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

Date of decision: 18th May, 2026

+ W.P.(C) 7245/2017 & CM APPL. 47311/2022

O N SINGH

.....Petitioner

Through: Mr. Rahul Shukla and Mr. Ramandeep Singh, Advocates with Petitioner (in-Person).

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Mukul Singh, CGSC with Mr. Aryan Dhaka, Mr. Vikrant Badesra and Ms. Sunidhi Tyagi, Advocates for R-1.

Ms. Tatini Basu and Ms. Sneha Mondal, Advocates for R-2.

Mr. Uttam Datt, Senior Advocate with Ms. Sonakshi Singh, Mr. Kumar B. and Mr. Naman Kumar, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral)

1. The Petitioner, former Director (Finance) of Satluj Jal Vidyut Nigam Ltd.¹ [*“SJVN”* or *“the Corporation”*], has filed this petition challenging the disciplinary proceedings initiated against him by memorandum dated 15th March, 2004, and the order dated 30th July, 2009, whereby the penalty of

¹ formerly known as Nathpa Jhakri Power Corporation Ltd. (NJPC).



dismissal from service along with forfeiture of retiral benefits was imposed.

The Controversy

2. The controversy arises out of certain payments released to M/s Jaiprakash Hyundai Consortium [“JHC”], the contractor engaged for Contract No. 3.0 of the Nathpa Jhakri Hydro Electric Project. The project involved, *inter alia*, construction of Pressure Shafts and Power-House Complex. The contract, awarded in June 1993, was governed by contractual provisions, including those dealing with variations, extra items and substituted items.

3. The payments which form the subject matter of the disciplinary proceedings were released between 1996 and 1998 in relation to claims raised by JHC during execution of the contract. The circumstances in which those payments came to be processed and released constitute the principal basis of the charges framed against the Petitioner.

4. The charge-sheet memorandum was issued on 15th March, 2004. The Petitioner ceased to hold the post of Director (Finance) on 16th March, 2004. The inquiry report was submitted on 11th May, 2006 and the penalty order was passed on 30th July, 2009. The Petitioner’s earlier writ petition [W.P.(C) 4620/2004] challenging the disciplinary proceedings remained pending for several years and, as the inquiry resulted in a penalty order, was ultimately withdrawn in 2017, whereafter the present writ petition was instituted.

Factual Background

5. The Petitioner was appointed as Director (Finance) of SJVN by order dated 18th November, 1996. The appointment order stated that, in pursuance of Article 32(a) of the Articles of Association, the President of India was pleased to appoint him as Director (Finance) for a period of five years from



the date of assumption of charge, or until the date of superannuation, or until further orders, whichever was earlier. The order further stated that the terms and conditions governing the appointment would be issued separately.

6. The Petitioner's initial tenure expired in November 2001. Thereafter, the Ministry of Power issued orders from time to time permitting him to continue to hold charge of the post of Director (Finance) for specified periods, or until approval of the Appointments Committee of the Cabinet ["ACC"] for regular extension was received, or until further orders, whichever was earlier. The Petitioner continued to function in that capacity until 16th March, 2004.

7. The first payment under consideration in the disciplinary proceedings was of INR 5.90 crore. A proposal processed in December 1996 recorded that claims raised by JHC had been examined at the project level and recommended release of INR 5.90 crore, representing 60% of the amount then assessed as admissible i.e., 9.94 crore, pending detailed examination and finalisation of the claims. The proposal moved through various levels of the project hierarchy, including the General Manager and Director (Civil). The Petitioner, while recording his concurrence, noted that the work had been executed and regularisation of claims was pending. He observed that, in the interest of ensuring that the progress of the project was not adversely affected, the amount could be released as recommended, but further directed that regularisation be completed by the end of February 1997, failing which recovery could be effected in one instalment. The proposal was thereafter approved by the Chairman-cum-Managing Director ["CMD"].

8. The second payment under consideration was of INR 12 crore. A proposal processed in February 1997 recorded that claims raised by JHC had



been assessed at the project level and recommended release of INR 12 crore as an interim measure, after factoring in the earlier payment of INR 5.90 crore. The proposal was recommended by the concerned project authorities, including by the Engineer-in-Charge and the General Manager, concurred with by the Petitioner and approved by the CMD.

9. The third payment followed a slightly different course. A proposal processed in 1998 recorded that claims raised by JHC remained under consideration and that earlier payments aggregating INR 17.90 crore had already been released. During consideration of the proposal, differing views emerged regarding the admissibility and quantum of JHC's claims. The matter was ultimately placed before the Board of Directors and considered at its 70th Meeting held on 20th June, 1998. In that Meeting, the Board was apprised of the nature of JHC's claims, the complexity involved in their final determination, the delay in settlement, the contractual framework governing the project, and the contractor's cash flow constraints. The Board ultimately approved the proposal subject to specified safeguards, including an undertaking from JHC that the payment would not amount to admission of its claims, that any excess amount found payable upon final determination would be refunded or adjusted, and that no further *ad hoc* payment would be released until settlement of the pending claims.

10. A fax communication dated 22nd June, 1998 recorded the Board's decision. The communication noted that the admissible amount had been assessed at INR 44.44 crore and that, after adding average escalation of INR 8.64 crore, the total worked out to INR 53.08 crore. After adjustment of earlier payments aggregating INR 17.90 crore, the balance amount was reflected as INR 35.18 crore, out of which INR 24.56 crore was proposed



for release. The communication also recorded the conditions subject to which the proposal had been approved.

11. The record further indicates that, during consideration of the third proposal, in the relevant proposal, the Petitioner recorded that repeated *ad hoc* payments were not in consonance with principles of financial norms/propriety and suggested that, if payment was considered necessary, it be structured as “*temporary financial assistance*” recoverable with interest. The matter was thereafter placed before the Board of Directors for consideration.

12. The transactions relating to release of payments to JHC subsequently became the subject matter of vigilance scrutiny. Material relating to the transactions was examined by the Ministry of Power and was thereafter referred to the Central Vigilance Commission [“CVC”]. In this regard, on 19th January, 2004, the Ministry of Power issued an Office Memorandum [“O.M.”] to CVC, recording its examination of the matter. Subsequently, on 19th February, 2004, the CVC issued its first-stage advice concerning the transactions and the role of the officers involved therein. It observed that payments had been released to the contractor “*in gay abandon*” on the pretext of maintaining cash flow and that adequate safeguards had not been adopted. It further recorded that the power to approve such payments vested in the Board of Directors, that the Board had been bypassed on the first two occasions, and that the payments had been made without proper examination of JHC’s claims. The note also observed that the officers concerned had unduly favoured JHC at “*substantial cost to the Corporation*”. It further observed that, as Director (Finance), the Petitioner was expected to safeguard the financial interests of the Corporation and commented adversely upon his role in the transactions.



13. On 15th March, 2004, the Ministry of Power issued a chargesheet memorandum proposing to hold an inquiry against the Petitioner under Rule 25 of the SJVN Conduct, Discipline and Appeal Rules [*“CDA Rules”*]. The memorandum enclosed six articles of charge and called upon the Petitioner to submit a written statement of defence within ten days of receipt thereof. On the following day, i.e., 16th March, 2004, the Ministry issued an order stating that, as decided by the competent authority, the Petitioner ceased to hold the post of Director (Finance) of SJVN with immediate effect. SJVN issued a consequential order on the same date.

14. The record also contains an internal Ministry note dated 15th March, 2004, concerning issuance of the charge-sheet and cessation of the Petitioner’s tenure. The note records that the proposal for initiation of major penalty proceedings had been submitted for approval on 12th March, 2004 and that the charge-sheet was required to be issued *“before an order regarding cessation of his tenure is issued”*. The note further records that the Department of Legal Affairs had informed the Ministry that the Petitioner had instituted a writ petition challenging the proposed discontinuation of his tenure and that the matter was likely to be listed before this Court on *“16th March 2004 or latest by 17th March 2004”*. The note proceeds to record that, lest the Court stays issuance of the charge-sheet or cessation of his tenure, it was necessary that the charge-sheet be issued *“today itself”* and the order regarding cessation of tenure be issued before the writ petition was taken up for hearing.

