



2024: DHC: 2332



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on : 18th December , 2023**
Pronounced on: 15th March, 2024

+ W.P.(C) 3360/2022
VIKASH KUMAR Petitioner

Through: In person.

versus

NTPC LIMITED & ORS. Respondents

Through: Mr. Sanjay Jain, Senior Advocate
with Mr. Adarsh Tripathi and
Vikram Singh Baid and Ajitesh
Garg Advocates for NTPC
Mr. Niraj Kumar, Sr. Central Govt.
Counsel for R-2

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition under Articles 226 and 227 of the Constitution of India has been filed by the petitioner seeking following reliefs:

“ I. Issue a Writ of Certiorari and/or any other appropriate writ(s), directions, or orders for:

a. Quashing of the impugned Removal Order Ref. No. ED(HR)/NTPC/DISC/04-2021 dated 13.04.2021 issued by the Appointing Authority/Respondent No. 5.

b. Quashing of the Appeal Order Ref. No. 01:HR:DISC:CC/9791/Appeal dated 15.06.2021 issued by the Appellate Authority/Respondent No. 4 and the Review Order Ref. No. CMD Sectt.:104 dated 23.10.2021 issued by the Reviewing Authority/Respondent No. 3.

c. Reinstating the Petitioner in service with all consequential benefits including back wages with interest @18% pa.

II. Award cost of the Petition in favour of the Petitioner against the Respondents.



III. Pass such orders and further directions as deemed fit and appropriate, in the facts and the circumstances of the case and in the interest of Justice.”

FACTUAL MATRIX

2. The petitioner joined respondent no.1/NTPC Limited as an Executive Trainee (Finance) on 29th September, 2006.

3. On 26th April 2020, the petitioner, on behalf of NTPC Executives' Rights Forum (hereinafter "NERF") made a detailed representation to the CMD, NTPC Limited/ respondent no.3 for ensuring strict implementation of the law laid down by the Hon'ble Supreme Court of India in ***Dev Dutt v. Union of India & Ors.***¹, wherein, it was held that fairness in public administration and transparency require that all entries in the Annual Confidential Reports of a public servant must be communicated within a reasonable period in order to enable the employee to make a representation for upgradation.

4. The Chief Executive Officer (hereinafter "CEO"), Kanti Bijlee Utpadan Nigam Limited (hereinafter "KBUNL")/respondent no. 7, vide an e-mail dated 2nd May 2020 replied that the aforementioned letter is written with a malafide intent to defame the officials of the respondent no. 1.

5. Thereafter, on 4th May 2020, a memorandum bearing Ref. No. NTPC/ER-1 was issued to the petitioner by the respondent no.1 for writing the aforesaid letter dated 26th April 2020. The petitioner submitted his reply against the aforesaid memorandum vide an e-mail dated 12th

¹ (2008) 8 SCC 725



May 2020. Moreover, NERF also filed a reply against the respondent no. 7's letter vide *e-mail* dated 17th May, 2020.

6. On 22nd May 2020, the petitioner received an order dated 21st May, 2020, of the Disciplinary Authority regarding appointment of the Inquiry Authority and Presenting Officer for initiating inquiry proceedings against the petitioner under Rule 25 of the NTPC CDA Rules, 1977. Pursuant to which, the petitioner received a notice from the Inquiry Authority *vide an e-mail* for hearing of the inquiry proceedings to be held through video conferencing on 26th June, 2020. Accordingly various hearings were conducted by the Inquiry Authority.

7. On 4th February 2021, the inquiry report bearing ref. No. RED (ER-I)/dated 04.02.2021 was sent to the petitioner. The petitioner then on 15th April, 2021, received the removal order dated 13th April, 2021, from the respondent no. 6, and accordingly the services of the petitioner were terminated.

8. Pursuant to which the petitioner filed an appeal against the aforesaid removal order. The Appellate Authority, vide order dated 15th June 2021, upheld the aforesaid removal order and dismissed the Appeal.

9. Subsequently, the petitioner preferred a revision application bearing Ref. No. CMD Sectt:104 against the aforesaid Appellate Authority's order and on 23rd October 2021, the petitioner's review application, was dismissed.

10. Aggrieved by the removal order, Appellate Authority's order as well as the dismissal of petitioner's review application (hereinafter "impugned orders"), the petitioner has approached this Court seeking setting aside of the same.



SUBMISSIONS

(on behalf of the petitioner)

11. The petitioner appearing, in person, submitted that the impugned orders passed by the respondents are against the settled position of law pertaining to the principles of natural justice since the aforesaid impugned orders have been passed without taking into consideration the various replies filed by the petitioner.

12. It is submitted that the letter dated 26th April, 2020 was regarding one of the HR Policies and practices of the respondent no. 1 which was not in conformity with the law laid down by the Hon'ble Supreme Court in various landmark judgments as per which there should be transparency and fairness in the functioning of the public authorities.

13. It is further submitted that the issue raised in the aforesaid letter stated the arbitrary and inconsistent provisions of the Annual Performance Appraisal Policy (hereinafter "PMS/PACE") which is being followed by the respondent no. 1.

14. It is contended that the PMS Officer (an executive from HR department) is given the mandate vide Cross Functional KPA Directory (HR) to stop the Appraisers up to R2 level by awarding appraisal marks more than 95 (i.e., 95%) to their appraisees. It is further contended that the Appraisers above the R2 level i.e., PMC has the mandate to change the R2 level awarded marks further $\pm 5\%$ without giving any reason or rationale to this.

15. It is submitted that the Memorandum dated 4th May, 2020 is in complete violation of the mandatory Rule 25(3) of the NTPC CDA Rules, Clause 6.2(a), Clause 7.4(a) and Clause 9.20(a) of NTPC Guidelines for



Disciplinary Procedure. It is a settled position of law that the charges levelled must be explained to the delinquent in clear terms. The disciplinary/inquiry proceedings cannot be initiated in vague terms since it would amount to vitiation of the entire disciplinary/inquiry proceedings as well as the same is considered to be bad in law. In the present case, petitioner's case is of 'no charge(s) framed and furnished' despite which an inquiry was ordered against the petitioner.

16. It is further submitted that the disciplinary authority/respondent no. 6 did not allow the petitioner to raise his contentions during the inquiry proceedings/hearings. Hence, it is evident that the disciplinary proceedings initiated against the petitioner suffers from procedural impropriety.

17. It is contended that the various authorities of the respondent no.1 did not conduct the disciplinary proceedings in a fair and transparent manner as no charge was framed charge against the petitioner by the respondent, no documents were provided to the petitioner pertaining to the disciplinary proceedings, no reasonable opportunity was granted to the petitioner for cross examining the respondent no.1 managements' witnesses and no reasonable opportunity was provided for filing any written as well as oral submission by the Inquiry Authority. Moreover, the daily order sheets of the inquiry proceedings did not record the submissions made by the petitioner.

18. It is further contended that the Inquiry Authority acted in an unfair and partial manner as well as carried out the proceedings with a pre-disposed mind.



19. It is submitted that the petitioner as well as his family have suffered financially and mentally because of the patently illegal, *mala fide* motivated and perverse disciplinary proceedings against the petitioner conducted by the respondents which is in complete violation of the principles of natural justice as well as the settled position of law pertaining to the process of conducting a disciplinary proceeding.

20. In view of the aforesaid submissions, the petitioner prays that the instant writ petition may be allowed and the reliefs as sought by him may be granted.

(On behalf of the respondent)

21. Learned senior counsel, Mr. Sanjay Jain appearing on behalf of the respondent NTPC Limited vehemently opposed the contentions advanced by the petitioner submitting to the effect that the impugned orders have been passed in accordance with the principles of natural justice as well as respondent no.1's statutory rules.

