

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on : November 16, 2015*
Judgment Delivered on : November 18, 2015

+ **LPA 684/2011**

RAVINDRA KUMAR SOODAppellant
Represented by: Ms.Richa Kapoor, Advocate

versus

NATIONAL THERMAL POWER
CORPORATION LTD. & ORS.Respondents
Represented by: Mr.S.K.Taneja, Sr.Advocate
instructed by Mr.Rajesh Gupta,
Advocate

LPA 685/2011

RAVINDRA KUMAR SOODAppellant
Represented by: Ms.Richa Kapoor, Advocate

versus

NATIONAL THERMAL POWER
CORPORATION LTD. & ORS.Respondents
Represented by: Mr.S.K.Taneja, Sr.Advocate
instructed by Mr.Rajesh Gupta,
Advocate

LPA 731/2011

NTPC LTD.Appellant
Represented by: Mr.S.K.Taneja, Sr.Advocate
instructed by Mr.Rajesh Gupta,
Advocate

versus

RAVINDRA KUMAR SOOD

.....Respondent

Represented by: Ms.Richa Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. The NTPC Conduct, Discipline and Appeal Rules, 1977 (hereinafter referred to as the 'Conduct Rules') deal with disciplinary matters concerning employees of NTPC. Rules 23, 32 and 33 of Conduct Rules and Schedule of Delegation of Powers in respect of Disciplinary Matters appended thereto are relevant for adjudication of the present appeals, the relevant portion(s) whereof read as under:-

“Rule 23 Penalties

The following penalties may be imposed on an employee as hereinafter provided, for misconduct committed by him or for any other good and sufficient reasons.

Minor Penalties:

(a) *Censure;*

(b) *withholding of increments of pay with or without cumulative effect;*

(c) *withholding of promotion;*

(d) *recovery from pay or such other amount as may be due to him, of the whole or any part of any pecuniary loss, caused to the Company by negligence or breach of orders.*

Major Penalties

(e) *reduction to a lower grade or post, or to a lower stage in a time scale;*

(f) removal from service which shall not be a disqualification for future employment;

(g) dismissal.

x x x

Rule 32 Appeals

(i) An employee may appeal against an order imposing upon him any of the penalties specified in Rule 23 or against the order of suspension referred to in Rule 20. The appeal shall lie to the authority specified in the Schedule.

(ii) An appeal shall be preferred within one month from the date of communication of the order appealed against. The appeal shall be addressed to the Appellate Authority specified in the Schedule and submitted to the authority whose order is appealed against. The authority whose order is appealed against shall forward the appeal together with its comments and the records of the case to the Appellate Authority within 15 days. The Appellate Authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders within three months of the date of appeal. The Appellate Authority may pass order confirming, enhancing, reducing or setting aside the penalty for remitting the case to the authority with such direction as it may deem fit in the circumstances of the case;

Provided that if the enhanced penalty which the Appellate Authority proposes to impose a major penalty specified in clauses (e), (f) and (g) of Rule 23 and an inquiry as provided in Rule 25 has not already been held in the case, the Appellate Authority shall direct that such an enquiry be held in accordance with the provisions of Rule 25 and thereafter consider the record of enquiry and pass such orders as it may deem proper. If the Appellate Authority decides to enhance the punishment but the enquiry has already been held under Rule 25, the Appellate Authority shall give a show cause to the employee as to why the enhanced penalty should not be imposed upon him. The Appellate Authority shall pass final order after taking into account the representation, if any, submitted by the employee.

Rule 33 Review

Notwithstanding anything contained in these Rules, the Reviewing Authority as specified in the schedule may call for the record of the case within six months of the date of final order and after reviewing the case may pass such order as it deem fit.

Provided that if the enhanced penalty which the Reviewing Authority proposes to impose a major penalty specified in clauses (e), (f) and (g) of Rule 23 and an inquiry as provided in Rule 25 has not already been held in the case, the Reviewing Authority shall direct that such an enquiry be held in accordance with the provisions of Rule 25 and thereafter consider the record of enquiry and pass such orders as it may deem proper. If the Reviewing Authority decides to enhance the punishment but the enquiry has already been held under Rule 25, the Reviewing Authority shall give a show cause to the employee as to why the enhanced penalty should not be imposed upon him. The Reviewing Authority shall pass final order after taking into account the representation, if any, submitted by the employee.

x x x

Schedule of Delegation of Powers in Respect of Disciplinary Matters Under NTPC Conduct, Discipline and Appeal Rules

<i>Subject Matter</i>	<i>Extent of Powers Delegated</i>	<i>Authorities to Exercise Powers</i>
<i>7. Reviewing Authority in the matter as disciplinary cases (minor & major penalties, other than removal from service & dismissal)</i>	<i>Full powers in respect of the employees under their control</i>	<i>Executive Authority higher to the next Appellate Authority</i>
<i>9. Reviewing Authority in the matter of removal from service/dismissal</i>	<i>Full powers in respect of the employees in the grades of Rs.950-1530/1540 and below.</i>	<i>Chairman & Managing Director</i>

Full powers in respect Board of Directors”

*of all the employees in the grades of Rs.8250-9250 (excluding Functional Directors) and below. **(Emphasis Supplied)***

2. On May 04, 1982 the Board of Directors of NTPC approved the Statement of Promotion Policy for employees in Supervisory Category. Clauses 2.8.2 and 2.8.3 whereof read as under:-

“2.0 General Principals - The following factors will be taken into account in promotion from one grade to the next higher grade.

2.8.2 No employee under suspension or against whom disciplinary or vigilance proceedings have been initiated shall be promoted until he is unconditionally reinstated or exonerated. In case of unconditional reinstatement or exoneration, he will be allowed promotion with retrospective effect, but the financial benefit accruing due to the promotion will be allowed with effect from the date his promotion order is issued and no arrears will be payable on this account unless specifically mentioned otherwise in the promotion order.

2.8.3 An employee who has been awarded any minor punishment will be debarred for a period of one year, from the effective date of punishment order, from consideration for promotion.”

3. On September 10, 1985, NTPC issued Guidelines on Promotion of Employees affected by Vigilance and Other Disciplinary Proceedings, the relevant portion whereof reads as under:-

“According to the promotion policy, if an employee is awarded minor penalty, his promotion has to be withheld for one year and in case of award of a major penalty the promotion has to be withheld for 2 years. It has been raised on a number of occasions that in case a minor penalty of Censure, Stoppage of Increment etc., is awarded with the promotion of the employee concerned has also to be withheld for one year and as a result

the employee may have to undergo double punishment. It has also been raised that the hardship of the individual gets further aggravated if the vigilance/disciplinary proceedings get prolonged and Final decision is taken very late. In some cases, the decision is taken even two or three years from the date the employee become eligible for promotion and in many cases he was cleared for promotion by DPC but pending the outcome of the vigilance/disciplinary proceedings was withheld.

II. This has been examined and the following decisions have been taken in the matter:-

1.0. Vigilance proceedings and disciplinary proceedings should be finalized expeditiously in all cases and extra care should be taken in respect of the employees who are likely to be in the zone of consideration for promotion.

2.0 However, wherever cases are prolonged while giving final decision in awarding punishment, the disciplinary authority may keep in view the fact that in case, where minor penalty is intended to be imposed the net result should not lead to withholding of promotion for more than one year and similarly in case of major penalty the net result should not lead to withholding of promotion for more than 2 years, from the date an employer was otherwise, found suitable for promotion.

2.1 Accordingly, in case where DPC proceedings have already taken place, the punishment should be formulated in terms of withholding of promotion for one year counting from the date the employee was found suitable, rather than imposing any other form of minor punishment on him.

III If an employee whose case under disciplinary proceedings is in the zone of promotion and is found suitable by the DPC, the DPC minutes will be kept in a sealed cover. On completion of vigilance/disciplinary proceedings if the employee is exonerated the recommendations of the DPC after due approval of competent authority would be announced and implemented. In case an employee is found guilty and given some punishment, the DPC proceedings would become null and void. In such case, the stand would be discussed in the DPC in a meeting. Assessment by the earlier DPC against other factors of promotion, if any, like interview, trade test etc., shall be

taken into consideration by the fresh DPC in its meeting.”
(Emphasis Supplied)

4. Mr.Ravindra Kumar Sood (hereinafter referred to as Mr.Sood) had joined NTPC in the Accounts Department.
5. In the year 1986 Mr.Sood was working as a Junior Controller.
6. On November 12/13, 1986 Senior Superintendent (Operations), the Disciplinary Authority, issued a charge sheet to Mr.Sood listing six articles of charge, which read as under:-

“Article-1

Shri RK Sood E No.21361, Jr Controller, O&M, shouted anti-management and anti-Mahila Samaj slogans at about 730 pm on 7.11.86 at the entrance gate of the Fete premises in Jamnipali Permanent Township. He tried to disrupt the official function by inciting violence among other employees and thereby he committed misconduct under Rule 7, 9, 5(5), 5(12), 5(20), 5(21) of CDA Rules of NTPC.

