

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/00767/2018

DATED THIS THE 27th DAY OF NOVEMBER, 2019

**HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

Sri.A.R.Pawar
(Staff No.13727)
Aged 63 years
S/o. Ramdas Pawar
Retired AGM
O/o the PGM Amravati SSA
PIN-444 602.
C/o.Hrushiksh Garud
Flat No. FG-2, Oasis Breeze
6th Main Road, 'D' Block
AECS, Kundanhalli Gate
Marathahalli
Bengaluru-560 037.

....Applicant

(By Advocate Sri N.G.Phadke)

Vs.

Union of India
Represented by the Secretary
Department of Telecommunications
Ministry of Communication and
Information of Technology
Sanchar Bhavan
20, Ashoka Road
New Delhi-110 001.

....Respondent

(By Advocate Sri Vishnu Bhat)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN)

The factual matrix of the case is as follows:

The applicant joined the service as a Repeater Station Assistant on 5.1.1976 and retired on 30.6.2015 as Asst.General Manager(AGM), O/o. the PGMT, Amravati

SSA, PIN-444601. While he was working as Asst.General Manager, O/o the General Manager(Telecom)(GMT), Ahmednagar during 2000-2001, there was acute shortage of power which hampered the working of BSNL in Ahmednagar Telecom District and Bheed & Latur SSAs under the command and control of GM. There was hue and cry both from the Public as well as Parliamentarians about the total deficiency of service of the BSNL. Due to this emergent situation of power failures in Western Maharashtra, the then GMT of Ahmednagar Telecom District, who was also in charge of other districts namely Bheed and Latur, took timely steps to procure Engine Alternators(EA) during 2000-2001 to effectively meet the failure of Electricity Board to supply uninterrupted power to provide satisfactory service to the consumers and thereby made BSNL Ahmednagar alone to earn a huge increase in profit of Rs.14 crores during the said year. In the procurement of required Engine Alternators both the applicant as well as DGM have discharged their duties on the written orders of the GMT and under direct supervision and directions of the CAO/Internal Finance Advisor and have not committed any irregularities in the discharge of their duties. When the Post & Telecom Audit office, Nagpur submitted an audit inspection report as to the purchase of Engine Alternators(EA) made in the year 2000 alleging that undue benefit of Rs.24135115/- has been extended to the supplier, he gave replies dtd.27.5.2002 and 17.4.2003 on being approved by the then GMT Ahmednagar explaining the type of equipment procured with reasonable price and commensurate with the quality and requested to drop the Audit Objection. Then the Post & Telecom Audit Office accepted the same and admitted the expenditure incurred by a communication dtd.2.11.2004. The applicant submits that the CBI had recommended launching of prosecution against the five persons

including the applicant pertaining to the purchase of Engine Alternators(EA) during the year 2000 at Ahmednagar. The DOT proposed to initiate RDA against the applicant and Shri A.P.Bhat the then DGM(HQ). On enquiry by the CVC with both CBI and DOT, the CVC came to the conclusion vide letter dtd.1.9.2009 and corrigendum dtd.16.9.2009(Annexure-A1) that the CBI has not been able to prove that the rates of purchase of EA is high nor the quality of the supply is poor as all the 408 EAs procured by the GMT, Ahmednagar were utilized in the newly commissioned exchanges and in other exchanges. It is of the view that evidence of criminality has not been brought out in adequate measure to justify prosecution, however, procedural lapses and tendency to extend the scope of procurement have been brought out, which warrant initiation of major penalty proceedings against the officials involved in the case. Hence, CVC advised DOT to initiate major penalty proceedings against the applicant, Shri A.P.Bhat and Shri D.M.Sudake, the then CAO. It was advised not to launch prosecution against Sri V.Krishnakumar, the then GMTD & Sri N.K.Sukumaran Nair the then CAO who have since retired. Strangely, the DOT had recommended stern administrative warning against the CAO, Shri D.M.Sudake who was internal Finance Advisor to the GMT and he was also one of the members of TEC with respect to the procurement of 10 KVA, 12.5KVA & 25KVA EAs. The respondent in pursuance of the advice tendered by the CVC, issued a memorandum dtd.30.3.2010(Annexure-A2) against the applicant with the following article of charge:

1. That, the said Shri A.R.Pawar, while functioning as Asst. General Manager, O/o. General Manager, Ahmednagar Telecom District, during the period 2000-2001, and as a Member of the Tender Evaluation Committee, irregularly recommended purchase

of 10 KVA, 12.5.KVA, 25 KVA, 32.5 KVA and 62.5 KVA (Engine Alternator) sets for total sum of Rs.9,66,51,000/- from M/s. Kala Enterprises and M/s. Kala Gensets Pvt. Ltd. and there by abused his official position as public servant to causing wrongful gain of Rs.9,66,51,000/- to Shri Manoj Phutane and Shri Sanjay Phutane of the said firms and corresponding loss to the BSNL.

