

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH, KOLKATA**

**LIBRARY**

O.A. 1325 of 2013

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

Shri Amarjit Singh,  
Son of Late Attar Singh,  
Aged about 65 years,  
had been working for gain as  
Senior Deputy Director General  
under the DGOF & Chairman,  
Ordnance Factory Board,  
Kolkata, (Since superannuated with  
effect from 30.04.2008),  
residing at T-19, Merlin Green,  
Diamond Harbour Road,  
P.O. Kriparampur,  
District — South 24 Parganas,  
West Bengal.

..... Applicant.

Versus

1. The Union of India  
Service through the Secretary,  
Ministry of Defence,  
Department of Defence Production,  
Having its office at South Block,  
New Delhi — 110 011.
2. Ordnance Factory Board  
Service through the DGOF & Chairman,  
Ordnance Factory Board,  
10-A, S.K. Bose Road,  
Kolkata — 700 001.
3. The Under Secretary  
to the Government of India,  
Ministry of Defence,  
South Block,  
New Delhi — 110 011.
4. The Desk Officer,  
Department of Defence Production,  
Ministry of Defence,

New Delhi – 110 011.

..... Respondents.

For the applicant : Mr. N.P. Biswas, Counsel

For the respondents : Mr. L.K. Chatterjee, Counsel  
Mr. A. Mondal, Counsel

Date of Order : 27-9-19.

**ORDER**

**Per : Bidisha Banerjee, Judicial Member**

Aggrieved with a penalty of withholding 10% of monthly pension for a period of 2 years, the applicant a retired General Manager Ordnance Equipment Factory has preferred this O.A. to seek the following reliefs:

"8.a) An order/ direction do issue to cancel, withdraw and/ or rescind the impugned order No. Order No. 13024/10/Vig.I/07/D(Vig.) dated 22.04.2013, issued by the Desk Officer, by order and in the name of the President, imposing upon the applicant a penalty of "withholding 10% (ten percent) of the monthly pension, otherwise admissible to him, for a period of two years" and as contained at Annexure – "A/9".

b) An order/ direction do issue to cancel, withdraw and/ or rescind the impugned Memorandum of Charges issued vide No. 13024/10/Vig. 1/2007/D(Vig) dated 28.04.2008, by the Under Secretary to the Government of India, Ministry of Defence, New Delhi – 110011, alleging that the applicant exhibited lack of integrity and devotion to duty and thus acted in a manner unbecoming of a Govt. Servant and thereby violated provision of Rule 3 (1)(i),(ii) and (iii) of CCS (Conduct) Rules, 1964 and as contained at Annexure – "A/3".

c) To direct the respondent authorities and each of them, their agents and/ or subordinates, to forthwith pay the terminal dues as the applicant is entitled to immediately after superannuation, but for the disciplinary action.

d) To direct the respondent authorities and each of them, their agents and/ or subordinates, to forthwith pay interest on the terminal dues withheld since the date of superannuation to the date of their actual payment.

e) To direct the respondents to produce the entire records of the cases before this Hon'ble Tribunal for adjudication of the points at issue.

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- f) Costs pertaining to this application.
- g) And/ or to pass such order or further order or orders and/ or direction or directions as this Hon'ble Tribunal deem fit and proper."

2. The following legal lacunae in the conduct of the disciplinary proceedings have been alleged by the applicant:

*"The order of the Disciplinary Authority imposing the penalty upon the applicant is cryptic, non-speaking, without proper application of mind, arbitrary and against the principles of natural justice and therefore, illegal and deserves to be quashed and set aside on this ground alone."*

*"The alleged charges of violation of Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964, against the applicant as contained in Memorandum dated 28.04.2008 are vague, baseless, arbitrary, mala fide and illegal and therefore, deserve to be quashed and set aside."*

*"The charges as contained in the Memorandum dated 28.05.2008 have been made against the applicant without application of mind and by misconstruing the rules, regulations and instructions guiding the subject matter and thus, the charges are without any justification, and therefore, arbitrary and unlawful."*

*"There is no allegation that the exercise of delegated power as Head of Department by the applicant was actuated by any corrupt motive or an improper motive to oblige someone or to take revenge on someone and in that circumstances, for such bonafide action taken in good faith and in the best judgment, no disciplinary proceedings lie against the applicant."*

*"A practice adopted for a considerable time, which is not violative of the Constitution or otherwise bad in law or against public policy can be termed good in law as well."*

*"It is settled principle of law that misconduct has to have some elements of delinquency Performance of duties which may have no element of unlawful behaviour, wilful in character, improper behaviour, misdemeanour, misdeed may sometime amount to not carrying out duties efficiently, but cannot be construed to be misconduct."*