Article-2

While the Fete fanware was going on smoothly, Shri RK Sood went to the Jalebi Stall and threatened the ladies managing the staff with dire consequences if they did not close down the staff and misbehaved with them, thereby he violated Rules 5(5), 5(17), 5(20) and 5(21) of CDA Rules of NTPC.

Article-3

Shri Sood went to the dias and disrupted the orchestra programme and snatching the mike delivered provocative speech in indecent language threatening the organizers to close down the Fete and appealed to the gathering to boycott the program. By the above act, he has committed misconduct under Rule 5(5), 5(20) and 5(21).

Article-4

Shri Sood alongwith others came down the dias and threatened Shri JK Mehta for steering the programme and scolded him. By the above act, Shri Sood has committed misconduct under Rule 5(5), 5(12), 5(20) and 5(21).

Article-5

Shri Sood alongwith others forced the person-in-charge of lighting the fire works to light up the crackers before the scheduled time and being afraid, the person-in-charge did the same. By the above, Shri Sood has committed misconduct under Rule 5(5), 5(12), 5(20) and 5(21).

Article-6

After the fire works, Shri Sood alongwith others went to the dais and disrupted the housie programme and tried to incite violence and instigated the gathering to demand refund of money and boycotting the programme and delivered a provocative speech. By the above acts, he committed misconduct under Rule 5(5), 5(10), 5(12), 5(20) and 5(21).”

7. An enquiry officer was appointed to record the evidence and submit a report.
8. After recording evidence, the enquiry officer submitted a report opining therein that the charges leveled against Mr.Sood were proved.
9. Vide order dated December 12/13, 1987, the Disciplinary Authority accepted the findings of the enquiry officer and imposed the penalty of withholding one increment with cumulative effect upon Mr.Sood, which we note is a minor penalty. It was further directed that next increment of Mr.Sood, which fell due on October 01, 1988, shall not be released to him.
10. In the meanwhile a DPC had met which recommended the name of Mr.Sood for promotion to the post of Controller Grade-II with effect from January 01, 1987.

11. Mr.Sood submitted an appeal on January 13, 1988 to the Appellate Authority (in terms of Rule 32 of Conduct Rules) challenging the penalty inflicted upon him.

12. In the meantime, on March 01, 1988, another charge sheet was issued to Mr.Sood.

13. An enquiry officer was appointed who recorded evidence and submitted a report, based whereon, vide order dated September 24, 1988 the Disciplinary Authority imposed the penalty of removal from service upon Mr.Sood, which order, vide order dated December 30, 1988 passed by the Disciplinary Authority was converted into one levying the penalty to that of Censure.

14. On January 16, 1989 a meeting was held between high ranking officials of NTPC and some members of Action Committee (a Committee formed for the welfare of the employees of NTPC) wherein following understanding was arrived at with respect to Mr.Sood:-

“Present:

Representatives of

Management

G.N. Karalay

A.T. Bonet

S. Nagrajan

B.K.Rastugi

Representatives of

Committee

P.A. Arun

S.N. Bhojasia

S.K.Mishra

Mohd. Yassi

S.K. Bhatia

Points of Understanding:

*(1) The place of posting of Shri Sood will be changed to B.T.P.S. and last date of joining will be 27th Jan, 1989.
Intimation about the D.P.C. recommendations for his w.e.f.*

1.1.1988 will be sent to BTPS alongwith NOC/LPC. All the pending cases will be closed at K.S.T.P.P.

Sd/- General Manager

Sd/- Personal Manager”

(Emphasis Supplied)

15. Mr.Sood was promoted on January 01, 1990 to the post of Controller Grade-II.

16. Then started the problem.

17. Between the years 1990 to 1993 Mr.Sood made various representations to the competent authority to the effect that he be promoted to the post of Controller Grade-II with effect from January 01, 1987 (date when promotion of Mr.Sood to post of Controller Grade-II fell due) or at least with effect from January 01, 1988 (date when one year period of withholding of promotion of Mr.Sood to post of Controller Grade-II due to imposition of minor penalty upon him came to an end) as decided in the meeting held on January 16, 1989, but he got no response to his representations.

18. All this while, the appeal filed by Mr.Sood challenging the imposition of the minor penalty of withholding of one increment with cumulative effect remained pending with the Appellate Authority.

19. Mr.Sood filed a writ petition in the month of July, 1993 registered as W.P.(C) No.8930/1993 before the High Court of Punjab and Haryana essentially praying therein that: - (i) order dated December 12/13, 1987 passed by the Disciplinary Authority imposing the minor penalty upon him be quashed; and (ii) He be promoted to the higher posts with effect from the dates his juniors were promoted to said posts.

20. Vide order dated July 27, 1993 aforesaid writ petition (C.W.P. No.8930/1993) was disposed of by the High Court of Punjab and Haryana in the following terms:-

“The respondents are directed to dispose of the appeal, Annexure P-3, filed by the petitioner within a period of three months from the communication of this order. Dasti on payment. With the direction aforesaid this writ petition stands disposed of.

If appeal succeeds, the petitioner will be given consequential benefits within reasonable time.” (Emphasis Supplied)

21. Thereafter, vide order dated January 01, 1994 the Appellate Authority disposed of the appeal filed by Mr.Sood against the minor penalty of withholding one increment with cumulative effect. As per the order the penalty of withholding one increment was sustained, but it being with cumulative effect was withdrawn and the penalty was thus modified to that of ‘withholding of one increment without cumulative effect’.

22. Mr.Sood submitted a review petition on March 07, 1994 to the Reviewing Authority (in terms of Rule 33 of Conduct Rules) challenging the award of (modified) penalty of withholding of one increment without cumulative effect upon him.

23. The review petition submitted by Mr.Sood remained pending with the Reviewing Authority for a considerable period. (It is claimed by Mr.Sood that due to delay in disposal of his review petition by Reviewing Authority he i.e. Mr.Sood lost out promotion to post of Assistant Engineer on two occasions, firstly in December, 1994 and thereafter in the year 1995).

24. Mr.Sood filed a writ petition in the year 1995 registered as W.P.(C) No.1422/1995 in this Court, praying therein that :- (i) He be promoted to the post of Controller Grade-II in terms of Guidelines dated December 10, 1985 which prescribe that the imposition of minor penalty should not result in withholding of promotion of a delinquent for more than one year; and (ii) the Reviewing Authority be directed to dispose of review petition submitted by him within a period of one month.

25. Vide order dated March 21, 1996 a Division Bench of this Court disposed of the aforesaid writ petition (CW No.1422/1995) filed by Mr.Sood in the following terms:-

“Learned counsel for the respondents states that he has instructions to say that the reviewing authority has considered the petitioner’s case and quashed annexures II and III-A dated 12/13th December, 1987 and 1st January, 1994 respectively and has directed reopen the enquiry proceedings held under Rule 25 of the N.T.P.C. C.D.A. Rules from the stage of 2nd June, 1987, namely, of giving the petitioner due opportunity to cross examine all the management witnesses and to decide the departmental proceedings in accordance with law after supplying copy of the report of the enquiry to the petitioner. It is also stated that Shri S.S.Mediratta, Senior Manager (OS) of N.C.R. Headquarter has been nominated to conduct the enquiry from the stage aforementioned.

Learned counsel for the respondents states that subject to the petitioner cooperating respondents will ensure to have the departmental proceedings completed within a period of six months.

Learned counsel for the petitioner states that in view of the above he has instructions to withdraw the petition with liberty reserved to the petitioner to approach the court again in case necessity thereon would arise and in case on culmination of departmental proceedings his claim for promotion from the due date is not favorably considered. It is also stated that the question as regards petitioner’s claim for promotion from the

due date and during the pendency of departmental proceedings be left open with liberty reserved to the petitioner to approach the court in case necessity thereof would arise in future.

*Leave and liberty granted. The petition is disposed of as withdrawn.” **(Emphasis Supplied)***

26. It is apparent that in the meanwhile the Reviewing Authority took a decision that enquiry proceedings be reopened because Mr.Sood was denied an opportunity to cross-examine all witnesses of the management and thus the Division Bench directed the reopened enquiry proceedings to be completed within six months. Thereafter the enquiry officer permitted Mr.Sood to cross-examine the witnesses of the management and submitted a report.

27. Vide order dated December 09, 1997 the Disciplinary Authority exonerated Mr.Sood of all the charges framed against him. Being relevant, we note that order dated December 09, 1997 reads as under:-

“WHEREAS Shri R.K. Sood, Supervisor, Employee No. 21361, Korba Super Thermal Power Project, Korba (presently working in Materials & Contracts Deptt. of Badarpur Thermal Power Station, Badarpur, New Delhi-110044) was informed of the proposal to take action against him under 25(3) of NTPC Conduct & Discipline Rule vide Charge Sheet No. KS:PERS:ESTT:PF:21361:2027 dated 12/13.11.1986.

WHEREAS Executive Director (NCR) has reviewing authority has given direction to reopen the enquiry by order dated 15.3.1996 and vide Office Order 26/96 dated 18.4.96 had appointed Shri S.S. Mediratta, Sr.Mgr. (OS) NCR Hq. as Inquiry Officer in the said case to begin the enquiry from the stage of proceedings dated 2.6.87 held by the then Inquiry officer Shri P.R. Daga.

