



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/1838/2018

Date of order : 28.8.19.

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

RADHE SHYAM JHA
VS.
UNION OF INDIA & OTHERS
(MINISTRY OF DEFENCE)

For the applicant : Mr. P.C. Das, counsel

For the respondents : Mr. S. Paul, counsel

ORDER

Bidisha Banerjee, Judicial Member

Ld. counsels were heard and the materials on record were perused.

2. The applicant in this O.A. has sought for the following reliefs:-

"a) To quash and/or set aside the impugned Charge-Sheet Memorandum dated 17th August, 2017 along with Statement of imputation of misconduct or misbehaviour framed against the applicant which was communicated to the applicant vide office letter dated 17th August, 2018 being Annexure A-3 of this original application;

b) To quash and/or set aside the impugned Penalty Order issued by the Disciplinary Authority dated 28.06.2018 whereby without considering the reply submitted by the applicant against the memorandum of charge-sheet imposed a penalty of reduction to a lower stage in the time scale of pay by one stage for a period of two years without cumulative effect and not adversely affecting his pension with immediate effect which was communicated to the present applicant by the Member of the Weapons, Vehicles & Equipments(WV&E) which was received by your applicant on 16.07.2018 being Annexure A-5 of this original application;

c) To declare that the entire minor penalty proceeding without supplying of the document and without supplying of the copy of the complaint to the

applicant and without considering the submission made by the applicant against such penalty order of punishment as well as charge-sheet on the ground of serious lapses on the part of the Administration is liable to be quashed and/or set aside in the eye of law and the applicant be exonerated from all charges along with all consequential benefits;

- d) To impose heavy cost upon the Union of India- respondents;
- e) Any further or other order or orders as Your Honour may seem fit and proper."

3. The admitted facts that emerge from the pleadings are as under:-

(A) The applicant joined Ordnance Factory, Ambajhari (OFAJ in short) on 07.02.2011. He was the controlling officer. He was nominated for the following committees:-

- (i) Chairman-Group "C" DPC(Fys)
- (ii) Chairman-Review Committee to review of cases under Rule 48 of CCS(Pension) Rules
- (iii) Public Information Officer of the Factory
- (iv) Chairman's nominee of VMC
- (v) Chairman-URC
- (vi) Secretary-JCM(iv)

For sections CE, EO(CC) and DDCC(concerned section for creation of Football Ground), following officers amongst others were supporting in decision making process during his tenure:-

- (i) Shri Rajesh Agarwal, Jt. GM/Civil
- (ii) Shri Sanjay Gupta, Jt.GM/Civil
- (iii) Shri P.S. Kulkarni, AWM
- (iv) Shri R. Venkal, HoS
- (v) Shri R.W. Kabandhe, JWM
- (vi) Shri S.B. Ghati, JWM

He was released from OFAJ on 31.05.2014 on transfer to OF Katni.

The CVC received a complaint under PIDPI resolution against Shri Saurabh Kumar, General Manager, Ordnance Factory, Ambajhari, Nagpur. CVC vide O.M. dated 06.10.2015 forwarded

the PIDPI complaint to CVO/OFB for submission of investigation report. The allegations were as under:-

(a) Relocation of site – A Football Ground was constructed at OFAJ, Nagpur through competitive bidding on a proposed site whose gradient was around 4.5 meters. The original estimation of the work was Rs.17.18 lakhs. After conclusion of the Work Order on a Nagpur based firm, the location of the proposed site was changed with lesser gradient on allegations that the contractor could complete the work with minimal investment.

(b) Couple of Orders – For the construction and repair/alteration of the same Football Field, couple of orders were also placed for the same work and Total Cost expended was more than Rs.50 lakh.

(B) The applicant, while serving as General Manager/OF, DumDum, was served with a show cause notice dated 04.05.2016, in regard to the complaint registered as CVC-370 at OFB which is extracted hereunder (with emphasis for clarity):-

"In order to address the points raised in the complaint the following points may please be clarified. The connecting documents are sent h/w please.

1. The ADP 2011-12 at Demand No. ND 1089 is for Repairs to chain link facing of foot ball ground, sports complex & tolani ground Ambajhari. The justification given read's "to maintain sports ground in good condition & to stop vehicular movements in these areas." There is a request from the OFAJ Football team dated 01.01.2011 for development of New Football Ground. Accordingly a noting dated 04-01-2012 was put up for the

approval of the General Manager and the same was approved on 18-01-2012. But in the proposal vide No.9905/EO/(cc)/12-13 dt.29/04/2012 it was put up that the foot ball field near Jal Vihar is to be developed and an elaborate scope of work was approved in the AON. Thus it appears that there is no relation between the Demand No 1089 and the development of new foot ball ground. A separate ADP should have been taken. And in case the scope of work is being changed including the(not legible) Member/OFB should be obtained.

2. In the actual execution of the contract through M/s Vipul Wooden Art Nagpur vide GM, OFAJ 33/ET-49/M & R/EOCC/C-38 of 2012-2013 dated 22-03-2013 an extensive excavation of hard/dense soil was carried out to an extent of 10932.3 Cubic meters. This shows a new Football Ground is developed under the ND 1089.
3. There are no recorded reasons for re-locating the site from the approved sanction. The approval of the General Manager dated 18-01-2012 in the noting OFAJSC/Football/2011-12 dated 04-01-2012 also talks about a new ground to be developed. The site was altered under the approval of the AGM on 09/05/2013.
4. You are requested to offer your comments as to why the demand ND 1089 of OFB was wrongly utilized in the works that are not sanctioned. Also the reasons for the change in the location.
5. The first contract was completed as on 31/01/2014. Vide noting dated 13/03/2014 it was shown that the Foot ball ground was badly damaged and eroded due to heavy rains, and a proposal for the new contract of repairs and renovation was put up within two months from the date of completion of the first contract. The completion certificate indicates that the Contractor is liable to maintain the ground/works for a period of 12 months and in such an event the repairs etc should be undertaken by the first contractor ie, M/s Vipul Wood art, and there was no necessity for the new proposal as such. Thus an exorbitant expenditure was made towards a contract which is avoidable.
6. There is no correlation in the exact nature of works that were actually undertaken in both the contracts in relation to the scope of work described.
7. All the relevant papers are sent here with. You are requested to offer your comments within one week from the date of receipt of this letter."

C) The applicant furnished his reply dated 01.06.2016 refuting the allegations as under:-

ORDC



भारतीय आयुष निर्माण पर्याय
रक्षा मंत्रालय
आयुष निर्माणी, दमदम
जेसोर रोड
कोलकाता - 700 028
आई एस ओ 9001 : 2000
प्रमापित निर्माणी



INDIAN ORDNANCE FACTORIES
MINISTRY OF DEFENCE
GOVT. OF INDIA
ORDNANCE FACTORY, DUM DUM
JESSORE ROAD, KOLKATA - 700 028
AN ISO 9001 : 2000 CERTIFIED FACTORY



N.O. 90/1346/2016

DATE 01.06.2016

CONFIDENTIAL

To
The Director/Vig(WC)
Ordnance Factory Ambajhari
Nagpur-440 021
(Attn : Shri G Krishna Kishore, Dir/Vig)

Sub :- Complaints under PIDPI, Resolution against
Shri Saurabh Kumar, Sr. GM, OFAJ, Nagpur.

