I may be referred.</p> <p>(b) Para 3(a) to (l) above may be referred for detailed reply.</p> <p>(c) The material at ground was physically checked by myself and so many engineers i.e., presiding officer and members of board of officer detailed by CEMZ & CWE (NAS) Arakkonam as mentioned in Para 3(b) and 3(g) above and the quantity physically verified by them was matching with the quantity of corresponding RARs. No fresh material was paid during these RARs but recovery of boulders more than the quantity of boulder consumed during RAR was effected as mentioned earlier. The above fact shows that 86000 Cum of boulders paid in 63rd RAR was available and the same was handed over to AGE B/R-I Shri SK Mishra by me. Further responsibility rest with Shri SK Mishra for any deficiency/pilferage of material lying at site. The risk & cost board also shows that material available was 86000 Cum.</p>
<p>'Blue boulders' were used in concreting and bituminous work, for which the contractor quoted percentage above SSR while 'white boulders' were used in WBM for which the contractor has quoted rates as per SSR. The rates for blue boulders and white boulders were Rs.95.00 and Rs.52.40 per Cum, respectively. Shri MC Gupta made improper application of rate and paid at a uniform rate of Rs.95 per Cum even for 'white boulders'.</p>	<p>8. <u>Rate of white boulder:</u> - For detailed reply please refer Para 5 above.</p> <p>9. I totally disagree with the charge. Charge is neither correct nor it specifies the amount of the over payment by each RAR. The charge should be specific and clearly stating the amount of over payment in each RAR so that specific reply can be given.</p> <p>10. Para 5 above may be referred for detailed reply.</p> <p>11. The above reply clearly specifies that charges are baseless and can not be proved.</p>

*Attested
Shri.
Advocate*

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<p>By this act, the said MES-186149 Shri MC Gupta, AEE B/R (now EE) failed to maintain devotion to duty and thus contravened Rule 3(1) (ii) of CCS(Conduct) Rules 1964.</p>	<p>12. I did my work sincerely with full responsibility to the entire satisfaction of my seniors with the result I could achieve 100% target assigned to me i.e., portion of runway for which I was Engineer-in-Charge was completed 100% whereas overall progress of project was about 60% only at the time of cancellation of contract. This fact can be seen from the ACRs earned during that period.</p> <p>13. During this period I worked round the clock as cement concrete work used to be progress in night due to high temp in day and bituminous work used to be progress in daytime. This resulted a outstanding quality of work known to every body and commendation certificate was awarded to me only, by FOC-in-C on recommendation of concerned GE/CWE/CE.</p> <p>14. It seems that the staff C of I has blamed me for overpayment of boulders based on quarry made from different staff and officers, court commissioner report and quantity of boulders handed over to BRO without reference to procedures, MES rules and regulations or going through documentary proof which I am submitting with reply to charges given above.</p> <p>15. I am confident that If my reply is examined properly my version will be appreciated and accepted that I have faithfully and honestly carried out the duties and functions of Engineer-in-Charge and Offg GE strictly as per rules and regulations. I therefore request you to close this case and save me from further harassment at this stage of my carrier when I am due for promotion to Superintending Engineer in next DPC.</p>

No. C-13011/3/D(Vig.II)/2002
 Government of India
 Ministry of Defence
 New Delhi, the 19th November, 2004

Order

WHEREAS disciplinary proceedings under Rule 16 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, were initiated against MES 186149 Shri MC Gupta, then AGE (B/R), now EE, vide Ministry of Defence Memorandum No.C-13011/3/D(Vig.II)/2002, dated the 12th June 2002, whereunder the Statement of Articles of Charge and the Statement of Imputations of Misconduct or Misbehaviour were also served on him and he was afforded an opportunity to make a submission/statement of defence against the charges levelled against him;

AND WHEREAS on denial of charges by the said Shri MC Gupta and based on the submission made by him, it has transpired that the boulders were not stacked and measured and the payments were released without any physical ground check of the material lying at the site;

AND WHEREAS the President after a careful consideration of the Article of Charges, the submission made by the said Shri MC Gupta, the evidence on record and all the facts and circumstances of the case, has arrived at the conclusion that a minor penalty should be imposed on the said Shri MC Gupta, then AGE (B/R), now EE, MES, for incorrect preparation of RARs (from 59th RAR to 63rd RAR) without any proper documentation/ transparent accounting of boulders and for releasing payments without conducting any physical ground check;

NOW, THEREFORE, the President imposes the penalty of 'Censure' on the said Shri MC Gupta, then AGE (B/R), now EE, MES.

BY ORDER AND IN THE NAME OF THE PRESIDENT

(3)

(Sunil Uniyal)

Under Secretary to the Govt. of India

MES 186 149 Shri MC Gupta, EE, MES – through EinC's Branch EID

Copy to: (i) Jt. DG D&V EinC's Branch

(ii) Shri SC Jarodia, Dir, CVC wrt their UO No. 001/DEF /103 dtd 24.5.02

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u.s. (Vig)

Attested
 for
 Advocate

To: The Hon'ble President
Government of India
Ministry of Defence
New Delhi.

REVIEW PETITION

Respected Sir,

1. Refer G of I, MOD letter No. C-13011/3/D (vig.II)/2002 dated 19th Dec 2004 vide which I have received penalty of censure.
2. It is submitted that in spite of my sincere hard work, devotion, appreciation letter, availability of documents in my favour, I have been imposed penalty of censure for working as AGE B/R i.e. engineer-in-charge **From 59th RAR to 63rd RAR** for the following reasons:
 - (a) **Incorrect preparation of RARs**
 - (b) **Improper documentation/transparent accounting of boulders**
 - (c) **Releasing payments without conducting any physical checks.**I submit additional and factually correct information for sympathetic consideration and review of reasons leading to award of penalty of censure for sake of natural and fair justice as described in subsequent paras.
3. It is factually correct to state that neither single boulder had been received at site as can be verified from material register (Ex P-88 to 90) nor any payment was released on account of boulders in any of RAR from 59th to 63rd by me for which I have been imposed penalty.
4. It is submitted that the basis on which my disciplinary case was initiated is itself not correct. Disciplinary case against me was initiated on the recommendation of staff C of I.

Alfred
Jnr.
Schwede

Staff C of I had made me responsible based on report of Tech C of I without going through the facts and figures, rules and regulations. In this regard following facts are produced for your consideration:

It is submitted that a huge quantity of boulders viz. 40400 cum and 74110 cum were released in RAR No 27 and 36 respectively (Ex P-92). These RARs were processed by VO Srinivasan as AGE and paid by Maj VKP Singh as GE. Boulders quantities 13600 cum, 62400 cum and 31,500 cum respectively (Ex P-93) were subsequently recovered in 52, 53 and 54th RAR (Ex P-38 to 48). Tech C of I had found an over payment of Rs 16.72 lakhs on boulders made at 52nd RAR stage, refer Para 28 of Tech C of I (Ex P-17). I was made responsible for this over payment vide Para 36 (a) (iii) (Ex P-20,21) whereas 52nd RAR (Ex P-38 to 41) was processed and signed by Sh SK Mishra as Offg AGE (Ex P-40, 41) and passed by Maj VK P Singh as GE. Measurement and payment of boulders pertained to another sub-division headed by Sh VO Srinivasan and not mine. Therefore I was not at all associated with the payment of above RAR. **It is also sad to note that the Tech C of I has factually erred on this account and had erroneously pointed out my name instead of SK Mishra in their report.**

5. It is submitted that Tech C of I has seen the documents up to 63rd RAR (Ex P-19) (before date of assembly of Tech C of I) and arrived at conclusion that Sh VO Srinivasan, AGE was responsible for laxity in documentation. Refer para 36(d) of C of I (Ex P-21). However I am surprised to see that charges of laxity in documentation as proved and recommended by Tech C of I for Sh VO Srinivasan, AGE (Ex P-21) has been attributed to me without any basis.

6. Besides above, I submit following additional information for each allegation as under:

(a) **Incorrect preparation of RARs:**

I had taken over work from 59th RAR and was Engineer-in-charge upto 63rd RAR. It is submitted that the responsibility for preparation of RAR lies on contractor. Contractor is supposed to prepare the bill and claim the advance payment on IAFW 2263. In this connection Para 460 (Ex P-75) & Para 468 (Ex P-76) of MES

*Attestd
Advocate*

Regulation under section 25: Bills and payments to contractors and para 64 of IAFW 2249 (Ex P-78) may be referred which are reproduced below:-

Para 460: "Bills will be prepared by contractors who will be required to submit a certified true copy with the original bill" (Ex P-75)

Para 468: "Claims for advance payment will be preferred by contractors in duplicate on IAFW 2263. The Engineer-in-Charge will assess the cost of work done and materials collected and will record the charges against the contractor with a view to verifying the reasonableness of the payment claimed by him. The GE will verify the claim by personal inspection". (Ex P-76)

Para 64 of IAFW 2249: "Advance on account:- The contractor may at interval of not less than 30 days submit claims on IAFW 2263 for payment of advances on account of work done and of materials delivered in connection with measurement and lump sum contracts."

These RARs were not prepared by me but were prepared by contractor on IAFW-2263 and submitted to department as on dated 15 Oct 91 (Ex P-49), 20 Nov 91 (Ex P-54), 16 Dec 91 (Ex P-59), 10 Feb 92 (Ex P-64) and 02 Mar 92 (Ex P-69) respectively. I processed the RARs and performed the duties of Engineer-in-charge by carrying out following functions as per RMES para 468 for each RAR;

- (i) Assessed the cost of work done during RAR period by physical measurement and recorded correctly in work done statement in each RAR.
- (ii) Assessed the cost of materials correctly by physical check and same has been verified by independent BOO.
- (iii) Verified the reasonableness of payments after physical checking on ground.

The performance of my duties has lead to reduction in quantities and amount claimed by contractor in RARs which are facts recorded on RARs. Hence, it is factually established that RARs were prepared by contractor and I as

Engineer-in-charge has processed the RARs in totally correct and as per rules leading to reduction in quantities and amount.

Therefore I should not be punished for the act for incorrect preparation of RAR as these RARs were prepared by contractor according to his responsibility given in RMES para 460 and 468, which were corrected by me while performing duties of Engineer-in-charge.

(b) **Improper documentation/transparent accounting of boulders:**

(i) Material register maintained up to 58th RAR by AGE Sh VO Srinivasan was continued from RAR No. 59th to 63rd. Pages of material register from RAR 58th to 63rd are enclosed as (Ex P-88 to 90) which shows that no boulder was procured by contractor during 59th to 63rd RARs. These RARs only show the quantities of boulders available at site, which were physically checked and also calculated based on material lying at site paid up to 58th RAR by AGE Sh VO Srinivasan and GE Maj. VKP Singh less quantity of crushed boulders / boulders used in work done against different items. Quantities of boulders crushed were entered in material register (Ex P-88 to 90).

Since no boulders arrived at site and only recovery of boulders was effected during these RARs as explained above, the documentation was more than adequate.

(ii) It is further submitted that all the works cannot be looked after by one person therefore different cadres have been given different responsibilities and duties in MES Regulation. It will not be in order to make one person responsible for which responsibility lies on other. In this connection following Para/tables of MES Regulation may be referred –

Table (M) : Duties of Supdt B/R, E/M Gde I (Ex P-77)

Para 1: - "The duties of Supdt B/R, E/M Gde I are primarily to assist Engineer-in-charge in his duties for execution of works efficiently. He

will however be responsible for the performance of following duties in particular:-

Para 1 (ac): --Measurement of materials including quality of boulders, store metals, chips, sand etc. brought to site''.

Since the responsibility of measurement of boulder and in turn responsibility of documentation is that of Supdt B/R Gde I as per MES Regulation. I can not be held responsible for the same specially while no boulders were procured during RAR from 59th to 63rd and I as an Engineer-in-charge had not released any payment for boulders.

Para 371:- "The Engineer - in - Charge and Supdts are personally responsible for the accuracy of measurement taken by themselves and by their sub-ordinates."

In this case material register shows that all measurements have been signed as Engineer-in-charge by Sh N Sanjeev upto 6th RAR and by Sh VO Srinivasan from RAR No 7 to last arrival of boulders. Also I had not released any payment for boulders as Engineer-in-charge in any RAR. Therefore Sh N Sanjeev, Sh VO Shrinivasan or their Supdt Gde - I should be held responsible for any mistake in this regard.

(iii) As per para 36(d) of Tech C of I (EX P-21) also Sh VO Srinivsan was made responsible for laxity of documents.

From the above it is clear that accounting of boulders during my tenure was correctly done and charge of improper documentation is not correct. I should not be held responsible for the task for which others are responsible. Recommendation of Tech C of I for blaming Sh VO Srinivasan for laxity of documentation should also be considered while reviewing my penalty of censure.

(c) Releasing payments without conducting any physical check:

(i) No payment for boulders was released during 59th to 63rd RAR. This fact can be clarified by following details.

Ser No	RAR No.	Qty of boulders shown by contractor which were already paid in previous RARs Cum	Qty of boulders allowed during last RAR	Qty of boulders received/ released/ for payment during RAR	Qty of boulders reduced equivalent to crushed/ consumed quantity during RAR	Qty of boulders shown during RAR for which payment already released in previous RARs	Reference (Ex P-)
1.	58					1,13,500.00	
2.	59	1,26,321.57	1,13,500.00	NIL	2,992.00	1,11,208.00	53
3.	60	1,26,321	1,11,208.00	NIL	15,375.00	95,833.00	58
4.	61	1,18,933.15	95,833.00	NIL	2,105.00	93,728.00	63
5.	62	90,128.00	93,728.00	NIL	4,728.00	89,000.00	68
6.	63	88,000.00	89,000.00	NIL	3,000.00	86,000.00	73

From the above it is crystal clear that no payment had been released towards cost of boulders in RAR No. 59th to 63rd but quantity of boulders lying at site and shown in previous RARs were reduced equivalent to crushing/consumed quantity of boulders after physical verification on ground.

Quantity of boulders lying at site shown in RAR 59th to 63rd were 111208 cum (Ex P-53), 95833 cum (Ex P-58), 93728 cum (Ex P-63), 89000 cum (Ex P-68) and 86000 cum (Ex P-73) respectively as shown in table 1 above whose cost @ Rs 95 per cum was Rs 105,64,760, Rs 91,04,135, Rs 89,04,160, Rs 84,55,000, Rs 81,70,000 respectively. The amount paid during these RARs was only for work done which is clear from cheque amounts (Ex P-51, 56, 61, 66, 71) issued to contractor as shown in table below:

Ser No.	RAR No.	Cheque amount issued to contractor (in Rs.)	(Ex P-)
1.	59	5,56,874	51
2.	60	1,40,000	56
3.	61	6,80,000	61
4.	62	2,10,000	66
5.	63	23,456	71

Cheque amounts and above details show that the payment for boulders lying at site was not released nor any material was procured during these RARs but payment of these boulders were released earlier to 58th RAR.

(ii) However physical check was conducted by me for material lying at site, which was already paid up to 58th RAR by Sh VO Srinivsan. It is submitted that physical check was not only conducted by me but physical check was also conducted by a number of engineer officer as explained below:

(aa) BOO for vigilance check of latest RAR paid during end of June 91 or beginning of July 91 and for physically checking of material at site and to examine the work done for which the payment has been claimed by the contractor was detailed by CE MZ Madras vide letter No. 84022/WED/E8 dt 3.7.91, 84022/1141/E8 dt 18.7.91 and 84022/1155/E8 dt 22.7.91. Following officers conducted physical ground check for the quantity of boulders (Ex P-96):

Sh Abhijit Niyogi, EE

Sh CN Subramaniam, EE

Sh N Padmanabha, ASW

As per the above BOO quantity of boulders physically available at site as on 30.7.91 was 1,23,423.75 cum (Ex P-97) and as per the 54th RAR paid on 01 Aug 91 it was 1,25,500 cum (Ex P-48) equal to quantity of boulder available in the material register (Ex P-

87). No boulder was procured nor any payment of boulders was ever released after this RAR No. 54 and the quantity of boulders physically checked by vigilant officers were matching with the quantity of boulders available in material register / release for payment.))

(ab) BOO detailed by CWE NAS Arakonam by order No. 184 dated 29th Oct 91(Ex P-102) to check the boulders lying at site paid through the RAR No. 59. Following officers checked the quantity of boulders physically on ground (Ex.P-98):

Sh B Sathia Murthy, EE , DCWE

Sh GK Srivastava,EE, GE (P) E/M

Sh JK Kapoor, AEE

Sh Sivadoss, SAI

The quantity of boulders physically checked by above officers at 59th RAR stage was 1,11,375 cum (Ex P-104) whereas the quantity of boulders physical checked by me was 1,11,208 cum at 59th RAR as shown in material register (Ex P-89) and 59th RAR (Ex P-53).

The above para show that the quantity of boulders physically checked by me was matching with the quantity of boulders physically checked by BOO and hence my physical ground check of boulders was correct.

Since no boulders were arrived at site and no payment was released for boulders after 54th RAR and boulders lying at site were physically checked on ground by me and so many engineer officers in addition to concern AGEs and GE as explained in sub Para 6 (c) (aa) and 6 (c) (ab) above, the charge of releasing payment without conducting any physical check is not justified.

7. It is further submitted that up to 6th RAR boulders were stacked on level ground as per material register. Boulders brought up to date 31st March 89 considered in 6th RAR. Material was stacked up to 10th April 89, which is evident from the fact that on 10.4.89 AGE

Sh VO Srinivasan calibrated the measurement of lorry load, and seen by GE Maj VKP Singh (Ex P-80) for payment of boulder by lorry load. Thus the quantity of boulders per lorry load was calibrated as 7.5 cum per lorry load. **This decision of measuring boulders by lorry load was taken deliberately by AGE and GE concerned with concurrence of CWE and CE.** CWE and CE were visiting site very frequently (Ex P-95) and they knew measurement of boulders by lorry load. The decision was taken because of following reasons:-

(a) SSR clause 20.A.1.2 (Ex P-79) permits measurement of materials like stone boulders, aggregates, screenings, sand etc. in bottomless boxes or measuring boxes or in closely packed stacking on level ground. Therefore any of these three methods of measurements could be adopted. Since lorry was closed from all the four sides giving firm measurement and calibrated as explained above and recorded in measurement register (Ex P-80), the same was considered as measuring box. Therefore measurement by measuring box i.e. lorry was absolutely in order as per SSR and is better than stacking on ground where it is difficult to give uniform dimension on all the four sides and averaging has to be carried out for all four sides measurement.

(b) Total quantity of boulders required to procure was about 4, 50,000 cum which had been calculated by Tech C of I also (Ex P-6). It was not possible to get level ground to stack such a large quantity, which was the prime requirement for stacking on ground as per SSR, while lorry bottom is better than ground being absolutely flat.

8. The boulders were measured based on lorry load by Sh VO Shrinivasan and entered into material register by him after 7th RAR as explained in para 7 above. Explanation on other RARs for which I had been served charge memo are also submitted as below:

(a). **RAR No. 7, 13, 14, 40, 43 and 54 paid as Offg GE:**

These RARs were processed by Sh VO Srinivasan as AGE and after technical check by surveyor assistant of GE office, I paid these RARs as offg GE as per responsibility given in para 472 of RMES (Ex P-74A). It is submitted that Supdt B/R and AGE are responsible for measurement of boulders as per MES regulation as

explained in para 6(b)(ii) above. As per the duties of GE given in para 371 and 472 of RMES (Ex P-74, 74A), I passed these RARs after ascertaining that the claim of boulders in above RARs were much below the quantity of boulders available on ground and entered into material register by concerned AGE Sh VO Srinivasan. My officiating period of GE was for very short duration. Further details regarding releasing of boulders in these RARs are as follow:

(i) RAR No. 7:

As explained in para 7 above the boulders were stacked up to 9th April 89 and lorries were calibrated on 10.4.89. This RAR was processed on 15 Apr 89 (Ex P-24).

The quantity of boulders received from 01.04.89 to 09.04.89 during this RAR as per material register (Ex P-81) is equal to 940 lorry load @ 7.5 cum per lorry load = 7050 cum

Total quantity of boulders received during 7th RAR as per material register (Ex P-81) = 11025 cum

Quantity of boulders released as per stack measurement in 7th RAR. Measurement of stacks has been shown in RAR (Ex P-28) as $900 \times 3.4 \times 4 \times 0.5 = 6120$ cum which is less than material arrived upto 9.4.89 i.e 7050 cum stacked and much less than the total arrival of boulders during 7th RAR i.e. 11025 cum.