15. Following issuance of the charge-sheet, a departmental inquiry was instituted. An Inquiry Officer [*“IO”*] was appointed and the proceedings continued. The Petitioner participated in the inquiry proceedings, cross-



examined management witnesses and examined witnesses in defence. Upon conclusion of the evidentiary stage, the matter was fixed for submission of written briefs. Subsequently, the IO submitted his report on 11th May, 2006, holding all six articles of charge proved. The report records that the Petitioner had sought extension of time for filing his written brief and had requested that time be granted up to 15th June, 2006. The IO, however, granted time up to 28th April, 2006 and thereafter proceeded to finalise the report upon recording that the written brief had not been received within the stipulated period.

16. The record indicates that, following submission of the inquiry report, the Petitioner addressed communications requesting that his written submissions be taken into consideration. The issue also became the subject matter of proceedings before this Court in W.P.(C) 4620/2004. By order dated 23rd November, 2006, this Court recorded the statement of Respondent No. 1 that the IO had been directed to take into consideration the Petitioner's written representation. Subsequently, by order dated 1st May, 2007, this Court directed compliance with the earlier order and disposal of the Petitioner's representation.

17. By communication dated 4th April, 2007, the CVC took the position that once the inquiry report had been submitted, the IO ceased to have any further role in the matter. The CVC advised that the Petitioner's submissions could instead be examined by the disciplinary authority while considering whether the findings returned by the IO warranted acceptance.

18. The Ministry thereafter sought second-stage advice from the CVC in relation to the disciplinary proceedings against the Petitioner. By communication dated 19th September, 2008, the CVC advised imposition of



the major penalty of dismissal from service along with forfeiture of retiral benefits. By O.M. dated 29th December, 2008, the Ministry referred the matter back to the CVC, noting that the Petitioner's tenure as Director (Finance) had ceased on 16th March, 2004 and seeking clarification regarding the manner in which the proposed penalty was to be implemented in those circumstances. Subsequently, by communication dated 5th May, 2009, the CVC reiterated that the penalty was to take effect immediately.

19. By memorandum dated 28th May, 2009, the Ministry supplied to the Petitioner copies of the CVC's second-stage advice and the related communications and invited his representation. In response, the Petitioner submitted a detailed representation dated 12th June, 2009. Upon consideration of the inquiry report, the Petitioner's representation, the CVC advice and the record before it, the Ministry passed the impugned order dated 30th July, 2009, concurring with the findings returned by the IO and imposing upon the Petitioner the penalty of dismissal from service along with forfeiture of retiral benefits with immediate effect.

Petitioner's Contentions

20. In support of the petition, Mr. Rahul Shukla, counsel for the Petitioner, makes the following submissions:

20.1. The chargesheet memorandum dated 15th March, 2004 and the cessation order dated 16th March, 2004 cannot be treated as independent events. The memorandum granted the Petitioner 10 days to submit his response, yet on the very next day he was removed from office. The internal Ministry note dated 15th March, 2004 reveals that the authorities intended to issue the charge-sheet and cessation order before this Court could consider the Petitioner's then pending challenge. An order styled as cessation of



tenure was, thus, employed to impose a punitive consequence.

20.2. The Petitioner continued as Director (Finance) under specific extension orders. His case for regular extension had been recommended but remained pending on account of vigilance clearance. The cessation of tenure was not a routine consequence of expiry of term. It followed immediately upon the adverse vigilance advice and issuance of the charge-sheet memorandum.

20.3. The disciplinary proceedings could not have been continued under the CDA Rules once the Petitioner ceased to be in service. Rule 2 applies the Rules to employees and Rule 3 defines an “employee” as a person in the employment of the Corporation. There is no provision authorising continuation of disciplinary proceedings after cessation of employment or empowering forfeiture of retiral benefits thereafter. Reliance is placed on *State Bank of India v. A.N. Gupta & Ors.*², *Bhagirathi Jena v. Board of Directors, OSFC & Ors.*³, and *UCO Bank & Anr. v. Rajinder Lal Capoor*⁴, in support of the submission that continuation of disciplinary proceedings after retirement or cessation of service, and the power to impose consequential penalties affecting retiral benefits, must be founded upon a specific statutory or regulatory provision. In the absence of such authority, disciplinary proceedings cannot ordinarily continue after the employee has ceased to be in service and penalties such as dismissal, removal or forfeiture of retiral benefits cannot be imposed thereafter.

20.4. Although the Petitioner participated in the inquiry, he was denied a meaningful opportunity at the stage of written briefs. The request for

² (1997) 8 SCC 60.

³ (1999) 3 SCC 666.



extension of time was occasioned by bereavement and personal difficulties. The IO nevertheless finalised the report without considering the Petitioner's written brief. The Petitioner thereafter approached both the disciplinary authority and this Court. The Respondents informed this Court that the IO had been directed to consider the Petitioner's written representation. Yet the course ultimately adopted, on the basis of subsequent advice received from the CVC, prevented any reconsideration by the IO. Rule 26(1) of the CDA Rules empowered the disciplinary authority to remit the matter for further inquiry or reconsideration, but that power was never exercised despite the procedural infirmity being specifically brought to its notice. Reliance is placed on *Managing Director, ECIL v. B. Karunakar & Ors.*⁵ to contend that the right to receive the inquiry report and make a representation against the findings recorded therein is an integral facet of the reasonable opportunity afforded to a delinquent employee in disciplinary proceedings.

20.5. The disciplinary authority did not independently consider the Petitioner's defence. The punishment order dated 30th July, 2009 merely reproduces the charges, inquiry history and procedural developments, but does not meaningfully engage with the Petitioner's principal defence founded upon the contractual provisions, contemporaneous note-sheets and correspondences. There is no proper consideration of Clause 52 of the General Conditions of Contract, Clause 9.2(iii)(d) of the Delegation of Powers, the note-sheets relating to the first and second payments, the Petitioner's objections to repeated *ad hoc* payments, the Board's approval of the third payment, or the repeated communications seeking recovery. The

⁴ (2007) 6 SCC 694.

⁵ (1993) 4 SCC 727.



order records conclusions without adequately disclosing any reasoning.

20.6. Even prior to the issuance of the charge-sheet, the Petitioner's explanation was not meaningfully considered by the vigilance authorities. While the allegations against the Petitioner were examined in detail, the contemporaneous documents and explanations furnished by him were either ignored or cursorily noticed without substantive analysis. The vigilance note and the subsequent CVC advice do not reflect any fair consideration of the Petitioner's defence or the documentary record relied upon by him.

20.7. Reliance is placed upon the O.M. dated 19th January, 2004 issued by the Ministry of Power. The Ministry itself recorded that one could not be certain of any vigilance or integrity angle and that, at best, the matter disclosed an administrative lapse. Despite this assessment, the matter was subsequently projected as a serious vigilance misconduct warranting major penalty proceedings and eventual dismissal from service.

20.8. The first two payments as per charge-sheet were not unlawful advances. They were provisional payments made against claims arising from works already executed, deviations and extra items. The first payment was initiated by the Assistant Executive Engineer, recommended by the Executive Engineer, General Manager and Director (Civil), and approved by the CMD. The Petitioner's concurrence was expressly conditional. Regularisation was specifically required by February 1997, failing which recovery could be effected in one instalment. The second payment followed a similar course.

20.9. The Petitioner never recommended release of a third *ad hoc* payment in the manner alleged. On the contrary, he specifically recorded that repeated *ad hoc* payments were inconsistent with principles of financial



propriety and proposed only “*temporary financial assistance*” recoverable with interest if interim relief to the contractor was considered unavoidable. The matter was thereafter placed before the Board of Directors. The Board, in its 70th Meeting, considered the claims and approved payment. Thus, liability cannot be fastened upon the Petitioner for a decision ultimately taken by the Board and after his objections had been expressly recorded.

20.10. Charge 5 is wholly unsustainable. The Petitioner repeatedly pressed for recovery or adjustment of the amounts released to JHC. This was done in April 2001, July 2001, July 2003 and again in March 2004. The Ministry was also informed that recoveries were not being permitted by the CMD and the Board. A person who repeatedly insisted upon recovery cannot simultaneously be accused of deliberately avoiding or delaying recovery unless the disciplinary authority first deals with those communications and rejects them on cogent grounds.

20.11. The entire disciplinary action was substantially influenced by the CVC O.M. dated 19th February, 2004. The language employed therein, particularly the observation that the Petitioner acted more as an “*Agent of the contractor*” than as “*Finance-chief of the Company*”, demonstrates that the matter was prejudged at the vigilance stage itself. The O.M. did not fairly consider the contractual framework, the chain of technical recommendations, the role of the CMD and Board, the Petitioner’s objections in relation to the third payment, or the subsequent correspondence relating to recovery.