Ref :- Dir/Vig(WC), Nagpur Letter No. A/VIG/CVC-370/2015
dated 03.05.2016.

With reference to above, following is submitted as background of the case before point wise reply to observations.

Existing formal Football ground between ATS ground & Kendriya Vidyalaya is measuring 90 x 50 mtr. neck to neck with Kendriya Vidyalaya boundary wall. The standard Football ground measures 55 x 100 yards (50.29 x 91.44 mtr). So, existing FB was of insufficient size even with absolutely minimum area required as per sports ground dimensions, leave apart extra desired space for general movement and gallery for audience. In view of this, there was long pending need for development of Foot Ball ground at suitable spot in estate.

Accordingly, the work of Repairs to chain-link fencing of football ground, sports complex & Tolani ground, Ambajhari was projected in ACP 2010-11 under Revenue work Code Head RD 1050 with Rough Indication Cost as ' 19 lakhs. This was keeping in mind, development of the informal grounds (There were some informal playgrounds in estate near Jai-vihar, hospital church and near Dharampeth school. These grounds are being used for sports by players and by morning / evening walkers. These grounds are without any fencing or enclosures and frequented by animals & cyclist as well as scooterist). So items of work considered in ADP / Estimate is basically for development of a natural ground into a football ground.

Proposal justify demand as 'To maintain sports ground in good condition & to stop vehicular movements in these areas'. OFB remarked on the case as 'to be processed

on file vide OFB letter No. 002/Budget/Origi. Proj/C.W/2010-11/OFAJ/E/B dt. 03.08.2010.

As per OFB instruction at point no. 6 of above mentioned letter dated 03.08.2010, it was suggested to process the case as new demand in capital head. Development of natural ground to football ground was creation of capital assets and accordingly, it was viewed to be processed under capital head.

Similarly the case was put up again under Capital Demand No. ND1089 in place of Revenue Demand No. RD1050 with same nomenclature in ADP 2011-12 with previously agreed rough cost of 19.00 lakhs. Accordingly, OFB had approved the case with remark as 'Agreed under capital head' for the costs of 19.00 lakhs vide OFB letter No. 002/Budget/OFAJ/E/B dated 14.10.2010.

It is very important to understand basis of RIC (Rough Indication Cost). When ADP was forwarded that time exact location was not decided. Question is, if location is not decided then how RIC can be estimated. Here we take the clue from normal visualization of likely spots and general topography of estate. Topography is such that some contour at north side is in range of 349 mtr. RL (reduced level) and on south side it is 324 mtr. RL in distance of approx. 3 km. Reduced level of a spot is simply elevation of that point with reference to mean sea level. This shows likely level difference as 80 cm in length of 100 mtr. This was broad basis of estimation for earth work and stone masonry wall. Approx. 75% cost of total work cost consists of earth work and stone masonry wall. During forwarding of ADP, spot was not finalized but area in vicinity of Jal-vihar, Tolani Square, church and near hospital in Sector No. 3 was in sight.

Knowing proposal for long pending Foot Ball ground was approved by OFB, football team's captain had suggested site opposite to Jal-vihar vide their letter No. OFAJSC/Football/11-12 dt. 01.10.2011. Accordingly, Noting was put for GM's approval from sports file vide No. OFAJSC/Football/11-12 dated 04.01.2012, suggesting that the football ground is required at the opposite side of Jal-vihar in Sector No. 3 and the area is required to be cleared which was covered with lots of babul trees & thorny bushes. The noting was approved by General Manager with remark 'Y&E' may clean the site for sport activities'.

Acceptance of necessity put by EO(CC) noting dated 29.04.2012 has taken into estimate - excavation, hard core, cement concrete, stone rubble masonry, refilling and rolling of excavated soil and provision of chain link fencing in scope of work for spot near Jal-vihar. This was required to attend undulations of ground and fencing requirement to check trespassing etc. as explained in para one of the noting. As ground was open space without enclosure and with undulations as explained above about general topography of area.

After e-tender process completed, quotation received at cost of 17,17,727/- Work Order was placed with commencement date as 28.03.2013 vide Work Order No. 9905/33/ET-49/ M&R/EO(CC)/WO-38 of 2012-13 dt. 25.03.2013.

On clearance the vegetation at Jal-vihar site the following technical difficulties were observed:-

- i) Ground level difference from higher level to lower level observed approx 4.5 mtr. which is much more than anticipated topography. The construction cost might have gone much beyond contracted cost. Stone wall qty. and earth filling might have gone much beyond tender qty.
- ii) The length and width was considered 125 x 160 mtr (sheet enclosed). Apart from this area, space was also required for parking and toilet facility. Accordingly it was found that foot ball ground along with parking & toilets facility would require area of 220 x 130 mtr. Location near jal-vihar had clear spans of 170 x 110 mtr. (rectangular size) due to constrain of nallah on one side and road on other side.
- iii) Natural nallah is flowing at one side of this location through which huge qty. of water flow during heavy rains, can adversely affect filled up earth and retaining wall of nallah. Chances are fair to wash away earth and masonry wall. Otherwise drain was to be constructed around to connect to nallah. It would have incurred additional expenditure.
- iv) During site visit, it was further evolved that very vicinity of the main Tolani Road with football ground may not be desirable for safety of the road users as it may create accident prone condition (Sheet-III). Such occurrence of accident already taken place in that narrow road segment with very limited road shoulders.

The original site opposite to Jal-vihar (sec-3) was shifted by approx. 350 mtr. which is also in sec-3 and site was technically suitable. New spot which is also opposite to Jal-vihar was finalized during site visit by Admin. sports & civil officers on 09.05.2013. Based on the recommendation of team of officers, new site was approved by AGM as per Delegation of financial powers to sign the official papers related to Civil works vide Factory Order of O.F. Ambajhari, Part-I, No. 192 dtd. 16.04.2011.

As per MES Manual of Contracts-2007, reprint 2012, part -I: (appendix 8.2, point no. 9 on page 320) (Sheet-IV) which reads as "There may be some changes in location / siting of building shown in site (layout) plan(s) to suite local conditions and or departmental requirements. The contractor shall have no claims whatsoever consequent to such changes in the location / siting of works".

Location shift was to disadvantage of contractor as earth shifting was from Jal-vihar location and in this case he has to traversed extra miles but as per MES rule no extra payment was made.