22. It is further submitted that as per the impugned letter dated 4th May 2020, a statement of charge was issued against the actions of the petitioner in relation to his misconduct, i.e., sending a letter dated 26th April, 2020 to the highest officer of the respondent no. 1, as well as to the prominent office of the country alleging irregularities in the functioning of the respondent no.1, which upon inquiry by the respondent no.1 were not proved. Hence, the aforesaid letter was sent by the petitioner with an intention to harm the reputation of the respondent no.1.

23. It is further submitted that the aforesaid misconduct mandated that a memorandum shall be issued to the petitioner elucidating various charges imposed upon him as per the rules.



24. It is submitted that despite being issued the aforesaid memorandum, the petitioner continued to make maligning attempts of defaming the respondent no.1 and he also accused the management of the respondent no.1 of being criminals and contemnors of the Hon'ble Supreme Court without any cogent reasons.

25. It is contended that the inquiry proceedings were held strictly in accordance with the principles of natural justice and in regard to due process of law as throughout the hearings, the petitioner had been given due opportunity to defend his case.

26. It is further contended that twenty-six hearings were conducted by the disciplinary authority in the presence of the petitioner and he was duly provided with all the necessary and relevant documents.

27. It is submitted that the petitioner was provided ample opportunities to lead evidence as well as to cross-examine the witnesses despite the fact that the conduct of the petitioner during the cross-examination was deplorable and the same was evident from his counter questions and answers in the cross-examination.

28. It is further submitted that the petitioner has also availed of his right to appeal as well as review of the Appellate Authority's order. The authorities of the respondent no.1 have passed the impugned appeal order and impugned revision order after careful perusal of various documents as well as the factual position.

29. It is submitted that as per the impugned orders the punishment was proportional and adequate since the misconduct committed by the petitioner amounts to harming the reputation of the respondent no.1 and the petitioner also tried to coerce the highest official of the respondent



no.1 to take an action against the senior officials of the respondent no.1. Moreover, the petitioner was not able to prove the various allegations levelled by him against the senior officials of the respondent no.1. As per the statutory rules of respondent no.1, such kind of misconduct warrants termination from services of an employee as has been done in the case of the present petitioner.

30. It is further submitted that if the petitioner is reinstated even after committing the aforesaid misconduct, it would adversely affect the discipline of the organization and would also affect the morale of other officers who diligently abide by the code of ethics and standards of the organization.

31. It is contended that the jurisdiction of the High Courts under Article 226 of the Constitution of India limits judicial intervention to an error apparent on the face of it or if it goes to the roots of the matter. In the instant writ petition, the reliefs sought by the petitioner in the garb of a writ petition, are appeals, against the impugned orders hence, the instant petition is not maintainable and liable to be dismissed.

32. It is further contended that the petitioner has failed to make any accusation of personal *mala fide* or of any specific employee of the respondent no. 1 who acted *mala fidely*, therefore, establishing the fact that the inquiry proceedings were fair and transparent.

33. In view of the aforesaid submissions, learned senior counsel appearing on behalf of the respondent NTPC Ltd. submitted that the instant writ petition is devoid of any merits and may be dismissed by this Court.



ANALYSIS AND FINDINGS

34. The matter was heard at length with arguments advanced by the petitioner in person as well as the learned senior counsel appearing on behalf of the respondents. This Court has also perused the entire material on record and has duly considered the factual scenario of the matter, judicial pronouncements relied upon by the parties, and pleadings presented by the learned counsel for the parties.

35. It is the case of the petitioner that the impugned memorandum dated 4th May 2020 is in violation of the statutory rules of the respondent no.1. Moreover, the impugned Appellate Authority's order as well as the order passed by the Reviewing Authority suffers from procedural infirmity and is in violation of the principles of natural justice as well as the settled position of law. Moreover, the disciplinary proceedings conducted by the authorities of the respondent no.1 are arbitrary, unfair and not transparent.

36. In rival submissions, the learned senior counsel on behalf of the respondent NTPC Ltd contended that the impugned orders have been passed in accordance with the statutory provisions. The disciplinary proceedings have been conducted as per the principles of natural justice and are in accordance with the settled position of law. Moreover, the misconduct committed by the petitioner is of grievous nature which amounts to harming the reputation of the company as well as affecting the discipline within the organization.

37. Under Article 226 of the Constitution of India, it is a well settled law that the High Courts shall intervene with an order of the statutory



authority only in cases where there is a gross violation of rights of the petitioner before the Court. A mere irregularity which does not substantially affect the case of the petitioner cannot be the ground for the High Courts to interfere with said order of the authority.

38. Before advertng to the merits of the case, this Court finds it germane to discuss the settled position of law with regard to the limited power of intervention of this Court while entertaining a writ pertaining to allegations of wrongful conduct of disciplinary proceedings.

39. It is a well settled position of law that the power of judicial review, of the Courts under writ jurisdiction, is evaluation of the decision-making process of the departmental enquiry and not to adjudicate upon the merits of the decision itself. It is to ensure fairness in treatment of the delinquent employee. The writ Court may interfere in the proceedings held against the delinquent if in any manner, it is of the view that the proceedings are inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence.

40. The writ Court may issue a writ of certiorari if the conclusion or finding of the disciplinary authority is such that no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or are based on no evidence at all.

41. Hence, the scope of judicial review of finding of the disciplinary authority is limited and cannot be extended to the examination of



correctness or reasonableness of a decision of authority since the same is a judicial review on law.

42. The Supreme Court recently in the judgment of ***Deputy General Manager (Appellate Authority) vs. Ajai Kumar Srivastava***² reiterated the scope of judicial review of disciplinary proceedings. The relevant portion of the judgment is reproduced herein below:

“24. it is thus settle that the power of judicial review, of the constitutional courts, is evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry 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 or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

xx xx xx

28. The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have

² (2021) 2 SCC 612



arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained .”

43. The aforesaid principle of law has also been discussed in the judgment of ***Ex-Const/Dvr Mukesh Kumar Raigar vs Union of India and other***³. The relevant portion of the judgment is reproduced herein below:

“8. It may be noted that even after the guiding principles laid down case of Avtar Singh by the three-judge Bench, divergent views were expressed by the various benches of this Court. Therefore, this Court in case of Satish Chandra Yadav v. Union of India , after taking into consideration the inconsistent views taken in the cases of Union of India v. Methu Meda ; Union of India v. Dilip Kumar Mallick ; Pawan Kumar v. Union of India ; Rajasthan Rajya Vidyut Prasaran Nigam Limited v. Anil Kanwariya ; Mohammed Imran v. State of Maharashtra ; etc., further laid down following principles:

“89. The only reason to refer to and look into the various decisions rendered by this Court as above over a period of time is that the principles of law laid therein governing the subject are bit inconsistent. Even after, the larger Bench decision in the case of Avtar Singh (supra) different courts have enunciated different principles.

90. In such circumstances, we undertook some exercise to shortlist the broad principles of law which should be made applicable to the litigations of the present nature. The principles are as follows:

a) Each case should be scrutinised thoroughly by the public employer concerned, through its designated officials more so, in the case of recruitment for the

³ (2023) SCC OnLine SC 27



police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security. [See Raj Kumar (supra)]

b) Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.

c) The suppression of material information and making a false statement in the verification Form relating to arrest, prosecution, conviction etc., has a clear bearing on the character, conduct and antecedents of the employee. If it is found that the employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service.

d) The generalisations about the youth, career prospects and age of the candidates leading to condonation of the offenders' conduct, should not enter the judicial verdict and should be avoided.

e) The Court should inquire whether the Authority concerned whose action is being challenged acted mala fide.

f) Is there any element of bias in the decision of the Authority?

g) Whether the procedure of inquiry adopted by the Authority concerned was fair and reasonable?"