*"No incidence of dishonesty has been alleged against the applicant, nor there is any allegation that the applicant has done anything with the intention of causing wrongful gain to any person or wrongful loss to any other person and therefore, the charge of 'failure to maintain absolute integrity' is totally baseless, arbitrary and illegal."*

*"The expression 'devotion to duty' means commitment to the task assigned and denote something opposed to indifference to duty or easy-going or light-hearted approach to duty. The applicant, having remained within the limit of delegated power, followed the precedents, rules and regulations scrupulously, taken decision in his best judgment and having acted in*

*bonafide and in good faith cannot be said to have not maintained devotion to duty and there being no instance of any type of indecent, improper, unsuitable, indecorous, reprehensible, or abominable conduct against the applicant, the applicant be said to have done something which is unbecoming of a Government servant and therefore, the charges under Rule 3(1)(ii) and (iii) of the CCS (Conduct Rules, 1964, as leveled against the applicant are totally vague, baseless, arbitrary and thus, unsustainable in the eyes of law."*

*"No witness has been cited or produced on behalf of the prosecution either to prove the documents or to sustain the charges. The entire allegations are based on suspicion, surmises and misconstrual of rules and regulations."*

*"The Inquiry Officer after objective analysis of the evidence adduced during the inquiry have held that all the Articles of Charges are 'Not Proved.'"*

*"Yet the Disciplinary Authority, in flagrant violation of the prescribed procedures and principle of natural justice, has obtained the Second Stage Advice of the CVC without furnishing the defence/representation of the C.O. and thus, not only the D.A. became biased and pre-judged the issue but also deprived the applicant a reasonable opportunity of rebuttal and thereby influenced the CVC to render an illegal and biased 2<sup>nd</sup> Stage Advice. The post decisional opportunity allowed to the applicant has no legal standing."*

*"The Disagreement Memo issued by the Disciplinary Authority is not based on the evidence adduced during inquiry, but based on suspicion, surmises and conjectures. The Disciplinary Authority has not cited any evidence on record which could negate the conclusions reached by the Inquiry Officer on a logical and objective analysis of evidences adduced during the inquiry. The Disciplinary Authority has held the charges as proved not on cogent, reliable and legal evidences but on mere ipse dixit of the Disciplinary Authority."*

*"There was no charge of 'Grave misconduct or negligence' in the Memorandum of Charges, the entire proceedings, after the superannuation of the applicant w.e.f. 30.04.2008, has become unsustainable and infructuous."*

*"The Disciplinary Authority illegally replied upon the advice of the UPSC in violation of the principle of natural justice, particularly when the UPSC has assumed the role of prosecution, introduced fresh allegations and held that the acts of the C.O. constitute 'grave misconduct', an allegation which does not contained in the Charge Sheet and has advised illegally to impose 10% cut in the monthly pension for a period of two years."*

*"Unexplained delay of five years after superannuation of the applicant has caused severe prejudice to the applicant and the penalty is shockingly disproportionate considering the huge financial loss incurred and mental agony sustained by the applicant during this prime time of his retired life."*

*"Malice of law and malice of fact are patent from the face of the records of the case."*

3. The nature of indictments against the applicant as evident from the statement of imputations, are as infra: (emphasis added)

"Statement of Imputation of misconduct or misbehaviour in support of Articles of Charge framed against Shri Amarjit Singh, ex GM, OEFHZ, now Sr. DDG/OFB.

During 2004-05 and 2005-06, 27 development orders were place for manufacture of certain 6 items. The details of these development orders are given in the Enclosure to Annexure – II.

2. The above 27 development order were placed by following a definite modus operandi, which is as follows. An application is received from a firm indicating that it can carry out certain tasks at a particular rate. But nothing is on record to show how the application was received from the firm and on what basis the application was accepted by the factory. Based on this application, a noting is put up for placement of development order for a value below Rs. 5 lakh on that firm. In the instant 27 case all the notings were routed through DGM/PV and concurred by the A.O. In wr out of the 27 cases (all cases except at Sl. Nos. 5, 6 & 16 of Enclosure to Annexure-II), Notings were approved by Shri Amarjit Singh in his capacity as General Manager, OEFHZ for placement of supply orders.

3. Further, as part of the modus operandi, computerized supply orders were generated giving false information about dated of the issue and opening of Tender Enquiries, as no TEs were floated in these 27 cases. In fact, in all cases the date of unsolicited application received from the firm was termed as date of TE to make up records for generation of computerized supply order. The grossness of the manipulation is evident form the fact that in all the 27 cases the date of application received from the firm is prior to date of issue of TE.