20.12. The Petitioner has been singled out. Officers who initiated, processed, technically examined, recommended or released the payments were either not charge-sheeted or were ultimately exonerated. Particular



emphasis is placed on the fact that the first and second payments were approved by the CMD, while the third payment was approved by the Board of Directors after consideration of the matter and subject to specified safeguards. Yet neither the CMD nor the members of the Board were subjected to comparable disciplinary proceedings. The Petitioner alone was visited with the penalty of dismissal and forfeiture of retiral benefits.

20.13. Reliance is also placed on the cases of K.K. Gupta and S.K. Sharma, who were associated with the processing of the first and second payments and whose cases culminated in exoneration or findings not warranting any major penalty, the disciplinary authorities having taken note of the peculiar circumstances prevailing at the project, including its World Bank-monitored nature, the possible impact of delayed payments on timely commissioning and the approvals accorded at higher levels. Reference is further made to the case of G.S. Rao, who was proceeded against in relation to release of the amount of INR 24.56 crore, but whose lapse was ultimately treated as procedural in nature without any finding of financial loss to the Corporation.

20.14. Reliance is placed on *M. Raghavelu v. Government of A.P. & Anr.*⁶ and *Rajendra Yadav v. State of Madhya Pradesh & Ors.*⁷ to contend that where officers charged in relation to the same incident and on the same evidence have been exonerated, or where a co-delinquent with a more serious role has been awarded a lighter punishment, the delinquent cannot ordinarily be singled out for adverse treatment without a justifiable distinction.

⁶ (1997) 10 SCC 779.

⁷ (2013) 3 SCC 73.



20.15. Reliance is also placed upon subsequent developments relating to the disputes between SJVN and JHC. An Arbitral Tribunal, by award dated 28th April, 2008, awarded substantial amounts in favour of JHC under various heads of claim while rejecting the counterclaims of SJVN. Further reliance is placed upon records concerning the settlement of disputes between SJVN and JHC, adjustment of amounts already released and approval of payments pursuant to the settlement process. These developments demonstrate that the claims based on which the payments were released were neither fictitious nor illusory and materially undermine the allegation that the payments constituted an unwarranted largesse extended to JHC or resulted in financial loss to the Corporation.

20.16. No financial loss to the Corporation has been established as a consequence of the Petitioner's actions. Neither the inquiry report nor the punishment order records any clear finding quantifying or identifying any actual loss attributable to the Petitioner. In the absence of such a finding, the allegation that the impugned payments caused financial prejudice to the Corporation is unsustainable.

20.17. The matter ought not to be remanded. The underlying events are nearly three decades old, and the charge-sheet itself is more than twenty years old. The Petitioner has long since crossed the age of superannuation. Co-delinquents have already been exonerated and the orders passed in their favour have attained finality. A remand at this stage would serve no useful purpose and would merely prolong an already protracted proceeding.

UOI's Contentions

21. Opposing the petition, Mr. Mukul Singh, CGSC, makes the following submissions:



21.1. The Petitioner held a Board-level tenure post and had no vested right to continue as Director (Finance). His appointment itself was for five years, or until the date of superannuation, or until further orders, whichever was earlier. Upon expiry of the initial tenure, he was permitted to continue only through interim orders pending consideration of the proposal for extension. The cessation order dated 16th March, 2004 was, therefore, an administrative decision concerning tenure and cannot be equated with a penalty.

21.2. The charge-sheet memorandum dated 15th March, 2004 and the order dated 16th March, 2004 were distinct and independent actions. The cessation order merely recorded that the Petitioner ceased to hold the post of Director (Finance) pursuant to a decision taken by the competent authority. It imposed no stigma and did not amount to removal from service.

21.3. Serious irregularities were noticed in relation to release of payments to JHC. The payments were released without proper examination of admissibility, without adherence to the applicable contractual framework, without approval of the competent authority and without adequate safeguards to protect the Corporation's interests. As Director (Finance), the Petitioner was under a heightened obligation to ensure financial propriety and compliance with governing procedures.

21.4. The Petitioner cannot avoid accountability by contending that he was neither the initiator nor the final approving authority in respect of the payments. As head of Finance, he was expected to safeguard the Corporation's interests and provide appropriate advice at every stage. Instead of objecting to the release of *ad hoc* payments, he repeatedly concurred in and recommended their release.

21.5. The Petitioner was afforded full opportunity to defend himself in the



departmental inquiry. He participated in the proceedings, examined witnesses and was granted time to submit a written brief. Although he sought extension up to 15th June, 2006, the IO considered the request excessive but nevertheless granted further time up to 28th April, 2006. Despite such extension, the Petitioner failed to submit his written brief.

21.6. The inquiry report was forwarded to the Petitioner. Although the initial communication was returned undelivered, subsequent efforts were made to furnish the report at the addresses available with the Ministry and thereafter at the address subsequently indicated by the Petitioner himself. Instead of submitting a formal representation against the inquiry report, the Petitioner primarily insisted that his written brief be considered by the IO.

21.7. The grievance relating to non-consideration of the written brief is misconceived. Although the Ministry initially directed that the Petitioner's submissions be forwarded to the IO, the CVC advised that, once the inquiry report had been submitted, the IO ceased to have any further role in the proceedings and that the Petitioner's submissions could instead be considered by the disciplinary authority while deciding whether the findings deserved acceptance. Acting on such advice, the disciplinary authority itself examined the Petitioner's submissions and found no new fact or circumstance warranting departure from the findings returned by the IO.

21.8. The disciplinary authority independently considered the inquiry report, the Petitioner's representations and the material placed on record before arriving at its conclusions. The observations contained in the vigilance advice cannot, by themselves, be treated as evidence of bias or predetermination.

21.9. The plea of discrimination or parity is misconceived. As Director



(Finance), the Petitioner occupied the highest financial office within the Corporation and his responsibilities were qualitatively different from those of other officers involved in the transactions. Exoneration of, or lesser punishment awarded to, other officers does not confer immunity upon the Petitioner. Reliance is placed upon *Punjab & Sind Bank v. Raj Kumar*⁸, to contend that parity cannot be claimed merely because co-delinquents received lesser punishment. The Supreme Court has reiterated that higher office carries higher responsibility and accountability, and that a disciplinary authority is justified in imposing a more stringent punishment upon a senior officer occupying a position of greater trust, even where other participants in the transaction are dealt with more leniently.

21.10. The Petitioner had an efficacious statutory remedy under Rule 32 of the CDA Rules by way of appeal against the punishment order. The said remedy was not availed within the prescribed period. The present challenge is therefore liable to be examined bearing in mind the Petitioner's failure to pursue the statutory appellate mechanism available under the Rules.

21.11. Without prejudice to the aforesaid, even if any procedural infirmity is found to exist, the appropriate course would be to remit the matter to the disciplinary authority for reconsideration. In exercise of judicial review, the Court does not sit in appeal over departmental findings, cannot re-appreciate evidence and ordinarily ought not substitute its own conclusions on merits or punishment unless the decision is shown to be wholly perverse or shockingly disproportionate.

CVC's Contentions

22. Additionally, Ms. Tatini Basu, counsel for CVC, submits as follows:

⁸ 2026 SCC OnLine SC 519.



22.1. CVC acted strictly within the scope of its statutory functions. Pursuant to complaints regarding alleged irregularities in the affairs of the Corporation, a committee was constituted to examine the issues raised and, based on the material received, CVC directed further investigation to identify the officers responsible for the lapses noticed. By O.M. dated 19th December, 2001, CVC instructed UOI and SJVN to undertake a detailed investigation, identify the executives responsible for the irregularities and initiate appropriate action in consultation with CVC.

22.2. The investigation reports and vigilance record relating to release of advances aggregating INR 42.46 crore to JHC were thereafter forwarded to CVC for consideration. Upon examination thereof, CVC rendered its first-stage advice by O.M. dated 19th February, 2004. The advice was not confined to the Petitioner alone but extended to other officers whose roles were found to require examination in disciplinary proceedings.

22.3. Reliance is placed upon CVC's O.M. dated 19th February, 2004 to contend that the material placed before it disclosed serious lapses in relation to release of payments to JHC. It was observed that substantial amounts had been released without adequate scrutiny and safeguards; the Board had not been approached on the first two occasions despite the magnitude of the payments; and no serious effort had been made to settle or recover the advances. Being Director (Finance), the Petitioner was viewed as bearing primary responsibility for safeguarding the Corporation's financial interests. It was in these circumstances that major penalty proceedings were advised.

