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

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Pronounced on: 2nd December, 2022

\+ W.P.(C) 2566/2012 & CM APPL. 5503/2012

VK ARORA ..... Petitioner

Through: Mr. A.K. Singla, Sr. Advocate with Mr. H.D. Sharma and Mr. Akshit Sachdeva, Advocates

versus

CEMENT CORPORATION OF INDIA & ORS ..... Respondents

Through: Mr. Arvind Kumar Gupta, Mr. Rishi Bharadwaj and Mr. Abhiesumat Gupta, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

FACTUAL MATRIX

1. The instant writ petition under Article 226 of the Constitution of India has been filed by the Petitioner seeking the quashing of the impugned disciplinary proceedings initiated against him which culminated into order dated 6th July 2011 passed by the Disciplinary Authority by way of which the Petitioner was dismissed from the services of the Respondent No.1; and to declare that the withholdings and adjustment of leave encashment and arrears of revised salary is illegal and arbitrary.

2. The facts necessary for the disposal of the present writ petition are that the Petitioner joined the Cement Corporation of India (hereinafter referred to as the '**CCI'**) as a Joint Senior Manager in the year 1991. In February 1996, a proposal was mooted for hiring and/or taking on lease heavy earth moving equipments from the contractors for the purpose of lifting and transportation of lime stones at different CCI units.

3. A written proposal dated 8th February 1996 was prepared by the Geology and Mining Department of CCI for taking administrative approval for hiring the required numbers of heavy earth moving equipments from the contractors. The said proposal traveled from Mining Department to the Material Management Department and was approved by the then Chairman Managing Director (hereinafter referred to as '**CMD**'). An estimate prepared by the Geology and Mining Department containing the estimated value of the contract was annexed with the proposal but these estimates were not scrutinized or vetted by the Finance department of CCI.

4. An exercise of cost estimates was undertaken by the Mining Department and the contract value of all the units was estimated @ Rs. 368.94 lacs as per the note dated 20th February 1996, as against estimated contract value ranging between Rs. 412/- to Rs. 477/- lacs as per the proposal dated 8th February 1996. The note dated 20th February 1996 was not referred anywhere in the entire process of obtaining administrative approval of the proposal dated 8th February 1996.

5. On the recommendations of Mr. BB Prasad, Senior Manager (Mining), Mr. J.K. Kulshreshtra Senior Manager (G&M), Mr. Yash Pal, General Manager (G&M), Mr. A.S. Prasad Senior Manager (Finance) & Mr.

B Sahay, Director (Personnel & Finance), the administrative approval was given by the CMD, CCI to above proposal for hiring the heavy earth moving equipments from outside sources. The above proposal was also cleared by Board of Directors, CCI in its meeting held on 27th February 1996.

6. Pursuant to the administrative approval of the above proposal by CMD and Board of Directors of CCI, notice inviting tenders were issued for eight units. In response, 8 offers were received by CCI and after going through the techno commercial bids of the tenderers, the Tender Committee recommended the price bids of six contractors.

7. Since the total value of the contract was more than Rs. 2.50 crores, the said recommendations of the Tender Committee were placed before the Committee of Directors headed by the CMD. The said recommendation was duly approved by the Committee of Directors, clearing the way for opening the price bids of the six contractors named in the recommendations of the Tender Committee.

8. On 1st July 1996, the Petitioner who joined as incharge of Materials Management Department was inducted as member of the Tender Committee for the purpose of evaluating the price bids. As per the guidelines laid down by CCI regarding procedure for tendering and processing of tenders for purchase and works, the tenders were to be examined and negotiated by a duly constituted Tender Committee in which the representative of Materials-Management Department was to act as co-coordinator/ convener of the Tender Committee and will ensure process of tenders, fixing meetings for negotiations, preparing minutes of the meetings, obtaining signatures of the Members etc.

9. After holding the negotiations with the tenderers, the Tender Committee unanimously recommended award of contracts to the respective contractors for Adilabad, Tandur, Mandhar and Nayagaon Units for different quantities. The recommendations of Tender Committee were placed before the Committee of Directors headed by CMD which consisted of Mr. Anand Darbari CMD, Mr. R.K.Agarwal Director (Finance), MR. B. Sahay, Director (Personnel), Mr. V. Aatray Director (Operations) and Mr. A. B. Sahay, General Manager Incharge (Marketing) & incharge Director Marketing and the same were considered and duly approved by the said Committee of Directors.

10. Pursuant to the acceptance and approval of the recommendations of the Tender Committee by the Committee of Directors headed by CMD, CCI awarded the contract for Tandur and Adilabad Units to M/s. A. Laxminarayana @ Rs. 53/- and Rs. 59.00/- P.M.T. respectively. In July/August 1997, there was a proposal for increase in the quantity of the lime stone to be lifted by the contractor with the help of Heavy Earth Moving Equipments by the Geology & Mining Department. A fresh proposal was initiated by Tandur Unit for placing repeat order for the similar work, for the quantity of 3 lacs MT. In the said proposal it was mentioned that there was no downward trend in the rates of 1996 at which the contract was awarded in July 1996.

11. On 28th October 1997, the Tender Committee consisting of the same officers who were in the Tender Committee of 1996 recommended the placement of repeat orders at the same rate i.e., Rs. 53/-. These recommendations were approved by Director (Operations) since the same

did not require the approval of Committee of Directors as the value of repeat order was less than Rs. 1.5 Crores.

12. In July 1998, a proposal was initiated by Tandur Unit for increase in the quantity in respect of repeat order placed by CCI on the contractor in October 1997. The above proposal was approved by Director (Operations) and accordingly the order was placed on the contractor for the increased quantity. In August, 1998 one more proposal was initiated for placing repeat order(s) for raising the lime stone by hiring Heavy Earth Moving Equipments. The proposal was also approved by the competent authority on the same rates.

13. A requisition was initiated by Tandur unit for floating fresh tender for the similar work. The estimated value of the contract was assessed by taking Rs. 100/- PMT as estimated rate as against Rs. 53/- at which the contract for similar work was awarded for Tandur Unit. The corporate office of the CCI considered the proposal of Tandur Unit and revised the quantity from 4.92 Lacs to 3 Lacs MT and approved floating of tender for the above quantity at the existing rates i.e. Rs. 53/- PMT instead of the proposed rate of Rs. 100/- mentioned in the proposal sent by Tandur Unit.