4. The above modus operandi was in violation of the provisions of para 28.4.4 of OFB Material Management Manual. The said para stipulates a specific exercise for identification of new sources (firms) for placement of development order. According to this, first an advertisement will be issued for listing new firms, indicating the quantity that is likely to be placed as development order. Interested parties will have to furnish particulars of their capacity, experience in the field, details of supplies made to various parties, financial stading, IT certificate, Bank reference etc. Then, development orders will be placed on the basis of this advertisement.

5. In the instant cases, no such exercise as above was undertaken. The firms were identified in an arbitrary manner. No advertisement was issued to elicit response from likely suppliers. Development orders were placed on arbitrarily chosen firms, without verifying their credentials.

6. Further, even though there was definite requirement for each of these 6 items, their requirement was split into 27 development orders, instead of processing 6 procurement actions. This is evident from the manner in which development orders have been sequenced. In most of the cases 3 or 4 development orders for one item have been placed within a span of one or two months. IN some cases, 2 or 3 development orders have been placed for one item the same day. This clearly points to intentional splitting of the requirements, so as to bring the orders within the financial powers of General Manager for development orders.

7. The above irregularities are attributable to Shri Amarjit Singh, ex GM/OEFHZ, have approved the office note for placement of development order in each of the above 24 cases, in his capacity as GM, OEFHZ.

8. By the above acts of omission and commission, Shri Amarjit Singh, ex. GM/OEFHZ now Sr. DDG/OFB, has exhibited lack of integrity and devotion to duty and thus acted in manner unbecoming of a Government Servant and thereby violated Rule 3(1)(i), (ii) and (iii) of CCS (Conduct) Rules, 1964."

4. An extract of the enclosure to Annexure II reveals the following:

S N	SO NO. / SO DT / SO RATE SO VALUE	Item Code/Item Desc	Qty Supplied/ Rate/ Value / Firm Name	Firm Quotation Date / TE dt / TE Op Dt.
1	20040264	WJ00000423	2002	12.10.2004
	25-Oct-04	Fabrication of	14.35	25/10/2004
	10000	Trousers Drill	28729	25/10/2004
	14.35	(ICK)	Arihant Packers	
	143500			
2	20040307	WJ00000423	100	20.11.2004
	22-Nov-04	Fabrication of	15.50	22/11/2004
	30000	Trousers Drill	1550	22/11/2004
	15.50	(ICK)	Shivani Enterprises	
	465000			
3	20040318	WJ00000423	3500	09.11.2004
	01-Dec-04	Fabrication of	15.80	01/12/2004
	30000	Trousers Dis. (ICK)	55300	01/12/2004
	15.80		Ramanlal	
	474000		Jagannath & Sons	

The TE i.e. Tender enquiry date and the date of SO the supply order is same i.e. 25.10.04 whereas the date of quotation is 12.10.04 i.e. prior to opening of tender.

5. On 3.7.11 the applicant sought for a speedy decision, ~~due~~ as his wife was battling against cancer and for her treatment his retiral benefits ought to be released.

6. He preferred O.A. 1008/2011, which was disposed of on 4.4.12 with the following order:

*"11. We feel that the disciplinary proceedings concerning a person who has already retired from service cannot be tackled in the way it is done for a serving officer. A retired employee is a senior citizen and therefore, the respondents should have taken necessary action to finalize the case within the shortest period time. No case has been made out by the respondents that the applicant has not cooperated in the proceedings.*

*12. However, it is seen that the inquiry report is complete and the same has been submitted to the Disciplinary Authority as far back as 2009. The Ld. Counsel for the respondents stated that the respondents are in disagreement with the findings of the Inquiry Officer and disagreement note is made finalization in consultation with the CVC. We see no reason why a disagreement note cannot be finalized without further delay since report of the Inquiry Officer has come as far back as 2009. Three years is sufficient time for the respondents to have decided the matter in consultation with CVC. We, therefore direct the disagreement note of the Disciplinary Authority with the findings of the Inquiry Officer should be communicated to the applicant within three months of the date of this order positively. After communication, the applicant should reply to the same within a period of one month from the receipt of such communication. The Disciplinary Authority then should finalize the proceedings by giving orders for penalty or otherwise within a further period of one month from the date the reply from the applicant is received. We direct that this schedule should be arrantly complied with and there should be no further request from the respondents for concession.*

*13. With the above direction, the OA is disposed of: No costs."*

7. Vide order dt. 30.5.12 the applicant was furnished the disagreement note of the Disciplinary Authority, etc. as under:

*"The Inquiry Officer has submitted the Inquiry Report dt. 18.12.2009 with his findings as under:*

**Article I, : Not Proved**

Article II	:	Not Proved
Article III	:	Not Proved
Article IV	:	Not Proved
Article V	:	Not Proved

3. However, the Disciplinary Authority, tentatively decided to disagree with the findings of the Inquiry Officer due to reason as cited in the "Disagreement Memo" attached herewith. The Disciplinary Authority has tentatively held the Articles of Charges of Charge as under:-

Article I	:	Proved
Article II	:	Proved
Article III	:	Proved
Article IV	:	Proved
Article V	:	Proved

With these tentative views of the Disciplinary Authority, the case was forwarded to CVC for its advice, who have Advised imposition of suitable cut-in-pension of Shri Amarjeet Singh then GM/OEFHZ (retired as Sr. DDG, OFB) in agreement with Disciplinary Authority's tentative views.

