

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)**

APPELLATE SIDE

Present :

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 21881 of 2022

Debanjan Guha

Vs.

State of West Bengal & Ors.

For the petitioner : Mr. Indranil Roy,
Mr. Sunit Kumar Roy,
Ms. Susmita Mondal.

For the respondents : Mr. N. C. Behuni, Ld. Sr. Adv.,
Mr. Kamal Kumar Chattopadhyay,
Ms. Rimi Chatterjee.

Heard on : 24.12.2025

Judgment on : 15.01.2026

Partha Sarathi Chatterjee, J.:-

Preface:

1. The present writ petition has been filed challenging the justifiability of the resolution adopted at the 362nd meeting of the Board of Directors, under Agenda

No. 5-362, whereby decision was taken for re-hearing of the statutory appeal preferred by the petitioner against the penalty imposed by the Disciplinary Authority. The petitioner also assails the legality of the decision of the Selection Committee taken in its meeting dated 24.08.2022, by which consideration of the petitioner's promotion was deferred. In addition thereto, the petitioner seeks issuance of a writ of *certiorari* for quashing and/or setting aside the aforesaid decisions. The petitioner further prays for issuance of a writ of *mandamus* directing the concerned respondents to promote the petitioner from the post of Assistant Manager-II to the post of Assistant Manager-I with effect from 30.08.2022.

Petitioner's case:

2. Before delving into the contours of the controversies involved in the present writ petition, it would be apposite to briefly advert to the facts, as projected in the writ petition and the documents annexed thereto, leading to its presentation.
3. The petitioner commenced his service career as an Assistant with the West Bengal Small Industries Development Corporation Ltd. (for short, Corporation), a Government of West Bengal undertaking functioning under the Department of Micro, Small and Medium Enterprises and Textiles, Government of West Bengal. Subsequently, he was promoted to the post of Senior Assistant and thereafter to the post of Assistant Manager-II on 16 April 2014, pursuant to a departmental promotion process conducted in accordance with the applicable staff regulations.
4. During his service tenure spanning over 22 years, the petitioner performed his duties diligently and efficiently without any blemish, and no complaint, adverse

remark, or disciplinary proceeding had ever been initiated against him prior to 2017.

5. On 20 June 2017, a contractual employee of the Corporation, namely Ms. Bandana Saha, working as an Information and System Analyst, lodged a complaint containing vague and unsubstantiated allegations against the petitioner. On the basis of the said complaint, an Enquiry Committee was constituted on 27 June 2017.
6. A show-cause notice, vide Memo No. SB-1/1034/1 dated 22.08.2017, was issued by the Executive Director-II, calling upon the petitioner to submit his response within seven days from the date of issuance thereof. The petitioner duly submitted his reply to the said show-cause notice.
7. However, without making any observation as to whether the reply to the show-cause notice was satisfactory, a charge-sheet containing two articles of charge was issued to the petitioner, vide Memo No. SB-I/1421/2 dated 1 November, 2017. The charge-sheet alleged that the petitioner had threatened Smt. Bandana Saha and had used abusive language towards other staff members as well as higher officials of the Corporation, including the Chairman, over the mobile phone of Smt. Bandana Saha (No. 9883887450) from his own mobile phone (No. 9836436276). Such conduct was treated as misconduct, being violative of Rules 30, 42 and 45 of the West Bengal Small Industries Development Corporation Limited (Staff Regulations) (for short, "Staff Regulations"). The petitioner was directed to submit his written statement of defence within seven days from the date of receipt thereof.

