

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 16th day of March, 2010

ORIGINAL APPLICATION No.539/2005

CORAM :

HON'BLE MR.B.L.KHATRI, ADMINISTRATIVE MEMBER

Gunjan Saxena,
Deputy General Manager,
BSNL,
Kota.

... Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through
Secretary to the Govt. of India,
Department of Telecom,
Ministry of Communications &
Information Technology,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi.
2. Member (Services),
Department of Telecom,
Ministry of Communications &
Information Technology,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi.
3. Union Public Service Commission through
Secretary, Dholpur House,
Shahjahan Road,
New Delhi.

... Respondents

(By Advocate : Shri T.P.Sharma)

ORDER

PER HON'BLE MR.B.L.KHATRI

The applicant has filed this OA against the order dated 17.11.2004 (Ann.A/1), passed on behalf of the President, whereby the review petition preferred by the applicant under Rule 29-A of the CCS (CCS) Rules, 1965 against the punishment of censure, has been rejected. He has also challenged the charge memos dated 12.3.1999 and 5.8.1999 (Ann.A/3 & A/4 respectively) as also the order dated 10.3.2004 (Ann.A/2) awarding penalty of censure upon him. Through this OA the applicant has prayed for the following relief :

- "i) That entire record relating to the case be called for and after perusing the same memo dated 17.11.2004 (Ann.A/1) order of reviewing authority with the memo dated 10.3.2004 (Ann.A/2) passed by the disciplinary authority be quashed and set aside with all consequential benefits including seniority/promotion from the date junior so allowed.
- ii) That the charge memo dated 5.8.1999 (Ann.A/4) with the memo dated 12.3.1999 (Ann.A/3) be quashed with the inquiry proceedings as the same is not justified as per facts and circumstances with all consequential benefits.
- iii) That the respondents be further directed to allow regular promotion to the applicant to the cadre of Junior Administrative Grade from the date junior so allowed with all consequential benefits by ignoring the punishment of censure."

2. Brief facts of the case are that the applicant joined the respondent department as Group-A Officer in the cadre of Indian Telecom Services in the year 1988 and became due for regular Junior Administrative Grade (JAG, for short) in the year 1998. Prior to that, the applicant was allowed adhoc promotion

in the JAG in the year 1997, vide order dated 15.12.1997 in which name of the applicant find place at S.No.58, as per Ann.A/11. The respondents did not conduct the DPC for regular promotion to the cadre of JAG and the DPC was held only in the year 2003 vide order dated 13.1.2003. Persons junior to the applicant were allowed regular promotion but name of the applicant did not find place in the said order. However, the respondents informed the applicant vide letter dated 24.6.2004 (Ann.A/9) that findings of the DPC kept in the sealed cover shall not be acted upon as he was awarded the punishment of censure vide order dated 10.3.2004 (Ann.A/2).

3. In this case, first charge-memo dated 12.3.1999 was issued, as per Ann.A/3, thereby enclosing the statement of imputation of misconduct or misbehavior on which the action was proposed to be taken against the applicant, which reads as under :

"That the said Shri Gunjan Saxena was functioning as Telecom District Engineer, Pali, during the period 1992-94.

2. During the aforesaid period, a Notice Inviting Tenders (NIT) No.S-48/93-94 dated -4-1993 was issued by the TDE, Pali, for the work of laying of underground cable in the various sub-divisions of Pali Telecom District, for the year 1993-94. The recommendations of the Tender Evaluation Committee were forwarded to the Director Telecom (South), Udaipur, vide letter No.S-48/Cable-Tender/93-94 dated 3.5.1993, for approval. Approval of the Director, Telecom (South), Udaipur, was communicated to the TDE, Pali, vide letter No.Eng-50/Tender/U/G Cable/Pali/5 dated 10.6.1993.

2.1 The TDE, Pali, accepted the tendered rates of M/s M.L. Construction Company, Alwar, for Jalore

Sub Division, vide letter No.S-48/Cable/93-94/JOR/17 dated 15.6.1993.

2.2 The Director Telecom (South), Udaipur, had inter-alia instructed TDE, Pali, to negotiate with the second lowest tenderer so that the work could be divided between two contractors, as more than 100 Kms. of cable laying had been targetted in Jalore Sub Division. The TDE, Pali, accordingly called M/s Raj Construction Company, Alwar, for negotiations, vide letter No.S-48/Cable/93-94/16 dated 14.6.1993; and, after negotiations on 25.6.1993, the work was awarded to the said firm at the approved rates of M/s M.L. Construction Company, Alwar, vide letter No.S-48/Cable/93-94/JOR/24 dated 31.7.1993.

2.3 Both M/s M.L. Construction Company and M/s Raj Construction Company were one and the same party, as is clear from the fact that the tenders of both the firms were signed by the same person, viz. Shri M.L.Sharma. Moreover, the letter pads of both the said firms contained the same addresses for their head offices and branch offices, and the same telephone numbers. The said Shri Gunjan Saxena, as the TDE, thus violated the spirit of the instruction of Director Telecom (South), Udaipur, that the work of laying of underground cable in Jalore Sub Division be divided between the first and second lowest tenders in view of the magnitude of the work; as the entire work was in fact awarded to the same party.

2.4 The tendered rates of M/s Prakash Construction Company, Beawar, were accepted by TDE, Pali, for laying of underground cable in Beawar Sub Division, vide letter No.S-48/Cable/93-94/BWR/13 dated 18.6.1993. The said Shri Gunjan Saxena, as the TDE, however, while evaluating the tenders, ignored the fact that corrections had been made in the tender by the said firm at three places to increase the rates from Rs.5.50 to Rs.8.50, from Rs.5/- to Rs.8/-, and from Rs.20/- to Rs.30/- while keeping the offer the lowest. The Department was thus compelled to make payment at rates considerably higher than the originally quoted rates.

2.5 When M/s Prakash Construction Company, Beawar, failed to execute the work, TDE, Pali, awarded the work of laying of underground cable in Beawar Sub Division, to the second lowest tenderer, viz. M/s Raj Construction Company, Alwar, at the approved rates of M/s Prakash Construction Company, Beawar, without referring the case back to the Director Telecom (South), Udaipur, who had approved the award of work to the lowest tenderer.

2.6 Further, while issuing NIT, the approximate quantities of various components of the work were not indicated. So also, the Tender Evaluation Committee assumed arbitrary quantities for each component after opening of the bids, thus vitiating the sealed tender process.

3. TDE, Pali, issued NIT No.S-48/94-95 dated 25.4.1994 for the work of laying of underground cable in the various sub divisions of Pali Telecom District, for the year 1994-95. The recommendations of the Tender Evaluation Committee were forwarded to the Director Telecom (South), Udaipur, vide letter No.S-48/Cable/Pali (T)/16 dated -6-1994, for approval of rates for Pali and Sojat Telegraph Sub Divisions.

3.1 While issuing NIT, the approximate quantities of various components of the work were not indicated. So also, the Tender Evaluation Committee gave arbitrary weightage after opening of the bids, thus vitiating the sealed tender process.

3.2 The lowest tenders of M/s P.K. Construction Company, Pali Marwar, for Pali and Sojat Sub Divisions were ignored by the said Shri Gunjan Saxena, as the TDE, on the ground that the party was not having experience of cable laying work. He, however, recommended the tender of M/s Creative Construction Company, Jaipur, on the pretext that the proprietor of the firm was a graduate engineer, though this tenderer too did not submit any experience certificate, in contravention of condition No.5 of the NIT.