(ii) RAR No. 13 and 14:

The decision for mode of measurement by lorry load was already taken by AGE and GE concerned i.e. Sh VO Srinivasan and Maj VKP Singh as explained in para 7 above. Material brought during RAR was already dumped in the form of heaps of lorry load. These were entered and signed in material register by concerned AGE. I as offg GE for few days had to follow the decision taken by GE and senior officers, which was also correct as per SSR. However I verified the complete material physically on ground and restricted the payment of boulders from the quantity of boulders entered in material register, which will be clear from the following facts:

Ser No.		RAR No. 12	RAR No. 13 (Ex P-30 to 33)	RAR No. 14(Ex P-34 to 37)
1.	Qty of boulders after deduction for crushing, (as per material register)(cum)	81360 (Ex P-82)	89235 (Ex P-83)	96735 (Ex P-84)
2.	Qty of boulders considered for payment in RAR (cum)	61200 (Ex P-91)	71200 (Ex P-33)	82036 (Ex P-37)
3.	Qty of boulders released for payment (cum)	-	10000	10836

If I would have considered the lorry load as basis of measurement, I should have allowed 96735 cum of boulder in 14th RAR and 89235 cum in 13th RAR. Instead I allowed only 71200 cum in 13th RAR and 82036 cum of boulders in 14th RAR, which is almost equivalent to boulders arrived and entered into material register upto 12 RAR (Ex P-82). This proves that though the entry into material register was as per lorry load as decided by GE Maj VKP Singh and documents maintained by Sh VO Srinivasan yet I physically verified the quantity of boulders lying on ground and released the payment that was actually due to contractor and not based on lorry load.

(iii) **RAR NO. 40, 43 and 54:**

Ser No.	RAR No.	Qty of boulders considered for payment as per RAR	Qty of boulders released for payment	Qty of boulders recovered during RAR
1.	39	130000+176000 =306000 cum (Ex P-92)		
2.	40	128000+174900 =302900 cum (Ex P-92) & (Ex P-112)	NIL	306000-302900 =3100 cum
3.	42	126100+169200 =295300 cum (Ex P-92)		

4	43	126100+165900 =292000 cum (Ex P-92) & (Ex P-116)	NIL	295000-292000 =3000 cum
5	53	157000 cum (Ex P-92) & (Ex P-44)		
6	54	125500 cum (Ex P-92) & (Ex P-48)	NIL	157000-125500 =31500 cum

The details given in above table clearly prove that **no boulders** were released for payment during RAR No. 40, 43, and 54 but 3100 cum, 3000 cum and 31500 cum of boulders were recovered during these RARs. Sh VO Srinivasan did documentation as per his charter of duties.

(b) RAR NO. 33 processed as Offg AGE:

Ser No.		RAR No. 32	RAR No. 33 (Ex P-)
1.	Qty of boulders as per material register	121125+102775 =223900 cum (Ex P-85)	111275+134423 =245698 cum (Ex P-85A)
2.	Qty of boulders considered for payment	101850+109700 =211550 cum (Ex P-92)	101850+109700 =211550 cum (Ex P-92) & (Ex P-108)
3.	Qty of boulders released for payment		NIL

This RAR was processed by me as offg AGE, when I officiated AGE for other Sub-division in the absence of AGE Sh VO Srinivasan for few days and RAR happened to be processed during that period.

Sh VO Srinivasan measured boulders brought during RAR as explained in para 7 above and entered in material register.

From the above table, it is clear that the quantity of boulders brought during RAR was not considered for payment and the quantity of boulders

considered for payment was much lesser than the quantity of boulders available in material register. S No. 2 & 3 of above table and material register (Ex P-85A) shows that even after procurement of boulders to the tune of $11400 + 9000 = 20400$ cum during 33rd RAR, the quantity of boulders released during 33rd RAR was NIL.

Para 6(b)(ii) above may also be considered while reviewing the case according to which Supdt B/R is responsible for measurement and documentation of boulders.

(c) RAR NO. 56 and 58 (NO ASSOCIATION AT ALL):

These RARs were neither processed as AGE nor passed as Offg GE by me. These RARs were processed by Sh VO Srinivasan as AGE and passed by Maj VKP Singh as GE (Ex P-117 to 120). Therefore I am not responsible for these RARs.

9. The conditions under which I performed the duties should also be considered. In this connection Para 37, 38 and 39 of recommendations given by Tech C of I (Ex P-21, 22) are reproduced below:

Para 37: "The following factors emerge from the findings as enumerated in the preceding paragraphs:

(a) The project was prestigious and time bound one and the executives were always under pressure with regard to quality and speed of work and were working round the clock.

(b) The overpayment made at 52nd RAR stage was adjusted in the immediate next RAR i.e. 53rd RAR."

Para 38: "Provision exists for subsequent modification/correction of certificate for advance payments both for work done and materials brought and paid, as per condition 64 of IAFW-2249."

Para 39: "In view of the foregoing and taking consideration the circumstances under which the executives were working in a project of this magnitude, the Tech C of I is of the opinion that no serious irregularity have been

committed and recommends that administrative action as deemed fit, be taken on the officers mentioned in para 36 above, for the lapses shown against them."

It is submitted that para 4 above may be considered while considering para 36 of Tech C of I

10. It is further-submitted that the responsibility of execution of work was given to three Engineers-in-Charge under one division. I was one of the Engineer-in-Charge who was assigned the responsibility of construction of runway from change O to 2400 meter i.e. first half runway including survey of complete runway & taxi track. I and my Supdt B/R Gde I & Gde II took the levels in difficult terrain i.e. in paddy fields, water logged area where standing water used to be up to thigh level. During progress of work we worked day and night to complete the work in time. Work was progressing round the clock. I mean to say that we did not hesitate to work even like a labour for getting the work completed successfully. Defence Secretary who was Chairperson of Project Management Group appreciated the work. Staff authorities were also happy with the quality and Progress of work with the result I was awarded FOC-in-C's Commendation. Only my portion of work was 100% completed at the time of termination of contract.

11. I was served a memorandum vide MOD No C-13011/3/D(Vig II)/2002 dt 12th June 2002 for an happening which took place in the year 1989 to 1992 in NAS Arakonam which was received by me on dated 08 Aug 2002 i.e. after 10 to 13 year of happening. This was my first executive assignment as AEE after getting appointment in March 1986 through UPSC. The work was for construction of Runway and allied works at NAS Arakonam and was declared prestigious time bound project. This was the Asia's longest runway. Senior officers told us that this would be a challenge for us to complete the work successfully as all overlays on runway were failed till that time and this was original work in difficult terrain. Difficult terrain in the sense that more than 50% area was in filling upto 4-metre depth and type of soil was black cotton. Even a little settlement of soil could have caused failure of runway project. The failure during flying time would have mean loss of at least one air craft causing loss of crores of rupees and question mark on Engineers of India.

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From: M C Gupta, EE
Dy Dir (Budget)
CE(AF) Shillong
Elephanta Falls Camp
PO-Nonglyer
Upper Shillong, Shillong - 793009.

To: The Hon'ble President
Government of India
Ministry of Defence
New Delhi.

REVIEW PETITION

Respected Sir,

1. Further to my Review Petition letter No MCG/15/ Ark/pers dated 30Dec 04 and G of I, MOD letter No. C-13011/3/D (vig.II)/2002 dated 19th Dec 2004 vide which I have received penalty of censure.

2 As can be seen from brief of the whole case attached, there was no overpayment up to 63rd RAR. Non overpayment shows that the RARs were prepared correctly with proper documentation and physically checking of boulders at site. The material (boulder) was lost after 63rd RAR when I left the station. Hence I should not be punished for the reason for which I was not at all responsible. Also the punishment has been given with an intention of minor punishment that too after 15 year of happening but in fact it is affecting me as major penalty since my sealed cover of DPC will not be opened due to this punishment.

3. I hereby submit some points in brief as Appendix for your kind consideration of providing me natural justice by withdrawing the punishment of censure. Natural justice considers the intention of individual before punishment. I at every stage reduced the amount of payment by reducing the quantity of boulders as explained in my detailed reply earlier. This shows that I always worked in the interest of state.

With regards

Yours sincerely


(M C Gupta)

*Attested
by
Sub. Secy*

File No.: MCG/16/ Ark/pers

Dated: 27 Dec 05

Copy to: E-in-C's Branch, E1D (D&V)
Army Headquarter, DHQ Post office
Kashmir House
New Delhi-11

Appendix

1. Justice delayed is justice denied. Penalty of Censure given after 15 years of happening as Minor Penalty but it is effecting as Major Penalty, since two sealed cover DPC will not be opened due to this punishment.

2. Total RARs paid were 63 and contract was terminated after 63rd RAR. Quantities of boulders at site at 63rd RAR stage were equal to quantity of boulders considered in 63rd RAR. This is proved by following documents/statements:

(a) Para 2d of show cause notice states that there was wide difference in the quantities mentioned in the cancellation board, tendered quantities of risk and cost, court commissioner report and quantities handed over to BRTF. This statement shows that the quantities of boulders were reduced after cancellation board.

(b) Para 33 of Staff Court of Inquiry states that there is a deficiency of 70,600 cum (86000-15400) of boulders lying at site between the last RAR (i.e.) 63rd paid to the contractor and the actual quantity of boulders handed over to the BRO. This statement of SCI clearly shows that the shortage of boulders was after 63rd RAR only.

© According to para 27 of SCI " The CEMZ ordered a Board of Officers to prepare the inventory of completed and incomplete works executed by M/S Atlanta const. co. The board assessed the quantities as equivalent to 86000 cum as reflected in 63rd RAR with remarks that the exact quantity of boulders can be ascertained only after stacking the material in measurable form.

(d) Technical BOO which was ordered by CESC Pune also scrutinized the 63rd RAR paid before cancellation of contract with a view to ascertain whether any overpayment exists in respect of boulders and found generally in order. According to BOO the quantity of boulders available at site were more than the quantity of boulders allowed in 63rd RAR (para 30 of tech BOO may be referred)

(e) During 53rd RAR CEMZ detailed a BOO to physically check the material at site. The material was physically checked by BOO continuously from 16 July 91 to 31 July 91. The BOO had certified that the quantity of boulders physically available at site on the date during 54th RAR was 123423.765 cum (Refer page 2 of vigilance check report) and the quantity of boulders paid in 54th RAR were 125500 cum. The deficiency of boulders pointed out by BOO was already recovered in 52nd to 54th RAR. Therefore the quantity of boulders in 54th RAR were physically checked by BOO alongwith AGE Sh VO Sreenivasan and was available on site.

From 54th RAR onwards no fresh material was procured/paid. Therefore quantity of boulders at site in 63rd RAR can not be less

(f) The quantity of boulders was again physically checked by a BOO detailed by CWE (NAS) Arakonam. Material was physically checked by BOO. The report of BOO indicates that the boulders at the end of 59th RAR available at site was equal to 111375cum whereas quantities of boulders paid in 59th RAR was 111206cum.

(2)

I took over the charge during this RAR. No material came on site nor was any fresh payment released after this RAR. Recovery of boulders from RAR 59th to 63rd RAR was made more than the quantities of boulders consumed in work during these RARs.

(g) The quantity of boulders paid in 63rd RAR as 86000 cum was finally handed over to AGE B/R I Sh SK Mishra by MC Gupta before going on permanent posting to CME Pune. I can not be held responsible for any loss of boulders after handing over the complete material to Sh SK Mishra.

(h) Quotations were called for stacking the boulders left after 63rd RAR. The cost for stacking the boulders was quoted to RS 46.46 lakhs (Ref CWE (NAS) Arakonam letter No. 8/113/2590/E8 dated 30 Jun 1992 to CEMZ Madras). This shows that the boulders were more than 15400 cum

(j) Arbitrator has not awarded anything on this account to department.

(k) Finally as per para 40 of recommendation of SCI, the amount for (86000-25600) cum of boulders were recovered from the contractor in the final bill prepared by GE (Maint), Arakonam pertaining to this contract in Nov 97. (Exb 33 of SCI)

Therefore there was no loss to state.

(3) I assumed the charge of material lying at site after 58th RAR. As Engineer-in-charge I processed RAR Nos 59th to 63rd. The BOO detailed by CWE for physical measurement of boulder confirmed that the boulders available at site is equal to the boulders considered for payment in 59th RAR. There after no boulders were procured nor any fresh payment was released. The quantities of boulders consumed during these RARs were entered in material register and the same were reduced while paying relevant RARs. RARs prepared by contractor were processed correctly

The performance of my duties sincerely has lead to reduction in quantities and amount claimed by contractor in RARs. These facts can be verified from RARs as explained in my earlier reply.

(4) While assuming the charge at 59th RAR, the boulders at site were lying in such a condition that no body on earth can measure the exact quantity. The reason for this may be the use of boulders spread over in very vast area upto RAR 58.

This fact has been brought out by almost all witnesses in Staff court of enquiry and has been reflected in my original reply. I also physically measured the approximate quantity of boulders by counting No of heaps as was done earlier by vigilance BOO detailed by CEMZ during 53rd RAR and further checked by a BOO detailed by CWE during 59th RAR.

(3)

(5) The quantity of boulders physically checked by me was matching with the quantity of boulders physically checked by BOO and hence my physical ground check of boulders was correct.

(6) The responsibility of measurement of boulder and in turn responsibility of documentation is that of Supdt B/R Gde I as per table 'M' Para 1 (ac) of MES Regulation. I can not be held responsible for the same specially while no boulders were procured during RARs 59th to 63rd paid in my tenure and I as an Engineer-in-charge had not released any fresh payment for boulders.

(7) Tech C of I has seen the documents up to 63rd RAR (before date of assembly of Tech C of I) and arrived at conclusion that **Sh VO Srinivasan, AGE was responsible for laxity in documentation. Refer para 36(d) of C of I.**

(8) Apart from above I processed RAR No 33 as offg AGE but no fresh payment was released in this RAR. Any material received was measured and entered by concerned AGE. I only checked the material physically lying on site by counting No of heaps.

(9) RAR No 7, 13, 14, 40, 43 & 54 were paid by me in the capacity of Offg GE. Offg GE can not be made responsible for measurement and documentation, in view of table 'M' Para 1 (ac) and para 371 of RMES.

Table (M) : Duties of Supdt B/R, E/M Gde I

Para 1: - "The duties of Supdt B/R, E/M Gde I are primarily to assist Engineer-in-charge in his duties for execution of works efficiently. **He will however be responsible for the performance of following duties in particular:-**

Para 1 (ac): -**Measurement of materials including quality of boulders, store metals, chips, sand etc. brought to site".**

Para 371:- "The Engineer - in - Charge and Supdts are personally responsible for the accuracy of measurement taken by themselves and by their sub-ordinates."

(10) Material register shows that all measurements have been signed as Engineer-in-charge by Sh N Sanjeev upto 6th RAR and by Sh VO Srinivasan from RAR No 7 to last arrival of boulders. Also I had not released any payment for boulders as Engineer-in-charge in any RAR. Therefore Sh N Sanjeev, Sh VO Srinivasan or their Supdt Gde - I should be held responsible for any mistake in this regard.

Attested
Jt. Secy.
Admn.

No.C-13011/3/D(Vig.II)/2002

Government of India

Ministry of Defence

New Delhi, the 18th August 2006

ORDER

WHEREAS, disciplinary proceedings under Rule 16 of CCS(CC&A) Rules 1965 were initiated against MES-186149 Shri MC Gupta, then AGE B/R, now EE, vide Ministry of Defence' Memorandum No.C-13011/3/D(Vig-II)/2002 dated 12th June 2002, whereunder the statement of Article of Charge and the Statement of Imputation of misconduct or misbehaviour were also served on him and he was afforded an opportunity to make a submission/statement of defence against the charges levelled against him;

AND WHEREAS, the said Shri MC Gupta denied the charges stating that the amount of overpayment made to the contractor was not specified. He also stated that he did not prepare the RARs No. 7, 13, 14, 33, 40, 54, 56 and 58, as alleged in the Charge Memo, though he admitted for having made the measurement from 59 to 63rd RAR. It was, however, pointed out by E-in-C's Branch that the officer has paid for RAR 7, 13, 14, 40, 43 and 54 in his capacity as officiating GE;

AND WHEREAS, after a careful consideration of the Article of Charges, the submissions made by the officer and evidence on record, the President arrived at the conclusion that a minor penalty should be imposed on the said Shri MC Gupta for incorrect preparations of the RARs (from 59th to 63rd RARs) without any proper documentation/transparent counting of boulders and for releasing payment without conducting any physical ground check of the material lying at the site. In view of this, the penalty of 'Censure' was imposed on the said Shri MC Gupta, vide, this Ministry's order of even No. dated 19.11.2004;

AND WHEREAS, aggrieved against the above order, the said Shri MC Gupta has submitted review petitions dated 30th December 2004 and 27th December 2005, for withdrawal of the aforesaid penalty;

AND WHEREAS, the arguments of the said Shri MC Gupta have been examined in consultation with the Zonal Chief Engineer, Chief Engineer Command and E-in-C's Branch. In brief, the officers' arguments and Zonal CE and CE Command's comments are as under :-

Attested
Sub.
Advocate

Argument of Shri Gupta	Comments of Zonal CE:	Comments of CE Command
(i) No payment was released by him on account of boulders in any of the RAR from 59 to 63. Overpayment is only in respect of the earlier RARs, which were processed and signed by other officers and he is not accountable for the same.	Quantities of material shown lying at site in RARs 59 to 63 paid by the CO, were wrong. It is also brought out that CO was officiating GE during payment of RARs 7, 13, 14, 40, 43 and 54 when payment for material at site was made.	He has agreed with the views of Zonal Chief Engineer.
(ii) He has blamed the earlier AGE for laxity in documentation.	The earlier AGE (Sh. VO Srinivasan) had prepared RARs upto No. 58 only. RARs 59 to 63 were prepared by the blamed officer and he is responsible for laxity on his part for showing quantity of boulders lying at site in these RARs.	He has agreed with the views of Zonal Chief Engineer.
(iii) Physical check was conducted by him for material lying at site, which was already paid up to 58 RAR by Shri VO Srinivasan.	Since the Charged Officer has stated that physical check was carried out by him, for material at site up to the quantity mentioned at RAR 58, he should have determined the actual excess quantity of boulders being reflected in RARs and was duty bound to have deducted the excess quantity in RARs 59 to 63, which were passed in his tenure as Engineer-in-Charge. The Charged Officer did not do this and hence it was a lapse on his part in the performance of his duties.	He has agreed with the views of Zonal Chief Engineer.
(iv) He has stated that the responsibility of preparing RARs lies with the contractor, who is supposed to prepare the bill and claim advance payment, as per Para 460 and 468 of RMES.	As Engineer-in-Charge, it was the responsibility of the blamed officer to check and verify the material lying at site, in addition to work done in terms of para 371 and 468 of RMES. This was not done leading to excess quantity of boulders being shown at site in RARs 59 to 63. The CO cannot absolve himself of his responsibility as Engineer-in-Charge. It was his duty to have verified the quantities given in the RARs submitted by the contractor, which he failed to do.	He has agreed with the views of Zonal Chief Engineer.

AND WHEREAS, it may be mentioned that the contract under reference was an item rate contract where supply of boulders was not a separate item. As per Condition 64 of General Condition of Contract, payment for material brought at site could be released by GE up to the extent of 85% of the value of the material. However, such payments are to be released after taking due precaution that payments released are not more than the cost of material at site. In the instant case, this precaution was not taken by the said Shri MC Gupta and the payments were released on the basis of lorry loads received, and not after taking the measurement;

AND WHEREAS, taking the above position into consideration, the President is of the view that the said Shri MC Gupta has in his review petitions dwelt on the same arguments as he had pleaded in his defence statements before the award of penalty of 'Censure', and the CE Command and E-in-C's Branch are also categorical

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that the Officer has not brought out any fresh material or evidence warranting a review of the said penalty.

NOW, THEREFORE, the President hereby orders for rejecting the review petitions of the said Shri MC Gupta, EE, and for maintaining the minor penalty of 'Censure' imposed on him vide Ministry's order of even No. dated 19.11.2004.

(By Order and In the Name of the President)



(SUNIL UNIYAL)

Under Secretary to the Government of India
Tele.No.2301 4067

MES -186149 -- Shri MC Gupta, EE-- through E-in-C's Branch

s/c

Copy for info/necessary action to :

Shri LM Sarin, ACE, Pr. Dir (D&V), E-in-C's Branch/E1D -- w.r.t. their note no:
78655/1359/2005/
E1D dated 27th April
2006

Attested
Advocate

Telephone: 23019687

Directorate General (Personnel)/EIR
 Military Engineer Services
 Engineer-in-Chief's Branch
 Army Headquarters
 Kashmir House
 DHQ PO, New Delhi-110 011


B/41023/SE /2003-2004/EIR

23 Jul 2003

List 'A'

**PANEL FOR PROMOTION OF EXECUTIVE ENGINEERS TO
 THE GRADE OF SUPERINTENDING ENGINEERS IN THE
 MILITARY ENGINEER SERVICES OF THE MINISTRY OF
 DEFENCE AGAINST THE VACANCIES FOR THE YEAR 2003-04**

1. 23 (Twenty Three) Executive Engineers listed at Appendix 'A' to this letter, have been approved for promotion to the grade of Superintending Engineers in the Military Engineer Services of the Ministry of Defence.
2. This panel shall be operative upto and including 18 Jun 2004 unless reviewed earlier by the Departmental Promotion Committee or specifically extended beyond this date by the Competent Authority.
3. Actual appointment of officers included in this panel will be made in the order shown therein subject to the availability of vacancies and issue of orders for appointment by this HQ.
4. Before placing in position on promotion it should be ensured that the officers are not involved in any disciplinary/CBI case.