4. **NOW, THEREFORE,** a copy of the Inquiry Report alongwith the "Disagreement Memo" and a copy of CVC's Second Stage Advice vide CVC's OM No. 005/DEF/053-175747 dated 23.05.2012 is hereby provided to Shri Amarjeet Singh, then GM/OEFHZ to make his representation/submission, if any, on the findings of Inquiry Officer, the "Disagreement Memo" and CVC's advice in writing within 15 days of receipt of this Memo, failing which, it will be presumed that he has nothing to say in the matter and the case will be processed on the basis of available information for orders of the Disciplinary Authority.

The disciplinary authority in his disagreement note (Annexure A-7) mentioned the following:

**"ARTICLE - I**

It is alleged that Shri Amarjit Singh, while functioning as GM/OEFHZ approved placement of 24 development orders in systematic violation of provisions of Para 28.4.4 of OFB Material Management Manual 1993 in placement.

While discussing the charge, the Inquiry Officer observed that the Charged Officer has utilized the powers delegated to him vide DE-7 (OFB letter No. 10/6/MM (P&C) dated 29.5.2002) & DE-8 (The Extract of Delegation of Financial powers, where GM has the power up to Rs. 5 lakh



for placement of Developmental Order) and the provisions of Para 28.4.4 of OFB Material Management Manual, 1993 were never operated in this regard and that his action cannot be called violation of any laid down provision. As such Inquiry Officer has concluded that the Article-I of charge that C.O. violated the provisions of 28.4.4 is not established.

Charged Officer has claimed that he has resorted to the route of placement of development orders as and when bulk order supplies failed DE-7 deals with source development through OTE and for development of special/critical items utilizing delegated power under point 8 of P/44 of Financial Power booklet of January, 2002. Under general remarks of Financial Power Booklet, it was mentioned that exercise of power listed in this section will be in accordance with guidelines/orders issued by OFB.

Para 28.4.1 of MM Handbook, 1983 (DE-1), para (C) mentioned that when total capacity of established sources is not adequate to meet requirement including contingencies that may arise due to failure of any source, source development should be resorted to. Provision of para 28.4.4 details methodology for source development through OTE.

Under the above scenario DE-7 which deals with special/critical items did not supersede the provisions under 28.4.4 of MM handbook, 1993 nor intended to. Charged Officer ignored provisions under 28.4.1(c) and placed development order as per DE-7 which is misuse of power though misleading interpretation since DE-7 is for development of special/critical items and not for general items like cloth stitching. DE-7 has no provision to deal with supply failure situation. Para 28.4.1(c) deals with supply failure situation. Provisions under DE-7 can not be generalised. Therefore, the findings of the Inquiry Officer is not agreed to and this charge is considered tentatively as "Proved".

## ARTICLE-II

It is alleged that Shri Amrjit Singh, while functioning as GD/OEFHZ approved placement of 24 development orders on certain firms, which were identified in a completely arbitrary manner.

While discussion the charge, the Inquiry Officer observed that the Charged Officer mentioned that firms collected information from Factory officials regarding criticality of requirement of particular item, due to supply failure of existing sources, capacity verified and order placed following OEF HQrs, guidelines communicated vide letter No. OEF/012/MISC/SP dated 11.03.2003 (DE-9) for placement of development orders on a particular firm after assessing certain aspects in one particular case of development pertaining to OCF Avadi. Similar process had been followed by the Charged Officer in placing development orders for fabrication job of various garments. The Court of Inquiry feels that pragmatic applicability of guideline for one item to others can be done by the Charged Officer, hence identification of firms was not arbitrary and Charged Officer did not violate any instructions. Inquiry Officer has concluded that Charged Article-II is not established.

DE-9 is not a guideline but a letter of instruction to a specific factory to place development order of a specific item on a specific firm, para 1 of which itself was violation of provisions under 28.4.1 of MM Handbook, 1993. However Charged Officer followed DE-9 instead of following provision under 28.4.4 of MM Handbook. Charged Officer also admitted about close inter-action between vendor and factory officials by providing space to the firms in the estate, in collecting information regarding shortfall of supply, submission of request for placement of sale orders and subsequent placement of orders on them which were systematic violation of transparency to be maintained. The methodology followed was non-transparent and inequitable. Therefore, the findings of the Inquiry Officer is not agreed to and this charge is considered tentatively as "Proved".