2. Thus, by his above acts, the said Shri A.R.Pawar committed grave misconduct, failed to maintain absolute integrity and devotion to duty, and acted in a manner unbecoming of a Government Servant, thereby contravening Rule 3(1)(i), (ii) and (iii) of the CCS(Conduct) Rules, 1964.

2. The applicant denied the alleged charges stating that he has not abused his position in discharge of his duties. He dutifully followed the instructions of his superior i.e. GMT. The article of charge is about the recommending of purchases by the applicant as a AGM and member of TEC only. Whereas the purchases of 17 engine alternators cost of 31 lakhs as per the quotation received by M/s.Kala Genset and as directed by GM at that time is not a part of article of charge at all. As such, whole data with respect to these purchases and conclusions there under are totally extraneous to article of charge. It deliberates on the proposals made by the applicant in the capacity of AGM and member of TEC. The proposal for emergent purchases is not made as a member of the TEC. The process of purchase was carried out as per the written order of the GM who indicated that it is purchase of emergent nature. With respect to DOT letter communicating the parliamentary committee report and the action taken report on issue of providing EAs to all exchanges, the GMT Ahmednagar has taken an initiative and directed his staff to procure engines for all exchanges. Even though 'ban' letter is put up, the GM had categorically instructed to go ahead with tender to procure the

required EAs. The applicant was required to follow the written instructions of the GM and hence he could not oppose it especially when there is urgency of requirement with respect to field situation. The applicant submits that against his noting to get permission from circle office for purchasing '3KVA EA' which is a banned item, either by getting approval from CGM or to go ahead with the tender', the GMT has remarked that '*during the visit to MBI on 1st December 2k the CGMT has told that he had already instructed to convey approval. So we may go ahead calling tender*'. Accordingly, tender was called for. The same is the case of all other tenders where GM was insisting to float the tender either orally or in writing and subordinate officers are duty bound to follow his instructions. DOT letter naturally supersedes circle office letter. The respondent failed to take notice of this evidence and undermines it by saying that DOT wanted only statistics and no action is required for a letter seeking action taking note.

3. The Inquiry Officer(IO) was appointed to hold inquiry in to the article of charge. The Presenting Officer(PO) produced the statements of witnesses obtained by CBI which are taken as deposition of State Witnesses(SW) and they were tendered for cross-examination to be conducted by the applicant. But they were tutored by PO to depose as 'I am concerned with my statement only before CBI and hence no comments' or simply 'no comments' and have avoided to tell the truth in their depositions(Annexure-A3 to A7). The IO also failed to put questions to the SW though warranted to arrive at truth. The IO has taken deposition of Defence Witnesses(DW) and conducted cross examination of the applicant under the garb of general examination which is bad apart from establishing the prejudicial mind of the IO against the applicant(Annexure-A8 & A9). Defence documents produced before the IO are marked as Annexure-A10 to A12. The IO

has submitted his report dtd.17.1.2015(Annexure-A13) holding the charges as proved. The IO has totally ignored the unchallenged and uncontroverted defence evidence. He has also ignored deliberately, the deliberate avoidance of the SW to reply the relevant questions put to them by the applicant in the cross examination and also fact of submission of 3 tenders by M/s.Brahme, who had submitted 3 demand drafts towards the BSNL, Ahmednagar for EMD, and he is signing the cheque for EMD, which has destroyed the allegation of forming a cartel against the suppliers. Against the IO's report, the applicant has submitted representation dtd.9.12.2015(Annexure-A14). The UPSC vide letter dtd.21.9.2017(Annexure-A15) observed that the allegations against the CO(applicant) that he had processed proposals for purchase of EAs of different capacities in violation of prescribed purchase procedures i.e. without calling of bids/quotations in some cases and without noting that the bids received in some other cases were manipulated and were submitted in cartel formation, thus causing wrongful gain of Rs.966.51 lakhs to the vendor(s) and corresponding loss to BSNL and advised the respondent to impose penalty of withholding of 25% of pension admissible to the applicant for a period of 5 years to meet the ends of justice. Against the same, the applicant submitted representation dtd.15.12.2017(Annexure-A16). As per the advice of the UPSC, the respondent by order dtd.31.01.2018(Annexure-A17) has imposed the penalty arbitrarily and unjustly. The UPSC also fell in error in ignoring the relevant evidence both oral and documentary at Annexures-A8 to A12 while advising the respondent in its letter. Thus both IO and UPSC are modifying the article of charge to their convenience for recording in their statement that the department incurred a loss of Rs.9.66 crores and then continuing their deliberations. Without any stretch of