22.4. Upon conclusion of the inquiry, all six articles of charge were held proved. Thereafter, second-stage advice was sought from CVC. By communication dated 19th September, 2008, CVC advised imposition of the



major penalty of dismissal from service along with forfeiture of retiral benefits. Subsequently, by communication dated 5th May, 2009, CVC clarified that the penalty was to take effect immediately.

22.5. The advice rendered by CVC was advisory in nature and did not bind the disciplinary authority. The competent authority was required to independently consider the inquiry report, the Petitioner's representations and the material on record before arriving at its own conclusions.

22.6. The Petitioner has neither specifically challenged the statutory advice rendered by CVC nor sought any substantive relief against it. The grievance of the Petitioner is essentially directed against the disciplinary proceedings and the punishment order passed by the competent authority. The allegations of *mala fides*, bias and prejudgment are denied.

SJVN's Contentions

23. Mr. Uttam Datt, Senior Advocate appearing for SJVN, addressed the following submissions:

23.1. SJVN is a Central Public Sector Enterprise functioning under the administrative control of the Ministry of Power and is governed by applicable Government of India instructions, Department of Public Enterprises guidelines and vigilance requirements. Appointments to Board-level positions, including that of Director (Finance), are made through a process involving the Public Enterprises Selection Board [*"PESB"*], vigilance clearance, the administrative Ministry and approval of the ACC.

23.2. The challenge suffers from substantial delay. The Petitioner ceased to hold office in March 2004 and had earlier invoked the writ jurisdiction of this Court through W.P.(C) 4620/2004. Though attempts were made during the pendency of those proceedings to challenge the disciplinary action and



punishment order, the earlier writ petition ultimately came to be withdrawn in 2017. The present proceedings seek to reopen matters that had long since culminated in inquiry findings and a final penalty order.

23.3. The challenge to continuation of disciplinary proceedings after cessation of tenure is misconceived. The disciplinary proceedings had already been instituted prior to cessation of the Petitioner's tenure and were thereafter continued in accordance with the applicable service framework. Reliance is placed upon Rule 30A of the CDA Rules to contend that proceedings instituted while an employee is in service may be continued and concluded notwithstanding subsequent retirement or cessation of service. On that basis, it is submitted that the charge-sheet having been issued on 15th March, 2004 prior to cessation of tenure on 16th March, 2004, the competent authority retained jurisdiction to conclude the proceedings and pass appropriate orders thereafter.

23.4. On the merits of the charges, substantial amounts were released to JHC without adequate scrutiny of admissibility, without ensuring compliance with the applicable contractual framework and without securing timely regularisation or recovery. The contractual provisions relied upon by the Petitioner do not authorise the kind of *ad hoc* payments that were released. The findings returned in the departmental inquiry are based on evidence and do not warrant interference in exercise of judicial review.

23.5. The Petitioner's reliance upon the exoneration of other officers is misplaced. The role of each officer was independently examined in accordance with the applicable disciplinary framework. Exoneration of other officers cannot dilute or negate the Petitioner's individual responsibility.

23.6. The relevance of the subsequent arbitral award and settlement



proceedings is disputed. The fact that disputes between SJVN and JHC were subsequently referred to arbitration, that certain amounts were ultimately found payable, or that adjustments were made during the settlement process, does not validate the release of payments between 1996 and 1998. The disciplinary proceedings concern the propriety of the decisions taken at the time the payments were released and not the eventual outcome of contractual disputes between the parties.

Issues for Determination

24. Having regard to the pleadings, record and submissions advanced, the following issues arise for determination:

- (i) What is the permissible scope of judicial review in the present challenge to disciplinary proceedings and punishment.
- (ii) Whether the present writ petition is liable to be rejected on account of delay, the earlier writ proceedings culminating in withdrawal of W.P.(C) 4620/2004, or the Petitioner's failure to avail the statutory remedy of appeal under Rule 32 of the CDA Rules.
- (iii) Whether the charge-sheet dated 15th March, 2004 and the cessation order dated 16th March, 2004 were independent administrative events, or whether the record shows that they were inseparably linked in a manner which affected the fairness of the action against the Petitioner.
- (iv) Whether, in the facts of the present case, the impugned order adequately discloses the legal basis on which disciplinary proceedings were continued after cessation of the Petitioner's tenure and the penalty of dismissal from service with forfeiture of retiral benefits was imposed.
- (v) Whether the inquiry and punishment order stand vitiated by denial of reasonable opportunity, particularly on account of non-consideration of the



Petitioner's written brief, the subsequent orders passed by this Court in the earlier writ petition, and the course adopted on CVC advice.

(vi) Whether the findings recorded against the Petitioner on the six articles of charge are sustainable on the material placed on record, having regard to the contractual framework, the nature of the payments released to JHC, the Petitioner's role in the decision-making process, and the allegation relating to recovery of the amounts released.

(vii) Whether the disciplinary authority failed to consider material documents, contemporaneous records and explanations relied upon by the Petitioner while recording its conclusions.

(viii) Whether the penalty of dismissal from service and forfeiture of retiral benefits is arbitrary, discriminatory or disproportionate, particularly in light of the treatment accorded to other officers involved in the same transactions and the subsequent developments relating to the disputes with JHC.

(ix) If the impugned action is found unsustainable, whether the matter should be remitted to the disciplinary authority or whether this Court should mould final relief having regard to the age of the proceedings, the Petitioner's superannuation and the nature of the record.

Discussion and Analysis

Scope of Judicial Review

25. The challenge before this Court requires a careful distinction between the existence of material sufficient to warrant an inquiry and the legality of the manner in which that inquiry was pursued, concluded and ultimately translated into the penalty of dismissal from service with forfeiture of retiral benefits. Public funds were involved. The project was a public sector project of considerable magnitude. Substantial payments were released to a



contractor. These circumstances justified scrutiny and may well have justified initiation of disciplinary proceedings. They do not, however, without more, justify a disciplinary conclusion reached in disregard of material documents, parity considerations, jurisdictional limitations and the basic requirement of reasoned decision-making.

26. The scope of judicial review in disciplinary matters is well settled. The Court does not act as an appellate authority over departmental findings and cannot reappreciate the evidence to arrive at an independent conclusion merely because another view may also be possible. Judicial review is directed to the decision-making process and not the decision itself. Interference is warranted where the enquiry has been conducted in violation of the principles of natural justice or the prescribed procedure, where the findings are based on “*no evidence*”, where relevant and material evidence has been ignored or extraneous considerations have influenced the decision, where the conclusions are such as no reasonable person acting objectively could have reached, where the disciplinary authority has failed to apply its mind or assign reasons, or where the punishment imposed is so disproportionate as to shock the Court’s conscience. These principles stand recognised in *B.C. Chaturvedi v. Union of India & Ors.*⁹, *Union of India v. P. Gunasekaran*¹⁰ and *Allahabad Bank v. Krishna Narayan Tewari*¹¹.

27. The present case is not one where the Court is merely being invited to prefer the Petitioner’s version of the facts over that accepted by the IO; the challenge goes to more fundamental aspects of the disciplinary process. The Petitioner contends that the proceedings, though clothed in disciplinary

⁹ (1995) 6 SCC 749.

¹⁰ (2015) 2 SCC 610.



form, failed to adequately reckon with the nature of the transactions in question, the chain of decision-making, his recorded objections and directions regarding recovery, the treatment accorded to other officers involved in the same transactions, and the absence of a lawful basis for imposing dismissal from service and forfeiture of retiral benefits after he had ceased to hold office. These contentions require examination within the recognised limits of judicial review.

Maintainability, Delay and Earlier Proceedings

28. The objection to maintainability cannot be accepted. The earlier writ petition, being W.P.(C) 4620/2004, was filed when the disciplinary proceedings were still pending and before the final penalty order was passed. Once the inquiry culminated in the order dated 30th July, 2009, the Petitioner, eventually, withdrew the earlier writ petition in 2017, with the statement that he would challenge the punishment order by initiating separate proceedings. The present writ petition is, therefore, not a second challenge to a finally adjudicated cause. It challenges the punishment order and its consequential civil consequences.