4. TD, Pali, issued NIT No.S-48/L&W/Post Erection/ Tender/92-93/23 dated 19.12.1993 for the work of erection of telecom lines (post and wire) in Jalore, Sumerpur, Beawar (T), Pali and Sirohi Sub Divisions. The following firms submitted tenders :-

- | | |
|-----|---------------------------------|
| I | <u>Jalore Sub Division</u> |
| | i) M/s Hema Ganga |
| | ii) M/s S.Kumar |
| | iii) M/s Niyojit Nirman Company |
| II | <u>Sumerpur Sub Division</u> |
| | i) M/s Vchitra |
| | ii) M/s Niyojit Nirman Company |
| | iii) M/s Vaibhav Enterprises |
| III | <u>Sirohi Sub Division</u> |

- i) M/s Vichtra
- ii) M/s Vaibhav Enterprises
- iii) M/s Niyojit Nirman Company

IV Beawar Sub Division

- i) M/s Niyojit Nirman Company

V Pali Sub Division

- i) M/s Niyojit Nirman Company
- ii) M/s Nagla Ram

4.1 As per comparative statement based on the length of one kilometer, M/s S.Kumar was the lowest tenderer for Jalore Sub Division, M/s Vaibhav Enterprises was the lowest for Sumerpur, and M/s Niyojit Nirman Company was the lowest for Sirohi. After negotiations, the rates of M/s Vaibhav Enterprises were approved by the TDE, Pali, for Sumerpur Sub Division, vide letter No.S-48/Post & Wire/Tender/92-93/48 dated 11.1.1993. The rates of M/s S.Kumar were approved for Jalore Sub Division, vide letter No.S-48/Post & Wire/Tender/92-93/75 dated 1.2.1993. M/s Niyojit Nirmal Company, however, vide letter dated 14.1.1993, indicated their inability to reduce their tendered rates. The work was accordingly awarded to M/s Vaibhav Enterprises for Sirohi Sub Division, vide letter No.S-48/Post & Wire Tender/92-93/74 dated 1.2.1993.

4.2 M/s Vaibhav Enterprises were allowed to alter their rates in their tender after opening of the bids, as is evident from the tenders submitted by the firm for Sumerpur and Sirohi Sub Divisions. In both the tenders, the rates were originally written in pencil and later on substituted in ink. This irregularity was pointed by S.S.(C) on note sheet 7/N of the tender file. However, the said Shri Gunjan Saxena, as the TDE, ignored the same at the time of evaluation of tenders.

5. TDE, Pali, issued NIT No.S-48/Tender/93-94/3 dated 16.4.1993 for annual maintenance of air-conditioners in Pali Telecom District. The rates of M/s Darpan Electricals, Jodhpur, were approved vide letter No.S-48/Genl Tender/93-94/11 dated 1.5.1993. The rates were to be valid up to 31.3.1994. M/s Darpan Electricals, vide letter No.DE-148/93-94 dated 22.3.1994 approached the TDE, Pali, for extension of the contract for the year 1994-95. And the said Shri Gunjan Saxena, as the TDE, extended the contract of the firm on the same

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terms and conditions, for the year 1994-95, vide letter No.S-48/Genl.Tender/94-95/82 dated 18.4.1994.

5.1 The said Shri Gunjan Saxena, as the TDE, did not ensure wide publicity to the NIT by advertisement in newspapers, thus depriving the Department of the benefit of competitive rates. So also, the contract of the same party was extended by him on the same terms and conditions, instead of inviting fresh tenders for 1994-95.

6. TDE, Pali, purchased eight cabinets and ten pillars from M/s Patel Traders, vide Orders No.S-48/Genl. Tender/93-94/48 to 50 dated 29.1.1994, at the rates approved by TDM, Jodhpur. However, though he was aware of the fact that cabinets and pillars were stocked items, the said Shri Gunjan Saxena, as the TDE, did not obtain Non-Availability Certificate from Circle Telecom Store Depot, Jaipur, before placing the orders.

7. TDE, Pali, vide letter No.S-48/93-94/Genl. Tender/25 dated 18.6.1993, accepted the offer of M/s G-Nine, Jodhpur, for repair of SLC Cards at the following rates :-

- i) Repair of SLC Cards -Rs.750/- per module
- ii) Cards having four or -Flat rate of Rs.2500/-
faulty modules
- iii) Other cards -Rs.2500/- per card
- iv) The rates were to be vald upto 31.3.1994

7.1 The said Shri Gunjan Saxena, as the TDE, approved the aforesaid rates recommended by a Purchase Committee formed by himself, and, further extended the contract of the same firm for 1993-94 on the same terms and conditions.

8. Notice Inviting Tenders (NIT) for supply of jeep trolleys was issued by the TDE, Pali, vide letter No.S-26/Genl./Vehicle/93-94 dated 7.5.1993. And the following parties responded to the said NIT :-

<u>S.No.</u>	<u>Name of firm</u>	<u>Rate (Rs.)</u>
i)	M/s R.M.Goshi Iron Industries, Udaipur	19,951/- each (with tyres) 16,951/- each (without tyres) Sales Tax not mentioned
ii)	M/s Mittal Brothers,	16,500/- each plus

	Ajmer	Sales Tax @ 4%
iii)	M/s India Agrico, Udaipur	18,000/- each plus all taxes
iv)	M/s Simco Engg. Corporation, Udaipur	16,900/- each plus tax

8.1 The tender of M/s Mittal Brothers, Ajmer, was accepted vide letter No. S-26/Genl/Vehicle/Tender Jeep Trolley/93-94/69 dated 18.6.1993. The following five Purchase Orders were accordingly placed by the TDE, Pali on the said firm :-

- i) No. S-26/Genl/Vehicle/Jeep Trolley/93-94/70 dated 18.6.1993 for one jeep trolley for SDOT, Beawar.
- ii) No. S-26/Genl/Vehicle/Jeep Trolley/93-94/71 dated 18.6.1993 for one jeep trolley for AE(C), Sirohi.
- iii) No. S-26/Genl/Vehicle/Jeep Trolley/93-94/72 dated 18.6.1993 for one jeep trolley for SDOT, Jalore.
- iv) No. S-26/Genl/Vehicle/Jeep Trolley/93-94/73 dated 18.6.1993 for one jeep trolley for SDOT, Pali.
- v) No. S-26/Genl/Vehicle/Jeep Trolley/93-94/74 dated 18.6.1993 for one jeep trolley for SDOP, Pali.

8.2 As the trolley is a part of a motor vehicle, and only the Chief General Manager was empowered to purchase motor vehicles, Telecom District Engineers were not competent to invite and finalize tender for supply of Jeep Trolleys from open market. The said Shri Gunjan Saxena, as the TDE, Pali, thus exceeded his financial powers by placing the aforesaid five Purchase Orders for a total of Rs.82,500/- plus Sales Tax.

9. Short term tender was invited by TDE, Pali, for electric wire wrapping tools, vide NIT No. S-48/Genl/94-95 dated 10.5.1994. The NIT was dispatched to nine firms. Four parties of Ahmedabad purchased tender forms on 24.5.1994 vide Receipts No.46 to 49 dated 24.5.1994, and submitted their tenders on 24.5.1994 itself. The lowest rate of Rs.18,709/- plus 4% Central Sales Tax, quoted by M/s Devi Krupa Electronics, Ahmedabad, was approved vide letter No. S-48/Genl/94-95/7 dated 3.6.1994, and nine Purchase



Orders, No. S-48/Genl. Wrapping Tools/94-95/8 to 16 dated 23.6.1994, were issued for one tool each for SDE (C), Abu Road, SDOT, Sirohi, SDE, Bhinmal, SDOT, Jalore, SDOT, Sumerpur, SDOT, Sojat City, SDE (GE), Pali, SDOT, Pali, and SDOP, Pali.

9.1 The said Shri Gunjan Saxena, as the TDE, however, did not ensure wide publicity to the Notice Inviting Tenders by advertisement in newspapers, thus depriving the Department of the benefit of competitive rates. The total cost of the purchases was Rs.1,68,381/-.