Vig. observation :

1. The ADP 2011-12 at Demand No. ND 1089 is for Repairs to chain link fencing of foot ball ground, sports complex & tolanni ground, Ambajhari. The justification given read's "to maintain sports ground in good condition & to stop vehicular movements in these areas". There is a request from the OFAJ Football team dated 01.10.2011 for development of New Football Ground. Accordingly a noting dated

04.01.2012 was put up for the approval of the General Manager and the same was approved on 18.01.2012. But in the proposal vide No. 9905/EO/(cc)/12-13 dt 29/04/2012 it was put up that the foot ball field near Jal-vihar is to be developed and an elaborate scope of work was in the AON. Thus it appears that there is no relation between the Demand No. 1089 and the development of new foot ball ground. A separate ADP should have been taken. And in case the scope of work is being changed including the location for execution, fresh approval of the Member/OFB should be obtained.

Comments : From background of the case as given above following is clear.

- (i) The existing formal Foot Ball ground between KV & ATS ground was of insufficient size and not suitable.
- (ii) New ground was to be developed at suitable location.
- (iii) Accordingly, proposal was included in ACP 2010-11 under Revenue Work Code Head RD 1050 with Rough Indication Cost as 19 lakhs.
- (iv) OFB suggested to go for capital head as development of natural ground to football ground was creation of capital assets.
- (v) Basis of RIC was general topography of estate as explained above based on contours.
- (vi) Exact location was not finalized at the time of ADP proposal to OFB. Only likely locations as Jal-vihar, Tolani Square, church and near hospital in Sector No. 3 was in sight.
- (vii) Immediately on OFB's approval, football team's captain suggested site opposite to Jal-vihar vide their letter No. OFAJSC/Football/11-12 dt. 01.10.2011.
- (viii) Accordingly, from sports file vide letter No. OFAJSC/Football/11-12 dated 04.01.2012 a noting was put up for site of foot ball ground near Jal-vihar in Sector No. 3 mentioning area was required to be cleared which was covered with lots of babul trees & thorny bushes.
- (ix) With above, estimate was prepared based on general topography as complete site was not visible due to vegetation and this was put up vide EO(CC) noting dt. 29.04.2012 and approved by GM.
- (x) Work was awarded after due tendering process and before commencement site was cleared of vegetation and due to technical constraints as elaborated above site was shifted 350 mtr. away in same Sector No. 3.
- (xi) Such shifting is permissible as per MES rules as explained above.

So it shows that original intent of development of foot ball ground as per ADP with absolutely same scope of work is maintained and work done as per rules with prudence to utilize funds for required work.

Vig. Observation

2. In the actual execution of the contract thorough M/s Vipul Wooden Art Nagpur vide GM, OFAJ 33/ET-49/M & R/EOCC/C-38 of 2012-2013 dated 22.03.2013 an extensive excavation of hard / dense soil was carried out to an extent of 10932.3 Cubic meters. This shows a new Football Ground is developed under the ND 1089.

Comments : As explained above for available topography 10000-12000 m³ earth filling was required and estimates and execution quantity is in permissible limits.

Vig. observation :

3. There are no recorded reasons for re-locating the site from the approved sanction. The approval of the General Manager dated 18.01.2012 in the noting OFAJSC/Football/2011-12 dated 04.01.2012 also talks about a new ground to be developed.

Relocation of site was based on technical constraints as explained above. The team of officers visited the site after clearance of vegetation by Y&E. Based on their recommendation, the site was selected which was 350m. away in sector 3 only. While deciding this site the provision of MES Manual of Contracts-2007, reprint 2012, part -I: (appendix 8.2, point no. 9 on page 320) (Sheet-IV) was considered which reads as "There may be some changes in location / siting of building shown in site (layout) plan(s) to suite local conditions and or departmental requirements. The contractor shall have no claims whatsoever consequent to such changes in the location / siting of works".

Vig. observation :

4. You are requested to explain the reasons as to why the demand ND1089 of OFB was wrongly utilized in the works that are not sanctioned. Also the reasons for the change in the location.

Comments : Demand No. ND1089 was properly utilized for the sanctioned work as explained above.

Vig. Observation :

5. The first contract was completed as on 31.01.2014. Vide noting dated 13.03.2014 it was shown that the football ground was badly damaged and eroded due to heavy rains, and a proposal for the new contract of repairs and renovation was put up within two months from the date of completion of the first contract. The completion certificate indicates that the contractor is liable to maintain the ground / works for a period of 12 months and in such an event the repairs etc should be undertaken by the first contractor i.e. M/s Vipul Wood art, and there was no necessity for the new proposal as such. Thus an exorbitant expenditure was made towards a contract which is avoidable.

Comments : Unusual natural events like Typhoon, cloud burst, earthquake and heavy flooding etc. are out of scope of any contract maintenance period. In this case, very heavy rain in month of Feb., 2014 eroded newly developed FB ground. Contractor is certainly liable to rectify the works done by him for the period of 12 month provided its related to his poor workmanship or poor quality of material used. Heavy rains leading to flooding of ground which washed away top soil, does not indicate quality of material or workmanship. However normal ground which was developed in first work was further thought for proper grassing of the FB ground to retain the soil in case of heavy rain and improve the overall aesthetics and

utility of ground. This was also considered in view of developing state of the art foot ball ground in estate which will organize zonal tournaments and other major sport events.

General Manager during estate round visited the above football ground site in the 1st week of March,2014 along with team of officers [AGM, AWM, JWM(SIC)]. It was directed to provide proper grass topping on priority to avoid soil erosion in future and to provide an appropriate playing surface commensurate to a football ground of reasonably good standard under revenue head within GM's delegated financial power. This would facilitate in utilization of the football ground throughout the year for practice and also for organizing an anticipated zonal / all India ordnance factories football matches on responsibilities assigned by OFB. The priority was accorded to this work to start the relevant activities immediately so as to ensure that availability of garden soil is not affected during the heavy & continuous monsoon season and proper growth of doob grass is achieved in the monsoon season.

5.1 Accordingly HOS/DD(CC) vide noting No. 9905/Football/EO(CC)/13-14 dt. 13.03.2014 initiated the proposal for the "Acceptance of Necessity" of said work under Revenue head for approval of GM/OFAJ stating the following reasons :-

"The condition of the football ground has become worse due to heavy rain in recent past. Top surface soil has eroded and rain water accumulates at many places and becomes un-useable & cause accident to players while playing due to undulation on the surfaces. It requires repairs for better comfort to players."

5.2 The major element in the scope of work included (item no. 1&2) providing & laying of garden soil of 2500 cu.mtr. qty. and providing, laying, maintenance & watering of Indian doob grass in area of 16900 sq.mtr. Therefore the average depth of the garden soil was considered as 15 cm to develop the doob grass.