 (AK Gangopadhyay)
 PAO
 SO 1 (Pers)/EIR
 For Engineer-in-Chief

Copy to :-

Lists 'B', 'C' & 'F'
 Ministry of Defence/D (Appts).
 U.P.S.C. /AF-3 (w.r.t. No. 1/33(18)/2003-AP-3.

Internal

TS/E-in-C, TS/DG (Pers), PS/ADG (Pers), PS/DDG (Pers) 'M', DDG (Pers) 'P', EIA,
 EIB-05 Copies. EIC, EID, MIS (Civ), MIS (ADP), CSCC, E Coord L E2PPC,
 QMG's Br/ADGTE, HQ DGBR/Pers Dir. IDSE association room No. 161/168

SLV

Advocate
Advocate

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Appendix 'A' to E-in-C's Branch/EIR letter
No. B/41023/SE/2003-2004/EIR
dated 23 Jul 2003

**PANEL FOR PROMOTION OF EXECUTIVE ENGINEERS TO THE
GRADE OF SUPERINTENDING ENGINEERS IN THE MILITARY
ENGINEER SERVICES OF THE MINISTRY OF DEFENCE AGAINST
THE VACANCIES FOR THE YEAR 2003-2004**

<u>S.NO.</u>	<u>MES NO.</u>	<u>NAME OF THE OFFICER</u> <u>S/Shri</u>	<u>DATE OF BIRTH</u>
01.	448682	Lalit Kumar	15 Apr 60
02.	300215	Dron Ahuja	22 Nov 61
03.	440323	Pyare Lal (SC)	01 Jan 58
04.	194028	Jagatpal Ram (SC)	06 Dec 59
05.	134317	B Natrajan (SC)	12 Apr 54
06.	189713	T Sridharan Reddy (SC)	15 Aug 61
07.	184739	Ajay Dixit	04 Mar 57
08.	300231	Arun Grover	14 Feb 58
09.	165347	Sushil Purohit	08 Mar 59
10.	186144	Mukesh Dhir	27 Oct 59
11.	194408	Rakesh Bhasin	06 Aug 59
12.	300216	Sachidanand Singh	12 Feb 60
13.	3001235	RK Bansal	27 Jul 59
14.	300241	Surendra Mohan	23 Jan 59
15.	468679	Vijay Kumar Jha	10 Jan 60
16.	507628	Govind Ram Verma	15 Dec 57
17.	300248	Vipin Kumar Jain	14 Jan 56
18.	400573	Abhai Bhatnagar	15 Apr 63
19.	268938	SK Choudhary	15 Sep 60
20.	433292	RK Srivastava	15 Sep 59
21.	300253	Janak Singh	16 Nov 56
22.	117441	Avinash Chandra Patel	12 Apr 59
23.	507567	Randhir Singh Thakur	02 Jul 57

(Twenty Three Officers Only)


(AK Gangopadhyay)
PAO
SO 1 (Pers)/EIR
For Engineer-in-Chief

MCG/Pers/06 / Vig

06 Dec 2005

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From: MES 186149, M C Gupta, EE
Dy Dir (Budget)
HQ CE (AF) Shillong Zone
Elephant Falls Camp
PO-Nonglyer
Upper Shillong, Shillong 793009
Meghalaya.

To: Director General of Personnel
Engineer-in-chief's Branch
Kashmir House
Army Headquarter
New Delhi

(THROUGH PROPER CHANNEL)

OPENING OF SEALED COVER LETTER FOR PROMOTION, EE TO SE
IN RESPECT OF MES 186149, M C GUPTA

Sir,

1. My Name for promotion from EE to SE was due against the vacancies for the year 2003-04. The panel for promotion from EE to SE against these vacancies was issued by E-in-C's Branch letter No. B/41023/SE/2003-04/E1R dated 23 Jul 03. It is understood that my name for promotion was kept in sealed cover because of pending disciplinary case for following charge sheets:-

(a) Charge Sheet for Earthquake works in Jabalpur issued vide Govt of India, MOD letter No. C-13011/13/vig II/2000 dated 03 Jan 2001. (Copy enclosed at Appx 'A')

(b) Charge Sheet for Runway work in Arakkonam issued vide Govt of India, MOD letter No. C-13011/03/D/vig II dated 12 Jun 2002. (Copy enclosed at Appx 'B')

2. One more charge sheet was served to me vide Govt of India, MOD letter No. C-13011/07/D/vig II/2001 dated 22 Sept 2003. (Copy enclosed at Appx 'C') after issue of panel for promotion for vacancies against the year 2003-04.

3. It is submitted that I have been exonerated from the charges imposed wide charge sheet mentioned in para 1(a) above, Vide Govt of India MOD letter No. C-13011/13/D/vig II/2000 dated 07 Feb 2004. (Copy enclosed at Appx 'D')

*Attested
Sub Advocate*

4. Please refer to para 3 of Govt of India, Ministry of Personnel, PG and Pension (Department of Personnel and training) letter No. 22011/2/202/Estt (A) dated 24 Feb 2003. (Copy enclosed at Appx 'E'), According to which my sealed cover for promotion from EE to SE against the vacancies for the year 2003-04 should have been opened if I could have got exoneration in charge sheet mentioned in para 1(b) above even though I was served an another charge sheet as mentioned in para 2 above because that charge sheet was served after the date of DPC and Joining of junior most officer. This shows that the charge sheet mentioned in para 2 above will not play any role while considering the case for opening of sealed cover

5. Now I have been served penalty of censure against charge sheet mentioned in para 1 (b) above vide Govt of India, MOD letter No. C-13011/03/D/vig II/2002 dated 19 Nov 2004. (Copy enclosed at Appx 'F') Since I have been served Penalty of Censure, my sealed cover for promotion for the post of SE against the vacancies for the year 2003-04 should be opened as penalty of Censure is not a bar for promotion. In this connection please refer to a court case decision published on page 57 in Swamy news letter for the month of Jul 2005 (Copy enclosed at Appdx G). In this case court has given directions to department to open the sealed cover after penalty of Censure since penalty of Censure is not a bar for promotion.

6. In view of above it is requested that my sealed cover for promotion from EE to SE against the vacancies for the year 2003-04 may be opened and I may be promoted with all financial benefits from that date.

7. It is requested that the decision on the above may be communicated to me at the earliest. I shall be grateful.


(M C Gupta, EE)

Advanced copy to:

Director General of Personnel
Engineer-in-chief's Branch
Kashmir House
Army Headquarter
New Delhi

06/12/05
16-11-06-Promotion
19/12/06-SA filed

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

IN THE MATTER OF

OA NO 313/2006

SHRI MAHESH CH GUPTA

...Application

Versus

Union of India and others

... Respondents

-AND-

IN THE MATTER OF

Written Statement submitted by the Respondent No. 1 to

WRITTEN STATEMENT :

The humble answering respondents submitted their written statement as follows :

1. (a) That I am Brig AK Wahi S/o Late Brij Mohan Wahi, aged about 51 years and on behalf of respondent No 01 and 02 in the above case. I have gone through a copy of the application served on me and have understood the contents thereof. Save and except whatever is specifically admitted in this written statements, the contentions and statements made in the application and authorized to file the written statement on behalf of all the respondents.
- (b) The application filed is unjust and unsustainable both facts and in law.
- (c) That the application is bad for non-joinder of necessary parties and misjoinder of unnecessary parties.
- (d) That the application is also hit by the principles of waiver estoppels and acquiescence and liable to be dismissed.

ATTESTED

DEPONENT

MBK Rao
 SE
 Director (Pers & Legal)
 For Chief Engineer

AK Wahi
 (AK Wahi)
 Brig
 Chief Engineer

448
 Filed by
 M. U. Ahmed Case
 8/11/08

Received without
 annexures on 08/01/08
 MBK Rao

(e) That any action taken by the respondents was not stigmatic and same were for the sake of public interest and it cannot be said that the decision taken by the Respondents, against the applicants had suffered from vice of illegality. 149

2. That the respondents would like to give the Brief History of the case before traversing various paragraphs of the OA, which may be treated as integral part of the Written Statement.

(a) A contract for construction of Runway at NAS Arakkonam was executed during the year 1988-89. The work was sanctioned vide Government of India, Ministry of Defence No WK/0539/Vol-I-III/WK-III/NHQ/689/D(N-W) dated 07 Mar 1988 for Rs. 2775 lakhs and the contract was concluded by CECZ, vide CA No CEMZ/ARK/07 of 1988-89 with M/s Atlanta Construction Company. This contract was executed by GE (P) No 1 NAS Arakkonam under CWE (P) NAS Arakkonam.

(b) The above contract was cancelled by CECZ on 02 Apr 1992 and the work was completed at risk and cost of the original contractor by 751 BRTF.

(c) Certain irregularities in execution of the contract were noticed. Based on the report by CE Chennai Zone, a Technical Court of Inquiry was ordered by CESC Pune vide their letter No 260505/6/Com/E1W&P dated 20 Mar 1992.

(d) Based on the findings of the Tech Court of Inquiry, FOC-in-C Eastern Naval Command, Visakhapatnam was requested by CECZ vide letter No 1003/Stores/Ark/07/40/EID dt 10 Jun 1996 to convene a staff Court of Inquiry.

(e) The proceedings of the Court of Inquiry was approved by the Naval Headquarters, New Delhi with the direction for taking suitable disciplinary / administrative action against the following officers vide Naval HQ New Delhi letter No DL/1159 dt 13 Jan 2000: -

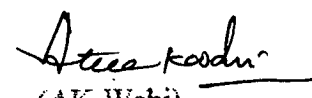
- (i) Shri Sudesh Dhiman, Ex CWE (Retd DG Pers)
- (ii) Shri MC Gupta, Ex AGE B/R II (Now SE)
- (iii) Shri VO Srinivasan, Ex AGE
- (iv) Maj VKP Singh, Ex GE (Now Col)

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MBK Rao
SE
Director (Pers & Legal)
For Chief Engineer

DEPONENT



(AK Wahi)
Brig
Chief Engineer

A copy of the letter dated 13 Jan 2000 is annexed herewith and marked as Annexure-A.

- (f) Show Cause Notice was issued to the applicant, Shri MC Gupta vide CE Northern Command letter No 42101/390/02/EID dt 19 Nov 2000.

A copy of the letter dated 19 Nov 2000 is annexed herewith and marked as Annexure-B.

- (g) Reply to Show Cause Notice was submitted by the applicant vide letter No MCG/PERS/SCB/2 dt 30 Nov 2000.

A copy of the letter dated 30 Nov 2000 is annexed as Annexure-C.

- (h) Charge sheet was issued under Rule 16 to the applicant, Shri MC Gupta, AGE B/R by MoD vide letter No C-13011/3/D(Vig-II)/2002 dt 12 Jun 2002.

A copy of the letter dated 12 Jun 2002 is annexed as Annexure-D.

- (i) Ministry of Defence imposed penalty of Censure on the applicant vide MoD letter No C-13011/3/Vig-II/2002 dated 19 Nov 2004.

A copy of the letter dated 19 Nov 2004 is annexed as Annexure-E.

- (k) The applicant Shri MC Gupta submitted Review Petition for withdrawal of penalty.

A copy of the Review Petition filed by the applicant is annexed as Annexure-F.

- (l) Comments on Review Petition was submitted to E-in-C's Br vide CESC Pune letter No 130806/4/681/EID dated 25 Mar 2006.

A copy of the letter dated 25 Mar 2006 is annexed as Annexure-G.

- (m) The Review Petition was disposed vide Presidential Order No C-13011/3/D(Vig-II)/2002 dated 18 Aug 2006.

A copy of the Presidential Order dated 18 Aug 2006 is annexed as Annexure-H.

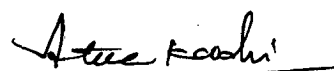
3. That with regard to the statement made in paragraphs 01 to 4.3 of the OA, the respondents do not admit.

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For Chief Engineer

DEPONENT



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Brig
Chief Engineer

4. That with regard to the statement made in paragraphs 4.4 of the OA, the answering respondents beg to submit that Flag Officer Commanding-in-Chief Eastern Naval Command, Visakhapatnam had ordered investigation to determine the circumstances under which irregularities were committed in CA No CEMZ/ARK/07 of 88-89. A show cause notice was issued to the applicant vide Chief Engineer Northern Command C/o 56 APO letter No 42101/309/02/E1D(2) dated 19 Nov 2000 (Annexure-B). The reply to this show cause notice was submitted by the applicant on 20 Nov 2000 and the same has been under consideration at appropriate level as per procedure.

5. That with regard to the statement made in paragraph 4.5 of the OA, the answering respondents do not admit anything contrary to the records of the case and the applicants are put to the strictest proof thereof.

6. That with regard to the statement made in paragraph 4.3 of the OA, the answering respondents beg to submit that based on the statement of facts and record including the reply to the show cause notice before the appropriate authority, the memorandum of charge sheet letter No C-13011/3/D(Vig-II)2002 dated 12 Jun 2002 (Annexure-D) under Rule 16 of the CCS (CCA) Rule 1965 was served on the applicant. The Board of Inquiry convened vide Flag Officer Commanding-in-Chief Eastern Naval Command, Visakhapatnam Signal DTG: 241740 had the under mentioned findings : -

(a) That the applicant was officiating Garrison Engineer during the payment of RAR Nos. 7, 13, 14, 33, 40, 43, 54, 56 and 58.

(b) That the applicant was responsible for incorrect preparation of RARs No 59 to 63 and for certifying the quantity of boulders lying at site without proper documentation. Even the rates for white boulders at site have been improperly applied.

As per Para 1(d) on Page 201 of Board of Inquiry the applicant has been apportioned Attributability of the blame.

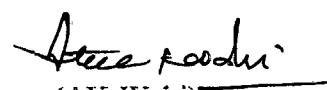
A copy of the relevant portion of the Board of Inquiry is annexed herewith and marked as Annexure-I.

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SE
Director (Pers & Legal)
For Chief Engineer

DEPONENT



(AK Wahi)
Brig
Chief Engineer

7. That with regard to the statement made in paragraph 4.6 of the OA, the answering respondents beg to submit that mere reading of the statement of articles of charges framed against the applicant (Annexure-D), it is crystal clear that the imputation of contraventions of the CCS (CCA) Rule 1965 have been spelt out in very clear cut terms.

8. That with regard to the statement made in paragraph 4.7 of the OA, the answering respondents beg to submit that based on the statement of articles of charges framed against the applicant the disciplinary authority i.e. President of India after careful consideration of the articles of charges submission made by Shri MC Gupta and the evidence on record and circumstances of the case has imposed minor penalty of 'Censure' on the applicant. No rule / provisions of the procedure for major penalties as contained in the disciplinary proceedings under Rule 16 of the CCS (CCA) Rule 1965 has been either dispensed with or infringed. Based on the evidence placed before the Government of India, Ministry of Defence, New Delhi has imposed the penalty of 'Censure' upon the applicant vide order bearing letter No C-13011/3/Vig-II/2002 dated 30 Nov 2004 (Annexure-E).


9. That with regard to the statement made in paragraph 4.8 of the OA, the answering respondents beg to submit that the applicant has not put forth any new facts or circumstances or evidence in support of submissions. The applicant as witness No 16 at the proceedings of the Board of Inquiry convened vide Flag Officer Commanding-in-Chief Eastern Naval Command, Visakhapatnam Signal DTG: 241740 (Exhibit-II) had been accorded full liberty to disprove any discrimination on record, or evidence against him. Even at the time when the charge sheet dated 12 Jun 2002 under Rule 16 of the CCS (CCA) Rule 1965, the applicant could not conclusively disprove the charges against him. The applicant being a Group 'A' Officer (UPSC Officer) the disciplinary power is vested in the Hon'ble President of India. Hon'ble President of India after careful consideration of the Articles of Charges, the submission made by the applicant i.e. Shri MC Gupta the evidence on record and all the facts and circumstances of the case has arrived at the conclusion that a minor penalty be imposed on the applicant, for preparation of RARs (From 59th RAR to 63rd RAR) without any proper documentation / transparent accounting of boulders and for releasing payments without conducting any physical ground check.

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Director (Pers & Legal)
For Chief Engineer


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Brig
Chief Engineer

It is pertinent to mention here that penalty have been imposed upon the applicant. However CE Zone commented that quantities of material shown lying at site in RARs 59 to 63 paid by the CO were wrong. It is also brought that CO was officiating GE during payment of RARs 7, 13, 14, 40, 43 and 54 when payment for material at site was made and CE Command had agreed with the view of Zonal CE.

10. That with regard to the statement made in paragraph 4.9 of the OA, the answering respondents state that review petition of 27 Dec 2005 was rejected by the Hon'ble President of India after proper application of mind to the facts and circumstances of the case. The Engineer-in-Charge has to check and verify the material lying at site in addition to work done. This was not done, leading to over payment. He should have determined the actual excess quantity of boulder being reflected in the RARs and was found to have deducted the excess quantity in 59 to 63 RARs, which were passed in his tenure. The CO cannot absolve himself of his responsibility as Engineer-in-Charge.

11. That with regard to the statement made in paragraph 4.10 of the OA, the answering respondents beg to submit that Shri VO Srinivasan, AGE had prepared RARs upto 58 only. The blamed officer prepared RARs 59 to 63 and he was responsible for laxity on his part for showing quantity of boulders lying at site in these RARs. CE Command has offered no separate comments and comments submitted by CE Zone were agreed based on factual position. Preparation of RAR is the responsibility of contractor is not agreed and as a GE, the applicant was responsible for payment of RAR as the facts brought by CE Zone has been scrutinized and found correct and hence CESC has no further comments to offer.

12. That with regard to the statement made in paragraph 4.11 of the OA, the respondents beg to submit that full opportunity has been accorded to the applicant to put forth his case in defence and all procedures as required under Central Civil Service (Classification, Control and Appeal) Rule and CVC guidelines have been followed. The applicant being a group 'A' Officer (UPSC Officer) the disciplinary power are vested with Hon'ble President of India.

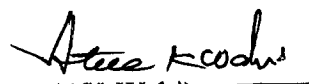
The point has been perused and the request of CO to set aside / quash the penalty order cannot be considered as the charges are already proved and accordingly Zonal CE has

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For Chief Engineer



(AK Wahi)
Brig
Chief Engineer

recommended in his comments on review petition also for the same and, hence his Review Petition was rejected by MoD, since no new fact / fresh evidence has been brought out by the CO and maintained the minor penalty of censure imposed on him vide Ministry's Order No C-13011/3/D(Vig-II)2002 dt 19 Nov 2004.

13. That with regard to the statement made in paragraph 4.12 of the OA, the answering respondents beg to submit that as per DOP&T's OM No 22011/1/99 Estt(A) dt 25 Feb 1999, if penalty is imposed on the Government Servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover / covers shall not be acted upon. His case for promotion may be considered in the next DPC in the normal course and having regard to the penalty imposed on him.

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Point to Sealed Cover

Accordingly, the officer was first considered for promotion to the grade of SE in the DPC held on 19 Jan 2003 against the vacancies for the year 2003-04 but recommendation in respect of the officer was kept in sealed cover. At the stage when the DPC was held, the officer was issued only two charge sheets dt 03 Jan 2001 and 12 Jan 2002. Also the officer's name was considered in subsequent years i.e. 2004-05 & 2005-06 and in both the years, recommendation in respect of the officer was kept in sealed cover.

Since, the officer was 'exonerated' on 07 Feb 2004 in first case and awarded 'Penalty of Censure' on 19 Nov 2004 in 2nd case and also 'exonerated' in the 3rd case on 27 Dec 2005, therefore, as per the DOP&T instructions, the name of the officer could only be considered in the DPC held after 19 Nov 2004. Accordingly, the sealed cover in respect of the officer was opened as per the recommendation of the DPC held on 08 Apr and 20 Apr 2005 for the year 2005-06 and officer was promoted to the grade of SE.

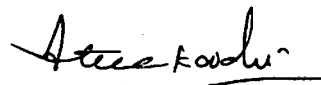
14. That with regard to the statement made in paragraph 4.13 of the OA, Govt of India, MoD issued memorandum on 12 Jun 2002 which was replied in detail by applicant vide his letter MCG/ARK/12/Pers dt 24 Oct 2002. Govt of India, MoD passed the order on 14 Nov 2002 after fully examining and giving the opportunity to applicant put forth his views. Hence the contention of applicant is incorrect. Also CE (Navy) Visakhapatnam and CE Southern

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MBK Rao
SE
Director (Pers & Legal)
For Chief Engineer



(AK Wahi)
Brig
Chief Engineer

Command gave their views and recommendations on review petition of applicant. Thus full opportunity was given to applicant to put forth his views.