WHEREAS the Inquiry Officer had submitted the enquiry report to Executive Director which has been forwarded to me as Disciplinary Authority.

*Now, therefore, I, as Disciplinary Authority after taking into account the facts & details given in the Inquiry Report submitted by Shri S.S. Mediratta is satisfied that no evidences have been produce to establish the Articles of Charges leveled against the charged employee and accordingly decided to exonerate the employee against the charged leveled in the charge sheet referred in above.” **(Emphasis Supplied)***

28. On the same date i.e. December 09, 1997 the Disciplinary Authority prepared a noting regarding his decision to exonerate Mr.Sood and the same reads as under:-

“Sub: Disciplinary case against Shri R.K. Sood, Emp No. 21361 vides Memorandum No.KS: PERS: ESTT: PF-21361: 2027 dated 12/13.11.1986

REF 1: Inquiry Report submitted by Sh. S.S. Mediratta

2. Endorsement of ED (NCR) on the covering letter of the Inquiry Report

1.0 Shri S.S. Mediratta, D.G.M. (OS) NCR HQ. Was appointed as an Inquiry Officer by E.D. (NCR) vide Office Order No.26/96 dated 18.4.96 to conduct enquiry into charges framed against Sh. R.K. Sood from the stage of proceedings dated 2.6.1987 held by the earlier Enquiry Officer Shri P.R. Daga.

2.0 Accordingly, Shri S.S. Mediratta had conducted the enquiry and submitted his report to E.D. (NCR) vide his ref. No.NCR.HQ:OS:560 dated 25.2.97.

3.0 E.D. (NCR) has ordered that the Inquiry Report be sent to the present disciplinary authority for taking action on the enquiry report based on advise of legal opinion given by M/s Sikri & Co. Advocates. Accordingly, the enquiry report along with one file containing 77 pages has been received by me as Head of Materials Deptt. of BTPS as Shri R.K. Sood, Supervisor is at present working in Materials Department.

4.0 The undersigned as HOD of Materials Department gone through the report as well as the records of proceedings of enquiry very carefully. Enquiry Officer have concluded that in

all the Articles of charges framed against the charged employee, no evidences have been proved or not established. In view of the above report of Inquiry Officer and also considering the mental agony the charged employee would have gone through these 8/9 years undersigned as Disciplinary Authority considers it very reasonable & justice to Exonerate the charged Employee Shri R.K. Sood, Emp. No. 21361 from the charges leveled against him and accordingly passed the order.”
(Emphasis Supplied)

29. With the culmination of departmental proceedings on passing of (exoneration) order dated December 09, 1997, Mr.Sood started submitting various representations to the competent authority to the effect that his promotion(s) which were withheld on account of pendency of departmental proceedings be given effect to from the date persons junior to him were promoted, but he got no response.

30. In the meantime, on July 29, 1998, Mr.Sood was promoted to the post of Senior Supervisor (Material).

31. In this view of the matter, since persons junior to him were promoted earlier, Mr.Sood filed a writ petition registered as W.P.(C) No.4566/1998 in this Court praying that he be promoted from the date persons junior to him were promoted.

32. Being relevant, we note following averments made by Mr.Sood in W.P. (C) No.4566/1998 filed by him:-

“38. That ‘after exoneration order dated 9.12.97’, the petitioner is entitled for his promotion from his due date i.e. 1.1.87 and all consequent Promotions and consequential benefits thereof in terms of the orders of Hon’ble High Court of Punjab and Haryana in CW.P. NO.8930/93 dated 27.7.93 and orders of Hon’ble High Court of Delhi in CW.P. No.1422 of 1995 dated 21.3.96 which supporting the claim of the petitioner

for his promotion from due date i.e. 1.1.1987 in case charges against the Petitioner are quashed.

x x x

40. That the petitioner is entitled for his Promotion and subsequent promotions alongwith other consequential benefits as under:-

<i>Post</i>	<i>Promotion as</i>	<i>Promotion</i>	<i>Promotion given from</i>
			<i>to be released wef-</i>
<i>Jr. Controller</i>	<i>Controller Grade-II</i>	<i>1-1-90</i>	<i>1-1-87</i>
<i>Controller Grade-II</i>	<i>Supervisor Grade-I</i>	<i>1-4-93</i>	<i>1-1-90</i>
<i>Supervisor Grade I</i>	<i>Asstt. Engineer (Er.)</i>		<i>1-4-93</i>
<i>Asstt. Engineer (Er.)</i>	<i>Sr. Asstt. Engineer (Elect Egn.)</i>		<i>1-4-96</i>
<i>Sr. Asstt. Engineer</i>	<i>Engineer</i>		<i>1-4-97</i>

41. That the petitioner was told by the respondent No.3 that his case has been sent for decision at Corporate Office. The petitioner persued the matter to expedite the decision but of no avail. In the meanwhile to the utter surprise of petitioner, respondent no.3 issued the promotion order vide ref. No.04 (Estt.)98/3224 dated 29/7/1998 promoting the petitioner as Sr. Supervisor (Material) from the due dates as per 'Channel of Promotion' applicable to the petitioner. The said order dated 29.7.88 is annexed as Annexure P-15. The petitioner is having qualification of Diploma in Engineer (Elec.) and therefore as per his channel of promotion he is promoted to Asstt. Engineer and due to unlawful and malafide acts respondents fail to consider petitioner in interview in DPC-93. The aforesaid promotion order is issued with malafide intention to harass and victimize the Petitioner and force the petitioner to approach the court of law. The above said order is against all rules, regulations, policies, law and have been issued without any decision on his relief claim and also again petitioners is being ignored whereas his juniors have been promoted. That from the

aforesaid order it is evident that respondent have failed to consider Petitioner's case from his due dates during the pendency of enquiry and even after culmination of disciplinary proceedings, despite of orders of two Hon'ble High Courts. That the petitioner is still under heavy penalty even after the quashing of the charge sheet and penalty in the year 13/11/1986 and 12/16th December, 1987 and 1.1.1994 respectively.

x x x

43. That as evident from the above, the respondents has victimized the petitioner for last 11 ½ years and even now the respondents are not releasing petitioner promotion from due date with all consequential benefits, despite orders of Hon'ble High Courts. It is apparent from the record that the attitude of the respondents is not fair with petitioner, as they are violating all rules, service terms and conditions and are discriminatory to the petitioner. The respondents by their acts of omission and commissions have kept the unlawful penalty imposed on the petitioner inspite of the quashing of the charge sheet and penalty in the year 1986."

33. Soon after service of W.P.(C) No.4566/1998 upon NTPC, on November 03, 1998 the Executive Director (NCR), Reviewing Authority (respondent No.2 in W.P.(C) No.4566/1998) issued a notice calling upon Mr.Sood to show cause as to why penalty of 'Censure' in connection with the charge-sheet dated November 13, 1986 be not imposed upon him. Being relevant, we note following portion of the show cause notice dated November 03, 1998:-

"01. WHEREAS the Disciplinary Authority vide his order No.BTPS/C&M/97-98/1 dated 09.12.97 had exonerated you from the charges leveled against you vide Charge Sheet No.KS:PERS:ESTT:PF:21361:2027 dated 12/13.11.86;

02. AND WHEREAS I have called for the entire record of the case in the capacity of Reviewing Authority, exercising my powers under Rule 33 of NTPC Conduct, Discipline and Appeal Rules, 1977;

03. *AND WHEREAS after going through the records relating to the case including the proceedings and the report of the Enquiry Officer, I have observed that the Disciplinary Authority while passing the order has overlooked the fact that there is sufficient material on the basis of which the Enquiry Officer has given his findings and that 3 of Articles of Charges (Articles 1,3 & 6) are proved substantially, i.e., Misconduct under Rule 7, Rule 5(5), 5(12), 5(20) and 5(21) of the NTPC Conduct, Discipline & Appeal Rules accordingly stand proved.*

04. *AND WHEREAS the charges have been proved are of very serious nature involving disturbance and disruption of an official function, disorderly and indecent behavior within the premises of the Company, acts subversive of discipline and abetment thereof, the Disciplinary Authority seems to have failed to appreciate the gravity of these Charges.*

05. *AND WHEREAS considering all these aspects and the material available on record and after proper application of mind, I am of the view that this is not a fit case for exoneration but warrants punishment.*

06. *Though the charges proved are of a serious nature, taking a lenient view, this time, I as Reviewing Authority, propose to impose the penalty of "CENSURE" in terms of Rule 23 (a) of NTPC Conduct, Discipline and Appeal Rules and issue this notice to you to show cause within 15 days from the date of receipt of this notice as to why the penalty of "CENSURE" should not be imposed upon you. A copy of the report of the Enquiry Officer Sh. S.S. Mediratta (9 pages) is enclosed." **(Emphasis Supplied)***

41. Soon thereafter Mr.Sood filed an application registered as C.M.No.11253/1998 in W.P.(C) No.4566/1998 filed by him, assailing the legality of the show cause notice dated November 03, 1998 issued to him. Vide order dated November 17, 1998 the learned Single Judge dismissed said application (C.M. No.11253/1998) with liberty to Mr.Sood to assail the show cause notice date November 03, 1998 by way of a fresh writ petition.

