

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.674 OF 2015

New Delhi, this the 6th day of April, 2017

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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Suresh Kumar Mehra,
aged 45 years,
s/o Sh.Mam Chand Mehra,
working as Director (E), TEC,
Department of Telecom, K.L.Bhawan,
Jappath, New Delhi

R/o 1644 Sector 46 Gurgaon (Har) Applicant

(By Advocate: Shri Yogesh Sharma)

V_S

1. Union of India, through the Secretary, Ministry of Communications and Information Technology, Department of Telecommunications, Government of India, Sanchar Bhawan, 20, Ashoka Road, New Delhi.
2. The Under Secretary to the Govt. of India (DI), Ministry of Communications and Information Technology, Department of Telecommunications, Government of India, Sanchar Bhawan, 20, Ashoka Road, New Delhi.
3. The Chief Vigilance Officer, BSNL, Ground Floor, Eastern Court, Janpath, New Delhi 110001
4. The Secretary, UPSC, Dholpur House, Shahjahan Road, New Delhi 110001

(By Advocates: Shri C.Bheemanama for R-1 & 2; and Shri R.V.Sinha for R-4)

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ORDER

Per Raj Vir Sharma, Member(J):

Brief facts: By order and in the name of the President, Memorandum dated 25.6.2010 was issued by respondent no.1 proposing to have an inquiry held against the applicant under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as ñCCS (CCA) Rulesö. Statement of articles of charge, statement of imputations of misconduct, list of documents by which the articles of charge were proposed to be sustained, and a copy of the first stage advice of the Central Vigilance Commission (CVC) for instituting major penalty proceedings against the applicant were also enclosed with the Memo dated 25.6.2010, ibid. A blank list of witnesses was also enclosed with the Memo dated 25.6.2010. The applicant was called upon to submit a written statement of his defence, and also to state whether he desired to be heard in person. The alleged misconduct in respect of which the inquiry was proposed to be held against the applicant pertained to the period from April 2004 to February 2010 when he worked as Superintending Engineer (Electrical), BSNL, W.B.Circle, Kolkata. There were six articles of charges against the applicant. The applicant submitted his reply dated 16.8.2010 denying all the charges framed against him. In his reply dated 16.8.2010, ibid, the applicant desired to be heard in person and also required copies of all the documents mentioned in the list of documents enclosed with the Memo dated 25.6.2010, ibid. Thereafter, Inquiring Authority (IA) and

Presenting Officer (PO) were appointed. Nomination of the Defence Assistant was admitted by the applicant. Some of the additional documents requested by the applicant to defend himself in the departmental enquiry, vide his letters dated 30.3.2011 and 30.4.2011, were furnished to him. The documents at sl.no.2 of letter dated 30.3.2011 and at sl.nos.2,4,6,8 and 10 of the letter dated 30.4.2011 of the applicant were not made available by the PO as such records were not available in the office of the custodian authority, and therefore, the same were not supplied to him. The listed documents were marked as Exhibits P-1 to P-30 and taken on record of the inquiry. The defence documents were marked as Exhibits D-1 to D-29 and taken on record of the inquiry. Though the applicant requested for examination of three witnesses to explain and clarify the departmental procedure to disprove the charges, vide his letter dated 30.4.2011, yet the IA allowed only Sri T.K.Haldar, SE (E), CTD, Kolkata, to be the Defence Witness. Accordingly, the said Shri T.K.Haldar was examined during the departmental enquiry as DW 1. After evaluating the documentary evidence adduced both by the Department and the applicant, and the oral evidence of DW 1, as well as other materials available on record, the IA submitted its inquiry report holding that all the Articles of Charges were not proved. The advice from the Chief Vigilance Officer (CVO), BSNL, was obtained by the DA. The CVO, vide its letter dated 23.5.2013, advised that Article I was partially proved, and Articles V and VI of the charges were proved against the applicant. By order and in the name of the President, a disagreement note

dated 31.7.2012, along with the inquiry report, was issued by respondent no.1 stating Article I as partially proved, and Articles V and VI of the charges as proved, and calling upon the applicant to make a representation thereto. The applicant made a representation dated 5.9.2012 against the disagreement note. The materials available on record, including the applicant's representation dated 5.9.2012 against the disagreement note dated 31.7.2012, as well as the advice of the Union Public Service Commission (UPSC), vide its letter dated 23.5.2013, were considered. By order and in the name of the President, the order dated 14.8.2013 was issued by respondent no.1 imposing on applicant the penalty of reduction to a lower stage in the time scale of pay by two stages for a period of one year with further direction that on expiry of this period the reduction will not have the effect of postponing his future increments of pay. The UPSC's letter dated 23.5.2013, ibid, was enclosed with the punishment order dated 13.8.2013, ibid. The applicant filed a review petition dated 14.1.2014 against the punishment order dated 14.8.2013, ibid. By order and in the name of the President, order dated 16/21.7.2014 was issued by respondent no.1 rejecting the applicant's review petition dated 14.1.2014 as being devoid of merit. Hence, the present O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

ð(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the penalty order dated 14.8.2013 (Annexure A/1), Review order dated 15/21.7.2014 (Annex.A/2), UPSC Advice dated 23.05.2013 (Annex.A/1), Disagreement Note (Annex.A/6), Charge Sheet dated 25.6.2010 (Annex.A/3)

and entire disciplinary proceedings declaring to the effect that the same are illegal, arbitrary, against the rules and against the principle of natural justice and consequently the applicant is entitled for all the consequential benefits including restoration of his pay with arrears of difference of pay and allowances with interest.

(ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation.ö

1.1 In the above context, the applicant has contended, *inter alia*, that at the behest of the CVO, BSNL, the disciplinary proceeding was initiated by the DA against him on false and fabricated charges. The charges were vague and did not specify any misconduct on his part. After evaluating the materials available on record, the IA rightly arrived at the conclusion that the charges were not proved against him. The DA not only failed to apply its mind to the materials/evidence available on record, but also disagreed with the findings of the IA and issued the disagreement note solely on the basis of advice of the CVO, BSNL, stating Article I as partially proved and Articles V and VI of the charges as proved against him. The finding that Article I was partially proved and Articles V and VI were proved, was arrived at by the DA in the disagreement note before giving him an opportunity to explain the justifiability of the findings of the IA. Copy of the advice of the CVO, BSNL, on the basis of which the DA issued the disagreement note, was not furnished to him. He has been discriminated against by the DA inasmuch as no disciplinary action has been taken against Shri S.N.Mishra, the other member of the TPC. The DA did not consider the contentions raised by him in the representation made against the disagreement note. Copy of the advice

of UPSC was not furnished to him by the DA before passing the order of punishment. The review petition was rejected by the DA without considering the grounds urged by him therein.

2. In their counter reply, respondent nos. 1 and 2 have stated, inter alia, that there was no infirmity in the charge-sheet. The report of the IA is only a guiding factor and not binding on the DA for deciding the charges. Taking comments from the CVO, BSNL, is an integral part of the disciplinary proceedings. The CVO is an institutional mechanism established by the Department of Personnel & Training to provide advice on the disciplinary matters. The allegations made by the applicant against the CVO are totally baseless. After considering the entire matter in true perspective, tentative findings were arrived at, and the disagreement note, along with the inquiry report, was issued to the applicant for making representation thereto. The DA did not take any final decision at that stage. As per Rule 32 of the CCS (CCA) Rules, 1965, the UPSC's advice was enclosed with the penalty order communicated to the applicant. The DA took into consideration the pleas and submissions of the applicant, and passed the penalty order. After considering all the relevant materials available on record and the grounds urged by the applicant in the review petition, the Reviewing Authority rejected the applicant's review petition. The disciplinary proceedings were initiated and conducted strictly as per the provisions of the CCS (CCA) Rules, 1965, for definite charges as conveyed in the charge sheet, and opportunity was given to the applicant at every stage to put up his defence.

Thus, the grounds urged by the applicant are beyond the pale of judicial review.

3. The counter reply filed on behalf of respondent no.3, i.e., CVO, BSNL, contains more or less the same assertions as in the counter reply filed on behalf of respondent nos. 1 and 2. It has also been stated that the DA, in order to form its opinion on the enquiry report, sought for the advice of the CVO, BSNL, on 12.12.2011. Accordingly, the CVO, BSNL, submitted a self contained note with details for disagreement with the findings of the IA in tabular statement, and opined that Article I of the charges stood partially proved, and Articles V and VI of the charges stood proved.

4. In the counter reply filed on behalf of respondent no.4, i.e., the UPSC, it has been stated, inter alia, that the UPSC is an advisory body and its advice was sought for in the case in accordance with the requirement of consultation with them as laid down in Article 320(3) (c) of the Constitution of India, read with Regulation 5(1) of the UPSC (Exemption from Consultation) Regulations, 1958. The basic tenet of provisions for seeking advice of the UPSC is to ensure that a case is assessed independently with the prime focus on upholding the principles of natural justice. The advice of the UPSC was tendered independently on the basis of all the relevant facts and circumstances of the case, findings of the IA, representations of the charged officer, the evidence on record, and documents made available by the respondent no.1-Ministry. The advice of the UPSC is self contained, self explanatory and well reasoned. However, the UPSC's advice is not binding

upon the DA, which arrived at its own conclusions after taking into consideration their advice.

5. In his rejoinder replies, besides refuting the stand taken by the respondents, the applicant has more or less reiterated his contentions as in the OA. Along with his rejoinder reply, the applicant has also filed copy of a letter dated 1.9.2009 issued from the office of the CVO, BSNL, Corporate Office, New Delhi, to the DGM (Vigilance), W.B.Telcom Circle, BSNL, Kolkata, stating that further investigation was carried out by the investigation team, and the involvement of the applicant and five other officers was found in the irregularities committed in processing/approving/awarding the tenders for SITC of various capacities of Diesel Engine Alternator sets for various sites under BSNL Electrical Zone, Kolkata. Accordingly, questionnaires in respect of the applicant and five others were also forwarded by the CVO to the DGM (Vigilane), BSNL, W.B.Telcom Circle, for taking their versions.

6. We have heard Shri Yogesh Sharma, the learned counsel appearing for the applicant, and Shri C.Bheemanama, the learned counsel appearing for respondent nos. 1 and 2, and Shri R.V.Sinha, the learned counsel appearing for respondent no.4-UPSC.

7. Shri Yogesh Sharma, the learned counsel appearing for the applicant, made the following submissions:

- (1) The charges were not specific, definite and clear. Therefore, the entire disciplinary proceedings and the

orders passed therein stood vitiated. In this regard, Shri Yogesh Sharma placed reliance on the decision of the Hon'ble Supreme Court in **Anant R.Kulkarni Vs. Y.P.Education Society and others**, (2013) 6 SCC 515. Referring to the relevant provision contained in the General Financial Rules, 2006 (copy of which has been filed during the course of hearing), Shri Yogesh Sharma submitted that there was no illegality or irregularity committed by the applicant for having the alleged negotiation with the lowest evaluated responsive bidder, and, therefore, there was no substance in any of the charges levelled against him.

(2) In the list of witnesses enclosed with the Memo dated 25.6.2010(ibid), no witness was cited. No witness was examined on behalf of the Department/prosecution in the departmental inquiry to prove either the contents of the documents produced by the prosecution during the enquiry, or the charges against the applicant. Thus, there was no legally admissible evidence to support the charges. In the absence of examination of any prosecution witness, the applicant did not get an opportunity to cross-examine the prosecution witness. Therefore, the impugned charge memo, the disagreement

note, the punishment order, and the order of rejection of review petition are bad, illegal and liable to be quashed.

In this regard, reliance was placed by Shri Yogesh Sharma on the decision of the coordinate Bench of the Tribunal in **B.Prasad (Retd.) Vs. Secretary, Ministry of Finance**, OA No.1016 of 2014, decided on 1.10.2014, as

upheld by the Hon'ble High Court of Delhi in **Secretary, Ministry of Finance & Another Vs. Shri B.Prasad**,

W.P. (C) No. 3273 of 2015, decided on 6.4.2015, and as against which SLP (C)/CC No.18551 of 2015, **Secretary, Ministry of Finance & Anr. Vs. B.Prasad**, was

dismissed by the Hon'ble Supreme Court on 16.10.2015.

Shri Yogesh Sharma also placed reliance on the decision of the Hon'ble High Court of Delhi in **Union of India Vs. Shameem Akhtar**, W.P. (C) No.8726 of 2015,

decided on 11.9.2015.

(3) Shri S.N.Mishra was a co-member of the TPC, the proceedings of which were the subject-matter of the disciplinary proceeding initiated against the applicant. No disciplinary action was taken against said Shri S.N.Mishra. Thus, the DA discriminated against the applicant by initiating the present disciplinary proceedings.

(4) The DA did not apply its mind to the materials available on record. The DA differed with the findings of the IA and issued the disagreement note solely on the basis of the advice of the CVO, BSNL. The finding recorded by the DA in the disagreement note that Article I was partially proved and Articles V and VI of the charges were proved, was not tentative, but was final. Thus, the conclusion of guilt having been recorded by the DA without affording the applicant an opportunity of hearing, the disagreement note was bad and illegal and consequently the impugned orders were bad, illegal, and unsustainable in the eyes of law. In this regard, Shri Yogesh Sharma also invited our attention to Rule 15(2) of the CCS (CCA) Rules, 1965 and the DoP&T&S O.M. dated 12.11.2010.

(5) The penalty order was passed by the DA on the basis of the UPSC&S advice. Thus, the applicant had a right to know the contents of the UPSC&S advice and to make representation against the same. Before passing the impugned penalty order, the DA did not supply copy of the UPSC&S advice to the applicant. Therefore, the impugned penalty order got vitiated on account of non-supply of copy of the UPSC&S advice to the applicant.

8. *Per contra*, Shri C.Bheemanama, the learned counsel appearing for respondent nos. 1 & 2, took us through the statement of Articles of Charges and the statement of imputations of misconduct, and submitted that as regards Article I of the charges, the applicant was one of the members and Secretary of the TPC, and as regards Articles V and VI of the charges, the applicant was heading the TPC. While dealing with the tenders as one of the members of the TPC, he was alleged to have committed grave misconduct, failed to maintain absolute integrity and exhibited utter lack of devotion to duty and, thus, acted in a manner unbecoming of a public servant. The details of the tenders and the recommendations made by the applicant as a member of the TPCs were clearly stated in the statements of Articles of Charges and of imputations of misconduct. Therefore, it cannot be said that the charges were unspecific and vague.