8. The petitioner submitted his written statement of defence, vide his letter dated 07.11.2017, denying the allegations of threatening Smt. Bandana Saha. It is pertinent to note that earlier, on 4 September 2017, the petitioner had submitted a letter tendering an unconditional apology for his conduct in using abusive language towards the Chairman and other senior officials of the Corporation.
9. However, upon conclusion of the disciplinary proceedings, the Disciplinary Authority, being Respondent No. 4, imposed a penalty upon the petitioner by an order dated 31 March 2018, reducing the petitioner's pay by two stages in the time scale of pay for a period of two years with cumulative effect, thereby resulting in postponement of the earning of increments during the said period as well as future increments under Rule 45(b) of the Staff Regulations.
10. Aggrieved by the penalty imposed, the petitioner preferred a statutory appeal on 25 June, 2018 under Regulation 50 of the Staff Regulations before the competent Appellate Authority.
11. The then Managing Director and the Chairman of WBSIDCL, being the highest authorities under the Staff Regulations, allowed the statutory appeal by an order dated 10 July, 2020 and revoked and/or condoned the penalty imposed upon the petitioner in exercise of the powers conferred under Regulation 50 of the Staff Regulations. As the Regulations do not provide for any review and/or revision of an order passed by the Appellate Authority, the said order dated 10.07.2020 attained finality.
12. In implementation of the order of the Appellate Authority, the Executive Director of the Corporation issued an office order dated 13 July, 2020 restoring

the Petitioner's pay band and service benefits to their original position. The appellate decision thus was fully acted upon.

13. After a lapse of nearly two years, in June 2022, a departmental promotion process was initiated for filling up various promotional posts, including the post of Assistant Manager-I, strictly on a merit-cum-seniority basis. The petitioner, having fulfilled all the eligibility requirements, was, vide a memo dated 27.06.2022 issued by the Executive Director-I, called upon to participate in the selection process for promotion to the post of Assistant Manager-I. Upon completion of the selection process, the petitioner secured the highest position in the merit list prepared for the said purpose.
14. Subsequently, on 05.08.2022, the petitioner received the minutes of the 362nd meeting of the Board of Directors of the Corporation, from which he came to learn that Agenda No. 5-362 had been placed for consideration, namely, *"to ratify the decision of revocation of penal measures imposed upon the petitioner."* During the discussion on the said agenda, the Chairman informed the Board that the legal retainer of the Corporation had opined that there had been non-compliance with the prescribed legal procedure in the revocation of the penalty imposed upon the petitioner. Accordingly, it was decided that the legal retainer would appoint a retired Judge as the Appellate Authority to hear the statutory appeal, and that upon receipt of the decision of the Appellate Authority, follow-up action would be taken by the Board.
15. Following the decision of the Board, despite securing the first position in the merit list, the Selection Committee, in its meeting held on 24 August, 2022,

decided to keep the petitioner's promotion in abeyance on the vague ground of "*public interest*" until the decision of the Appellate Authority was received.

16. While the petitioner's promotion was withheld, the second empanelled candidate was promoted to the post of Assistant Manager-I with effect from 30 August 2022, causing discrimination and serious prejudice to the petitioner. The petitioner contended that, at the time the selection process was conducted and the decision of the Committee to withhold his promotion was taken, no disciplinary proceeding, enquiry, or appeal was pending against him.
17. The petitioner, by making an application under Section 6 of the Right to Information Act, 2005, sought certain documents; however, the concerned respondents did not furnish any of the requested documents, on the ground that, as the petitioner had sought a large volume of information, some time would be required to provide them. Finding no other alternative, the petitioner submitted a representation dated 12.09.2022, requesting that the statutory appeal not be re-heard and that he be promoted to the post of Assistant Manager-I. Despite receipt of the said representation, no effective action has been taken by the respondents to date.
18. Pursuant to the said decision of Board, a notice dated 14 September, 2022 was issued to the Petitioner directing him to appear for a fresh hearing of the appeal originally decided in 2020.
19. The petitioner contended that the actions of the Respondent authorities in re-opening a concluded appellate decision and in withholding promotion despite the Petitioner's first position in the merit list are arbitrary, without jurisdiction, and

violative of the principles of natural justice and the fundamental rights guaranteed under Articles 14, 16, and 21 of the Constitution of India.

