

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.2206/2008

Order Reserved on :29.01.2016
Order Pronounced on:23.02.2016

Hon'ble Mr.Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Dr. S.K. Sharma,
S/o late Shri M.R. Sharma,
R/o Qr. No.1, Type-IV, CPWD Qr.
Behind Hospital CRPF Group Centre,
Jalandhar-144805.

.....

Applicant.

(By Advocate: Shri B.S.Mathur)

Versus

1. Union of India through the
Secretary,
Ministry of Urban Development,
Nirman Bhawan, C Wing,
Maulana Azad Road,
New Delhi-110011.
2. Chief Vigilance Officer,
Govt. of India,
Directorate General of Works,
Central Public Works Department,
Nirman Bhawan,
New Delhi-110011.
3. Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi -110069.

.... Respondents

(By Advocate: Shri Rajinder Nischal)

ORDER

By Hon'ble Shri K.N. Shrivastava, M(A):

This OA has been filed by the applicant under section 19 of Administrative Tribunal Act, 1985 against the order No. C-13015/42/2002-AVI dated 20.03.2008 (Annexure A-1) passed by the Under Secretary to the Govt. of India, Ministry of Urban Development by order and in the name of President of India imposing the penalty of reduction to a lower stage in the time scale of pay by one stage for 2 years without cumulative effect and not affecting his pension, on the applicant under Rule 16 of CCS(CCA) Rules, 1965. The OA was considered by a single judge bench of this Tribunal who vide order dated 07.10.2009 allowed the OA. The respondents, thereafter, went before the Hon'ble High Court of Delhi in Writ Petition (Civil) No.7109 of 2011) against the said order of the Tribunal which came to be disposed of on 01.03.2013. The operative part of the order of Hon'ble High Court reads as under:-

"8. A perusal of the two Appendixes would reveal that issues pertaining to disciplinary matters irrespective of whether penalty levied is major or minor have to be dealt with by a Division Bench.

9. Under the circumstances the learned Single Bench Member of the Tribunal would be

coram-non-judice. The writ petition stands disposed O.A.No.2026/2008 filed by respondent No.1 is restored for re-adjudication by a Division Bench of the Tribunal."

2. The applicant has sought the following reliefs in the OA:-

"1. Quash and set aside order dated 20.3.3008 of respondent No.1 punishing the applicant by imposing penalty of reduction to a lower stage in the time scale of pay by one stage for two years without cumulative effect and not adversely affecting his pension 'being violative of Articles 14 and 16 of the Constitution of India.

2. To declare the departmental proceedings holding the applicant guilty and consequent imposition of minor penalty of reduction to a lower stage in the time scale of pay by one stage for two years without cumulative effect and not adversely affecting his pension against the applicant void and non-est being in disregard and violation of CPWD Works Manual and CCS(CCA) Rules, 1965.

3. To declare that there is error apparent on the fact of record in respondent No.1's decision to initiate and to conclude departmental proceedings against applicant as there is procedural irregularity/infirmity in the manner enquiry was initiated by respondent No.2 and penalty inflicted after more than 8 years by respondent No.1 of the alleged misconduct relating to the year 1999 is voilative of well-settled norms set by the Hon'ble Supreme court that delay in departmental enquiry causes prejudice to the employee (P.V.Mahadevan v. M.D. T.N.Housing Board, (2005)6 SCC 636, State of M.P. v. Bani Singh and Anr., 1990 (Supp.) SCC 738 & M.V. Bijlani case decided on 5.4.2006. Respondent No.1 in imposing the penalty ignored the decisions in B.L. Sharma case O.A. No.638/2007 decided on 5.6.2007 by this Hon'ble Tribunal.

4. To declare that imposition of minor penalty of reduction to a lower stage in the time scale of pay by one stage for two years without cumulative effect and

not adversely affecting his pension ought not to be an impediment for the applicant's promotion of Chief Engineer.

5.To declare that holding the applicant guilty of misconduct is illegal and is a result of procedural illegality after a lapse of more than 8 years.