8.1 In reply to the second submission of Shri Yogesh Sharma, the learned counsel appearing for the applicants, it was submitted by Shri C.Bheemanama, the learned counsel appearing for respondent nos. 1 & 2, that the applicant did not raise such plea of non-examination of any witness on behalf of the prosecution at any stage of the departmental enquiry, or in his representation against the disagreement note, or in his review petition. Therefore, he cannot be allowed to raise the said plea in the present proceeding before the Tribunal. Furthermore, the applicant has not shown any prejudice to have been caused to him due to non-examination of any witness by the prosecution.

8.2 In reply to the fourth submission of Shri Yogesh Sharma, the learned counsel appearing for the applicant, it was submitted by Shri C.Bheemanama that in view of the provisions contained in Rule 15(2) of the CCS (CCA) Rules, 1965, the findings recorded by the DA in the disagreement note can by no stretch of imagination be said to be final, nor could the use of the phrases “the Article-I of charge stands partially proved”, “Article V of charge stands proved”, and “the charge stands proved” by the DA render the disagreement note null and void.

9. Before proceeding further, we would like to advert to the case-laws relied upon by Shri Yogesh Sharma, the learned counsel appearing for the applicant, in support of his submissions.

9.1 **In Anant R.Kulkarni Vs. Y.P.Education Society & others** (supra), the appellant was appointed as an Assistant Teacher in the school run by the respondents, and was promoted as the Headmaster of the said school. The respondent-Management Committee of the school initiated a disciplinary proceeding against the appellant. After conducting the enquiry, the enquiry committee submitted its enquiry report. Accepting the enquiry report, the respondent-Management Committee of the school terminated the services of the applicant. The appeal made by the appellant against the order of termination of his services was allowed and the termination order was quashed by the School Tribunal. It was held by the School Tribunal that none of the charges levelled against the appellant stood proved and that the enquiry was not conducted in accordance with the relevant rules. The writ

petition filed by the respondent-Management Committee against the School Tribunal's decision was dismissed by the learned Single Judge. In the LPA filed against the judgment of the learned Single Judge, though the Division Bench of the Hon'ble High Court upheld the decisions of the School Tribunal and the learned Single Judge, yet it was observed by the Division Bench that the respondent-Management Committee were at liberty to proceed with the enquiry afresh as regards the charges. This judgment of the Division Bench was challenged by the appellant before the Hon'ble Supreme Court. One of the substantial questions formulated in paragraph 12 of the judgment and decided by the Hon'ble Apex Court was "Whether the enquiry can be permitted to be held on vague and unspecified charges? In paragraphs 15 to 17 of the judgment, the Hon'ble Supreme Court observed thus:

"Enquiry – on vague charges

15. In **Surath Chandra Chakrabarty v. State of W.B.**, AIR 1971 SC 752 this Court held that it is not permissible to hold an enquiry on vague charges, as the same do not give a clear picture to the delinquent to make out an effective defence as he will be unaware of the exact nature of the allegations against him, and what kind of defence he should put up for rebuttal thereof. The Court observed as under: (SCC p. 553, para 5)

"The grounds on which it is proposed to take action have to be reduced to the form of a *definite charge* or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has to be stated. This rule embodies a principle which is one of the specific contents of a reasonable or adequate opportunity for defending oneself. If a person is *not told clearly and definitely* what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him."

(Emphasis added)

16. Where the chargesheet is accompanied by the statement of facts and the allegations are not specific in the chargesheet, but are crystal clear from the statement of facts, in such a situation, as both constitute the same document, it cannot be held that as the charges were not specific, definite and clear, the enquiry stood vitiated. Thus, nowhere should a delinquent be served a chargesheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the chargesheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. Evidence adduced should not be perfunctory, even if the delinquent does not take the defence of, or make a protest with against that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair-play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges.(vide: **State of Andhra Pradesh & Ors. v. S. Sree Rama Rao**, AIR 1963 SC 1723; **Sawai Singh v. State of Rajasthan**, AIR 1986 SC 995; **U.P.S.R.T.C. & Ors. v. Ram Chandra Yadav**, AIR 2000 SC 3596; **Union of India & Ors. v. Gyan Chand Chattar**, (2009) 12 SCC 78; and **Anil Gilurker v. Bilaspur Raipur Kshetria Gramin Bank & Anr.**, (2011) 14 SCC 379).ö

17. The purpose of holding an enquiry against any person is not only with a view to establish the charges levelled against him or to impose a penalty, but is also conducted with the object of such an enquiry recording the truth of the matter, and in that sense, the outcome of an enquiry may either result in establishing or vindicating his stand, and hence result in his exoneration. Therefore, fair action on the part of the authority concerned is a paramount necessity.ö

In paragraph 32 of the judgment, after analyzing the findings recorded by the School Tribunal, the learned Single Judge and the Division Bench, the Hon'ble Supreme Court observed in paragraph 32 as follows:

öí í í í there is no allegation of misappropriation/ embezzlement or any charge which may cast a doubt upon the integrity of the appellant, or further, anything which may indicate even the slightest moral turpitude on the part of the appellant. The charges relate to accounts and to the discharge of his functions as the Headmaster of the school. The appellant has provided satisfactory explanation for each of the allegations levelled against him. Moreover, he has retired in the year 2002. The question of holding any fresh enquiry on such vague charges is therefore, unwarranted and uncalled for.ö

In paragraph 33 of the judgment, the Hon'ble Supreme Court again observed thus:

ö The Education Officer (Secondary), Zilla Parishad, Solapur, had filed an affidavit before the High Court, wherein it was stated that a dispute had arisen between the trustees, and in view thereof, an enquiry was initiated against the appellant. The respondents terminated the services of the appellant and many other employees, as a large number of cases had been filed against the Management Committee without impleading the State of Maharashtra, though the same was a necessary party, as the school was a government-aided school. Rules 36 and 37 of the Rules 1981, which prescribe the procedure of holding an enquiry have been violated. The charges levelled against the appellant were entirely vague, irrelevant and unspecific. As per statutory rules, the appellant was not allowed to be represented by another employee. Thus, the procedure prescribed under Rule 57(1) of the Rules 1981 stood violated. No chargesheet containing the statement of allegations was ever served. A summary of the proceedings, along with the statements of witnesses, as is required under Rule 37(4) of the Rules 1981, was never forwarded to the appellant. He was not given an opportunity to explain himself, and no charge was proved with the aid of any documentary evidence. There existed no charge against the appellant regarding his integrity, embezzlement or misappropriation. Therefore, the question of misappropriation of Rs.4,900/- in respect of a telephone bill remained entirely irrelevant. Furthermore, the same was not a charge of misappropriation. The learned Single Judge has also agreed with the same. The Division Bench though also in agreement, has given liberty to the respondents to hold a fresh enquiry.ö

After having observed as above, the Hon'ble Supreme Court held thus:

ö 35. In the light of the facts and circumstances of the case, none of the charges are specific and precise. The charges have not been accompanied by any statement of allegations, or any details thereof. It is not, therefore, permissible for the respondents to hold an enquiry on such charges. í í .ö

9.2 In B.Prasad (Retd.) Vs. Secretary, Ministry of Finance & anr. (supra), the applicant retired from service on attaining the age of superannuation on 31.12.2004. At the time of his retirement, the applicant was working as Additional Commissioner of Income Tax, Range-36, New Delhi. The respondent-Ministry of Finance, Department of Revenue, after obtaining approval of the President under Rule 9(2)(i)(a) of CCS (Pension) Rules, 1972, vide order dated 11.7.2008, instituted an enquiry against him in terms of the procedure laid down in Rules 14 and 15 of the CCS (CCA) Rules, 1965. Along with the said Memo, there was also a letter dated

11.7.2008 conveying the sanction of the President for instituting the said departmental proceedings. The Article I of the charges against the applicant was that during the period from 2003 to 2004 he had granted approval for issuing refund of Rs.44,68,939/- with interest in favour of M/s Oriental Apparels in a casual and negligent manner and without safeguarding the interest of revenue, knowing fully well that it was a case where the refund was claimed by the assessee by retracting the income disclosed during the survey operation conducted on it. Article II of the charges against the applicant was that during the aforesaid period he failed to properly monitor and supervise the follow-up action, such as, early selection of the case of scrutiny, conduct of investigation and early finalization of assessment in the case of M/s Oriental Apparels for the AY 2003-04. The aforesaid two Articles of Charges were proposed to be sustained by two documents, namely, (i) Assessment records of M/s Orient Apparels for AY 2003-04, and (ii) Survey folders of M/s Orient Apparels. However, no prosecution witness was listed for sustaining those charges. On receipt of the aforesaid Memo and Sanction Order, vide covering letter dated 16.07.2008, the applicant made a detailed representation on 18.5.2009 stating, inter alia, that though the aforesaid Memo and Sanction Order, both dated 11.7.2008, were in fact sent to the O/O CCIT (CCA), Delhi, which in turn were sent to him at his post-retirement address vide letter dated 16.7.2008 by Regd. Post despatched on 17.7.2008, yet the same were served on him on 23.7.2008. Thus, the aforesaid Memo and Sanction Order were deemed to have been

issued to him only on 23.7.2008. Therefore, the date of institution of the departmental proceedings shall be treated as 23.7.2008. As he granted the approval for refund on 15.7.2004, the alleged misconduct stated to have been committed by him was on 15.7.2004. As the four years limitation provided under Rule 9 of CCS (Pension) Rules, 1972, had expired on 14.7.2008, the said Memo and Sanction Order were barred by limitation. When no heed was paid to his representation, and he was asked to participate in the departmental enquiry, the applicant filed the O.A. challenging the charge memo, etc. The coordinate Bench of the Tribunal not only accepted the aforesaid contention of the applicant and decided the question of limitation in favour of the applicant, but also considered and decided two more additional questions which were stated to have cropped up in the O.A. One of those two questions was: Whether in the absence of list of witnesses, the charge memo issued to the applicant was in conformity with Rules 14(3) & (4) of the CCS (CCA) Rules, 1965, and the enquiry could be held on the charges levelled against the applicant. Referring to Rule 14(3)&(4) of the CCS(CCA) Rules, 1965, and relying on the decisions of the Hon'ble Supreme Court in **Roop Singh Negi Vs. Punjab National Bank & Ors.**, 2009 (2) SCC 570, and **LIC of India & Anr. Vs. Ram Pal Singh Bisen**, 2011 (1) SLJ 201, the coordinate Bench of the Tribunal held that the impugned charge memo issued to the applicant was not in conformity with the rules and the law laid down by the Apex Court on the issue, and that in

the absence of any witness to prove the charge, the enquiry proposed to be held would be an exercise in futility.

9.2.1 In its order dated 6.4.2015 passed in W.P. (C) No. 3273/2015, **Secretary, Ministry of Finance & Another Vs. Shri B.Prasad**, while upholding the Tribunal's decision, the Hon'ble High Court observed thus:

On the other aspect also, the learned counsel for the petitioner has not put forward any cogent argument that in case where the evidence sought to be proved is in the nature of documentary evidence, the petitioner is not required to prove the memorandum of charges framed against the respondent with the help of the prosecution witnesses. The learned Tribunal has placed reliance on the judgments in the case of **Roop Singh Negi v. Punjab National Bank & Ors. 2009(2) SCC 570** and **LIC of India & Anr. vs. Ram Pal Singh Bisen, 2011 (1) SLJ 201**, in support of its reasoning and we find no reason to disagree with the same.

9.2.2 The SLP(C)/CC No.18551/2015 (**Secretary, Ministry of Finance & Anr. Vs. B.Prasad**), filed against the Hon'ble High Court's order, was dismissed by the Hon'ble Supreme Court, vide its order dated 16.10.2015.

9.3 In **Union of India Vs. Shameem Akhtar** (supra), the respondent was functioning as GMTD, BSNL, Muzaffar Nagar, during the period from 1.11.2000 to 18.6.2003. During this period, he had floated an NIT with respect to manning of exchanges and operating generators in the year 2002 for providing guarding and manning of exchanges/offices and operating generators set in the case of power failures in Muzaffar Nagar SSA. The Articles of Charges were framed against him in the year 2011. O.A. was filed by the respondent before the Tribunal, challenging the charge memo on two grounds; firstly, gross delay in issuing the Articles of Charges; and secondly, absence of list of witnesses to prove the charges. The Tribunal

accepted those two grounds and allowed the O.A. The Hon'ble High Court upheld the Tribunal's decision. While considering the justifiability of the reasoning given by the Tribunal to accept the applicant/respondent's plea that the charge memo was in violation of sub-rule (3) of Rule 14 of the CCS (CCA) Rules, 1965, the Hon'ble High Court of Delhi held thus:

12. Another ground which was raised by the respondent before the Tribunal for quashing of the charge sheet was that the same was in violation of Rule 14 of sub-Rule (3) of CCS(CCA) Rules, 1965. The said Rule reads as under:

(3) where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the Disciplinary Authority shall draw up or cause to be drawn up –

- (i) the substance of the imputation of misconduct or misbehaviour into definite and distinct articles of charge;
- (ii) a statement of the imputations of misconduct or misbehavior in support of each article of charge, which shall contain–
- (a) a statement of all relevant facts including any admission or confession made by the Government servant;
- (b) a list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained.

13. A reading of the aforesaid Rule would show that the substance of the imputation of misconduct or misbehavior in support of Articles of Charge shall contain the list of documents and list of witnesses by whom the Articles of Charge are proposed to be sustained. In the present case, no list of witnesses was provided to prove the charges leveled against the respondent herein. In the case of **Kuldeep Singh v. The Commissioner of Police and Others**, reported at JT 1998(8) SC 603, it was held as under:

..there was absolutely no evidence in support of the charge framed against the appellant and the entire findings recorded by the Enquiry Officer are vitiated by reasons of the fact that they are not supported by any evidence on record and are wholly perverse. Again, in its judgment in **Roop Singh Negi Vs. Punjab National Bank and Others** 2009(2) SCC 570 the Apex Court held that mere production of documents is not enough but their contents have to be proved by examining the witnesses. The relevant part of the said judgment is as under:-

14. Indisputably, a departmental proceedings is a quasi judicial proceedings. The Enquiry Officer must be performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a find upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the

disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof.

Again the Apex Court in **Modula India Vs. Kamakshya Singh Deo** (1988) 4 SCC 619 held that in a disciplinary proceedings documents are the tools for the delinquent employee for cross-examining the witnesses who deposed against him. Further, the Apex Court in its judgment in the case of **Hardwari Lal Vs. State of U.P.& Others** 1999 (8) SCC 582 held that in a departmental enquiry proceedings, examination of the material witnesses is a must. We are, therefore of the considered view that the disciplinary proceedings initiated against the Applicant vide the impugned Memorandum dated 22.02.2011 is an exercise in futility.