10. The Constitution Bench, in case of State of Orissa v. Bidyabhushan Mohapatra had observed way back in 1963 that having regard to the gravity of the established



misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. A three-judge Bench in case of B.C. Chaturvedi v. Union of India had also held that 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 the charges of misconduct by a public servant, the Court or Tribunal would be concerned only to the extent of determining whether the inquiry was held by a competent officer or whether the rules of natural justice and statutory rules were complied with.

11. In Om Kumar v. Union of India this Court had also after considering the Wednesbury Principles and the doctrine of proportionality held that the question of quantum of punishment in disciplinary matters is primarily for the disciplinary authority, and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or the other of the well-known principles known as “Wednesbury Principles” namely whether the order was contrary to law, or whether relevant factors were not considered, or whether irrelevant factors were considered or whether the decision was one which no reasonable person could have taken.”

44. The Hon’ble Supreme Court in the judgment of **State of Karnataka vs N. Gangaraj**⁴ has reiterated the principle of law pertaining to limited judicial interference in the conduct of a disciplinary proceedings, relevant portion of which is as follows:

“9. In State of A.P. v. S. Sree Rama Rao [State of A.P. v. S. Sree Rama Rao, AIR 1963 SC 1723] , a three-Judge Bench

⁴ 2020 3 SCC 423



of this Court has 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 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. The Court held as under : (AIR pp. 1726-27, para 7)

“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.”

10. In B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] , again a three-Judge Bench of this Court has held that power of 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 eyes of the court. The court/tribunal in its power of judicial review does not act as an appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. It was held as under : (SCC pp. 759-60, paras 12-13)



“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 therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate 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 reappreciate 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. H.C. Goel [Union of India v. H.C. Goel, (1964) 4 SCR 718 : AIR 1964 SC 364] , 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.”

11. In High Court of Bombay v. Shashikant S. Patil [High Court of Bombay v. Shashikant S. Patil, (2000) 1 SCC 416 : 2000 SCC (L&S) 144] , this Court held that interference with the decision of departmental authorities is permitted if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry while exercising jurisdiction under Article 226 of the Constitution. It was held as under : (SCC p. 423, para 16)

“16. The Division Bench [Shashikant S. Patil v. High Court of Bombay, 1998 SCC OnLine Bom 97 : (2000) 1 LLN 160] of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But



we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.”

12. In State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya [State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721] , this Court held 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 ground for interfering with the findings in departmental enquiries. The Court held as under : (SCC pp. 587-88, paras 7 & 10)

“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 [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] , Union of India v. G. Ganayutham [Union of India v. G. Ganayutham, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806] and Bank of India v. Degala Suryanarayana [Bank of India v. Degala Suryanarayana, (1999) 5 SCC 762 : 1999 SCC (L&S) 1036] , High Court of Bombay v. Shashikant S. Patil [High Court of Bombay v. Shashikant S. Patil, (2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)

10. The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceeding invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him.”



13. In another judgment reported as *Union of India v. P. Gunasekaran* [*Union of India v. P. Gunasekaran*, (2015) 2 SCC 610 : (2015) 1 SCC (L&S) 554], this Court held that while reappreciating evidence the High Court cannot act as an appellate authority in the disciplinary proceedings. The Court held the parameters as to when the High Court shall not interfere in the disciplinary proceedings : (SCC p. 617, para 13)

“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.”

45. The aforesaid principle of law has also been followed by the Hon’ble Supreme Court recently in the judgment of *The Indian Oil Corporation & Ors. versus Ajit Kumar Singh & Anr.*⁵.

46. In view of the aforesaid judgments, it is a settled principle of law, that under the writ jurisdiction, the Courts shall have limited power to adjudicate upon the disputes pertaining to disciplinary proceedings. The writ Court can adjudicate upon whether the disciplinary proceedings can

⁵ Civil Appeal No. 3663 of 2023; May 17, 2023



adjudicate upon the issue, whether the procedure followed during the proceedings is fair and follows the procedure as laid for disciplinary proceedings, however, it cannot adjudicate upon the merits of the case, i.e., whether the decision taken by the disciplinary authority is correct or not.

47. Furthermore, it can appreciate the evidence produced by the parties or adjudicate upon the proportionality of the punishment given to the delinquent employee. Only in exceptional circumstances, the writ Court can intervene with the findings of the disciplinary authority if it is of the view that the conclusion arrived at the by the disciplinary authority is such that no person acting reasonably could have arrived at such a conclusion.

48. Adverting to the instant petition, now, this Court will peruse the impugned removal order dated 13th April 2021 passed by the respondent no.1, relevant extracts of which is reproduced herein below:

“ 01. Whereas the then Regional Executive Director (East-1), NTPC being the Disciplinary Authority has issued Charge sheet dt. 04.05.2020 to the Charged Officer (hereinafter called, CO) as the CO has written a letter dated 26.04.2020 to the Chairman and Managing Director, NTPC Limited with copies to the following:-

- Hon'ble Chief Justice of India through Secretary General*
- Hon'ble Minister of Law & Justice through Secretary*
- Hon'ble Minister of HI & PE through Secretary*
- Hon'ble MoS (Power) I/C through Additional Secretary*
- Hon'ble Mos (DoPT) through Secretary*
- All Functional Directors of NTPC through the Company Secretary*
- All Independent Directors of NTPC through the Company Secretary*
- All Regional HQ Head of NTPC*



• *All Projects/Stations (including JVs and Subsidiaries) Head*

• *Chairman and Secretary General of NEFI through their Subordinate or Associated office/officer with a request for the information of the respective Authority and needful action please.*

The CO has demanded in his above referred letter dated 26.04.2020 that "In view of the above, we demand ACKNOWLEDGEMENT and ACTION on this Account , as earmarked below , from your end in 30 days and in the event of no acknowledgement and no action , this Forum will be compelled to take this issue of ILLEGALITY, CRIMINALITY and CONTEMPT of SUPREME COURT to the appropriate platform for due justice and good".

The CO has further written in the above letter demanding" An appropriate action (disciplinary and criminal) must be taken , at the earliest , against those senior executives of NTPC like Head of Policy, Head of Corporate HR , Head of Regional HQs , Head of Regional HR , Head of Projects/Stations including JVs & Subsidiaries , Head of Projects/Station HR , Head of Department(s) who were directly involved in such ILLEGALITY and CRIMINALITY and thereby depriving executives at large from their legitimate rights and causing irreparable professional harm and pecuniary loss for years now". CO has further written that " A detailed report must be released by the Company, at the earliest explaining such ILLEGALITY and CRIMINALITY and their impact over years on the Company (NTPC) in particular as well as on its executives at large in general."

It was mentioned in the Charge Sheet that Sh. Vikash Kumar(CO) in the above letter dated 26.04.2020 has made wrong averments and allegations regarding the Corporation/its officials as well as the Management alleging contempt of Court, violation of CDA rules, violation of Office Memorandum of the Government.

The Charge Sheet has further contained that the averments and allegations of Sh. Vikash Kumar(CO) are false,



unfounded, malicious, mala fide and have been made to malign and criticize the company, its officials, including the directors of the Company.