6.To declare that Clause 7 of Govt. of India's Guidelines regarding grant of vigilance clearance to members of the Central Civil Services/Central Civil Post vide G.I. Dept. of Per. & Trg. O.M. No.11012/11/2007-Estt.(A) dated 14.12.2007 to the effect that in case of minor penalty cases vigilance clearance will not be given normally for 3 years after the currency of punishment is null and void, unconstitutional, illegal and non-est as against the applicant.

7.Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may be awarded in favour of the applicant and against the respondents."

3. The brief facts of this case are as under:-

The applicant joined the Central Engineering Service in 1976 batch and has been getting his regular promotions. He had been working as Superintendent Engineer (Civil) w.e.f. 31.03.1984. In that capacity he was placed In-charge of Indore Central Circle of CPWD between 28.04.1999 to 24.7.2002. On 28.4.2004, he was issued with a charge memorandum contemplating disciplinary enquiry against him under Rule 16 of CCS(CCA) Rules, 1965 for some alleged irregularities pertaining to award of a tender **(water proof treatment in roof of residential and non-residential building in – CTC-I, CRPF, Neemuch)** The charge

memorandum contained two articles of charges which are reproduced below:-

" Dr. S.K. Sharma, Superintending Engineer while working as Superintending Engineer (Civil), Indore Central Circle, CPWD, Indore, during the period 28.04.1998 to 24.07.2003, had committed the following lapses.

ARTICLE-I

The tender of M/s Dropex(India) Tar Product Private Limited, Indore amounting to Rs.18,75,000/- for the work "Water Proofing Treatment in roof of Neemuch" was accepted by the said Dr.S.K. Sharma, Superintending Engineer, Indore Circle Central P.W.D., Indore vide letter No.23(9)/99-ICC/594, dated 30.12.1999. The work was executed by M/s Dropex (India) Tar Product Private Limited, Indore under Agreement No.40/EE/ICC-1/99-2000.

The Executive Engineer, Indore Central Division-I vide letter No.19(9-PB)/2000/ICD.I/140 dated 08.5.2000 submitted an Extra item Statement No.II pertaining to the said Agreement No.40/EE/ICDI/99-2000 amounting to Rs.2,65,000/-. The EIS was containing a single item of "P/L water proofing treatment with chop glass fibre mat" with quantity as 1000 sqm. The Extra item Statement No.II amounting to Rs.2,65,000/- was seen by Dr.S.K. Sharma on 8.5.2000. But it was not approved by Dr.S.K. Sharma even after a lapse of 7 months after its receipt in Indore Central Circle till 8.12.2000.

During processing of Extra item Statement No.II in Circle Office, the said Dr. S.K.Sharma in the margin of note-sheet at page No.39 of Part File No.23(91) recorded the following remarks against Para-4 of note:

"Instructions issued during inspection at site".

The Executive Engineer, Indore Central Division-I in the absence of any specific instructions by Dr.S.K. Sharma, Superintending Engineer in regard to the

restriction of quantity of extra item to be executed and also in the absence of sanction of extra items Statement No.II (submitted by the Executive Engineer on 8.5.2000) by Dr.S.K. Sharma, allowed the execution of a proprietary item of "water proofing treatment with chop glass fibre mat" as extra item to the extent of 8,748.08 sqm., and one more extra item, which was also a proprietary item, of "Providing & applying two coats Gilsonate" to the extent of 11,668.82 sqm. And one submitted the revised Extra item Statement No.II vide letter No.19(9-PB)/2000/ICD/2522 dated 8.12.2000 amounting to Rs.31,70,050/-.

Although the said Dr.S.K.Sharma saw the Extra item Statement No.II on 8.5.2000 but failed to sanction the same even after a lapse of 7 months. The said Dr.S.K. Sharma violated the provisions of Para 25.8 of CPWD Manual, Vol.II (1998 Edition).