14. Pursuant to the approval given by the competent authorities, an advertisement was published in the newspapers inviting the quotations for hiring Heavy Earth Moving Equipments at Tandur Unit only, unlike in the year 1996 when the tenders were invited for eight units of CCI including Tandur. However, fresh tender was also floated for Adilabad Unit in 1998 which is also situated in the southern region.

15. For Tandur Unit, the five contractors submitted their quotations, out of which price bids of three contractors including M/s. A. Laxminaryana

were considered by the tender committee. The tender committee after holding negotiations with the contractors eventually on 24th August 1998 recommended the award of the contract to the above named contractor at Rs.55.50/- PMT for 3 Lacs MT limestone and rock rejects.

16. The recommendations of the tender committee were placed before the approving authority i.e. committee of directors headed by CMD and R. K. Agarwal Director Finance & Marketing, A.K. Sinha Director Operation & Personnel and after approval of the same, the contract was awarded to M/s. A. Laxminayarana, Hyderabad at Rs. 55.50/- P.M.T.

17. It was decided by the CCI Management that henceforth all the works relating to award of contract for hiring the Heavy Earth Moving Equipments would be handled and executed by the respective Regional Offices of CCI Units in different parts of the country. Pursuant to the above decision, a fresh tender was floated by Tandur Unit in September 1999 for hiring the Heavy Earth Moving Equipments for the purpose of transportation of lime stone and shale.

18. An objection was raised by the Auditor Board of CCI in respect of the award of contract by CCI to M/s Laxminarayna for work at Tandur Unit @ Rs.53/-PMT and subsequent order placed in 1998 @ Rs. 55.50/- PMT and a detailed reply/explanation was sought from CCI. On 1st July 2001, a detailed explanation was furnished by CCI.

19. On 4th September 2002, CCI received a communication from Indian Auditor and Accounts Department, Hyderabad objecting to the extra expenditure on raising and transportation of the lime stone with respect to the contract awarded to M/s Laxminarayna. On 27th April 2004, the Ministry of Heavy Industry (Parent Ministry of CCI) sought comments on the

relevant paragraph of CAG Report concerning avoidable expenditure allegedly incurred by CCI in awarding the contract @ Rs. 53/- PMT in 1996 and Rs. 55.50/- in 1998. On 2nd June 2004, CCI submitted its comments in respect of different issues mentioned in the report of the Comptroller and Auditor General.

20. The above anomalies namely, award of contracts spreading over July 1996 to 1998 for Tandur Unit was investigated by the Vigilance Department CCI. A case was registered by Central Bureau of Investigation (hereinafter referred to as 'CBI') by registering FIR against all the members of the Tender Committee including the Petitioner and the then Chairman-cum-Managing Director under the provisions of Prevention of Corruption Act, 1988. During the course of investigation by the CBI, the Petitioner was summoned twice and even the house of the Petitioner was raided by the CBI.

21. On 3rd January 2007, the CBI submitted its closure report against the members of the Tender Committee and the then CMD, but regular departmental action was recommended against them. The relevant portion of the closure report is reproduced below:

> *"During the investigation, no procedural lapse or illegality was found on the part of the accused/servant forwarding the contract to M/s. A. Lakshminarayana, Hyderabad. The contract was awarded to M/s. A. Lakshminarayana, Hyderabad L-1 party after negotiations. Secondly the contract was awarded after publishing an open press tender notice and giving an equal opportunity to all the bidders to compete for the contract. The prices of commodities and services are governed by market forces, no connivance of the Officer of CCI with the contractor was revealed during the investigation."*

22. On 18th September 2007, just 10 days before his superannuation, the Petitioner received a memorandum along with the Articles of Charges etc. issued by the Disciplinary Authority in respect of the award of contract for lifting and transportation of the lime stone at Tandur.

23. On 27th September 2007, the Petitioner submitted his statement of defence in response to the memorandum dated 18th September 2007. On 28th September 2007, relieving order was passed against the Petitioner and CCI withheld the amount of gratuity, arrears due to revision in pay scale & leave encashment payable to the Petitioner on the ground of pendency of disciplinary proceedings.

24. On 7th December 2009, inquiry report was submitted by the Inquiring Authority and on 20th December 2010, the copy of inquiry report was received by the Petitioner from CCI. On 19th January 2011, Petitioner submitted its representation against the Inquiry Report dated 7th December 2009 to Respondent No.2. On 16th November 2011, Respondent No.2 as Disciplinary Authority passed the impugned order thereby imposing major penalty of dismissal against the Petitioner.

25. Aggrieved with the order of dismissal passed by the Disciplinary Authority, the Petitioner has approached this Court by way of the instant writ petition.

SUBMISSIONS

Submissions on behalf of Petitioner:

26. Mr. A.K. Singla, learned senior counsel appearing on behalf of the Petitioner has submitted that the disciplinary proceedings initiated against the Petitioner were highly belated and suffered from laches and hence, the

decision to initiate the disciplinary proceedings against the Petitioner just 11 days before his superannuation date was taken whimsically and arbitrarily and due to some hidden and undisclosed motives.

27. It is further submitted that the initiation of Disciplinary proceedings against the Petitioner were highly discriminatory and aimed only against the Petitioner as no action has been taken against any other member of the tender committee, committee of directors & other officers who recommended & approved increase in the quantities & repeat order(s).

28. Learned senior counsel has further submitted that that the major penalty of dismissal and denial of Petitioner's retirement's dues towards alleged loss is highly disproportionate in the facts and circumstances of the present case as no act of the Petitioner has caused any loss to CCI. The closure report submitted by the CBI has completely absolved the Petitioner and other officers of CCI who were part of the tender committee and the Committee of Directors from the charges of corruption and conspiracy.