15. That with regard to the statement made in paragraph 4.14 of the OA, the answering respondents beg to submit that the President of India as the disciplinary authority after a careful consideration of the Articles of charges, the submission made by the applicant Shri MC Gupta, the evidence on record and all the facts and circumstances of the case has arrived at the conclusion that a minor penalty be imposed on the applicant, for preparation of RARs (from 59th to 63rd RAR) without any proper documentation / transparent accounting of boulders and for releasing payments without conducting any physical ground check.

16. That with regard to the statement made in paragraph 4.15 of the OA, the answering respondents while denying the contentions made therein beg to submit that it is well settled law that as per Rule 3 (i) (ii) of the CCS (CCA) Rule 1965, act of neglect of work or duty amounts to misconduct. The applicant was negligent in the preparation of RARs and payment of RARs in the performance of his duties as the AGE and Officiating GE.

17. That with regard to the statement made in paragraph 4.16 of the OA, the answering respondents beg to submit the OA is devoid of merit hence liable to be dismissed with cost.

18. That with regard to the statement made in paragraph 5.1 to 5.27 of the OA, the answering respondents while replying upon the above paragraphs beg to submit that based on one of the vigilance check on payment of 53rd RAR in respect of CA No CEMZ/ARK/07 of 1988-89 and subsequent in puts, Chief Engineer Southern Command Pune vide letter No 260505/6/Con/E2W&P dt 20 Mar 1992 (Exhibit-VII) convened a Technical Court of Inquiry to investigate into the alleged overpayment of approximately Rupees One Crore to the contractor M/s Atlanta Construction Company (I) (Pvt) Ltd. in respect of CA No CEMZ/ARK/07 of 1988-89, pertaining to works at NAS Arakkonam. CA No CEMZ/ARK/07 of 88-89, on part completion was cancelled on 02 Apr 1992. The progress of work on that date was approximately 75%. The Technical Court of Inquiry has established negligence / lapses and attributed the same to various executives including the applicant during the year 1992. Follow up action for taking the matter to its conclusive finish as per the CCS (CCA) Rule 1965, has been put into motion

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MBK Rao
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Director (Pers & Legal)
For Chief Engineer

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Chief Engineer

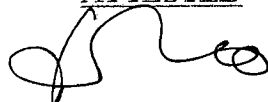
since then to establish and bring to the notice of the competent authority to take action. The negligence / lapses having been brought to the notice of the authority competent to initiate action against the applicant on 19 Nov 2000 and the proceedings under the CCS (CCA) Rules 1965 has been completed on 19 Nov 2004 i.e. by issue of penalty of 'Censure' to the applicant.

19. That with regard to the statement made in paragraphs 6 and 7 of the OA, the respondents offer no comment.

20. That with regard to the statement made in paragraphs 8.1 to 8.4 of the OA, the respondents beg to submit that the applicant has failed to make out a case warranting the interference by the Hon'ble Tribunal. In view of the submission the respondents therefore pray that the Hon'ble Tribunal may be pleased to dismiss the present case in the interest of justice and equity.

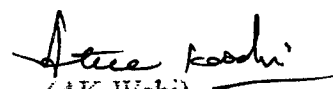
21. Statement made in paragraph 01 to 20 are true to my knowledge and belief, those made in paragraph 01 to 20 being matter of records, are true to my information derived there from and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact. And I sign this verification this 04th day of December 2007 at Visakhapatnam.

ATTESTED



MBK Rao
SE
Director (Pers & Legal)
For Chief Engineer

DEPONENT



(AK Wahi)
Brig
Chief Engineer

File in Court on 22/11/08...

Court Officer.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the matter of:-

O.A. No. 313/2006.

Shri Mahesh Chandra Gupta.

-Versus-

Union of India and others.

-And-

In the matter of:-

Rejoinder submitted by the applicant
against the written statements
submitted by the respondent.

The applicant above named most respectfully begs to state as follows:-

1. That with regard to the statements made in para 1 (b), (c), (d) and (e) of the written statement the applicant categorically denies the correctness of the objections and further begs to say that the applications preferred by the applicant is based on specific and firm grounds and the allegation of non-joinder and mis-joinder of parties as well as objection raised to the effect that O.A. is hit by principle of waiver and acquiescence is totally incorrect, hence denied. Moreover, the entire disciplinary proceeding has been conducted in total violation of the relevant procedure laid down in CCS (CCA) Rules, 1965 and the findings of the inquiry officer is also perverse and based on no evidence.
2. That your applicant also deny the correctness of paragraph 2 (a), (b), (c), (d), (e), (f), (g), (h), (i), (k), (l) and (m). The applicant while denying the correctness of the aforesaid statements save and except, which are borne on record and further beg to say that in the Technical Court of Inquiry, the Chief Engineer, Southern Command, Pune vide order dated 28.03.1992 constituted for the purpose of conducting inquiry regarding irregularities

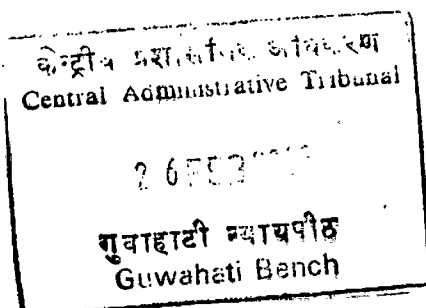
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Gupta
Filed by the applicant
through M. Dutta, advocate
on 22.02.08

Recd. Secy

22/2/08

occurred prior to 59 RAR and it is categorically submitted that there was no reference made by the Chief Engineer, Southern Command for holding any inquiry in respect of any irregularities beyond 59 RAR. But surprisingly, while memorandum of charge sheet was issued upon the applicant the disciplinary authority brought allegation of incorrect preparation of RAR Nos. 7, 13, 14, 33, 40, 43, 54, 56 and 58 in article of charge no. I and also brought further allegation regarding incorrect preparation of RAR from 59 RAR to 63 RAR certifying quantities of boulders lying at site is correct without proper documentation and improper application of rates by while boulders in respect of workers pertaining to the period October '88 to April '92, whereas it appears from the memorandum of charge sheet dated 12.06.2002 as well as from the order of penalty dated 19.11.2004, that the applicant has been charged for certifying the quantities of boulders lying at sites as correct without any proper documentation and improper application of rates for the while boulders lying at sites in Article of charge II. Whereas, penalty has been imposed upon the applicant alleging incorrect preparation of RAR from 59th RAR to 63rd RAR without any proper documentation/transfer and wanting of boulders and for releasing payment without conducting any physical ground check. However, the disciplinary authority remained silent about the allegation brought against the applicant in Article of Charge No. I. Applicant also categorically denies the charge raised in Article- I that he "did not go to the site physically", moreover the respondents in support of the allegation has not produced any document to establish the charge that the applicant "did not go to the site physically". As such the charge labeled against the applicant in Article I of the impugned memorandum of charge sheet dated 12.06.2002 based on "no evidence" and the said charge at Article I of the impugned charge sheet is liable to be set aside and quashed.

It would be evident from the impugned order of penalty dated 19.11.2004, that the applicant has been imposed penalty also for non transparent accounting of boulders and for releasing of payment without conducting any physical ground check. Therefore it appears from the impugned order of penalty that the penalty has been imposed upon the



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applicant for which no charges contained in Article of Charge No. II, for perusal of convenience of the Hon'ble Court, the Article of charge No. I and II as well as the relevant portion of impugned order of penalty dated 19.11.2004 are quoted hereunder:-

"ARTICLE-I

MES-186749 Shri M. C. Gupta, AEE B/R while functioning as ACE B/R-III CE (P) No. 1 Naval Air Station, Arakkonam during the period from Oct 88 to Apr 92 failed to perform his duty in that he prepared incorrect RAR Nos. 7, 13, 14, 33, 40, 43, 54, 56 and 58 whereby the material lying at the site was certified without any physical ground check.

By this act, the said MES-186749 Shri MC Gupta, AEE B/R (now EE) failed to maintain devotion to duty, and thus contravened Rule 3 (1) (ii) of CCS (Conduct) Rules, 1964.

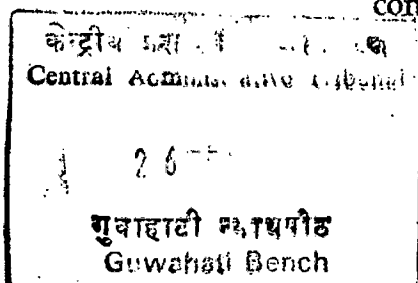
ARTICLE-II

MES-186749 Shri MC Gupta, AEE B/R (now EE) while functioning as ACE B/R-III CE (P) No.1 Naval Air Station, Arakkonam during the period from Oct '88 to Apr '92 failed to perform his duty in that he prepared incorrect RARs from 59th RAR to 63rd RAR and certifying the quantities of boulders lying at site as correct without any proper documentation and improper application of rates for the white boulders lying at site. By this act, he failed to maintain devotion to duty, and thus contravened Rule 3 (1) (ii) of CCS (Conduct) Rules, 1964."

"Penalty order dated 19.11.2004

AND WHEREAS on denial of charges by the said Shri MC Gupta and based on the submission made by him, it has transpired that the boulders were not stacked and measured and the payments were released without any physical ground check of the material lying at the site;

AND WHEREAS the President after a careful consideration of the Article of Charges, the submission made



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by the said Sri MC Gupta, the evidence on record and all the facts and circumstances of the case, has arrived at the conclusion that a minor penalty should be imposed on the said Sri MC Gupta, then AGE (B/R), now EE, MES, for incorrect preparation of RARs (from 59th RAR to 63rd RAR) without any proper documentation/transparent accounting of boulders and for releasing payments without conducting any physical ground check.

NOW, THEREFORE, the President imposes the penalty 'Censure' on the said Shri MC Gupta, then AGE (B/R), now EE, MES.

BY ORDER AND IN THE NAME OF THE PRESIDENT

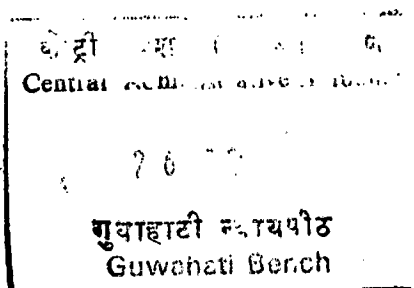
Sd/-

(Sunil Uniyal)

Under Secretary to the Govt. of India."

On a mere reading of the article of charge No. II and the relevant portion of the penalty, it would be evident that the applicant is imposed for the alleged charges that the boulders were not staged and measured and the payments were released without conducting any physical ground check of the materials lying at site which are not part of the article of charge no. II or in other words such charges has never brought against the applicant in the impugned memorandum of charge sheet dated 12.06.2002 and on that score alone the penalty order dated 19.11.2004 is liable to be set aside and quashed.

It is further categorically submitted that the Chief Engineer, Southern Command never referred RAR 59th to RAR 63rd before the technical court of inquiry, which would be evident from the letter dated 28.03.1992 as indicated in para 2 (C), but surprisingly, for the reasons best known to the authorities that they are referring now that the alleged irregularities has come to the notice through a staff court of inquiry based on the findings of the technical court of inquiry. Whereas, it is specifically stated that RAR 59th to 63rd was not referred by the Chief Engineer, Southern Command for any sort of inquiry to the technical court of

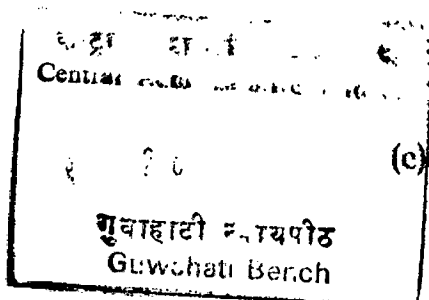


inquiry. As such the applicant is made a victim of conspiracy by a vested circle working in the office against the applicant at the relevant point of time. Since RAR 59th to 63rd was never the subject matter of the technical court of inquiry as such the initiation of impugned memorandum of charge sheet dated 12.06.2002 based on the staff court of inquiry is liable to be set aside and quashed. Moreover, the applicant is no way connected with RAR 52nd, where the alleged over payment is made as per findings of the technical court of inquiry constituted following the order of the Chief Engineer, Southern Command.

It is further submitted that on a mere reading of para 35 and 36 of the technical court of inquiry, it would be evident that an overpayment of Rs. 16.72 lakhs has been allowed for materials at site at the 52nd RAR stage. Whereas, the applicant is not any way connected with RAR 52nd, whereas he has been declared responsible for such overpayment, which, was recovered from the next running bills pertaining to 53rd RAR. The relevant portion of para 35 and 36 are quoted below for perusal of the Hon'ble Court.

"35 From the foregoing, the Tech C of I finds that following lapses have been committed:-

- (a) An overpayment of Rs. 16.72 lakhs has been allowed for materials at site at the 52nd RAR stage.
- (b) Contractor has been allowed to utilize 31843 Cu M of boulders brought in site and paid for in the RAR for items of works not covered in the Contract Agreement.
- (c) Payment has been allowed in the RAR for raw material viz boulders, without any proper authority.
- (d) Adequate controls/checks on payments and documentation have not been exercised at CWE/CE level.
- (e) The documentation for materials brought by the Contractor has not been satisfactory.



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Mahesh chandra Gupta

36. For the lapses enumerated at para 35 above, the Tech C of 1 finds the following responsibilities.

(a) For overpayment as brought out para 35 (a) above:

- (i) Maj VKP Singh, GE (P).
- (i) Shri VO Srinivasan, AGE B/R
- (ii) Shri MC Gupta, AGE B/R.

(b) For allowing contractor to use material paid for in works other than covered in the CA, as brought out para 35 (b) above:

- (i) Shri S. Dhiman, CWE
- (ii) Maj. VKP Singh, GE (P)

(c) For not exercising checks/controls resulting in overpayment of Rs. 16.72 lakhs.

- (i) Shri S. Dhiman, CWE.

(d) For laxity in documentation, brought out at para 35 (c) above:

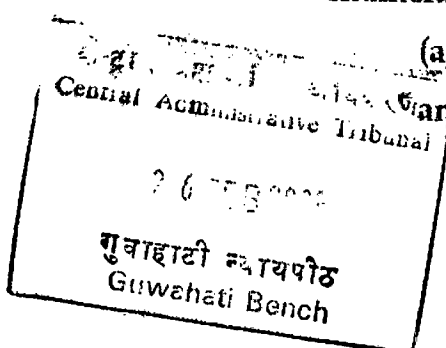
- (i) Shri V O Srinivasan, AGE B/R.

It is categorically submitted that the applicant is not at all connected with the 52nd RAR. As such he cannot be declared responsible if there is any overpayment is made in respect of RAR 52nd and it would be evident from Article I and II that nowhere RAR 52nd is mentioned and on that score alone the impugned penalty order dated 19.11.2004 is liable to be set aside and quashed.

It is further submitted that on a mere reading of the recommendation of the technical court of inquiry which was held on 23.04.1992 and on subsequent days pursuant to the order of Chief Engineer, Southern Command dated 20.03.1992, which are quoted below for the perusal of the Hon'ble Court.

"37. The following factors emerge from the findings as enumerated in the preceding paragraphs:-

- (a) The Project was prestigious and time bound one, and the executives were always under pressure with regard



to quality and speed of work and were working round the clock.

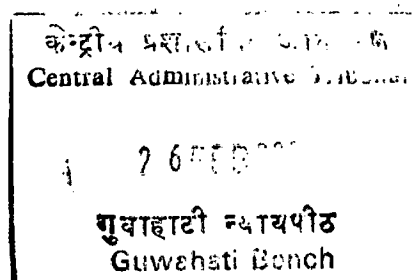
(b) The overpayment made at 52nd RAR stage was adjusted in the immediate next RAR i.e. 53rd RAR.

38. Provision exists for subsequent modification/correction of certificate for advance payments both for work done materials brought and paid for as per condition 64 of IAFW-2249."

On a mere reading of the recommendations, it appears that even the technical court of inquiry also satisfies that "no serious irregularities have been committed". However the court recommended administrative actions deem fit be taken on the officers mentioned in para 36 of the lapses shown against them. When the applicant is not involved with the job of RAR 52nd recommendations of his name for lapses and also for disciplinary actions does not arise as such the initiation of the disciplinary action against the applicant under the impugned memorandum of charge sheet dated 12.06.2002 is without having any jurisdiction under the law or mere holding the field. Moreover, even assuming if there is any lapse on the part of the applicant that does not warrant any disciplinary proceeding under Rule 16 of the CCS (CCA) Rules 1965.

That it is stated that when the applicant categorically denied the charges, it is mandatory on the part of the respondents to hold a full flagged inquiry and providing a reasonable opportunity to the applicant. But in the instant case the respondents Union of India in spite of specific denial of the charges did not hold any inquiry and on that score alone the impugned penalty dated 19.12.2002 is liable to be set aside and quashed.

It is further submitted that on a mere reading of the report of the staff court inquiry, which was convened following the order of the Chief Engineer, Chennai Zone vide its letter dated 10.06.1996 as indicated in paragraph 2 (d), on a careful reading of paragraph 38, 40 and 1 (d), 2 and 3 of the recommendations, which are quoted below for the perusal of the Hon'ble Court.



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Majesh chandra Gupta

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Mahesh Chandra Gupta

"38. It was physically impossible to take accurate measurement of the boulders unless stacked properly as the same was scattered in large area. The court commissioner also did guess work and only assessed the approximate quantity (Q. No. 464).

39. The quantity of contractors material i.e. boulders lying at site as per the 63rd RAR was 86,000 Cum, where as per the Court Commissioner's report. The quantity of boulders lying at site was assessed only 25,600 Cum. Major VKP Singh failed to account for the difference between the two quantities, though, he was the Garrison Engineer throughout between these two occasions (Q. No. 680)

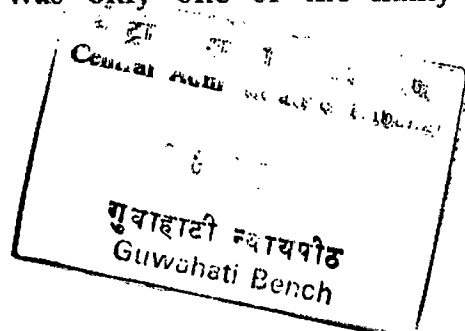
40. Thus there is a difference of quantity (86,000-25,600) 60,400 cubic metre of boulders over paid at the rate of Rs. 95 per cubic metre. This quantity, however, has been recovered in the final bill prepared by the GE (Maint), Arakkonam pertaining to this contract in Nov 97 (Exhibit No. 33)."

1. (d) Shri MC Gupta, MES No. 186749, then Assistant Garrison Engineer B/R III, GE (P) No 1, Naval Air Station, Arakkonam from oct 88 to Apr 92 for:-

(i) Incorrect preparation of RAR Nos. 7, 13, 14, 33, 40, 43, 54, 56 and 58 wherein the material lying at site have been certified without any physical ground check.

(ii) Incorrect preparation of RAR from 59th RAR to 63rd RAR and certifying the quantities of boulders lying at site as correct and improper application of rates for the white boulders lying at site.

2. The huge project of such a magnitude which was also time bound, was closely monitored for its progress from highest Engineer, Naval and Defence authorities. The staff and executives of CE, CWE and GE's came under tremendous pressure to adhere to unworkable time frame envisaged for the project. The aim of everyone was to achieve the target. However, the accounting of boulders for executing this work, in essence was only one of the many such important activities being

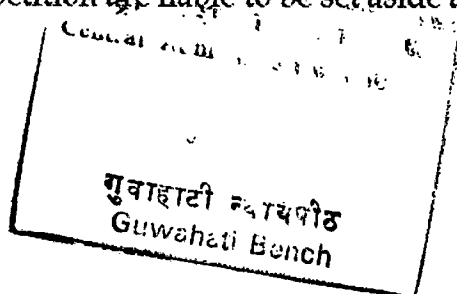


handled by the site executives and in no case was a final settlement, it being just an advance being paid to contractor. As the over payment is more or less recovered in the final bill as also claimed in arbitration proceedings in progress. The difference in quantity of the boulders between the Court Commissioner's report and the quantities handed over to BRTF and its value may also be claimed from the contractor in arbitration.

3. The lapses monitored in para 1 above should not be viewed in isolation. The circumstances prevailing and trying conditions experienced by the executives and constant pressure exerted by higher ups be given due consideration".