29. The writ petition is also not liable to be rejected merely because CVC has been impleaded. The Court is not called upon to issue any personal direction against any officer of CVC. The CVC advice forms part of the decision-making record. The Petitioner has challenged the disciplinary process partly on the ground that CVC's advice was strongly prejudicial and that the disciplinary authority allowed that advice to displace independent consideration. The presence of CVC in the array of parties, therefore, cannot defeat the petition. At the highest, if no substantive relief is to be issued

¹¹ (2017) 2 SCC 308.



against CVC, the petition may be moulded accordingly.

30. The objection of delay, however, must be considered with some care. The payments relate to 1996 to 1998. The charge-sheet was issued in 2004. The punishment order was passed in 2009. The present writ petition was filed after withdrawal of the earlier proceedings. There is some delay, but the Petitioner had been litigating and pursuing his grievance through representations and legal proceedings during the intervening period. The record does not indicate abandonment of the claim. Equally, UOI's objection of alternate statutory remedy of appeal under Rule 32 of the CDA Rules does not merit rejection. The existence of an alternative remedy is not an absolute bar to the exercise of writ jurisdiction, particularly where questions relating to jurisdiction, legality of the disciplinary proceedings and forfeiture of retiral benefits are raised. More importantly, the impugned order entails dismissal from service and forfeiture of retiral benefits. Such continuing civil consequences cannot be shut out on delay alone when the record itself shows that the earlier writ petition was withdrawn to pursue a separate challenge to the punishment order.

Whether the Charge-sheet and Cessation Order were Independent Events

31. The Petitioner's principal objection to the initial action arises from the sequence of events on 15th and 16th March, 2004. On 15th March, 2004, the Petitioner was served with a charge-sheet memorandum proposing major penalty proceedings and called upon to submit a written statement of defence within 10 days. On the following day, i.e., 16th March, 2004, the Ministry of Power issued an order stating that the Petitioner ceased to be Director (Finance) of SJVN, with immediate effect.

32. If these two documents stood alone, the Respondents' submission that



the charge-sheet and the cessation order were independent actions would have merited acceptance. The Petitioner was occupying a tenure post. The order of appointment dated 18th November, 1996 itself contemplated continuation for a specified period, or until further orders, whichever was earlier. Following expiry of the initial tenure, the Petitioner continued under formal extension orders pending consideration of the proposal for further extension. In that sense, the Petitioner did not possess an indefeasible right to continue as Director (Finance).

33. The difficulty for the Respondents arises from the internal Ministry note dated 15th March, 2004. The note records that the charge-sheet was required to be issued “*before an order regarding cessation of his tenure is issued*”. It further records that the Department of Legal Affairs had informed the Ministry that the Petitioner had instituted proceedings before this Court challenging the proposed discontinuation of his tenure. The note proceeds to state that, lest this Court stay the issuance of the charge-sheet or the order regarding cessation of tenure, the charge-sheet be issued “*today itself*” and the order regarding cessation of tenure be issued before that petition was taken up for hearing.

34. The language employed in the note is difficult to ignore. At the very least, it demonstrates that the issuance of the charge-sheet and the cessation order was administratively sequenced with reference to the pending proceedings before this Court. The concern reflected in the note was not merely to give effect to an earlier administrative decision. It also extended to ensuring that both actions were taken before the Court had an opportunity to examine the matter. A public authority is entitled to defend its actions in judicial proceedings and, in the absence of any restraint order, is not



precluded from taking decisions otherwise available to it in law. However, where the contemporaneous record expressly proceeds on the footing that action should be taken before the Court could consider the matter, the decision-making process becomes a legitimate subject of closer scrutiny.

35. That said, the Court is not persuaded that the cessation order dated 16th March, 2004 can be invalidated merely on that basis or that the Petitioner is entitled to be treated as having continued as Director (Finance) until the date of superannuation. The post was tenure-based and the Petitioner's continuance after expiry of the original tenure was under several extension orders. A writ court cannot convert a tenure appointment into a continuing office merely because the timing or sequence of the administrative action is open to criticism. The significance of the contemporaneous record lies elsewhere; it reinforces the need to closely examine whether the disciplinary proceedings that followed were fair, independent and legally sustainable.

Continuation of Disciplinary Proceedings after Cessation of Tenure

36. The Petitioner has urged that, once his tenure as Director (Finance) came to an end on 16th March, 2004, the Respondents lacked authority to continue the disciplinary proceedings and thereafter impose, in 2009, the penalty of dismissal from service coupled with forfeiture of retiral benefits. The submission proceeds on the footing that disciplinary jurisdiction ordinarily rests upon a subsisting relationship of employment and that any continuation of proceedings, or curtailment of retiral benefits after cessation of service, must be supported by a clear and lawful source of power.

37. The Respondents dispute this contention and maintain that the



disciplinary proceedings were validly continued notwithstanding cessation of the Petitioner's tenure. According to them, the charge-sheet having been issued on 15th March, 2004, prior to the cessation order dated 16th March, 2004, the disciplinary process could lawfully proceed to its conclusion.

38. The Petitioner, however, contends that the present case concerns a Board-level tenure appointment which came to an end on 16th March, 2004, whereas the impugned order imposing punishment came to be passed more than five years thereafter. It is further pointed out that the charge-sheet itself was issued under Rule 25 of the CDA Rules and that the impugned order does not identify the provision under which such consequences could be imposed after cessation of tenure.

39. The Court does not consider it necessary, for purposes of the present case, to finally pronounce upon the precise contours of the authority, if any, available to continue disciplinary proceedings after cessation of tenure. The Respondents have relied upon Rule 30A of the CDA Rules to contend that proceedings instituted while an employee is in service may continue notwithstanding subsequent retirement or cessation of service. The narrower question arising on the present record, however, is whether the disciplinary authority addressed that jurisdictional issue and identified the source of power under which the penalties ultimately imposed were authorised.

40. The record indicates that this issue was not free from doubt even at the level of the Ministry. By O.M. dated 29th December, 2008, the Ministry recorded that the Petitioner's tenure had ceased on 16th March, 2004 and that he was no longer in the service of SJVN. The Ministry specifically sought advice regarding the nature and operation of the proposed penalty in those circumstances. The very fact that such clarification was considered



necessary indicates that the legal basis for continuing the proceedings and imposing the proposed penalty after cessation of tenure required examination.

41. The same O.M. also referred to the case of one Mr. Binay Kumar, ex-Director, NHPC, which the Ministry considered similar in material respects. In that case also, the officer was a Board-level PSU functionary; his tenure had come to an end; disciplinary proceedings for major penalty had been initiated; and major penalty had been advised when the officer was no longer holding office. The note records that CVC had advised that since the tenure had already come to an end and the services had not been “terminated”, the major penalty be kept in “suspended animation”, to revive if the officer rejoined government service. Whether that case was in fact comparable is not determinative. What is significant is that the Ministry itself recognised the need to examine the legal consequences of imposing a major penalty upon a person who had already ceased to hold office.

42. The Court is mindful of the principles recognised in *A.N. Gupta*, *Bhagirathi Jena* and *Rajinder Lal Capoor*, namely that the continuance of disciplinary proceedings after retirement, the withholding or curtailment of retiral benefits, or the imposition of any post-retiral consequence must derive authority from a specific provision in the applicable service or pension rules, and that the exercise of such power must remain within the limits of the rule creating it.

43. The impugned penalty order dated 30th July, 2009 does not engage with that issue. While it records the inquiry proceedings, the findings returned by the IO and the advice received from the CVC, it does not identify the authority under which dismissal from service was imposed after



cessation of tenure. Nor does it indicate the provision under which gratuity, leave encashment or other retiral benefits were liable to be forfeited. The order is equally silent on the concerns reflected in the Ministry's O.M. dated 29th December, 2008.

44. Be that as it may, the present case is not being decided solely on the footing that no provision could ever authorise such action. The difficulty lies in the fact that the disciplinary authority did not examine or explain the source, scope or applicability of the authority under which it purported to impose the penalties ultimately imposed in the circumstances of the present case.

45. In these circumstances, the objection relating to post-cessation jurisdiction cannot be treated as insubstantial. Where a Board-level tenure appointee had ceased to hold office several years before the penalty order came to be passed, and where the Ministry itself had sought clarification on the issue, the final order was expected to disclose the legal basis on which such consequences were being imposed. The impugned order does not do so.

46. This aspect is not, by itself, determinative of the writ petition. It nevertheless constitutes a material circumstance bearing upon the sustainability of the impugned order and must be considered along with the Petitioner's remaining challenges to the disciplinary proceedings, the findings returned in the inquiry and the penalty ultimately imposed.