### ARTICLE-III

It is alleged that Shri Amarjit Singh, while functioning as GM/OEFHZ approved splitting of the requirement of the 6 items into 24 development orders in an irregular manner, so as to bring them within the financial powers of GM for development orders.

While discussing the charge, the Inquiry Officer observed that the Charged Officer pleaded that there is not embargo by any rule that more than one development order cannot be placed at a time is reasonable and in fact development of more sources would ultimately lead to better competition in future. The placement of orders for same items on different firms cannot be termed as splitting of quantity to bring procurement value within financial powers of GM. In view of the above the Inquiry Officer has concluded that charge is not established.

Although it is agreed that there is need to develop more sources but the procedure adopted by Charged Officers was not transparent and equitable and ... (not legible) orders were placed by splitting required quantity to decide within Charged Officer's financial power. Charged Officer placed 2/3 development orders for same item on a single day, thus splitting the required quantity. Para 28.4.1 to 28.4.4 of the Material Management Handbook, 1993 are the instructed method of source development and not by hand-picking vendors as appears done by Charged Officer when any one approaches him & that also without tendering. Thus, splitting of requirement to place orders under GM's power is clearly established. Therefore, the finding of the Inquiry Officer is not agreed to and this charge is considered tentatively as "Proved".

### ARTICLE-IV

It is alleged that Shri Amarjit Singh, while functioning as GM/OEFHZ, played a crucial role in the definite modus operandi followed to arbitrarily place supply orders as development orders in a series of 27 cases, by having approved placement of orders in 24 of these 27 cases.

While discussing the charge, the Inquiry Officer observed that Article-IV of the charges is the summation of first 3 Articles of charge. On the basis of assessment of evidence in Article I, II and III and no arbitrariness found in

placement of 24 development orders by Charged Officer, Inquiry Officer has concluded that this Article of charge is not established.

Charged Officer's mentioning that he followed DE-9 to approve placement of orders in 24 cases is misleading. DE-9 is neither a procedure order nor instructions to all clothing factories to follow the procedure mentioned in para 1 of the letter. It is a specific instruction to a specific factory for a specific item. Charged Officer misused his financial power by placing development orders for the same item on a number of firms on the same day or within few days of placement of development orders in violation of standing instructions and took shelter under DE-9. Therefore, the findings of the Inquiry Officer is not agreed to and this charge is considered tentatively as "Proved".

#### ARTICLE-V

It is alleged that by the above acts of omission and commission, Shri Amarjit Singh exhibited lack of integrity and devotion to duty and thus acted in a manner unbecoming of a Govt. Servant and thereby violated Rule 3(1)(i),(ii) and (iii) of CCS (Conduct) Rules, 1964.

While discussing the charge, the Inquiry Officer observed that since charges under Article I to IV not proved, therefore, Article-V by inference is not established.

Charged Officer had used a specific modus operandi to place supply orders in the name of Development orders by misinterpreting/twisting rules/standing instructions and splitting the requirement to place orders under GM's power. Therefore, the findings of the Inquiry Officer is not agreed to and this charge is considered tentatively as "Proved".

8. The CVC tendered its advise vide O.M. dt. 23.5.12 (Annexure A-7) which is extracted hereunder:

" CENTRAL VIGILANCE COMMISSION

Dated 23.05.2012

#### OFFICE MEMORANDUM

Sub: Disciplinary proceedings against Shri Amarjit Singh, Sr. DDG, OFB and others.

Department of Defence Production may refer to their note dated 31.01.2012, on file no. 13024/10/Vig-I/07/D(Vig)/Vol-II, on the above subject.

2. The matter was examined by the Commission. On facts of the case, the Commission advises imposition of suitable major penalty on Shri V.K. Choudhury, DGM/OEF, Hazratpur and suitable cut in pension under Rule 9 of the CCS (Pension) Rules, 1972 in respect of Shri Amarjit Singh, Ex-Sr, DDG/OFB.

3. DDP's file no. 13024/10/Vig-I/07/D(Vig)/Vol-II and other documents are returned herewith. Receipt of the same may be acknowledged.

Sd/-  
(Parwinder Kaur)  
Advisor"

9. Although no witness was cited in the chargememo, the daily order sheet from record of proceedings dated 23/7/09 records "Shri Amarjit Singh requested to grant him further one week time for submitting lists of witness as well as documents in his defence. Accordingly one week time has been granted and next date of hearing has been fixed on 05<sup>th</sup> August, 2009 at 1500 hrs. in the office of Member/Per."

On 8.10.09 the presenting officer stated "he is going to produce documents by which the Articles of charges are to be sustained and as per list enclosed in Annexure-III of the Memorandum one by one. As annexure-IV of the memorandum does not mention any list of witnesses, no witness will be produced by the Presenting Officer".