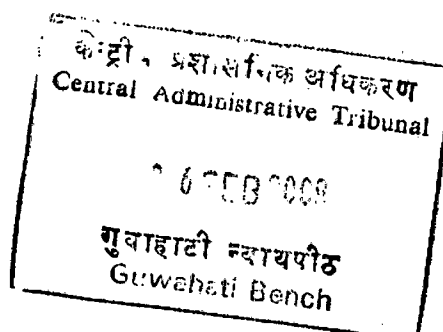
It is quite clear from paragraph 38, that even the Court Commissioner could not able to take the accurate measurement of the boulders and overpayment has been indicated only in respect of RAR 48, 49, 51 and 52nd as indicated in 1 (C) 4. Therefore applicant is not at all connected with the job of RAR 48, 49, 51 and 52nd.

So far allegation made in respect of RAR 59th to 63rd only to the extent of certifying quantities of boulders lying at sites as correct without any proper documentation and improper application of rates for the white boulders lying at sites. But penalty has been imposed by the disciplinary authority for releasing payment without conducting any physical ground check, which allegation is not there in the article of charge no. II. Moreover it would be evident from the recommendation itself that the alleged overpayment has been recovered from the final bill and it is also recommended lapses should not be viewed in isolation considering the circumstances prevailing and trying conditions experienced by the executives and constant pressure exerted by a higher ups be given due consideration. A mere lapse as indicated in the staff court of inquiry report does not warrant initiation of a disciplinary proceeding even under Rule 16 of the CCS (CCA) Rules, 1965 and on that score alone the impugned charge sheet dated 12.06.2002, impugned penalty order dated 19.11.2004 and impugned order dated 18.08.2006 passed rejecting the review petition are liable to be set aside and quashed.



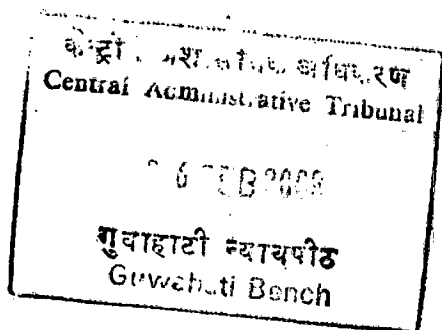
It is further stated that the entire disciplinary proceeding itself is liable to be set aside and quashed only on the ground of inordinate delay in initiating the instant disciplinary proceeding which has seriously prejudiced the defence of the applicant in defending his case.

3. That with regard to the statements made in paragraph 3, 5, 6(a), (b), 7 and 8, the applicant denies the correctness of the statements and further reiterates the statements made in the original application. Moreover, on a mere reading of the article of charge contained in impugned memorandum dated 12.06.2002 as well as the allegation brought in show cause dated 19.11.2006, it would be evident there are sharp differences on the allegations and on that score alone the impugned penalty order dated 19.11.2004 is liable to be set aside and quashed.
4. That with regard to the statements made in paragraph 9, 10, 11, 12, 13 14, 15, 16, 17, 18 and 20 of the written statements and further reiterates the statements made in the original application. It is further submitted that mere lapses or negligence's without any ulterior motive does not fall within the purview of misconduct and such alleged lapses or negligence does not warrant initiation of disciplinary proceeding under Rule 16 of the CCS (CCA) Rules, 1965 and that too holding any formal inquiry. So the impugned penalty order dated 19.11.2004 is not sustainable in the eye of law. It is submitted that the full text of the technical court of inquiry report held on 23.04.2002 and on subsequent dates pursuant to the order of the Chief Engineer, Southern Command, Pune vide order bearing no. 260505/6/Con/E 2 W & P dated 20.03.1992 as well as Staff Court of Inquiry held pursuant to the order bearing letter no. 1003/Stores/Ark/07/40/E 1 D dated 10.06.1996 by the Chief Engineer, Chennai Zone are not available with the applicant in spite of his best effort, as such the Hon'ble Court be pleased to direct the respondents to produce the full text of the aforesaid two reports of the technical court of inquiry and staff court of inquiry at the time of the final hearing for proper adjudication.



5. It is categorically submitted that the staff court of inquiry report recommended administrative actions against the applicant without having any sort of evidence as regard the alleged allegation that the applicant has not conducted the physical verification without any physical ground check and also on the allegation that the applicant never physically gone to the work site and there is no any oral and documentary evidence and on that score alone the impugned order of penalty dated 19.11.2004 is liable to be set aside and quashed.

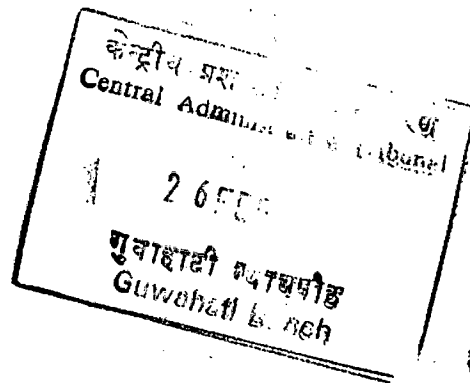
In the facts and circumstances stated above, the charge sheet dated 12.06.2002, impugned penalty order dated 19.11.2004 and impugned order dated 18.08.2006 passed rejecting the review petition are liable to be set aside and quashed.



VERIFICATION

I Shri Mahesh Chandra Gupta, SE, S/o- Shri Shanti Swarup Gupta, aged about 47 years, working as Director, in the O/o- Chief Engineer (AF), Shillong, Elephant Falls Camp, P.O- Nonglyer, Upper Shillong, Shillong- 793009, applicant in the instant application, do hereby verify that the statements made in Paragraph 1 to 5 of the rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 17th day of February 2008.



Mahesh chandra Gupta

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

IN THE MATTER OF

A NO 313/2006

IN THE MATTER OF

SHRI MAHESH CH GUPTA

Versus

Union of India and others

... Respondents

-AND-

IN THE MATTER OF

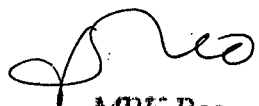
Written reply Statement submitted by the Respondents to the Rejoinder filed by applicant

WRITTEN REPLY STATEMENT :

The humble answering respondents submit their written reply statement to the rejoinder filed by the applicant as follows :

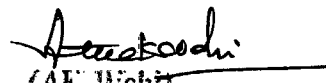
1. (a) That I am Brig AK Wahi S/o Late Brij Mohan Wahi, aged about 51 years and on behalf of respondent No 01 and 02 in the above case. I have gone through a copy of the rejoinder served on me and have understood the contents thereof. Save and except whatever is specifically admitted in this written statements, the contentions and statements made in the rejoinder and authorized to file the written statement on behalf of all the respondents.
- (b) The rejoinder filed is unjust and unsustainable both in facts and in law.
- (c) That the rejoinder is bad for non-joinder of necessary parties and misjoinder of unnecessary parties.
- (d) That the rejoinder is also hit by the principles of waiver estoppels and acquiescence and liable to be dismissed.

ATTESTED

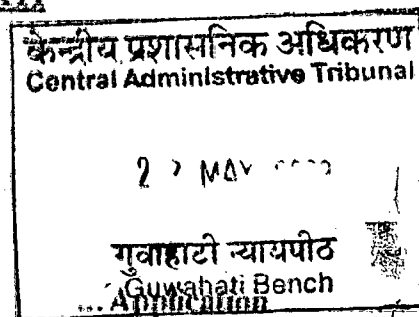


MBK Rao
SE
Director (Pers & Legal)
For Chief Engineer

DEPONENT



(AK Wahi)
Brig
Chief Engineer



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2. That with regard to statement made by the applicant in Paragraph 1 of rejoinder, the statements made in Paragraph 1 (b), (c), (d) and (e) of written statements made by the Respondents are true and based on facts and hence denies the contention of Paragraph 1 of rejoinder statement of the applicant. The points raised by applicant in the rejoinder statement were already replied in the written statement filed by the respondents to the OA and no new issue was raised in the rejoinder. However replies to the rejoinder are humbly submitted in the succeeding Paragraphs.

3. That with regard to the statement made in Paragraph 2 of Rejoinder statement, the answering respondents beg to submit that statement made in Paragraph 2 (a), (b), (c), (d), (e), (f), (g), (h), (i), (k), (l) and (m) of the written reply statement are true and based on facts and records including the reply to the Show cause notice before the appropriate authority, the memorandum of charge sheet letter No C-13011/3/D(Vig-II)2002 dated 12 Jun 2002 (Annexure-D) under Rule 16 of the CCS (CCA) Rule 1965 was served on the applicant. The Board of Inquiry convened vide Flag Officer Commanding-in-Chief Eastern Naval Command, Visakhapatnam Signal DTG: 241740 had the under mentioned findings :-

(a) That the applicant was officiating Garrison Engineer during the payment of RAR Nos. 7, 13, 14, 33, 40, 43, 54, 56 and 58.

(b) That the applicant was responsible for incorrect preparation of RARs No 59 to 63 and for certifying the quantity of boulders lying at site without proper documentation. Even the rates for white boulders at site have been improperly applied.

As per Para 1(d) on Page 201 of Board of Inquiry the applicant has been apportioned Attributability of the blame.

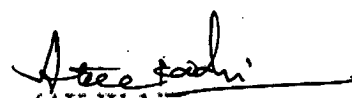
A copy of the relevant portion of the Board of Inquiry is annexed herewith and marked as Annexure-I. [Filed with W.S.]

ATTESTED



MBK Rao
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Director (Pers & Legal)
For Chief Engineer

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Chief Engineer

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4. The respondents beg to submit that mere reading of the statement of articles of charges framed against the applicant (Annexure-D), it is crystal clear that the imputation of contraventions of the CCS (CCA) Rule 1965 have been spelt out in very clear cut terms.

5. Further respondents beg to submit that based on the statement of articles of charges framed against the applicant the disciplinary authority i.e. President of India after careful consideration of the articles of charges, submission made by Shri MC Gupta and the evidence on record and circumstances of the case has imposed minor penalty of 'Censure' on the applicant. No rule / provisions of the procedure for penalties as contained in the disciplinary proceedings under Rule 16 of the CCS (CCA) Rule 1965 has been either dispensed with or infringed. Based on the evidence placed before the Government of India, Ministry of Defence, New Delhi has imposed the penalty of 'Censure' upon the applicant vide order bearing letter No C-13011/3/Vig-II/2002 dated 30 Nov 2004 (Annexure-E). [Filed with W.S.]

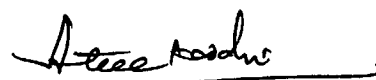
6. Respondents beg to submit that the applicant has not put forth any new facts or circumstances or evidence in support of submissions. The applicant as witness No 16 at the proceedings of the Board of Inquiry convened vide Flag Officer Commanding-in-Chief Eastern Naval Command, Visakhapatnam Signal DTG: 241740 (Exhibit-II) had been accorded full liberty to disprove any discrimination on record, or evidence against him. Even at the time of disciplinary action through the charge sheet dated 12 Jun 2002 under Rule 16 of the CCS (CCA) Rule 1965, the charges against applicant were conclusively proved. The applicant being a Group 'A' Officer (UPSC Officer) the disciplinary power is vested in the Hon'ble President of India. Hon'ble President of India after careful consideration of the Articles of Charges, the submission made by the applicant i.e. Shri MC Gupta the evidence on record and all the facts and circumstances of the case has arrived at the conclusion that a minor penalty be imposed on the applicant, for preparation of RARs (From 59th RAR to 63rd RAR ie Article II of Charge Memo) without any proper documentation / transparent accounting of boulders and for releasing payments without conducting any physical ground check.

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Director (Pers & Legal)
For Chief Engineer

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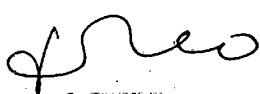
CE Zone commented that quantities of material shown lying at site in RARs 59 to 63 paid by the CO were wrong. It is also brought that CO was officiating GE during payment of RARs 7, 13, 14, 40, 43 and 54 when payment for material at site was made. CE Command had agreed with the view of Zonal CE that since the Engineer-in-Charge has to check and verify the material lying at site in addition to work done. This was not done, leading to over payment. He should have determined the actual excess quantity of boulder being reflected in the RARs and should have deducted the excess quantity in 59 to 63 RARs, which were passed in his tenure. The CO cannot absolve himself of his responsibility as Engineer-in-Charge.

7. The respondents beg to submit that full opportunity has been accorded to the applicant to put forth his case in defence and all procedures as required under Central Civil Service (Classification, Control and Appeal) Rule and CVC guidelines have been followed (specifically covered under Article of Charge Memo for 59 to 63rd RAR). The applicant being a group 'A' Officer (UPSC Officer) the disciplinary power are vested with Hon'ble President of India.

8. Respondents beg to submit that the President of India, as the disciplinary authority, after a careful consideration of the Articles of charges, the submission made by the applicant Shri MC Gupta, the evidence on record and all the facts and circumstances of the case, has arrived at the conclusion that a minor penalty be imposed on the applicant, for preparation of RARs (from 59th to 63rd RAR) without any proper documentation / transparent accounting of boulders and for releasing payments without conducting any physical ground check.

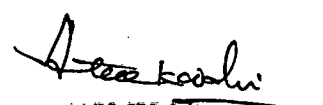
9. That with regard to statement made in Paragraph 3 of the Rejoinder, the answering Respondents reiterate that the statement made in Paragraph 3, 5, 6(a), (b), 7 and 8 in the reply statement to OA are correct and based on facts and full opportunity has been accorded to the applicant to put forth his case in defence and all procedure as required under Central civil service (Classification Control and Appeal) Rules and CVC guide lines have been followed by disciplinary authority i.e. Hon'ble President of India in this case, since the applicant is a Group 'A' office (UPSC Officer).

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Director (Pers & Legal)
For Chief Engineer

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Chief Engineer

10. That with regard to the statement made in paragraphs 4 & 5 of the Rejoinder, the answering respondents, while denying the contentions made therein beg to submit that it is well settled law that as per Rule 3 (i) (ii) of the CCS (CCA) Rule 1965, act of neglect of work or duty amounts to misconduct and the rejoinder is devoid of merit. The applicant was negligent in the preparation of RARs and payment of RARs in the performance of his duties as AGE and Officiating GE. The respondents while replying upon the above paragraphs beg to submit that based on one of the vigilance check on payment of 53rd in respect of CA No CEMZ/ARK/07 of 1988-89 and subsequent in puts, Chief Engineer Southern Command Pune vide letter No 260505/6/Con/E2W&P dt 20 Mar 1992 (Exhibit-VII) convened a Technical Court of Inquiry to investigate into the alleged overpayment of approximately Rupees One Crore to the contractor M/s Atlanta Construction Company (I) (Pvt) Ltd. in respect of CA No CEMZ/ARK/07 of 1988-89, pertaining to works at NAS Arakkonam. CA No CEMZ/ARK/07 of 88-89, on part completion was cancelled on 02 Apr 1992. The progress of work on that date was approximately 75%. The Technical Court of Inquiry has established negligence / lapses and attributed the same to various executives including the applicant during the year 1992. Follow up action for taking the matter to its conclusive finish as per the CCS (CCA) Rule 1965, has been put into motion since then to establish and bring to the notice of the competent authority to take action. The negligence / lapses having been brought to the notice of the authority competent to initiate action against the applicant on 19 Nov 2000 and the proceedings under the CCS (CCA) Rules 1965 has been completed on 19 Nov 2004 i.e. by issue of penalty of 'Censure' to the applicant.

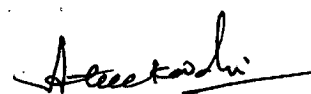
11. The respondents beg to submit that the applicant has failed to make out a case warranting the interference by the Hon'ble Tribunal. In view of the submission the respondents therefore pray that the Hon'ble Tribunal may be pleased to dismiss the present case in the interest of justice and equity.

ATTESTED

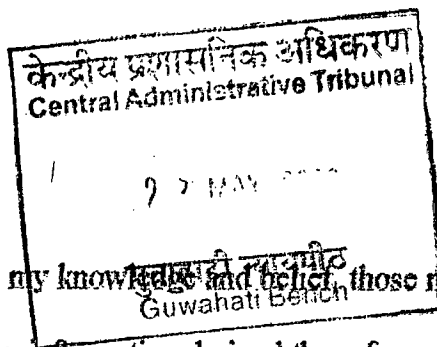


MBK Rao
SE
Director (Pers & Legal)
For Chief Engineer

DEPONENT



(AK Wahi)
Brig
Chief Engineer



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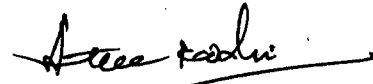
12. Statement made in paragraph 01 to 11 are true to my knowledge and belief, those made in paragraph 02 to 10 being matter of records, are true to my information derived there from and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact, and I sign this verification on this day of April 2008 at Visakhapatnam.

ATTESTED



MBK Rao
SE
Director (Pers & Legal)
For Chief Engineer

DEPONENT



(AK Wahi)
Brig
Chief Engineer

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

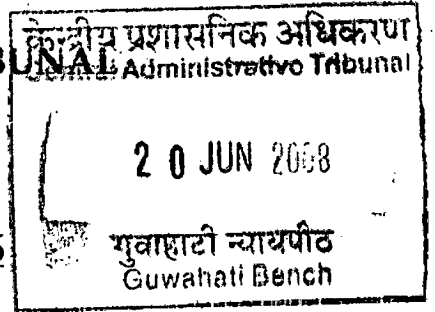
GUWAHATI BENCH: GUWAHATI

Additional Rejoinder in O. A. No. 313 /2006

Shri Mahesh Chandra Gupta.

-Versus -

Union of India & Others.



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04.	B	Copy of convening order dated 29.10.1991.	16-18
05.	C	Copy of handing over and taking over of document dated 20.05.1992	19-22
06.	D	Copy of CVC guideline dated 23.05.2000	23-24

Revised
19/6/08
PC

Date: 19.06.08

Filed by

Dutta
Advocate

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Filed by the applicant
through U. Datta, advocate
on 19.06.08

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI**

0 JUN 2008
GUWAHATI BENCH

In the matter of:-

O.A. No. 313/2006

Shri Mahesh Chandra Gupta.

-Versus-

Union of India and others.

-And-

In the matter of:-

Additional rejoinder submitted by the
applicant against the written statements
submitted by the respondent.

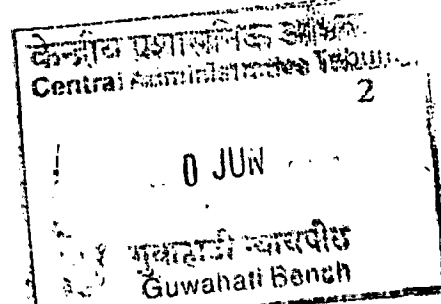
The applicant above named most respectfully begs to state as follows:-

1. That it is stated that so far article of charge No. 1 contained in the impugned memorandum of charge sheet dated 12.02.2002, wherein it has been alleged that during the period from October, 1988 to April, 1992, the applicant had failed to perform his duty by preparing incorrect RAR 7, 13, 14, 33, 40, 43, 54, 56 and 56, whereby the material lying at the sites was certified without any physical ground check. Relevant portions of article no. I and II are quoted below:-

"ARTICLE-I

MES -186749 Shri MC Gupta, AEE B/R while functioning as AGE B/R-III CE (P) No. 1 Naval Air Station, Arakkonam during the period from Oct 88 to Apr 92 failed to perform his duty in that he prepared incorrect RAR Nos. 7, 13, 14, 33, 40, 43, 54, 56 and 58 whereby the material lying at the site was certified without any physical ground check.

Mahesh Chandra Gupta



ARTICLE - II

MES- 186749 Shri MC Gupta, AEE B/R (now-EE) while functioning as ACE B/R-III CE (P) No.1 naval Air Station, Arakkonam during the period from Oct'88 to Apr '92 failed to perform his duty in that he prepared incorrect RARs from 59th RAR to 63rd RAR and certifying the quantities of boulders lying at site as correct without any proper documentation and improper application of rates for the white boulders lying at site. By this act, he failed to maintain devotion to duty, and thus contravened Rule 3 (1) (ii) of CCS (Conduct) Rules, 1964".

However, it would be evident from the Annexure- C of the written statement as well as from Annexure- A of my additional rejoinder, wherein the Chief Engineer, Vizag has agreed on the basis of comments submitted by the CWE, Chennai after submission of review petition dated 30.12.2004 and in fact it is evident from the communication of the letter no. 130806/4/681/E1D dtd. 25.03.2006 (Annexure-C of the written statement) that the Chief Engineer has specifically stated penalty of censure has not been imposed on the basis of allegation leveled in Article of charge No. 1. It is relevant to mention here that in Article of Charge No. 1, it was alleged that the applicant has prepared incorrect RAR nos. 7, 13, 14, 33, 43, 54, 56 and 58, wherein allegation was material lying at the site was certified without any physical ground check. Rather it appears from the communication dated 25.03.2006 that CWE, Navy, Chennai submitted a comments where no discrepancies found as alleged in the article of charge no. 1 as regard RAR no. 7, 13, 14, 40, 43, 54, 33, 56 and 58 and ultimately, certified that the officer comments is correct, so far the allegation contained in Article of charge no. 1 and therefore the Chief engineer on 17.05.2005 in para 8 of review petition of the applicant has agreed with the CWE's comments. The relevant portion of specific comments of Chief Engineer, Visakhapattanam of para 8 of review petition is quoted hereunder:-

Mahesh chandra Gupta

"Para-8- Agreed with the CWE's comments. However, it is intimated that this RAR not those for which the blamed officer has been censored.