35. In these circumstances, Mr.Sood filed a writ petition registered as W.P.(C) No.5973/1998 in this Court assailing the legality of the show cause notice dated November 03, 1998 issued to him.

36. Vide order dated November 19, 1988, the learned Single Judge stayed the operation of the show cause notice dated November 03, 1998 issued to Mr.Sood.

37. In the second writ petition filed by Mr.Sood i.e. W.P.(C) No.5973/1998, NTPC filed a counter affidavit stating therein that :- (i) Reviewing Authority was justified in issuing the show cause notice dated November 03, 1998 to Mr.Sood in view of the power of review conferred upon the Reviewing Authority under Rule 33 of the Conduct Rules; (ii) Reviewing Authority has not violated Rule 33 of the Conduct Rules in any manner inasmuch as it had called for the records of the case in question on May 19, 1998 i.e. within a period of six months of the passing of (the exoneration) order dated December 12/13, 1987 passed by the Disciplinary Authority; and (iii) Mr.Sood is not entitled to be considered for promotion in view of the issuance of the charge sheet to him and pendency of enquiry/departmental proceedings against him. (Pertinently, NTPC adopted the counter affidavit filed by it in W.P.(C) No.5973/1998 in the first writ petition i.e. W.P. (C) No.4566/1998 filed by Mr.Sood).

38. Being relevant, we note the following portion of the aforesaid counter affidavit filed/adopted by NTPC in the writ petition(s) filed by Mr.Sood:-

“PRELIMINARY OBJECTIONS”

2. I further state that the petitioner has no legal right to seek Writ of Mandamus directing quashing of the show-cause notice dated 3rd November, 1998, and staying the proceedings initiated, vide said show cause notice. There is no violation of any fundamental right of the petitioner or any violation of the NTPC Conduct, Discipline and Appeal Rules, 1977 (as amended) which are applicable and govern the service condition of the petitioner with the respondent No.1/Corporation. It may be mentioned that the respondent No.2 is the Reviewing Authority in the matter of disciplinary cases (minor and major penalties) and Rule 33, it is provided that the Reviewing Authority may call for the record of the case within six months of the date of the final order and after reviewing the case, pass such order thereon as it may deem fit. The said rule further provides that if the Reviewing Authority proposes to enhanced penalty and an enquiry has already been held in accordance with the provisions of Rule 25, the Reviewing Authority shall give show-cause notice to the employee and the Reviewing Authority shall pass the final order after taking into account the representation, if any, submitted by the employee. In the present case, the Reviewing Authority has merely exercised his jurisdiction under Rule 33 of the NTPC Conduct, Discipline & Appeal Rules, 1977. The Reviewing Authority called for the records of the case on 19th May, 1998, i.e. within the period of six months and after examining the enquiry report and the entire record of the proceedings, the Reviewing Authority has issued the show-cause notice dated 3rd November, 1998 under rule 33 of the NTPC CDA Rules, 1977. There is no violation of the rules nor can any mala-fide be imputed to the Reviewing Authority, who has exercised his powers under rule 33 of the said Rules, 1977. The petitioner has no legal right to challenge or locus-standi to challenge the action of the Reviewing Authority who has issued the show-cause notice within the authority and power vested in him under the said Rules.

PARA-WISE REPLY:

34. Para No.34 of the writ petition is wrong and denied. The petitioner was not entitled to be considered for promotion in view of the chargesheet issued to him and on-going enquiry into charges against him.

38. Para No.38 of the writ petition is wrong and denied. It is denied that after the issue of the order dated 9th December, 1997, by the Disciplinary Authority, the petitioner is entitled for his promotion from 1st January, 1987, automatically. In fact, the NTPC CDA Rules, 1977 provide the examining of the case by the Reviewing Authority and the said Reviewing Authority has to be act under Rule 33 of the Rules and he is thus within his powers to impose penalty and differ with the decision of the Disciplinary Authority in the matter and this is in continuation of the proceedings initiated on the chargesheet dated 13th November, 1986. It may be mentioned that the petitioner cannot say that the charges against him have been quashed and consequently claim his promotion from 1st January, 1987, on that basis alone.

39. Para No.39 of the writ petition is wrong and denied. It may be mentioned that the departmental proceedings, on the basis of chargesheet dated 13th November, 1986, are still pending, and as such, the question of considering the petitioner for promotion with effect from 1st January, 1987, does not arise.

40. Para No.40 of the writ petition is wrong and denied. It is denied that the petitioner is entitled to any alleged promotion and other consequential benefits from 1st January, 1987, onwards.

41. As regards para 41 of the writ petition, it is submitted that the petitioner's case for promotion was considered by the Corporate Office of the respondent No.1/Corporation and he was promoted as Controller Grade II with effect from 1st January, 1990, and Supervisor Grade I from 1st April, 1993, as per the rules. It is wrong to say that the petitioner is entitled to be promoted to the post of Assistant Engineer, or that his case was not considered in the interview held in DPC 1993. The allegations against the respondent/Corporation are wrong and are denied.

43. Para No.43 of the writ petition is wrong and denied. The allegations are false.

49. Para No.49 of the writ petition is wrong and denied. The petitioner himself is responsible for prolongation of the disciplinary proceedings, as he was not co-operating in the

*enquiry proceedings and as such, the disciplinary proceedings have prolonged on account of his own acts of omissions. The disciplinary proceedings are still pending as the matter is sub-judice before the Reviewing Authority under the Rules. The petitioner has no right to claim promotion retrospectively with effect from 1st January, 1987, or for that matter claim subsequent promotion and consequential benefits.” (**Emphasis Supplied**)*

39. Mr.Sood filed a rejoinder to the afore-noted counter affidavit filed by NTPC, essentially stating therein that the show cause notice dated November 03, 1998 issued by the Reviewing Authority to him is mala-fide because the same had been issued with the sole motive/intention of defeating the claim of promotion made by him in the first writ petition i.e. W.P. (C) No.4566/1998 filed by him.

40. During the pendency of the writ petitions, in the month of April, 2000, Mr.Sood submitted a representation to Executive Director (NCR), the Reviewing Authority praying for retrospective grant/release of his promotion(s). On May 09, 2000 the Senior Manager (P), NTPC made following noting on the aforesaid representation submitted by Mr.Sood:-

“I have gone through the papers enclosed (p1 to p 24) with the representation of Mr.Sood.

On p 18 NTPC has informed Hon’ble Delhi High Court that order 12/13 Dec 1987 & 1st January 1994 have been quashed and Shri Sood has been exonerated vide o/o dated 9th Dec 1997 by disciplinary authority.

Withholding of all consequential benefits and continuation of penalties due to order dated 12/13.12.1987 & 1.1.94 is not justified.

May kindly be looked into the case in totality to resolve once for all. The employee has been forced to approach High Courts twice for such small matters. This should not happen if we are responsive to employees need.”

41. On December 13, 2002 NTPC filed an additional affidavit in both the petitions filed by Mr.Sood on the aspect of claim of promotion made by Mr.Sood in the first writ petition i.e. W.P. (C) No.4566/1998 filed by him, the relevant portion whereof reads as under:-

*“4. Another memorandum of charge sheet was issued against the petitioner on 01.03.1988. After enquiry the petitioner was removed from services by Order dated 24.09.1988. A copy of said Order dated 24.09.1988 is annexed as **“ANNEXURE R-A1”**. In appeal the order of removal from service was modified into “censure” by Order dated 30.12.1988. A copy of said Order dated 30.12.1988 is annexed as **“ANNEXURE R-A2”**.*

*5. By virtue of clause 2.8.3 of policy of promotion of Respondent Corporation, the petitioner could have been considered for promotion only after one year after the effective date of punishment. Since punishment has been imposed on 30.12.1988, therefore, the bar of promotion as per rules continued till 30.12.1989. Accordingly by Order dated 01.07.1990 the petitioner was promoted with effect from 01.01.1990 as Controller Grade-II, which is a S-2 post. A copy of the said order dated 01.07.1990 is annexed herewith as **ANNEXURE-R-A3**.*

*6. The next promotion to the petitioner was due as per rules after 3 years and accordingly by Order dated 25.06.1993 the petitioner was duly promoted to the next higher post as Supervisor Grade-I (Materials) which is S-3 post, with effect from 01.04.1993. A copy of Office order dated 25.06.1993 is annexed as **“ANNEXURE-R-A4”**.*

7. The petitioner was again due for being considered for promotion in 1996. By this promotion from S-3 post, petitioner could have either been promoted to E-1 (Executive cadre post) post directly, which is inter cadre post for which recommending authority is the Regional level DPC or he could have been promoted S-4 post, which is intra cadre post for which recommending authority is project DPC.