The Article of Charge mentioned that CO has committed misconduct under Rule 4(1) (iii), 4(F), 5(5), 5(20) and Rule 9 of the NTPC Conduct, Discipline and Appeal Rules, 1977. In his reply dated 12.05.2020, CO has stated that Charges levelled i.r.o Rule 4(1) (iii), Rule 4(F), Rule 5(5), Rule 5(20) and Rule 9 of the NTPC's CDA Rules, 1977 without mentioning the specific conduct(s) that were presumed to be in violation of the said rules stem from the NERF's letter dated 26.04.2020 written to CMD, in exercise of the conferred and guaranteed constitutional and Legal Rights with the Forum as well as with the Executives of NTPC as an employee and precisely in adherence to the Rule 4(1) (i) and Rule 4(E) of the NTPC's CDA Rules, 1977 are out rightly & vehemently denied and marked as frivolous, unwarranted, perverse, merely intuitive and thus are liable to be dropped at this very outset in the interest of justice. 02. In light of the CO's denial of Charges as contained in Charge sheet dated 04.05.2020, Disciplinary Authority has appointed Inquiry Officer/Authority(IO/IA) and Presenting Officer(PO) on 21.05.2020 to hold enquiry against CO. The Inquiry Officer has submitted his Inquiry report dated 03.01.2021 to the Disciplinary Authority who happens to be RED(East-1) by concluding as follows: - I. As far as the matter of writing to CMD and other sr. officials outside NTPC, the same has never been denied by the CO.

II. CO has contended that he has written these letters in the capacity of convenor NERF and not in his individual capacity.

III. The fact that NERF is only mentioned when CO wrote the letter dated 26.04.2020 to CMD with copy to Sr. officials outside NTPC, was never contested by CO and the same is also proved as CO did not provide any details or documentary proof/evidence about existence and creation of NERF, any elections held, details of members, the process of his elections as convenor, etc. even when he was specifically



asked during cross examination by PO. The only mention about NERF was seen in its letter dated 26.04.2020 and in the follow up letters

IV. All the questions posed by PO pertaining to NERF , its formation , membership , governing rules , etc during cross examination of CO were not replied to by CO and were evaded all through the examination . Thus the existence of NERF is not proved at all.

V. The CO has contended that NEFI has been writing number of similar letters to CMD and other sr. officials of NTPC and no such disciplinary proceedings have never been initiated against any of the NEFI officials. In this regard the PO submitted that NEFI has been taking up employee related issues on regular basis with NTPC Management and there are Company guidelines on participative foras and internal stakeholder engagement plan, which was shared by MW1 during his deposition and the communication with NEFI is based on above guidelines. As far as NERF is concerned, there has been no intimation of formation of NERF to NTPC Management either at KBUNL or Corporate Centre.

VI. Beyond doubt it is evident from the letter dated 26.04.2020 of the CO wherein he has severely criticised the PMS policy of the company terming it as unilateral, not objective, lacking transparency and not confirming the rule of law without providing any document or proof in support of his allegations. Also no documentary evidence or witness in support of his claim was provided by the CO during the course of inquiry proceedings.

VII. From the tone and tenor of the letter dated 26.04.2020, it can be easily construed that the CO has severely criticised the PMS policy and unilaterally demanded action against all senior executives of the company without any proof thereby maligning them. Such type of criticism can be assumed far from being healthy and definitely not good for the discipline, peace and harmony of an organisational set up. Such action points that the act of writing the letter with copies to outside authorities was done solely to defame NTPC LTD and not



seek any amendments and/or refinement in the existing Performance Management System.

VIII. During the deposition of MW1 , it was shared that the CO has never written to NTPC prior to his letter dated 26.04.2020 on behalf of NERF and after his PMS appeal got rejected , he wrote the letter in the alleged capacity of NERF convenor . Also NERF was non-existing before 26.04.2020. Further, as a consequence of rejection of CO's PMS Appeal on 10.04.2020, the CO wrote the letter dated 26.04.2020 to CMD, NTPC. Hence both the actions i.e rejection of his own PMS appeal 2019 and subsequently writing the letter are indirectly related. The above assumption though not correctly established cannot be ruled out.

IX. After going through the letter dated 26.04.2020, it is observed that the language used by the CO is not for giving the feedback on the PMS system but is very contentious, casting serious aspersions on senior officers with an intent of embarrassing the company. There are other elements in the conclusions in the Inquiry Report of I.A, which are not repeated for the sake of brevity⁰³. The above said Inquiry report with 3 volumes of files, along with the pen drive containing soft copies of relevant Inquiry documents were received in my office on 05.04.2021.

All the documents are related to the charges of mis-conduct against CO; the list of documents as part of Inquiry Proceedings and details of Inquiry proceedings; Report of I.A., various correspondence made by IA and later by Disciplinary Authority(DA) and CO.'s voluminous correspondences to IA, DA and other authorities, etc. Vide his noting's dated April 02, 2021, RED (ER -1), (who happens to be the present Disciplinary Authority of CO, for all major penalties except for removal from services/dismissal from service/Compulsory retirement), the Inquiry report has been sent to me, as per Delegation of Powers of provided in NTPC's Conduct Discipline and Appeal rules.

04. I have gone through the entire records of Inquiry thus submitted to me. I am satisfied from the record that the



inquiry has been conducted with all fairness and requirement of upholding of Principles of Natural Justice has been met during the Inquiry. At the same time, I also agree to the Inquiry Report that the charges levelled against the C.O. {Shri Vikash Kumar, Employee number 009791, ~ Manager (Finance), KBUNL} under Rules 4(1)(iii), 4(F), 5(5), 5(20) and 9 of CDA Rules of NTPC stand proved. 05. I have also carefully perused the recommendation of the Disciplinary Authority of the CO, i.e. that of RED(ER-I) which is reproduced as below: -

"I therefore find that these transgressions are of an extremely serious nature, and I am in agreement with the Inquiry Report that the charges levelled against Mr, Vikash Kumar under the Rules 4(1)(iii), 4(F), 5(5), 5(20) and 9 of the NTPC CDA Rules have been proved. Considering the serious nature of these infractions which threaten to significantly affect the reputation of the Company and its senior officials; the tenor of language employed in his replies; his continued hostile and brazen attitude towards the Company and its officials; his refusal to adhere to the applicable rules and regulations of the Company; the fact that he has shown no remorse for the infractions committed, sought to make amends or apologies; and it being evident that his continuing as an employee would be detrimental to the interest of the Company; I find that imposition of the major penalty of "removal" is warranted in this case. While an employee may offer constructive comments and suggestions, the same must be done within the framework of the rules and regulations of the Company. There is a crucial difference between useful and constructive suggestions by an employee through, (proper and official channels, as per the rules and regulations, designed to improve the Company, on one hand, and abrasive and defamatory remarks and statements, made in



violation of the applicable rules and regulations, extraneous to the established framework and official channels, and involving external authorities, in order to bring the Company in disrepute, on the other. Mr Vikash Kumar's case falls in the latter category and is tantamount to an attack on the reputation and functioning of the Company. Furthermore, his continuously belligerent and unapologetic attitude amply demonstrates that these transgressions and violations would continue, if he were to remain an employee of the Company. Therefore, imposition of the penalty of "removal" would be necessary in the present case."

06. In the conspectus of the circumstances, I am of the independent view that NTPC Ltd. is a very large Organisation with a definite positive image in the minds of public at large, in general, and with its external/internal Stakeholders, in particular. It is not out of place to mention that NTPC is an Essential Services provider of the Country and Executives are the back bone of the Organisation from whom highest degree of discipline, maturity and restraints are expected, which is not shown by CO in the case in hand.