(A.P. Singh)
Brig.
Chief Engineer.
17 May, 2005"

It is quite clear from the above comments of the Chief Engineer that the applicant has not been imposed penalty on the basis of allegations contained in Article of charge no. 1 where discrepancies has been alleged in respect of RAR no. 7, 13, 14, 40, 43, 54, 33, 56 and 58, but surprisingly it appears that the penalty has been imposed upon the applicant on the basis of allegation of article of charge no. 1 from the impugned order of penalty dated 19.11.2004 as because the impugned order although it is alleged that the applicant has prepared incorrect RAR from 59th RAR to 63rd RAR without any proper documentation/transparent account of boulders and for releasing of payment without conducting any physical ground check. But on a mere reading of article of charge no. 2 it would be evident that there is no allegation of non preparation of transparent account and also there is no allegation for releasing payment without conducting any physical ground check. Therefore the allegation which is indicated in the impugned order dated 19.11.2004 for which penalty has been imposed appears to be connected with Article of charge no. 1 although there is a allegation for incorrect preparation of 59th RAR to 63rd RAR. On the face of the comments of the Chief Engineer dated 17.05.2005 the impugned order dated 19.11.2004 is not sustainable in order to impress upon the Hon'ble Court that the article of charge no. I and II and the relevant order dated 19.11.2004 are quoted hereunder for perusal of the Hon'ble Court for ready reference.

"ARTICLE-I

MES -186749 Shri MC Gupta, AEE B/R while functioning as AGE B/R-III GE (P) No. 1 Naval Air Station, Arakkonam during the period from Oct 88 to Apr 92 failed to perform his duty in that he prepared incorrect RAR Nos.

Mahesh chandra Gupta

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Guwahati Bench

7,13,14,33,40,43,54,56 and 58 whereby the material lying at the site was certified without any physical ground check.

ARTICLE - II

MES- 186749 Shri MC Gupta, AEE B/R (now EE) while functioning as AGE B/R-III GE (P) No.1 naval Air Station, Arakkonam during the period from Oct'88 to Apr '92 failed to perform his duty in that he prepared incorrect RARs from 59th RAR to 63rd RAR and certifying the quantities of boulders lying at site as correct without any proper documentation and improper application of rates for the white boulders lying at site. By this act, he failed to maintain devotion to duty, and thus contravened Rule 3 (1) ii) of CCS (Conduct) Rules, 1964.

Order

WHEREAS disciplinary proceedings under Rule 16 of the Central Civil Services (classification, control & appeal) Rules, 1965, were initiated against MES 186149 Shri MC Gupta, then AGE (B/R), now EE, vide Ministry of Defence Memorandum No. C-13011/3/D (Vig.II)/2002, dated the 12th June 2002, where under the statement of Articles of charge and the statement of imputations of misconduct or misbehaviour were also served on him and he was afforded an opportunity to make a submission/statement of defence against the charges leveled against him."

AND WHEREAS on denial of charges by the said Sri MC Gupta and based on the submission made by him, it has transpired that the boulders were not stacked and measured and the payments were released without any physical ground check of the material lying at the site;

AND WHEREAS the President after a careful consideration of the article of charges, the submission made by the said Shri MC Gupta, the evidence on record and all the facts and circumstances of the case, has arrived at the conclusion that a minor penalty should be imposed on said Shri MC Gupta, then AGE (B/R), now EE, MES, for incorrect preparation

Mahesh chandra Gupta

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of RARs (from 59th RAR to 63rd RAR) without any proper documentation/transparent accounting of boulders and for releasing payments without conducting any physical ground check;

"NOW, THEREFORE, the president imposes the penalty of 'Censure' on the said Shri MC Gupta, then AGE (B/R), now EE, MES.

BY ORDER AND IN THE NAME OF THE PRESIDENT

Sd/-

(Sunil Uniyal)

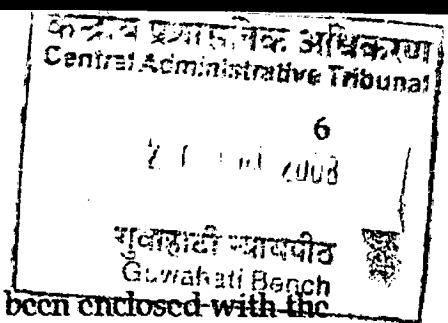
Under Secretary to the Govt. of India".

It is specifically stated that in view of the observation of CWE as well as in view of the comments of Chief Engineer dated 17.05.2005, it appears that penalty has been imposed upon the applicant only for the sake of imposing penalty but not on the basis of the charge brought in article no. 2, when the applicant is exonerated from the charge no. 1 as it appears from the Chief Engineer's comments as such relying those charges a penalty cannot be imposed upon the applicant questioning the reference of 59th RAR to 63rd RAR but relying on the grounds raised in Article of charge no.1 and on that score alone the impugned penalty order dated 19.11.2004 is liable to be set aside and quashed.

CHARGE	PUNISHMENT
Prepared in correct RAR from 59 th to 63 rd and certifying the quantities and boulders lying at site as correct without any proper documentation and improper application of rates for white boulders lying at site.	In-correct preparation of RARs from 59 th to 63 rd without any proper documentation/transparent accounting of boulder and for releasing payment without conducting any physical ground check.

Therefore it appears that the department has proceeded the applicant on a wrong notion where everything is in order as appeared from the CWE's comments. It is also surprised to note here at this stage that the relevant documents pertaining to comments of CWE and Chief

Mahesh chandra Gupta



Engineer in respect of article of charge no. 2 has not been enclosed with the written statement and thereby the respondents has suppressed the material fact. Therefore Hon'ble Court be pleased to direct the respondents to produce the relevant documents containing comments of CWE as well as Chief Engineer, Visakapatnam relating to RAR 59th RAR to 63rd RAR for perusal of the Hon'ble Court as well as for proper adjudication of the case.

2. That it is stated that it appears from the letter dated 25.03.2006 that the authority did not agree with the stand taken by the applicant in his subsequent review petition, which was submitted on 27.12.2005 and such stand of the respondents are self contradictory, in view of CWE comments as indicated above in respect of charge no. 1.

(A copy of the letter dated 25.03.2006 is enclosed herewith and marked as Annexure-A).

3. That it is stated that the applicant has made payment as per RAR 59, the quantity of boulders is paid for 1, 11, 208.00 Cu. Meters, which is also certified by the board of officers, constituted by the CWE, Arakonam, and thereafter no materials namely boulders were supplied thereafter by the contractors. Moreover the applicant handed over the charge on 20.05.1992, therefore, assuming if there is any discrepancies then also applicant is not liable for any discrepancy. It is also stated that the applicant has handed over the charge to the Asstt. Garrison Engineer on 28.05.1992 and said Sri S.K. Mishra never pointed out any shortage any quantity of boulders rather he made a comments in the handing over document that the quantity of materials lying at site as reflected in 63rd RAR (last before conciliation) cannot be verified unless it is staged in measurable condition. Garrison Engineer also countersigned the handing over the document and the applicant was relieved from the charge, as such at that belated stage the memorandum of charge sheet is not maintainable. Moreover, there is an inordinate delay in initiating the memorandum of charge sheet against the applicant for which no explanation is given in the written statement. Therefore there is a gross violation of CVC guidelines and on that score

Mahesh Chandra Gupta

alone the impugned penalty order dated 19.11.2004 and the memorandum of charge sheet dated 12.06.2002 are liable to be set aside and quashed.

गुवाहाटी न्यायपीठ
Guwahati Bench

(Copy of convening order dated 29.10.1991, handing over and taking over the document dated 20.05.1992 and CVC guideline dated 23.05.2000 are enclosed herewith and marked as Annexure- B, C and D respectively).

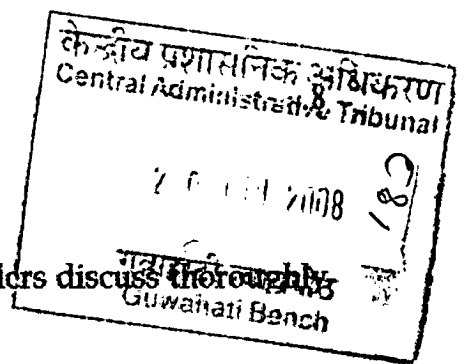
4. That it is further submitted that the subsequent review petition of the applicant has been rejected by the respondents on the alleged ground that there is no new point or fresh material has been raised in the review petition, but it is stated that lots of new grounds or fresh material has been placed by the applicant in his review petition. However, as per CCS (CCA) Rules, 1965, more particularly sub Rule 2 of Rule 27 says as follows:-

"2. Sub rule 2 of rule 27 clearly lays down that the appellate authority shall consider-

- (a) Whether the procedure laid down in the CCS (CCA) Rules has been complied with and if not whether such non compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice.
- (b) Whether the findings of the disciplinary authority are warranted by the evidences on the record; and
- (c) Whether the penalty is adequate, inadequate or severe."

Thus the rule requires that even if the applicant has not brought out any new points in the appeal, it is obligatory on the part of the Appellate Authority to discuss whether there is any procedural lapses or denial of opportunity of defence and whether the findings of the disciplinary authority are based on evidences or not. This is rarely done and the result is obvious. The Appellate Authorities should bear this mind and issue the appellate orders in such a way that such unjust feelings or impressions are

Maheesh Chandra Gupta



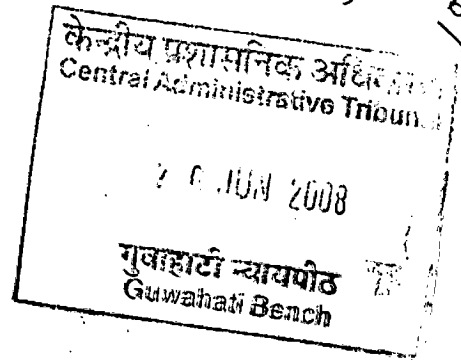
not correct. This is possible only if the appellate orders discuss thoroughly the following points.

- (i) The procedural aspects as well as the justness of the findings of the disciplinary authority with reference to the admissible evidences;
- (ii) A proper discussion of the points raised in the appeal; and
- (iii) Any objective assessment of the lapse on the part of the punished official with a view to coming to a decision that the charge (s) had been established and that the penalty is appropriate/adequate and does not require to be either toned down or enhanced.

In view of clear provision of rule the review petition ought not to have been dismissed on the alleged ground that no new material or point has been raised.

5. The Hon'ble Court be further be pleased to direct the respondents to produce all relevant original documents/records pertaining to the instant proceeding vide memorandum of charge sheet dated 30.11.2000.
6. That this additional rejoinder is filed bonafide and for the ends of justice.

Mahesh Chandra Gupta



VERIFICATION

I, Shri Mahesh Chandra Gupta, SE, S/o- Shri Shanti Swarup Gupta, aged about 47 years, working as Director, in the O/o- Chief Engineer (AF), Shillong, Elephant Falls Camp, P.O- Nonglyer, Upper Shillong, Shillong- 793009, applicant in the instant application, do hereby verify that the statements made in Paragraph 1 to 6 of the additional rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 14th day of June 2008.

Mahesh Chandra Gupta

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Annexure-A

CONFIDENTIAL

File: 2610254

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

Headquarters
Chief Engineer
Southern Command
Pune-411 001

19080641-681/EID

गुवाहाटी सायबॉट
Guwahati Bench

25 12/06

Encl-C's Branch: EID(D&V)
Army HQ, DHQ PO
Kashmir House
New Delhi-11

REVIEW PETITION DATED 30 DEC 2004 FROM
MES-186148 SHRI MC GUPTA-EE

1. Reference your HQ letter No 78655/1339/1005/EID dated 09 Jan 06.
2. Paras 1-4 comments/recommendations of Chief Engineer Zone alongwith comments/recommendations of CE Southern Command on the version of Review Petition dt 27 Dec 05 submitted by MES-186148 Shri MC Gupta are forwarded herewith in duplicate for your further action please.

FR 15.12
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(SJ Mujumdar)
Col
Col (D&V)
for Chief Engineer

As above (08 sheets)

Chief Engineer (Navy)
Station Pond
Visakhapatnam- 530001

for info wrt your letter No 19003/51/545/EID
dt 06 Mar 2006

Attested
Dutta
Adv

CONFIDENTIAL

enclose only 5 sheet instead of 8 sheet?
contents of review petition dt 30.12.04 - ? not found

Appendix

1. Justice delayed is justice denied. Penalty of Censure given after 15 years of happening as Minor Penalty but it is effecting as Major Penalty, since two sealed cover DPC will not be opened due to this punishment.

2. Total RARs paid were 63rd and contract was terminated after 63rd RAR. Quantities of boulders at site at 63rd RAR stage were equal to quantity of boulders considered in 63rd RAR. This is proved by following documents/statements:

(a) Para 2d of show cause notice states that there was wide difference in the quantities mentioned in the cancellation board, tendered quantities of risk and cost, court commissioner report and quantities handed over to BRTF. This statement shows that the quantities of boulders were reduced after cancellation board.

(b) Para 33 of Staff Court of Inquiry states that there is a deficiency of 70,600 cum (86000-15400) of boulders lying at site between the last RAR (i.e.) 63rd paid to the contractor and the actual quantity of boulders handed over to the BRO. This statement of SCI clearly shows that the shortage of boulders was after 63rd RAR only.

(c) According to para 27 of SCI, The CEMZ ordered a Board of Officers to prepare the inventory of completed and incomplete works executed by M/S Adante Con. Co. The board assessed the quantities as equivalent to 86000 cum as reflected in 63rd RAR with remarks that the exact quantity of boulders can be ascertained only after stacking the material in measurable form.

(d) Technical BOO which was ordered by CESC Pune also scrutinized the 63rd RAR paid before cancellation of contract with a view to ascertain whether any overpayment exists in respect of boulders and found generally in order. According to BOO the quantity of boulders available at site were more than the quantity of boulders allowed in 63rd RAR (para 30 of tech BOO may be referred).

(e) During 63rd RAR CEMZ detailed a BOO to physically check the material at site. The material was physically checked by BOO continuously from 16 July 91 to 31 July 91. The BOO had certified that the quantity of boulders physically available at site on the date during 54th RAR was 123423.705 cum (Refer page 2 of vigilance check report) and the quantity of boulders paid in 54th RAR were 125500 cum. The deficiency of boulders pointed out by BOO was already recovered in 52nd to 54th RAR. Therefore the quantity of boulders in 54th RAR were physically checked by BOO alongwith AGE Sh. VO Sreenivasan and was available on site.

From 54th RAR onwards no fresh material was procured/paid. Therefore quantity of boulders at site in 63rd RAR can not be less.

(f) The quantity of boulders was again physically checked by a BOO detailed by CWV (NAS) Arakonam. Material was physically checked by BOO. The report of BOO indicates that the boulders at the end of 59th RAR available at site was equal to 111250 cum whereas quantities of boulders paid in 59th RAR was 111206 cum.

Appendix

Para 1. Needs no comments

Para 2. Not agreed with Charged Officer (CO). Para 2d of show cause notice is clearly indicated that - This situation risen and is attributed to the fact that right from arrival boulder no proper arrangement, organization and records existed for the boulders received at dumping site. Thus it led ultimately to over payment and other complications. Show cause notice has not stated that the boulders were reduced after cancellation of work.

Para 2.b. Not agreed with Charged Officer (CO). Para 33 of SCI clearly stated that there is a deficiency of 70,600 Cum of boulders lying at site between last RAR paid to the Contractor and actual quantity of boulders handed over to the BRO. But the BOO had not certified that the quantities taken in 63rd RAR was correct.

Para 3.c. The BOO remarked that the Qty of boulders lying at site can be ascertained only after stacking the materials in measurable form. But the Board has not certified that the quantities taken in 63rd were correct. The contractor could have been asked to stack the materials as per the conditions of contract by the Charged Officer (CO) the CO is Engineer in Charge of the work. Other wise payment could have not been allowed in 63rd RARs. The Charged Officer (CO) has not said in the conditions of contract and he is responsible for the lapses.

Para 3.d. Not agreed with the Charged Officer CO. The General findings of the Tech. O. in Para 32 is relevant in this matter. The T.B.O opined that Stacking/ storing of boulders is far from satisfactory and in its present form it is not suitable for any settlement.

Para 3.e. The role of the Charged Officer (CO) is as per RMES.

Para 3.f. The Engineer in Charge has to check and certify the materials lying at site in relation to work done. This was not done and leaving over payment. He should have determined the actual excess quantity of boulders lying at site in the RAR and was duty bound to have deducted the excess quantity in 63rd RAR which

was not done. The Charged Officer (CO) did not do this. The Charged

Attended
Mulla
Adv

(2)

I took over the charge during this RAR. No material came on site nor was any fresh payment released after this RAR. Recovery of boulders from RAR 59th to 63rd RAR was made more than the quantities of boulders consumed in work during these RARs.

(g) The quantity of boulders paid in 63rd RAR as 86000 cum was finally handed over to AGE B/R I Sh SK Mishra by MC Gupta before going on permanent posting to CME Pune. I can not be held responsible for any loss of boulders after handing over the complete material to Sh SK Mishra.

(h) Quotations were called for stacking the boulders left after 63rd RAR. The cost for stacking the boulders was quoted to RS 46.46 lakhs (Ref CWE (NAS) Arakonam letter No. 8/113/2590/138 dated 30 Jun 1992 to CEMZ Madras). This shows that the boulders were more than 15400 cum.

(i) Arbitrator has not awarded anything on this account to department.

(k) Finally as per para 40 of recommendation of SCI, the amount for (86000-25600) cum of boulders were recovered from the contractor in the final bill prepared by GE (Maint), Arakonam pertaining to this contract in Nov 97. (Exb 33 of SCI)

Therefore there was no loss to state.

Assuming the charge of materials lying at site after 58th RAR. As Engineer-in-charge I processed RAR Nos 59th to 63rd. The BOO detailed by CWE for physical measurement of boulders confirmed that the boulders available at site is equal to the boulders considered for payment in 59th RAR. There are no boulders were procured nor any fresh payment was released. The quantities of boulders consumed during these RARs were entered in material register and the same were reduced while paying relevant RARs. RARs prepared by contractor were processed correctly.

The performance of my duties sincerely has lead to reduction in quantities and amount claimed by contractor in RARs. These facts can be verified from RARs as explained in my earlier reply.

(4) While assuming the charge in 58th RAR, the boulders at site were lying in such a condition that no body on site can measure the exact quantity. The reason for this may be the use of boulders spread over in very vast area after RAR 58.

This fact has been brought out by almost all witnesses in Staff court of enquiry and has been reflected in my original reply. I also physically measured the approximate quantity of boulders by counting no of heaps as was done earlier by vigilance BOO detailed by CEMZ during 58th RAR and further checked by a BOO detailed by CWE during 59th RAR.

Para 2.8: Not agreed with the Charged Officer (CO) as no documentary evidence of handing over of 86000 Cum of boulders to his next incumbent is produced /Submitted.

Para 2.11: Quotations for stacking boulders and materials lying at site is not relevant.

Para 2.1: Since the matter is in court no comments are offered.

Para 2.1: Not agreed with the Charged Officer (CO). Already over payment had been made to the contractor. Govt has already incurred heavy loss due to over payment made to the contractor.

Para 3: The Mode of measurement and payment as explained by the Charged Officer (CO) that the Qty of boulders consumed in the work has been deducted from the qty of materials lying at site and balance has been allowed in the RAR is not as per procedure. As Engineer-in-charge, the Exact quantity of materials lying at site has to be ascertained by the Charged Officer (CO) before making payment to contractor instead of making additions /omissions from old quantities. Which he did not carry out correctly.

Para 4: The statement of the Charged Officer (CO) is not agreed. As Engineer-in-charge the materials lying at site should have been verified by the Charged Officer (CO) before taking over the Charge by carrying out stock measurements and made him aware of the exact quantities lying at site, which he has failed.

(3)

The quantity of boulders physically checked by me was matching with quantity of boulders physically checked by BOO and hence my physical check of boulders was correct.

(6) The responsibility of measurement of boulder and in turn responsibility of documentation is that of the Engineer-in-charge (EIC) of MES Regulation. I can not be held responsible for the same specially while no boulders were procured during RARs 59th to 63rd paid in my tenure and I as an Engineer-in-charge had not released any fresh payment for boulders.

(7) Tech C of I has seen the documents up to 63rd RAR (before date of assembly of Tech C of I) and arrived at conclusion that Sh VO Srinivasan, AGE was responsible for laxity in documentation. Refer para 36(d) of C of I.