8. It is relevant to mention here that on 07.03.1994 the petitioner had filed a review under rule 33 of NTPC CDA rules against Order dated 01.01.1994 of the appellate authority by which the Order of punishment imposed on the petitioner was moderated. The reviewing authority by its Order dated 19.03.1996 reopened the enquiry in respect of charge sheet dated 12/13 November 1996. Since the enquiry had been reopened the disciplinary proceedings against the petitioner became pending. On 09.12.1997 the disciplinary authority passed the Order exonerating the petitioner. In this way the disciplinary proceedings against the petitioner remained pending up to 09.12.1997.

9. As regard promotion of the petitioner from S-3 to E.1 post, the petitioner was duly considered in the year 1996-1997 as well as Regional Level DPC. The petitioner as per pre requirement appeared in a mandatory test and interview of the same. The Regional Level DPC did not recommend his name for promotion to E.1 Cadre in both the years ie 1996 and in 1997. The papers relating to the petitioner qua his recommendation was kept in sealed covers as disciplinary proceedings against the petitioner were going on till 29.12.1997. The papers regarding Regional DPC recommendations vis-à-vis the petitioner for 1996 and 1997 are annexed as **ANNEXURE R-A5 & 6** respectively.

However, it is submitted that since the CR ratings and marks obtained Test and Interview are confidential data, as such the same is not shown in the annexures except the recommendations of the regional DPC. It is respectfully submitted that the Respondents are in possession of the original copies of the annexures and crave leave of this Hon'ble Court to show it during course of hearing as and when desired by this Hon'ble Court.

10. In the year 1998, the petitioner did not give his consent for transfer upon promotion, as per the then requirements of the management for considering candidates for promotion to E.1 Cadres. Therefore the name of the petitioner was not forwarded to the Regional DPC. A copy of supporting documents is annexed herewith as **ANNEXURE-R-A7**.

12. *Since the year 1999 onwards the petitioner has not come forward for test interview which, inter alia, is mandatory prerequisite for being promoted from S-3/S-4 to E-1 cadre and hence the name of the petitioner could not be considered after the year 1999.*

13. *As regards the promotion of the petitioner from S-3 to S-4 post the petitioner was duly considered by the Project Level DPC along with other eligible candidates in the year 1996 and 1997. However, it is submitted that due to pendency of departmental proceedings against him he was not recommended for promotion to S-4 post by project DPC. Copies of supporting documents are annexed as ANNEXURE R-A8. However, in 1998 after his exoneration by order dated 09.12.1997, the petitioner was promoted to S-4 grade by Order dated 28.07.1998 with effect from 01.01.1998.*

14. *Therefore the petitioner has been considered from time to time for promotions on his due dates as per rules of Corporation and due promotions have been given to the petitioner.” (Emphasis Supplied)*

42. In response to the additional affidavit dated December 13, 2002 filed by NTPC, Mr.Sood filed a reply essentially reiterating the stand taken by him in his writ petitions. Additionally, Mr.Sood contended that the Statement of Promotion Policy for employees in Supervisory Category issued in the year 1982 was amended in the year 1989 and clause 2.8.3 of the original policy strongly relied upon by NTPC to contend that ‘*an employee who has been awarded any minor punishment will be debarred for a period of one year, from the effective date of punishment order, from consideration for promotion*’ does not find a place in the amended policy.

43. On May 05, 2009 Mr.Sood filed an additional affidavit in both the writ petitions yet again essentially reiterating the stand taken by him in

his writ petitions. Pertinently, three letters were filed by Mr.Sood along with his additional affidavit dated May 05, 2009.

44. The first letter filed by Mr.Sood along with his additional affidavit dated May 05, 2009 is dated January 20, 1989 written by Dy. General Manager (P&A), KSTPP and addressed to the Dy.General Manager (P&A), BPTS and reads as under:-

“Dear Sir,

Kindly refer to our letter No.KS:Pers:PF-21361 dated 18-1-1989 by which the place of posting of Shri R.K. Sood, Ex-Jr. Controller, KSTPP has been changed to BTPS on his reinstatement.

Shri R.K.Sood was recommended for promotion by DPC with effect from 1-1-1987, however, the promotion was not issued because of pendency of disciplinary action against him. Photo copies of DPC recommendations are enclosed. In this connection, it is mentioned that Shri Sood was issued a charge sheet on 13th November, 1986 for creating disturbance in the fete organized by Ladies Club on the occasion of Raising Day in the township resulting into award of minor penalty of stoppage of one increment with cumulative effect. The penalty was awarded on 16th November, 1987.

Keeping in view the promotion policy for Supervisors and clarification of GM (P&A) that the net effect of minor punishment should not be such as to delay the promotion by a period of more than one year from the date an employee is recommended for promotion, Shri Sood could have been considered for promotion with effect from 1-1-1988. However, another charge sheet was issued to Shri Sood on 8th March, 1988 which ultimately resulted into award of minor penalty of Censure by the Appellate Authority. The order of Censure was communicated to Shri Sood on 30-12-1988 and as such his promotion could not be made effective from 1-1-1988. (Copy of punishment order enclosed). No other disciplinary action is pending against Shri Sood as on date.

As can be above, there was no disciplinary proceedings pending against Shri Sood between 1st of Janaury, 1988 to 8th March, 1988. The condition of debarring of promotion of one year emanating from first charge sheet was over as on 1-1-1988 and as on that date no other disciplinary proceeding was pending against him. We would, therefore, request you to consider issuing order promoting Shri Sood as Controller Gr.II with effect from 1-1-1988 on his reporting for duty at BTPS and after completion of debarring period of one year.”
(Emphasis Supplied)

45. The second letter filed by Mr.Sood along with his additional affidavit dated May 05, 2009 is dated March 06, 1989 written by the Dy.General Manager (P&A), BPTS in response to afore-noted letter dated January 20, 1989 written by Dy. General Manager (P&A), KSTPP and reads as under:-

“I have already discussed with you personally the case regarding promotion of Shri R.K. Sood, Junior Controller, KSTPP, now transferred to BTPS. In this connection, your letter No. KS:DGM(P&A):PA: dated 20.1.989 refers. In the last para you have desired that BTPS may issue order of promotion w.e.f. 1.1.1988 after completion of debarring period of one year which would end on 30th Dec., 1989. I find from your letter that as on 1.1.88, there was no disciplinary action pending against him. Since the present charge sheet has no connection with his earlier promotion order, it is suggested that you may issue his promotion order from KSTPP effective from 1.1.1988 under intimation to us. In this connection, you may also refer to Corporate Centre guidelines on promotion of employees affected by vigilance/disciplinary proceedings circulated vide Confidential letter No.01:Pers:7(13.1) dated 10.9.85. Your letter passing an order of censure on Shri R.K. Sood communicated to him by your letter No.KS:Pers: dated 30.12.88 has not been formulated in accordance with Para II.2.1 simply because the DPC conducted in July, 1987 related to his promotion due on 1.1.87 and as a result of debaring clause, he should have been promoted from 1.1.88. I, therefore, see no reason that Shri Sood cannot be promoted from 1.1.88 without waiting upto 30.12.88. I, therefore, request you to

*please issue necessary promotion order from KSTPP and fix his pay accordingly.” **(Emphasis Supplied)***

46. The third letter filed by Mr.Sood along with his additional affidavit dated May 05, 2009 is dated March 20/25, 1989 written by the Dy.General Manager (P&A), BPTS in response to General Manager (P&A) and reads as under:-

“KSTPP vide their D.O. No. KS:DGM(P&A) : P&A: dated 13.4.89, a copy of which is enclosed for information, had advised us to issue the promotion orders of Sh.R.K. Sood, Jr. Controller, now placed at BTPS effecting from 1.1.88 in January, 1990. In this context, I had written to DGM(P&A), KSTPP on 6th March, 1989, explaining our difficulties to issue his orders from BTPS. A similar letter had also been sent by our G.M. to G.M., KSTPP, on 14th April, 1989.

While going through the case history, it would be seen that Sh. Sood was found suitable for promotion by the DPC w.e.f. 1.1.87. On completion of the disciplinary proceedings resulting to award of “Censure” he was debarred from promotion for a period of one year. He cleared the debarring period in December, 1987 as per item 2.1 of “Guidelines of promotion of employees affected by Vigilance and other Disp. Proceedings” dated 10.9.85. Therefore, in normal way his case should have been cleared by the DPC on 1.1.88. This had not been done rather delayed.

During March 1988, Sh. Sood was again charge sheeted resulting into award of a major punishment. Subsequently, he had been reinstated into the services with instructions to adjust his period of absence from his leave due. KSTPP instead of issuing his orders w.e.f. 1.1.88 had mixed up the second Charge Sheet with the earlier one consequent to which as per our rules he was debarred for a period of two years. Accordingly, KSTPP has decided to release his Promotion Orders w.e.f. 1.1.88 only in January, 1990.

In our opinion, the decision taken by KSTPP is contrary to the rules particularly when there was no disciplinary case pending against Sh. Sood during January, 1988 to March, 1988. As per

Item No. 2.1 of the Guidelines circulated on 10.9.85 read with item No. 7.3.3 (iii) of "Amendment in NTPC's Conduct, Discipline and Appeal Rules and NTPC Promotion Policy" dated 3.2.89, his promotion on completion of the first enquiry should have been considered by next D.P.C. in normal course of time. Therefore, we feel that even without waiting upto January, 1990, Sh. Sood can be issued of his promotion orders w.e.f. 1.1.88 even now. Keeping him on waiting upto January, 1990 will have no support of the rules.