10. The tendered rates of Rs.96.76 per metre including all taxes and F.O.R. at Pali, of M/s Durga Ramji Patel, Jaipur, for one and a half inches diameter 'B' Class GI pipes, were accepted by the TDE, Pali, vide letter No. S-48/92-93/178 dated 5.10.1992, for the year 1992-93. The said contractor, vide letter No.150 dated 29.3.1993, addressed to TDE, Pali, requested for extension of the contract for the year 1993-94; and the TDE, Pali, extended the contract for one more year i.e. upto 31.3.1994 on the same terms and conditions, vide letter No. S-48/Genl. Tenders/93-94/2 dated 8.4.1993. The following purchases of GI pipes were accordingly made :-

<u>S.No.</u>	<u>Quantity</u>	<u>Amount</u>	<u>Year</u>
i)	1752.78 metres	1,37,208	1992-93
ii)	1345.00 metres	1,30,088	1993-94
iii)	1781.00 metres	1,72,282	1994-95

10.1 The said Shri Gunjan Saxena, as the TDE, thus extended the contract of M/s Durga Ramji Patel, instead of inviting fresh tenders; and purchased 4878.78 metres of GI pipes for a total of Rs.4,39,578/- at abnormally high rates compared to the prevalent market rates and the rates approved by DGS&D.

11. Thus, by his above acts, the said Shri Gunjan Saxena committed misconduct, failed to maintain absolute integrity, exhibited lack of devotion to duty, and acted in a manner unbecoming of a Government servant, thereby contravening Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964.

By order and in the name of the President."

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4. Another charge-memo, in continuation of the aforesaid charge-memo dated 12.3.1999 (Ann.A/3), was issued to the applicant vide letter dated 5.8.1999 ((Ann.A/4) thereby enclosing the statement of articles of charge and the statement of imputations of misconduct or misbehavior in support of the articles of charge framed against the applicant, which reads as under :

"ANNEXURE -II

Statement of imputations misconduct or misbehaviour in support of the articles of charge framed against Shri Gunjan Saxena (Staff No. 8465), presently Telecom District Manager, Jhunjhunu, Rajasthan Telecom Circle.

That the said Shri Gunjan Saxena was functioning as Telecom District Engineer, Pali during the period 1992-94.

2. During the aforesaid period, a Notice Inviting Tenders (NIT) No. S-48/93-94 dated -4-1993 was issued by the TDE, Pali for the work of laying of underground cable in the various sub divisions of Pali Telecom District, for the year 1993-94. The recommendations of the Tender Evaluation committee were forwarded to the Director Telecom (South), Udaipur vide letter No. S-48/cable-Tender/93-94 dated 3.5.1993, for approval. Approval of the Director Telecom (South), Udaipur, was communicated to the TDE, Pali vide letter No. Eng-50/Tender/U/G Cable/Pali/5 dated 10.6.1993.
 - 2.1 The TDE, Pali, accepted the tendered rates of M/s M.L. construction Company, Alwar, for Jalore Sub Division, vide letter No. S-48/Cable/93-94/JOR/17 dated 15.6.1993.
 - 2.2 The Director Telecom (South), Udaipur, had inter-alia instructed TDE, Pali, to negotiate with the second lowest tenderer so that the work could be divided between two contractors, as more than 100 Kms. of cable laying had been targeted in Jalore Sub Division. The TDE, Pali, accordingly called M/s Raj Construction Company, Alwar, for negotiations, vide letter No. S-48/Cable/93-94/16 dated 14.6.1993 and after negotiations on 25.6.1993, the work was awarded to the said firm at the approved rates of

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M/s M.L. Construction Company, Alwar vide letter No. S-48/Cable/93-94/JOR/24 dated 31.7.1993.

- 2.3 Both M/s M.L. Construction Company and M/s Raj Construction Company were one and the same party, as is clear from the fact that the tenders of both the firms were signed by the same person, viz. Shri M.L. Sharma. Moreover, the letter pads of both the said firms contained the same addresses for their head offices and branch offices, and the same telephone numbers. The said Shri Gunjan Saxena, as the TDS, thus violated the spirit of the instruction of Director Telecom (South), Udaipur that the work of laying of underground cable in Jalore Sub Division be divided between the first and second lower tenders in view of the magnitude of the work as the entire work was in fact awarded to the same party.
- 2.4 The tendered rates of M/s Prakash Construction Company, Beawar, were accepted by TDE, Pali, for laying of underground cable in Beawar Sub Division vide letter No. S-48/Cable/93-94/BWR/13 dated 18.6.1993. The said Shri Gunjan Saxena, as the TDS, however, while evaluating the tenders, ignored the fact that corrections had been made in the tender by the said firm at three places to increase the rates from Rs.5.50 to Rs.8.50, from Rs.5/- to Rs.8/- and from Rs.20/- to Rs.30/- while keeping the offer the lowest. The Department was thus compelled to make payment at rates considerably higher than the originally quoted rates.
- 2.5 When M/s Prakash Construction Company, Beawar, failed to execute the work, TDS, Pali, awarded the work of laying of underground cable in Beawar Sub Division to the second lowest tenderer, viz. M/s Raj construction Company, Alwar at the approved rates of M/s Prakash construction Company, Beawar, without referring the case back to the Director Telecom (South) Udaipur, who had approved the award of work to the lowest tenderer.
- 2.6 Further, while issuing NIT, the approximate quantities of various components of the work were not indicated. So also, the Tender Evaluation Committee assumed arbitrary quantities for each component after opening of the bids, thus vitiating the sealed tender process.
3. TDE, Pali issued NIT NO. S-49/94-95 dated 25.4.1994 for the work of laying of underground cable in the various sub divisions of Pali Telecom District, for the year 1994-95. The recommendations of the Tender Evaluation committee were forwarded to the Director Telecom (South), Udaipur vide letter

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No. S-48/Cable/Pali (T)/16 dated -6/1994, for approval of rates for Pali and Sojat Telegraph Sub Divisions.

3.1 While issuing NIT, the approximate quantities of various components of the work were not indicated. So also the Tender Evaluation Committee gave arbitrary weightage after opening of the bids, thus vitiating the sealed tender process.

3.2 The lowest tenders of M/s P.K. Construction Company, Pali Marwar for Pali and Sojat Sub Divisions were ignored by the said Shri Gunjan Saxena, as the TDE, on the ground that the party was not having experience of cable laying work. He, however, recommended the tender of M/s Creative Construction Company, Jaipur on the pretext that the proprietor of the firm was a graduate engineer, though this tenderer too did not submit any experience certificate, in contravention of condition No. 5 of the NIT.

4. TDE, Pali issued NIT No. S-48/L&W/Post Erection/Tender/92-93/23 dated 19.12.1993 for the work of erection of telecom lines (Post and wire) in Jalore, Sumerpur, Beawar (T), Pali and Siroh Sub Divisions. The following firms submitted tenders -

I. Jalore Sub Division

- i) M/s Hema Ganga
- ii) M/s S. Kumar
- iii) M/s Niyojit Nirman Company

II. Sumperpur Sub Division

- i) M/s Vichitra
- ii) M/s Niyojit Nirman Company
- iii) M/s Vaibhav Enterprises

III. Sirghi Sub Division

- i) M/s Vichitra
- ii) M/s Vaibhav Enterprises
- iii) M/s Niyojit Nirman Company.