(8) Apart from above I processed RAR No 33 as offg AGE but no fresh payment was released in this RAR. As material received was measured and entered by concerned AGE. I only checked the material physically lying on site by

Measuring No. 14/11/11

(9) RAR No 7, 13, 14, 40, 41, 54 were paid by me in the capacity of Offg GE. Offg GE can not be made responsible for measurement and documentation in view of table (M) of para 371 of RMES.

Table (M) : Duties of Supdt E/M Gde I

Para 1: The duties of Supdt E/M Gde I are primarily to act as Engineer-in-charge in his duties of execution of works efficiently. He will however be responsible for the performance of following duties in particular:-

Para 1 (a): -Measurement of materials including quality of boulders, store metals, etc. and of brought to site".

Para 371: "The Engineer-in-Charge and Supdts are personally responsible for the accuracy of measurement taken by themselves and by their subordinates."

(10) Material registered is that all measurements have been signed as Engineer-in-charge by Sh N Sanjeev upto 6th RAR and by Sh VO Srinivasan from RAR No 7 to last arrival of boulders. Also I had not released any payment for boulders as Engineer-in-charge in any RAR. Therefore Sh N Sanjeev (Sh VO Srinivasan or their Supdt Gde - I should be held responsible for any measurement taken by them).

Para Not agreed with Charged Officer (CO). Question No. 554 and 558 of Benchmarks are relevant.

Para Not agreed with the Charged Officer (CO). The quantity of boulders lying at site in 59 to 63 rd RAR were in excess to the actual quantity at site as Engineer-in-Charge, he was responsible to have correctly measured these quantities before passing the RARs which he did not carry out correctly.

Para It will not absolve the Charged Officer (CO) of his responsibilities for not doing his duties as per conditions of contract.

Para No Comments as it is not relevant.

Para The Charged Officer (CO) is not produced any documentary proof for the curtailing of any powers during the period of Officiating GE. However, as per para 468, the GE should verify the RARs by personal inspection. The Charged Officer has failed to perform the duty of Officiating GE.

Para The Charged Officer (CO) did not pay actual quantities of boulders over the quantity paid by his predecessor upto 58th RAR, he should have determined the actual quantity of boulders being reflected in the RARs and could have been deducted the quantity in RAR 59 to 63 RAR to save the Govt interest. The Charged Officer did not do this and hence it was a lapse in the performance of his duties.

RECOMMENDATION

The Charged Officer (CO) has been recommended by Govt of India for his lapse. Since no fresh evidence has been brought out by the Charged Officer (CO), the powers imposed by the Govt of India should not be renewed.

(Signature) Singh)

Chief Engineer

Mar 2006

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CONFIDENTIAL

WISE COMMENTS ON PARA 8 OF REVIEW PETITION BY CWE (NAVY) CHENNAI

RAR NO 7, 13, 14, 40, 43 AND 54 PAID AS OFFG. GE

IN GENERAL

Considering the fact that a separate AGRE B/R (P) No III was solely allocated for measurement of materials lying at site, issuing charge sheet to the concerned officer Sri Gupta for improper accountability of boulder, that too when he was acted as Offg GE only for a short period may be reviewed.

PARA 8 (i)

i. RAR NO 7

Payment for boulder made in the RAR for 6120 cum as against the actual qty available at site is 11025 cum. It is as verified and found correct (as per the paid DV RAR available). It is seen that no deduction was made for ~~crushing~~ in the material register while making 7th RAR, after allowing deduction now for crushing, it is found that the qty of material ~~in~~ RAR is still much less than the qty brought at site. Total ~~of~~ boulders received during 7th RAR as per material register = 11025 cum
Allow for crushing appx (-) 550

10473 cum

Qty of boulder released in 7th RAR = 1020 cum

The officer did not bring out details of qty of boulder gone in this work if any. Hence there is no ~~improper~~ accounting of boulders, statement made by the officer is ~~agreed~~ =

ii. RAR NO 13 & 14

Statement with figures shown is ~~verified~~ with actual paid DVs of RAR (duplicate) and found tallying. Details regarding qty of boulders incorporated/gone in the ~~work~~ if any out of qty shown in the material register were not brought out by the individual concerned. Restriction was made while making payment in 12, 13 & 14th RAR from the qty of material register by 25%, 20% & 15% respectively and the reason for above restriction is not given ~~any~~ of above RARs. Since the quantities are restricted, the statement made by the officer may be ~~agreed~~ to.

SPECIFIC COMMENTS OF CE (NAVY) VISAKHAPATNAM ON
PARA 8 OF REVIEW PETITION OF SHRI MC GUPTA

Para 8. Agreed with the CWE's comments. However, it is intimated that these RARs are not those for which the blamed officer has been censured.

(AP Singh)

Brig

Chief Engineer

12 May 2013

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-2-

RAR No 40, 43 and 54

Statement made by the officer and figures shown thereon are tallying with duplicate paid DVs of RARs. No exhibits for the details of boulder if any gone into the work were submitted. Otherwise, the contention of the officer is found correct.

iv RAR NO 33

Comments same as above in (iii)

v) RAR no 56 & 58

It is verified with paid DV of RAR and found correct that the individual officer concerned had not processed these RARs.

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Exhibit-25

Exhibit-25

-16-

Annexure-B.

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OFFICE ORDER NO. 184

DATED 29 OCT 91

CONVENING ORDER

1. A Board of Officers composed as under will assemble at a place, date and time to be fixed by the Presiding Officer to check the boulders lying at site in respect of EA No CE MZ/ARK/7 of SS-89' Construction of Runway and Allied Works at Arkonam and paid through the Last RAR No 59.

Presiding Officer : MES 200097
Shri B Sathia Murthy, EE
DCWE E/M

Members

- 1 MES 467507 Shri GK Srivastava.
EE E/M
- 2 MES 483001
Shri JK Kapoor, AEE B/R
- 3 MES 210568
Shri SIVADOSS, SA I

2. Board Proceedings duly completed in all respects will be submitted to the undersigned by 18 Nov 91.

(Sudesh Dhiman)
SE (SG)
Commander Works Engineers(P)

87113/1339/EB

29 Oct 91

Distributions

1. OO Book
2. Shri Sathia Murthy, DCWE E/M
3. Shri GK Srivastava, EE E/M
4. Shri JK Kapoor, AEE B/R
5. Shri M Sivados, SA I
6. AMR GE(P) No1 NAS Arakonam

CTE

-TSM

Attended
Muthu
Adm

MEETINGS OF

ASSEMBLED at

By the Order of

For the purpose of

-17- : Board of Officers

: Work site

: 30 Oct. 91 and subsequent days

: CWE(P) NAS Arakkonam Office
Order No 184 dated 29 Oct 91

: To check the boulders lying
at site in respect of CA No
CEMZ/ARK/7 of 88-89 Construction
of Runway and Allied Works
at Arakkonam and paid through
the last RAR No 59.

PRESIDING OFFICER

: MES 200097 Shri B Sathia Murthy,
EE, DCWE E/M, CWE(P) NAS Arakkonam

MEMBERS

: 1. MES 467607 Shri GK Srivastava, EE
GE(P) E/M No 1 NAS Arakkonam

2. MES 483001 Shri JK Kapoor, AEE
GE(P) No 3 NAS Arakkonam

3. MES 210568 Shri Sivados, SAI
CWE(P) NAS Arakkonam

2. The Board having assembled pursuant to order, proceeded to check the boulders lying at site in respect of CA No CEMZ/Ark/7 of 88-89 Construction of Runway and Allied works at Arakkonam and paid through the RAR No 59.

3. As per the RAR No 59, the quantity of boulder paid for is 1,11,208.00 Cu Metres.

4. The findings of the board are as under:-

(a) The boulders are spread over a vast area of about 450 Acres.

(b) The boulders are lying in heaps of various truck loads in and around the plant sites, Magazine Area, IOC Area, the area adjoining the Cheyyur Village boundary wall and the area in between the Taxi Track and the above areas. The boulders are also stacked in huge heaps on both the sides of the ramp leading to the crushing plants.

(c) As the heaps are kept in stacks of various sizes the quantity was assessed visually by means of lorry loads as the basis of measurement.

.....2/-

CTC
1/1/92

\$

Proceedings

held on

Refers to CE, pl refer

1-15-1991

13

5. The quantity of boulders assessed are as under:-

(a) Approximate quantity of boulders lying at site considering the aspects given in para 4 above.

96,000.00 Cu Metres

(b) Quantity of boulders crushed from 16/10/91 to 16/11/91

15,375.00 Cu Metres

Total

1,11,375.00 Cu Metres

Presiding Officer

B. Sathia
(MES 200097 Shri B. Sathia Murthy, BE)
18/11/91

Members

W
(MES 467607 GK Srivastava, BE E/N)

ellaper
(MES 483001 JK Kapoor, ABE B/R)

amir
(MES 210568 Sivadas, SAI)

2008

गुवाहाटी न्यायपीठ
Guwahati Bench

Annexure 'C'

- 19 -

HANDING/TAKING OVER REPORT BETWEEN SHRI MC GUPTA, AGE B/R II
AND SHRI SK MISHRA AGE B/R I, SUB DIVISION OF GE(P) No.1
NAS ARKONAM.

P-78
2008
Guwahati

AGE B/R (P) No.3 is one of the Sub division under GE(P) No.1 NAS Arkonam. At present there are three works under this sub division. The brief of each work is given below separately workwise:-

(I) BRIEF OF WORK ON CONSTRUCTION OF RUNWAY & ALLIED
WORKS NAS ARKONAM UNDER CA No. CEMZ/ARK/7 OF 88-89.

1. AGE B/R (P) No.3 is one of the three Engineer-in-Charge of this work. The jurisdiction of AGE B/R (P) 3 in this contract is from chainage 0 to chainage 2400 including 06 end dumb bell and from left drain area to central drain area excluding link taxi and dispersals. He is also responsible for issue of steel to the contractor under schedule 'B' for the whole contract.

~~This~~ This work was commenced on 24 Nov 1988. AGE B/R (P) No.3 was made incharge of taking ground levels for complete area. After entering into level books/level register duly signed by Engineer-in-Charge, GE, Contractor, these field books were handed over to concerned Engineer-in-Charge. This sub divn have level books relating from CH 0 to 2400. Levels from CH 0 to road side had been entered in taxi track level books. In future AGE B/R(P) No.2 who is having taxi track & dispersal level book can be contacted for these levels.

2. PROGRESS OF WORK : The present state of works are given in appendix 'A'

3. DOCUMENTS : A list of documents and register maintained by this sub divn in respect of this contract is enclosed at Appx 'B' which are under physical custody of Supdt B/R Gde II Shri Sudhakar Rao.

4. MEASUREMENT : MB No. 07, 16, 17, 138 have been maintained for this work. All completed/partly completed works have been entered in the MBs except earthwork in shoulder areas. The calculation for earthwork in main runway have been entered in MB. Earthwork in shoulder area can be entered in MB only after taking levels on ground. Original ground levels are available in field book.

Unapproved soil from runway and shoulder portions have been removed and disposed off. The load for disposal have been entered in unapproved disposal register where Engineer-in-Charge and contractor has signed. Soil was not disposed off after as per CWE's letter No. but this unapproved soil was used in between shoulder area where filling is more.

324 cm of soil was disposed to officer's mess in a load of 2.750 to 3.00 KM at the time of inauguration by CWE's verbal order.

The formation level of Runway and the depth of unapproved soil in different chainages to be removed was approved by the then GE Major PS Tamhan based on bad result on a graph sheet signed by contractor, Engineer-in-Charge and GE. The same

Contd ... P/2

7

graph sheet is also available in sub division .

The formation level approved by GE was based on 72 cm thick moorum, 22.5 cm thick WBM and 15 cm thick BM but afterwards these thicknesses were changed to 72 cm thick moorum, 20.0 cm thick WMM and 14 cm thick BM resulting formation level has come up by 3.5 cm above than the earlier approved formation level in flexible pavement areas only.

5. CHANGES MADE DURING EXECUTION FROM CH) TO 2400

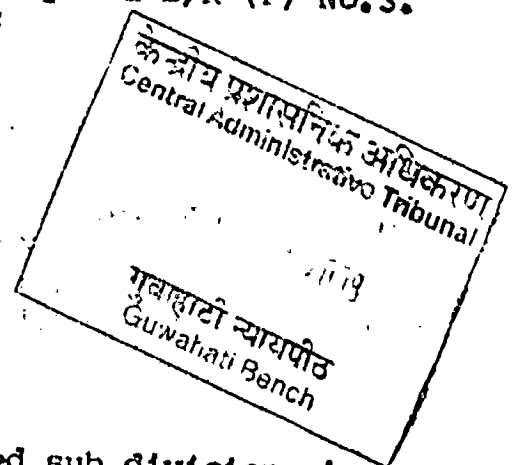
A list of changes made due to user's requirement/technical reasons with authority is enclosed at Appx 'D'.

6. SCHEDULE 'B' STORES

Issue of steel to contractor from AGE B/R(P) No.1 and AGE B/R (P) No.2 , recommendation have been done by AGE B/R (P) No.3. Total steel issued upto date is as follow :

10 mm dia	....	147651.00 Kgs
12 mm dia	....	201.00 Kgs
16 mm dia	...	28775.00 Kgs
18 mm dia	....	8624.00 Kgs
20 mm dia	....	56507.00 Kgs
25 mm dia	....	117319.00 Kgs

Total 359077.00 Kgs



7. RAR : Work done statements are prepared sub division wise and compiled by one of the Engineer-in-Charge. Upto 58th RAR AGE B/R (P) No. 2 was responsible for compiling RAR and payment of contractors material sying at site i.e. boulders, aggregates.etc. From 59th RAR onwards AGE B/R (P) No.3 was responsible for compiling RAR and payment of contractor's material lying at site. During the period from 59th RAR to till date no boulder has come to site.

The boulders/Aggregates from 59th RARs onward were paid on the basis of material lying at site in 58th RAR less the boulder/Aggregates consumed in work done during concerned RAR. While paying 59th RAR it was assumed that the boulders/Aggregates paid in 58th RAR were correct because it was not possible to measure the boulders/Aggregates on ground due to scattering in wide spread area and not lying in stacked formed which was also brought out by AGE B/R (P) No.1 Shri SK Mishra while taking over from AGE B/R (P) No.2 Shri VO Sreenivasan in their handing/taking over report. Remark by T/o officer:- Qty. of Contractors material lying at site as reflected in 58th RAR (Last before cancellation) cannot be verified as it is shipped in measurable condition. 20/5/92

Since the contract has been cancelled on 02 Apr 92, there will not be any RAR in future.

8. SUPERVISORY STAFF.

1. Su B/R Gde I Shri Viswanath Ilalashettar
2. S: B/R Gde II Shri Sudhakar Rao

Handed over by
M C GUPTA

COUNTER SIGN
M. V. S. Singh

Taken over by
S. K. Mishra
20/5/92

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APPX 'B'

LIST OF DOCUMENTS PERTAINING TO CA No. CE ME/ARK/1 OF 88-89
CONSTRUCTION OF RUNWAY AND ALLIED WORKS AT NAS ARKONAM
MAINTAINED BY AGE B/R III.

1. Works dairy 6 Volumes
2. Site order book ... 1 No.
3. Stage passing Register ... 3 Nos (Three)
4. Sch 'B' stores issue/USR Steel register 1 No.
5. Cement consumption register of sub division
6. Sample passing register
7. Workmanship register
8. Bottle neck register
9. Soft disintegrated rock register
10. unapproved soil disposal lead register.
11. Road roller log book for WBM & Cold rolling AC by pneumatic roller
12. Compaction control register 2 Nos
13. Works monitoring Register
14. Level field book of original ground level 3 Nos
15. Unapproved soil excavated level register
16. Soil result register
17. Sub base top level register
18. Material testing register (WBM Sieve analyses & Physical Propert.
19. Flexural strength of beam register ... 2 Nos
20. Slump, compaction factor test register ... 2 Nos
21. Sieve analysis of individual and combined aggregate register ..2 N
22. Graph book showing LCL & UCL value of 50 beams ... 3 Nos
23. Impact test register
24. Moisture content test register.

FOR FLEXIBLE PAVEMENT

25. Flakiness index register
26. Field compaction Register 2 Nos
27. Sieve analysis register ... 2 Nos
28. Abrasin, flakiness index register.
29. One graph sheet showing approval of formation level of runway
from CH 0 to 2400 and depth of unapproved soil to be removed
signed by GE & Contractor.

Contd ... P/2

30. LIST OF FILES

General Correspondence ... File No. 100, 200, 300,
500 and 800.
RAR Runway work ... File No. 800 .. 4 Nos
Conference file ... File No. 801
Lab soil test result ... File No. 802 .. 2 Nos
Design mix of concrete .. File No. 803
Sieve analysis of WBM ... File 804
Sieve analysis of WMM ... File No. 805
Compaction result of WMM .. File No. 806
Result of BM ... File No. 807
Result of BC ... File No. 808
Result of AC ... File No. 811

भारतीय न्यायाधीश
सुप्रीम कोर्ट
नया दिल्ली
जुलै १९७१

31. Measurement book No. 07, 16, 17, 138
32. Computer calculation for earth work
33. Contract agreement
34. Old USR Book bearing No. 151 to 200 (Completely used)
35. USR Book bearing No. A151 to A 200 used upto A157.
36. NEW 2000 P&S D and P&S FF one
37. Register of Stone Soulden (brought to site) one
38. Soulden crushing (After 10.10.91) register one
39. sketch showing dummy joint of less depth and expansion joint not filled one
40. Current USR register from 26.11.24 to 11.1.91 one

HANDED OVER

Physical Custodian

TAKEN OVER

Note: Documents not physically verified due to shortage of time

MC GUPTA
AGE B/R III

SUDHAKAR RAO
Supdt B/R II

SK NISHRA
AGE B/R I

COUNTERSIGN

May VKP Singh
GE(P) No. 1

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ANNEXURE 7

0254/1004-VC
1996

No.000/VGL/10
Government of India
Vigilance Commission

Satnagar, Bhawan, Block 'A',
CPO Complex, INA,
New Delhi-110 023
Dated the 23rd May 2000

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
11 JUN 2000
गुवाहाटी न्यायापीठ
Guwahati Bench

To-

The CVOs of Ministries/Departments, autonomous organisations and Societies etc.

Subject: Schedule of time limits in conducting investigations and departmental inquiries.

Sir,

Delays in disposal of disciplinary cases are a matter of serious concern to the Commission. Such delays also affect the morale of the suspected/charged employees and others in the organisation. The Commission has issued instructions vide its communication No. 8(1)8/99(3) dated 03.03.1999, that departmental inquiries should be completed within a period of six months from the date of appointment of Inquiry Officers. Regarding other stages of investigation/inquiry, the time-schedule, as under, has been laid down in the Special Chapters on Vigilance Management in Public Sector Banks/Enterprises which are applicable to the employees of public sector banks / enterprises. The Commission desires that these time-limits should also be adhered to by the Ministry/Departments of Government of India, autonomous organisations and other Cooperative Societies, in respect of their employees, so as to ensure that the disciplinary cases are disposed of quickly.

S.No	State of Investigation or Inquiry	Time Limit
1	Decision as to whether the complaint involves a vigilance angle.	One month from receipt of the complaint.
2	Decision on complaint, whether to be filed or to be entrusted to CBI or to be taken up for investigation by departmental agency or to be sent to the concerned administrative authority for necessary action.	do.
3	Conducting investigation and submission of report.	Three months.
4	Department's comments on the CBI reports in cases requiring Commission's advice.	One month from the date of receipt of CBI's report by the CVO Disciplinary Authority.
5	Referring departmental investigation reports to the Commission for advice.	One month from the date of receipt of investigation report.
6	Reconsideration of the Commission's advice, if required.	One month from the date of receipt of Commission's advice.

Attended
Quilla
Adv

41/01

Dt 7/7/00

- 24 -

Annexure - 1

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1.	Issue of charge-sheet, if required.	(i) One month from the date of receipt of Commission's advice. (ii) Two months from the date of receipt of investigation report
8.	Time for submission of defence statement.	Ordinarily, ten days or as specified in CDA Rules.
9.	Consideration of defence statement.	15 (Fifteen) days.
10.	Issue of final orders in minor penalty cases.	Two months from the receipt of defence statement.
11.	Appointment of IO/PO in major penalty cases.	Immediately after receipt and consideration of defence statement.
12.	Conducting departmental inquiry and submission of report.	One month from the date of appointment of IO/PO.
13.	Sending a copy of the IO's report to the Charged Officer for his representation.	(i) Within 15 days of receipt of IO's report if any of the Articles of charge has been held as proved; (ii) 15 days if all charges held as not proved. Reasons for disagreement with IO's findings to be communicated.
14.	Consideration of CO's representation and forwarding IO's report to the Commission for second stage advice.	One month from the date of receipt of representation.
15.	Issuance of orders on the Inquiry report.	(i) One month from the date of Commission's advice. (ii) Two months from the date of receipt of IO's report if Commission's advice was not required.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

Yours faithfully,
JUN 2014
गुवागरी न्यायाधीश
Officer on Special Bench

3/7/08

Reply filed today.