In view of the above, we would request you to consider the case and pass on necessary instructions to KSTPP to issue his promotion orders to the post of Controller Gr.II (S.2) with immediate effect with a copy endorsed to us. As Sh. Sood was not in position on 1.1.88 at BTPS but at KSTPP end, it would not be appropriate on our part to issue his promotion orders keeping in view the restriction imposed on us by KSTPP."
(Emphasis Supplied)

47. In response to the affidavit dated May 05, 2009 filed by Mr.Sood, NTPC filed a reply essentially stating therein that the afore-noted three letters filed by Mr.Sood along with affidavit dated May 05, 2009 do not show complete picture regarding claim of promotion made by Mr.Sood and Mr.Sood has deliberately concealed letter dated February 20, 1990 written by Sr. Personnel Officer (IR) having material bearing on the claim of promotion made by Mr.Sood despite being in possession of said letter. Being relevant, we note following portion of the aforesaid reply filed by NTPC:-

"10. Contents of paragraph 10 of the additional affidavit are wrong and denied. It is denied that the respondent have suppressed any documents as alleged. The averments based on documents are accepted as correct subject to it being in conformity to the record. The petitioner is not entitled to promotion merely on the recommendation of DPC. It may be correct that DPC-1987 and DPC-1988 favoured the petitioner for promotion; but the promotion is subject to rules. Since the petitioner was imposed penalty in 1987 and again in 1988, he

was not found eligible for promotion during currency of his punishment orders as per Rules and Policy of the Respondents. He was granted promotion as per his eligibility in the year 1990. In this regard respondent relies on letter dated 20.02.1990.

*11. Contents of paragraph 11 of additional affidavit are wrong and denied. It is for the petitioner to aver and show as to his eligibility as per rules. Such fact cannot be accepted on basis of letter or recommendation of officers, which may not have any sanctity and rational. The notings and of DPC-87 and DPC-88 at pages referred by the petitioner in his additional affidavit may be in his favor, but at the same time it has also been written in the remark column that “no promotion order to be issued till the conclusion of Disciplinary case against the petitioner”. And as per the Promotion Policy of the respondents, if any punishment is imposed upon a charged official, then the recommendation of the DPC will become null and void. There is no question of calling for records since the averment of the petitioner in this paragraph is similar to that made by him in paragraph 2.” **(Emphasis Supplied)***

48. Being relevant, we note the letter dated February 20, 1990 written by Sr.Personnel Officer (IR) relied upon by the reply filed by NTPC in response to affidavit dated May 05, 2009 filed by Mr.Sood:-

“This has reference to your IOM No. BTPS:04:89:7532 dated 25th May 1989 and the subsequent communications dated 22nd July’ 89 and 30th January’ 90 on the subject of the promotion of Sh. R.K. Sood, Jr. Controller, Emp. No. 21361.

The matter has been examined at our end and our comments/observations of the subject are as under:-

i) In terms of para III of the Guidelines issued by Corp. Management vide our communication no. 01:Pers:7(13.1) dated 10.9.85, the DPC proceedings held on 6.7.87 became null and void with the imposition of punishment of withholding one increment with cumulative effect vide Punishment Order dated 16.12.87 giving effect to the punishment from 1.10.88.

ii) *The second chargesheet issued on 1.3.88 for a fresh set of misconduct had further imposed debar on the individual from his being considered for promotion till one year from the date of minor punishment order i.e. 30.12.88.*

iii) *In terms of Rules 2.8.2 & 2.8.3 of the Promotion Policy applicable to employees in the Supervisory category, circulated vide CPC No. 94/82 dated 4.5.82 and the guidelines dated 10.9.85, the individual concerned is debarred from consideration for promotion till 29.12.89 on two accounts and the period of debarment running concurrently for some period of time.*

iv) *So computed it is opined that Sh. Sood becomes eligible for promotion from the next standard date i.e. 1.1.90 on completion of the debarred period cumulatively reckoned till 29.12.89.*

As Sh. Sood is working at Badarpur since January' 89, the BTPS Management will have to place his case for consideration by the Department Promotion Committee to be constituted in respect of promotions to be effected from 1.1.90."

49. Vide judgment dated July 14, 2011 the learned Single Judge decided both the writ petitions filed by Mr.Sood.

50. The first writ petition filed by Mr.Sood i.e. W.P.(C) No.4566/1998 (regarding claim of promotion made by Mr.Sood) was dismissed by the learned Single Judge.

51. Briefly stated the reasons given by the learned Single Judge are as under:-

a) The stand taken by NTPC in its additional affidavit dated December 13, 2002 regarding claim of promotion made by Mr.Sood is correct and as a necessary corollary thereof the claim of promotion made by Mr.Sood is misplaced.

b) In view of prescription contained in clause 2.8.3 of Promotion Policy that an employee who has been awarded any minor punishment will be debarred for a period of one year reckoned from the date of punishment order Mr.Sood was rightly promoted with effect from January 01, 1990 for the bar on his promotion continued till December 30, 1989 inasmuch as first minor penalty of withholding of increment was imposed on Mr.Sood December 12/13, 1987 and second minor penalty of censure was imposed on December 30, 1988. Such being the position, the next promotion to the post of Supervisor Grade-I (Materials) was rightly granted to Mr.Sood with effect from April 01, 1993 as Mr.Sood was required to render three years service in feeder grade for being eligible to be promoted to said post.

c) Mr.Sood was rightly not granted promotion in the years 1996-1997 for the departmental proceedings initiated against him remained pending up to December 09, 1997.

d) The contention advanced by Mr.Sood that act of NTPC of imposing minor penalty and withholding of punishment has resulted in double jeopardy to Mr.Sood as Mr.Sood has been punished twice for same misconduct is misplaced for the reason unless the period of punishment gets expired by efflux of time, the chain for consideration during the said period cannot be taken up as it would amount to retrospective promotion which is impermissible under the Rules and would be a premium to misconduct as held by Supreme Court in the decision reported as 1995 (3) SCC 273 State of Tamil Nadu vs. Thiru K.S. Murugesan & Ors.

e) A perusal of promotion policy of NTPC shows that there has been no change in channel of promotion of Mr.Sood.

f) A perusal of original record produced by NTPC shows that Mr.Sood was duly considered by the DPC conducted in the year 1996-1997.

52. The first writ petition filed by Mr.Sood i.e. W.P. (C) No.5973/1998 (regarding validity of show cause notice dated November 03, 1998 issued to Mr.Sood) was allowed by the learned Single Judge.

53. Briefly stated the reasons given by the learned Single Judge are as under:-

a) NTPC should put a quietus to the matter and not proceed against Mr.Sood with respect to show cause notice dated November 03, 1998 in view of the fact that Mr.Sood has been fighting battle emanating from charge sheet dated December 12/13, 1986 for a long period of twenty five years., particularly when there was no necessity to issue the show cause notice dated November 03, 1998 and a decision was taken in the meeting of officials with representatives of Action Committee to close all the pending cases against Mr.Sood.

b) No delay was caused by NTPC/Reviewing Authority in issuing show cause notice dated November 03, 1998 to Mr.Sood for the reason on receipt of representation made by petitioner against (exoneration) order dated December 09, 1997, Reviewing Authority called for the records of case on May 19, 1998 and after examining the report submitted by Enquiry Officer and entire record of the enquiry proceedings and obtaining legal opinion issued show cause notice dated November 03, 1998 to Mr.Sood.

c) Rule 33 of Conduct Rules does not lay down any restriction as to the power of review that such power can be exercised only if order under review has resulted in punishment; provided the Reviewing Authority calls for the record of the case within six months of the final order. Further, Rule 33 does not specify within how much time the Reviewing Authority has to take its decision to pass the final order. Only mandate of limitation prescribed in Rule 33 is to call for record within six months.

54. Aggrieved by impugned judgment dated July 14, 2011, both Mr.Sood and NTPC have filed the above captioned (three) Letter Patent Appeals, the details whereof are being tabulated herein under:-

<i>S. No.</i>	<i>Number of LPA</i>	<i>Name of party which has filed LPA</i>	<i>Subject-matter of LPA</i>
<i>1.</i>	<i>684/2011</i>	<i>Mr.Sood</i>	<i>(i) Laying challenge to finding of learned Single Judge that Rule 33 of Conduct Rules does not lay down any restriction as to the power of review that such power can be exercised only if order under review has resulted in punishment.</i> <i>(ii) Further laying challenge to finding of learned Single Judge that Rule 33 does not specify within how much time the Reviewing Authority has to take its decision to pass the final order and that only mandate of limitation prescribed in Rule 33 is to call for record within six months.</i>
<i>2.</i>	<i>LPA</i>	<i>Mr.Sood</i>	<i>Laying challenge to decision</i>

	<i>No.685/2011</i>		<i>of learned Single Judge of dismissing first writ petition filed by Mr.Sood i.e. W.P. (C) No.4566/1998 (regarding claim of promotion made by Mr.Sood).</i>
3.	<i>LPA No.713/2011</i>	<i>NTPC</i>	<i>Laying challenge to decision of learned Single Judge to the effect that NTPC should put a quietus to the matter and not proceed against Mr.Sood with respect to show cause notice dated November 03, 1998.</i>

52. From the afore-noted conspectus of facts, it is apparent that following two questions arise for consideration in the present case:-

I Whether Mr.Sood is entitled to be promoted to various post(s) from the dates claimed by him?