Respondents' case:

20. Except for Respondent No. 3, the Company Secretary of the Corporation, no other respondents have filed their affidavits-in-opposition to the writ petition. The specific defense set out in the affidavit-in-opposition filed on behalf of Respondent No. 3 and the documents annexed thereto, is that the West Bengal Small Industries Development Corporation Ltd. (WBSIDCL) is a Government of West Bengal undertaking, functioning in accordance with its Memorandum and Articles of Association, the Staff Regulations, and under the overall supervision and control of its Board of Directors.
21. Regulation 50(iii) of the Staff Regulations provides for a statutory appeal against a penalty imposed by the Disciplinary Authority under Regulation 45 of the said Regulations, to such authority or authorities as may be prescribed by the Board of Directors. In accordance with this provision, the Board of Directors, under Agenda No. 17 of its 198th meeting held on 04.05.1985, resolved that the Board itself would act as the Appellate Authority.
22. As Mr. Abhijit Mukherjee, the then Executive Director-I of the Corporation, had no authority to act as the Appellate Authority and had erred in disposing of the statutory appeal preferred by the petitioner, rendering his order revoking the penalty imposed upon the petitioner null and void, the Board of Directors, in its 362nd meeting, decided to delegate the power to hear the petitioner's appeal to a

retired Judge. To defend such action, it was pleaded therein that the respondents have a right to rectify its bona fide mistake.

23. Narrating the allegations levelled against the petitioner and the sequence of events relating to the disciplinary proceedings initiated against him, it was further pleaded that the petitioner preferred three statutory appeals on 25.06.2018, 15.06.2020, and 08.07.2020. These appeals were initially considered by Smt. Tanmoyee Dutta, Executive Director-II, who placed them before Mr. Abhijit Mukherjee, Executive Director-I. Thereafter, the appeals were submitted to the Chairman for consideration, along with a recommendation to pardon the penalty imposed upon the petitioner and to consider the matter sympathetically.
24. Subsequently, a draft order was placed for the perusal and signature of the Managing Director, and the same was duly signed. It was contended that the note sheet prepared and placed by Mr. Mukherjee could not be treated as an order passed by the Appellate Authority. It was further contended that the restoration of benefits to the petitioner was not in accordance with the applicable rules.
25. These anomalies were pointed out by Smt. Bandana Saha and one Nachiketa Ghosh, General Secretary of the WBSIDC Karmachari Samity, through a legal notice dated 30.06.2022. The notice was placed before the 362nd meeting of the Board of Directors, which correctly resolved that a retired Judge be appointed to hear the statutory appeal preferred by the petitioner.
26. In order to rectify the error and ensure adherence to due process, the Board resolved to recall the unauthorized action and to have the petitioner's appeal heard afresh by a competent and independent authority. Accordingly, a retired Judge, Sri Hara Prasad Chattopadhyay, was appointed to hear the appeal.

27. During the departmental promotion process for the post of Assistant Manager-I in 2022, the petitioner's case came up for consideration. In view of the pending examination of the validity of the alleged appellate disposal, the Selection Committee decided to keep the petitioner's promotion in abeyance, citing the interest of public administration and organizational discipline.
28. Subsequently, the Board of Directors, in its meeting held on 18 November, 2022, resolved to initiate action against Sri Abhijit Mukhopadhyay for acting beyond his jurisdiction. Pursuant thereto, a show-cause notice dated 09 January, 2023 was issued to him, calling upon him to explain his actions.
29. The answering respondent contended that all actions taken in respect of the petitioner were undertaken in good faith, in the public interest, and in accordance with the applicable Staff Regulations and other governing rules.

Contents of affidavit-in-reply:

30. In the affidavit-in-reply, while addressing the averments made in the affidavit-in-opposition and reiterating the contentions set out in the writ petition, the Petitioner further submitted that, during the enquiry, he admitted to having made telephone calls to the complainant on the relevant date, while he was experiencing mental stress and emotional disturbance. The Petitioner, however, never admitted to making any illegal demand or engaging in moral misconduct. He expressed sincere remorse for any inappropriate language that may have been directed toward senior officials of the Corporation and tendered an unconditional apology for the same.