IV. Beawar Sub Division

- i) M/s Niyojit Nirman Company

V. Pali Sub Division

- i) M/s Niyojit Nirman Company
- ii) M/s Nagla Ram

- 4.1 As per comparative statement based on the length of one Kilometre, M/s S. Kumar was the lowest tenderer for Jalore Sub Division, M/s Vaibhav Enterprises was the lowest for Sumerpur, and M/s Niyojit Nirman Company was the lowest for Sirohi. After negotiations, the rates of M/s Vaibhav enterprises were approved by the TDE, Pali, for Sumerpur Sub Division, vide letter No. S-48/Post & Wire/Tender/92-93/48 dated 11.1.1993. The rates of M/s S. Kumar were approved for Jalore Sub Division, vide letter No. S-48/Post & Wire/Tender/92-93/75 dated 1.2.1993. M/s Niyojit Nirman Company, however, vide letter dated 14.1.1993 indicated their inability to reduce their tendered rates. The work was accordingly awarded to M/s Vaibhav Enterprises for Sirohi sub Division, vide letter No. S-48/Post & Wire Tender/92-93/74 dated 1.2.1993.
- 4.2 M/s Vaibhav Enterprises were allowed to alter their rates in their tender after opening of the bids, as is evident from the tenders submitted by the firm for Sumerpur and Sirohi Sub Divisions. In both the tenders, the rates were originally written in pencil and later on substituted in ink. This irregularity was pointed out by S.S. (C) on note sheet 7/N of the tender file. However, the said Shri Gunjan Saxena, as the TDS, ignored the same at the time of evaluation of tenders.
5. TDS, Pali, issued NIT No. S-48/Tender/93-94/3 dated 16.4.1993 for annual maintenance of air-conditions in Pali Telecom District. The rates of M/s Darpan Electricals Jodhpur, were approved vide letter No. S-48/Genl. Tender/93-94/11 dated 1.5.1993. The rates were to be valid up to 31.3.1994. M/s Darpan Electricals, vide letter No. DE-148/93-94 dated 22.3.1994 approached the TDS, Pali, for extension of the contract for the year 1994-95. And the said Shri Gunjan Saxena, as the TDE, extended the contract of the firm on the same terms and conditions, for the year 1994-95, vide letter No. S-48/Genl. Tender/94-95/82 dated 18.4.1994.
- 5.1 The said Shri Gunjan Saxena, as the TDS, did not ensure wide publicity to the NIT by advertisement in newspaper, thus depriving the Department of the benefit of competitive rates. So also, the contract of the same party was extended by him on the same terms and conditions, instead of inviting fresh tenders for 1994-95.
6. TDE, Pali, purchased eight cabinets and ten pillars from M/s Patel Traders, vide Orders No. S-48/Genl.

Tender/93-94/48 to 50 dated 29.1.1994, at the rates approved by TDM, Jodhpur. However, though he was aware of the fact that cabinets and pillars were stocked items, the said Shri Gunjan Saxena as the TDE, did not obtain Non-Availability Certificate from Circle Telecom Store Depot, Jaipur, before placing the orders.

7. TDE, Pali, vide letter No. S-48/93-94/Genl. Tender/25 dated 18.6.1993 accepted the offer of M/s G-Nine, Jodhpur for repair of SLC Cards at the following rates:-

- i) Repair of SLC Cards - Rs.750/- per module.
- ii) Cards having four or more Faulty modules. -Flat rate of Rs.2500/-.
- iii) Other Cards - Rs.2500/- per Card.
- iv) The rates were to be valid up to 31.3.1994.

7.1 The said Shri Gunjan Saxena, as the TDE, approved the aforesaid rates recommended by a Purchase Committee formed by himself and, further, extended the contract of the same firm for 1993-94 on the same terms and conditions.

8. Notice Inviting Tenders (NIT) for supply of jeep trolleys was, issued by the TDE, Pali, vide letter No. S-26/Genl./Vehicle/93-94 dated 7.5.1993. And the following parties responded to the said NIT:-

<u>S.No.</u>	<u>Name of firm</u>	<u>Rate (Rs.)</u>
i)	M/s R.M. Goshi Iron Industries Udaipur.	19,951/- each (with tyres) 16,951 each (without tyres) Sales Tax not mentioned.
ii)	M/s Mittal Brothers, Ajmer	16,500/- each plus Sales Tax @ 4%.
iii)	M/s India Agrico, Udaipur	18,000/- each plus all taxes.
iv)	M.s Simco Engg. Corporation Udaipur.	16,900/- each plus tax

8.1 The tender of M/s Mittal Brothers, Ajmer, was accepted vide letter No. S-6/Genl/Vehicle/ Tender Jeep Trolley/93-94/69 dated 18.6.1993. The

[Signature]

following five Purchase Orders were accordingly placed by the TDE, Pali, on the said firm:-

- i) No. S-26/Genl/Vehicle/Jeep Trolley/93-94/70 dated 18.6.1993 for one Jeep trolley for SDOP, Beawar.
- ii) No. S-26/Genl/Vehicle/Jeep Trolley/93-94/71 dated 18.6.1993 for one jeep Trolley for AE (C), Sirohi.
- iii) No. S-26/Genl/Vehicle/Jeep Trolley/93-94/72 dated 18.6.1993 for one jeep trolley for SDOT, Jalore.
- iv) No. S-26/Genl/Vehicle/Jeep Trolley/93-94/73 dated 18.6.1993 for one jeep trolley for SDOT, Pali.
- v) No. S-26/Genl/Vehicle/Jeep Trolley/93-94/74 dated 18.6.1993 for one jeep trolley for SDOP, Pali.

8.2 As the trolley is a part of a motor vehicle, and only the Chief General Manager was empowered to purchase motor vehicles, Telecom District Engineers were not competent to invite and finalize tender for supply of jeep trolleys from open market. The said Shri Gunjan Saxena, as the TDE, Pali, thus exceeded his financial powers by placing the aforesaid five Purchase Orders for a total of Rs.82,500/- plus Sales Tax.

9. Short terms tender was invited by TDE, Pali, for electric wire wrapping tools, vide NIT No. S-48/Genl/94-95 dated 10.5.1994. The NIT was dispatched for nine firms. Four parties of Ahmedabad purchased tender forms on 24.5.1994 vide Receipts No. 46 to 49 dated 24.5.1994 and submitted their tenders on 24.5.1994 itself. The lowest rate of Rs.18,709/- plus 4% Central Sales Tax, quoted by M/s Devi Krupa Electronics, Ahmedabad, was approved vide letter No. S-48/Genl/94-95/7 dated 3.6.1994; and nine Purchase Orders, No. S-48/Genl. Wrapping Tools/94-95/8 to 16 dated 23.6.1994, were issued for one tool each for SDE (C), Abu Road, SDOT, Sirohi, SDE, Bhinmal, SDOT, Jalore, SDOT, Sumerpur, SDOT, Sojat City, SDE (GE) Pali, SDOT Pali and SDOP Pali.

9.1 The said Shri Gunjan Saxena, as the TDE, however, did not ensure wide publicity to the Notice Inviting Tenders by advertisement in newspaper, thus depriving the Department of the benefit of competitive rates. The total cost of the purchases was Rs.1,68,381/-.

10. The tendered rates of Rs.96.76 per metre including all taxes and F.O.R. at Pali, of M/s Durga Ramji Patel, Jaipur, for one and a half inches diameter 'B' Class GI pipes, were accepted by the TDE, Pali vide

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letter No. S-48/92-93/178 dated 5.10.1992, for the year 1992-93. The said contractor, vide letter No. 150 dated 29.3.1993, addressed to TDE, Pali, requested for extension of the contract for the year 1993-94 and the TDE, Pali, extended the contract for one more year, i.e. up to 31.3.1994 on the same terms and conditions vide letter No. S-48/Geni. Tender/93-94/2 dated 8.4.1993. The following purchases of GI pipes were accordingly made:-

<u>S.No.</u>	<u>Quantity</u>	<u>Amount</u>	<u>Year</u>
i)	1752.78 metres	1,37,208	1992-93
ii)	1345.00 metres	1,30,088	1993-94
iii)	1781.00 metres	1,72,282	1994-95

10.1 The said Shri Gunjan Saxena, as the TDE, thus extended the contract of M/s Durga Ramji Patel, instead of inviting fresh tenders; and purchased 4878.78 metres of GI pipes for a total of Rs.4,39,578/- at abnormally high rates compared to the prevalent market rates and the rates approved by DG S&D.

11. Thus, by his above acts, the said Shri Gunjan Saxena committed misconduct, failed to maintain absolute integrity, exhibited lack of devotion to duty, and acted in a manner unbecoming of a Government servant, thereby contravening Rule 3(1) (i), (ii) and (iii) of the CCS (Conduct) Rules, 1964.