imagination, total cost of engines itself cannot be a total loss. No iota of evidence was placed in the inquiry or before the UPSC to show the prevailing rate of EAs in 2000 which is less than the EAs purchased by the GM. The respondent has come to a vague conclusion in the penalty order dtd.31.1.2018 that the applicant has caused the wrongful gain to the suppliers and corresponding loss to the BSNL, without specifying any figures. Time and again the respondent says that the BSNL has suffered loss without any basis. Increase in revenue was possible because enough power supply was maintained due to the procurement of EAs to increase number of telephone connections. Because of commissioning of these engines and exchanges, total transformation has been brought out in the areas served by Ahmednagar Telecom District where out of 330 exchanges only 21 were having EAs earlier i.e. less than 10% exchanges were having engines. Situation is no better in Bheed or Latur SSAs for which the same GM was in charge. The electrical wing had miserably failed to provide the required engines to all exchanges. The set procedure has been set aside to meet the exigency of the grave situation faced by the BSNL while purchasing 17 EAs to the extent of Rs.31.53 lakhs on the written directions of the GM issued to procure the EAs as per the quotation submitted by the firm, which the applicant has processed in the capacity of DGM and not as a member of TEC. He had no authority of whatsoever to ignore the written direction of the GM being his subordinate. That apart, the GM's responsibility for such a purchase was sole and indivisible under the Rules as held by this Tribunal in OA.No.356/2005(Annexure-A18). The said decision by this Tribunal is binding on the respondent who was a party in the said OA. Under any stretch of imagination, the applicant could be held responsible. The respondent deliberately holds the applicant responsible for someone's

responsibility. On the UPSC's observation that 'the purchases processed and recommended by the applicant were outside the delegated powers of the GM, which he failed to point out, the applicant submits that there was no charge in article of charge or in imputation of misconduct that he has failed to point out. The allegation now made is purely outside the charge memo and the applicant has not been given any opportunity to rebut and defend the said issue during the inquiry also. Hence, it should not be considered by the respondent in deciding the alleged charge as the said matter is extraneous. Further he stands by the statement that it is GMT's power and has to be exercised by him in consultation with IFA. Sri D.M.Sudake in the capacity of IFA and CAO had recommended that 'as GM has financial powers up to Rs.1 crores in each case in awarding of work to the lowest tenderer through open tender, he may explore the possibility of restricting the purchase on one occasion up to Rs.1 crores'. The GM has also approved the same. But the respondent exonerates the finance adviser (CAO & IFA) who was required to guide the GM as to his financial powers under the rules. In the imputations of misconduct, it is quoted that 'the officers failed to notice that there was no competition among the bidders and due to which the EAs were purchased at the rates quoted by the firms without any negotiation'. The term officers in the allegation is meant for all officers of TEC of which finance member Sri D.M.Sudake has already been exonerated by the respondent and concluding only two officers were at fault by the respondent tantamount to bereft of reasons. The respondent has incorrectly stated that all violations are agreed by the applicant but it is not clear as to what violations they are referring to. He is bound to follow the CCS conduct rules. When the action is done as per superior's instruction, it does not constitute misconduct as per conduct rules itself. It is

totally wrong to say that the applicant is taking the shelter of conduct rules. The conclusion of the respondent that bids submitted by some firms were manipulated and managed by suppliers is based on surmises and conjectures and the TEC had no inkling of the same. Since the rates quoted by L1 bidder are reasonable, the committee has recommended for it. The concept of cartel does not arise. With the available documents and data before TEC it is almost impossible to find out about the inter connections, if any, of the tenderers, cross holdings, persons signing the document in the bidder office after the firms having taken the tender forms etc. The aim of tendering is to get the good quality materials with a reasonable cost. That has been achieved as per the CVC advice which states that the rates are reasonable and the CBI has also not established that rates are higher nor the quality of the supply is poor. The UPSC's incorrect observation has been accepted by the respondent that the applicant failed to notice that there was no competition and EAs were purchased at the rates quoted by the firms without any negotiation and that the basis of estimation of the cost of EAs to be procured through invitation of bids cannot be considered as realistic. The concept of negotiation with vendors has been banned by CVC itself. Negotiation tantamount to hobnobbing with vendor. Hence, charge that negotiation should have been done is not acceptable and is against the spirit of CVC especially when the rates quoted are reasonable. The respondent has concurred with the UPSC observation that the purchases were made without assessing the actual requirements. The said charge is not sustainable as all the EAs purchased had been put to use. All the 391 engines were commissioned which shows the requirements were assessed. The conclusion of the respondents in the impugned orders is not based on any admissible evidence