8. In view of above position, we allow this OA and quash and set aside the impugned memorandum dated 22.12.2011 with all consequential benefits. As the Applicant has already retired from service, the Respondents shall pass appropriate orders in favour of the Applicant positively within a period of 2 months from the date of receipt of a copy of this order.ö

14. Similar view was taken by the Supreme Court in the case of **State of U.P. and Ors. v. Saroj Kumar Sinha**, reported at 2010 (2) SLJ 59, wherein it was observed as under:

ö26í .Even such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. But nonetheless in order to establish the charges the department is required to produce the necessary evidence before the enquiry officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge. Enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/ Government. His function is to examine the evidence presented by the department even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could have been taken into consideration to conclude that the charges have been proved against the respondents.

27. Apart from the above by virtue of Article 311(2)of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.

28. When a department enquiry is conducted against the Government Servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate/removal from service in the case of **Shaughnessy Vs. United States 345 US 206 (1953) (Jackson J)**, a judge of the United States Supreme Court has said procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied.ö

15. It is settled law that the charges leveled against a delinquent official is to be proved in the inquiry before any penalty is imposed. Sub-Rule (3) of Rule 14 provides that the Articles of Charge are to be supported with documents and proved by witnesses during the hearing. In our view, this in-built safeguard has been provided to allow a delinquent employee to cross-examine the witnesses and to rebut the allegations against him. In the absence of any witness and in the absence of any opportunity to cross-examine a witness would be against the canon of natural justice and the same cannot be treated as a mere formality.ö

10. At this stage, we would like to refer to the decisions of the Hon'ble Supreme Court in **Modula India Vs. Kamakshya Singh Deo, (1988) 4 SCC 619; Kuldeep Singh Vs. The Commissioner of Police and Others, JT 1998(8) SC 603; Hardwari Lal Vs. State of U.P. & Others, 1999 (8) SCC 582; Roop Singh Negi Vs. Punjab National Bank & Ors, 2009(2) SCC 570; and LIC of India & Anr. Vs. Ram Pal Singh Bisen, 2011(1) SLJ 201**, which were relied upon by the coordinate Bench of this Tribunal in **B. Prasad (Retd.) Vs. Secretary, Ministry of Finance (supra)** and by the Hon'ble High Court of Delhi in **Union of India Vs. Shameem Akhtar (supra)**, to hold that in the absence of list of witnesses, the charge memo issued to an official is not in conformity with the CCS (CCA) Rules, 1965 and the enquiry proposed to be held is an exercise in futility, and

therefore, the charge memo and disciplinary proceedings are liable to be quashed.

10.1 **In Modula India Vs. Kamakshya Singh Deo** (supra), the question as to the nature and scope of the rights available to a defendant whose defence has been struck out was determined by the Hon'ble Supreme Court in the particular context of the West Bengal Premises Tenancy Act, 1956. It was held by the Hon'ble Supreme Court that even in a case where the defence against delivery of possession of a tenant is struck off under Section 17(4) of the Act, the defendant, subject to the exercise of an appropriate discretion by the court on the facts of a particular case, would generally be entitled (i) to cross-examine the plaintiff's witnesses, and (ii) to address argument on the basis of the plaintiff's case.

10.2 **In Kuldeep Singh Vs. The Commissioner of Police and Others** (supra), the appellant, a Constable in Delhi Police was dismissed from service, after a regular departmental enquiry. The punishment was upheld by the Appellate Authority. The Tribunal dismissed the O.A. Hence, the Civil Appeal was filed by the appellant. The charge against the appellant was that on 22.2.1990, three labourers, namely, Radhey Shyam, Rajpal Singh and Shiv Kumar, who were working in the factory of Smt. Meena Mishra at A 25, Garhi, Lajpat Nagar, and had not been paid their salary by the factory owner, had approached the appellant who was posted at Police Post, Amar Colony, attached to P.S.Lajpat Nagar, New Dehi, for his help in the matter. The appellant, along with the aforesaid labourers, went to the

factory owner who gave Rs.1000/- to the appellant for payment to the three labourers, but the appellant did not pay the whole of the amount to them and instead gave them only Rs.800/-, keeping an amount of Rs.200/- in his own pocket. In order to prove this charge, the Department examined Inspector D.D.Sharma, SHO, P.S.Lajpat Nagar, and Smt. Meena Mishra, the factory owner. Two of the complainants, namely, Rajpal Singh and Radhey Shyam, though cited as witnesses in the charge-sheet, were not examined on behalf of the Department in the departmental enquiry. The original complaint lodged by the complainants was not brought on record of the departmental enquiry. One of the complainants, namely, Shiv Kumar was examined as a defence witness, who supported the appellant that the factory owner Smt. Meena Mishra (PW 2) had not made any payment. Smt. Meena Mishra (PW 2) also denied having made any payment to the appellant. The explanation given by the Department for non-examination of two of the original complainants was rejected by the Hon'ble Supreme Court. In the circumstances, the Hon'ble Supreme Court held that there was absolutely no evidence in support of the charge framed against the appellant and the entire findings recorded by the Enquiry Officer are vitiated by reason of the fact that they are not supported by any evidence on record and are wholly perverse.ö

10.3 **In Hardwari Lal Vs. State of U.P. & Others** (supra), the appellant was a Constable in the Police Department of the State of U.P. He was dismissed from service after a regular departmental enquiry, and his

challenge thereto before the Public Services Tribunal and writ petition before the Hon'ble High Court of Allahabad failed. The charge against him was that on the night between 16-1-1991 & 17-1-1991, being under the influence of liquor, he hurled abuses in the police station at Constable Prakash Chandra Pandey. The sole ground urged before the Hon'ble Supreme Court was as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and the witness, Jagdish Ram. The Tribunal and Hon'ble High Court brushed aside the grievance made by the appellant that the non-examination of those two persons prejudiced his case. Examination of those two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. Considering this ground, the Hon'ble Apex Court held that the Tribunal and the High Court erred in not attaching importance to this contention of the appellant, and that there was no proper enquiry held by the authorities and on this short ground, quashed the order of punishment of dismissal from service.

10.4 **In Roop Singh Negi Vs. Punjab National Bank & Ors** (supra), the appellant was a Peon in respondent Bank. He, along with others, was involved in a case of theft of bank draft book. An FIR was lodged for the alleged loss, and after investigation by the police, the appellant and

others were prosecuted. The appellant was, however, acquitted by criminal court. Departmental proceedings were also conducted against the appellant wherein charge against the appellant was held to have been established on the basis of FIR, some other documents, and appellant's alleged confession before the police. These documents were, however, not proved during the course of departmental enquiry by examining and cross-examining the witnesses. Contentions raised by the appellant were also not considered by the departmental authorities, yet the appellant was dismissed from service. The Hon'ble High Court dismissed appellant's writ petition. Allowing the appeal, and reversing the decision of the High Court, the Hon'ble Supreme Court held:

¶14. Indisputably, a departmental proceedings is a quasi judicial proceedings. The Enquiry Officer must perform a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. ¶

The Hon'ble Supreme Court further held thus:

¶15. The appellant being an employee of the Bank, his confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. There was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left. ¶

10.5 In **LIC of India & Anr. Vs. Ram Pal Singh Bisen** (supra), the respondent/plaintiff was appointed by the appellants/defendants on probation as a Development Officer on 5.4.1964, and was confirmed on the

said post on 1.4.1966. Charge sheet dated 16.4.1974 imputing six charges was served on him. He was also placed under suspension. Supplementary charge sheet was also served on him on 21.10.1974. After completion of inquiry proceedings, The Inquiry Officer furnished his report to Disciplinary Authority on 29.01.1976. On the basis of this, respondent was served with show-cause notice on 23.2.1976 stating, *inter alia*, that in view of the fact that some of the serious charges stood proved against him, why order of dismissal from service be not passed against him. The respondent submitted his reply to the show cause notice on 02.04.1976, pointing out irregularities committed during the course of inquiry by the Inquiry Officer. His categorical case in reply was that he had not been given adequate, proper, reasonable and sufficient opportunity of hearing during the domestic inquiry. Therefore, the whole inquiry stood vitiated on the principles of natural justice. It deserves to be quashed and no action on such an inquiry report can be taken against him. However, without taking note of the submissions of the respondent, appellants by non-speaking order and further without disclosing any opinion, on the basis of which respondent was held guilty of charges levelled against him, arrived at a conclusion for his dismissal from service vide order dated 11.5.1976. Feeling aggrieved and dissatisfied, the respondent was constrained to prefer a departmental appeal, but that too met the fate of dismissal vide order dated 20.12.1976. He then submitted further mercy appeal before the Chairman of LIC, but without any favourable result as the same came to be dismissed on 12.10.1977.

10.5.1 Feeling aggrieved by the aforesaid orders passed by appellants, respondent as plaintiff was constrained to file a suit, as an indigent person before Additional District Judge No.2, Ajmer, for declaration that the departmental inquiry proceedings culminating in order of dismissal from service, the appellate order, and further order passed by the Chairman of the appellant-Corporation as null and void. Consequently, he be held entitled for reinstatement in service with all consequential benefits. The learned trial Judge was pleased to grant permission to respondent-plaintiff to contest the suit as an indigent person. The appellants as defendants filed written statement, *inter alia*, denying that no proper or sufficient opportunity was afforded to the respondent. They further contended that despite grant of sufficient opportunity, respondent took undue adjournments on various earlier dates or had remained absent, and thereafter deliberately remained absent from the inquiry on 5.1.1976, thereby compelling the Inquiry Officer to proceed *ex parte* against him. Thus, even after grant of several opportunities, he cannot legitimately contend that inquiry was hit by the principles of natural justice. Thus, in general, they have denied averments of the plaint in toto and submitted that the suit being misconceived deserves to be dismissed with costs.

10.5.2 On the strength of the pleadings of the parties, the trial court framed six issues. The main and pertinent issue was with regard to the fact whether action of the appellants resulting in respondent's dismissal from service, rejection of appeal and further representation, was in violation of the

principles of natural justice, and if so, then to what reliefs respondent was entitled.

10.5.3 To prove his averments in the suit, respondent-plaintiff tendered himself in the witness box and proved his case as also documents filed in support thereof. Surprisingly enough, appellants-defendants did not lead any oral evidence, yet some of the documents filed by them were exhibited, probably under misconception of law that they were not disputed in Court by the respondent. The appellants had also not served any notice of admission or denial of documents on the respondent during trial as contemplated under Order XII Rule 2 of the Code of Civil Procedure (for short, 'CPC').

10.5.4 After appreciating the evidence available on record, the learned trial court decided the issues in favour of the respondent-plaintiff, holding that there was complete violation of principles of natural justice inasmuch as no reasonable, proper and sufficient opportunity was afforded to him to defend himself in the departmental enquiry. Similarly, the appellate order was passed in a mechanical manner as also the order on representation of the respondent by the Chairman. In the result, the Trial Court passed a decree in favour of respondent, quashing and setting aside order of dismissal from service with further direction to reinstate him along with all consequential benefits including payment of salary for the intervening period.

10.5.5 Regular First Appeal and Special Appeal against the said trial court's judgment having been dismissed by the learned Single Bench and the Division Bench of the Hon'ble High Court, the appellants filed the Civil Appeal before the Hon'ble Supreme Court.

10.5.6 Thus, the question that arose before the Hon'ble Apex Court for consideration was: Whether in the absence of any oral evidence having been tendered by the appellants, and especially in absence of putting their own defence to the respondent during his cross-examination in the Court, what was the effect of documents filed by appellants and marked as Exhibits.

10.5.7 In the above context, dismissing the appeal and upholding the judgments of the courts below, the Hon'ble Supreme Court observed and held thus:

ð21. Despite our persistent requests made to the learned counsel appearing for the appellants they have not been able to show compliance of Order XII Rule 1 and 2 of the CPC, meaning thereby that there has not been any compliance thereof.

22. Order XII, Rules 1 and 2 appearing in the Code of Civil Procedure reads as thus:

"ORDER XII ADMISSIONS

1. **Notice of admission of case.** - Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

2. **Notice to admit documents.** - Either party may call upon the other party to admit, within seven days from the date of service of the notice, any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the

omission to give the notice is, in the opinion of the Court, a saving of expense."

23. It is also necessary to mention here that Rule 2A of Order XII of the CPC deals with the situation where notice of admission as contemplated in Order XII Rule 2 of the CPC has been served but is not denied then the same shall be deemed to have been admitted. Similarly, Rule 3A of the aforesaid Order grants power to the Court to admit any document in evidence, even if no notice has been served. The aforesaid provisions of law have been brought in the Code vide Amendment by Act No. 104 of 1976, w.e.f. 1.2.1977.

24. Records do not reveal that any such procedure was adopted either by the appellants or by the Trial Court to prove the documents filed by the appellants and mark them as Exhibits. Thus, no advantage thereof could be accrued to the appellants, even if it is assumed that said documents have been admitted by respondent and were then exhibited and marked.

25. No doubt, it is true that failure to prove the defence does not amount to an admission, nor does it reverse or discharge the burden of proof of the plaintiff but still the duty cast on the defendants has to be discharged by adducing oral evidence, which the appellants have miserably failed to do. Appellants, even though a defaulting party, committed breach and failed to carry out a legislative imposition, then had still to convince this Court as to what was the just cause for doing the same. Thus looking to the matter from any angle, it is fully established that appellants had miserably failed to prove and establish their defence in the case.

26. We are of the firm opinion that mere admission of document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law. As has been mentioned herein above, despite perusal of the record, we have not been able to come to know as to under what circumstances respondent plaintiff had admitted those documents. Even otherwise, his admission of those documents cannot carry the case of the appellants any further and much to the prejudice of the respondent.

27. It was the duty of the appellants to have proved documents Exh. A-1 to Exh. A-10 in accordance with law. Filing of the Inquiry Report or the evidence adduced during the domestic enquiry would not partake the character of admissible evidence in a court of law. That documentary evidence was also required to be proved by the appellants in accordance with the provisions of the Evidence Act, which they have failed to do.

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31. Under the Law of Evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the

Court. Contents of the document cannot be proved by merely filing in a court.ö

11. The statement of articles of charges, the statement of imputations of misconduct, and the list of documents by which the charges were proposed to be sustained, issued to the applicant, along with the Memorandum dated 25.6.2010(ibid), are reproduced below

(1) Statement of Article of charges framed against Shri S.K.Mehra the then SE (Electrical), BSNL, W.B. Circle, Kolkata (Staff No. 96525) and presently SE (Electrical), BSNL, UP (West).Circle, Meerut.