07. From the above proved misconducts, it is clear that charges levelled against CO are of grave nature and warrant severe punishment. Moreover CO has failed to point out any extenuating/aggravating circumstances. It is abundantly clear from Inquiry record that CO has tried to unduly pressurise the highest officer of the company & also seeking action against other high officials of the Company for no justifiable reasons at all, as is evident & clear from the tone and tenor of his letter dated 26.04.2020 and also tried to malign the image of the company by sending copies of the said letter to various dignitaries. During the Inquiry, it is clearly proved that CO has indulged in a misconduct unbecoming of an Executive of a Maharatna Company, like NTPC, & has acted in a manner prejudicial to the interest of the company and has committed clear acts, subversive of



discipline or of good behaviour. OB. Therefore, after taking into consideration, all evidences and facts on record, including reasons cited by CO, during inquiry, for justifying his action, I decide to remove him from service in NTPC Ltd. with immediate effect as per Rule 23(i) of Conduct, Discipline and Appeal Rules of NTPC.

09. The CO should surrender the token/identification card, medical card and all other properties of the Company issued to him/in his possession.

10. The CO is also required to vacate the Company's quarters/accommodation, if any in his occupancy /possession.

11. Final payment will be made to CO subject to receipt of No Demand /No Dues certificate from all concerned Departments and adjustment of outstanding dues, if any, as per Company Policy...”

49. Upon perusal of the aforesaid order, it is inferred that the petitioner had sent a letter dated 26th April 2020, to various offices such as Law Ministry, Chief Justice of India, etc. alleging instances of illegality, criminality as well as contempt of Court committed by the senior employees of the respondent organization.

50. Thereafter, a chargesheet dated 4th May 2020, was issued against the petitioner stating that the averments made by him are wrong and such allegations have maligned and criticized the company as well as its officials. In this regard, it was held that the petitioner has committed misconduct as per the rules of the respondent organization. The petitioner in reply to the aforesaid chargesheet, denied the charges of misconduct. He further stated that the aforesaid charges are frivolous, unwarranted as well as perverse, and hence, he requested the charges to be dropped.



51. Pursuant to which, the respondent organization, appointed inquiry officer/authority as well as presenting officer to hold inquiry against the petitioner. The inquiry report submitted by the inquiry officer on 3rd January 2021 stated that the petitioner never denied the factum that he wrote the letter dated 26th April 2020 to the CMD of the respondent no.1 along with the other senior officials outside the respondent no.1 organization. Although the petitioner has contended that he has written the aforesaid letter in the capacity of being convenor of NERF, however, NERF is only mentioned when the petitioner wrote the aforesaid letter and that there is no other information provided by the petitioner pertaining to NERF. Moreover, the petitioner has contended that one organization namely NEFI has written similar kind of letter to the officials of respondent no.1 and no action has been taken against them. In this regard, the authority held that NEFI had taken up issues pertaining to employees of respondent no.1 on regular basis and there are company guidelines pertaining to participative foras and internal stakeholder engagement plan as per which the communication was done with NEFI. However, the constitution of NERF was never intimated to respondent no.1. The impugned order further states that upon perusal of the inquiry report as well as the documents annexed with it, the respondent organization was of the view that the inquiry had been conducted following the principles of natural justice as well as fairness.

52. In view of the aforesaid submissions, the respondent organization held that the charges levied on the petitioner were of serious nature and warranted severe punishment. Furthermore, the inquiry report stated that the petitioner had been wrongly pressurizing the highest position officer



of the respondent organization to take action against the senior officials of the respondent organization despite the fact that the petitioner had not been able to establish the various allegations levied by him against the senior officials of the respondent organization.

53. The petitioner has further tried to wrongly malign the reputation of the respondent organization by sending copies of the letter dated 26th April 2020 to various dignitaries of the country. Hence, the petitioner acted in a manner which is prejudicial to the interest of the company. The respondent organization in consideration of the facts on record as well as the evidence on record removed the petitioner from its services.

54. In view of the foregoing discussion and the reasons as detailed in the impugned order, this Court is of the view that the impugned order has been passed after taking into account the representation of the petitioner and in accordance with the statutory rules. Hence, this Court is of the opinion that the aforesaid order does not suffer from any illegality.

55. Now, this Court will peruse the impugned Appellate Authority order dated 15th June 2021 passed by the respondent no.1. Relevant extracts of the same are reproduced herein below:

“The present Appeal filed before me, inter alia challenges the Order dated 13.04.2021 issued by Shri Mrugank Shekehar Dash Bhattamishra, Executive Director (HR), NTPC and Appointing Authority of the Charged Officer (hereinafter referred to as the "Appointing Authority"), whereby the charges leveled against the Appellant were held to be proved and a punishment of removal from service with immediate effect as per Rule 23 (i) of the Conduct, Discipline and Appeal Rules of NTPC ('CDA Rules ') was imposed. The Appeal also challenges the Memorandum dated 04.05.2020 that had been issued to the



Appellant, levelling charges against him, and also prays that the video recordings of the inquiry proceedings conducted against him, be provided to him.

At the very outset, I note that under Rule 32 of the CDA Rules, an appeal can only be preferred against an order imposing any of the penalties specified in Rule 23 or against the order of suspension referred to in Rule 20. Therefore, the present Appeal, to the extent that it challenges the Memorandum dated 04.05.2020 and prays for provision of video recordings of inquiry proceedings, would not be maintainable. Accordingly, the Appeal would have to be confined to the challenge to the Order dated 13.04.2021.

The matter at hand primarily concerns a letter dated 26.04.2020 by the Appellant addressed to the CMD , NTPC and other higher officials outside the organization, for which a Memorandum of Charges dated 04.05.2020, along with statement of allegations, alleging violation of Rule 4 . 4 (F), 5 and 9 of the "CDA Rules was issued to Appellant. inquiry proceedings were initiated, which culminated in an Inquiry Report, which concluded that the charges had been proven against the Appellant. The Disciplinary Authority, Mr. Asit Kumar Mukherjee, was of prima facie agreement with the findings of the Inquiry Report, and issued a Notice dated 15.01.2021, asking the Appellant to show cause why the said Report should not be accepted and a major penalty under "CDA Rules "not be imposed. After perusing the replies of the Appellant, Mr. Praveen Saxena, in the capacity of Disciplinary Authority (Mr. Asit Kumar Mukherjee having retired earlier), concluded that the misconduct alleged, had been proved against the Appellant, and a major penalty of removal ought to be imposed. The matter was subsequently sent to the Appointing Authority, with the opinion of the Disciplinary Authority, for his independent decision regarding the penalty, if any. The Appointing Authority, after a perusal of the facts and documents agreed with the conclusions of the Inquiry Officer as well as the Disciplinary Authority and passed the Order dated 13.04.2021, which has been challenged in the present Appeal.



I have gone through the facts and circumstances of the matter, including the replies and representations of the Appellant, the record of the Inquiry proceedings, the reasoning and findings of the Inquiry Officer, the opinion of the Disciplinary Authority and the decision of the Appointing Authority. I have also carefully examined the grounds raised in the present Appeal. Having done so I am of the conclusion that there is no merit in the Appeal's challenge to the Order dated 13.04.2021.