(JOHN MATHEW)
ASSTT. DIRECTOR GENERAL

ANNEXURE-III

Statement of documents by which the article of charge framed against Shri Gunjan Saxena (Staff No.8465), Telecom District Manager, Jhunjhunu, Rajasthan Telecom Circle, are proposed to be sustained.

1. S1 TDE, Pali, memo No. S-48/93-94 dated 4.93
2. S2 TDE, Pali, letter No. S-48/Cable-Tender/93-94 dated 3.5.93



3. S3 Asstt. Director (Eng.), O/o Director Telecom (South), Udaipur, letter No. Eng-50/tender/U/G Cable/Pali/5/ dated 10.6.1993.
4. S4 TDE, Pali, letter No. S-48/Cable/93-94/JOR/17 dated 15.6.1993
5. Director Telecom (South), Udaipur, letter No. S-48/Cable/93-94/16 dated 14.6.1993
6. S5 TDE, Pali, memo No. S-48/Cable/16/93-94 dated 14.6.1993
7. S6 TDE, Pali, letter No. S-48/Cable/93-94/BWR/13 dated 18.6.1993
8. S7 Tender submitted by M/s Prakash Construction Co., Beawar, in response to NIT No. S-48/93-94 dated .4.93 for Beawar Sub Division
9. S8 Tender document submitted by M/s Raj Construction Co., Alwar and M/s M.L. Construction Co., Alwar, in response to NIT No. S-48/93-94 dated .4.93 for Jalore Sub Division
10. S3 Director Telecom (South), Udaipur, Letter No. Eng.50/tender/UG Cable/Pali/5 dated 10.6.1993
11. S9 TDE, Pali, letter No. S-48/Cable/93-94/Sojat/91 dated .5.1994
12. S10 TDE, Pali, memo No. S-48/94-95 dated 25.4.1994
13. S11 TDE, Pali, letter No. S-48/Cable/Pali (T)/16 dated .6.94
14. Tender document of M/s Creative Construction Co., Jaipur, in response to NIT No. S-48/94-95 dated 25.4.1994 for Pali (T) Sub Division
15. S12 Tender Evaluation Committee report Alongwith comparative statement for Pali and Sojat (T) Sub Divisions for 1994-95
16. S13 TDE, Pali, memo No. S-48/L&W/Post Erection/Tender/92-93/23 dated 19.12.1993

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17. S14 Comparative Statement for L&T tender For Jalore, Sumerpur and Sirohi Sub Divisions
18. S15 TDE, Pali, letter No. S-48/Post & Wire /Tender/92-93/48 dated 11.1.1993
19. S16 TDE, Pali, letter No. S-48/Post & Wire /Tender/92-93/75 dated 12.1.1993
20. S17 TDE, Pali, letter No. S-48/Post & Wire Tender/92-93/74 dated 12.1.1993
21. S18 Tender document submitted by M/s Vaibhav Enterprises, Jodhpur, in response to NIT No. S-48/L&W/Post erection/Tender/92-93/23 dated 19.12.1993 for Sumerpur and Sirohi Sub Divisions
22. S19 Note sheet 7/N of tender file No. S-48/Tender/92-93/erecting of O/H line.
23. S-20 TDE, Pali, letter No.S-48/Tender/93-94/3 dated 16.4.1993
24. S21 TDE, Pali, letter No.S-48/Genl Tender/93-94/11 dated 1.5.1993
25. S22 M/s Darpan Electricals, Jodhpur, letter No. DE-148/93-94 dated 22.3.1994 Addressed to TDE, Pali
26. S23 TDE, Pali, letter No.S-48/Genl Tender/94-95/82 dated 18.4.1994 addressed to M/s Darpan Electricals, Jodhpur
27. S24 M/s Patel Traders letter No. 21 dated 30.4.1993 addressed to TDE, Pali.
28. S25 TDE, Pali, Purchase Order No. S-48/Genl Tender/93-94/48 to 50 dated 29.1.1994
29. S26 M/s G-Nine, Jodhpur, letter No.GN/PT/93/49 dated 16.6.1993 addressed to TDE, Pali.
30. S27 TDE, Pali, letter No. S-48/93-94/Genl Tender/25 dated 18.6.1993 addressed to M/s G-Nine, Jodhpur, for extension up to 31.3.1994.

31. S28 TDE, Pali, memo No.S-26/Genl/Vehicle/
93-94 dated 7.5.1993.
32. S29 TDE, Pali letter No. S-26/Genl/Vehicle/
Tender Jeep Trolley/93-94/69 dated
18.6.1993.
33. S30 TDE, Pali, Purchase Order No.S-26/Genl
/Vehicle Jeep Trolley/93-94/74 dated
18.6.1993 placed to M/s Mittal Brothers.
34. 31 Purchase Order No. S-26/Genl/Vehicle/
Jeep Trolley/93-94/73 dated 18.6.1993
to M/s Mittal Brothers.
35. 32 Purchase Order No. S-26/Genl/Vehicle/
Jeep Trolley/93-94/72 dated 18.6.1993
to M/s Mittal Brothers.
36. 33 Purchase Order No. S-26/Genl/Vehicle/
Jeep Trolley/93-94/71 dated 18.6.1993
to M/s Mittal Brothers.
37. 34 Purchase Order No. S-26/Genl/Vehicle/
Jeep Trolley/93-94/70 dated 18.6.1993
to M/s Mittal Brothers.
38. 35 TDE, Pali, letter No. S-26/Genl/93-
94/82 dated 13.8.1993 addressed to
M/s Mittal Brothers, Ajmer.
39. Schedule of Financial Powers of TDE/
CGMT.
40. 36 TDE, Pali-Marwar, letter No.S-48/Genl/
94-95 dated 10.5.1994.
41. 37 TDE, Pali, Office Receipt No.46 to 49
dated 24.5.1994.
42. 38 TDE, Pali, letter No. S-48/Genl/94-95/7
dated 3.6.1994.
43. 39 TDE, Pali, letter No. S-48/Genl.
Wrapping tools/94-95/8 dated
23.6.1994.
44. S40 TDE, Pali, letter No. S-48/Genl.
Wrapping tools/94-95/8 dated
23.6.1994.
45. 41 TDE, Pali, letter No. S-48/Genl.
Wrapping tools/94-95/10 dated
23.6.1994.

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46. S42 TDE, Pali, letter No. S-48/Genl. Wrapping tools/94-95/11 dated 23.6.1994.
47. S43 TDE, Pali, letter No. S-48/Genl. Wrapping tools/94-95/12 dated 23.6.1994.
48. S44 TDE, Pali, letter No. S-48/Genl. Wrapping tools/94-95/13 dated 23.6.1994.
49. S45 TDE, Pali, letter No. S-48/Genl. Wrapping tools/94-95/14 dated 23.6.1994.
50. S46 TDE, Pali, letter No. S-48/Genl. Wrapping tools/94-95/15 dated 23.6.1994.
51. S47 TDE, Pali, letter No. S-48/Genl. Wrapping tools/94-95/16 dated 23.6.1994.
52. S48 TDE, Pali, letter No. S-48/92-93/178 dated 5.10.1992.
53. S49 Letter No.150 dated 29.3.1993 of M/s Durga Ramji Patel.
54. S50 TDE, Pali, letter No. S-48/Genl. Tender/ 93-94/2 dated 8.4.1993.

ANNEXURE-IV

List of witnesses by whom the articles of charge framed against Shri Gunjan Saxena (Staff No.8465), Telecom District Manager, Jhunjhunu, Rajasthan Telecom Circle, are proposed to be sustained.

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5. The inquiry officer submitted his report on 5.7.2002 (Ann.A/6) giving the finding that on the basis of documentary evidences adduced in the case and in view of the analysis given in Para 6 of the report, I hold that the article of charge as mentioned in Para 2 against the applicant has not been proved.