5.3 The excavated local soil containing mixture of gravels, cobbles, clay, BC:soil, silt, clay etc. included in the contract no. C-38 of 2012-13 was suitable only for filling purpose of large depressions/low lying area and was entirely different from the garden soil (suitable mixture of sand, silt, clay & organic contents to provide a base for roots, nutrition & growth to the doob grass) considered in new scope of work.

5.4 Thus scope of work in the next proposal was entirely different from the previous one and it was basically meant to improve and enhance the life of the already created football ground in the CA no. C-38 of 2012-13. Further though the processing of new proposal commenced on 13.03.2013 with approval of AON by CFA however the actual work of garden soil & grass laying started in the month of August,2014 after tender formalities and the guarantee period of CA No. C-38 of 2012-13 was still effective for any material / workmanship defects if any , for the items included in the scope of work of the contract as explained above

Vigilance observation :

6. There is no correlation of exact nature of works that was actually undertaken in both the contracts in relation to the scope of work described.

Comments : In acceptance of necessity noting , scope of work is outlined which is very broad in nature. Each work contents many items as per MES SSR and detailed estimate is enclosed alongwith AON giving complete details of each item of work, unit, qty., SSR rates and SSR item no.

D) Long thereafter a charge was framed against him vide memorandum dated 17.08.2017 under Rule 16 of CCS(CC A) Rules, 1965. The statement of imputation of misconduct or misbehavior being as under:-

"Statement of imputation of misconduct or misbehaviour framed against Shri R.S. Jha, the then AGM/OFAi and now GM/OFDC.

01. Ordnance Factory Ambajhari received sanction of ND1089 which was projected and accepted in ADP 2011-12 vide Director/EB letter no. 002/Budget/Origi.Proj/C.W./2011-12/OFAJ/E/B dated 22.09.2011. As per ND1089, the sanctioned work was for 'repairs to chain-link fencing of football ground, sports complex & Tolani ground, Ambajhari.' Hence, it was known that the sanctioned work was for repairs of existing infrastructure, i.e., repairs to chain-link fencing which already existed as per the projection given by the factory to OFB in order to obtain ADP approval.
02. Noting No. OFAJSC/Football/11-12 dated 04-01-2012 was put up by the Sports Officer of the factory for approval of a new proposed site for football cum athletics ground and preparation of the same since there was no standard football ground in the estate and the football team of the factory was practicing in the open space between ATS ground and Kendriya Vidyalaya. The proposed site in Sector-III opposite to rain water harvesting lake (Jal Vihar) was approved by the General Manager. Although as per ND1089, the repairs to chain link fencing were for football ground, sports complex & Tolani ground, but as per the above noting there was no football ground in the estate.
03. But Shri R.S. Jha, while functioning as Addl. General Manager, Ordnance Factory Ambajhari, Nagpur had proposed in EO/CC Section noting no. 9905/EO(CC)/12-13 dated 29-04-2012 for according Acceptance of Necessity (AoN) for preparation of a new football field and erection of new chain-link fencing against the sanction ND1089, which constituted new infrastructure. So, while ND1089 was sanctioned for repair works of existing infrastructure, Shri R.S. Jha proposed in the said noting for according Acceptance of Necessity for new infrastructure. Subsequently, Work Order no. 9905/33/ET-49/M&R/EO/CC/W.O-38 of 2012-13 dated 25-03-2013 was jointly signed by Shri R.S. Jha in which the repairs to chain link fencing was still mentioned as the subject of the contract, although the work descriptions mentioned in the schedule of work were for new infrastructure for preparation of the football field.
04. After issuance of the Work Order no. 9905/3/ET-49/M&R/EO/CC/12-13 dated 25/03/2013, the site was handed over to the contractor on 28.03.2013. However, on 09.05.2013 in a sketch of the Estate of the factory, Shri R.S. Jha approved change of location of the site which was already handed over to the contractor subsequent to issuance of the Work Order. The contractor was asked to work on the new site.

05 Shri R.S. Jha, therefore, misused the said sanction ND1089 meant exclusively for 'repairs to chain link fencing' and proposed for approval of new football field and erection of new fencing against the said sanction. The repairs to the chain link fencing were supposed to be confined to the existing football ground, sports complex & Tolani ground, Ambajhari, as per proposal forwarded by the factory and accepted by OFB. As per Para 10.b. of Director/FB letter no. 002/Budget/Origi.Proj/C.W./2011-12/OFAJ/E/B dated 22.09.2011, it was mentioned that 'In case scope of work is changed, including location for execution of project, fresh approval of Member/Operating Division is to be obtained'. It was also mentioned in the Circular No. 001/CW/E/B dt. 08-09-2006 issued by DDG/Engg. That 'once the work is approved, subsequent changes in scope and specification are to be avoided. In case it is noticed at a subsequent date that further changes are unavoidable then proposal is to be submitted to OFB for fresh sanction of operating member mentioning the reason for such change.' DGOF and Chairman/OFB also issued directives vide OFB No. 01/SYS IMP/A/VIG/2009 (SITE) dated 27-04-2009 that 'During vigilance investigations a few instances have come to notice where the site indicated in the case file was different from the site at which Civil Works were carried out. Also in a few cases the description of the site was ambiguous. In order to avoid ambiguity and to ensure that the work is carried out at the specified place only, it is directed that a sketch of the site, duly signed by the concerned officials, should be invariably kept in the case file. The sketch should broadly indicate the dimensions also. Thus, Shri R.S. Jha manipulated and proposed for according Acceptance of Necessity for preparation of new infrastructure, knowing fully well that the sanctioned work was for repairs to existing infrastructure. Such act by Shri R.S. Jha violated instructions for Civil Works issued by DDG/Engg Circular No.001/CW/E/B dt. 08.09.2006, DGOF & Chairman/OFB instructions vide OFB No.01/SYSIMP/A/VIG/2009(SITE) dated 27-04-2009 and Director/EB letter no.002/Budget/Origi.Proj/C.W./2011-12/OFAJ/E/B dated 22.09.2011, which constituted misconduct.

06. Contract no. GM(OFAJ)33/ET-49/M&R EO/CC/C-38 was signed on 22.03.2013 for preparation of a new football field and as per Completion Certificate No.9905/33/ET-49/M&R/EO(CC)/12-13 dated 11-01-2015, the actual date of completion was 31.01.2014. The Completion Certificate also indicated Condition No.46 of General Condition of Contract (IAFW-2249) under which the contractor shall have to rectify the defects if observed during currency of Maintenance period, which is 12 calendar months from the date of completion of the work.