Article-I

Shri S.K.Mehra, worked as SE (Electrical), BSNL, W.B.Circle, Kolkata from April 2004 to February 2010. The said Shri Mehra while working in the said capacity is alleged to have failed to recommend the 30% work in the tender of SITC of 185 x 20 KVA DEA Sets for various USO sites under BSNL Electrical Zone, Kolkata to M/s Jeevan Diesel and Electricals Ltd., the L-II Tenderer with biased attitude and in violation of terms and conditions of the tender.

Thus by his above act, the said Shri S.K.Mehra committed grave misconduct, failed to maintain absolute integrity and exhibited utter lack of devotion to duty and acted in a manner unbecoming of a public servant thereby contravening provisions of Rule 3(1), (i), (ii) & (iii) CCS (Conduct) Rules, 1964.

Article-II

The aforesaid Shri S.K.Mehra while working in the aforesaid position during the aforesaid period failed to prevent the avoidable loss to BSNL as unnecessary expenditure was incurred in tendering/re-tendering in the tender process for SITC of M S CANOPY MOUNTED 2 x 500 KVA DEA Sets for MSO, Media Gateway at Behrampore, vide NIT No.10/TED-MLD/NIT-04/07-08/229 dated 18.5.2007. These tenders were recommended for rejection by Shri S.K.Mehra with biased attitude towards M/s Jeevan Diesel & Electricals although the said firm was L-I as there was already availability of the Diesel Sets with the Department.

Thus by his above act, the said Shri S.K.Mehra committed grave misconduct, failed to maintain absolute integrity and exhibited utter lack of devotion to duty and acted in a manner unbecoming of a public servant thereby contravening provisions of Rule 3(1), (i), (ii) & (iii) CCS (Conduct) Rules, 1964.

Article III

The above said Shri S.K.Mehra during the above said period failed to prevent the avoidable loss to BSNL as unnecessary expenditure was incurred in tendering in the tender for SITC of 2 x 320 KVA DEA Sets for Krishna Nagar Telephone Exchange, vide

NIT No.42 /TED-II/KOL/07-08 dated 05.12.2007, opened on 14.01.2008. The said tender was recommended for rejection by Shri S.K.Mehra with biased attitude towards the M/s Jeevan Diesel and Electricals although the said firm was L-1 as there was already availability of the Diesel Sets with the Department.

Thus by his above act, the said Shri S.K.Mehra committed grave misconduct, failed to maintain absolute integrity and exhibited utter lack of devotion to duty and acted in a manner unbecoming of a public servant thereby contravening provisions of Rule 3(1), (i), (ii) & (iii) CCS (Conduct) Rules, 1964.

Article IV

The aforesaid Shri S.K.Mehra while working in the above said capacity failed to recommend the award of 30% work in the tender of SITC of 80x15 KVA DEA Sets for BTS Sites (Phase-V) under WB Circle to M/s Jeevan Diesel and Electricals Ltd., the L-II tenderer with biased attitude and in violation of terms and conditions of the tender.

Thus by his above act, the said Shri S.K.Mehra committed grave misconduct, failed to maintain absolute integrity and exhibited utter lack of devotion to duty and acted in a manner unbecoming of a public servant thereby contravening provisions of Rule 3(1), (i), (ii) & (iii) CCS (Conduct) Rules, 1964.

Article-V

The aforesaid Shri S.K.Mehra while working in the above said capacity failed to act judicially and impartially while recommending rejection of the following tenders in which M/s Jeevan Diesel and Electricals was L-1 with the plea that rates are on higher sides. On other hand in similar conditions, the tenders of M/s Elmech Engineers were approved after getting the consent of the firm for lower rates:-

- a) SITC of 28x15 KVA sets by EE (E), Divn-II, Kolkata NIT No.2/TED-II/KOL/08-09 dated 03.04.2008, opened on 12.5.2008.
- b) SITC of 20x30 KVA sets for CDMA/WCL sites under Malda SSA opened on 26.02.2007 vide NIT No.CE(E)/BSNL/KOL/32/06-07.
- c) SITC of 20x30 KVA sets for CDMA/WCL sites under Malda SSA opened on 30.12.2006 vide NIT No.50/TED-II/2006-07 dated 02.02.2007.

Tenders, in which M/s Elmech Engineers was L-1 but quoted rates were on higher side and the letter for lowering the rates was accepted from this firm and tender recommended to be approved and 70% of work awarded are:

- (i) SITC of 28x15 KVA DEA sets for BTS station phase-V under BSNL Electrical Division, Siliguri. Tender opened on 16.02.2008 NIT No.TEDS/AB-3/NUT-259/125 dated 24.01.2008.
- (ii) SITC of 28x15 KVA DEA sets for BTS station phase-V under BSNL Electrical Division, Malda NIT No.10/ED-MLD/NIT-69/07-08/85 dated 24.01.2008.

Thus by his above act, the said Shri S.K.Mehra committed grave misconduct, failed to maintain absolute integrity and exhibited utter lack of devotion to duty and acted in a manner unbecoming of a public servant thereby contravening provisions of Rule 3(1), (i), (ii) & (iii) CCS (Conduct) Rules, 1964.

Article VI

The aforesaid Shri S.K.Mehra while working in the above said capacity failed to recommend the award of 30% work in the following tenders under WB Circle to M/s Jeevan Diesel and Electricals, the L-II tenderer with biased attitude and in violation of terms and conditions of the tender.

- a) SITC of 20x305 KVA DEA sets for BTS Stations Phase V under BSNL Electrical Division, Kolkata opened on 12.05.2008 vide NIT No.3/TED-II/KOL/08-09 dated 03.04.2008.
- b) SITC of 28x15 KVA DEA sets for BTS Stations Phase V under BSNL Electrical Division, Asansol, opened on 21.05.2008 vide NIT No.TED/ASL/BSNL/34/08-09 dated 02.05.2008.
- c) SITC of 28x15 KVA DEA sets for BTS Stations Phase V under BSNL Electrical Division, Siliguri, opened on 16.02.2008 vide NIT No.TEDS/AB-3/NUT-259/125 dated 24.01.2008.
- d) SITC of 28x15 KVA DEA sets for BTS Stations Phase V under BSNL Electrical Division, Malda vide NIT No.10/ED-MLD/NIT-69/07-08/85 dated 24.01.2008.

Thus by his above act, the said Shri S.K.Mehra committed grave misconduct, failed to maintain absolute integrity and exhibited utter lack of devotion to duty and acted in a manner unbecoming of a public servant thereby contravening provisions of Rule 3(1), (i), (ii) & (iii) CCS (Conduct) Rules, 1964.ö

- (ii) Statement of imputations of misconduct or misbehavior in support of articles of charge framed against Shri Suresh Kumar Mehra (S.K.Mehra), the then SE (Electrical), BSNL, WB Circle, Kolkata (Staff No. 96525) and presently SE (Elec.), BSNL, UP (West) Circle, Meerut.

Article I

Shri S.K.Mehra worked as SE (Electrical), BSNL, W.B.Circle, Kolkata from April 2004 to February 2010. The said Shri Mehra while working in the said capacity is alleged to have failed to recommend the 30% work in the tender of SITC of 185x20 KVA DEA Sets for various USO sites under BSNL Electrical Zone, Kolkata to M/s Jeevan Diesel and Electricals Ltd., the L-II Tenderer (tender opened on 7/11/2007).

In the aforesaid tender, the said Shri S.K.Mehra as a member TPC, accepted the letter No.EE/07-08/20KVA/USO/Kol dated 26.11.2007 of M/s Elmech Engineers, Kolkata for voluntary

reducing its quoted price and recommended for award of 70% of the work to M/s Elmech Engineers Kolkata. The balance 30% of work was not recommended to be awarded to L-II, i.e, M/s Jeevan Diesels & Electricals Ltd. though the firm matched the negotiated rates that of L-1, M/s Elmech Engineers, vide their letter No.JDEL/dated 18.12.2007.

From the record it is observed that the approval of proto type test was given to M/s Elmech Engineers Kolkata within 3 days. The firm applied vide their letter dated 28.01.2008 and approval given by the said Shri S.K.Mehra on 30/01/2008.

On the other hand, the application dated 27.02.2008 from M/s Jeevan Diesels & Electrical was kept pending up to 16/4/2008 in the O/o CE (E) Kolkata and thereafter disposed of with the remarks as "Are some additional discrepancies in the test report? Why not to list them and convey if necessary". Accordingly letter was written to M/s J.D.Electrical vide No.7/SWE/CE(E)/KOL/634 dated 16.04.2008 and reminder dated 13.06.2008. On verification of test report dated 21.02.2008 to 22.02.2008, signed by the said Shri S.K.Mehra, as one of the members, it is observed that no discrepancy in respect of variation of voltage, speed and frequency in the test report was pointed out. But after a lapse of about two months it has been shown a letter written to the M/s J D Electrical regarding discrepancies of the parameter of voltage, speed and frequency vide CE (E) Kolkata letter dated 16.04.2008. It appears afterthought as the firm confirmed that these letters were not received which reveals from their letter No. J5/1235 dated 15/06/2009.

As such, a biased and mala fide decision has been taken by the said Shri S.K.Mehra by accepting the letter of M/s Elmech Engineers, Kolkata for voluntary reduction of its quoted rates and recommending award of 70% work, giving approval of its proto type within 3 days and not approving the proto type of M/s Jeevan Diesels & Electrical Ltd. and thus depriving the firm for the award of 30% of work, which is a violation of the terms and conditions of the tender.

Thus by his above act, the said Shri S.K.Mehra committed grave misconduct, failed to maintain absolute integrity and exhibited utter lack of devotion to duty and acted in a manner unbecoming of a public servant thereby contravening provisions of Rule 3(1), (i), (ii) & (iii) CCS (Conduct) Rules, 1964.

Article II

The aforesaid Shri S.K.Mehra failed to prevent the avoidable loss to BSNL as unnecessary expenditure was incurred in tendering/re-tendering process in the tender for SITC of M S CANOPY MOUNTED 2 x 500 KVA DEA Sets for MSO, Media Gateway at Bahrampore, vide NIT No.10/TED-MLD/NIT-04/07-08/229 dated 18/05/2007.

First, the tender was rejected due to ambiguity in rates quoted by L-1, i.e. M/s Jeevan Diesels &Electricals. It wa re-tendered and opened on 01.02.2008. This time, tender was also cancelled due to the reason that L-1 bidder i.e. M/s Jeevan Diesels & Electrical Ltd. had quoted the higher rate than that of previous quoted rates. It is mentioned further that there was no need of inviting tender as existing generators at TE Building Berhampore

could be continued to be used without replacement. From the above, it is observed that these tenders were recommended to be rejected by Shri S.K.Mehra with biased attitude towards M/s Jeevan Diesel & Electricals although the said firm was L-I and there was already availability of the Diesel Sets with the Department. Thus unnecessary expenditure occurred in tendering/re-tendering which caused avoidable loss to the BSNL.

Thus by his above act, the said Shri S.K.Mehra committed grave misconduct, failed to maintain absolute integrity and exhibited utter lack of devotion to duty and acted in a manner unbecoming of a public servant thereby contravening provisions of Rule 3(1), (i), (ii) & (iii) CCS (Conduct) Rules, 1964.

Article III

Tender for SITC of 2x320 KVA DEA Sets for Krishnanagar TE, NIT No.42/TED-II/KOL/07-08 dated 05/12/07 was opened on 14.01.2008. This letter was rejected on the plea that the spare 2x250 KVA DEA sets from Berhampore will be sufficient to take the load at Krishna Nagar Telephone Exchange and the cost will be saving to BSNL. The reasons given for the cost saving to the BSNL should have been for the cost saving to the BSNL should have been explored before calling for the tenders and the tender should not have been called for. It is pointed out that M/s Jeevan Diesels & Electricals Ltd. was L-1.

The aforesaid Shri S.K.Mehra failed to prevent the avoidable loss to BSNL as unnecessary expenditure incurred in tendering process in the tender for SITC of 2x320 KVA DEA Sets for Krishna Nagar Telephone Exchange. The said tender was recommended to be rejected by Shri S.K.Mehra with biased attitude towards M/s Jeevan Diesel and Electricals although the said firm was L-1 and there was already availability of the Diesel Sets with the Department.

Thus by his above act, the said Shri S.K.Mehra committed grave misconduct, failed to maintain absolute integrity and exhibited utter lack of devotion to duty and acted in a manner unbecoming of a public servant thereby contravening provisions of Rule 3(1), (i), (ii) & (iii) CCS (Conduct) Rules, 1964.

Article IV

Tender for SITC of 80x15 KVA DEA Sets for BTS Sites (Phase-V) under W.B.Circle with estimated cost Rs.2,76,83,040/- was invited & tender was opened on 14/07/2008. As per TPC report dated 29.07.2008, it is observed that two nos. of tenders had been received and opened by the Executive Engineer (E), Electrical Division-II, Kolkata on 14.07.2008. It is observed from the financial bid opening register record, the rates quoted are as under:

- 1/2 M/s Jeevan Diesel & Electrical Pondicherry ó Rs.3,01,23,040/- (Rs.2,66,12,800/- + ED Extra @ 14.42% on item No.1(a) + service Tax extra on item No.1(b)(@) 12.36% - 3.78% below.
- 2/2 M/s Elmech Engineers Kolkata í ..Rs.2,88,03,436/- (2,90,70,720/- & less 1% on item No.1(a) ..8.18% below.

M/s Elmech Engineers Kolkata was L-1 bidder and M/s J.D.Electrical was L-II. TPC, in which the aforesaid Shri

S.K.Mehra was member, recommended vide its minutes dated 29.07.2008 that as per splitting clause for the quantity incorporated in the NIT, the 70% of the total quantities (of 80 nos.) i.e. 56 nos. of E/A sets for Rs.2,01,62,405.50 only and cost to BSNL Rs.1,77,93,440/- may be allotted to L-1 i.e. M/s Elmech Engineers Kolkata & remaining 30% quantity i.e. 24 Nos. of E/A set may be allotted to the 2nd lowest i.e. M/s Jeewan Diesel & Electrical Ltd. provided the firm agrees to bring down the rates as per the lowest tenderer's rate.

The recommendation of the TPC was approved by CE (E) Kolkata on 2/8/2008. Accordingly approval for 70% of work was conveyed to M/s Elmech Engineers, Kolkata from the office of CE (E) Kolkata vide No. 7/CE/SW (E)/BSNL/KOL/1103 dated 02/08/2008. But no approval was conveyed to M/s Jeewan Diesel & Electricals Ltd. for award of 30% of work. Being SE (E) no further action was taken by the aforesaid Shri S.K.Mehra to award the 30% in this tender to M/s Jeewan Diesel & Electricals Ltd., the L-II tenderer, with biased attitude, mala fide intention and in violation of terms and conditions of the tender.