[Signature]

6. The disciplinary authority, however, did not agree with the report of the inquiry officer and had issued a disagreement note vide memo dated 13.11.2002 (Ann.A/7) thereby holding the applicant guilty of the charges levelled against him through the charge memos. The disciplinary authority after having considered the reply of the applicant had imposed the penalty of censure upon him vide order dated 10.3.2004 (Ann.A/2). The disciplinary authority had also enclosed copy of the advice of the UPSC alongwith the said penalty order.

7. Order of the disciplinary authority imposing penalty of censure upon the applicant was confirmed through revision petition vide order dated 17.11.2004 (Ann.A/1), whereby the reviewing authority had rejected the review petition for the reasons recorded in para-3 of the said order (Ann.A/1), which read as under :

"3. Rule 29-A of CCS (CCA) Rules 1965 lays down that the President may, at any time, either on his own motion or otherwise review any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to his notice. The merit of some of the arguments reiterated by the petitioner in his Review Petition need to be discussed once again in order to clarify the doubts harbored by petitioner on this account. It may be seen in this case that in regard to the allegation of awarding the contract to M/s M.L. Construction Company and M/s Raj Construction Company the argument reiterated by the petitioner is that he is not an expert in verifying the signatures of the proprietors if they were made by the same person on behalf of the said two companies. Moreover, just by the co-incidence of the tendered

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documents being signed by one person on behalf of the two companies and the companies being located at the same address does not disqualify them from participating in the tendering process. Further, he has also reiterated his argument regarding DGS&D annual rate contract for GI pipes not being available for the year 1992-93 in support of his action of extending the contract of M/s Durga Ramji Patel for GI pipes upto 31.3.1994 on the rates for the year 1992-93. In so far as the allegation of awarding the contract to M/s M.L. Construction Company and M/s Raj Construction Company for laying the underground cables is concerned the petitioner is trying to act as a naïve person. The documents produced in the inquiry in the form of Prosecution Exhibits S-4, S-5, S-8(a), S-8(b) & S-9 clearly reflect that the tendered documents of the M/s M.L. Construction Company and M/s Raj Construction Company were not only signed by the same person; namely, Sh. M.L. Sharma but both of these companies had also furnished the same address viz., Bheejitiya Bhawan, Bhikam Sayed Mohalla, Alwar. So, it could be clearly seen even with naked eyes by any prudent person that M/s M.L. Construction Company and M/s Raj Construction Company were the same company owned by the same proprietor. As such, the action of the petitioner to award the contract of laying underground cables to the said two companies automatically becomes suspect. Similarly, a copy of the certificate produced by the petitioner in the matter of extending the contract for GI pipes without number and date purported to have been signed by a Section Officer of DGS&D also cannot bail him out. It is a matter of common knowledge that no document, in any form, can be issued by an official functionary of the Government of India without number and date especially an important document like this. Therefore, the authenticity of the certificate produced by the petitioner in his defence was itself in doubt. As such, reiteration of such argument by the petitioner again and again in various forms does not make him entitled for any further concession or benefit in the matter of punishment. The other arguments reiterated by the petitioner in his petition in regard to other charges have already been considered by the competent authority at various stages and they need not be discussed again and again. Thus, Shri Gujan Saxena has not been able to bring forward any new material or evidence in his Review Petition which has the effect of changing the nature of the case and which may justify a review of his case by the President. Therefore, the President does not find it a fit case for review under Rule 29-A of CCS (CCA) Rules, 1965."

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8. Learned counsel for the applicant after having relied upon the pleadings, as per the OA, had submitted as under :

(i) That while working at Jhunjhunu in the year 1999, the applicant was served with a charge-memo dated 12.3.1999 under Rule 16 of the CCS (CCA) Rules, 1965, alleging therein that he failed to act as per procedure in connection with tenders and purchase of some material inspite of fact that these so called short comings relate to the year 1992 and the allegations have been levelled in the year 1999 i.e. after a lapse of 6 years, which is not at all justified. In this connection, he had relied upon the following case law :

- I State of Madhya Pradesh v. Bani Singh & Anr.
[1991 SCC (L&S) 638]
- II State of A.P. v. N.Radhakishan
[1998 SCC (L&S) 1044]
- III P.V.Mahadevan v. MD, T.N.Housing Board
[2005 SCC (L&S) 861]

(ii) It was submitted that the Presenting Officer supplied the listed documents except at S.No.5 & 39. The applicant also protested for genuineness of the documents at S.No.14 & 16.

(iii) Learned counsel for the applicant also contended that the competent authority discussed the matter on the basis of documents which were never produced during the course of inquiry. It is admitted fact that as per the charge-

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memo two documents i.e. at S.No.5 [TDE, Pali, Memo No.S-48/Cable/16/93-94 dated 14.6.1993] & S.No.39 [TDE, Pali, letter No.S-48/Geni. Wrapping tools/94-95/8 dated 23.6.1994] had never been produced.

- (iv) The competent authority after consultation with respondent No.3 i.e. UPSC awarded the penalty of censure upon the applicant vide order dated 10.3.2004 in spite of the fact that the UPSC was nowhere satisfied with the findings of the competent authority and stated that allegations are minor negligence for which the officer may be awarded censure. The punishment can only be a caution to the officer for future. There was no intention of the UPSC to put the applicant in adverse position. Due to punishment of censure, services of the applicant could not be regularized and the officers junior to the applicant have regularly been promoted in the JAG in the year 2003 but the applicant has been ignored because of the penalty of censure, for which the applicant made request to the competent authority and the competent authority vide letter dated 24.6.2004 informed the applicant that his case will be considered in the next DPC inspite of the fact that at the time of DPC, minor penalty charge-sheet served upon the applicant was pending and the respondents, as per procedure, kept the recommendations in sealed cover and did not act upto the penalty order dated 10.3.2004. By this action, the applicant became junior to so many officers. The

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applicant is of 1986 batch and he was due for JAG in the year 1998 and at that time nothing was adverse against the applicant.

- (v) Learned counsel for the applicant further contended that the charge-memo served upon the applicant was not as per procedure. In Annexure-IV no witness had been shown to authenticate the documents listed in Annexure-III and as per procedure it was necessary to annex the list of witnesses.

9. Notice of this application was given to the respondents, who have filed their reply opposing the claim of the applicant and making the following submissions :

- (i) As regards the contention raised by the applicant in para No.(i) above, the respondents have not written a single word in their reply.
- (ii) As regards contention No.(ii), it was admitted that the documents mentioned at S.No.5 & 39 of the listed documents enclosed with the charge-memo had not been supplied to the applicant.
- (iii) As regards the contentions made in the Para No.(iii) above, it was submitted that the inquiry officer gave finding on the article of charge. The disciplinary authority proposed to disagree with certain portion of the findings of the inquiry officer since the inquiry officer failed to take

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proper cognizance of the evidences available on record. The disciplinary authority issued the disagreement note as per rules. The quantum of penalty had been advised by the UPSC and after considering the facts of the case the disciplinary authority had imposed the penalty of censure upon the applicant. The respondents did not give any reply to the contentions raised in para No.(iii) above that the documents No.5 & 39, as mentioned in the listed documents enclosed with the charge-memo, were not produced during the course of inquiry and these relied upon documents had also not been supplied to the applicant. The respondents have not rebutted this contention of the applicant.

(iv) As regards the contentions made in para No.(iv) above, it was submitted by the respondents in their reply that the UPSC had tendered their advice after thorough examination of the record. The service particulars and the CR dossiers were furnished to the UPSC alongwith the case record, which was perused by the UPSC before tendering its advice. The competent authority after having considered all the record and the advice tendered by the UPSC had decided to accept the advice of the UPSC and the orders were passed accordingly.

(v) As regards the contentions raised by the applicant in Para No.(v) above, it was submitted by the respondents that the allegation of the applicant is misleading and the

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charge-memo was issued strictly as per the provisions contained in the statutory rules. There was adequate documentary evidence in support of the article of charge against the applicant. However, it is evident from record that the author(s) of the document(s) had not been shown as witness(es).