07. After a span of one month and 13 days after the actual date of completion of newly constructed football field, i.e. on 13-03-2014, a note No.9905/Football/EO(CC)/13-14 dt. 13.03.2014 was put up for 'Acceptance of Necessity' and 'Technical Sanction' for repairs/renovation of football ground at OFAJ stating that 'the condition of the football ground has become worse due to heavy rain in recent past.' This noting was put up even though the currency of the maintenance period of Contract no.GM(OFAJ)33/ET-49/M&R EO/CC/C-38 was still running. Shri R.S. Jha recommended for according of Necessity of Approval of the proposal in the said noting. As per Indian Meteorological Department- Nagpur's Report No. TO-242(E)/2016/1011 dated 02-06-2016, rainfall on the days on which it had rained during the period Feb' 2014 to Mar' 2014 is as under:-

Date	Rainfall	Date	Rainfall	Date	Rainfall
22 Feb 2014	1.4mm	01 Mar 2014	14mm	10 Mar 2014	0.1mm
24 Feb 2014	1.7mm	04 Mar 2014	5mm	13 Mar 2014	7.3mm
27 Feb 2014	13.3mm	05 Mar 2014	8.8mm		

28 Feb 2014	5.2mm	06 Mar 2014	0.8mm	
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08. From the above meteorological data, it can be seen that there was no washout of unseasonal winter rains in the one month thirteen days period which shall warrant erosion of the top soil and accumulation of rain water causing the field unusable and cause accidents to players.

09. Even though there was erosion of the top soil, since the football ground was under the maintenance of the contractor, it was unwarranted to put up a note for repair/renovation of the football field. By taking up fresh repair work, without revoking the warranty clause of the previous contractor, Shri R.S. Jha helped incur infructuous expenditure which caused loss to the Govt. Exchequer.

10. Therefore by such acts, as explained above, Shri R.S. Jha displayed lack of devotion to duty and acted himself in a manner unbecoming of a Government Servant, thereby violating Rules 3(l)(ii) & Rules 3(l)(iii) of CCS(Conduct) Rules, 1964."

E) Such chargesheet, was issued at the advice of the Central Vigilance Commission vide its advice dated 22.06.2017. The advice is as under:-

"2. The case has been examined by the Commission. Commission in agreement with the recommendations of DDP would advise initiation of Minor Penalty Proceedings against Shri R.S. Jha, the then AGM/OFAJ(now GM/OFAJ) and Recordable Warning to (i) Shri Sanjay Gupta, Jt. G.M; (ii) Shri Rajesh Agarwal, Jt. GM; (iii) Shri M.K. Maurya, DGM; (iv) Shri P.S. Kulkarni, AWM (v) Shri R. Venkat, HoS; (vi) Shri R.W. Kalbandhe, JWM; and (vii) Shri S.B. Ghate, JWM.

3. Commission has noted that nothing has been found in the investigation against other officers viz. Shri Saurabh Kumar, GM; Shri T. Wangyal, AGM; Shri Ravi Singh, DGM; Shri M.K. Arya, JGM and Shri A.K. Mishra, Jt. GM in the development of football field."

F) The applicant had duly replied to each and every allegations in the charge memo, as extracted above. Yet without an enquiry, by an order dated 28.06.2018 a minor penalty of "*reduction to a lower stage in the time scale of pay by one stage for a period of two years without cumulative effect and not adversely affecting his pension.*" was issued to him. It was ordered by and in the name of the President. The applicant preferred

an appeal to the Hon'ble President on 31.08.2018 which was of no avail.

G) On 15.11.2018 he preferred RTI application for supply of the documents which was responded to as under:-

Sl.No.	Information sought	Reply
a)	Investigation/inspection report carried out by CVO(W) along with related note sheets, documents, covering views/comments of CVO/OFB as well as Chairman/OFB.	Information pertains to OFB. Hence transferred to CPIO/OFB under Rule6(3) of RTI Act, 2005.
b)	Relevant note sheets and documents thereof put up to Appointing Authority for approval before sending the case file to CVC for 1 st Stage Advice.	Copy of relevant note sheets thereof consisting of 07 pages are sent herewith.
c)	Relevant case file sent to CVC for 1 st Stage Advice.	Ministry sent the file in ID format reference to which may be seen at page 7 of note sheet(enclosed).
d)	Relevant note sheets and documents wherein Appointing Authority according approval of memorandum vide ref (i)	Photocopy of Relevant note sheet consisting of 02 pages are sent herewith.
e)	Relevant note sheets and documents wherein Appointing Authority imposed penalty vide ref.(ii)	Approval of Appointing Authority has been obtained on Note(on page 15) Photocopy of Relevant information enclosed.
f)	2 nd Stage advice rendered by CVC on the subject matter.	2 nd Stage Advice of CVC is not required in the case therefore no such material available in this regard.

H). From the documents supplied it transpired that the crux of the allegation against the applicant was :-

- (a) That, location of work, i.e. football ground was changed after placement of work order.
- (b) Further repair work of newly built football ground was got done by new contract instead of invoking warranty obligation from the first contractor, resulting in loss to the exchequer.

I) The OFB Vigilance held the applicant and other officers liable for the following alleged lapses:-

7. Responsibility fixed: - The investigation report was examined by OFB Vigilance and the following officials have been held responsible for the said lapses:

(i) Shri R.S. Jha, AGM/OFAJ now GM/OFDC

- For recommending utilisation of ND 1089 on dated 29.04.2012 which was for Repair of Chain Link Fencing towards development of new football ground at Sector-II in OFAJ which was not the intended purpose.
- For amending site vide approval dated 09.05.2013 which was not the site as per OFB sanction and contrary to GM's approval dated 29.04.2012.
- For not obtaining the approval of the competent authority i.e. Member (Operating division) for the change in scope of work and location as per OFB directives vide letter dated 22.09.2011. After the placement of work order dated 22.03.2013 on M/s Vipul Wooden Arts Nagpur, the site was changed on 09.05.2013.
- For recommending approval for repair/renovation of new football ground in the office note dated 13.03.2014 and on signing Acceptance of Necessity/Administrative Approval dated 29.04.2014 at an estimated cost Rs.38.745 lakhs wrongfully; knowing the fact that the football ground was under maintenance of first contractor M/s Vipul Wooden Arts.
- Award of the second contract on M/s L.P. Patel Nagpur has resulted in loss of Rs.15 lakhs (approx.) which were incurred for garden soil filling for grassing..

(ii) Shri Sanjay Gupta, Jt.GM/Civil/OFAJ now DDG/OFB

- For recommending approval for repair/renovation of new football ground in the office note dated 13.03.2014 and signing Acceptance of Necessity/Administrative Approval dated 29.04.2014 at an estimated cost of Rs.38.745 lakhs knowing the fact that the football ground was under maintenance of first contractor M/s Vipul Wooden Arts. By awarding the second contract on M/s L.P. Patel Nagpur, approx. Rs.15 lakhs were incurred for garden soil filling for grassing.