Natural Justice and Non-consideration of the Written Brief

47. The inquiry report records that the Petitioner did not submit his written brief within the time granted and that the report was finalised without its benefit. The Respondents contend that the Petitioner was afforded sufficient time and that his request for extension was unreasonable.



48. The Court is not required to hold that every refusal of extension vitiates disciplinary proceedings. An IO is entitled to regulate the conduct of the inquiry, and a charged officer cannot indefinitely delay submission of written arguments. The facts of the present case, however, do not end with the refusal of extension. After submission of the inquiry report, the Petitioner repeatedly requested that his written brief be considered. In the earlier writ proceedings, this Court recorded on 23rd November, 2006 that Respondent No. 1 had stated that the IO had already been directed, by communication dated 5th October, 2006, to take the Petitioner's written representation into consideration. The Court therefore observed that the second prayer in the application stood satisfied and that the prayer seeking quashing of the inquiry would be considered after action had been taken on the said communication. Thereafter, on 1st May, 2007, this Court again directed compliance with the order dated 23rd November, 2006 and disposal of the Petitioner's representation.

49. In the above circumstances, the record reflected that the Petitioner's written representation was to be considered in the manner indicated in the statement made on behalf of Respondent No. 1. However, CVC subsequently advised that, once the IO had submitted the inquiry report, he was no longer concerned with the matter and that the Petitioner's submissions could instead be considered by the disciplinary authority while deciding whether the findings deserved acceptance. The Ministry thereafter proceeded on that basis.

50. The difficulty does not lie merely in the fact that the IO did not reconsider the inquiry report. It lies in the circumstance that a statement was made before this Court that the IO had been directed to consider the



Petitioner's written representation and the proceedings thereafter continued on a different footing. Where a public authority informs the Court that a particular procedural course has been adopted, and the Court proceeds on that basis, a subsequent departure from that course ordinarily requires appropriate disclosure or an equivalent procedural safeguard.

51. The Respondents submit that the disciplinary authority examined the Petitioner's written submissions and found no new fact or circumstance warranting departure from the findings recorded in the inquiry report. That submission does not fully answer the grievance raised. The Petitioner's complaint is that the inquiry report itself came to be finalised without consideration of his written brief. A subsequent conclusion by the disciplinary authority that no new fact emerged does not address the concern that the IO returned findings on the charges without first considering the written defence which the Petitioner sought to place on record.

52. In ***B. Karunakar***, the Supreme Court recognised that the findings recorded by the IO constitute "*important material*" before the disciplinary authority and that the delinquent employee must have an effective opportunity to point out errors, misreading of evidence, non-consideration of relevant material or unsupported conclusions before the disciplinary authority arrives at its own decision. In the present case, the Petitioner's defence rested substantially upon documentary material, including contemporaneous note-sheets, contractual provisions, Board proceedings, communications relating to recovery and the treatment accorded to other officers involved in the same transactions. These were not extraneous matters, but went to the very foundation of the charges levelled against him.

53. In the opinion of this Court, the manner in which the issue relating to



the written brief was ultimately dealt with caused prejudice to the Petitioner and adversely affected the fairness of the disciplinary process.

Sustainability of Findings on the Articles of Charge

54. The Court is not required to reappraise the evidence led in the disciplinary proceedings. Some examination of the articles of charge is nevertheless necessary, as the Petitioner alleges ignorance or non-consideration of material documents. The inquiry is therefore confined to whether the findings reflect due consideration of the contemporaneous record and satisfy the standard of reasoned disciplinary adjudication.

Articles 1 and 2

55. Article 1 concerns the first payment of INR 5.90 crore and Article 2 concerns the second payment of INR 12 crore. The allegation is that the Petitioner concurred in release of *ad hoc* payments without proper examination of their justification, contractual admissibility and approval requirements.

56. The contemporaneous notes indicate that the first proposal originated at the project level. The Assistant Executive Engineer recorded that the relevant issues had been examined and that an amount of approximately INR 9.94 crore was estimated to be admissible. The proposal thereafter moved through the Executive Engineer, General Manager and Director (Civil). The Director (Civil) expressly recorded that “*admissibility of the claims*” required case-wise examination and called for detailed particulars to be furnished to the Corporate Office. The Petitioner, while concurring, recorded that the works had already been executed, that regularisation was pending and that recovery could be effected in one instalment if regularisation was not completed by February 1997.



57. The note recorded by the Petitioner does not reflect an unconditional release of funds. It reflects concurrence in a proposal that had already undergone technical scrutiny, coupled with a stipulation regarding regularisation and recovery. Whether such concurrence represented the most prudent financial course is a separate question. However, the disciplinary authority was required to examine the nature and extent of the Petitioner's participation in the decision-making process before attributing to him sole responsibility for the transaction.

58. The note relating to the second payment assumes particular significance. It records total claims of INR 67.36 crore, an estimated admissible amount of INR 21.05 crore and expressly takes note of the earlier payment of INR 5.90 crore while arriving at the amount proposed for release. The proposal ultimately recommended payment of INR 12 crore. The contemporaneous record, thus, indicates that the earlier release was neither overlooked nor ignored while processing the second payment. In these circumstances, the disciplinary authority was required to specifically examine the effect of this contemporaneous material while evaluating the allegation that the Petitioner had failed to safeguard the Corporation's interests in relation to recovery of the amounts already released.

59. The Respondents' objection that the proposals did not clearly identify the governing contractual provision or the precise source of approval authority may raise issues of financial propriety. However, the disciplinary findings required a closer examination of the Petitioner's actual role in the process, the extent to which technical assessment lay within the domain of engineering officers, and the significance of the Petitioner's recorded observations regarding regularisation and recovery. The impugned order



does not engage with these aspects in the detail that was necessary considering the nature of the charge.

Article 3

60. Article 3 relates to the third payment of INR 24.56 crore. The charge proceeds on the basis that the Petitioner wrongfully concurred in release of a further *ad hoc* payment to the contractor. The contemporaneous record, however, requires closer scrutiny. It shows that the proposal underwent examination at multiple levels, including by technical authorities. During that process, differing views emerged. The Petitioner recorded reservations regarding repeated *ad hoc* payments and suggested that, if assistance was considered unavoidable, it should be structured as “*temporary financial assistance*” recoverable with interest. The matter was thereafter placed before the Board of Directors.

61. The proceedings of the 70th Meeting of the Board of Directors indicate that the Board was apprised of the nature of the contractor’s claims, the additional and substituted works executed, the delay in final determination of claims and the financial position of the contractor. The Board ultimately approved release of funds subject to specified safeguards. The subsequent communications also record adjustment of the amounts already released while computing the balance amount.

62. In these circumstances, the disciplinary authority was required to carefully distinguish between the Petitioner’s role in processing the proposal and the Board’s ultimate decision to approve the payment. The impugned order does not meaningfully engage with that distinction.

Article 4

63. Article 4 relates to alleged failure to ensure compliance with the



Board's requirement that a specific undertaking be obtained from the contractor before release of INR 24.56 crore.

64. The record indicates that this issue subsequently arose in proceedings against another officer, namely G.S. Rao, and was treated as a procedural lapse that did not result in financial loss to the Corporation. While such proceedings may not be determinative of the Petitioner's liability, they formed part of the surrounding circumstances that required consideration. Even otherwise, the disciplinary authority was required to examine the precise nature of the Petitioner's responsibility in relation to obtaining the undertaking and whether the obligation rested primarily upon officers responsible for implementation of the Board's decision.

Article 5

65. Article 5 alleges failure to pursue recovery of the amounts released to the contractor and attributes to the Petitioner a course of conduct designed to avoid or defer such recovery. This article requires examination in light of the contemporaneous correspondences relied upon by the Petitioner.

66. The record includes communications of April 2001, July 2001, July 2003 and March 2004, in which the Petitioner repeatedly addressed the issue of recovery of the amounts released to JHC. By communication dated 12th April, 2001, he called for recovery or adjustment of the outstanding advances and cautioned against further delay. On 27th July, 2001, he reiterated that recoveries should be effected in accordance with the decision of the Board of Directors. In July 2003, he directed that recoveries be made through running account bills, particularly in circumstances where bank guarantees had not proved effective. Thereafter, by communication dated 8th March, 2004 addressed to the Secretary, Ministry of Power, he stated that



his repeated requests for recovery had not been acted upon and that recovery was not being permitted. Whether these communications were sufficient to discharge his responsibilities is a matter that may admit debate. They, nevertheless, formed part of the contemporaneous record and required specific consideration before a finding could be returned that the Petitioner had failed to pursue recovery or had deliberately sought to avoid it.