29. Learned counsel has vehemently stressed that the initiation of the disciplinary proceedings is contrary to the provisions of the Central Vigilance Commission Manual (hereinafter referred to as '**CVC Manual**') as applicable to the Petitioner in the matters where the disciplinary proceedings are initiated on the basis of recommendations made in CBI report against the delinquent officials. As in the present case, the CBI has recommended initiation of regular departmental action but without framing any articles of charge and statement of imputations which is mandatory requirement under Article 4.12 of CVC Manual and resultantly, the initiation of the disciplinary proceedings is not in accordance with law.

30. It is further submitted that the exercise undertaken by the Tender Committee in July, 1996 was bona-fide and fair which is clear from the fact that the Tender Committee did not recommend the award of the contract to those contractors whose rates quoted for the works at Rajban and Bokajan were more than the existing rates at which the similar contracts were awarded by CCI in 1995. The above approach was adopted by the Tender Committee notwithstanding the fact that the rates quoted by the contractors in 1996 were the lowest amongst all other contractors.

31. It is further argued that the Tender Committee before recommending the award of contract in question held detailed negotiations with the contractor by taking into account the only existing rate of Rs. 50/- PMT prevailing at that time in Southern Region, recommended the award of contract @ Rs. 53/- PMT considering the fact that by taking into account dual mode of payment as against single mode of payment provided in the contract awarded to the contractor by any other cement manufacturing company @ Rs. 50/- PMT.

32. It is further argued that the impugned order suffers from non-consideration of relevant documents on record and statements of the witnesses which would establish that the costs estimates made by Geology & Mining department on 8th February 1996 could not be taken either as existing rates or estimated rates for the purpose of recommending the rates by Tender Committee for the purpose of awarding contract at Tandur unit. This was admitted by Management witness and was also proved before the inquiring authority by the defense evidence led by the Petitioner.

33. It is vehemently stressed that the Respondent No. 2 has committed an error by placing reliance on the alleged cost estimates dated 8th February 1996 as they were never vetted by the Finance department of CCI.

34. Learned senior counsel has also submitted that the Respondent no. 2 has failed to notice that the alleged cost details dated 20th February 1996 remained within Geology & Mining Department only and were not forwarded to any other department for perusal nor the said details formed part of the notes/documents placed before CMD for giving administrative approval as would be clear from the records placed before the Inquiring Authority.

35. It is further argued that the Respondent no. 2 has grossly erred in not appreciating and noticing the fact that the finding recorded on Article-I of the Charge Sheet was based on the assumption that the alleged estimated rates dated 8th February 1996 were prepared on the basis of last rates whereas in fact there were no rates prevailing or fixed in respect of Tandur Unit where the contract for hiring was awarded for the first time in 1996 only.

36. It is also submitted that the major penalty of dismissal from service could not be imposed on the Petitioner because he was relieved from the CCI on attaining the age of superannuation on 28th September 2007 and was no more in the employment of CCI on the date of passing of the impugned order dated 16th November 2011. The continuation of the inquiry proceedings against the Petitioner was only for limited purpose of continuing with inquiry proceedings, but such continuity did not empower Respondent No. 2 to pass a dismissal order four years after the

superannuation of the Petitioner. Therefore, the dismissal of the Petitioner cannot be sustained in the eyes of law.

37. *Lastly*, it is humbly prayed the instant writ petition may be allowed and all the reliefs may be granted to the Petitioner as prayed.

Submission on behalf of the Respondents:

38. Learned counsel appearing on behalf of the Respondents has submitted that the instant writ petition is liable to be dismissed as non-maintainable because the Petitioner has not challenged the order dated 16th November 2011 passed by the Disciplinary Authority before the Appellate Authority in spite of the right to appeal in accordance with the provision of Cement Corporation of India (Conduct, Discipline and Appeal), Rules. Even otherwise, it is submitted that the contract was awarded to M/s A. Laxminarayana @ Rs. 53/- PMT against the estimated rate of Rs. 27/- PMT. Likewise, vide work order dated 29th December 1998, the contract was awarded to M/s A. Laxminarayana @ Rs. 55.50/- PMT against the prevailing rate of Rs. 19.90/- PMT.

39. It is further submitted that the Petitioner has failed to show any violation of principles of natural justice. In fact, the facts and circumstances as narrated hereinabove would only show that the Petitioner had ample opportunity to defend himself before the Inquiry Officer. The Inquiry Officer after considering the documents and the material placed on record submitted the report which has been examined by the Respondents while imposing the penalty on 16th November 2011.

40. It is also argued that the Competent Authority has come to the conclusion that the Petitioner being a member of the Tender Committee,

surreptitiously obtained the consent of the other members of the Tender Committee. Thus, the penalty order is justified in the facts and circumstances of the case and more importantly when the Respondent is a public undertaking.

41. Learned counsel has also argued that the inquiry proceedings were initiated against the Petitioner upon receipt of the recommendation from the CBI and sufficient evidence has come on record which substantiates the charge leveled against the Petitioner. It is submitted that the Competent Authority has imposed the penalty only after considering the inquiry report.

42. It is further argued that the allegation of the Petitioner that initiation of the departmental inquiry is highly belated is baseless and misconceived. It is stated that after the CBI filed a closure report on 3rd January 2007 and upon coming to know about the same, the Respondents have initiated the departmental inquiry in September, 2007. Thus, the allegation of the Petitioner that there was a delay in initiating the departmental inquiry is frivolous.

43. *Lastly,* it is submitted that the allegation of violation of CVC Manual is baseless and the action has been taken in accordance with the procedure.

FINDINGS AND ANALYSIS

44. Heard learned counsel for the parties and perused the record. I have given thoughtful consideration to the submission made on behalf of the parties. The issues which arise for consideration in the present case are as follows:

Issue 1: Whether the disciplinary proceedings initiated against the Petitioner is without evidence and malicious, so as to warrant

interference by this Court in exercise of power under Article 226 of the Constitution of India?

Issue 2: Whether is there any delay in the initiation of disciplinary proceedings by the CCI? If yes, can the disciplinary proceedings be quashed on that ground?

Issue 3: Whether Paragraph 4.12.2 of the Central Vigilance Commission Manual has been complied in the facts and circumstances of the instant case? If no, then whether the disciplinary proceedings can be quashed on this ground?