and is purely speculative. The respondent took 18 long years to conclude the unjust action against the applicant which made him to suffer both mentally and financially for no fault of his. Being aggrieved by the action of the respondents, the applicant has filed the present OA seeking the following relief:

- i. *Quash the impugned order No.8-69/2009-Vig.II dtd.31.01.2018 at Annexure-A17 issued by the respondent.*
- ii. *And grant such relief(s) to the applicant on the facts and circumstances of the case with all the consequential benefits with costs, in the interest of justice.*

4. Per contra, the respondent has submitted in the reply statement that the applicant being a member of the Tender Evaluation Committee(TEC) during the period 2000-2001 irregularly recommended purchase of Engine Alternators(EAs). Thereafter the CBI investigation was taken place. The respondent consulted CVC and after due deliberations, CVC gave its advice on 1.9.2009 and subsequently on 16.9.2009. Thereafter, the case was processed for issue of charge memorandum which was issued to the applicant on 30.3.2010. IO and PO were subsequently appointed on 24.6.2010. However, the first IO expressed his unwillingness to conduct inquiry and hence another IO was appointed on 17.9.2012. The handing over of prosecution documents and defence documents to the applicant took time. It may be stated that there were 141 prosecution documents. The IO submitted his report to the department on 17.1.2015 and the same was processed and sent to the applicant on 28.9.2015 but he received the same on 7.12.2015. Then the applicant submitted representation dtd.9.12.2015. With the approval of the Disciplinary Authority(DA), the case was sent to UPSC for their statutory advice on 13.7.2016. However, UPSC pointed out some deficiencies which were sorted out and the case was again taken up with UPSC.

The UPSC again pointed out some deficiencies and the same was soon sorted out and was taken up with the UPSC on 29.8.2016. The UPSC vide their communication dtd.30.9.2016 again pointed out that considerable number of pages in RUDs were not legible and sought for legible and authenticated copies of pages on 6.1.2017. CBI conveyed their reply on 29.6.2017. Thereafter, UPSC was again approached for their statutory advice on 6.7.2017. UPSC vide their letter dtd.21.9.2017 tendered their advice. The UPSC advice was sent to the applicant on 17.10.2017 for representation. The applicant vide his letter dtd.18.11.2017 sought additional one month time for submission of his representation on the UPSC advice. The representation dtd.15.12.2017 submitted by the applicant was received in the department on 21.12.2017. Thereafter the disciplinary case was duly processed and a penalty order was issued on 31.1.2018. Further, the letter conveying the release of gratuity to the applicant was issued on 13.3.2018. The averment of the applicant that the State Witnesses(SW) were tutored by PO to depose as 'I am concerned with my.....' is denied as their deposition took place as per the laid down procedure. The depositions of all SWs were also duly signed by the applicant in addition to signatures of IO, PO and SWs. The applicant has now raised the issue as an afterthought though he did have full opportunity to raise the issue at the stage of taking depositions of SWs during the course of departmental inquiry. The IO conducted the inquiry as per the procedure. Applicant was given due opportunity to substantiate his position during inquiry as per procedure. Defence documents bearing Exhibit No. D-1 to D-6 were taken on record in the departmental inquiry. The defence documents are related to audit objection and list of telephone exchanges etc. and do not prove that the applicant is not guilty. On the basis of