10. I have heard the rival submissions, perused the record as also the case law on the subject. I find that in this case, as per the inquiry report dated 5.7.2002 (Ann.A/6), the inquiry officer held that the charges levelled against the applicant are not proved. However, the disciplinary authority had issued the memo dated 13.11.2002 (Ann.A/7) containing disagreement note, wherein it was held that charges against the applicant are proved. On the basis of this disagreement note, the disciplinary authority had imposed a penalty of censure upon the applicant vide order dated 10.3.2004 (Ann.A/2). Order of the disciplinary authority was also confirmed by the reviewing authority vide order dated 17.11.2004 (Ann.A/1). Learned counsel for the applicant had invited attention of the Bench to the advice of the UPSC tendered vide letter dated 27.1.2004 enclosed with the penalty order (Ann.A/2). Through para-7 of this letter, the UPSC had advised that C.O. has long service tenure in future; therefore the punishment awarded to him should be such that it should warn him for the irregularities committed by him, but it should not affect his future permanently. Penalty of censure can be imposed with the object to improve the conduct of the applicant in future. Learned counsel for the applicant had relied

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upon the case of **Ravi Bhargava v. Secretary, Department of Telecommunications & Anr.** [2009 (2) (CAT) SLJ 243].

Brief facts of the case of Ravi Bhargava, as mentioned in para 13 of the order, are as under:

"13. The DPC met in September, 2007 for considering promotion of 169 officers of three batches for promotion from JAG to SAG. The name of the applicant was considered for promotion by DPC for the vacancies of the year 2007-08. According to model calendar, placed at page 104 of the paper book in the reply affidavit of the second respondent, ACRs upto July 2006 could be seen, which would effectively mean ACRs of the year 2005-06. The argument is that the penalty of 'Censure' was awarded in September, 2006 and, therefore, it could not have been considered for the vacancies of 2007-08; for which ACRs of the year up to 2005-2006 only could be considered. It has been re-emphasized by the learned counsel for the applicant that he has been graded 'outstanding' in his ACRs, whereas the bench mark for promotion is 'very good'. The DPC has illegally considered the punishment of 'Censure' awarded in September 2006, while considering the applicant for promotion for the vacancies of 2007-08. The DPC recommended 169 officers for promotion and next meeting of DPC would be held only after his panel is exhausted. The panel comprises officers belonging to batches of 1986 and 1987. The implication for the applicant thus is that he would lose seniority by two batches."

In the above case it was contended that the applicant could not have been overlooked for promotion only on the basis of censure as the specific penalty of withholding of promotion was not imposed on him. Reference has been made to the C&AG's circular number NGE/38/1990 dated 30.8.1990 (reproduced in Swamy's Complete Manual on Establishment and Administration, Swamy Publisher (P) Ltd., Tenth Edition 2006). According to para-12 of this order, 'Censure' cannot have the

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effect of withholding of promotion. Relevant paragraph of the order is reproduced below :

"As regards the first point, under the existing instructions, every person, eligible for promotion and in the filled of choice has to be considered for promotion. The fact of the imposition of the minor penalty of censure on a Government servant does not by itself stand against the consideration of such person for promotion, as his fitness for promotion has to be judged, in the case of promotion by seniority, on the basis of an overall assessment of his service record, and in the case of promotion by selection on merit, on the basis of his merit categorization which is again based upon an overall assessment of his service record. So far as the eligibility of a Government servant who has been awarded the penalty of censure, who appear at departmental/promotional examination is concerned, the same principle would apply, viz., that he cannot merely because of the penalty of censure, be debarred from appearing at such an examination. In case, however, the rules of such an examination lay down that only those eligible persons can be allowed to appear at the examination who are considered to be fit for the purpose, the fitness of an eligible candidate who has been awarded the penalty of censure, to appear at the examination has to be considered on the basis of an overall assessment of his service record and not merely on the basis of the penalty of censure."

Reference has also been made to the circular No.F.10/6/2007-AUC dated 5.6.2008, which reads as under :

"Subject: Treatment of penalties imposed on an officer by the DPCs

1. The DOP&T O.M. No.22011/5/86-Estt.(D) dated 10th April, 1989, inter alia, provides that before making the overall grading after considering the CRs for the relevant years, the DPC should take into account whether the officer has been awarded any major or minor penalty or whether any displeasure of any superior officer or authority has been conveyed to him as reflected in the ACRs. The DPCs generally treats the penalties imposed on an officer while considering him for promotion as per the practice in vogue although the codified procedure in this regard does not exist.

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2. The ACC has observed that the Commission does not appear to have the support of any instructions issued by the DOP&T while treating the penalties in the matter of promotion. The ACC, therefore, directed the DOP&T to discuss the issue with the UPSC so that the practice and existing instructions could be brought in harmony. The DOP&T has accordingly requested the Commission to examine the issue.

3. The DOP&T has, however, not discussed the modalities for treatment of penalties imposed on an officer and as such it is left to the discretion of the DPC to treat the penalties the way it deems fit. As already stated, guidelines codified by the Commission also do not exist.

4. The Commission, after deliberating on the issue in their meetings held on 31st January, 2008 and 22nd May, 2008, have finalized suggestions on rationalization of treatment of penalties by the DPCs and DOP&T is being requested to issue necessary instructions in the matter. The Commission have also decided that till instructions are issued by the DOP&T, the DPCs would follow the current practice on treatment of penalties uniformly. A copy of the current practice for treating the penalties by the DPCs is enclosed for information."

The current practice when the punishment is 'Censure' is as under :

"(1) Where the penalty is 'Censure', or a warning or displeasure of a superior officer has been conveyed.

(2) The cases are decided by the DPCs on case to case basis after taking into consideration the article of charges/background material etc., against the officer."

It is also pointed out that there is no periodicity prescribed for 'Censure'."

In this case, reliance was also placed on the advice of the UPSC, wherein it was stated that 'Censure' should not come in the way of the career of an officer. In the case of Gunjan Saxena, who was awarded 'Censure' by the UPSC, it was noted

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thus in paragraph 7 of the order dated 27.1.2004, which reads as under :

"Para 7 – The Commission finds that C.O. has long service tenure in future; therefore the punishment awarded to him should be such that it should warn him for the irregularities committed by him, but it should not affect his future permanently. The Commission considers that for this minor carelessness and irregularities punishment of censure is appropriate and according to the spirit of punishment. This provision of punishment is to set an example before other officers and simultaneously explore the possibilities of improvement in the working of Charged Officer also and it acts as a warning for the future conduct of the Charged Officer. Accordingly UPSC advises the same."

In this case, in para-25 of the order, instances have been given of the officers who had been considered for promotion inspite of the fact that penalty had been imposed upon them. Learned counsel for the respondents had relied upon the case of Union of India etc. v. K.V.Jankiraman etc. [JT1991 (3) SC 527] to buttress his arguments that the promotion to a post and more so, to a selection post, depends upon several circumstances: To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interest. After having considered the various circulars as issued from time to time, as reproduced in the order of Ravi Bhargava (Supra), vide OM No.21/5/70-Est.(A) dated 15th May, 1971, procedure has been explained for promotion of employees on whom penalty has been imposed. Para-2 of the order reads as under :

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"(2) As regards the first point, under the existing instructions every person, eligible for promotion and in the field of choice has to be considered for promotion. The fact of the imposition of the minor penalty of censure on a Government servant does not by itself stand against the consideration of such person for promotion, as his fitness for the promotion has to be judged in the case of promotion by seniority, on the basis of an overall assessment of his service record, and in the case of promotion by selection on merit, on the basis of his merit categorization which is again based upon an overall assessment of his service record. So far as the eligibility of a Government servant who has been awarded the penalty of censure to appear at a departmental/promotional examination is concerned, the same principles would apply viz. that he cannot merely because of the penalty of censure, be debarred from appearing at such an examination. In case, however, the rules of such an examination lay down that only those eligible persons can be allowed to appear at the examination who are considered to be fit for the purpose, the fitness of an eligible candidate who has been awarded the penalty of censure, to appear at the examination has to be considered on the basis of an overall assessment of his service record and not merely on the basis of the penalty of censure."