Answer to Issue 1

45. The Inquiry Officer has taken a stand that the Petitioner while functioning as a member of the Tender Committee in the year 1996-1998 intentionally did not place the estimates dated 8th February 1996 of the contract awarded to M/s A. Laxminarayana formulated by the Geology & Mining Department and maliciously ignored them thereby, portraying lack of integrity as an employee of CCI. It has been alleged that the repeat orders were approved by the Petitioner in favour of M/s A. Laxminarayana at the higher rate of Rs.53.00 PMT as against the estimated rate of Rs.27.00 PMT.

46. Inquiry Officer has relied *inter alia* on the following evidence to record that the charges stand proved against the Petitioner:

> *"....Evidence which have come on record both oral and documentary rebut CO's contention that rate were called on consolidated basis. In this case reference is made to comparative statement of original received rate, negotiated rate as available at Exhb S-5 and D-1 and also to testimony of SW-I. Contention raised by CO contradicts his own statement. On the one hand he is taking plea that Committee Members were aware of these estimates (Page 3 of defence statement of*

CO). That being so why cognizance of these estimates was not taken during the deliberations of TC meeting held on 4.7.1996 (Ex. S-5). Even if we agree to CO's contention that estimates at Ex. S- I were not valid, TC consisting of other members as well as CO should have placed this fact on the record of the TC proceedings with their justification for ignoring these estimates of Rs. 24-27 PMT and awarding the contract Rs. 53/- PMT. Since these facts were not recorded in the TC's proceedings, no defence is available to the CO for raising this contention which is only an afterthought.

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Evidentially CO who was aware that the rate at which WO Ex.S-6 has been issued in favour of party M.s A. Laxminarayana were exorbitantly high. CO was also well aware that these rates were finalized on single tender basis. One of the contentions raised by him for not retendering is the time involved in finalizing the new tender which would have caused loss of production. Given this admitted position of the CO evidentially there was no justification for granting various extensions to the original WO which were admittedly processed by him. CO in his defence has repeatedly made reference to D-39 which is a proposal initiated by Tandur Unit for repeat order……..
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From the above, it is evident that there is no comparison between the cost incurred by CCI on sale and distribution and the cost to be incurred by the contractor lifting cement in lieu of payment by cheque. Further, from defence exhibit D- 55 it is also evident that contractor was given the liberty to lift cement from any of the marketing zone of the Corporation as per his economic prudence. Though CO through examination of DW- I at Q . & Ans. 11 and 31 has tried to make a case on the basis of difference in terms and conditions of WO under Ex. S-6 and S-13 on the one hand and S- 14 on the other hand. But from the examination of DW- 1 contrary fact showing the stiffer nature

> *of the terms and conditions under Ex. S-14 vis-a-vis Ex. S-13 have come on record. As per defence witness the payment terms under the contract of Tandur Unit (Ex.S-14) was within 30 days of submission of bills whereas in the case of Corporate Office contract (Ex. S-13) it was within 15 days of submission of bills. Most of the contentions raised by the CO are hypothetical which were never recorded during the proceedings of the TC. For example, while stating that non finalization of the contract and issuing fresh tender notice would have led to delay in procurement action by about 6 month time adding to the loss of the Corporation. But all these are an afterthought as the same were never brought on record. Most importantly CO was required to call for cost benefit analysis at the time of opening the price bid which he did not call for. Having intentionally ignored these important records relevant to arrive at prudent decision, he cannot justify his decision under the above pleas which are only an afterthought. Rebuttal to the CO's hypothetical presumptions as came on record through the cross examination of DW- 1."*

47. In the writ petition, the Petitioner has taken the following stand to submit that he did not feel obligatory to point out the estimates dated 8th February 1996. The relevant portion of the writ petition has been reproduced below:

> *"...Although an estimate prepared by the G&M department was also annexed with the proposal containing the estimated value of the contract but the said estimates were not based on any prevailing rates or other relevant factors necessary to reach at some realistic estimates for different locations all over India. These estimates were not scrutinized or vetted by the finance department of CCI. The proposal which is vetted by the finance department, vetting number is entered in the register specifically maintained for this purpose by finance department and the reference of such number and vetting is made in the proposal. Undisputedly, no such exercise was undertaken by*

the finance department in respect of the estimates made by the G&M department.

Another exercise of cost estimates was undertaken by the Mining Department while the aforesaid proposal dated 8.2.96 was being processed for administrative approval of CMD, CCI. As per this exercise the contract value of all the units was estimated Rs. 368.94 Lacs as against estimated contract value ranging between Rs. 412 to Rs. 477 Lacs as per the proposal dated 8.2.1996.

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On the recommendations of Mr. B B.Prasad, Senior Manager (Mining), Mr. J.K. Kulshreshtra Senior Manager (G&M), Mr. YashPal, General Manager (G&M), Mr. A.S. Prasad Senior Manager (finance)& Mr. B. Sahay, Director (Personnel & Finance), the administrative approval was given by the CMD, CCI to above proposal for hiring the heavy earth moving equipments from outside sources. Such approval was never intended to be nor could be construed as acceptance of or approval to the figures mentioned in the aforesaid estimates rates dated 8.2.96 which were far from realistic and were not seen or vetted by the finance department…."

48. In the counter affidavit, the Respondents have imputed misconduct on the part of the Petitioner and have submitted that there has been intentional concealment on part of the Petitioner. The relevant portion of the counter affidavit has been reproduced below:

"Petitioner who had marked proposal note dated 8.2.1996 to JSM(1) was fully aware about the estimated rate of Rs. 24-27 PMT for Tandur Unit. Therefore, as a Committee Member representing MM Deptt he was required to place these estimates for the consideration of other Committee Members which he did not do. Besides as a Committee Member he was also required to ascertain the reasonability of rate in respect of

Tandur Unit also as was done in the case of Rajban and Bokajan Units before recommending any rate for award of contract. Since in this case estimated rate of Rs. 24-27 PMT, duly approved by the Competent Authority on 23.2.1996 were available in the file the award of contract @ Rs. 53/- PMT was totally unjustified. Petitioner, therefore intentionally did not place the above estimate for consideration of the other committee members and also intentionally overlooked these estimates and did not ascertain the reasonability of rate thereby causing award of above contract at exhorbitant rate of Rs. 53/- PMT against the estimate rate of Rs. 27/- PMT causing loss of Rs. 1.40,4000/- on the executed qty of 5.40 lakh MT (Rs. 53/- PMT- Rs. 27/- PMT= Rs. 26 PMT) within corresponding gain to the party M/s A. Laxminarayana, Hyderabad (Exhb. S-6 to S-b).”