II Whether show cause notice dated November 03, 1998 issued by Reviewing Authority to Mr.Sood is legal and valid?

In Re: Question I: Whether Mr.Sood is entitled to be promoted to various post (s) from the dates claimed by him?

55. In a nutshell, the claim of promotion made by Mr.Sood can be summarized as follows:-

<i>“Post</i>	<i>Promotion as</i>	<i>Promotion</i>	<i>Promotion given from to be released wef-</i>	
<i>Jr. Controller</i>		<i>Controller Grade-II</i>	<i>1-1-90</i>	<i>1-1-87</i>
<i>Controller Grade-II</i>		<i>Supervisor Grade-I</i>	<i>1-4-93</i>	<i>1-1-90</i>

<i>Supervisor Grade I</i>	<i>Asstt. Engineer (Er.)</i>	<i>1-4-93</i>
<i>Asstt. Engineer (Er.)</i>	<i>Sr. Asstt. Engineer (Elect Egn.)</i>	<i>1-4-96</i>
<i>Sr. Asstt. Engineer</i>	<i>Engineer</i>	<i>1-4-97”</i>

56. For the sake of convenience, the claim of promotion can be divided into two parts. The first claim would be to the posts of Junior Controller, Controller Grade-II and Supervisor Grade-I. Pertinently, the claim of Mr.Sood for promotion to the posts of Controller Grade-II and Supervisor Grade-I is dependent upon success of claim of his promotion to Junior Controller. As is obvious, the second claim would be to the posts of Assistant Engineer and Senior Assistant Engineer. Pertinently, NTPC has taken a common stand to deny promotion to Mr.Sood to the posts of Assistant Engineer and Senior Assistant Engineer from the dates claimed by him.

57. With respect to the promotion to the post of Junior Controller, the stand of Mr.Sood can be crystallized as follows: - Before the imposition of minor penalty of withholding one increment upon him vide order dated December 12/13, 1987 passed by the Disciplinary Authority, the DPC had recommended the name of Mr.Sood for promotion to the post of Junior Controller with effect from January 01, 1987. However, NTPC did not grant said promotion to Mr.Sood on the ground of imposition of minor penalty of withholding one increment upon him. The act of NTPC of withholding promotion of Mr.Sood as a consequence of imposition of minor penalty upon him is arbitrary and falls foul of Articles 14 and 16 of Constitution of India as the same has caused double jeopardy to Mr.Sood,

in that Mr.Sood has been punished twice for a misconduct committed by him.

58. Per contra, the stand taken by NTPC was that in view of prescription contained in clause 2.8.3 of Promotion Policy that an employee who has been awarded any minor punishment will be debarred for a period of one year reckoned from the date of punishment order the promotion of Mr.Sood to the post of Junior Controller was withheld till December 12/13, 1988 i.e. a period of one year from the date (December 12/13, 1987) when minor penalty of withholding of increment was imposed upon him. By the time, Mr.Sood could be promoted to the post of Junior Controller on January 01, 1988 another minor penalty of censure was imposed upon Mr.Sood vide order dated December 30, 1988. As a result of imposition of minor penalty of censure upon him, promotion of Mr.Sood was withheld for another period of one year reckoned from December 30, 1988 i.e. the date when minor penalty of censure was imposed on Mr.Sood. When the period of withholding of his promotion finally came to an end on December 30, 1989 NTPC promoted Mr.Sood to the post of Junior Controller with effect from January 01, 1989. Thus, no fault can be found with the action of NTPC of promoting Mr.Sood to the post of Junior Controller with effect from January 01, 1989. (The aforesaid stand of NTPC has been crystallized from the afore-noted letter dated February 20, 1990 written by Sr. Personnel Officer (IR) and annexed by NTPC along with reply filed by NTPC to affidavit dated May 05, 2009 filed by Mr.Sood.)

59. As noted above, on November 12/13, 1986 a charge sheet was issued to Mr.Sood for having caused obstruction in an official function. On December 12/13, 1987 a penalty of withholding of one increment with cumulative effect was imposed upon Mr.Sood.

60. The problem started with the imposition of this penalty, which was converted into one of the increment being stopped but without cumulative effect.

61. Clause 2.8.3 of Statement of Promotion Policy for employees in Supervisory Category prescribes that *'an employee who has been awarded any minor punishment will be debarred for a period of one year, from the effective date of punishment order, from consideration for promotion'*.

62. But that is not the end of matter.

63. On September 10, 1985 NTPC issued Guidelines on Promotion of Employees affected by Vigilance and Other Disciplinary Proceedings. Clause 2 of said guidelines prescribes that where minor penalty is intended to be imposed the net result should not lead to withholding of promotion for more than one year from the date an employer was otherwise, found suitable for promotion. (A close perusal of said Guidelines shows that said Guidelines, particularly clause 2 thereof, was issued by NTPC taking due consideration of Promotion Policy 1982. In essence, clause 2 of Guidelines issued in the year 1985 amends clause 2.8.3 of Promotion Policy issued in the year 1982 on the aspect of duration of effect of minor penalty on promotion of delinquent in order to mitigate the delay faced by the delinquent employee in case of delay in conclusion of departmental proceedings).

64. Clause 2 of the Guidelines issued in the year 1985 (later than Promotion Policy issued in year 1982) is categorical. There is no room for any doubt that being subsequent in time clause 2 of Guidelines issued in the year 1985 would prevail over clause 2.8.3 of Promotion Policy issued in the year 1982. NTPC cannot wriggle out of its own guidelines.

65. Coming back to the instant case, Mr.Sood was admittedly recommended for promotion to the post of Junior Controller with effect from January 01, 1987. On January 01, 1987 Mr.Sood could not have been promoted to the post of Junior Controller in view of prescription contained in clause 2 of guidelines as one year period of withholding of promotion reckoned from the date Mr.Sood was found suitable for promotion (January 01, 1987) had not come to an end. The one year period of withholding of promotion of Mr.Sood reckoned from the date Mr.Sood was found suitable for promotion (January 01, 1987) came to an end on December 30, 1987. Meaning thereby, Mr.Sood became entitled to the promotion of post of Junior Controller with effect from January 01, 1988. As a necessary corollary thereof, the issuance of second charge sheet to Mr.Sood on March 01, 1988 and imposition of minor penalty of censure on December 30, 1988 has no bearing on the promotion of Mr.Sood to the post of Junior Controller on January 01, 1988 for the said promotion had already become due before happening of said events. (We note here that Mr.Sood has not challenged vires of guidelines issued in the year 1985 and in fact a close perusal of writ petition filed by Mr.Sood shows that he has no objection in case he is promoted to the post of Junior Controller with effect from January 01, 1988 by virtue of application of guidelines).

66. In this regard, it also worth mentioning that in a meeting held between senior officials of NTPC and representatives of Action Committee of NTPC it was decided that Mr.Sood shall be granted promotion to the post of Junior Controller with effect from January 01, 1988 but said decision was never implemented.

67. Further, we note that senior officials at Korbo Special Thermal Power Plant and Badarpur Thermal Power Plant (places where Mr.Sood

was posted at the relevant time) were of the opinion that in view of prescription contained in guidelines dated September 10, 1985 Mr.Sood is entitled to be promoted to the post of Junior Controller with effect from January 01, 1988. (See the letters exchanged between officials of Korbo Special Thermal Power Plant and Badarpur Thermal Power Plant noted by us in the foregoing paras.) Similar opinion was also shared by another officer viz. Senior Manager (P). (See the noting made by Senior Manager (P) on the representation dated May 09, 2000 submitted by Mr.Sood noted by us in the foregoing paras.)

68. The upshot of the above discussion is that Mr.Sood is entitled to be promoted to the post of Junior Controller with effect from the date the person immediately junior to him was promoted; Controller Grade-II with effect from the date the person immediately junior to him was promoted; Supervisor Grade-I with effect from the date the person immediately junior to him was promoted; Assistant Engineer with effect from with effect from the date the person immediately junior to him was promoted and Sr. Assistant Engineer with effect from with effect from the date the person immediately junior to him was promoted. **(We are not directing Review DPCs to be held because admittedly at the relevant DPCs Mr.Sood was empanelled for promotion but the empanelment was not given effect to because of the pendency of the disciplinary proceedings and further as already noted above, the claim of Mr.Sood for promotion to the posts of Controller Grade II and Supervisor Grade I was dependent upon the success office claim for promotion to the post of Junior Controller)**

69. This takes us to second claim made by Mr.Sood to the posts of Assistant Engineer and Sr. Assistant Engineer.

70. It is claimed by Mr.Sood that he was entitled to be promoted to the posts of Assistant Engineer and Sr.Assistant Engineer in the years 1996 and 1997 respectively.