Thereafter the delinquent never demanded additional witness.

10. At hearing Id. Counsel for the respondents would place the instructions pertaining to source Development, reproduced infra:

**"28.4.1 SOURCE DEVELOPMENT:**

*Sources development will be necessary when the number of existing established sources is less than six as also under the following circumstances.*

- (a) When it is apprehended that the established sources have formed a group and quote to the disadvantage of the Govt.*
- (b) When the rates offered by the established sources are considered high and not realistic in terms of the prevailing market condition.*
- (c) When the total capacity of the established sources is not adequate to meet our requirement including contingencies that may arise due to failure of any source.*

28.4.2 While source development is necessary when the established sources number less than six, the question of necessary for development of other sources under other conditions will be decided by the relevant TPC.

28.4.3 The quantity – reserved for development of additional sources should normally be 20% of the annual requirement, the balance quantity procured as per normal procedure as emplified by these Guidelines.

28.4.4 For the purpose of developing new sources advertisement will be issued for listing new firms indicating at the time of advertisement, the quantity that are likely to be placed as development order on them, Interested parties will have to furnish all particulars of their capacity, experience in the field, details of supplies made to various parties, financial standing, I.T. certificates, Bank reference, etc. Orders placed based on this advertisement will be of development nature. The powers of the Board for Development nature. The powers of the Board for Development of source vide M of D letter No. F. 12(47)/80/D(Projects) dt. 6-6-1981 will be exercised. At present this power is only for 5 lakhs. Enhancement of this power is being sought for separately."

11. On delegation of Financial Power Source Development, the following order was drawn attention to:

"Sub: Delegation of Financial Power – Source Development.

X X X

Finance Division has also concurred to the effect that the financial power mentioned at point no. 8 of page No. 44 in the latest Financial Power Booklet published by OFB in Jan '02 would be resorted to by General Managers for development of a special / critical item even by a single tender for which the financial power is restricted to Rs. 5 lakhs."

Ld. Counsel for respondents would submit that such power was available for development of Special/Critical items whereas trousers and shirts were not critical items, therefore the power was misutilised by the applicant, the then G.M.

12. Ld. Counsel for the applicant would refer to minutes of meeting held on 16.1.2001 in the office of GM Kanpur to decide placement of Development order

for the fabrication of jacket on disruptive 1998 PATT. (I.C.K.) where such powers were involved but never questioned.

Ld. Counsel for the respondents would respond submitting that shirts and trousers did not fall under critical item category.

13. The UPSC advise dated 9.4.13 is extracted to the extent relevant and germane to the lis with added emphasis for clarity:

**"Article I**

*The Commission note that the various development orders show that proposals were directly received from firms requesting for jobs of fabrication of trousers, capes, tent extendable etc. The CO interpreted the instructions in his favour and justifying his action by stating that the development orders were placed for items which were critical and special. It is observed that para 28.4.1 is about source development and states that source development will be necessary when the number of existing established sources is less than six under the following circumstances:*

- (a) When it is apprehended that the established sources have formed a group and quote to the disadvantage of the Govt.*
- (b) When the rates offered by the established sources are considered high and not realistic in terms of the prevailing market condition.*
- (c) When the total capacity of the established sources is not adequate to meet the requirement including contingency that may arise due to failure of any source.*

*Para 28.4.2 states that source development is necessary when the established sources number less than 6, the question of necessity for development of other sources under other conditions will be decided by the relevant TPC. Further, para 28.4.3 states that the quantity reserved for development of additional sources should normally be 20% of the annual requirement, the balance quantity procured as per normal procedure as amplified by these guidelines.*

*Para 28.4.4 reads that for the purpose development of new sources advertisement will be issued for listing new firms indicating at the time of advertisement the quantity that are likely to be place as development order on them. Interested parties will have to furnish all particulars of their capacity, experience in the field, details of supply made to various parties, financial standing, IT certificates, bank reference etc. Order placed based on this advertisement will be of development nature.*

*4.1.1 The Commission observe that a perusal of files show that proposals have been received from petty firms/suppliers/manufactures etc. for development order for jobs mentioned in the statement of imputations*

without quoting any reference of advertisement published by the Ordnance factory where the CO officiated as GM at the relevant time. The noting portion of these files nowhere mention justification of source development on the ground mentioned in DE-1 which is a relevant para of the Material Management Manual required to be followed by the Ordnance Factory officers while procuring material for official consumption.