49. In the rejoinder affidavit, the Petitioner has taken the following stand:

“That in response to para 2, it is submitted that note dated 20.02.1996 was put up by S.M (Mining) to S.M (Geology & Mining). The Note did not go to any other officer except the above said two officers. The Note was not even seen by General Manager (Geology & Mining), Finance Department, any other department or CMD. The Note was not vetted by Finance Department or approved by any other authority. The petitioner has reason to believe that said Note was subsequently inserted in the file in as much as same was not referred in any of the proceedings and was not even seen by the petitioner.”

50. At one stage, the Petitioner in the writ petition has taken a stand that another cost estimate exercise was undertaken by the Geology & Mining Department while the proposal dated 8th February 1996 was being processed for administrative approval of CMD of CCI whereas, in the rejoinder he has taken a stand that the said note might be subsequently inserted in the file. The stand taken by the Petitioner in the rejoinder affidavit appears to be an afterthought.

51. It is not in dispute that the charges in disciplinary proceedings are not required to be proven to the same extent as in a criminal trial i.e., beyond reasonable doubt. The Inquiry Officer is not required to observe the strict adherence of Indian Evidence Act to arrive at the conclusions and he has to consider the document/evidence available before him on the basis of preponderance of probabilities.

52. In the case of ***M.V. Bijlani vs Union of India*, (2006) 5 SCC 88**, the Hon'ble Supreme Court held as under:-

> *"25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."*

53. It is settled law that this Court will not act as Appellate Court and will not reassess the evidence already led during inquiry so as to interfere on the ground that another view is possible on the basis of material on record. After perusal of the aforesaid inquiry report and other material on record, I do not find any force in the argument of the Petitioner that he is not guilty for the charges which were leveled against him.

54. The Hon'ble Supreme Court in ***State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya,*** **(2011) 4 SCC 584,** held as under:-

> *"**7.** It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762 : 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil [(2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)"*

55. In the case of ***Union of India vs H.C. Goel,*** **AIR 1964 SC 364,** Hon'ble Supreme Court held as under:-

> *"**23**. That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney-General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view this Court should not*

sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that Charge No. 3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence illegally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance in well founded, because, in our opinion, the finding which is implicit is the appellant's order dismissing the respondent that charge number 3 is proved against him is based on no evidence."

56. In the case of ***K.L. Tripathi vs State Bank of India and Others,*** **(1984) SCC 1 43**, the Hon'ble Supreme Court held as under:-

"**32.** *The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitablly form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by*

> *absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement.*

57. In view of the discussion in the foregoing paragraphs, there is no force in the argument that the entire disciplinary proceedings against the Petitioner is without evidence and malicious as no other officer of CCI was charged for the anomalies in the tender process. Hence, issue 1 is decided accordingly

Answer to Issue 2

58. The genesis of the anomalies in the tender process dates back to the year 1996-1998 when the contracts were awarded in the favour of M/s A. Laxminarayana. In July, 2001 the Auditor Board of CCI raised objections and sought detailed response from CCI with respect to the contracts awarded in favour of M/s A. Laxminarayana for work at the Tandur Unit, as in the opinion of the Auditor Board, the contract was awarded at an exorbitantly high price thereby, causing financial loss to CCI.

59. In September 2002, the CCI received a communication from the Indian Auditor and Accounts Department, Hyderabad stating that the CCI incurred an avoidable extra expenditure of Rs. 3.05 crores. The relevant portion of the communication dated 4th September 2002 is reproduced below:

> *"The Management stated (August 2001) that the contract entered into by the Tandur Unit could not be compared with that entered into by Corporate Office mainly due to the facts (i) the contract entered into by Tandur unit also included*

transportation of shale; (ii) while the mode of payment by Corporate Office was generally the issue of credit advices for lifting cement. the Tandur unit was to release payments by cheque and (iii) the contract with firm X stipulated the quantity to be handled as 3.0 lakh MT during a 12 month period while Y was required to handle 2.40 lakh MT during a period of 6 months; the higher the quantity to be transported and shorter the time, the lower would be the price. The reply is not tenable. Even though the scope of work mentioned in the work order issued to firm X did not include raising/transportation of shale, the same firm was accorded approval to raise/transpot 10,000 MT of shale on similar terms and conditions as those for raising/transportation of limestone, (ii) though there was no mention of any mode of payment in the contract issued to firm 'Y', the Tandur unit too issued credit advice for Rs. 1,00,000 for issuing cement; even otherwise whether the payment is effected by cash or through credit advice, in any case such high rated on the ground would appear ridiculous (iii) as to the quantum of work, whereas X handled an aggregate quantity of 6.91 lakh MT over a period of 27.6 months or.025 lakh MT per month, Y actually handled only 1.84 lakh MT over a period of 7 months @ 0.26 lakh MT per month, thus there was no appreciable difference in the average quantity handled by the two firms.

The company has evaded the question as to why they not go for open tender Further the award of contract directly by Corporate Office without ascertaining the local market rates resulted in avoidable extra expenditure of Rs.3.05crore. In the face of Company facing severe resource crunch and having been declared sick and referred to BIFR for revival package, such financial mismanagement only indicate gross negligence and unprofessional financial standards in the company."

60. In furtherance of the report of the Comptroller and Auditor General, on 27th April 2004, the Ministry of Heavy Industry sought comments on the relevant paragraph of CAG Report concerning avoidable expenditure of Rs.