The Appellant has not brought on record anything that would dislodge the conclusions of the Inquiry Report, including the fact that he had written the letter dated 26.04.2020. In fact, the Appellant has consistently admitted having written this letter. The Appellant had hurled harsh criticism at NTPC in the letter, and had taken pains to publicize its contents among the senior officials of NTPC and beyond. This was hardly an employee ventilating his legitimate grievances. This is also demonstrated by the fact that he had not even availed of the available grievance redressal mechanism provided by the organization. I am in complete agreement with both the Disciplinary and the Appointing Authority, that the letter was aimed at lowering the reputation of NTPC, and would have the effect of severely hampering its functioning. It had been noted by these authorities that the Appellant had failed to provide any evidence to dislodge the conclusions regarding his transgressions, and instead had offered evasive responses and tried to shift the focus to frivolous, trivial or entirely irrelevant issues. For instance, he has woefully failed to address the conclusions drawn by the Inquiry Officer regarding NERF. This is a pattern that is present even in the instant Appeal. The Appellant is eloquent in his silence regarding the transgressions committed by him and has in the Appeal, focused on the same frivolous and extraneous issues, that have no bearing on the present matter, and has rehashed claims that have already been addressed by the Inquiry Officer, whose findings have found agreement with the Disciplinary and Appointing Authorities.



I find that the Appellant's claim that the inquiry proceedings had not been conducted in accordance with the applicable rules, the principles of natural justice, or in violation of the directions of the Hon'ble High Court of Delhi, to also be without merit. The grounds raised by the Appellant in this regard, have already been addressed by the Inquiry Officer, and the reasoning and conclusions of the Inquiry Officer have been accepted by the Appointing Authority and the Disciplinary Authority. I am in broad agreement with conclusions reached by the authorities regarding these claims. The claims made by the Appellant which have been already addressed include the claims of non-communication of the charges of misconduct; not being provided with relevant documents; germane officials not being called upon as witnesses; non-acceptance of the choice for defence assistant; non-permission for logical conclusion of cross-examination of management witnesses; non-recording of daily order sheet in a fair and transparent manner and non-discussion by the enquiring authority on the Dissent Note; decision making by the inquiring authority being in nonspeaking terms; back-to-back proceedings being conducted without a reasonable gap; non-acceptance of the request for calling senior officers and providing documents. While many of the claims are trivial and frivolous and have no bearing on the sanctity of the proceedings, most of them are contradicted by a perusal of the record of the enquiry proceedings.

The main claims made by the Appellant in the present Appeal, and my responses, have been laid down in the table below-

Claim	Conclusion
<i>No opportunity provided to the Appellant regarding imposition of penalty.</i>	<i>More than sufficient opportunity was being provided to the Appellant regarding imposition of penalty, as indicated by the several replies submitted by the Appellant, during the Inquiry proceedings as well as before the Disciplinary Authority.</i>



<i>Charges of misconduct and relevant material and documentary evidence, not explained to the Appellant. Chargesheet merely reproduces the relevant rules of CDA rules.</i>	<i>The articles of charges coupled with the relevant evidence, were explained several times to the Appellant, as is also recorded in the Inquiry Report. It should be noted that the Memorandum dated 04.05.2020 contained not just the articles of charges but also statement of allegation of facts as well.</i>
<i>Documents and names of witnesses relied upon, not communicated to the Appellant.</i>	<i>This objection has been made at a belated stage and as an afterthought, and there is nothing on record to support this.</i>
<i>Appellant not allowed to conclude cross examination of witnesses.</i>	<i>The Appellant was given sufficient opportunity to cross examine witnesses, and asked ample questions. On many occasions, he simply refused to proceed with the cross examination. The record shows that the Appellant put a great number of questions to these witnesses, and on many occasions, had to be told to not deviate from the matter at hand. The Appellant cannot be allowed to indefinitely delay the proceedings on the pretext of cross examining witnesses, and has to complete the same within a reasonable time frame.</i>
<i>Witnesses were not aware of and could not address the cardinal issues, and made certain admissions during cross examination.</i>	<i>There is no admission made by the witnesses that would dislodge the conclusion regarding the misconduct committed by the Appellant. The issues raised by the Appellant have no bearing on the matter at hand. Moreover, there is nothing to indicate that the witnesses were unaware of the cardinal issues.</i>



<i>Documents requested by the Appellant not provided to him</i>	<i>The Inquiry Officer's decision to disallow these documents appears to be based on them being extraneous and unrelated to the matter at hand. The Appellant himself appears to have been unable to indicate how these documents were relevant.</i>
<i>Appellant's request for calling upon 23 executives of NTPC was denied.</i>	<i>The Appellant made this demand in the last few hearings of the inquiry proceedings, and could not give any reasons for summoning these senior officials.</i>
<i>Appellant was not allowed to have the person he wanted as Defence Assistant</i>	<i>It is a matter of record that the Appellant failed to provide the name of his Defence Assistant in the allotted time. Moreover, he kept insisting on having Mr. Jyoti Kumar as his Defence Assistant, even though he was functioning as such in two other disciplinary cases, and his appointment would not be in compliance with " CDA Rules"</i>
<i>Appellant not allowed to submit necessary points of defence to the Inquiry Report in person or through video conferencing.</i>	<i>The Appellant had submitted his replies to the Inquiry Report, and the same were duly considered by the Inquiry Officer. Nowhere does the " CDA Rules" mandate an oral hearing.</i>
<i>Authorities acted in contravention of the directions of the Hon'ble Delhi High Court in LP A No. 228/2020.</i>	<i>Nowhere it is apparent from the record of the Inquiry proceedings, the findings of the Inquiry Officer, the recommendation of the Disciplinary Authority or the Order passed by the Appointing Authority, that the directions of the Hon'ble High Court were not adhered to.</i>



<i>Inquiring Officer intentionally did not record serious deficiencies and departures mentioned in the dissent notes/objections in the order sheets, and did not attempt to discuss and settle these.</i>	<i>This is plainly contradicted by the record of the inquiry proceedings, which mentions and encloses dissent notes submitted by the Appellant, alongwith the record notes of discussions for the hearings. Moreover, the Inquiry Officer cannot mechanically initiate discussion of each and every issue in the dissent note, and has to apply his mind to the matter, to decide whether these objections are germane to the matter, or extraneous, frivolous, trivial and dilatory.</i>
<i>CDA Rules applies to the employees of NTPC, not associations formed by them.</i>	<i>This objection, in the present form, does not appear to have been taken before the authorities below. Needless to state, an employee cannot use the garb of an association to engage in misconduct.</i>
<i>Order of termination is a non-speaking order, and issued without application of mind.</i>	<i>The order of termination is detailed and reasoned, and appears to have been issued after considering all the relevant material.</i>
<i>Inquiry proceedings closed abruptly and sufficient opportunity not provided to the Appellant.</i>	<i>Far from being concluded abruptly, the inquiry proceedings stretched over 6 months and 26 hearings, and sufficient opportunity was provided to the Appellant to present his case. In fact, the record shows that the Appellant was requested on repeated occasions to carry out various steps of compliance, and yet the Appellant delayed and stonewalled.</i>

I must also note that while inquiry proceedings have to be conducted in consonance with the applicable rules and the principles of natural justice, the Charged Officer cannot use this as a garb to indefinitely delay the proceedings or line up a range of trivialities and irrelevant issues, to somehow claim that the proceedings have been vitiated. It is a settled position of law that principles of natural justice are not inflexible rules, and a hyper technical approach cannot be



adopted. This is exactly what the Appellant has attempted to do by raising grounds regarding the conduct of the proceedings in the present Appeal. While most of these grounds have already been addressed in the Inquiry Report, and in the opinion and decision of the Disciplinary and Appointing Authorities respectively, I believe that my reasoning and conclusion would become clearer by offering a few examples. The Appellant has claimed that the Articles of Charges were not explained to him during the proceedings, and that the Memorandum dated 04.05.2020 merely reproduced the rules that he was alleged to have violated. However, the said Memorandum contained not just the article of charges, but also a statement of allegation of facts, which made the charges against the Appellant amply clear. The fact that he had understood the charges against him is also demonstrated by the fact that in his Reply dated 12.05.2020 to the Memorandum dated 04.05.2020, he responded to the allegations regarding the letter dated 26.04.2020 in detail. Similarly, in another instance, the Appellant has claimed that he was not allowed to conclude his cross examination of Management witnesses. However, it is apparent from the record that on many occasions the Appellant refused to cross examine these witnesses, and when he did cross examine these witnesses he asked ample number of questions and in fact had to be reminded several times to ask questions related to the proceedings. As noted that while the proceedings have to be conducted and were conducted in accordance with the applicable rules as well as the principles of natural justice, the enquiry or the Charged officer cannot be allowed to indefinitely extend or delay the proceedings and thereby make a mockery of the same.