ARTICLE II

The Extra Item Statement after scrutiny in the Planning Unit of Indore Central Circle was put up to the said Dr.S.K.Sharma on 31.10.2000.

The Assistant Engineer (P) in Para-4 of note at page 39 of Part File No.23(91) on 16.5.2000, raised the following objection regarding non-compliance of provision of para 25.4 of CPWD Manual, Vol.II.

"According to Para 25.4 of CPWD Manual, Vol.II, no deviation should be made from original agreement without prior permission of competent authority (SE, Indore Central Circle in this case). From the file, it is seen that neither EE/Indore Central Division-I has asked for permission for such deviation nor SE/Indore Central Circle has given any permission."

It was subsequently endorsed by the Executive Engineer (P&A) on 31.10.2000.

The said Dr.S.K.Sharma, in the margin of note-sheet at Page No.39 of Part File

"Instructions issued during inspection at site"

But the said Dr. S.K.Sharma did not issue any inspection note confirming such instructions in violation of the instructions contained in Para 37 (a) of CPWD

Code. He also failed to confirm the above instructions, in writing.

The said Dr.S.K.Sharma, Superintending Engineer by the above acts of omission and commission exhibited lack of devotion to duty and failed to confirm the oral instructions, in writing, thereby violating Rule 3 (1)(ii) and Rule 3(2) (iii) of the CCS (Conduct) Rules,1964.

4. The CBI had registered a Preliminary Enquiry (PE) on 10.4.2002 in connection with the tender mentioned at para (3) (supra). The said PE (Annexure R-8) reads as under:

"An information exists that S/Shri P.R. Patil, I.S.Bhati and S.K. Udiya were posted as Executive Engineer, Asstt. Engineer and Junior Engineer respectively during the year 1999-2000 at CPWD. ICD-I, Indore entered into unholy alliance and in pursuance thereof committed gross mis-conduct in respect of allowing extra work of water proofing treatment of roofs of residential and office buildings at CRPF Colony, Neemuch to M/s. Dropex (India) Tar Products Pvt. Ltd. Indore.

CPWD, ICD-I, Indore had floated tender for water proofing treatment of roofs of residential and office buildings in Group Centre at CTC-II, CRPF Colony, Neemuch at the estimated cost of Rs.15,20,250/-.

M/s. Dropex (India) Tar Products Pvt. Ltd. Indore, I.S. Bhati, Asstt. Engineer, CPWD, Neemuch and S.K. Udiya, Junior Engineer, CPWD, Neemuch, in pursuance of their unholy alliance allowed M/s Dropex (India) Tar Products Pvt. Ltd. to carry out the extra work of water proofing treatment for 11,668.69 sqm. @ Rs.64.72 per sqm. and 8,781.78 sqm. @ Rs.223.71 per sq.m. without getting prior approval of the said work from the competent authority and also without observing code of

formalities of inviting tenders etc. The firm carried out the extra work upto October, 2000.

Thus, M/s. Dropex (India) Tar Products Pvt. Ltd. Indore was provided pecuniary advantage by the suspect officials by awarding extra work of Rs.28.00 lakhs by flouting laid down norms and procedure.

The aforesaid facts disclose gross misconduct on the part of S/Shri P.R.Patil, I.S.Bhati and S.K.Udiya.

Hence, this PE is registered and entrusted to Shri Subhash Pandey, Sub-Inspector of Police, CBI, Bhopal for enquiry."