(iii) Shri Rajesh Agarwal, Jt. GM/Civil now DDG/RMC/Pune

- For recommending utilisation of ND 1089 (ADP 11-12) on dated 29.04.2012 which is for repair of Chain Link Fencing towards development of new football ground at Sector III in OFAJ (which is not the intended purpose).
- For not taking approval of operating division Member for the change in the scope of work and location as per OFB directives vide letter dated 22.09.2011. After the placement of work order dated 22.03.2013 on M/s Vipul Wooden Arts Nagpur, the site was changed on 09.05.2013.

(iv) Shri M.K. Maurya, DGM/OFAJ now Jt.GM/OFC

- For amending site vide approval dated 09.05.2013 which was not the site as per OFB sanction and contrary to GM's approval dated 29.04.2012

(v) Shri P.S. Kulkarni, AWM/Civil, now retired

- For recommending AoN in the office noting dated 13.03.2014 for a new contract under RD 1343 within the revenue powers of GM/OFAJ when the ground is damaged due to heavy rains/erosion and the football field prepared was under maintenance clause as per the completion certificate dated 11.01.2015 for a period of 12 months thereby causing loss of public money by award of 2nd contract
- Due to above reasons, the expenditure on earth filling and UCR masonry are seen to be very high because a new football field was developed instead of repairs to the chain link fencing on an existing ground. Similarly by award of a 2nd Contract through M/s L.P. Patel Nagpur and extensive earth filling to a cost of Rs.15 lakhs was undertaken especially when it was shown that the ground is damaged due to rains and erosion and the said ground is under maintenance by the 1st Contractor i.e. M/s Vipul Wooden Art Nagpur.

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(vi) Shri M.V. Ramireddy, AWM (Resigned for the service) - No further action proposed by OFB

(vii) Shri R. Venkat, HoS/EOCC

For recommending AoN in the office noting dated 13.03.2014 for a new contract under RD 1343 within the revenue powers of GM/OFAJ when the ground is damaged due to heavy rains/erosion and the football field prepared was under maintenance clause as per the completion certificate dated 11.01.2015 for a period of 12 months thereby causing loss of public money by award of 2nd contract. Due to above reasons, the expenditure on earth filling and UCR masonry are seen to be very high because a new football field was developed instead of repairs to the chain link fencing on a existing ground. Similarly by award of a 2nd contract through M/s L.P. Patel Nagpur and extensive earth filling to a cost of Rs.15 lakhs was undertaken especially when it was shown that the ground is damaged due to rains and erosion and the said ground is under maintenance by the 1st contractor i.e. M/s Vipul Wooden Art Nagpur.

(iv) Shri R.W. Kalbandhe, JWM/EOCC

As the site incharge of the 1st contract, the failure to point out the damage to the ground to the 1st contractor i.e. M/s Vipul Wooden Arts Nagpur & failure to get the defects rectified under the maintenance condition and thereby facilitating a new contract causing loss of public money.

(viii) Shri S.B. Ghate, JWM/EOCC

For recommending utilisation of ND 1089 (ADP 11-12) on dated 29.04.2012 which is for repair of chain link fencing towards development of new football ground at Sector III in OFAJ (which is not the intended purpose).

Out of 8 officers only the applicant was awarded a minor penalty while others were let off with a warning.

4. Ld. counsel for the applicant at hearing would vociferously submit that records show that the alleged change of site was made with the approval of the then GM while the applicant was functioning as Additional General Manager, Ordnance Factory, Ambajhari, Nagpur. Ld. counsel would submit that the files were initiated by the officers of the factory and approved by the then General Manager, yet the applicant was punished.

5. In support Ld. counsel would place the following documents:-

(a) A noting initiated on 13.03.2014 by the HOS/DD(CC) that reads:-

- "i) Ground preparation by filling red soil which suitable for grassing.
- ii) Grassing on top surface to avoid erosion of soil & suitable for playing football.
- iii) Brick edging on outer track border.
- iv) Approaches hardened by laying WBM layer.
- v) Toilet work."

It is neither initiated by the applicant nor approved by him.

(b) It transpires that at least 8 suspected officials including those who had initiated the note on 13.03.2014 and forwarded it to the applicant were held responsible but all the 7 were let off with only a "recordable warning", while the applicant was awarded a minor penalty. The list of such officials and action proposed against them being as under:-

S.No.	Name & Designation	Action proposed
1.	Shri R.S. Jha, the then AGM/OFAJ(now G.M/OFAJ)	Minor Penalty (being the senior-most official and as head of civil works he is primarily responsible for the aberrations noticed in the case)
2.	Shri Sanjay Gupta, Jt. GM	Recordable Warning
3.	Shri Rajesh Agarwal, Jt. GM	Recordable Warning
4.	Shri M.K. Maurya, DGM	Recordable Warning
5.	Shri P.S. Kulkarni, AWM	Recordable Warning
6.	Shri R. Venkat, HoS	Recordable Warning
7.	Shri R.W. Kalbandhe, JWM	Recordable Warning
8.	Shri S.B. Ghate, JWM	Recordable Warning

S.No.	Name	Designation	CVC Advice
9.	Shri Saurabh Kumar	GM/OFAJ	No action
10.	Shri T. Wangyal	AGM/OFAJ	No action
11.	Shri Ravi Singh	DGM/OFAJ	No action

12.	Shri M.K. Arya	Jt. GM/OFAj	No action
13.	Shri A.K. Mishra	Jt. GM/OFAj	No action

"No action" is proposed against other officials of the case who have been mentioned in the complaint and whose role have been examined by the investigating officer and OFB Vigilance but were not held responsible for the aberrations noticed in the case."

(C) The contract under demand no. ND 1089 was meant for :-

1. Excavation of soil;
2. Material and labour of hard core;
3. Providing and laying cement concrete;
4. Material and labour for stone rubble masonry;
5. Excavation of soil from nearby area and refilling in the ground including rolling and(not legible);
6. Supply and fixing chain-link wire mesh alongwith angles etc.;

for repair to chain-link fencing of football ground Sports Complex & tolani ground, Ambajhari whereas RD 1343 initiated on 13.03.2014 under AON was for :-

- i) Ground preparation by filling red soil which suitable for grassing.
- ii) Grassing on top surface to avoid erosion of soil & suitable for playing football.
- iii) Brick edging on outer track border.
- iv) Approaches hardened by laying WBM layer.
- v) Toilet work.

Ld. counsel would assert that scope of work under the two contracts were entirely different. The work under RD1343 was not covered under the maintenance contract of RD1089 and therefore, the allegation raised against the applicant was baseless and based on no evidence.

6. We called for the records to decipher whether the alleged change of site was in fact made without the approval of the then G.M., i.e. whether there was some evidence to prove the allegation. No scrap of paper has been placed to demonstrate alleged change of site under RD 1089.

A bare perusal of the records demonstrated as under:-

(i) The noting prepared on 13.03.2014 by the HOS/DD(CC) was accepted by the G.M.