4.1.2 The Commission observe that DE-8 is about delegation of financial power for source development accorded by Ministry of Defence, Government of India. DE-7 states that as per para 28.4.4 of MM HB, source development should be through open tender enquiry only and not through limited tender enquiry. Source development is a process which necessarily has to be a prelude to established source. As regards the powers of GM since it is through advertised tender, their power would Rs. 50 lakhs/One crore depending on the delegation to the GM concerned. If single technically acceptable offer against OTE is received, the power of GM would be restricted to Rs. 5 lakhs in each case.

4.1.3 A perusal of 27 files listed in the charge memo, including the file No.5, 6 & 16, in which the CO did not give final approval, shows that in the computerized supply orders date of tender enquiry mentioned is subsequent to the date of letter received from the private firms. It is not understood how firms could approach Ordnance Factory before floating of tender enquiry. The plea of the CO therefore does not hold it rather proves the charge as he accepted in his brief that the para 28.4.4 was never operated by him. In all 27 cases the same modus operandi has been followed. Application has been received from the firm indicating the task being carried out by them at a particular date without recording on the note sheet as to how such an application was received from the firm and why it was accepted by the factory. Only a noting is there for putting up a development order for a value below Rs. 5 lakhs in each case and the noting routed through DGM(PV) and concurred by AO and in 24 cases noting were approved by the CO in his capacity as General Manager OEFHZ for placing of supply orders. In all 27 cases the computerized supply orders have been generated with false information about dates of issue and opening of tender enquiries as no TE has been floated and unsolicited applications received from the firms have been accepted in gross manipulation of date of application received from the firm is prior to the date of TE in the computerized supply order. All the 27 files speak of arbitrariness and deliberate manipulation of processing development orders.

4.1.4 The Commission observed that had the CO followed the provision of para 28.4.4 of OFB MM for undertaking exercise for identifying new sources (firms) for placement of development order, first an advertisement listing new firms would have been issued, interested parties would have furnished their particulars with capacity, experience in the field, details of supplies made to other organizations, financial standing, IT certificate, bank reference etc. and then development orders would have been placed on the basis of OTE after discussing the specialty/criticality of the item on the note sheet. The noting portion of all 27 files is silent about

such an exercise. The charge, therefore, stands proved on the basis of documentary evidence that in 24 cases the CO while functioning as GM/OEFHZ approved placement of development orders in systematic violation of para 28.4.4 of OFB Material Management Manual 1993.

#### 4.2 Article II

The Commission note that the CO pleaded that the article reflects lack of understanding and appreciation of the facts as his defence assistant brought out how the firm's credentials were verified. Identification of firms were guided by their standing as registered firms with DGQA or as suppliers to sister factories or as ISO 9000 certified firms. Capacity verification was also done. He further pleaded that OEF HQ outlined the methodology to-be adopted for development of critical items and he followed these guidelines.

4.2.1 The Commission observe that a perusal of DE-9 shows that these are instructions of Ministry of Defence, Govt. of India, to General Manager, Ordnance Clothing Factory, Avadi with reference to the case of M/s. Sunil Industries, Mumbai. While discussing the issue of a particular factory, the letter concludes that if the factory is satisfied that the firm is having the facilities to manufacture the stores in collaboration with another firm then a development order upto Rs. 5 lakh at the prevailing price or lower can be placed on the firm. It is observed that DE-9 is item specific and pertained for a single firm who approached OEF HQ with letter of interest and cannot be generalized and taken as a guideline for placing all development orders by all the factories. DA is fully justified in recording that the DE-9 is neither a procedure nor a general instruction to all the clothing factories. It's a specific instruction to a specific factory for a specific item which ab initio was an incorrect instruction. Even if the CO followed DE-9 then he should have first approached Ordnance Factory Board for obtaining the permission for placement of development order. The evidence on record merely suggests that orders were placed one by one on submission of unsolicited quotation by the firm without involving tendering process. The work of cloth stitching is not a high technology work and calling for vendors selectively is not justified. There should have been issue of tender which has not been done in any of the case. The files do not show that on what basis the firm approached OEFHZ for placement of development orders which proves that the processing was not non-transparent.

4.2.2 The Commission observe that in all supply orders date of tender enquiry is subsequent to the date of letter mentioned in the offers received from various firms which have not even been diarized in the office of the CO and have been processed for placing development orders arbitrarily. Thus flagrant flouting of provisions of para 28.4.4 of OFB Material Management Manual, 1993 is proved beyond doubt in all 24 cases. The charge that the CO while functioning as GM/OEFHZ approved placement of 24 development orders on certain firms identified in completely arbitrary manner stands fully proved on the basis of documentary evidence.



Commission note that the charges proved against the CO constitute grave misconduct on his part and consider that the ends of justice would be met in this case if the penalty of withholding of 10% (ten per cent) of the monthly pension otherwise admissible to the CO, Shri Amarjit Singh, Sr. DDG (Retd.), Ministry of Defence, Department of Defence Production for a period of two years, is imposed on him and further his gratuity should be released, if not required in any other case. They advise accordingly."