5. The CBI vide its letter No.1153/2/1(A)/2002 BPL/CBI/BR/BPL/02 dated 30.03.2002 addressed to CVO, CPWD recommended starting of RDA against the applicant for imposition of Major Penalty and also submitted article of charges, statement of imputation of misconduct, and list of witness and documents

6. The matter was got investigated into by the vigilance unit attached to the office of DG, CPWD who vide their UO Note No.DG(W),CPWD.UONO.12/13/9/2001-VSI dated 23.01.2003 and enclosing therewith a copy of the investigation report, recommended as under:-

"It was also observed that Shri S.K.Sharma, Superintending Engineer was emphasizing again and again to use authorized schedule items of DSR instead of promoting use of proprietary items for water proofing whose efficacy in long term was not even tested and material was not approved by CPWD. Thus Superintending Engineer was

acting in Govt. interest and therefore, major penalty as recommended by CBI was not warranted. However, in view of grave lapses committed by Executive Engineer. Assistant Engineer & Junior Engineer, major penalty is recommended against S/Shri P.R.Patel, Executive Engineer, I.S. Bhati, Assistant Engineer and S.K. Udiya, Junior Engineer.”

Based on the report of the said vigilance unit, the matter was referred to the CVC who vide their OM No.002W&H-46 dated 08.1.2003 recommended initiation of minor penalty against the applicant and a few others. Accordingly, Annexure A-3 charge memorandum dated 28.4.2004 was issued to the applicant by the Disciplinary Authority. The applicant submitted his explanation to the charge memo vide his letter No.5(1)/CVCC/2004-05 dated 25.5.2004 in which he denied the charges. Not satisfied with the explanation of the applicant, the Disciplinary Authority passed the Annexure A-1 impugned order dated 20.3.2008 imposing a minor penalty of reduction to a lower stage in the time scale of pay by one stage for 2 years with cumulative effect and not affecting his pension, on the applicant.

7. The case was taken up for final hearing on 29.01.2016 Shri B.S. Mathur learned counsel for the applicant and Shri Rajinder Nischal learned counsel for the respondents argued the case.

8. The learned counsel for the applicant besides stressing the points raised in his earlier pleadings, submitted that enormous delay has been caused on the part of the respondents in passing the Annexure A-1 impugned order dated 23.03.2008. It was also submitted that as per CVC guidelines dated 23.05.2000, in a minor penalty case, the order has to be passed within 2 months from the date of receipt of the defence statement, whereas, in the instant case the respondents have taken about 4 years in passing the impugned order. Consequently, the applicant has been overlooked for promotion in the year 2007-2008. He further submitted that this Tribunal in its order dated 07.10.2009 has taken into consideration various case laws cited on behalf of the applicant and the same can be seen at page 13 of the said order. It was also submitted that the investigation report of DG(works), Technical Head of the applicant, was not forwarded to CVC for their advice before coming to the conclusion that minor penalty must be imposed on the applicant. Even the CVC prescribed time limits for different stages of disciplinary proceedings have been adhered to. Concluding his argument, learned counsel for the applicant pleaded for allowing the prayer made in the OA.

9. Per contra, learned counsel for the respondents submitted that the applicant while working as Superintending Engineer, Indore Central Circle, CPWD during the period 28.04.1998 to 24.07.2007

issued oral instruction to his subordinates during the course of his inspection of the work "water proofing treatment in the roofs of residential and non-residential buildings in group Centre and CTC-I at CRPF, Neemuch " for execution of some extra item of 'P/L water proofing treatment with chop glass fibre mat' but failed to issue any inspection note to that effect. The original tender was awarded to M/s Dropex (India) Tar Product Pvt. Ltd. for Rs. 18,75,000/-. This extra item of work was never approved by the applicant formally and that acting on his oral instructions, the Executive Engineer carried out the said extra work and consequently the value of the contract increased from Rs.18,75,000/- as per the agreement, to Rs. 31,70,050/- . It was also submitted that the provisions of para-25 (4) of CPWD Manual Vol.II have not been complied with, which has been pointed out in the note of AE(P) and EE(P&A) as under:-

"According to Para 25.4 CPWD Manual Vol.II, no deviation should be made from original agreement prior permission of competent authority (SE, Indore Central Circle in this case). From the file, it is seen that neither EE/Indore Central Division-I has asked for permission for such deviation nor SE/Indore Central Circle has given the permission."