3.05 Crores allegedly incurred by CCI by awarding the contract @ Rs. 53/- PMT in 1996 and Rs. 55.50/- PMT in 1998.

61. In the year 2004, these anomalies were investigated by the Vigilance Department of CCI and a case was registered by CBI which culminated in a closure report in the year 2007, recommending departmental action against the Petitioner and other erring officials. It is in this background that on 18th September 2007 disciplinary proceedings were initiated against the Petitioner which co-incidentally was also the 10th last working day before his superannuation.

62. With respect to the delay in the initiation of disciplinary proceedings, the CCI has taken the following stand:

> *"The allegation of the petitioner that initiation of the departmental inquiry is highly belated. In this regard it is stated that after the CBI filed a closure report on 03.01.2007 and upon coming to know about the same. The respondent have initiated the departmental inquiry in September, 2007.* ***Thus, the allegation of the petitioner that there was a delay in initiating the departmental inquiry is frivolous*** *In fact facts and circumstances are self- explanatory. It is stated that since CBI registered the case against all the Members of Tender Committee & investigating the Role of each Member of the Committee. When Closure Report was filed and action is recommended departmentally the respondents took the action. Hence there is no delay."*

63. CCI has relied on the CBI investigation and the recommendations made in the closure report to justify the delay in the initiation of disciplinary proceedings.

64. Every delay in the initiation of the disciplinary proceedings is not fatal and the Court is duty bound to look into the totality of facts and

circumstances of each case so as to decipher as to whether any prejudice has been caused to the Petitioner due to the delay in the initiation of disciplinary proceedings. From the year 2001 till 2004, the matter was brought to the notice of CCI and comments were sought by its parent ministry as well as the Comptroller and Auditor General which shows that CCI was considering the matter at an internal level before initiating disciplinary proceedings against the Petitioner. Undoubtedly, financial irregularities are involved in the present case, but this Court has to ensure that a holistic view is taken into consideration before coming to a conclusion.

65. The delay from the year 2004 till 2007 can also be justified as the investigation was being carried by the CBI. In this regard, it is pertinent to refer to the decision of the Hon'ble Supreme Court in ***Food Corporation of India & Anr. Vs. V.P. Bhatia,*** **(1998) 9 SCC 131,** wherein it was held that:

> *"4. It is no doubt true that undue delay in initiation of disciplinary proceedings may cause prejudice to the employee concerned in defending himself and, therefore, the courts insist that disciplinary proceedings should be initiated with promptitude and should be completed expeditiously. The question as to whether there is undue delay in initiation of disciplinary proceedings or whether they are being unnecessarily prolonged has to be considered in the light of the facts of the particular case. On an examination of the facts of this case we find that the alleged misconduct came to light in April 1986 after the CBI carried surprise checks in April 1986 and the samples that were taken were found to be substandard by the Forest Research Institute, Dehradun. Thereafter, the CBI took up the investigation in the matter suo motu and submitted its report on 30-12-1988 wherein it recommended*

> *the holding of disciplinary proceedings against the employees concerned including the respondents. Shri Vivek Gambhir, the learned counsel for the appellants, has invited our attention to paragraph 1.7 of Chapter III of Volume I of the Vigilance Manual of the Central Vigilance Commission which has been adopted by the appellant-Corporation wherein it is stated; "Once a case has been entrusted to the CBI for investigation further inquiries should be left to them and departmental inquiry, whether fact-finding or formal under the Discipline and Appeal Rules, if any, commenced already, should be held in abeyance till such time as the investigation by the CBI has been completed. Parallel investigation of any kind should be avoided. Further action by the administrative authority should be taken on the completion of the investigation by the CBI on the basis of their report.*
>
> *5.* ***In view of the said direction contained in the Vigilance Manual no fault can be found with the appellant-Corporation in waiting for the investigation report of the CBI and the High Court was in error in holding that the appellant-Corporation need not have waited for the report of the CBI and should have started the disciplinary proceedings straightaway****."*

66. It is appropriate to refer to certain judicial pronouncements which deal with the delay in the initiation of disciplinary proceedings. In ***State of Punjab vs Chaman Lal Goyal***, **(1995) 2 SCC 570**, the Hon'ble Supreme Court noted that:

> *"9. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the*

interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances."

67. In ***State of Madhya Pradesh vs Bani Singh & Anr.***, **(1990) Supp. SCC 738**, the Hon'ble Supreme Court held that:

"4.....The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

68. In ***State of A.P. vs N. Radhakrishnan***, **(1998) 4 SCC 154**, the Hon'ble Supreme Court held that:

"19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the

court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

69. In P.***V. Mahadevan vs Managing Director, T.N. Housing Board***, **(2005) 6 SCC 636**, the Hon'ble Supreme Court held as follows:

"11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only

> *in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."*

70. In ***UCO Bank & Ors. vs. Rajender Shankar Shukla*, *(2018) 14 SCC 92***, the Hon'ble Supreme Court held that:

> *"12….The first issue of concern is the enormous delay of about 7 years in issuing a charge-sheet against Shukla. There is no explanation for this unexplained delay. It appears that some internal discussions were going on within the Bank but that it took the Bank 7 years to make up its mind is totally unreasonable and unacceptable. On this ground itself, the charge-sheet against Shukla is liable to be set aside due to the inordinate and unexplained delay in its issuance."*

71. In ***Bhupendra Pal Singh vs. Union of India*, 2021 SCC OnLine Bom 6073**, a Division Bench of the Bombay High Court summarised the principles in this regard:

> *"31. The principles that can be culled out from the aforesaid decisions may be summarized as below:*
>
> *a. It would always be desirable to initiate disciplinary proceedings immediately after the alleged misconduct is detected but if charge-sheet is issued after a considerable length of time has passed since such detection, it would be unfair to the charged officer to proceed against him on the basis of stale charges.*

b. Disciplinary proceedings may not be interdicted at the stage of charge-sheet and should be allowed to proceed according to the relevant rules since a charge-sheet does not affect any legal right of the delinquent unless, of course, it suffers from an invalidity that strikes at the root of the proceedings.
c. If there is delay in initiation of disciplinary proceedings by drawing up charges against the delinquent and such proceedings are challenged, the disciplinary authority is under an obligation to explain the reasons for the delay; and, depending upon the worth of such reasons, the Court may proceed to decide one way or the other.
d. There cannot be any exact measurement of the length of delay by reference to years to fall into the category of "too long a delay", and what would amount to the same has to be decided depending upon the facts of a given case.
e. Should the delay be found to be too long and unexplained, that would definitely have a bearing on the seriousness of the disciplinary authority to pursue the charges against the charged officer and the Court may, in a fit and proper case, quash the proceedings because prejudice to the officer in such case would be writ large on the face of it.
f. Even if, in a given case, the delay is satisfactorily explained, the charge-sheet could still be quashed if the charged officer proves to the satisfaction of the Court that he would be severely prejudiced if the proceedings were allowed to continue, a fortiori, lending credence to the claim of unfair treatment.
g. For the mistakes committed by the department in the procedure for initiating disciplinary proceedings, the charged officer should not be made to suffer.
h. Delay in initiation of disciplinary proceedings per se may not be a vitiating factor, if the charges are grave and in such case the gravity of the charges together with the factors, for and against the continuation of the proceedings, need to be balanced before arriving at a just conclusion."

72. The disciplinary proceedings must be conducted soon after the irregularities are committed or soon after discovering the irregularities. However, it has been held by the Hon'ble Supreme Court that this

proposition cannot be a rigid and inflexible guideline restricting the judicial discretion, when there is an explanation to justify the delay and laches. Issue 2 is decided accordingly.

Answer to Issue 3:

73. The Petitioner has alleged that there has been a violation of the CVC manual and hence, the proceedings are in the face of mandatory provisions which go to the root of the matter. The following stand has been taken by the Petitioner in this regard:

> *"In the closure report of CBI regular departmental action was recommended, but the said report was not accompanied by any Articles of Charge, Statement of Imputations, List of Documents and Witnesses etc. which was a mandatory requirement as per clause 4.12.2. Apart from the above, the CBI report was required to be forwarded to Central Vigilance Commission ("CVC") for the advice to the Disciplinary Authority regarding further course of action to be taken. Petitioner understands that the procedure laid down in CVC Manual was not followed/adhered by CCI. Therefore, the initiation of the disciplinary proceedings suffered from a serious defects going to the root of the matter."*

74. CCI has countered the submissions made by the Petitioner and has taken the following stand:

> *"That the contents of ground (f) are wrong and denied. The allegation of violation of CVC Manual is baseless. It is stated that 4.12 of the CVC Manual as has been filed on the record would show that the action has been taken in accordance with the procedure."*

75. Paragraph 4.12.2 of the CVC Manual reads as follows:

> *"4.12.2. In cases in which sufficient evidence is not available for launching criminal prosecution, the C.B.I. may come to the conclusion that:*
> *(a) The allegations are serious enough to warrant regular departmental action being taken against the public servant concerned. The final report in such cases will be accompanied by (a) draft article(s) of charge(s) in the prescribed form, (b) a statement of imputations in support of each charge, and (c) lists of documents and witnesses relied upon to prove the charges and imputation; or*
> *(b) Sufficient proof is not available to justify prosecution or regular departmental action but there is a reasonable suspicion about tile honesty or integrity of tile public servant concerned. The final report in such cases will seek to bring to the notice of the disciplinary authority, the nature of irregularity or negligence for such administrative 'action as may be considered feasible or appropriate."*

76. No doubt that the case of the Petitioner is covered by Paragraph 4.12.2 (a) of the Vigilance Manual and the CBI ought to have complied with the requirements as are mentioned hereinabove, but merely because the provisions of the CVC manual are not complied will not mechanically lead to the quashing of the disciplinary proceedings. It is settled principle of law that prejudice must be shown to have been caused to the Petitioner due to the non-compliance of such procedural requirements as they are a part of the broader set of the principles of natural justice.

77. In ***State Bank of Patiala vs. S.K. Sharma*, AIR 1996 SC 1669**, the Hon'ble Supreme Court while considering an appeal against the quashing of a Disciplinary Authority held that:

> *"11. It is not brought to our notice that the State Bank of Patiala (Officers') Service Regulation contains provision corresponding to Section 99 C.P.C. or Section 465 Cr. P.C. Does it mean that any and every violation of the regulations*

renders the enquiry and the punishment void or whether the principle underlying Section 99 C.P.C. and Section 465 Cr. P.C. is applicable in the case of disciplinary proceedings as well. In our opinion, the test in such cases should be one of prejudice, as would be later explained in this judgment. But this statement is subject to a rider. The regulations may contain certain substantive provisions, e.g., who is the authority competent to impose a particular punishment on a particular employee/officer. Such provisions must be strictly complied with. But there may be any number of procedural provisions which stand on a different footing. We must hasten to add that even among procedural provisions, there may be some provisions which are of a fundamental nature in the case of which the theory of substantial compliance may not be applicable. For example, take a case where a rule expressly provides that the delinquent officer/employee shall be given an opportunity to produce evidence/material in support of his case after the close of evidence of the other side. If no such opportunity is given at all in spite of a request therefore, it will be difficult to say that the enquiry is not vitiated. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. The position can be stated in the following words: (1) Regulations which are of a substantive nature have to be complied with and in case of such provisions, the theory of substantial compliance would not be available. (2) Even among procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case, the theory of substantial compliance may not be available. (3) In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available. In such cases, complaint/objection on this scope have to be judged on the touch-stone of prejudice, as explained later in this judgment. In other words, the test is: all things taken together whether the delinquent officer/employee had or did not have a fair hearing. We may clarify that which provision falls in which of the aforesaid categories is a matter

to be decided in each case having regard to the nature and character of the relevant provision.

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21. Pausing here, we may notice two decisions of this Court where the test of prejudice was rejected, viz., Chintapalii Agency T.A.S.C.S. Limited v. Secretary (F&A) Government of Andhra Pradesh and S.L. Kapoor v. Jagmohan both rendered by three-Judge Benches. But if one notices the "facts of those cases, it would be evident that they were cases of total absence of notice as in the case of Ridge v. Baldwin.