The aforesaid Shri S.K.Mehra while working in the aforesaid position during the aforesaid period failed to prevent the avoidable loss to BSNL as unnecessary expenditure was incurred in tendering/re-tendering in the tender process for SITC of M S CANOPY MOUNTED 2 x 500 KVA DEA Sets for MSO, Media Gateway at Bahrampore, vide NIT No.10/TED-MLD/NIT-04/07-08/229 dated 18.5.2007. These tenders were recommended for rejection by Shri S.K.Mehra with biased attitude towards M/s Jeewan Diesel & Electricals although the said firm was L-I as there was already availability of the Diesel Sets with the Department.

Thus by his above act, the said Shri S.K.Mehra committed grave misconduct, failed to maintain absolute integrity and exhibited utter lack of devotion to duty and acted in a manner unbecoming of a public servant thereby contravening provisions of Rule 3(1), (i), (ii) & (iii) CCS (Conduct) Rules, 1964.

Article V

The aforesaid Shri S.K.Mehra failed to act judicially and impartially while recommending the rejection of the following tenders in which M/s Jeewan Diesel and Electricals was L-1 with the plea that rates were on higher side. On other hand in similar conditions, the tenders of M/s Elmech Engineers were recommended to be approved after getting the consent of the firm for lower rates:-

- (a) Tender with Estimated cost of Rs.9064901/- for SITC of 28x15 KVA DEA sets for various BTS sites phase-V under BSNL, EE(E), Divn.-II Kolkata was opened on 12.05.2008, NIT No.2/TED-II/KOL/08-09 dated 03.04.2008.

As per TPC report dated 7/08/08, it is observed that two nos. of tenders had been received and opened by the Executive Engineer (E), Electrical Division-II, Kolkata on 12.05.2008 & the positions of the bidders were as below:-

1 /2 M/s Jeewan Diesel & Electrical Ltd. ó Rs.90,34,510/- 0.335% below
2/2 M/s Elmech Engineers Kolkata í í .. Rs.96,78,000/- 6.75 above

As per TPC report dated 7/8/2008, M/s Jeevan Diesel & Electrical Ltd. Became the lowest tenderer. Rates quoted by the L-1 were below the estimated cost. But the aforesaid Shri S.K.Mehra, as a member TPC, recommended to reject the tender giving the reasons that the rates quoted by the L-1 tenderer were higher than that of the recent awarded rate in this zone. Based on the recommendations the tender was rejected. But the aforesaid Shri S.K.Mehra accepted the letter No.EE/07-08/20 KVA/USO/KOL dated 26.11.2007 of M/s Elmech Engineers Kolkata wherein the first was allowed to lower its rates voluntarily and unconditionally regarding the tender of SITC of 185x20 KVA DEA referring NIT No.32/TED-II-Kolkata/07-08/1089. He has also been accepting the type of reduction from M/s Elmech Engineers Kolkata thus favouring in the cases of tenders mentioned in article of charge VI (b)(c) & (d).

(b) Tender with estimated cost of Rs.88,39,436/- for SITC of 20x30 KVA DEA Sets for CDMA/WCL sites under Malda SSA, opened on 26.02.07. NIT No.CE (E)/BSNL/KOL/32/2006-07 M/s J.D.Electricals Ltd. was L-1.

As per TPC report dated 19/5/2007, two nos. of tenders had been received and opened by the Executive Engineer (E), Electrical Division, Malda on 26/02/2007 & the positions of the bidders were as below:-

1/2 M/s Jeevan Diesel & Electrical Ltd. ó Rs.93,50,960/- 05.78% Above
2/2 M/s Elmech Engineers Kolkata í í . Rs.94,04,420/- 06.39 Above

As per TPC report dated 19/5/2007, M/s Jeevan Diesel & Electrical Ltd. became the lowest tenderer. But the aforesaid Shri S.K.Mehra, as a member TPC, recommended to reject the tender giving the reasons that the rates quoted by the L-1 tenderer were higher than recently received rates. Based on his recommendations the tender was rejected. But the aforesaid Shri S.K.Mehra accepted the letter No.EE/07-08/20 KVA/USO/KOL dated 26.11.2007 of M/s Elmech Engineers Kolkata wherein the firm was allowed to lower its rates voluntarily and unconditionally regarding the tender of SITC of 185x20 KVA DEA referring NIT No.32/TED-II-Kolkata/07-08/1089. He has also been accepting the type of reduction from M/s Elmech Engineers Kolkata thus favouring in the cases of tenders mentioned in article of charge VI (b)(c)&(d).

(c) Tender with estimated costs of Rs.90,59,992/- for SITC of 20x30 KVA DEA Sets for CDMA/WCL sites under Malda SSA, opened on 30.12.2006. NIT No.50/TED-II/2006-07 dated 08/02/2007, M/s J D Electricals Ltd. was L-1.

As per TPC report dated 13/3/2007, three nos. of tenders had been received and opened by the Executive Engineer (E), Electrical Division, Malda on 30/12/2006 and the positions of the bidders were as follows:

1/3 M/s Jeevan Diesel l& Electricals Ltdí ..Rs.94,59,760/- í .4.41% Above.
2/3 M/s S.G.Enterprise, Kolkataí í Rs.1,02,69,200/-í .13.34% Above.
3/3 M/s Elmech Engineers, Kolkataí í Rs.97,51,680/- í .. 07.63% Above.

As per TPC report dated 13/03/2007, M/s Jeevan Diesel & Electrical Ltd. became the lowest tenderer. But the aforesaid Shri S.K.Mehra, as a member TPC, recommended to reject the tender giving the reasons that the rates quoted by the L-1 tenderer were higher than recently received rates in the tender opened on 26/02/2007 in ED-II Kolkata. Based on his recommendations the tender was rejected. But the said Shri S.K.Mehra accepted the letter No.EE/07-08/20 KVA/USO/KOL dated 26.11.2007 of M/s Elmech Engineers Kolkata wherein the firm was allowed to lower its rates voluntarily and unconditionally regarding the tender of SITC of 185x20 KVA DEA referring NIT No.32/TED-II-Kolkata/07-08/1089. He has also been accepting the type of reduction from M/s Elmech Engineers Kolkata thus favouring in the cases of tenders mentioned in article of charge VI (b)(c)&(d).

From above, it is observed that no such possibility was explored before recommending rejection of the aforesaid tenders, which was being done in cases in which M/s Elmech Engineers was L-1, which was a biased decision on the part of the aforesaid Shri S.K.Mehra.

Thus by his above act, the said Shri S.K.Mehra committed grave misconduct, failed to maintain absolute integrity and exhibited utter lack of devotion to duty and conducted himself in a manner unbecoming of a public servant thereby contravening provisions of Rule 3(1), (i), (ii) & (iii) CCS (Conduct) Rules, 1964.

Article – VI

As per terms of the tenders L-II Bidders were to be awarded 30% of the total quantity but M/s Jeevan Diesels & Electrical was not given orders in the following cases.

- (a) Tender with estimated cost of Rs.88,39,436/- for SITC of 20x30 KVA DEA Sets for BTS station Phase-V under BSNL Electrical Division, Kolkata, Kolkata. Tender was opened on 12.05.08 NIT No.3/TED-II/KOL/08-09 dated 03/04/2008.

As per TPC report dated 14/07/08, two nos. of tenders had been received and opened by the Executive Engineer (E), Electrical Division, Kolkata on 12.05.2008 & the positions of the bidders were as below:

- 1/2 M/s Elmech Engineers Kolkata .Rs.82,44,800/- ..6.72% below
- 2/2 M/s Jeevan Diesel & Electrical Ltd .Rs.84,60,000/- 4.24% below

The aforesaid Shri S.K.Mehra, as a member TPC, recommended to accept the lowest tender of M/s Elmech Engineers Kolkata for 70% of the quantities, i.e. 14 nos. of E/A sets for Rs.57,22,360/- only and as per the splitting clause for the quantity incorporated in the NIT, remaining 30% quantity i.e. 6 Nos. of E/A sets may be allotted to the 2nd lowest i.e. M/s Jeevan Diesel & Electrical Ltd. provided the firm agrees to come down the rates as per the lowest tenderer's rate.

Based on the recommendation of the aforesaid Shri S.K.Mehra approval letter was issued to M/s Elmech Engineers, Kolkata for acceptance of 70% of work vide CE (E) Kolkata No.7/CE/SW(E)/BSNL/Kol/1029 dated 15/07/2008. But no action was taken by the aforesaid Shri S.K.Mehra, in his capacity as SE

(Electrical) for conveying 30% award of work to M/s Jeevan Diesel & Electricals Ltd.

It is also observed from the TPC report that the aforesaid Shri S.K.Mehra, as a member TPC, has got reduced irregularly the tendered rates further with negotiation with L-1 for justifying the award of 70% of work. But he had not informed this reduction of rates to the L-2.

(b) Tender with Estimated cost of Rs.90,64,901/- for SITC of 28x15 KVA DEA sets for BTS station phase-V under BSNL Electrical Division, Asansol. Tender opened on 21.05.2008. NIT No.TED/ASL/BSNL/34/08-09 dated 02.05.2008.

As per TPC report dated 14/07/08, two nos. of tenders had been received and opened by the Executive Engineer (E), Electrical Division, Asansol on 21.05.2008 & the positions of the bidders were as below:-

1/2 M/s Jeevan Diesel & Electrical Ltd. ..Rs.1,07,82,544/- 18.948% above
2/2 M/s Elmech Engineers Kolkata .Rs.89,89,337/- .8.33% below (L-1)

The aforesaid Shri S.K.Mehra, as a member TPC, recommended to accept the lowest tender of M/s Elmech Engineers Kolkata for 70% of the quantities i.e. 20 nos. of E/A sets for Rs.63,51,955/- only and as per the splitting clause for the quantity incorporated in the NIT, remaining 30% quantity i.e. 8 nos. of E/A sets may be allotted to the 2nd lowest i.e. M/s Jeevan Diesel & Electrical Ltd. provided the firm agrees to come down the rates as per the lowest tenderer's rate.

Based on the recommendation of the said Shri S.K.Mehra approval letter was issued to M/s Elmech Engineers, Kolkata for acceptance of 70% of work vide CE (E) JKolkata No.7/CE/SW(E)/BSNL/Kol/1454 dated 24/10/2008. But no action was taken by the aforesaid Shri S.K.Mehra, in his capacity as SE (Electrical) for conveying 30% award of work to M/s Jeevan Diesel & Electricals Ltd.

It is also observed from the TPC report that the aforesaid Shri S.K.Mehra as a member TPC has got reduced irregularly the tendered rates further with negotiation with L-1 for justifying the award of 70% of work. But he had not informed this reduction of rates to the L-2.

(c) Tender with Estimated cost of Rs.90,64,901/- for SITC of 28 x 15 KVA DEA sets for BTS station phase-V under BSNL Electrical Division, Siliguri. Tender opened on 16.02.2008. NIT No.TEDS/AB-3/NUT-259/125 dated 24.01.2008.

As per TPC report dated 08/04/08, two nos. of tenders had been received and opened by the Executive Engineer (E), Electrical Division, Siliguri on 16/02/2008 & the positions of the bidders were as below:

1/2 M/s Elmech Engineers Kolkata .Rs.1,04,41,062/- 15.18% above
2/2 M/s Jeevan Diesel & Electrical Ltd .Rs.1,07,87,740/- 19% above.

In the minutes of TPC it is mentioned that ó

1. Rate quoted by the lowest tenderer M/s Elmech Engineers, Kokata, is 15.18% above the estimated cost of Rs.90,64,901/- which is on higher side.

2. Vide his letter No.EE/08-09/TPC-SLG/28x15 KVA dated 08.04.2008 M/s Elmech Engineers Kolkata have reduced their rate for item 1(a) from Rs.2,95,000/- to Rs.2,89,000/- for each set. Present Excise Duty rate will be 14.42% on item No.1(a). After taking reduction of rate their reduced quoted amount works out to Rs.88,94,510/- excluding CENVATable Taxes which is 1.88% below the estimated cost of Rs.90,64,901.
3. Considering the above facts TPC recommends to accept the lowest negotiated tender of M/s Elmech Engineers Kolkata for Rs.88,94,510/- (cost to BSNL).

Based on the recommendation of the saidShri S.K.Mehra as a member TPC, approval letter was issued to M/s Elmech Engineers, Kolkata for acceptance of 70% of work vide CE (E) Kolkata No.7/CE/SW(E)/BSNL/Kol/682 dated 30/04/2008.

It is also observed from the TPC report that the said Shri S.K.Mehra as a member TPC got reduced the tendered rates further with negotiation with L-1 for justifying the award of 70% of work.

As per the splitting clause incorporated in the NIT, the said Shri S.K.Mehra, as member TPC, did not recommend to allot 30% of work to the 2nd lowest i.e. M/s Jeevan Diesel & Electrical Ltd. So no approval was also conveyed from the office of CE(E), Kolkata to M/s Jeevan Diesel & Electricals Ltd. for award of 30% of work.

(d) Tender with Estimated cost of Rs90,64,901/- for SITC of 28x15 KVA DEA sets for BTS station phase-V under BSNL Electrical Division, Malda was opened on 16.02.2008. NIT No.10/ED-MLD/NIT-69/07-08/85 dated 24.01.2008.

As per TPC report dated 08/04/08, two nos. of tenders had been received and opened by the Executive Engineer (E), Electrical Division, Malda on 16/02/2008 & the positions of the bidders were as below:-

1/2	M/s Elmech Engineers Kolkata	Rs.1,04,41,062/-	15.18% above.
2/2	M/s Jeevan Diesel & Electrical Ltd	Rs.1,07,87,740/-	19% above.

In the minutes of TPC it is mentioned that ó

1. Rate quoted by the lowest tenderer M/s Elmech Engineers, Kolkata, is 15.18% above the estimated cost of Rs.90,64,901/- which is on higher side.
2. Vide his letter No.EE/08-09/TPC-MLD/28x15 KVA dated 08.04.2008 M/s Elmech Engineers Kolkata have reduced their rate for item 1(a) from Rs.2,95,000/- to Rs.2,89,000/- for each set. Present Excise Duty rate will be 14.42% on item No.1(a). After taking reduction of rate their reduced quoted amount works out to Rs.88,94,510/- (excluding CENVATable Taxes) which is 1.88% below the estimated cost of Rs.90,64,901/-.
3. Considering the above facts TPC recommends to accept the lowest negotiated tender of M/s Elmech Engineers Kolkata for Rs.88,94,510/- (cost to BSNL).