10. Learned counsel also submitted that the applicant by not issuing the inspection note has also violated instructions contained

in Para 37(a) of CPWD code. He also drew out attention to the judgment of Hon'ble Supreme Court in the case of **Anant R Kulkarni Vs. Y.P. Education Society & Ors.** (AIR 2013 SC 2098) to say that the court/tribunal should not generally quash and set aside the departmental enquiry. The relevant extract from the said judgment as mentioned by the applicant is reproduced below:-

"8. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is dehors the limitation of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, must be carefully examined, taking into consideration the gravity/magnitude of charges involved therein. The Court has to consider the seriousness and magnitude of the charges and while doing so the Court must weigh all the facts, both for and against the delinquent officers and come to the conclusion, which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weight the same, so as to determine, if it is in fact in the interest of clean and honest administration, that the said proceedings are allowed to be terminated, only on the ground of delay in their conclusion."

11. Concluding his argument, learned counsel for the respondents states that the OA is devoid of merit and as such it should be dismissed.

12. We have considered the arguments put forth by learned counsel for the parties and have also perused the pleadings and documents annexed thereto.

13. It is seen from the records that the CVC OM No.002-W8H-Y6 dated 08.1.2003 was issued prior to a copy of DG(works) investigation report dated 16.01.2003 having been received by the CVC. Hence, it is logical to conclude that the CVC did not have the benefit of considering the said investigation report of DG(works) before issuing the OM dated 08.1.2003. Pertinent to mention that the DG(works) in the said report has recommended for issuance of "caution" for his lapses to the applicant. The relevant part of the said report is reproduced below:-

"The comments of Central Bureau of Investigation report were submitted to M/O UD & PA vide this office No. U.O. No.12.13/9/2001-VSI dated 23.1.03, wherein role of Dr. S.K. Sharma, Superintending Engineer was discussed in detail (copy enclosed for ready reference) and in view of the same , it was proposed to caution him in future for lapse committed by him. It was requested that since Dr. S.K. Sharma was acting in Govt. interest therefore major penalty proceedings against Dr. S.K. Sharma was not warranted and since the role of Dr. S.K.

Sharma was found limited to the extent that while allowing the Executive Engineer to execute extra item of water-proofing material ,he should have specified the quantum of extra item so allowed by him and the therefore, it was recommended to caution him to be careful in future. However vide MO UD & PA OM NO. dated 25.2.03 referred above it was intimated that CVC to whom the case sent for re-consideration of then earlier 1st stage advice have reiterated their earlier advice.

However as per CVC advice charge-sheets under Rule-CCS(CCA)Rules ,1964 for minor penalty proceedings have already issued in r/o Shri P.R.Patil, Executive Engineer (now Superintending Engineer) S.K. Udia, Junior Engineer (now Assistant Engineer) and I.S. Bharti, Assistant Engineer.

In view of foregoing paras, it is requested that the CVC may please be apprised again with the position and may be requested to re-consider the case of Dr.S.K. Sharma for minor penalty proceedings and to consider the case for "issuance of caution" on account of his lapses .

However, it is seen from the record that the Ministry of Urban Development & Poverty Alleviation wrote to CVC vide their note dated 05.02.2003 IN No. C-13015/42/2002-AVI for reconsideration of the CVC's advice presumably by endorsing the DG(Works) investigation report dated 16.01.2003. But the CVC vide their UO note No. 002-WSH-46 dated 24.02.2003 reiterated their earlier order to impose minor penalty on the applicant and three others, if their replies to the chargesheet were found to be unacceptable (Annexure Z-7 – page 160 of the paper book)."

14. The impugned order dt. 20.3.2008 (annexure A-1) indicates that UPSC's advice received vide their letter No.F3/3/2007-SI dated 24.1.2008 was considered by the Disciplinary Authority while passing the said order. But the order does not show whether the DG(Water) investigation report dated 16.1.2003 was considered by the UPSC and the Disciplinary Authority.