analysis and assessment of documentary and oral evidences adduced during the inquiry as well as related facts and circumstances relevant to the case, it was found during inquiry that the then CGMT(SW-1) in his statement recorded by CBI, which he confirmed during the course of inquiry, stated that he had directed vide his letter dtd.14.7.2000 that EAs required for small exchanges (256 lines) may be procured locally and these orders were in relaxation to the existing orders. The relaxation was applicable only up to 31.3.2001 which was subsequently extended up to 30.6.2001. The relaxation was available only for newly commissioned telephone exchange of 256 lines(small exchanges) and he also informed that for a small exchange of 256 lines, the EAs required were between 5KVA and 7.5 KVA, but not more than 7.5KVA. He categorically told that for making purchases, prescribed procedure was required to be followed and no relaxation was allowed in this regard by him. Thus it is evident that there were no directions for local purchase of EAs in excess of capacity of 7.5 KVA whereas purchases made in the case were in the range of 10KVA to 62.5 KVA. It was also found out that based on the single quotation of M/s Kala Gensets, 17 EAs(8 Nos of 10 KVA, 1 No of 25 KVA, 4 Nos of 10 KVA and 4 Nos of 12.5 KVA) were procured from M/s Kala Gensets on single quotation basis without following prescribed procedure i.e. by invitation of tenders etc. The procurement was processed by the applicant. It is also found that against the tender for procurement of 60 Nos of 10KVA EAs, actual procurement was 120 Nos which is double the quantity of tender. Against the tender for procurement of 40 Nos of 12.5 KVA EAs, actual procurement was 166 numbers, which is more than 4 times of tendered quantity. Against the tender for procurement of 25 Nos. of 25 KVA EAs, actual procurement was 95 numbers, which is about 4 times of

tendered quantity. This certainly proves gross irregularity violating the procurement procedures and powers whereby quantities in excess of the tendered quantity were purchased. It was also found that there were dummy bids submitted and managed by forming a cartel, thus fair play and competition in tender was missing. The applicant failed to exercise due diligence right from the receipt of letter from M/s.Kala Gensets to floating and finalizing of tenders. Therefore, the total purchase more than worth Rs.9 Crores were made without following laid down procedures which caused loss to the department. The applicant himself agreed to violation of purchase procedure in the name of necessity, emergency and the advantage of CCS(Conduct) Rules. The applicant's allegation of bias against IO is without any substance. During inquiry proceedings, he did not raise any issue of bias against the IO. The applicant failed to note that the bids received from M/s.Kala Gensets and M/s.Kala Enterprises were from sister concerns as the address as well as telephone numbers and fax numbers indicated on the letter heads of two firms as the same. This indicates that a cartel was formed while submitting bids by the two firms. It was established from evidences that the signatures of the bids of M/s D.B.Brahme & Sons and M/s Supra Engineers were not genuine. This leads to the probability that the bids submitted on behalf of these firms were manipulated and had been managed by the proprietors of M/s.Kala Gensets and M/s.Kala Enterprises to obtain the contract for supply of Engine Alternators. The grounds on which OA.No.356/2005 was allowed by this Tribunal is not relevant in this case and moreover the said OA was not filed by the applicant. UPSC is an independent constitutional body. When it was consulted it tendered its advice after thorough, judicious and independent consideration of all the relevant facts

of the case. The competent authority accepted the advice of the UPSC with due consideration and application of mind. Accordingly, in view of the above facts, the applicant is not entitled for any relief. Therefore, the OA is liable to be dismissed.

5. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that the delays in initiating and concluding the disciplinary proceedings are due to the deliberate negligence committed by the concerned. Had they applied their mind fairly, it was possible for them to come to a just decision early, rather, they are responsible for injustice suffered by the applicant. The respondents have submitted totally lame and unacceptable excuses for the inordinate delay committed by them. He submits that he has not abused his position as public servant. He has not caused even a rupee wrongful gain to M/s. Kala Enterprises and M/s.Kala Gensets. No cartel of bidders was taken place to the knowledge of the applicant. The IO has alleged that cartel of bidders was formal and dummy bids were submitted due to total non-application of mind. The acceptable evidence proves that there was neither cartel of bidders nor any dummy bidders. The applicant nowhere agreed that procedure was flouted in the purchase of EAs and all these purchases have been made in view of necessity to serve the customers effectively and properly. Not a rupee loss the BSNL has suffered by his action. In fact, the BSNL has earned profits. The IO ought to have assessed the evidence recorded in the inquiry by totally ignoring the evidence of those who had deliberately avoided to give answer to the questions posed to them in the cross-examination, which the IO did not do. And he did not peruse the positive evidence placed before him which resulted in miscarriage of justice. It is true that UPSC is an independent constitutional body. But, it is not a license to those who are required to discharge their duties honestly and properly. In the

present case, the persons who gave their advice and the competent authority have failed in discharge of its duty.