It was neither initiated nor approved by the applicant while functioning as AGM(RSJ). It was approved by the then GM on 16.03.2014 and a General Manager is not expected to approve any construction work loosely or lightly.

(ii) DGOF & Chairman/OFB's observations as evident from the notes put up to Secretary, DP were as under:-

The then DGOF & Chairman/OFB on examination of the case file in his considered opinion has remarked (Page 8/C) that the two works i.e. ND 1089 and RD 1343 are distinctly different. The scope of work for Demand No. ND 1089 are soil excavation, M/s hard-core Cement Concrete, Stone Rubber masonry, refilling of ground chain link fencing. The scope of work in RD 1343 i.e. second work are ground preparation by filling red soil suitable for grassing, grassing on top surface, brick edging on outer track border, approaches hardened by laying WBM layer, toilet work. For the first work, the work started in May 2013 and completed in November 2014. Thus DGOF concluded that both the works are distinctly different and there is no overlap period of execution of both the contracts. This view has been reiterated by subsequent DGOF & Chairman/OFB also, further stating that the alteration of site allocation has also not been proved by the investigating officer. He recommended that for certain procedural errors committed by the officials during the execution of contract it would meet the end of justice if they are issued "Advisory Memo" instead of "Charge sheet" (Page 16/C)."

Yet the CVO/OFB observed on the whole issue as under:-

"On the whole irregularities have been committed in allowing expenditure involving Rs.38.75 lakhs, extra deviating from the financial propriety and prescribed procedure. There was no need/scope for a new football field to develop, when one was developed at a cost of Rs.17.18 lakhs."

Having so observed, the CVO/OFB recommended initiation of Major Penalty proceedings against all the officials found for the irregularities.

(iii) The allegations levelled against other officers, as noted under, were not less serious:-

7. **Responsibility fixed:** - The investigation report was examined by OFB Vigilance and the following officials have been held responsible for the said lapses:

(i) Shri R.S. Jha, AGM/OFAJ now GM/QFDC

- For recommending utilisation of ND 1089 on dated 29.04.2012 which was for Repair of Chain Link Fencing towards development of new football ground at Sector-III in OFAJ which was not the intended purpose.
- For amending site vide approval dated 09.05.2013 which was not the site as per OFB sanction and contrary to GM's approval dated 29.04.2012.
- For not obtaining the approval of the competent authority i.e. Member (Operating division) for the change in scope of work and location as per OFB directives vide letter dated 22.09.2011. After the placement of work order dated 22.03.2013 on M/s Vipul Wooden Arts Nagpur, the site was changed on 09.05.2013.
- For recommending approval for repair/renovation of new football ground in the office note dated 13.03.2014 and on signing Acceptance of Necessity/Administrative Approval dated 29.04.2014 at an estimated cost Rs.38.745 lakhs wrongfully, knowing the fact that the football ground was under maintenance of first contractor M/s Vipul Wooden Arts.
- Award of the second contract on M/s L.P. Patel Nagpur has resulted in loss of Rs.15 lakhs (approx.) which were incurred for garden soil filling for grassing..

(ii) Shri Sanjay Gupta, Jt.GM/Civil/OFAJ now DDG/OFB

- For recommending approval for repair/renovation of new football ground in the office note dated 13.03.2014 and signing Acceptance of Necessity/Administrative Approval dated 29.04.2014 at an estimated cost of Rs.38.745 lakhs knowing the fact that the football ground was under maintenance of first contractor M/s Vipul Wooden Arts. By awarding the second contract on M/s L.P. Patel Nagpur, approx. Rs.15 lakhs were incurred for garden soil filling for grassing.

(iii) Shri Rajesh Agarwal, Jt. GM/Civil now DDG/RMC/Pune

- For recommending utilisation of ND 1089 (ADP 11-12) on dated 29.04.2012 which is for repair of Chain Link Fencing towards development of new football ground at Sector III in OFAJ (which is not the intended purpose).
- For not taking approval of operating division Member for the change in the scope of work and location as per OFB directives vide letter dated 22.09.2011. After the placement of work order dated 22.03.2013 on M/s Vipul Wooden Arts Nagpur, the site was changed on 09.05.2013.

(iv) Shri M.K. Maurya, DGM/OFAJ now Jt.GM/QFC

- For amending site vide approval dated 09.05.2013 which was not the site as per OFB sanction and contrary to GM's approval dated 29.04.2012

(v) Shri P.S. Kulkarni, AWM/Civil, now retired

- For recommending AoN in the office noting dated 13.03.2014 for a new contract under RD 1343 within the revenue powers of GM/OFAJ when the ground is damaged due to heavy rains/erosion and the football field prepared was under maintenance clause as per the completion certificate dated 11.01.2015 for a period of 12 months thereby causing loss of public money by award of 2nd contract
- Due to above reasons, the expenditure on earth filling and UCR masonry are seen to be very high because a new football field was developed instead of repairs to the chain link fencing on an existing ground. Similarly by award of a 2nd Contract through M/s L.P. Patel Nagpur and extensive earth filling to a cost of Rs.15 lakhs was undertaken especially when it was shown that the ground is damaged due to rains and erosion and the said ground is under maintenance by the 1st Contractor i.e. M/s Vipul Wooden Art Nagpur.

(vi) Shri M.V. Ramireddy, AWM (Resigned for the service) - No further action proposed by OFB

(vii) Shri R. Venkat, HoS/EOCC

For recommending AoN in the office noting dated 13.03.2014 for a new contract under RD 1343 within the revenue powers of GM/OFAJ when the ground is damaged due to heavy rains/erosion and the football field prepared was under maintenance clause as per the completion certificate dated 11.01.2015 for a period of 12 months thereby causing loss of public money by award of 2nd contract. Due to above reasons, the expenditure on earth filling and UCR masonry are seen to be very high because a new football field was developed instead of repairs to the chain link fencing on a existing ground. Similarly by award of a 2nd contract through M/s L.P. Patel Nagpur and extensive earth filling to a cost of Rs.15 lakhs was undertaken especially when it was shown that the ground is damaged due to rains and erosion and the said ground is under maintenance by the 1st contractor i.e. M/s Vipul Wooden Art Nagpur.

(iv) Shri R.W. Kalbandhe, JWM/EOCC

As the site incharge of the 1st contract, the failure to point out the damage to the ground to the 1st contractor i.e. M/s Vipul Wooden Arts Nagpur & failure to get the defects rectified under the maintenance condition and thereby facilitating a new contract causing loss of public money.

(viii) Shri S.B. Ghate, JWM/EOCC

For recommending utilisation of ND 1089 (ADP 11-12) on dated 29.04.2012 which is for repair of chain link fencing towards development of new football ground at Sector III in OFAJ (which is not the intended purpose).