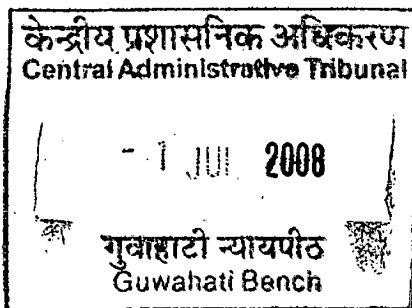
11.7.08

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Filed by the applicant through U. Datta, advocate on 01.07.08

Maheeth Chandra Gupta

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI



In the matter of:-

O.A. No. 313/2006.

Shri Mahesh Chandra Gupta.

-Versus-

Union of India and others.

-And-

In the matter of:-

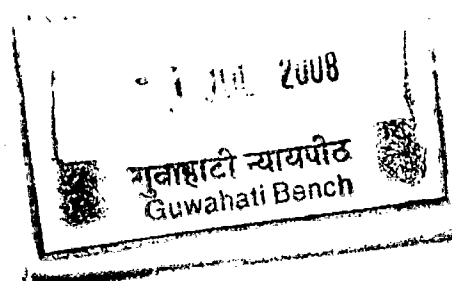
Reply submitted by the applicant against the written reply statement submitted by the respondents to the rejoinder.

The applicant above named most respectfully begs to state as follows:-

1. That with regard para 1 (b), (c) and (d) to the reply statement submitted by the respondents the applicant begs to state that the rejoinder is just and proper both in the facts and in law.
2. That with regard to the statements made in para 2 of the written reply, the applicant begs to state that the respondents have not submitted any proper reply with regard to the facts in support of charge and also failed to submit justifiable reason for delay in initiating disciplinary proceeding and also delay in finalizing the disciplinary proceeding.
3. That in reply to the para 2 of the written reply submitted by the respondents, the applicant begs to state that respondents have repeated the facts stated in the written statement and the applicant reiterates the statements made in rejoinder.
4. That the applicant denies the statements made in para 5 of the written reply submitted by the respondents and further begs to state that the penalty imposed upon the applicant vide impugned penalty order dated 30.11.2004 is based on "no evidence" as because the respondents have

Recd

1/7/08

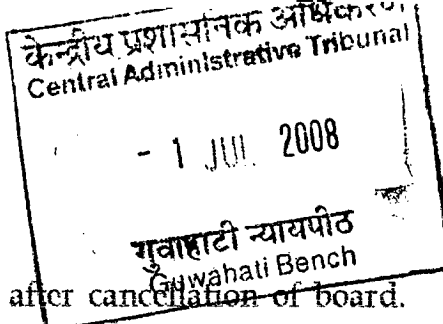


never brought out any evidence since the beginning to prove the charge brought against the applicant. As such the penalty imposed upon the applicant is based on no evidence and the impugned penalty order dated 19.11.2004 (not 30.11.2004 as stated in para 5) is liable to be set aside and quashed.

5. That the applicant denies the statement made in para 6 of the written reply submitted by the respondents and further beg to state that contention of the respondents that the applicant has been accorded full liberty to disprove any discrimination through staff Court of Inquiry is not correct since no charges were intimated till that time against 59th to 63rd RAR for which punishment has been given. Nor copy of Tech C of I was served upon the applicant. Applicant was called for witness and not the accused in this Staff Court of Inquiry, he only answered the question whichever were asked to him. Staff Court of Inquiry has blamed the applicant incorrectly on the basis of questions asked to him without having any evidence in support of charges. Further respondents have never put forth any evidence which can prove the charge.

Contention of the respondents that quantities of material shown lying at site in RAR 59 to 63 paid by the applicant were wrong as in-correct since no evidence has been given by respondents in support of this. Fact is that the material was paid correctly in 59th to 63rd RAR. (No fresh material was procured during this period but material was procured during previous RARs i.e. during the period of previous ACE Sri Sreenivasan. Applicant had to carried over balance material in these RARs). A Board of Officers (for short BOO) convened by CWE, Arakonam also checked physically the material on site and confirmed in his report that quantity of boulders paid in 59th RAR is equal to the quantity of material lying at site. After 63rd RAR the work was cancelled and the applicant handed over the charge to S K Mishra. Cancellation of board also showed the material on ground as per 63rd RAR. The material was lost after this board. Para 1 (d) of show cause notice itself state that there was wide difference in the quantities mentioned in cancellation board, tendered quantities of risk and cost, court commissioner's report and quantity handed over to BRTF. This

Mahesh Chandra Gupta



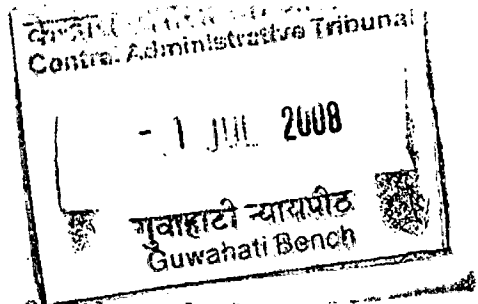
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Mahesh chandra Gupta

fact clearly states that material was reduced after cancellation of board. Therefore, the contention of the respondents that that material paid in 59th to 63rd RAR was not correct is wrong. In this regard applicant stated in detail in his review application dated 30.12.2004 (Annexure- 8) and 27.12.2005 (Annexure- 9).

6. That the applicant denies the contention of the respondents in para 7 of the reply to written reply submitted by the respondents and further begs to state that CVC guide line is that the case should be finalized within 3 months but the respondents have taken 16 year to finalize the case, as such in the instant case CVC guideline is grossly violated by the respondents in initiating the disciplinary proceeding as well as in finalizing the proceeding. Moreover, CVC's first stage advice was to initiate penalty of token recovery of pecuniary loss. Since no loss was found i.e. no over payment was proved the applicant was penalized with the penalty of Censure only when over payment was not proved the department should have sought for 2nd stage of CVC's advice but in the instant case this rule was not followed prior to imposition of penalty upon the applicant.

The irregularities in initiating the disciplinary proceeding vide impugned memorandum of charge sheet dated 12.06.2002 and imposition of impugned penalty order dated 19.11.2004 are as follows:

- (i) Tech BOO was for RAR prior to 59 RAR based on which staff Court of Inquiry was ordered whereas applicant has been punished for 59 to 63 RAR.
- (ii) Tech BOO blamed the applicant for over payment in 52 RAR for which applicant was not connected at all.
- (iii) Tech BOO blamed to Sri Sreenivasan for documentation but the applicant has been punished on this account.
- (iv) Applicant was called as witness in staff Court of Inquiry and without any evidence it has blamed the applicant.
- (v) Staff Court of Inquiry is based on Technical Court of Inquiry but the Tech Court of Inquiry recommendation is wrong as because applicant was not connected with 52 RAR.
- (vi) Speaking order not given while penalizing the applicant vide impugned penalty order dated 19.11.2004.

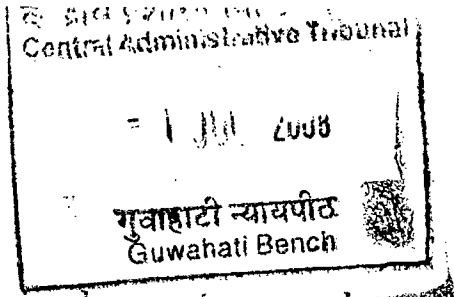


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Highest Charge Aptg

7. That with regard to the statement made in Para 8 of the reply the applicant begs to submit that the evidence on record not produced to the applicant before imposition of impugned penalty order dated 19.11.2004, as such the principle of natural justice have been violated in imposing penalty of Censure upon the applicant. It is also stated that prior to imposition of penalty under Rule 16 of CCS (CCA) Rules 1965 the disciplinary authority to apply its mind to all the facts and circumstances after receiving the representation dated 24/31.10.2002 (Annexure- 6 of the O.A) submitted by the applicant against the charge sheet dated 12.06.2002 and to apply its mind to all the facts and circumstances after receiving the representation and to form a definite opinion as to whether an inquiry is necessary or not, and in case the authorities decide not to hold an inquiry, it should say so in writing by giving reasons but in the instant case of the applicant the disciplinary authority has never furnished such reasons to the applicant before imposition of penalty of censure vide impugned penalty order dated 19.11.2004. As such without furnishing evidence to the applicant in support of the charges, the respondents most arbitrarily issued the impugned penalty order dated 19.11.04, which is contrary to the provision of Rule 16 of the CCS (CCA) Rule. Therefore the impugned penalty order dated 19.11.2004 is bad both in facts and law and the same is liable to be set aside and quashed.
8. That the applicant denies the statement made in para 10 and further begs to state that in support of the contention of the respondents that the neglect of work or duty amount to misconduct, the respondents have not produced any proof against the applicant in favour of the charge of negligence. Further it is submitted that the applicant was awarded Flag Officer Commanding in Chief's commendation for the same work. The wording of Commendation is reproduced as below:

"1. It has been brought to my notice that whilst carrying at the duties of construction of the runway at NAS (A) you have displayed professional skill and dedication of a high order.



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2. I Commend you for your professional competence, zeal, enthusiasm and devotion to duty which are in keeping with the highest traditions of the service.

3. I have directed that a note of this commendation be made in your record of service."

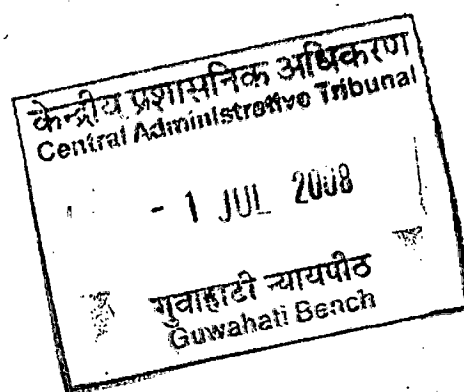
The above Commendation was signed by VS Shekhawat, Vice Admiral, Flag Officer Commanding in Chief on 15th August 1992 i.e. after the applicant handed over the charge to Shri S.K. Mishra on 20.05.1992 and left the station on posting.

9. That with regard to the statement made in para 11 the applicant begs to state that the respondents again relying on vigilance check on payment of 53rd RAR and Tech Court of Inquiry based on vigilance check as the basis of punishment. In this connection applicant reiterates the statement made in paragraph 2 of the rejoinder.

It is stated that the impugned penalty of Censure imposed upon the applicant has already effected promotion of the applicant (recommendation of two DPC have been placed in sealed cover) and the applicant has been deprived of from the executive posting whereas juniors of the applicant have already posted for executive tenure. Further the impugned penalty will effect future promotion of the applicant to the grade of Additional Chief Engineer and Chief Engineer. Moreover, the impugned penalty of Censure imposed upon the applicant vide impugned order dated 19.11.2004 in fact effected the applicant as major penalty, as such in the facts and circumstances as stated above and contention of the applicant made in the Original application as well as rejoinder, the impugned memorandum of charge sheet dated 12.06.2002 as well as the impugned penalty order dated 19.11.2004 are liable to be set aside and quashed.

10. That in the facts and circumstances as stated above the Original Application deserves to be allowed with costs.

Mahesh Chandra Gupta



VERIFICATION

I, Shri Mahesh Chandra Gupta, SE, S/o- Shri Shanti Swarup Gupta, aged about 47 years, working as Director, in the O/o- Chief Engineer (AF), Shillong, Elephant Falls Camp, P.O- Nonglyer, Upper Shillong, Shillong-793009, applicant in the instant application, do hereby verify that the statements made in Paragraph 1 to 10 of the reply to the written reply submitted by the respondents are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 30th day of June 2008.

Mahesh Chandra Gupta

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

File in Court on 27/9/08

IN THE MATTER OF

OA NO. 313/2006

SHRI MAHESH CH GUPTA

...Application

Versus

Union of India and others

...Respondents

IN THE MATTER OF

Written reply/statement to the additional rejoinder filed by applicant submitted by the Respondents

WRITTEN REPLY STATEMENT

The humble answering respondents submit their written reply statement to the additional rejoinder filed by the applicant as follows:

1. (a) That I Brig AK Wahi S/o Late Brij Mohan Wahi, aged about 51 years and on behalf of respondent No 01 and 02 in the above case and I have gone through a copy of the additional rejoinder served on me and have understood the contents thereof. Save and except whatever is specifically admitted in the written statements, the contentions and statements made in the application may be deemed to have been denied. I am competent and authorized to file the statement on behalf of all the respondents.
2. The facts raised by applicant in the additional rejoinder statement were already replied in the written statements filed by the respondents to the OA and rejoinder. No new issue has been raised in the additional rejoinder. However, replies to the additional rejoinder are humbly submitted in the succeeding paragraphs.

ATTESTED

(SP Singh)
Col
ACE (Works)
for Chief Engineer

DEPONENT

(AK Wahi)
Brig
Chief Engineer

filed by Respondent
20.6
M.A. B. Sc. L.L. B.
Addl. Central Govt. Standing Counsel
Guwahati Bench (CAT)
1/9/08

Received
Shri Mahesh Ch Gupta
Received
1/9/08

3. That with regard to the statement made in para 1 of the additional rejoinder the answering respondents beg to state that the statement made in paragraphs 2 (b), (f), (g), (h), (i), (k), (l) and (m) of the written reply statement are true and based on facts and records including the reply to the show cause notice before the appropriate authority, the memorandum of charge sheet letter No C-13011/3/D(Vig-II)2002 dated 12 Jun 2002 (Annexure-D) under Rule 16 of the CCS (CCA) Rule 1965 was served on the applicant. The Board of Inquiry convened vide Flag Officer Commanding-in-Chief Eastern Naval Command, Visakhapatnam Signal DTG: 241740 had the under mentioned findings : -

(a) That the applicant was officiating Garrison Engineer during the payment of RAR Nos. 7, 13, 14, 33, 40, 43, 54, 56 and 58.


(b) That the applicant was responsible for incorrect preparation of RARs No 59 to 63 and for certifying the quantity of boulders lying at site without proper documentation. Even the rates for white boulders at site have been improperly applied.

As per para 1(d) on Page 201 of Board of Inquiry the applicant has been apportioned attributability of the blame.

A copy of the relevant portion of the Board of Inquiry is annexed herewith and marked as Annexure-I.

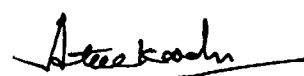
4. The respondents beg to submit that mere reading of the statement of articles of charges framed against the applicant (Annexure-D), it is crystal clear that the imputation of contraventions of the CCS (CCA) Rules 1965 have been spelt out in very clear cut terms.

ATTESTED



(SP Singh)
Col
ACE (Works)
for Chief Engineer

DEPONENT



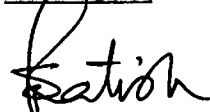
(AK. Wahi)
Brig
Chief Engineer

5. Further respondents beg to submit that based on the statement of articles of charges framed against the applicant the disciplinary authority i.e. President of India after careful consideration of the articles of charges, submission made by Shri MC Gupta and the evidence on record and circumstances of the case has imposed minor penalty of 'Censure' on the applicant. Based on the evidence placed before the Government of India, Ministry of Defence, New Delhi has imposed the penalty of 'Censure' upon the applicant vide order bearing letter No C-13011/3/Vig-II/2002 dated 30 Nov 2004 (Annexure-E).

6. Respondents beg to submit that the applicant has not put forth any new facts or circumstances or evidence in support of submissions. The applicant as witness No 16 at the proceedings of the Board of Inquiry convened vide Flag Officer Commanding-in-Chief, Eastern Naval Command, Visakhapatnam Signal DTG: 241740 (Exhibit-II) had been accorded full liberty to disprove any discrimination on record, or evidence against him. Even at the time of disciplinary action through the charge sheet dated 12 Jun 2002 under Rule 16 of the CCS (CCA) Rules 1965, the charges against applicant were conclusively proved. The applicant being a Group 'A' Officer (UPSC Officer) the disciplinary power is vested in the Hon'ble President of India. Hon'ble President of India after careful consideration of the articles of charges, submission made by Shri MC Gupta and the evidence on record and circumstances of the case has arrived at the conclusion that a minor penalty be imposed on the applicant, for preparation of RARs (from 59th RAR to 63rd RAR i.e. Article II of Charge Memo) without any proper documentation / transparent accounting of boulders and for releasing payments without conducting any physical ground check.


CE Zone commented that quantities of material shown lying at site in RARs 59 to 63 paid by the CO were wrong. It is also brought that CO was officiating GE during payment of RARs 7, 13, 14, 40, 43 and 54 when payment for material at site was made. CE Command had agreed with the view of Zonal CE that since the Engineer-in-Charge has to check and verify the material lying at site in addition to work done, this was not done, leading to over payment. He should have determined the actual excess quantity of boulder being reflected in the RARs and should have deducted the excess quantity in 59 to 63 RARs, which were passed in his tenure. The CO cannot absolve himself of his responsibility as Engineer-in-Charge.

ATTESTED



(SP Singh)
Col
ACE (Works)
for Chief Engineer

DEPONENT



(AK Wahi)
Brig
Chief Engineer

209

7. That with regard to the statements made in paragraphs 2 and 3 the answering respondents beg to submit that full opportunity has been accorded to the applicant to put forth his case in defence and all procedures as required under Central Civil Service (Classification, Control and Appeal) Rules and CVC guidelines have been followed (specifically covered under Article of Charge Memo for 59 to 63 RAR). The applicant being a Group 'A' Officer (UPSC Officer) the disciplinary power are vested with Hon'ble President of India.

8. Respondents beg to submit that the President of India, as the disciplinary authority, after a careful consideration of the Articles of Charges, the submission made by the applicant Shri MC Gupta, the evidence on record and all the facts and circumstances of the case, has arrived at the conclusion that a minor penalty be imposed on the applicant, for preparation of RARs (from 59th to 63rd RAR) without any proper documentation / transparent accounting of boulders and for releasing payments without conducting any physical ground check.

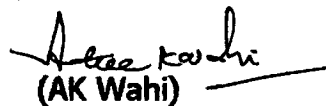
9. That with regard to the statement made in the paragraph 4 the answering respondents beg to submit the review petition submitted by the applicant against the order of Censure was examined and processed as per CCS (CCA) Rules 1965 particularly Sub-Rule 2 (a) to (c) of Rule 27 by appellant authority i.e. Hon'ble President of India in this case, since the applicant being Group 'A' Officer. After due process the Review Petition submitted by the applicant was disposed off and confirmed the Censure awarded to the applicant. No rule / provisions of the procedure as contained in the disciplinary proceedings or appellant proceedings have been either dispensed with or infringed. Hence full opportunity had been afforded to the applicant and confirmed the order of award of Censure duly comply with the procedures laid down as per the CCS (CCA) Rules 1965 by the appellant authority.

ATTESTED



(SP Singh)
Col
ACE (Works)
for Chief Engineer

DEPONENT



(AK Wahi)
Brig
Chief Engineer

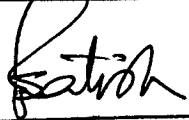
10. That with regard to the statements made in paragraphs 5 of the answering respondents beg to submit that the due laid procedure as per CCS (CCA) Rules was followed affording full opportunity to the applicant in the disciplinary proceeding before award of penalty of Censure as well as in confirmation of censure in disposal of review petition submitted by the applicant by the appellant authority. Hence, the Hon'ble Tribunal is prayed to reject the plea of the applicant to produce all relevant original documents / records pertaining to the instant disciplinary proceedings.

11. That the respondents beg to submit that the applicant has failed to make out a case warranting the interference by the Hon'ble Tribunal. In view of the submission the respondents therefore pray that the Hon'ble Tribunal may be pleased to dismiss the present case in the interest of justice and equity.

12. That this reply to the additional rejoinder filed by the applicant has been made bonafide and for the ends of justice and equity.


It is therefore humbly prayed before this Hon'ble Tribunal that the present application filed by the applicant may be dismissed with costs.

ATTESTED



(SP Singh)
Col
ACE (Works)
for Chief Engineer

DEPONENT



(AK Wahi)
Brig
Chief Engineer

VERIFICATION

I that I Brig AK Wahi S/o Late Brij Mohan Wahi aged about 51 years and Respondents No 01 & 02 working as Chief Engineer duly authorized and competent officer of the answering respondents to sign this verification, do hereby solemnly affirm and verify that the statement made in paras 1 and 11 are true to my knowledge, belief and information & those made in para 2 to 12 being matter of record are true to my knowledge as per the legal advice and I have not suppressed any material facts and I sign this verification on this 22 day of August, 2008 at 2008
(3pm)



(SP Singh)
Col
ACE (Works)
for Chief Engineer



(AK Wahi)
Brig
Chief Engineer