14. The imposition of penalty vide order dated 22.4.2013 reads:

"2. And whereas, after considering the representation dated 05.05.2008 submitted by the said Shri Amarjit Singh, in response to the aforesaid Charge Memorandum, it was decided by the Competent Authority, to remit the case to inquiry, by appointing Subhas Chander, the then Member, M&C & Export/OFB, as Inquiry Officer. As the CO retired on attaining the age of superannuation on 30.04.2008, the proceedings were deemed to continue under rule 9 of CCS (Pension) rules, 1972. The Inquiry Officer submitted his report on 18.12.2009 with findings on the articles of charges as follows:-

Article I	:	Not Proved
Article II	:	Not Proved
Article III	:	Not Proved
Article IV	:	Not Proved
Article V	:	Not Proved

3. After considering all the relevant facts of the case, the Disciplinary (D.A) tentatively held all the charges as "Proved". Since the D.A. had not accepted the findings of the Inquiry Officer, a copy of the Inquiry Report along with Disagreement Memo of the Disciplinary Authority, together with the copy of CVC's 2<sup>nd</sup> Stage advice was served upon Shri Amarjit Singh for submitting his representation, if any. The CO submitted his representation on the findings of the Inquiry Authority, on 9.11.2012. After consideration of Inquiry Report, Disagreement Memo, representation of CO against it and all other relevant case records, the D.A. tentatively recommended imposition of suitable cut-in-pension on Shri Amarjit Singh, under rule 9 of CCS(Pension) Rules, 1972. The case was then referred to the Union Public Service Commission (UPSC) for obtaining their considered advice in the matter, as required under the rules, in such cases. And, the UPSC while tendering their advice, vide letter No. F.No.3/356/2012-SI dated 9.04.2013 (copy enclosed), due to detailed reasons given in their advice, have now inter-alia concluded as under:-

Article - I	:	Stands Proved
Article - II	:	Stands Proved
Article - III	:	Stands Proved

Article – IV : Stands Proved

Article – V : Stands Proved

4. And now, the President after giving careful consideration to the Charge Memorandum, Inquiry report, Disagreement Memo, the representation submitted by the said Shri Amarjit Singh, there against and also all other records/aspects relevant to the case, including the UPSC's advice (as referred to above), has concluded for the reasons given in the UPSC's advice that all the charges are Proved against the said Shri Amarjit Singh and they constitute grave misconduct on his part. Therefore, while agreeing with the UPSC's advice, it has been decided by the President that ends of justice would be met in this case, if, a penalty of "withholding 10% (ten percent) of the monthly pension, otherwise admissible to him, for a period of two years" is imposed on Shri Amarjit Singh, Sr. DDG, OFB(Retd.). His gratuity may be released, if not required in any other case.

5. As decided above, the aforesaid penalty is hereby imposed accordingly on the said Shri Amarjit Singh.

6. The said Shri Amarjit Singh is required to acknowledge receipt of this order in writing.

By order and in the name of the President."

15. In **B.C. Chaturvedi v. Union of India & Others**, (1995) 6 SCC 749, the Hon'ble Apex Court on the scope of judicial review has held as under:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/ Tribunal is concerned to determine whether the inquiry was held by a Competent Officer or whether the inquiry was held by a Competent Officer or whether Rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical Rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the Disciplinary Authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the Rules of natural justice or in violation of statutory Rules prescribing the mode of inquiry or where the conclusion or finding reached by the Disciplinary

*Authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with me conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."*

Laying down the scope of judicial review, the Hon'ble Apex Court in **Union of India v. P. Gunasekaran, (2015) 2 SCC 610**, has observed as under:

*"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an Appellate Authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the Disciplinary Authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second Court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:*

- (a) the enquiry is held by a Competent Authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case.*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*

- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience."

In **Ranjit Thakur v. Union of India & Others, 1989(1)SLJ 109 (SC)=(1987)4 SCC 611**, the Hon'ble Supreme Court has evolved the principle of proportionality in the following words:

*".....It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."*

16. In the aforesaid backdrop we would note that at every stage the authorities have issued orders in scrupulous observation of procedural law, having delved indepth into the facts etc., therefore further narrowing down the scope of our interference.

17. Having understood the true import of the decisions supra and the limited scope of interference in disciplinary proceedings and having noticed that the penalty is not shockingly disproportionate to the allegations levelled and proved, the penalty imposed on the applicant could not be faulted. No extenuating circumstances prevail which would tempt us to pass orders impelled by benediction. Accordingly the O.A. is dismissed. No costs.

(Dr. Nandita Chatterjee)  
Administrative Member

(Bidisha Banerjee)  
Judicial Member