In their notes of arguments the respondents have emphatically admitted that "*the applicant was the senior most official and Head of Civil Work of the factory. Being the Controlling Officer, it was incumbent upon him to exercise utmost caution while dealing the cases. He should have pointed out the deviations before recommending the Acceptance of Necessities(AONs) to the General Manager. The applicant failed in his duties and showed his lack of devotion. Instead of pointing out the aberrations, he endorsed in OFAJ note dated 29.04.2012(Annexure R-3) and note dated 13.3.2014(Annexure R-10) recommending the GM for approval of AON.*

It is pertinent to mention that Additional General Manager(SAG Level Officer) at Ordnance Factories functions as the Controlling Officers of specific divisions and being the senior most officer of their respective division and head of that division, they are primarily responsible for all the being decisions taken at their division. Decision/Recommendations proposed by them are expected to be correct by all accounts and there is no scope for any deviations from the standard provisions/sanctions. If there is any deviation, same need to be highlighted by the Controlling Officer through notes, else, it would not be possible for the Sanctioning Authority(General Managers) to get the whiff of the things and the whole idea of having such a long chain of hierarchy at Factory would be rendered invalid. The applicant also functioned as the Controlling Officer of the civil section and he was primarily responsible for all the aberrations noticed in the aforesaid case. The applicant failed to bring up these deviations before the then General Manager." Therefore, the applicant was guilty of forwarding a note initiated by HOS/DD/CC cleared by AWM/ED(CC), AWM/CIVIL, JGM/CIVIL. Yet such persons were let off with only a recordable warning while the applicant was punished.

(iv) The analysis of D(Vig.)/DDP is quite interesting. He has in fact admitted that :-

"Thus in the 2nd contract extensive earth filling appears to have been done to grow grass suitable for playing football. Whereas the repair work by the first contract would not have entailed laying earth on the entire field rather the earlier contractor would have done only some patchwork for the damages on the field due to rains. Thus in order to accomplish these works there was a need of another contract. Therefore, how in such an event the matter can be deemed as malafide is also not elaborated by CVO/OFB."

The reason why these endorsements did not find favour with the vigilance is not forthcoming. Details of the analysis of D(Vig.)/DDP is as under:-

10. From the case details received from OFB Vigilance and comments of CVO/OFB it is seen that Major Penalty against the above mentioned 08 officials have been recommended for the lapses attributed to them though CVO/OFB has not been elaborate enough as to whether these irregularities were gross enough and whether any vigilance angle/mala fide intention observed so as to warrant Major Penalty against them. The recommendations of CVO/OFB holding all of them equally responsible appears to have been made as a sweeping recommendations (Page 1-2/C and 14-15/C). The contention of two DGOF & Chairman/OFB also carries weight. It is observed that the major irregularities that have been pointed out by OFB Vigilance and CVO/OFB in the case appears to have their own doubts which are elaborated as under:

(i) The Foot Ball field at OF Ambajhari Nagpur was developed within the sanction under ND 1089 (New Development 1089), instead of earlier RD 1050 (Revenue Development 1050) as per the approval vide OFB letter dated 22.09.2011 (Page 23-24/C) with remark as "Accepted earlier". Thus the grant was utilised for the development of the new ground, though it appears that approval of Member/Operating Division was not obtained. In such a situation how the matter involves Vigilance angle is not elaborated by CVO/OFB in his recommendations.

(ii) Whether the placement of the contract on M/s LP Patel, Nagpur vide the Work Order dated 23.7.2014 was for the replacement/repairs only of the Football field that was developed in the 1st Contract and had suffered some damages. In fact, the scope of work indicates many other items which are not related to earth filling alone, and it is observed that the scope is much larger and wider than the repair works. Further, it has been mentioned by HOS/DD(CC) (Page 40-46/C) in his detailed explanation that the GM directed to provide proper grass topping to avoid soil erosion in future and to provide an appropriate playing surface commensurate to a football ground of reasonably good standard under Revenue head within GM's delegated financial power. Thus in the 2nd Contract extensive earth filling appears to have been done to grow grass suitable for playing football. Whereas the repair work by the first contract would not have entailed laying earth on the entire field rather the earlier contractor would have done only some patchwork for the damages on the field due to rains. Thus in order to accomplish these works there was a need of another contract. Therefore, how in such an event the matter can be deemed as mala fide is also not elaborated by CVO/OFB.

11. Though it is visible that aberrations did occur in the development of football field as observed in the comments of OFB Vigilance and CVO/OFB, nevertheless considering the opinion of DGOF & Chairman/OFB and the doubts raised above as to whether there was any mala fide intention on the part of above 08 suspected officials in the case the following action against the officials held responsible is proposed:

S.No.	Name & Designation	Action proposed
1.	Shri R.S. Jha, the then AGM/OFAJ (now GM/OFAJ)	Minor Penalty (being the senior most official and as head of civil works he is primarily responsible for the aberrations noticed in the case)
2.	Shri Sanjay Gupta, Jt.GM	Recordable Warning
3.	Shri Rajesh Agarwal, Jt.GM	Recordable Warning
4.	Shri M.K. Maurya, DGM	Recordable Warning
5.	Shri P.S. Kulkarni, AWM	Recordable Warning
6.	Shri R. Venkat, HoS	Recordable Warning
7.	Shri R.W. Kalbandhe, JWM	Recordable Warning
8.	Shri S.B. Ghate, JWM	Recordable Warning

"No action" is proposed against other officials of the case who have been mentioned in the complaint and whose role have been examined by the investigating officer and OFB Vigilance but were not held responsible for the aberrations noticed in the case.

7. Ld. counsel for the applicant would vociferously urge that applicant's strong and succinct denial of the allegations which were factual in nature, made it imperative for the respondents to hold a regular enquiry to unearth the truth, after allowing the applicant to refute the allegations on the basis of examination, cross examination and placement & perusal of orders. The conduct of the respondents in fixing liability through vigilance, ignoring the observation of the DGOF smacks of arbitrariness and vindictive attitude to mar the chances of promotion of the applicant. He would strongly condemn the manner in which the penalty has been imposed.

8. By way of appeal preferred by the applicant on 31.08.2018 the applicant had prayed for an enquiry in terms of Rule 16(1)(b), but the Appellate Authority has failed to address why such enquiry was not necessary. Rule 16(1)(b) of CCS(CCA) Rules reads :-

"Procedure for imposing minor penalties

"1. (b) holding an inquiry in the manner laid down in sub-rules (3) to (24) of rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;"

9. In the aforesaid backdrop, having noted the DGOF and Chairman, OFB's observations, the denial of the applicant, the penalties imposed upon other officers and the law laid down in **O.K. Bharadwaj's case**, we are of the considered opinion that the allegations being factual and grave and the applicant ought to have been allowed the opportunity to justify his action. The respondents ought to have resorted to an enquiry in terms of Rule 16(1)(b) of CCS(CCA) Rules, as quoted supra.

10. Accordingly we quash the penalty order with liberty upon the respondents to act in accordance with law. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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