15. The charge against the applicant is that he did not submit his inspection note nor did he confirm his oral instructions with regard to the extra work and hence, has violated the provision of para 25(8) of CPWD Manual vol.II. It would be appropriate to extract the relevant part of the said manual and the same is reproduced below:-

"25.8 Delays in the sanctioning of rates for extra/substituted items of work should be avoided at all levels. To minimize such delays the following procedure should be followed:-

(a) Proposal for fixing rates for the extra and substituted items of works should be submitted by the Sub-Divisional Officer as and when any extra/substituted item is foreseen. This should be done by him within a week of such foreseeing and in any case not later than a

week of taking up of the work on such item. He must also submit a complete analysis etc. to the Executive Engineer who should approve the rate within a week of receipt of reference from the SDO if the sanction is within his competence.

(b) The Executive Engineer should take orders from the next higher authority, if the rates for the extra items are not within his competence of sanction. This can be done by personal contact/making a reference in writing within a week of receipt from the Sub-Division according to the exigencies /situation of work."

16. A simple reading of the above extract of the CPWD Manual would indicate that the onus of obtaining the order of the higher authority in regard to extra item laid with the Executive Engineer. In the absence of any inspection note issued by the applicant, the Executive Engineer concerned was duty bound to get a written confirmation from the applicant of his oral instructions that he might have given during his inspection. As such, the failure laid with the Executive Engineer and not with the applicant.

17. We now come to the chronology of events which ultimately culminated into the imposition of penalty on the applicant by the Disciplinary Authority and the same is mentioned below:-

1999-2000	The alleged misconduct was committed
28.4.1999- 24.7.2002	The applicant worked as Supdtg. Engineer Central Circle.
11.4.2002	CBI submits its report recommending departmental action against the Applicant along with others.
8.1.2003	The CVC recommended for minor penalty proceedings against the Applicant.
16.1.2003	Director General of Works, CPWD, submitted his Investigation Report along with comments on the Report of the CBI.
23.01.2003	The DG (Works's) Report was transmitted to CVC
28.04.2004	A Chargesheet under Rule 16 was issued against the Applicant.
25.05.2004	The applicant submitted his explanation to the charges.
19.03.2007	The applicant represented to decide his disciplinary case since he was due for promotion.
29.03.2007 & 05.12.2007	Advice of UPSC was sought in the disciplinary case.
June 2007	The Applicant moved the Tribunal in OA No. 1476/2007 to direct the Respondents to decide the case.
8.10.2007	This Tribunal passed order in the Applicants first OA No. 1476/2007 directing the Respondents to conclude the disciplinary proceedings enquiry and pass orders within 4 months.
24.01.2008	UPSC provided its advice to the Disciplinary Authority
20.03.2008	The Applicant was inflicted minor penalty in the disciplinary case.
12.08.2008	The OA No. 2206/2008 was filed by the Applicant.

18. The above chronology would indicate that the applicant submitted his explanation to the charge sheet on 25.5.2004 but no action was taken by the respondents for completing the enquiry for almost 3 years. Only on 19.3.2007 when the applicant represented that the pendency of the disciplinary case is coming in the way of his promotion, the respondents, on 29.3.2007, sought the advice of UPSC. The desperate applicant came to the Tribunal in OA-1446/2004 in June, 2007 for expeditious completion of the DE which was disposed of by the Tribunal on 08.10.2007 directing the respondents to complete the disciplinary enquiry within a period of 4 months. Only on account of this judicial intervention that the respondents showed some bit of alacrity, obtained UPSC on 24.1.2008 and passed the impugned order dated 23.3.2008 imposing the minor penalty as indicated in the said order.

19. There is no doubt that inordinate delay caused at the end of the respondents in concluding the disciplinary enquiry against the applicant has been prejudicial to the interest of the applicant. He has been deprived of his promotion to the post of Chief Engineer due to the pendency of the disciplinary enquiry. The charge sheet was issued to the applicant in 1999-2000 for

- (a) Delay in concluding extra time work
- (b) Non-submission of inspection notes; and
- (c) The associated supervisory lapses

20. It is appalling that on the charge sheet issued way back in 1999-2000, the final punishment order was passed by the Disciplinary Authority only on 20.3.2008, i.e. after a lapse of about 8 years. As stated earlier, even after the receipt of defence explanation to the charge sheet from the applicant on 25.5.2004, the Disciplinary Authority passing took 3 years and 9 months in passing the penalty order.