From perusal of para-2 of the order, it is evident that the fact of imposition of the minor penalty of censure on a Government servant does not by itself stand against the consideration of such person for promotion, as his fitness for the promotion has to be judged in the case of promotion by seniority, on the basis of an overall assessment of his service record, and in the case of promotion by selection on merit, on the basis of his merit categorization which is again based upon an overall assessment of his service record.

11. As per OM No.22011/6/75-Estt.(D) dated 30.12.1976, it has been provided that an officer whose increments have been withheld or who has been reduced to a lower stage in the time-

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scale, cannot be considered on that account to be ineligible for promotion to higher grade as the specific penalty of withholding promotion has not been imposed on him.

12. It is evident from perusal of the OMs of the Government of India that the fact of imposition of the minor penalty of censure on a Government servant does not by itself stand against the consideration of such person for promotion, as his fitness for the promotion has to be judged in the case of promotion by seniority, on the basis of an overall assessment of his service record. Secondly, specific penalty of withholding of promotion had not been imposed upon him. In this case, the penalty of censure was imposed vide order dated 10.3.2004 (Ann.A/2). Therefore, his case should have been considered for promotion even after imposition of penalty on 10.3.2004.

13. In this connection, learned counsel for the applicant had invited attention of the Bench to the letter dated 24.6.2004 (Ann.A/9), whereby the Under Secretary to the Government of India, Department of Telecommunications, through letter addressed to the Chief General Manager, had informed that the applicant was considered for regular promotion to JAG of ITS Group-A in the DPC held in November/December, 2002 against the vacancy of years 1999-2000, 2000-2001 and 2001-2002. The DPC considered his case and kept its recommendation in sealed cover due to the vigilance case pending against him. The vigilance case pending against the applicant ended with



imposition of penalty of censure as per order dated 10.3.2004 (Ann.A/2).

14. It was submitted through additional affidavit that the respondents should have opened the sealed cover after the currency of punishment in the year 2005. The respondents should have communicated specific reasons for not promoting the applicant to the grade of JAG in the order dated 5.1.2005 (Ann.A/15). In spite of the fact that they have considered the case of one Shri Akhilesh Kumar Gupta, who was imposed punishment of withholding of an increment for two years vide order dated 12.11.2002, allowed promotion after currency of punishment in the year 2005 vide order dated 5.1.2005.

15. In the case of Ravi Bhargava (supra) it was observed by the Bench that they had noted in paragraph 14 of this order that as per the circular dated 30.8.1990, the instructions are that in case of minor penalty, the suitability of the officer for promotion should be assessed by the DPC as and when occasion arises for such assessment. In assessing the suitability, the DPC will take into account the circumstances leading to imposition of the penalty and consider the general service record of the officer and the fact of imposition of penalty. The facts of the case have been summed up in paragraphs 36 to 38. They have also relied upon the case of Gunjan Saxena [the applicant in the present case].

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16. From perusal of the facts of the case, it is evident that as per Annexure-III enclosed with the charge-memo dated 5.8.99 (Ann.A/4), the respondents listed as many as 54 documents. However, it is evident that they have not made the author of the documents as witness as the list of witnesses has been shown as nil. In this connection, it is pertinent to refer to the case of **Rajesh Kumar v. Union of India & Ors.** [2009 (1) (CAT) SLJ 228]. After having relied upon the judgement of Apex Court in the case of *Ministry of Finance v. S.B.Ramesh* [1998 (2) SLJ 67] it was held that when document is produced in the inquiry, it is the duty of the prosecution to establish and to allow its being controverted and also rebutted by way of calling a person, who issued the document with an opportunity to cross-examine the delinquent, failing which it shall not only be an infraction to the substantive procedure but also violation of principle of audi alteram partem in the wake of principles of natural justice. However, on this ground the penalty of censure cannot be sustained. In spite of the request being made by the applicant for supply of the documents listed at S.No.5 & 39, the same were not supplied to the applicant. Thus, all the relied upon documents had not been supplied to the applicant. The documents which are proposed to be utilized against a person are indicated in the charge sheet but copies thereof are not supplied to him in spite of his request, therefore, the order of penalty of censure cannot be sustained, as held in the case of **Azmat Ali v. Union of India & Ors.** [2008 (3) SLJ 42]. It was thus held in para-22 of the judgement of the Apex Court in the

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case of **State of U.P. v. Shatrughan Lal & Anr.** [1991 (1) SLJ 213 (SC) = AIR 1998 SC 3038].

17. Another contention raised in this case is that for the irregularities alleged to have been committed by the applicant in the year 1992, the respondents had issued a charge-memo dated 12.3.1999 (Ann.A/3) after a lapse of six years. Learned counsel for the applicant had relied upon the case of *State of Madhya Pradesh v. Bani Singh & Anr.* (supra), *State of A.P. v. N.Radhakishan* (supra) & *P.V.Mahadevan v. MD, T.N.Housing Board* (supra).

18. As regards delay in issuing the charge-sheet, learned counsel for the applicant relied upon the case of **State of Madhya Pradesh v. Bani Singh and Another** [1991 SCC (L&S) 638], wherein the Apex Court while considering the order of the Tribunal quashing the charge-sheet because of delay of 12 years in issuing the charge-sheet, held as under :

"4. The appeal against the order dt. 16.12.1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned Counsel. The irregularities which were the subject-matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no

satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

The facts in **P.V. Mahadevan v. MD, T.N. Housing Board** [2005 SCC (L&S) 1044] were that disciplinary action was proposed against the petitioner in the year 2006 for some alleged misconduct in the year 1990. The Hon'ble Supreme Court considered the precedents of Bani Singh (supra), adverted to above and **State of A.P. v. N.Radhakrishnan** [1998 SCC (L&S) 1044].

The Hon'ble Supreme Court upheld the order of the Tribunal quashing the charge-sheet on the ground that there was hardly any explanation worth considering as to why the delay occurred. The Hon'ble Supreme Court, following the case of **State of A.P. v. N.Radhakrishnan** (supra), held thus in **P.V.Mahadevan v. MD, T.N.Housing Board**, as under :

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

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the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

In **State of Punjab v. Chamanlal Goel** [1995 (2) SLJ 126 (SC)], the Hon'ble Supreme Court considered a similar case of delay in initiating departmental proceedings and held thus in paragraph 9 :

"9. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the Court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the Court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the Court has to indulge in a process of balancing."

19. In this case, for the irregularities committed during the year 1993 charge-memo had been issued during the year 1999, after a lapse of six years. There is no explanation whatsoever by the respondents as to how and why the said charges had been levelled against the applicant after a lapse of about six years. It is certain that the applicant cannot recall the events with any certitude after a passage of so many years.

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It would, therefore, be seriously prejudicial to the cause of the applicant to tread on such slippery ground, after a lapse of merely six years. Therefore, the penalty order is also not sustainable on this ground also.

20. After having considered the reasons given in this order, the charge memos dated 12.3.1999 (Ann.A/3) and 5.8.1999 (Ann.A/4) alongwith the order imposing penalty of censure dated 10.3.2004 (Ann.A/2) as also the order 17.11.2004 (Ann.A/1) passed by the reviewing authority confirming the order of the disciplinary authority are hereby quashed..

21. In the facts & circumstances of this case and after carefully considering the various judicial precedents cited in the preceding paragraphs, we feel that the applicant's case should be reconsidered by a review DPC. The DPC may consider the case of the applicant subject to fulfillment of other necessary conditions for promotion while keeping the observations in this order also in mind before reaching any conclusion about the suitability of the officer for promotion. The review DPC should be convened within six months of the receipt of a copy of this order. The respondents are directed to allow all consequential benefits including seniority/promotion from the date the person junior to the applicant were allowed.

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