67. The disciplinary findings do not adequately engage with that record. Where documentary material relied upon by a charged officer bears directly upon the substance of the charge, the authority is expected to explain why such material does not alter the conclusion ultimately reached. The absence of such analysis materially weakens the finding recorded on Article 5.

Article 6

68. Article 6 alleges that while recommending the first and second payments, the Petitioner did not bring to the notice of other Directors and CMD that financial power to approve such advances vested in the Board, and that he did so only indirectly and as an afterthought after the third proposal.

69. The record shows that the third proposal was ultimately placed before the Board of Directors and that the first two payments were approved after processing through multiple levels of the organisation, including the Director (Civil) and the CMD. If Board approval was indeed mandatory for the first two payments, that issue was not peculiar to the Petitioner. The CMD, Director (Civil), project authorities and other officers were all part of the process. The Petitioner may have been under a duty to flag the issue. But again, the question is whether this omission, when placed in its proper context, constituted grave misconduct warranting the penalty imposed,



particularly when the Board later broadly considered the payments and when other officers were exonerated. The impugned punishment order does not undertake that exercise in any meaningful manner.

70. For the foregoing reasons, the findings recorded on Articles 3 and 5 cannot be sustained on the reasoning reflected in the record. As regards Articles 1, 2, 4 and 6, the disciplinary authority failed to adequately engage with material aspects of the contemporaneous record, the Petitioner's explanation, the chain of decision-making, and other relevant circumstances bearing upon the charges. The Court is not required to finally determine whether every allegation levelled against the Petitioner stood conclusively disproved. The issue is whether the findings, particularly those forming the foundation of the penalty imposed, were arrived at after due consideration of all material circumstances. On that test, the disciplinary conclusions suffer from substantial infirmities. Even assuming that certain aspects of the Petitioner's conduct could still warrant scrutiny, the findings as recorded cannot furnish a sustainable basis for the penalty ultimately imposed.

Failure to Consider Material Documents and Relevant Considerations

A. Effect of the CVC Note and Independent Application of Mind

71. The CVC O.M. dated 19th February, 2004 cannot also be ignored. It constituted the basis of the first-stage advice recommending initiation of major penalty proceedings and reflects the vigilance perspective that subsequently informed the disciplinary process.

72. CVC was fully entitled to examine whether the release of substantial amounts to a contractor disclosed vigilance concerns and, if the material so warranted, to advise initiation of major penalty proceedings. This Court does not sit in appeal over such administrative advice rendered at the pre-inquiry



stage. The question, however, is not whether CVC could render such advice, but whether the disciplinary authority thereafter independently evaluated the material placed before it.

73. The difficulty arises from the language employed in the O.M. and the extent to which the subsequent disciplinary process appears to have remained influenced by it. The O.M. described the payments as having been released “*in gay abandon*”, observed that “*no precautions or safeguards*” had been taken, stated that the officers concerned had deliberately extended undue favour to the contractor and that mala fides were “*loud and clear*”, at least *prima facie*. It further recorded that the Petitioner appeared to have acted more as an “*Agent*” of the contractor than as a Finance Chief.

74. These were undoubtedly serious observations. They were, however, made at the stage of first-stage vigilance advice, before commencement of disciplinary proceedings and before the evidence and the Petitioner’s defence had been examined in the course of an inquiry. Equally significant is the fact that the O.M. did not engage with several aspects that later emerged from the record, including the processing of the first two payments through the institutional hierarchy, the Petitioner’s recorded stipulation regarding regularisation and recovery, the treatment of the first payment while computing the second, the differing views expressed in relation to the third payment, the Board’s eventual approval and the Petitioner’s subsequent communications concerning recovery.

75. The Court does not suggest that the use of strong language by CVC, by itself, vitiated the disciplinary proceedings. Had the disciplinary authority independently analysed the record and furnished its own reasons for accepting the findings against the Petitioner, the language employed in the



vigilance advice may have assumed limited significance. The concern arises because the punishment order does not disclose any meaningful engagement with the principal documentary defences relied upon by the Petitioner. While recording the procedural history, the findings of the IO and the advice received from CVC, the order does not undertake any substantial analysis of the Petitioner's defence.

76. The Court is not required to return any finding of *mala fides* against CVC. The difficulty lies in the fact that, in the circumstances of the present case, the disciplinary authority was expected to demonstrate a clear and independent evaluation of the material before it, particularly when the first-stage vigilance advice had expressed strong *prima facie* views on the Petitioner's conduct. That obligation assumed added significance when the Ministry's own internal notings had, at one stage, referred to the matter as involving an "*administrative gap/lapse*" and reflected uncertainty regarding the "*vigilance/integrity angle*". The record, however, does not sufficiently demonstrate such independent consideration.

B. Subsequent Arbitral Award and Settlement

77. Reliance has also been placed on the arbitral award dated 28th April, 2008 and the subsequent settlement of disputes between SJVN and JHC. According to the Petitioner, these developments demonstrate that the contractor's claims were not fictitious and that the payments released during execution of the project did not result in the financial prejudice alleged in the disciplinary proceedings.

78. The Respondents are correct in contending that a subsequent arbitral award cannot retrospectively validate every procedural step taken at the time of release of funds. Questions of financial propriety, authority and



compliance with applicable procedures must ordinarily be assessed with reference to the circumstances prevailing when the decision was taken. A later award or settlement cannot, by itself, cure an otherwise irregular exercise of authority.

79. At the same time, the subsequent developments cannot be treated as wholly irrelevant. The disciplinary case, as framed and pursued, was not confined to a technical breach of procedure. It proceeded on allegations of undue favour to the contractor, injury to the Corporation's financial interests and conduct suggestive of deliberate protection of the contractor. The subsequent arbitral award and the materials relating to settlement of disputes between SJVN and JHC indicate that substantial claims of the contractor were ultimately adjudicated upon or resolved through the settlement process. In that context, the premise that the payments represented nothing more than an unwarranted largesse extended to the contractor required closer examination. These developments were plainly relevant to the issues of financial prejudice to the Corporation, culpability and the gravity of the misconduct alleged.

80. The Court does not suggest that the arbitral award or subsequent settlement conclusively established the correctness of the decisions taken during execution of the contract. Nor could the Inquiry Officer, whose report had already been submitted in 2006, could be expected to consider developments that occurred later. The significance of these subsequent events lies elsewhere. By the time the punishment order came to be passed on 30th July, 2009, allegations of financial prejudice to the Corporation continued to form an important part of the disciplinary narrative. Yet the punishment order neither identifies nor analyses any specific financial loss



attributable to the Petitioner's conduct, nor does it indicate how the question of financial prejudice was evaluated while imposing the extreme penalty of dismissal from service coupled with forfeiture of retiral benefits. In these circumstances, the absence of any meaningful examination of that aspect assumes significance.

Penalty, Parity and Proportionality

A. Treatment of Co-delinquents and Parity

81. The treatment accorded to other officers associated with the transactions in question constitutes a significant feature of the present case. The record indicates that the first, second and third payments were processed through multiple levels of the organisation. Different officers participated at different stages by initiating proposals, examining claims, making recommendations, according approvals or implementing decisions relating to release of funds.

82. The record further indicates that several such officers were either not proceeded against departmentally or were ultimately exonerated. Proceedings concerning K.K. Gupta and S.K. Sharma, who were associated with the processing of the first and second payments, culminated in outcomes materially different from those visited upon the Petitioner. In those proceedings, reference was made to the World Bank-monitored nature of the project, the possible impact of delay in payments on commissioning of the project and the fact that the transactions had received approval at higher levels within the Corporation. Similarly, in the proceedings concerning G.S. Rao, arising out of release of the amount of INR 24.56 crore without obtaining the undertaking contemplated by the Board, the lapse was treated as not having resulted in dilution of the Corporation's



position or any identifiable financial loss.

83. The Court accepts the Respondents' submission that the Petitioner cannot claim automatic exoneration merely because other officers were exonerated or treated more leniently. Nor can the office of Director (Finance) be equated in all respects with positions held at other levels of the organisation. A Director (Finance) carries a distinct degree of responsibility and is expected to exercise independent financial judgment while also discharging supervisory functions. In this regard, reliance placed by the Respondents upon *Raj Kumar* is not misplaced. The Supreme Court reiterated that parity cannot be claimed in the abstract and that officers occupying positions of greater authority, trust and responsibility may legitimately be subjected to more stringent consequences than co-delinquents holding positions with comparatively limited powers. As observed therein, authority carries accountability, and higher authority carries correspondingly higher accountability.