71. Per contra, NTPC contended that Mr.Sood was not promoted in the years 1996 and 1997 because of pendency of departmental proceedings initiated against him. (It was strongly highlighted by counsel for Mr.Sood that NTPC has taken variant stands with respect to promotion of Mr.Sood in the years 1996 and 1997. It was highlighted that NTPC has contended in the counter affidavit that Mr.Sood was not entitled to be considered for promotion in the years 1996 and 1997 on account of pendency of departmental proceedings whereas in the additional affidavit dated December 13, 2002 it was contended that DPC held in the years 1996 and 1997 had considered Mr.DPC but findings/recommendations of DPC qua Mr.Sood were kept in sealed cover due to pendency of departmental proceedings initiated against Mr.Sood. Be that as it may. Nothing much turns thereon for the reason it has been averred by NTPC that findings/recommendations of DPC qua Mr.Sood kept in sealed cover were opened subsequently. It has nowhere been contended by NTPC that Mr.Sood was not fit for promotion in the years 1996 and 1997. The fact of the matter remains that NTPC denied promotion to Mr.Sood in the years 1996 and 1997 on account of pendency of departmental proceedings initiated against him).

72. In the foregoing paras, we have traced the history of the case till December 12/13, 1987, when the Disciplinary Authority had imposed the penalty of withholding of one increment with cumulative effect against Mr.Sood.

73. We now move forward.

74. On January 13, 1988 Mr.Sood submitted an appeal to the Appellate Authority assailing the legality of the order dated December 12/13, 1987 passed by the Disciplinary Authority imposing the penalty of withholding of one increment with cumulative effect upon Mr.Sood. The aforesaid appeal remained pending with the Appellate Authority for about six long years. Finally, vide order date January 01, 1994 the Appellate Authority disposed of the appeal by converting the penalty of *'withholding of one increment with cumulative effect'* to *'withholding of one increment without cumulative effect'*, that too on being nudged by Punjab and Haryana High Court.

75. On March 03, 1994 Mr.Sood submitted a review petition to the Reviewing Authority assailing the legality of order dated January 01, 1994 passed by the Appellate Authority. The apathy of NTPC continued. The review petition of Mr.Sood remained pending with Reviewing Authority for about two years. Finally, vide order dated March 19, 1993 the Reviewing Authority quashed the penalty of withholding of one increment imposed upon Mr.Sood and directed reopening of enquiry proceedings.

76. The enquiry proceedings were reopened. Finally, after about one and half year of reopening of enquiry proceedings vide order dated December 09, 1997 the Disciplinary Authority exonerated Mr.Sood.

77. It is the stand of NTPC that since departmental proceedings initiated against Mr.Sood were pending in the year 1996-1997 (as enquiry proceedings were reopened by the Reviewing Authority in the year 1996) Mr.Sood could not have been promoted in the year 1996-1997 in view of prescription contained in clause 2.8.2 of Statement of Promotion Policy for employees in Supervisory Category that no employee under suspension or against whom disciplinary or vigilance proceedings have

been initiated shall be promoted until he is unconditionally reinstated or exonerated.

78. The instant case is an illustration of gross apathy shown by an organization to its employee.

79. In the instant case, NTPC kept the appeal and the review petition submitted by Mr.Sood pending for about six and two years respectively. In all, the departmental proceedings initiated against Mr.Sood remained pending for about eleven years, out of which eight years were gobbled up by NTPC to decide the appeal and the review petition submitted by Mr.Sood. Most significantly, Rule 32 of Conduct Rules requires appellate authority to decide the appeal submitted by a delinquent employee within **three months** of submission of said appeal.

80. The net result of the apathy of NTPC was that such promotion of Mr.Sood got withheld due to pendency of departmental proceedings initiated against him which had fallen due about ten years after issuance of charge sheet dated November 12/13, 1986 forming gravamen of departmental proceedings. And the icing on the cake is the fact that Mr.Sood was ultimately exonerated by the disciplinary authority.

81. Mr.Sood cannot be penalized for apathy/laxity/inaction of NTPC. The justice and fair play require that Mr.Sood be granted promotion to the posts of Assistant Engineer and Sr. Assistant Engineer from the date he became entitled for said promotion(s) i.e. April 01, 1993 and April 01, 1996 respectively for Mr.Sood cannot pay for action of NTPC of dragging departmental proceedings initiated against Mr.Sood for about eleven long years, more so when we find that one promotion of Mr.Sood got withheld for a period of one year on account of imposition of minor penalty, which penalty ultimately got quashed and Mr.Sood stood exonerated by disciplinary authority.

In Re: Question II: Whether show cause notice dated November 03, 1998 issued by Reviewing Authority to Mr.Sood is legal and valid?

82. Till now we have traced the case till December 09, 1997 when the Disciplinary Authority exonerated Mr.Sood.

83. We move forward.

84. In the year 1998 Mr.Sood filed W.P.(C) No.4566/1998 seeking relief of promotion.

85. This stirred up the hornet's nest.

86. Soon after service of W.P.(C) No.4566/1998 upon NTPC, Reviewing Authority issued notice dated November 03, 1998 calling upon Mr.Sood to show cause as to why penalty of censure be not imposed upon him as he is of the opinion that the order dated December 09, 1997 passed by Disciplinary Authority exonerating Mr.Sood is unwarranted.

87. The timing of issuance of show cause notice dated November 03, 1998 is most suspicious and smacks of mala-fide.

88. The report submitted by (second) Enquiry Officer had exonerated Mr.Sood. The Reviewing Authority was kept in the loop by the Enquiry Officer, in that the Enquiry Officer submitted his report exonerating Mr.Sood to the Reviewing Authority who in turn forwarded the same to the Disciplinary Authority for taking a final decision. (The same is evident from the note dated December 09, 1997 noted by us in the foregoing paras).

89. In case the Reviewing Authority found something amiss with the report of Enquiry Officer and order dated December 09, 1997 passed by Disciplinary Authority exonerating Mr.Sood why did he i.e. Reviewing Authority not immediately issue show cause notice to Mr.Sood but instead chose to wait for about eleven months to issue the show cause notice. Why did Reviewing Authority sprang to life and issued show

cause notice to Mr.Sood only after service of W.P. (C) No.4566/1998 upon NTPC. (The finding returned by learned Single Judge that Reviewing Authority sprang into action and called for the records of case after receiving representation submitted by Mr.Sood against order dated December 09, 1997 exonerating Mr.Sood is faulty. It is not the case set up by NTPC in its counter affidavit and Reviewing Authority had called for the records of case after receiving representation submitted by Mr.Sood against order dated December 09, 1997 exonerating Mr.Sood. Further, where was the occasion for Mr.Sood to submit representation against an order which granted relief to him. The representation filed by Mr.Sood related to his promotion and not to order dated December 09, 1997 exonerating him.)

90. In this view of the matter, we uphold the impugned decision quashing the show cause notice dated November 03, 1998 issued by Reviewing Authority to Mr.Sood on the ground of same being mala-fide. (In view of the fact that we have upheld the order passed by the learned Single Judge quashing the show cause notice dated November 03, 1998 on the ground of mala-fide we do not go into contentions advanced by Mr.Sood that:- power of review cannot be exercised by Reviewing Authority in case of exoneration of delinquent employee and (ii) show cause notice dated November 03, 1998 was issued by Reviewing Authority after expiry of limitation period of six months prescribed in Rule 33 of Conduct Rules.)

91. The net result of above discussion is as follows:-

a) LPA No.684/2011 filed by Mr.Sood is allowed with the relief that Mr.Sood is held entitled to be promoted to the post of Junior Controller with effect from the date the person immediately junior to him was promoted; Controller Grade-II with effect from the date the person

immediately junior to him was promoted; Supervisor Grade-I with effect from the date the person immediately junior to him was promoted; Assistant Engineer with effect from with effect from the date the person immediately junior to him was promoted and Sr. Assistant Engineer with effect from with effect from the date the person immediately junior to him was promoted. **(We are not directing Review DPCs to be held because admittedly at the relevant DPCs Mr.Sood was empanelled for promotion but the empanelment was not given effect to because of the pendency of the disciplinary proceedings)**

b) LPA No.685/2011 filed by Mr.Sood is allowed with the relief that show cause notice dated November 03, 1998 issued by Reviewing Authority to Mr.Sood is quashed.

c) LPA No.731/2011 filed by NTPC is dismissed.

92. Mr.Sood would be entitled to all consequential benefits except actual salary for the higher posts to which he would now be promoted to, and we deny the same applying the principle that not having shouldered the responsibilities of the higher posts he should not be paid actual wages for the post in question, but we clarify that he would be given notional benefit of being placed in the pay scale with annual increments. Arrears be calculated and paid to him within a period of six months.

93. Parties shall bear their costs in the appeals.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

NOVEMBER 18, 2015/mamta