I will now examine whether the punishment imposed by the Disciplinary Authority, was appropriate, considering the facts and circumstances of the case. On this aspect, I am in agreement with the Disciplinary Authority and the Appointing Authority, that the case of the Appellant is entirely different, and in fact diametrically opposite to an employee expressing his legitimate grievances to improve



and better the organisation through proper channels. I must state, that I am conscious of the need for employees to air their grievances. However, the same be done in accordance with law and by utilising proper channels. There is a difference between an employee that flags issues through proper mechanisms in order to better the organisation, and an employee that directs abuse and criticism towards an organisation, in an unrestrained manner, with the intention to harm the reputation of the organisation. The present case clearly belongs to the latter category. I am of course, mindful of the legal position that the punishment that is imposed must be proportionate to the offence. In the present case, the Appellant has deliberately attempted to harm the functioning and reputation of NTPC, through the contents, mode of circulation and the number of recipients of the Jetter dated 26.04.2020. The Appellant has continued to display a nonchalant and unapologetic attitude towards his actions. In the current scenario, where competition is fierce, and goodwill, brand value and marketability have attained enormous importance, the need for preserving and enhancing the reputation of an organisation cannot be overstated. The actions of the Appellant would cause severe prejudice and harm to the NTPC. Therefore, the continuation of the Appellant as an employee, would not only give the wrong signal to other employees, giving rise to a chain reaction of insubordination and defamation, but would also continue to directly harm the reputation of the NTPC, as the Appellant is quite likely to continue with his transgressions in future. I am supported in this conclusion by the fact that even in the present Appeal, the Appellant has made no efforts to express remorse for his actions, or even attempt to offer a set of mitigating circumstances that would warrant reducing the punishment. In fact, the Appellant has so far even failed to give the semblance of an assurance that he would not repeat these transgressions in the future. Therefore, I am of the considered opinion that the punishment imposed by the Appointing Authority is entirely justified and necessary in the present case.



Accordingly, the Appeal is dismissed.”

56. The above extracted impugned appeal order upholds the impugned order dated 13th April 2021 as per which the appellant was removed from the services. The Appellate Authority of the respondent organization held that there is no illegality in the impugned order dated 13th April 2021 and it was further held that there was nothing brought on record to dislodge the conclusions of the inquiry report.

57. The Appellate Authority has further stated reasons for rejecting the various claims of the petitioner observing that there has been no violation of the principles of natural justice by the respondent organisation since the appellant, i.e., the petitioner herein had been provided various opportunities as evident from the various replies filed by the appellant, Article of Charges were explained to the petitioner, etc. The Appellate Authority also tabulated the various claims of the appellant and its findings on the same.

58. It was opined by the Appellate Authority that the appellant had claimed that the Article of Charges were not explained to him during the proceedings and the memorandum dated 4th May 2020 had reiterated the rules that had been alleged to be violated. In this regard, the Appellate Authority opined that the aforesaid memorandum stated not only the Article of Charges but also a statement of alleged facts against the appellant. Moreover, it is pertinent to note that the appellant understood the aforesaid charges and the same is evident from the reply to the aforesaid memo.



59. Furthermore, the appellant has claimed that he was not allowed to conclude the cross-examination of respondent management's witness however, on a perusal of the record it is evident that on many occasions the appellant refused to cross-examine the witnesses. During the cross-examination, the appellant digressed asking the questions and did not limit his questions to the disciplinary proceedings only.

60. In view of the aforesaid findings, the Appellate Authority held that the Disciplinary Authority's and the Appointing Authority's decision was correct. The channel adopted by the appellant in airing his grievances was wrong. There is a difference between an employee who highlights issues in the organisation through proper channels and an employee who directs abuse and criticism towards the organisation in a manner which is not as per the due process as well as with an intention to harm the reputation of the organisation.

61. Hence, the appellant has tried to spread false allegations against the organization which could cause severe of prejudice and harm to it. The Appellate Authority was of the view that if such an employee continues to work with the organization, it would be a wrong precedent to other employees which could further give rise to a chain of insubordination and defamation. Accordingly, the appeal preferred by the appellant was dismissed and the punishment imposed by the Appointing Authority was justified.

62. In view of the foregoing discussions and the reasons as detailed in the impugned appeal order, it is observed that the order was passed after taking into account the representations of the petitioner and in accordance



with the statutory rules. Hence, this Court is of the opinion that the aforesaid order also does not suffer from any illegality.

63. Now, this Court will peruse the impugned Review order dated 23rd October 2021, passed by the respondent no.1, relevant extracts of which are as under:

“The Applicant, Mr. Vikash Kumar, has preferred the instant Application for review of the Order dated 15.06.2021, issued by Mr Dillip Kumar Patel, Director (HR), NTPC Ltd., as the Appellate Authority, dismissing the Appeal against the Order dated 13.04.2021 issued by the Appointing Authority of the Applicant which had held the charges levelled against the Appellant to have been proved against him and had imposed a penalty of removal from service on him.

At the very outset, I will address the request of the Applicant made vide his representation dated 01 .10.2021, that he be provided with a personal hearing in these proceedings. A perusal of NTPC Conduct, Discipline and Appeal Rules, 1977, reveals that Rule 33 which deals with review, does not provide for personal hearing. It has been held in a number of judgments, such as Kanubhai P. Shah v. Bank of Baroda and Ors (2006 6 SLR 435) and Anil Kumar Dobhal v. State Bank of India and Ors (2003 3 SLR 513), that there is no obligation to provide for a personal hearing, if there is no provision for the same in the applicable rules. Therefore, the plea of the Applicant for a personal hearing cannot be entertained.

I have carefully gone through the representation dated 01.10.2021 of the Applicant. The Applicant has contended that the disciplinary proceedings against him were prejudiced and carried out with a predisposed mind. He has further claimed that the Inquiry Officer, Disciplinary Authority and Appellate Authority, aimed at deliberately establishing an effect without a cause. The Applicant has further implied that the inquiry, disciplinary and appellate proceedings were not conducted in accordance with the applicable rules. However, apart from making these



assertions, the Applicant has not provided any specific instances in support of this assertion. The Applicant has not indicated how these proceedings were prejudiced and carried out with a predisposed mind. He has not shown how these proceedings were in violation of the rules. Merely making general statements without any particulars or specificities to establish the same, would not be sufficient to dislodge the conclusions reached by the Inquiry Officer, Disciplinary Authority and Appellate Authority, particularly when these conclusions were reached after a detailed study of the facts and considering all relevant factors, including the representations made by the Applicant. Moreover, even these general statements made by the Applicant, have already been made before, considered and adequately addressed by the Inquiry, Disciplinary and Appellate Authorities. I find myself to be in agreement with their reasoning and conclusions. The fact-finding authorities have carefully studied the factual position, sifted through the voluminous documents, and reached certain factual conclusions, which have been upheld by the Appellate Authority. The Applicant has not raised any ground that would warrant exercise of the power of review in the instant case and interfere with the findings and conclusions of these authorities. It is crucial to note that apart from making these general and borderline vague contentions, the Applicant has not brought-on record any particular fact or a point of law, that would necessitate deviating from the conclusions reached by the previous authorities in this matter.