Based on the recommendation of the said Shri S.K.Mehra as a member TPC, approval letter was issued to M/s Elmech Engineers, Kolkata for acceptance of 70% of work vide CE (E) Kolkata No.7/CE/SW(E)/BSNL/Kol/683 dated 30/04/2008.

It is also observed from the TPC report that the said Shri S.K.Mehra as a member TPC got reduced the tendered rates further with negotiation with L-1 for justifying the award of 70% of work.

As per the splitting clause incorporated in the NIT, the said Shri S.K.Mehra, as member TPC, did not recommend to allot 30% of work to the 2nd lowest i.e. M/s Jeevan Diesel & Electrical Ltd. So no approval was also conveyed, from the office of CE (E) Kolkata to M/s Jeevan Diesel & Electricals Ltd. for award of 30% of work.

The said Shri S.K.Mehra failed to recommend/pursue to award the 30% work in the aforesaid tenders to M/s Jeevan Diesel & Electricals, the L-II tenderer with biased attitude, mala fide intention and in violation of terms and conditions of the tender.

Thus by his above act, the said Shri S.K.Mehra committed grave misconduct, failed to maintain absolute integrity and exhibited utter lack of devotion to duty and acted in a manner unbecoming of a public servant thereby contravening provisions of Rule 3(1), (i), (ii) & (iii) CCS (Conduct) Rules, 1964.ö

(iii) ØList of documents by which the article of charges framed against Shri S.K.Mehra, the then SE (Electrical), BSNL, W.B.Circle, Kolkata (Staff No.96525) and presently SE (Elec.), BSNL, UP (West) Circle, Meerut are proposed to be sustained.

1. Copy of TPC meeting dated 26.11.2007, in case of tender for SITC of 185x20 KVA DEA set in silent canopy for various USO sites under BSNL Electrical Circle, Kolkata.
2. Copy of letter of M/s Elmech Engineers, Kolkata bearing Ref. No.EE/07-08/20 KVA/USO dated 28.01.2008.
3. Copy of letter signed by SE (E), Kolkata on 30/01/2008, for giving approval of Proto-Type of 20 KVA E/A to M/s Elmech Engineers, Kolkata in case of tender, mentioned above at S.No.(1).
4. Copy of test report dated 22/2/2008 of Proto-type of 20 KVA of M/s Jeevan Diesels & Electricals Ltd.
5. Copy of letter M/s Jeevan Diesels & Electricals bearing Ref. No.JDEL/dated 27.2.2008.
6. Copy of Note-sheet page 1 & 2 of tender file, in case of tender, mentioned above at S.No.(1).
7. Copy of Surveyor of Works O/o CE (E) Kolkata letter No.7/SW(E)/CE(E)/Kol/846 dated 16/04/2008.
8. Copy of Surveyor of Works O/o CE (E) Kolkata letter No.7/SW(E)/CE(E)/Kol/846 dated 13/06/2008.
9. Copy of letter No.J5/1235 dated 15.6.2009 from M/s Jeevan Diesels & Electricals Ltd., Bangalore.
10. Copy of Additional Condition of Contract.
11. Copy of Minutes of TPC Meeting dated 7/7/2007, in case of tender for SITC of MS canopy mounted 2x500 KVA DEA set for MSC/Media Gateway at Behrampore.

12. Copies of M/s Jeevan Diesels & ElectricalsLtd., letters No.JDEL/330 dated 18/7/07, JDEL/331 dated 18/7/07, JDEL/357 dated 27.07.07 and JDEL/054 dated 05/05/08 in respect of tender mentioned under S.N.11.
13. Copy of Minutes of TPC Meeting dated 10/04/2008 for tender for SITC of MS canopy mounted 2x320 KVA DEA for T.E.Building, Krishnagar.
14. Copy of letter of SE (E), BSNL Electrical Circle-1, Kolkata bearing No.T-70/SWE/BSNL EC-1/KOL/449 dated 14/02/2008
15. Copy of Minutes of TPC Meeting dated 29/7/2008 for tender for SITC of 80x15 KVA DEA set for various BTS sites phase V under W B Telecom Circle.
16. Copy of Surveyor of Works O/O CE (E) Kolkata letter No.7/CE/SW(E)/BSNL/1103 dated 02/08/2008.
17. Copy of Minutes of TPC Meeting dated 07/08/2008 for tender for SITC of 28x15 KVA DEA set for various BTS sites phase V sites under BSNL Electrical Division-II, Kolkata.
18. Copy of Minutes of TPC Meeting dated 19/05/2007 for tender for SITC of 20x30 KVA, DEA sets for various CDMA WLL sitesunder Malda SSA.
19. Copy of Tender Scrutiny in which the CE(E) Kolkata gave his approval on 1/6/2007 in respect of tender mentioned at S.N.(18) above.
20. Copy of Minutes of TPC Meeting dated 13/03/2007 for tender for SITC of 20x30 KVA DEA set for various CDMA WLL sites under Malda SSA.
21. Copy of Tender Scrutiny in which the CE (E) Kolkata gave his approval on 15/03/2007 in respect of tender mentioned at S.N.(20) above.
22. Copy of Minutes of TPC Meeting dated 14/07/2008 for tender for SITC of 20x30 KVA DEA set for various BTS sites phase V under BSNL Electrical Division, Kolkata.
23. Copy of Surveyor of Works O/O CE (E) Kolkata letter No.7/CE/SW(E)/BSNL/Kol/1029 dated 15/07/2008 in respect of tender mentioned at S.N.(22) above.
24. Copy of Minutes of TPC Meeting dated 14/07/2008 for tender for SITC of 28x15 KVA DEA set for various BTS sites phase V under BSNL Electrical Division, Asansol.
25. Copy of Surveyor of Works O/o CE (E) Kolkata letter No.7/CE/SW(E)/BSNL/Kol/1454 dated 24/10/2008 in respect of tender mentioned at S.N.(24) above.
26. Copy of Minutes of TPC Meeting dated 08/04/2008 for tender for SITC of 28x15 KVA DEA set for various BTS sites phase V under BSNL Electrical Division, Siliguri.
27. Copy of Surveyor of Works O/o CE (E) Kolkata letter No.7/CE/SW(E)/BSNL/Kol/682 dated 30/04/2008 in respect of tender mentioned at S.N.(26) above.
28. Copy of Minutes of TPC Meeting dated 08/04/2008 for tender for SITC of 28x15 KVA DEA set for various BTS sites phase V under BSNL Electrical Division, Malda.
29. Copy of Surveyor of Works O/o CE (E) Kolkata letter No.7/CE/SW(E)/BSNL/Kol/683 dated 30/04/2008 in respect of tender mentioned at S.N.(28) above.

30. Copy of Surveyor of Works O/O CE (E) Kolkata letter No.7/CE(E)/SWE/Kol/BSNL dated 9.6.2009.ö

After going through the above statement of articles of charges, the statement of imputations of misconduct, and the list of documents by which the charges were proposed to be sustained, we are unable to accept the plea of the applicant that the charges were not specific, definite and clear and, thus, the disciplinary proceeding, the order of punishment, as well as the order on the review petition, passed by the DA, stood vitiated. Therefore, the decision of the Hon'ble Supreme Court in **Anant R.Kulkarni Vs. Y.P.Education Society & others** (supra) is of no avail to the applicant.

12. The Central Vigilance Commission (CVC) is the apex vigilance institution, free of control from any executive authority, monitoring vigilance activities under the Central Government and advising various authorities in the Central Government organizations in planning, executing, reviewing and reforming their vigilance work. The Chief Vigilance Officers (CVOs) are the extended hands of the CVC. The CVOs are considerably higher level officers who are appointed in each and every Department/Organization to assist the Head of the Department/Organization in all vigilance matters. The CVOs constitute an important link between the organizations concerned and the CVC (as also the CBI). Even though detection and punishment for corruption and other malpractices are certainly important, what is more important is taking preventive measures

instead of hunting for the guilty in the post-corruption stage. Therefore, the role and functions of CVOs are broadly divided into two parts, which are (I) Preventive and (II) Punitive. On the preventive side, the CVOs undertake various measures, which include:

- (a) To examine in detail the existing Rules and procedures of the Organization with a view to eliminate or minimize the scope for corruption or malpractices;
- (b) To identify the sensitive/corruption prone spots in the Organization and keep an eye on personnel posted in such areas;
- (c) To plan and enforce surprise inspections and regular inspections to detect the system failures and existence of corruption or malpractices;
- (d) To maintain proper surveillance on officers of doubtful integrity; and
- (e) To ensure prompt observance of Conduct Rules relating to integrity of the Officers.

On the punitive side, the CVOs are:

- (i) To ensure speedy processing of vigilance cases at all stages. In regard to cases requiring consultation with the Central Vigilance Commission, a decision as to whether the case had a vigilance angle shall in every case be taken by the CVO who, when in doubt, may refer the matter to his administrative head, i.e. Secretary in the case of Ministries/Departments and Chief Executive in the case of public sector organizations;
- (ii) To ensure that charge-sheet, statement of imputations, lists of witness and documents etc. are carefully prepared and copies of all the documents relied upon and the statements of witnesses cited on behalf of the disciplinary authority are supplied wherever possible to the accused officer along with the charge-sheet;

- (iii) To ensure that all documents required to be forwarded to the Inquiring Officer are carefully sorted out and sent promptly;
- (iv) To ensure that there is no delay in the appointment of the Inquiring Officer, and that no dilatory tactics are adopted by the accused officer or the Presenting Officer;
- (v) To ensure that the processing of the Inquiry Officer's Reports for final orders of the Disciplinary Authority is done properly and quickly;
- (vi) To scrutinize final orders passed by the Disciplinary Authorities subordinate to the Ministry/Department, with a view to see whether a case for review is made out or not;
- (vii) To see that proper assistance is given to the C.B.I. in the investigation of cases entrusted to them or started by them on their own source of information;
- (viii) To take proper and adequate action with regard to writ petitions filed by accused officers;
- (ix) To ensure that the Central Vigilance Commission is consulted at all stages where it is to be consulted and that as far as possible, the time limits prescribed in the Vigilance Manual for various stages are adhered to;
- (x) To ensure prompt submission of returns to the Commission;
- (xi) To review from time to time the existing arrangements for vigilance work in the Ministry/Department for vigilance work subordinate officers to see if they are adequate to ensure expeditious and effective disposal of vigilance work;
- (xii) To ensure that the competent disciplinary authorities do not adopt a dilatory or law attitude in processing vigilance cases, thus knowingly otherwise helping the subject public servants, particularly in cases of officers due to retire;
- (xiii) To ensure that cases against the public servants on the verge of retirement do not lapse due to time-limit for reasons such as misplacement of files etc. and that the

orders passed in the cases of retiring officers are implemented in time; and

(xiv) To ensure that the period from the date of serving a charge-sheet in a disciplinary case to the submission of the report of the Inquiry Officer, should, ordinarily, not exceed six months.

The above being the functions of the CVC and CVOs, we do not find any substance in the contention of the applicant that at the behest of the CVO, BSNL, the disciplinary proceeding was initiated by the DA against him on false and fabricated charges.

13. Relying on Rule 160(xii) of the General Financial Rules, 2005, Shri Yogesh Sharma, the learned counsel appearing for the applicant, submitted that there was no substance in any of the charges levelled against the applicant. Rule 160(xii) reads thus:

“Negotiation with bidders after bid opening must be severely discouraged. However, in exceptional circumstances where price negotiation against an ad hoc procurement is necessary due to some unavoidable circumstances, the same may be resorted to only with the lowest evaluated responsive bidder.”

It is, thus, clear that Rule 160(xii) severely discourages negotiation with bidders after bid opening. Whether, or not, the price negotiation with the lowest evaluated responsive bidder resorted to by the applicant as a member of the TPC could be held to be in accordance with the second clause of Rule 160(xii), *ibid*, was the issue in the disciplinary proceeding to be determined by the DA and/or any other statutory authority. Therefore, we do not find any substance in the contention of the applicant that in view of the provision of Rule

160(xii), *ibid*, there was no substance in any of the charges framed against him.

14. In the disciplinary proceedings initiated against the applicant, the charges were sought to be sustained by the Department/prosecution by adducing documentary evidence, and, accordingly, the list of documents was enclosed with the charge memo dated 25.6.2010(*ibid*), and no witness was cited in the list of witnesses enclosed with the said charge memo. When the charges framed against the applicant were proposed to be sustained on the basis of the documents, the list of which was enclosed with the charge memo dated 25.6.2010(*ibid*), and when no statement of any person was referred to in the articles of charges and the statement of imputations of misconduct, the question of enclosing a list of witnesses with the charge memo dated 25.6.2010(*ibid*) or requirement of examining any witness to prove the charges against the applicant did not arise.

15. Rule 14(3) of the CCS (CCA)Rules, 1965, stipulates, *inter alia*, that where it is proposed to hold an inquiry against a Government servant, the DA shall draw up or cause to be drawn up *o*a statement of the imputations of misconduct or misbehavior in support of each article of charge, which shall contain *o*a list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained*o*. It has nowhere been prescribed in Rule

14(3) that the listed documents are required to be proved by the Department/prosecution by examining any witness/witnesses or by adducing oral evidence in the departmental enquiry. Thus, in the instant case, the articles of charges were proposed to be sustained by the documentary evidence only. The applicant has not brought to our notice any rule, or instruction issued by the Government of India, stipulating that the examination of witnesses and/or oral evidence in a departmental enquiry is a must.

16. In a departmental enquiry, when the copies of the listed documents, by which the articles of charges are proposed to be sustained, are supplied to the charged official, and the documents are produced by the Department/prosecution and marked as Exhibits without any objection thereto by the charged official and, thus, are admitted in evidence, the charged official gets sufficient opportunity to lead rebuttal evidence not only in the shape of documentary evidence but also by examining defence witness or witnesses on his behalf. As already pointed out by us, the charges levelled against the applicant were based solely on the documents. In the written statement of his defence, or in the representation made by him against the disagreement note, or in the review petition filed by him against the punishment order, the applicant did not dispute the existence of any of the listed documents. Even DW 1 in his deposition did not dispute the existence of any of the documents produced by the

Department/prosecution and marked as Exhibits in the departmental enquiry. Most of the documents, namely, minutes of the TPC, Prototype Test Reports, were created and/or authored by the applicant, while other documents, namely, tender documents, and letters written by some bidders, letters written by Surveyor of Works, etc., were dealt with by the applicant in his official capacity as SE (E) and member of the TPC.