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33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature of (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: Procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking,

conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed.-Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice in established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is sell-evident. No proof of prejudice as such need be called for in such a case. To report, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle slated under (4) herein below is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(4)(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could not be waived by him, then the Court on Tribunal should make appropriate directions (include the setting aside of the order of punishment) keeping in mind the approach adopted by the Constitution Bench in B. Kaninakar. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action- the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/no hearing" and "no fair hearing",
(a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem).
(b) But in the latter case, the effect of violation (of a facet of the rule audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not

have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arises before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

78. In ***Janakinath Sarangi v. State of Orissa*, (1969) 3 SCC 392,** the Hon'ble Supreme Court made the following pertinent observations:

"5. From this material it is argued that the principles of natural justice were violated because the right of the appellant to have his own evidence recorded was denied to him and further that the material which was gathered behind his back was used in determining his guilt. In support of these contentions a number of rulings are cited chief among which are State of Bombay v. Narul Latif Khan; State of Uttar Pradesh and Anr. v. Sri C.S. Shanna and Union of India v. T.R. Varma. There is no doubt that if the principles of natural justice are violated and there is a gross case this Court would interfere by striking down the order of dismissal; but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right.... Anyway the questions which were put to the witnesses were recorded and sent to the Chief Engineer and his replies were received. No doubt the replies were not put in the

hands of the appellant but he saw them at the time when he was making the representation and curiously enough, he used those replies in his defence. In other words, they were not collected behind his back and could be used to his advantage and he had an opportunity of so using them in his defence. We do not think that any prejudice was caused to the appellant in his case by not examining the two retired Superintending Engineers whom he had cited or any one of them."

79. In ***K.L. Tripathi v. State Bank of India and Ors.*, (1984) 1 SCC 43,** the Hon'ble Supreme Court held the following:

"32. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitable form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version of the credibility of the statement.
The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation to the acts, absence of opportunity to cross-examination does not create any prejudice in such cases.

> *The principles of natural justice will, therefore, depend upon the facts and circumstances of each particular case. We have set out hereinbefore the actual facts and circumstances of the case. The appellant was associated with the preliminary investigation that was conducted against him. He does not deny or dispute that. Information and materials undoubtedly were gathered not in his presence but whatever information was there and gathered namely, the versions of the persons, the particular entries which required examination were shown to him. He was conveyed the information given and his explanation was asked for. He participated in that investigation. He gave his explanation but he did not dispute any of the facts nor did he ask for any opportunity to call any evidence to rebut these facts."*

80. In the present case, memorandum of charges along with statement of imputations was issued to the Petitioner by CCI on 18th September 2007 and a statement of defense was called for. It is not the case of the Petitioner that he was not permitted to lead his evidence, including, the witnesses to prove his defense or any material was withheld from him but such material was relied upon by the Disciplinary Authority in arriving at its findings against the Petitioner.

81. In my opinion, no prejudice has been caused to the Petitioner as paragraph 4.12.2 (a) envisages procedural provisions which are substantially complied in the facts and circumstances of the present case in view of the law laid down in ***S.K. Sharma (supra)*** and every non-compliance cannot mechanically culminate into setting aside of the disciplinary proceedings. Petitioner has failed to bring out any case showing infraction of the principles of natural justice leading to prejudice

being caused to the Petitioner in meeting his defense. This issue is answered accordingly.

***Scope under Article 226 to interfere in the findings of disciplinary proceedings*:**

82. It is very much essential to look at the powers of this Court under Article 226 of the Constitution of India to interfere in the findings of a Disciplinary Authority which on appeal have been upheld by the Appellate Authority. Recently, the Hon'ble Supreme Court in ***State Bank of India & Anr. v. K.S. Vishwanath*, (2022) SCC OnLine SC 667** held as follows:

> "27. *Recently in the case of Nand Kishore Prasad (Supra) after considering other decisions of this Court on judicial review and the power of the High Court in a departmental enquiry and interference with the findings recorded in the departmental enquiry, it is observed and held that the High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is further observed and held that the High Court is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. It is further observed that if there is some evidence, that the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition under Article 226 of the Constitution of India to review/reappreciate the evidence and to arrive at an independent finding on the evidence….."*

83. In ***State of A.P. v. S Sree Rama Rao*, AIR 1963 SC 1723,** a three judge bench of the Hon'ble Supreme Court observed as follows:

> *"7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence....."*

84. In ***B.C. Chaturvedi v. Union of India,*** **(1995) 6 SCC 749**, again a three judge bench of the Hon'ble Supreme Court held as under:

> *"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The*

Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. HC Goel this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

85. In ***State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya,*** **(2011) 4 SCC 584**, the Hon'ble Supreme Court held as under:

"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse.

> *The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations…."*

86. In ***Union of India v. P Gunasekaran*, (2015) 2 SCC 610,** the Hon'ble Supreme Court delineated the parameters as to when the High Court shall not interfere in the disciplinary proceedings:

> *"13. Under Articles 226/227 of the Constitution of India, the High Court shall not:*
> *(i) reappreciate the evidence;*
> *(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
> *(iii) go into the adequacy of the evidence;*
> *(iv) go into the reliability of the evidence;*
> *(v) interfere, if there be some legal evidence on which findings can be based.*
> *(vi) correct the error of fact however grave it may appear to be;*
> *(vii) go into the proportionality of punishment unless it shocks its conscience."*

87. Therefore, this Court cannot act as an appellate authority over the findings as recorded by the Disciplinary Authority. This Court cannot re-appreciate the evidence on the basis of which the authorities below have come to a conclusion and interfere in the findings so recorded by the authorities below unless they are perverse or suffer from gross illegality.

CONCLUSION

88. In view of the above said discussion on facts as well as law, I do not find any perversity or gross illegality in the orders passed by the

Disciplinary Authority. The Disciplinary Authority has acted on the basis of material evidence on record and have come to a reasoned reasonable conclusion after giving the Petitioner a detailed opportunity of hearing in accordance with the principles of natural justice. No infraction of principles of natural justice can be said to have been proved by the Petitioner to call for the interference by this Court.

89. Accordingly, the challenge to the impugned disciplinary proceedings fails and the present writ petition is dismissed as being devoid of merits.

90. Pending applications, if any, also stand dismissed.

91. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 2, 2022
Dy/mg