21. The DOPT and CVC guidelines provide for time limits for the conduct of different stages in a disciplinary enquiry. The table below indicates these time limits:

S.No.	State of Investigation/Inquiry	Time Limit
4.	Department's comments on the CBI reports in cases requiring Commission's advice.	One months from the date of receipt of CBI's report by the CVO/Disciplinary Authority.
5.	Referring departmental investigation reports to the Commission for advice	One month from the date of receipt of Investigation Report
6.	Reconsideration of the Commission's advice, if required.	One month from the date of receipt of Commission's

		advice
7.	Issue of charge sheet, if required.	(i) One month from the date of receipt of Commissioner's advice. (ii) Two months from the date of receipt of investigation report.
8.	Time for submission of defence statement.	Ordinarily ten days or as specified in CDA Rules
9.	Consideration of defence statement.	15 (Fifteen) days
10.	Issue of final orders in minor penalty cases.	Two months from the receipt of defence statements.

From the above table it would become clear that even the guidelines laid down by DOPT and CVC have been flouted by the respondents in this case.

22. The judgment of Hon'ble Supreme Court in the case of **Anant R Kulkarni Vs. Y.P. Education Society & Ors.** (supra) says that the court/tribunal should not generally set aside and quash the departmental enquiry and the charges on the ground of delay in initiation of disciplinary proceedings. But the Hon'ble Apex Court in the said judgment also directs to take into consideration the relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration, that the said proceedings are allowed to be

terminated, only on the ground of delay in their conclusion. In the instant case, as observed earlier, the respondents have not considered the provisions of para 25(8) CPWD Manual Vol.II in true letter and spirit. It makes it absolutely clear that it was the responsibility of the EE to obtain written confirmation from his superior i.e. the applicant who was then S.E. to the oral instructions given to him by the said superior. No inspection note was issued by the applicant for any oral instruction given by him to EE. Hence, holding the applicant responsible for the extra item of work carried out, would be unfair. Even the inordinate delay caused in the conduct and conclusion of the disciplinary proceedings also require to be adversely commented upon. The Hon'ble Supreme Court in the **case P.V. Mahadevan Vs. M.D. TN Housing Board** (2005 SCC (L&S) 891) **M.V. Bijlani Vs. Union Of India & ors.** (2006 (3) SLR SC 105) and **State of Andhra Pradesh Vs. N. Radhakrishnan** (1988 (4) SCC 154) has held that if no decision is given as to inordinate delay in initiating enquiry, the disciplinary proceedings would be illegal.

23. From the above discussion we are of the view that the charge sheet issued to the applicant on 28.4.2004 after a long and inexplicable delay and in violation of the provisions of para 25(8) of CPWD Manual Vol. II shall render it not sustainable in eyes of

law. Similarly, the inexplicable delay of more than 3 years in proceeding ahead with the matter after having received the applicant's explanation to the charge sheet on 25.5.2004, substantially erodes the credibility of the Annexure A-1 impugned order dated 23.3.2008.

24. In view of above, we quash the Annexure A-3 charge sheet dated 28.8.2004 and also Annexure A-1 impugned penalty order dated 20.3.2008. We also direct that the applicant may be considered for promotion to the post of Chief Engineer by opening the sealed cover, if the recommendations of the DPC to that effect have been kept in sealed cover; or else the respondents would call a review DPC within a period of 4 weeks from the date of receipt of a copy of this order and promote the applicant to the post of Chief Engineer, if he is found eligible otherwise.

25. With above directions, the OA is disposed of.

(K.N. Shrivastava)
Member(A)
/rb/

(Raj Vir Sharma)
Member(J)