17. The evidence includes, besides oral account of facts, all documents produced by the parties for inspection of court. According to Section 3 of the Evidence Act, "document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means intended to be used, or which may be used, for the purpose of recording that matter. At this stage, we must bear in mind another principle, i.e., "party must produce the best evidence in possession or power of the party". In

R.V.E.Venkatachala Gounder Vs. Aralmigu Viswesarswami & V.A.Temple & another, AIR 2003 SC 4548, it has been held that the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an Exhibit. Under Section 58 of the Evidence Act, no fact need to be

proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings.

18. **In State of Mysore v. Shivabasappa**, (1963) 2 SCR 943 = AIR 1963 SC 375, it has been held thus:

"Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will, in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and

sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

19. The Hon^{ble} Apex Court in the case of **K.L. Shinde v. State of Mysore**, (1976) 3 SCC 76, having considered the scope of

jurisdiction of this Tribunal in appreciation of evidence, has ruled as

under:-

59. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. *í ö*

20. In **B.C. Chaturvedi v. Union of India**, AIR 1996 SC 484, reiterating the principles of judicial review in disciplinary proceedings, the Hon'ble Apex Court has held as under:

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or

reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In **Union of India v. H. C. Goel (1964) 4 SCR 718** : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

21. In **Sher Bahadur v. Union of India**, (2002) 7 SCC 142, the order of punishment was challenged on the ground of lack of sufficiency of the evidence. The Hon'ble Apex Court observed that the expression "sufficiency of evidence" postulates "existence of some evidence" which links the charged officer with the misconduct alleged against him and it is not the "adequacy of the evidence".

22. After having considered the facts and circumstances of the present case in light of the principles of law laid down by the Hon'ble Supreme Court in the cases cited supra, we do not find any substance in the contention of the applicant that in the absence of list of witnesses being enclosed with the charge memo and in view of non-examination of any prosecution witness in the departmental enquiry, the documents produced by the Department/prosecution in the departmental enquiry remained unproved and there was no evidence on the basis of which the charges could be held to have been proved against him and, therefore, the entire disciplinary proceedings and the order of punishment and the order on his review petition passed by the DA stood vitiated.

23. Furthermore, in the written statement of his defence, or in his representation against the disagreement note, or in the review petition, the applicant has not raised the point of absence of citing any witness in the list of documents appended to the charge memo and/or non-examination of any witness on behalf of the Department/prosecution in the departmental enquiry either to prove the documents produced, marked as exhibits, and admitted in evidence. Save and except making a bald statement that due to non-examination of any prosecution witness, he was denied an opportunity of cross-examining any prosecution witness, the applicant has failed to demonstrate before this Tribunal as to how, due to non-citing of any witness in the list of witnesses appended to the charge memo and/or due to non-examination of any witness by the prosecution/Department, prejudice was caused to him in putting forward his defence.

24. In the light of our discussions in paragraphs 14 to 23, we have found no substance in the second submission of Shri Yogesh Sharma, the learned counsel appearing for the applicant.

25. The third contention of Shri Yogesh Sharma, the learned counsel appearing for the applicant is that the applicant has been discriminated against by the DA because no disciplinary action has been taken against Shri S.N.Mishra, the other member of the TPC. This submission of Shri Yogesh Sharma is without any substance. It is

the DA who examines the matter and takes a decision either to initiate or not to initiate departmental proceedings against a Government servant. Even if two Government servants are alleged to be involved in a case, the DA is free to consider the materials available on record as well as the allegations levelled against each of them and to take a decision for initiating departmental proceedings against both, or any one of them, or none of them. In the event one of those two Government servants is proceeded against and in the departmental proceedings the authorities pass appropriate orders against him/her, such departmental proceedings and orders of the authorities cannot be said to be vitiated solely because of non-initiation of the departmental proceedings against the other Government servant. The departmental proceedings are initiated against a Government servant by the DA to inquire into the truth of any imputation of misconduct or misbehavior against him/her, and to impose any of the prescribed penalties on him/her if the charge/charges is/are held as proved. Thus, the Government servant proceeded against cannot be allowed to term the entire departmental proceedings and the orders passed therein by the authorities as discriminatory, bad and illegal, merely because of non-initiation of the departmental proceedings against the other Government servant.

26. The other submission of Shri Yogesh Sharma, the learned counsel appearing for the applicant, is regarding the vulnerability of the disagreement note issued by the DA, which is reproduced below:

**DISAGREEMENT NOTE BY THE DISCIPLINARY AUTHORITY
ON THE REPORT OF I.O.**

S.N o.	Name and design a-tion of the CO	Allegations in brief	Findings of the Inquiry on each Allegation	Of the C.O.	Comments of Disciplinary Authority on the report of Inquiry Officer
1	Sh. S.K. Mehra, the then SE (Electri -cal), BSNL, West Bengal Circle, Kolkata Transfe -red to U.P. (West) Repatri ated to DoT Delhi	Article I of charge:- a)That Sh. S.K.Mehra, while working as SE (Electrical), BSNL, WB Circle, Kolkata from April 2004 to Feb. 2010 has failed to recommend the 30% work in the tender of SITC of 185X20 KVA DEA Sets for various USO sites under BSNL Electrical Zone, Kolkata to M/s Jeevan Diesel and Electricals Ltd., the L-II tenderer with biased attitude and in violation of terms and conditions of the tender. b)That charged officer has taken a biased and malafide decision by accepting the letter No.EE-07- 8/20KVA/USO/Kol dated 26/11/2007 of voluntary reduction of quoted price of M/s Elmech Engineers, Kolkata and Recommending to award of 70% work. c)That M/s Jeevan Diesel and Electricals Ltd. was deprived from award of 30% work due to non approval of prototype.	a)The charged officer while working as a member of TPC has recommended allotment of 30% work to L-II tenderer i.e. M/s Jeevan Diesels & Electricals Ltd., provided the firm agrees to match the rates of the lowest tenderer, as per the terms and conditions of the tender. Further action on the recommendation of the TPC was to be taken by the O/o CE (E) Kolkata. b) The CO as a member of TPC accepted the letter No.EE-07- 08/20KVA/USO dated 26/22/3007 from M/s Elmech Engineers Kolkata which is a general practice in the Department (Electrical Wing) to accept such voluntary rate reductions, if given by the L-I tenderer, as deposed by DW- 1. c) The CO was a member of committee of Prototype testing. The Committee conducted Prototype test of M/s Jeevan Diesels & Electricals on 21.02.08 and 22.02.2008 and submitted the report. Further action on the report was to be taken by the O/o CE (E) in view of above,	a)He as a member of TPC, recommended allotment of 30% work to L-II tenderer i.e. M/s Jeevan Diesels and Electricals Ltd., provided the firm agrees to match the rates of the lowest tenderer, as per the terms and conditions of the tender. Further action on the recommendati on of the TPC was to be taken by the O/o CE (E) Kolkata. b) He, as a member of TPC, accepted the letter No.EE-07- 08/20KVA/US O dated 26/11/2007 from M/s Elmech Engineers, Kolkata which is a general practice in the Department (Electrical Wing) to accept such voluntary rate reductions, if given by the L-1 tenderer, as deposed by DW-1.	The CO, as a member of the TPC, accepted the letter No.EE-07- 08/20KVA/USO/Kol dated 26.11.2007 from M/s Elmech Engineers for voluntary reduction of rate, on the date of Meeting of TPC. The TPC meeting was held on 26.11.2007. The TPC recommended award of 70% work to this firm, after accepting his voluntary reduction offer. As per Additional conditions of Contract, there is no such provision for voluntary reduction of rate by the L-1 bidder after opening of tender. As such that the charge (b) of Article-1, that charged officer has taken a biased and malafide decision by accepting the letter No.EE- 07-08/20KVA/USO/Kol dated 26/11/2007 of voluntary reduction of quoted price of M/s Elmech Engineers, Kolkata and recommending to award of 70% work, stands proved. So the Article-I of charge stands partially proved to this extent.

			the IA has concluded that Article-I of charge is not proved.		
		<p>Article V of charge</p> <p>The said Shri S.K.Mehra failed to act judicially and impartially while recommending the rejection of the following tenders in which M/s Jeevan Diesel & Electricals was L-1 with the plea that rates were on higher sides. On other hand in similar conditions, the tenders of M/s Elmech Engineers were recommended to be approved after getting the consent of the firm for lower rates:-</p> <p>(a) Tender with Estimated cost of Rs.9064901/- for SITC of 28x15 KVA DEA sets for various BTS sites Phase-V under BSNL EE (E) Divn.-II Kolkata was opened on 12.05.08. NIT No.2/TED-II/KOL/08-09 dtd.03.04.08.</p> <p>(b) SITC of 20x30 KVA Sets for CDMA/WCL sites under Malda SSA opened on 26.02.2007 vide NIT No.CE(E)/BSNL/KOL/32/06-07.</p> <p>(c) SITC of 20x30 KVA Sets for CDMA/WCL sites under Malda SSA opened on 30.12.2006 vide NIT No.50/TED-II/2006-07 dated 08.02.2007.</p> <p>Tenders, in which M/s Elmech Engineers was L-1 but quoted rates were on higher side and the letter for lowering the rates was accepted from this firm and tender recommended to be approved and 70% of work awarded are:-</p> <p>(i) SITC of 28x15</p>	<p>It has been established from the Exhibit D-11/2, Exhibit P-19 and Exhibit P-21 that all the tenders concerned were approved by the CE(E). The CO was one of the members of TPC appointed by the CE(E) along with other officers: (1) SW(E) O/o CE(E) and (2) IFA to CE(E).</p> <p>It has been established from Exhibit P-17, Exhibit P-18 and Exhibit P-20 that the rates quoted by the L-1 tenderer i.e. M/s Jeevan Diesel and Electricals Ltd. were on higher side and thus TPC recommended them for rejection.</p> <p>It has been established from Exhibit D-1/4, that the letter of voluntary rate reduction i.e., letter No.EE/07-08/20KVA/USO/KO L dated 26.11.2007, from M/s Elmech Engineers, Kolkata was addressed to CE(E) and had been considered by the TPC meeting dated 26.11.2007.</p> <p>It could not be established with documentary evidence that similar type of unconditional and voluntary rate reduction from the M/s Jeevan Diesel and Electricals Ltd. were made available to TPC for consideration in any of the above mentioned tenders.</p> <p>It is thus evident on assessment of documentary and oral evidence adduced during the inquiry that the allegations against the CO are not</p>	<p>The alleged charges are beyond the authority and jurisdiction of the charged officer as SE(E) and member of TPC, the tenders were recommended for acceptance or rejection by the TPC in the interest of BSNL based on the documents produced before the TPC by the office of CE(E).</p> <p>That in the case of tenders of three works mentioned above, M/s Jeevan Diesel and Electricals Ltd. was L-1, the recommendations for rejection were made by the TPC as the rates quoted by them were on higher side and not because of any biased attitude towards them.</p> <p>As a member of TPC and SE (E), no action was required by him to explore such possibilities to seek any letter from any tenderer regarding reduction of rates. The letter No.EE/07-08/20KVA/USO/KOL dated 26.11.2007 of M/s Elmech Engineers Kolkata regarding voluntary reduction of</p>	<p>As per Additional conditions of contract there is no such provision for voluntary reduction of rate by the L-1 bidder after opening of tender.</p> <p>TPC, for SITC of 28x15 KVA DE sets for BTS station phase-V under BSNL Electrical Division, Siliguri, for tenders opened on 16.02.2008, was held on 8.04.2008. Voluntary reduction of rate letter No.EE/08-09/TPC-SLG/28x15 KV dated 08.04.08 from M/s Elmech Engineers (L-1) was accepted by the TPC in which the CO was one of the members. The date of letter of M/s Elmech Engineers and date of TPC is the same.</p> <p>TPC, for SITC of 28x15 KVA DEA sets for BTS station phase-V under BSNL Electrical Division, Malda NIT No.10/EE/MLD/NIT-69/07-08/85 dated 24.01.2008 was held on 08.04.08. Voluntary reduction of rate letter No.EE/08-09/TPC-MLD/28x15 KVA dated 08.04.08 from M/s Elmech Engineers(L-1) was accepted by the TPC in which the CO was one of the members. The date of letter of M/s Elmech Engineers and date of TPC is the same.</p> <p>For remaining two tenders namely Tender with Estimated cost of Rs.9064901/- for SITC of 28x15 KVA DEA sets for various BTS sites phase-V under BSNL EE(E),Divn.-II Kolkata, was opened on 12.05.08, NIT No.2/TED-II/KOL/08-09 dtd.03.04.08 and for Tender with estimated cost of Rs.90,59,992/- for SITC of 20x30 KVA DEA Sets for CDMA/WCL sites under Malda SSA, opened on 30.12.2006. NIT No.50/TED-II/2006-07 dated 08.02.2007, the rate quoted by M/s Jeevan Diesel & Electricals Ltd. were marginally higher by 1.73% & 5.3% approximately. By</p>