Nevertheless, I have gone through the entire record pertaining to this matter and have applied my mind independently and anew to the facts of the case. I find that the Applicant's conduct fully warrants the imposition of the penalty that has been imposed upon him, and that there is nothing on record to show that the proceedings were prejudiced, carried out with a pre-disposed mind, not in accordance with the applicable rules, or aimed at establishing an effect without a cause. It is crucial to note that the Applicant has not denied that he wrote the letter



dated 26.04.2020. It is clear from the content and language of this letter, that the goal was to lower the reputation of the NTPC both within and outside the organisation. This is also amply demonstrated by the fact that the Applicant resorted to writing and sending out this letter without even using the grievance redressal mechanisms available and took pains to publicise the contents of the letter. The Applicant has offered no defence for his conduct, apart from raising points which have no bearing or relevance to the matter at hand. Furthermore, in the previous proceedings, and even now, the Applicant has remained entirely unapologetic about his conduct, and nonchalant about the implications of his actions. As a result, I find that the conclusions of the previous authorities regarding the conduct of the Applicant are entirely justified. It also clear from the record that the inquiry proceedings were conducted in accordance with the applicable rules and the principles of natural justice, and were neither prejudiced nor carried out with a predisposed mind. While the Applicant has not raised any particular grounds regarding this claim in his review application, I find that the previous authorities have dealt with each specific contention of the Applicant regarding this issue in detail. The Appellate Authority in particular, has addressed and responded to each and every contention regarding the conduct of the proceedings threadbare. I am in agreement with the findings of these authorities regarding this issue. Furthermore, even though the Applicant has raised no ground before me regarding the suitability of the penalty imposed on him, I am nevertheless examining this issue as well. I find myself to be entirely in agreement with the view taken by the Disciplinary Authority, Appointing Authority and Appellate Authority, that the Applicant's conduct shows that he had every intention to damage the reputation of the NTPC, and it was not the case of an employee airing legitimate grievances. The attitude demonstrated by the Applicant, and one that he continues to display, is also an important factor to be considered. Far from showing any remorse, his attitude has been brazenly unapologetic. The



Applicant has also failed to show any mitigating factors that would justify interfering with the penalty imposed on him. Therefore, I am of the view that the penalty imposed on the Applicant is completely suitable and necessary considering the facts and circumstances of the present case, and there is no reason to interfere with the same.

Regarding the conduct of the proceedings that took place in this matter, I see that the findings in the Inquiry Report were made after perusing the facts in detail, and duly considering all evidence and submissions. The findings in the Inquiry Report are sound and correct, and I am in agreement with the same. The Order dated 15.06.2021 was passed after considering all the facts and circumstances of the matter, including the replies and representations of the Applicant, the Inquiry Report and the entire inquiry record. The Appointing Authority considered the recommendation of the Disciplinary Authority, and also took an independent view of the matter, to impose the penalty of removal from service. I am in agreement with the Appointing Authority that the Applicant has indulged in conduct unbecoming of an Executive of a Maharatna Company like the NTPC and has acted in a manner prejudicial to the interest of the company. I also agree that the Applicant has fallen short of showing the high degree of discipline, maturity and restraint expected of him.

The Appointing Authority had rightly noted that the charges levelled against the Applicant were of a serious nature and warranted severe punishment, and that he had failed to point out any extenuating or aggravating circumstances. In fact, even in the Representation dated 01 .10.2021, the Applicant has not pointed out any mitigating or extenuating circumstances and has also failed to show even a hint of an apologetic or remorseful attitude regarding his actions. I therefore find the Order the Appointing Authority to be sound, cogent and well-reasoned, and the punishment that was imposed being suitable in the present case. The Appellate Authority, vide its Order dated 15.06.2021 , has painstakingly addressed, point by point, the grounds raised



by the Applicant in his Appeal. The Appellate Authority has provided detailed reasons for rejecting these grounds, and has also addressed the Inquiry Report, the recommendation of the Disciplinary Authority and the Order of the Appointing Authority and provided its own reasons for agreeing with the conclusions reached therein. I find myself to be in agreement with the findings of the Appellate Authority, which dismissed the Appeal and upheld the conclusions of the Inquiry Officer, Disciplinary Authority and Appointing Authority.

Consequently, after perusing the record, and applying my mind independently to the matter, I am in agreement with the findings and conclusions reached by the Appellate, Appointing and Disciplinary Authorities, and find no reason to interfere with the Order dated 15.06.2021 or the Order 13.04.2021. The application/representation for review made by the Applicant is accordingly dismissed.”

64. Upon perusal of the same, it is observed that the petitioner did not state any specific reason in support of his assertions against the various officials of the respondent organization. Furthermore, the petitioner did not specifically point out any specific instance to support his contention that the inquiry conducted against him was in a prejudice manner and carried out with a pre-disposed mind as well as he failed to prove that the proceedings have been conducted in violation of the rules.

65. The fact-finding authority has carefully adjudicated the petitioner's case and reached to certain factual conclusions which have been upheld by the appellate authority. In view of the aforesaid discussion the reviewing authority was of the view that there were no circumstances or situations brought to the notice of the review authority which warranted the exercise of power of review.



66. It is pertinent to note that the petitioner has not denied that he wrote the letter dated 26th April 2020 which was written with the aim to defame the respondent organization both within the organization and outside it. Hence, the impugned revision order held that the Appellate Authority had further taken into consideration all the claims of the petitioner and given its finding on them.

67. The petitioner has failed to make out a case for issuance of a writ of certiorari quashing the impugned orders and accordingly this Court does not deem it necessary to interfere with the aforesaid impugned orders.

68. Furthermore, as per law, a writ of certiorari can be issued only in those cases where there is an order of the authority which is to be quashed on the ground that there has been a wrongful exercise of powers by the authority concerned. The Court does not sit as an appellate authority perusing the entire record, re-appreciating the evidence, etc. The writ of certiorari can be issued if an error of law is apparent on the face of record.

69. In view of the foregoing discussions and the reasons as detailed in the impugned review order, this Court is of the considered view that the said order has been passed after taking into account the representation of the petitioner and in accordance with the statutory rules. Hence, this Court is of the opinion that the aforesaid order does not suffer from any illegality.

CONCLUSION

70. Under Article 226 of the Constitution of India, the Courts cannot encroach upon the executive domain since, it is the competent disciplinary authority which has the authority to take decisions pertaining



to the misconduct committed by the petitioner. Hence, the Court shall exercise certain degree of judicial restraint while adjudicating upon the instant writ petition.

71. In regard to the facts of the matter at hand, this Court is of the considered view that a writ of certiorari cannot be issued since for the issuance of such a writ, there should be an error apparent on the face of it or it should go to the roots of the matter. However, no such circumstances are present in the instant petition.

72. The instant petition is an appeal in the garb of a writ petition. The petitioner is seeking a review of the impugned orders of the respondent no.1 despite the fact that there are no such special circumstances that require the interference of this Court. The respondent no. 1 has passed the impugned orders after perusal of the documents on record as well as taking into consideration the submissions of the petitioner.

73. Accordingly, this Court is of the view that the petitioner is not aggrieved by any such violation of his rights, which merits intervention of this Court in the orders passed by the respondent.

74. In view of the discussions in the foregoing paragraphs, this Court does not find any merit in the instant petition and does not deem it necessary to interfere with the impugned orders. Accordingly, the instant petition is dismissed.

75. Pending applications, if any, stands dismissed.

76. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

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