2. We have heard the Learned Counsel for both the parties and perused the materials placed before us in detail. The event related to the infraction in this case happened in the year 2000 and the charge memo was issued in the year 2010. The Inquiry Officer(IO) took five years to finalise his report and the department has finally issued the impugned order in the year 2018. In the meantime, the applicant had retired from service on superannuation. As noted by the applicant, the charge against him vide Annexure-A2 and the charge as noted by the IO vide Annexure-A13 are different as can be seen in the two Annexures. The Inquiry Officer in para-2 in page-2 of Annexure-A13 is mentioning that the charge was that while the applicant was working as Assistant General Manager in the Office of General Manager, Ahmednagar Telecom District during the period 2000-2001, in collusion with Shri V.Krishna Kumar, the then GM, Shri A.P.Bhat(applicant in OA.No.750/2018), the then DGM(HQ) and Shri N.K.Sukumaran Nair, the then CAO, he has committed gross irregularities in the matter of purchase of Engine Alternators. As a member of Tender Evaluation Committee etc., the applicant is stated to have abused his official position as a public servant and caused wrongful gain of Rs.96651000/- to certain persons belonging to certain firms and corresponding loss to the BSNL. The charge vide the memorandum dtd.30.3.2010 which should have been correctly reflected in the IO's report does not mention anything about collusion etc. but states the same wrongful gain to certain private individuals and corresponding loss to the BSNL. This itself is a clear example as to the preconceived nature of the report of the IO. As rightly pointed out by the applicant, the entire contract value itself is

stated to be the wrongful gain to the private persons and corresponding loss to the BSNL hinting as though the order and supply were never made and there was total fraud in the whole issue. The applicant has also objected to the inquiry officer's detailing the presenting officer's arguments in his inquiry report which is against the Rule 14 (23) (1) of the CCS(CCA) Rules. As rightly pointed out by the applicant, the IO's report shall contain only the articles of charge and statement of imputation of misconduct or misbehaviour, the defence of the official in respect of each article of charge, assessment of the evidence in respect of each article of charge and the finding on each article of charge and reasons there for. As already noted, even the detailing of the article of charge by the inquiry officer in his report is faulty. The detailing of the presenting officer's presentation and observations is also faulty. The inquiry officer proceeds along on the same lines and based on certain irregularities noticed in two of the tenderers being from the same address and being brothers etc., he has come to the conclusion that the whole tendering process is vitiated by a manipulated procedure. Thereby the inquiry officer comes to the conclusion that the charge of loss to the BSNL is proved. Nowhere in the inquiry report is there any mention about the fact of the rates for the equipment procured being unreasonably high or that the equipment procured for has either not been supplied or are found to be of poor quality or that there was any other defect with regard to the whole issue. In this regard, we also need to see the Office Memorandum from the Central Vigilance Commission(CVC) vide Annexure-A1. The CVC vide para-4 states as follows:

4. *Accordingly the CBI was asked to furnish above information, vide Commission's OM of even No., dated 13.7.2009. The CBI furnished their reply vide their letter no.DP 026 2009/7905/RC/50(A)/2005-Mumbai dtd 21.8.2009, which has been examined in the Commission. The information received, from the CBI & Commission's observations on the reply are briefly given below:*

- a. *Did the CBI verify the reasonableness of the price of the EAs based on the market survey & whether the price was found to be exorbitant?*

Reply & Obsn: - Regarding reasonableness of price of EAs the CBI informed that the reasonableness was verified. However no specific data has been given by the CBI & CBI has not been able to prove that the rates of the EAs were exorbitant.

- b. *Was the quality of the equipment procured found to be satisfactory & did the equipments give proper service for which these were procured?*

Reply & Obsn: - Regarding the quality of procurement, the CBI quoting two letters written by the AGM BSNL, to the supplier in Oct 2002, has concluded that 64 EAs were found defective. There are no details on this count & it appears that the CBI did not investigate this aspect.

- c. *Whether the EAs were actually utilized for the purpose for which the purchase was intended or they remained unutilized for the long periods.*

Reply & Obsn: - Regarding utilisation of EAs, the CBI has informed that only 180 sets were installed at new exchanges for which they were procured. Remaining 228 sets were utilized in other exchanges. It appears that even though the all the sets were not utilized in newly commissioned exchanges, no set remain unutilized.