	<p>KVA DEA sets for BTS station phase-V under BSNL Electrical Division, Siliguri. Tender opened on 16.02.2008.</p> <p>(ii)SITC of 28x15 KVA DEA sets for BTS station phase-V under BSNL Electrical Division, Malda NIT No.10/ED-MLD/NIT-69/07-08/85 dated 24.01.2008.</p>	<p>substantiated. The article of charge is therefore held as Not Proved.</p>	<p>rates has been addressed to CE(E), Kolkata, hence it can be accepted by the CE(E) only. No letter from M/s Jeevan Diesel and Electricals Ltd. regarding voluntary reduction of rates was produced to the TPC in the above cases. So, the charge is NOT Proved.</p>	<p>cancelling the tenders, the procurement of E/A sets might have been delayed & thus the project. Hence, recalling of tenders might have been costlier than the marginally higher rates quoted by M/s Jeevan Diesel & Electricals Ltd. TPC should have exercised their normal prudence.</p> <p>It is seen from documents that rates of M/s Jeevan Diesel & Electricals Ltd. were 0.33% below the estimated cost. However, TPC stated that the quoted rates of M/s Jeevan Diesel & Electricals Ltd. were higher (Rs.2,94,000/- without CENVATable taxes) in comparison to recently awarded rates in the Zone (Rs.2,89,000). In this case, the rate was only 1.73% higher. From above, it can be seen, though the rate of M/s Jeevan Diesel & Electricals Ltd. was less in comparison to Estimated cost and marginally higher in comparison to recent rates, still the charged officer, as a member of TPC, recommended for rejection of tender.</p> <p>In case of Elmech Engineers, it is observed that the firm voluntarily agreed to reduce the rates in each case while M/s Jeevan Diesel & Electricals Ltd. did not do so in any of the tender. This circumstantial evidence has been overlooked by the Inquiring Authority in his report. A businessman of normal prudence will reduce the rate to get the business, particularly when his competitor has been doing so.</p> <p>Charged officer, being the member of TPC, appears to be responsible for lapses for Tender with Estimated cost of Rs.9064901/- for SITC of 28x15 KVA DEA sets for various BTS sites phase-V under BSNL EE(E), Divn-II, Kolkata, was opened on 12.05.08, NIT No.2/TED-II/KOL/08-09 dtd.03.04.08 and for Tender with estimated cost of Rs.90,59,992/0 for SITC of 20x30 KVA DEA Sets</p>
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					for CDMA/WCL sites under Malda SSA, opened on 30.12.2006, NIT No.50/TED-II/2006-07 dated 08.02.2007, documentarily and circumstantially. So, this article-V of charge stands proved.
		<p><u>Article VI of charge:</u></p> <p>The aforesaid Sh.S.K.Mehra while working in the above said capacity failed to recommend the award of 30% work in the following tenders under WB Circle to M/s Jeevan Diesel and Electricals, the L-II tenderer with biased attitude and in violation of terms and conditions of the tender.</p> <p>a) SITC of 20x30 KVA DEA Sets for BTS Station phase-V under BSNL Electrical Division, Kolkata, Tender opened on 12-05-08 vide NIT No.3/TED-II/KOL/08-09 dtd.03/04/2008.</p> <p>b) SITC of 28x15 KVA DEA Sets for BTS Station phase-V under BSNL Electrical Division, Asansol, Tender opened on 21-05-08 vide NIT No.TED-ASL/BSNL/34/08-09 dtd.02.05.08.</p> <p>c) SITC of 28x15 KVA DEA Sets for BTS Station phase-V under BSNL Electrical Division, Siliguri, Tender opened on 16-02-08 NIT No.TEDS-AB-3/NUT-259/125 dtd.24.01.08.</p> <p>d) SITC of 28x15 KVA DEA Sets for BTS Station phase-V under BSNL Electrical Division, Malda. Tender was opened on 16/02/2008. NIT No.10/ED-MLD/NIT-69/07-08/85 dtd.24.01.08.</p>	<p>It has been established from the Exhibit D-14/2, Exhibit D-16/2 and Exhibit D-18/2, Exhibit D-19/2 that all the draft NITs for the tenders related to this article were approved by the CE (E) and tenders were called and opened by the concerned Executive Engineer(E). The CO was appointed as one of the members of TPC towards evaluation of the referred tenders for recommendations which is evident from Exhibit D-14/2, Exhibit D-15/2 and Exhibit D-18/2, Exhibit D-19/2. The other members of the TPC were:- SW(E) O/o CE(E) Kol. IFA O/o CE(E), Kol. From the Exhibit P-22, P-24, P-26 and P-28, it is observed that the TPC recommendations for these tenders were approved by the CE(E). It is observed from Exhibit P-23, P-25, P-27 and P-29 that the SW(E) O/o CE(E) to M/s Elmech Engineers for acceptance of work. It is further observed from Exhibit D-27, D-28 and D-29 that SW(E) O/o CE(E) Kolkata requested M/s Jeevan Diesel and Electricals Ltd. to attend to the office of CE(E) for further negotiation of rates as per the splitting clause of the tender. No such record regarding matching of rates with L-1 tenderer by the L-II, i.e., M/s</p>	<p>As a member of TPC and SE(E), there is no evidence of negotiation done by the CO with L-1. However a letter of voluntary reduction rebate by L-1 was provided to the TPC by the office of CE(E), same has been confirmed by the Defence Witness DW-1 in the Answer to Q9 during examination in chief. DW-1 has also confirmed that no action was required by the CO to inform L-2 tenderer regarding matching the rates with L-1 tenderer. It has been confirmed by the DW-1 in the Answer to Q-4 by the IA that office of CE(E) will ask the L-II bidder to match the rates with L-I after approval of CE(E) and the same has been done by the SW(E) office of CE(E) vide Exhibit D-27, 28, 29. In view of above, the CO has pleaded to exonerate him from all the charges.</p>	<p>As per Minutes of TPC, in which the CO was one of the members, held on 8.04.08, in respect of the following two tenders, part of Article-VI of charge:-</p> <p>c) SITC of 28x15 KVA DEA sets for BTS station phase-V under BSNL Electrical Division, Siliguri. Tender opened on 16-02-098. NIT No.TEDS/AB-3/NUT-259/125 dtd.24-01-08.</p> <p>d) SITC of 28x15 KVA DEA sets for BTS station phase-V under BSNL Electrical Division, Malda, was opened on 16/02/2008. NIT No.10/ED-MLD/NIT 69/07-08/85 dtd.24-01-08. It is observed that the TPC had not recommended award of 30% of work to M/s Jeevan Diesel & Electricals Ltd.(L-II) which was required to be recommended as per splitting clause for the quantity incorporated in the NIT. This proves that the CO failed to recommend award of 30% of work to M/s Jeevan Diesel & Electricals Ltd.(L-II) with biased attitude and in violation of terms and conditions of the tender, in respect of above noted two tenders. So the charge stands proved.</p>

		Jeevan Diesel and Electricals Ltd. in response to letter no.7/SWE/CE/BSN L/Kol/1030 dated 15/07/2008, letter no. 7/SWE/CE/BSNL/K ol/1466 dated 27/10/2008 and letter no.7/SWE/CE/BSN L/Kol/755 dated 22/05/2008(Exhibit D-27, D-28 and D-29) were made available during the proceedings by the custodian authority. In view of above, the article of charge is therefore held as Not Proved.		
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26.1 In his representation against the above disagreement note, the applicant has raised, *inter alia*, the following pleas:

26.4 It is evident from the said Memorandum dated 31.7.2012 that the Disciplinary Authority had already made up his mind with regard to the guilt of the Charged Officer on the Article of Charge which is in violation of principle of natural justice. The Disciplinary Authority has arrived at a conclusive finding of guilt of the applicant without application of mind and thus recorded Memorandum dated 31-07-2012 that the charge stands proved and the Applicant has been asked to give representation.

2.5 The Memorandum dated 31.07.2012 is not only irregular but also illegal in as much as a final call in the matter has been taken without even giving me an opportunity to convince the Disciplinary Authority on the findings of the inquiring authority, and virtually I have been held guilty of the charges.

2.6 The Disciplinary Authority has not given reasons for tentative disagreement on the inquiry report and applicant has not been given an opportunity to represent on such tentative disagreement. The RESPONDENT has arrived at a conclusive finding of guilt of the applicant before issuance of the Memorandum dated 31.7.2012. This is a clear violation of principles of natural justice as the Applicant has not been given an opportunity for making a representation before arriving at such a finding.ö

26.1 **In Punjab National Bank Vs.Kunj Behari Mishra,**
(1998) 7 SCC 84, the Hon'ble Supreme Court has held as under:

26.19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such

disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.ö

26.2 The aforesaid position has been reiterated by the Hon'ble Supreme Court in the case of **Yoginath D.Bagde vs. State of Maharashtra**, (1999) 7 SCC 739, wherein it has been held as under:

öf i ...a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution.ö

26.3 Rule 15(2) of the CCS (CCA) Rules, 1965 stipulates that the DA shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the DA or where the DA is not the IA, a copy of the report of the IA together with its own tentative reasons for

disagreement, if any, with the findings of IA on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the DA within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

26.4 As per the requirement of Rule 15(2) of the CCS (CCA) Rules, 1965, and the law laid down by the Hon'ble Supreme Court in **Punjab National Bank Vs. Kunj Behari Mishra** (supra) and **Yoginath D. Bagde vs. State of Maharashtra** (supra), the DA had to forward to the applicant a copy of the IA's report together with its own tentative reasons for disagreement with the findings of the IA on Articles I, V and VI of the charges, requiring him to submit, if he so desired, his written representation/submission thereto, and the DA had to consider the representation, if any, submitted by the applicant and record its findings before proceeding further in the matter. The applicant in his representation to the inquiry report and the disagreement note was entitled to point out any defect of substantial nature in appreciation of evidence by the DA while disagreeing with the findings of the IA on Articles I, V and VI of the charges inasmuch as the IA had held those Articles of charges as not proved against the applicant. In his representation any inputs and explanation given by the applicant were also entitled to be considered by the DA before it embarks with further proceedings as per statutory rules. But perusal of

the disagreement note reveals that the DA has considered the charges levelled against the applicant (vide Articles I, V and VI), the findings of the IA on those Articles of charges, and the materials available on record of the departmental inquiry, and has held that Article-I of charge stands partially proved and that Articles-V and VI stand proved, before obtaining the applicant's comments/ representation/ submission on the inquiry report and/or the reasons for disagreement with the findings of the IA. Thereafter, the DA has forwarded to the applicant a copy of the inquiry report and the said disagreement note requiring him to submit his representation thereto. Thus, we are of the view that there has been violation of principle of natural justice at the level of DA when opinion has been finally formed to hold that Articles I, V and VI of the charges stand partially proved / proved. Therefore, the impugned disagreement note issued to the applicant stands vitiated, and the order of penalty and the order passed on the applicant's review petition are unsustainable and liable to be interfered with.

27. The last contention of Shri Yogesh Sharma, the learned counsel appearing for the applicant, is regarding non-supply of copy of the UPSC's advice to the applicant by the DA before making the impugned penalty order. According to the applicant, non-supply of the UPSC's advice vitiates the impugned order as well as the order passed on the review petition.

27.1 It is evident from the impugned order dated 14.8.2013 issued by order and in the name of the President imposing on applicant the penalty that a copy of the UPSC's letter No.F.3/387/2012-S.I. dated 23.5.2013 was enclosed therewith. It is also the admitted position between the parties that in terms of Rule 32 of the CCS (CCA) Rules, 1965, the impugned order of penalty, along with the UPSC's advice, was communicated to the applicant.

27.2 At the relevant point of time, when the impugned order was issued by order and in the name of the President, there was no provision in Rules 15 to 17, 19, 27, 29 and 29-A of the CCS (CCA) Rules, 1965, requiring the DA to supply copy of the UPSC's advice to the Government servant for making any representation thereon, and to consider the Government servant's representation, if any, before making an order imposing any of the penalties on the Government servant.

27.3 In **Union of India & Ors. Vs. S.K.Kapoor**, 2011(4) SCC 589, the Hon'ble Supreme Court held that it is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge-sheeted employee so that he may have a chance to rebut the same. Where the advice of the UPSC is relied upon by the DA, then a copy of the same must be supplied to the charge-sheeted

employee, otherwise there will be violation of the principles of natural justice.

27.4 In view of the said judgment of the Hon'ble Supreme Court, Rules 15, 16, 17, 19, 27, 29 and 29A of the CCS (CCA) Rules, 1965, were amended, vide GSR No. 769(E) dated 31.10.2014. Thereafter, O.M. dated 19.11.2014 was issued by the DoP&T, stipulating that in the disciplinary cases, where the UPSC are to be consulted, the following procedure should be adopted:

(a) The DA shall forward or cause to be forwarded to UPSC for its advice;

(i) a copy of the report of the IA together with its own tentative reasons for disagreement, if any, with the findings of IA on any article of charge; and

(ii) comments on the representation of the Government servant on the inquiry report and disagreement note, if any, with all the case records of the inquiry proceedings.

(b) On receipt of the UPSC advice, the DA shall forward or cause to be forwarded a copy of the advice to the Government servant who shall be

required to submit, if he so desires, his written representation/submission to the DA within fifteen days. The DA shall consider such representation and take action as prescribed in sub-rules (4), (5) and (6) of Rule 15 of CCS (CCA)Rules 1965.

Similarly, in matters relating to Appeal/Revision/Review, a copy of the UPSC's advice, if consulted, may be supplied to the Government servant and his representation, if any, thereon may be considered by the Appellate/Revisionary/Reviewing Authority before passing final orders.

27.5 Thereafter, the DoP&T issued another O.M. dated 14.7.2016, stipulating thus:

3. Representations received from Government servants against penalty in such cases may be dealt with in the following manner. Cases decided before the date of this judgment, i.e., 16th March, 2011 need not be reopened. In cases decided after 16th March, 2011, where a penalty was imposed after relying upon the advice of UPSC, but where a copy of such advice was not given to the Charged Officer before the decision, the penalty may be set aside and inquiry taken up from the stage of supply of copy of the advice of UPSC.

4. In cases where a penalty of dismissal, removal or compulsory retirement has been imposed, the Charged Officer, if he has not reached the age of superannuation, shall be deemed to be under suspension from the date of original penalty as per rule 10(4) of CCS (CCA) Rules, 1965.

5. Cases where the Government servant has retired shall be dealt with as per rule 69 of CCS(Pension) Rules, 1972. In the cases of any other penalties, only the penalty will be set aside, but no consequential like arrears of pay shall be allowed. This will be decided by the Competent Authority after conclusion of the further inquiry. Similarly, in a case where a penalty of

recovery has been imposed, if the recovery is being made in instalments, the recovery shall be suspended pending finalization of the further inquiry. No refund of the recovery already effected will be made. Whether the money already recovered has to be refunded will depend on the decision of the Disciplinary Authority. Where a penalty of withholding of increments has been imposed, if a withheld increment has become due, the same may be released. There is no question of release of any arrears till finalization of the proceedings.ö

(Emphasis supplied)

27.6 In view of the decision of the Hon'ble Supreme Court in **Union of India & Ors. Vs. S.K.Kapoor** (supra) and the DoP&TØ O.M. dated 14.7.2016(ibid), we have found substantial force in the contention of Shri Yogesh Sharma, the learned counsel appearing for the applicant that the impugned order of penalty, dated 14.8.2013, stands vitiated on account of non-supply of copy of the UPSCØs advice by the DA before making the said order. Consequently, the impugned order passed by the DA on the applicantØs review petition also stands vitiated. Therefore, both the said two orders are unsustainable and liable to be interfered with.

28. In the light of our above discussions, we set aside the impugned disagreement note (Annexure A/6), order of penalty dated 14.8.2013(Annexure A/1), and order dated 16/21.7.2014 (Annexure A/2) passed on the review petition, and remand the matter back to the respondent-Union of India/DA to proceed from the stage of Rule 15(2) of the CCS (CCA) Rules, 1965 and pass appropriate orders in the departmental proceedings initiated against the applicant within six months from today.

29. Resultantly, the O.A. is partly allowed to the extent indicated above. No costs.

**(RAJ VIR SHARMA)
JUDICIAL MEMBER**

**(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER**

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