84. That, however, does not conclude the matter. Where the transactions arise out of the same project, involve the same payments and form part of the same factual matrix, the disciplinary authority is required to explain why considerations treated as mitigating or exculpatory in the case of some officers cease to have any relevance in the case of another. The project urgency, the approval of higher authorities, the nature of the contractor's claims and the absence of demonstrated financial loss were all matters which featured in the treatment accorded to other officers. The impugned penalty order does not explain why those considerations were wholly disregarded while evaluating the Petitioner's case.

85. In *M. Raghavelu*, the Supreme Court found it impermissible to



sustain punishment against an officer who was only overall in-charge of the work when the officers directly responsible for the execution of the work had been exonerated on the same set of evidence. The Court observed that, in the circumstances therein, there was no justification to single out the appellant for a finding of guilt. In *Rajendra Yadav*, the Supreme Court reiterated that parity among co-delinquents is a relevant consideration in disciplinary matters and that punishment must bear a reasonable relationship to the nature of participation and culpability established against each delinquent. It was held that markedly unequal punishments imposed in respect of the same incident, without a sustainable basis in the comparative roles attributed to the delinquent officers, would not withstand scrutiny. In *Coimbatore District Central Cooperative Bank v. Employees Association*¹², the Supreme Court reiterated that while the choice of punishment ordinarily lies within the domain of the disciplinary authority, a penalty that is grossly excessive, unduly harsh or disproportionate remains amenable to judicial review. These authorities do not mandate identical outcomes in every case; they do, however, require that any differentiation in disciplinary consequences rest on a discernible and rational basis.

86. In the present case, the Petitioner's role was not identical to that of the other officers involved in the transactions. Nonetheless, the disciplinary authority was required to explain why his role was of such a different character as to warrant dismissal from service and forfeiture of retiral benefits, when others connected with the same transactions were either exonerated or dealt with far more leniently. The absence of any meaningful discussion on this aspect constitutes a significant infirmity in the decision-

¹² (2007) 4 SCC 669.



making process.

B. Proportionality of Penalty

87. The penalty imposed upon the Petitioner was dismissal from service coupled with forfeiture of retiral benefits. The consequence of the penalty is severe. It affects not only the employee's service record but also benefits accrued over the course of service and ordinarily reserved for the post-service phase of employment.

88. Even assuming that certain lapses could be attributed to the Petitioner in relation to the transactions under consideration, the proportionality of the penalty must be assessed in the context of the entire record. The payments were not clandestine transactions but were processed through multiple levels of the organisation. The third payment was ultimately considered and approved by the Board of Directors. The contemporaneous record reflects the Petitioner's concerns regarding regularisation and recovery, and subsequent communications show that he continued to raise issues relating to recovery. The contractor's claims were thereafter the subject of arbitral proceedings and subsequent settlement. The proceedings against other officers resulted in materially different outcomes. By the time the punishment order came to be passed, the Petitioner had already ceased to hold the tenure post of Director (Finance). These were all relevant considerations bearing upon the question of penalty.

89. The doctrine of proportionality does not permit a court exercising judicial review to substitute its own view merely because a different penalty could have been imposed. However, where the penalty imposed bears no reasonable relationship to the nature of the misconduct established, the surrounding circumstances and the overall record, judicial intervention



becomes warranted. In the present case, viewed cumulatively, the circumstances noticed above, together with the deficiencies identified in the disciplinary process and the treatment accorded to other officers involved in the same transactions, render the penalty of dismissal from service coupled with forfeiture of retiral benefits disproportionate and unsustainable.

90. The punishment order suffers from an additional infirmity. While a disciplinary authority may accept the findings recorded in an inquiry report, the imposition of an extreme penalty must reflect an independent and reasoned consideration of the issues bearing upon punishment. The impugned order does not disclose the degree of evaluative exercise that the circumstances of the present case warranted. This omission further reinforces the conclusion that the penalty cannot be sustained.

Remand or Final Relief

91. The normal rule is that where a punishment order is set aside on account of procedural infirmity, violation of natural justice or inadequate consideration of material issues, the matter may be remitted to the disciplinary authority for fresh consideration from the stage at which the defect occurred. This principle reflects institutional deference to the disciplinary authority and the limited nature of judicial review.

92. Remand, however, is not an inflexible consequence. Ordinarily, where an inquiry or punishment order is found to suffer from procedural or substantive infirmities, the matter may be remitted to the disciplinary authority for fresh consideration. That course, however, is not invariably required. Where the passage of time or other supervening circumstances render a fresh disciplinary exercise unfair, harsh, oppressive or otherwise unnecessary, the Court may mould final relief instead of directing remand.



In *M.V. Bijlani v. Union of India & Ors.*¹³ the Supreme Court declined remand in view of the age of the matter and the prejudice already suffered by the employee on account of prolonged disciplinary proceedings. Likewise, in *Krishna Narayan Tewari*, it was recognised that although remand may ordinarily be the proper course where an inquiry is found deficient, a writ court may, in an appropriate case, decline remand where long passage of time and other supervening circumstances render such a course unjust or unnecessary.

93. The present case is one in which remand ought not to be ordered. The events in question relate to the period between 1996 and 1998. The charge-sheet was issued in 2004, the inquiry report was submitted in 2006 and the punishment order came to be passed in 2009. The Petitioner has long since crossed the age of superannuation and ceased to hold the office of Director (Finance) on 16th March, 2004. The proceedings concerning other officers associated with the same transactions have attained finality, while the disputes between SJVN and JHC have culminated in arbitral proceedings and subsequent settlement. The record before the Court is substantially documentary in nature, and the issues arising for consideration have been fully canvassed on the basis of the material already available. In these circumstances, a remand at this stage would serve no useful purpose and would merely prolong proceedings that have already remained pending for nearly three decades from the underlying events.

94. The infirmities identified in the present case are also not confined to an isolated procedural defect capable of being cured through a limited reconsideration. They extend to multiple aspects of the disciplinary process,

¹³ (2006) 5 SCC 88.



including non-consideration of material documents and explanations, deficiencies in the findings recorded on important charges, failure to adequately address the jurisdictional objection arising from cessation of tenure, and issues bearing upon parity and proportionality of punishment. In these circumstances, the Court is not persuaded that a fresh round of disciplinary proceedings would meaningfully advance the matter or serve the interests of justice.

95. The Court is therefore of the view that the interests of justice would be better served by granting final relief rather than directing a fresh round of disciplinary proceedings.

Conclusion and Directions

96. For the reasons recorded above, the writ petition is allowed in the following terms:

- (i) The order dated 30th July, 2009 imposing the penalty of dismissal from service and forfeiture of retiral benefits upon the Petitioner is hereby quashed and set aside.
- (ii) The Respondents shall treat the impugned penalty as *non est* for the purpose of retiral and post-retiral benefits.
- (iii) The Petitioner shall be entitled to all retiral dues and consequential retirement benefits which would have been payable to him in accordance with law but for the punishment order dated 30th July, 2009. Such benefits shall include gratuity, leave encashment, admissible post-retirement medical benefits and all other consequential benefits, if any, payable under the applicable rules.
- (iv) The Respondents shall compute the amounts payable to the Petitioner within eight weeks from the date of this order and release the same within



four weeks thereafter.

(v) The Petitioner shall be entitled to simple interest at the rate of 6% per annum on the amounts found payable, calculated from the date on which each amount became due until the date of actual payment. In the event the amounts are not released within the period stipulated above, the outstanding amount shall thereafter carry interest at the rate of 9% per annum from the date of default until payment.

(vi) This order shall not be construed as directing reinstatement of the Petitioner or as treating him to have continued as Director (Finance) beyond the date on which his tenure came to an end. Nor shall it be construed as entitling the Petitioner to salary or allowances attached to the tenure post for any period after such cessation. The relief granted is confined to setting aside the disciplinary penalty and its consequential civil consequences, including forfeiture of retiral benefits.

(vii) No remand is ordered for the reasons recorded in this order.

97. The writ petition is disposed of in the above terms. Pending applications, if any, also stand disposed of.

SANJEEV NARULA, J

MAY 18, 2026/as