- d. *As Shri V.Krishnakumar was also holding the charge of Latur & Beed SSAs, the requirement of these two SSAs was also found to be included in the tender, which was initially floated for Ahmednagar SSA only. The CBI should pinpoint if the purchase was within the actual requirement or was excessive. If excessive the role of the officers responsible should also be specified.*

Reply & Obsn: - Regarding the excess purchase against the requirement, the CBI has informed that the purchase was very much on the higher side. The reply shows that the purchase was also made for Beed and Latur SSAs also. However from the reply it is also seen that the sets did not remain unutilized.

3. Vide para-5, the CVC further elaborates as follows on the rates attached and equipment procured:

"After perusing the reports of the CBI and the proposal of the DoT, the Commission has observed that the CBI has not been able to establish that the rates at which EAs were procured were exorbitant & it is found EAs were also utilized in the existing exchanges, besides the newly commissioned exchanges. The commission is of the view that the evidence of criminality has not been brought out in adequate measure to justify the prosecution, however, procedural lapses & tendency to extend the scope of procurement have been brought out, which warrants initiation of major penalty proceedings against the officials involved in this case".

4. Finally, the CVC concurs with the proposal of the respondent Department of Telecommunications and advises for initiation of major penalty proceedings against the applicant and Sri A.P.Bhat who is the applicant in OA.No.750/2018 before this Tribunal, the then Dy.General Manager(HQ) and Sri D.M.Sudake, the then CAO and the member of the Tender Evaluation Committee along with the applicant. The CVC has also recommended that no sanction for prosecution is required in respect of Sri V.Krishna Kumar, the then GMTD and Sri N.K.Sukumaran Nair, the then CAO, who have since retired. In a further communication vide the corrigendum dtd.16.9.2009, the CVC recommends that only a stern administrative warning be given to Sri D.M.Sudake, the then CAO but recommends for disciplinary action against the other two members mentioned in their original communication dtd.1.9.2009. As rightly pointed out by the applicant, Sri Sudake who was the CAO and also the IFA to the GM and a member of the Tender Evaluation Committee along with the applicant was let off with the stern warning whereas a major departmental proceeding was continued against the applicant along with the applicant in the other related OA. As pointed out by the applicant, if Sri Sudake is to be given a stern warning in the same issue wherein there were only certain procedural lapses finally arrived at, what was the need for major disciplinary proceedings against the applicant and the applicant in other OA is not clear. We also make a mention of the fact that in all

the cases referred to, the then GM has given approval for the same and no further action has been taken against him apparently on the ground that he had since retired. The reasoning and the rationale for taking the decision at that time has been explained in detail by the applicant at several stages during the proceedings i.e. first before the CBI and thereafter before the inquiry officer of the respondents. The fact of there being very frequent power cuts in Maharashtra State at that time, the issue of instructions on providing continued power supply in all the exchanges by both the Minister for Telecom as well as by the Parliamentarians and following up of the same by the Ministry itself in order to ensure better service to the customers of the respondent organisation are all not in dispute. The fact that the revenue of the concerned divisions were not only protected but also improved upon due to the timely action taken by the applicant as well as by the General Manager concerned is also not in dispute even though the inquiry officer tries to say that the increased revenue is because of additional lines and not necessarily because of the purchase of equipment in the particular case. It is ridiculous to assume that without adequate power supply, the services could be maintained and revenue could be improved. Additional customers would come only if the service is maintained up to a satisfactory level which was not possible at that point of time because of the frequent power cuts. The applicant has also established very clearly that the local level purchases were resorted to only since the centralised purchase mechanism was not able to deliver the required equipment in time. It is also not in dispute that the suppliers of the equipment were dealers of the standard quality equipment which they had been supplying to many other regions. The respondents have not produced an iota of evidence to show in their inquiry report and further proceedings with the UPSC

etc., that there has been any over invoicing or fictitious billing to justify the claim that there has been a wrongful gain to the agents/parties who supplied the equipment and corresponding loss to the BSNL. Further as already noted, the Central Vigilance Commission did not point out any defect in the supply made and in fact the equipment was used not only in the particular region but also elsewhere. The only point which the inquiry officer could come up with and say is that additional orders were placed beyond the tender and if that had been part of the tender, better prices could have been obtained. This is only a hypothetical point and in fact at a time when several regions were facing power cuts, it could also be argued that if additional supply was required, the suppliers could have enhanced the prices also since they have to compete with other requirements for the same standard equipment. In other words, a hypothetical point is highlighted to victimise the applicant. It is also pertinent to take note of Annexure-A8 where a completely unconnected person who was functioning as a DGM(Finance) in the respondent organisation in a different area has also deposed categorically relating to the fact that what was done at that time was critically required in view of the power situation and the minor procedural lapses noticed should not be held against the applicant when he had strived hard to not only maintain the reputation of the respondents but also ensured that it is expanding the revenues as well as protecting the existing revenue. In fact in his deposition, the defence witness DW 1 had finally come to the conclusion that an additional Rs.26 crores was earned by the respondents by way of provision of Engine Alternators. Even the UPSC in its final advice could only infer that there could have been loss since there were certain doubts about the agencies which had supplied and about certain signatures not being found as authentic etc. It is obvious that the UPSC

has come to the conclusion without any direct evidence and it merely states that since the prices at which the purchases had been made were not competitive (in the sense that there were some lapses in the tenders from two firms with the same address etc.), it can be inferred that the action of CO resulted in undue financial benefits for the tenderers and corresponding loss to the department. This is clearly unacceptable since we cannot infer any loss unless it is conclusively established that the rates obtained in the tender are exorbitant or much beyond what was the real price and that there was collusion among all the officers concerned including the Accounts Officers who are primarily responsible for pointing any errors in the procedure. Further the applicant has also pointed out that a similar exercise was done with respect to the tenders worth Rs.2.41 crores wherein certain audit observations were made relating to some of the same equipments as noted in Annexure-A10 which was replied to in detail vide communication dtd.27.5.2002 from the office of the applicant and the then GM had also given in detail about the consideration of the prices to establish whether they were reasonable or not vide his letter dtd.17.4.2003 and the same had been accepted by the audit vide Annexure-A11. To sum up, it is clear that the respondents took an unacceptably long time to take disciplinary action against the applicant for a purchase that was made in the year 2000. The inquiry officer took 5 years to complete the proceedings after issuance of charge memo which itself took 10 years to get issued. The final punishment is meted out in 2018 much after the retirement of the applicant. There is no whisper any where relating to the fact that exorbitant prices were given in the tender causing wrongful gain to the suppliers and corresponding loss to the respondent organisation. All the equipment purchased has been put to use resulting in substantial increase in the

revenue of the respondents. Even the UPSC, because of certain lapses in the procedure, infers that certain loss could have been caused. The entire purchase value is considered as wrongful gain which under any circumstances cannot be accepted. Without an iota of proof relating to the prices or supply, the respondents have gone ahead and punished the applicant vide the impugned order at Annexure-A17. It is also seen that both the final approving authority namely the GM and the Accounts and Finance officer primarily responsible for pointing out any error or lapses in the procedures have both been let off. We, therefore, deem it appropriate to quash the impugned order at Annexure-A17 and direct the respondents to issue necessary orders for revising the retiral benefits including the pension of the applicant within a period of two(2) months from the date of issue of this order. Whatever recoveries have been made in the interregnum should also be refunded to the applicant within the above said period including the interest at the GPF rate for the entire period.

5. The OA is allowed with the above. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00767/2018

Annexure-A1: OM dtd.1.9.2009 issued by CVC, together with corrigendum dt.16.9.2009
Annexure-A2: Memorandum dtd.30.3.2010 U/R 14 of CCS (CCA) Rules, 1965

Annexure-A3: Deposition of Shri Harikrishna Iyer Sundereshan – SW- 1 before the IO
Annexure-A4: Deposition of Shri Rajeev Dhondo Brahme – SW-2 before the IO
Annexure-A5: Deposition of Shri Vijay Prahlad Naphade – SW-17 before the IO
Annexure-A6: Deposition of Shri Shivaji Madhava Rao Thorat – SW-20 before the IO
Annexure-A7: Deposition of Shri Shankar Kishan Ghuge – SW-21 before the IO
Annexure-A8: Deposition of Shri T.N.Suryaprakasham – DW-1 before the IO
Annexure-A9: General Examination of the applicant by the IO
Annexure-A10: Defence Document No.1
Annexure-A11: Defence Document No.2
Annexure-A12: Defence Document No.3
Annexure-A13: IO's Report dtd.17.01.2015
Annexure-A14: Applicant's representation dtd.9.12.2015 against the IO's report
Annexure-A15: UPSC's Advice dtd.21.9.2017
Annexure-A16: Applicant's representation dtd.15.12.2017
Annexure-A17: Impugned order dtd.31.1.2018
Annexure-A18: Order dtd.24.11.2006 in OA.No.356/2005

Annexures with reply statement:

-NIL-

Annexures with rejoinder:

-NIL-