31. The Petitioner submitted that the disciplinary enquiry was conducted by a retired judicial officer. Following the enquiry, the Managing Director, acting as Disciplinary Authority, imposed a penalty on 31 March, 2018, reducing the Petitioner's pay by two stages for two years with cumulative effect. The Petitioner filed statutory appeals under Regulation 50 of the Staff Regulations. Considering his long and otherwise unblemished service record, the competent authorities of the Corporation condoned the penalty. In July 2020, the punishment was revoked, and the Petitioner's pay and service benefits were fully restored, allowing him to resume duty with all consequential entitlements.
32. In 2022, the Petitioner participated in the selection process for promotion to Assistant Manager-I and secured the top position in the merit list prepared by the Selection Committee. Despite this, his promotion was inexplicably withheld, while the next candidate on the list was promoted.
33. Subsequently, on 22 July, 2022, the Board of Directors purportedly "recalled" the earlier appellate decision and resolved to appoint a retired Judge to rehear the Petitioner's appeal, despite there being no provision in the Staff Regulations allowing for the review, recall, or reopening of a concluded appellate order.
34. The Petitioner submits that the Respondents' actions in reopening a settled disciplinary matter, questioning a concluded exoneration, and withholding his promotion despite securing the top position in the merit list are arbitrary, mala fide, and contrary to the principles of natural justice. Having themselves revoked the penalty, restored his benefits, and allowed the decision to attain finality, the

Respondents are in law estopped from reopening the matter after such an undue delay.

Arguments:

35. Mr. Roy, learned Senior Advocate, advanced arguments on behalf of the Petitioner and also submitted written notes of arguments. In substance, he contended that the Petitioner, aggrieved by the penalty order dated 31 March, 2018 passed by the Disciplinary Authority, preferred a statutory appeal before the Appellate Authority on 25 June, 2018 within the prescribed period in terms of Regulation 50 of the Staff Regulations. After nearly two years, the appeal was allowed by an order dated 13 July, 2020, whereby the punishment was revoked. The said appellate order was communicated to the Petitioner by the Executive Director, and by an order dated 17 July, 2020, the order of the Appellate Authority was implemented and the Petitioner's pay was restored to its original position.

36. He further argued that in 2022 a departmental promotion process was initiated on the basis of merit cum seniority, in which the Petitioner participated and secured the top position in the merit list. He contended that the subsequent allegations were engineered solely to deprive the Petitioner of the promotional post and to favour another employee of the Corporation.

37. He alleged that the General Secretary of the WBSIC Karmachari Samity, a staff association affiliated with the ruling political party of the State, acting in concert with the complainant, Smt. Saha, conspired against the Petitioner. Pursuant thereto, a legal notice was served upon the Corporation on 30

June, 2022, nearly two years after the appellate order dated 13 July, 2020 had been implemented, seeking to set aside the appellate order and to keep the Petitioner's promotion in abeyance.

38. Drawing attention to certain portions of the minutes of the Selection Committee dated 24 August, 2022, he contended that although the General Secretary of the WBSIC Karmachari Samity neither appeared in the written examination nor participated in the interview conducted by the Departmental Promotion Committee, he was nevertheless promoted. It was argued that such promotion was granted despite non participation in the departmental promotion process, purportedly in the name of the larger interest of the employees of WBSIDCL.

39. He argued that since the Petitioner secured the highest position in the merit list, a conspiracy was hatched to deprive him of the promotion. Consequently, the concluded appeal was sought to be reopened after two years on the basis of a legal notice issued by the General Secretary of the Union and the complainant, Smt. Saha, along with the so-called opinion of the legal retainer of the Corporation. He further contended that the entire process was tainted by mala fide intentions on the part of certain officials of the Corporation. It was also pointed out that all agenda items placed before the 362nd meeting of the Board of Directors pertained to the year 2022, except one item relating to the year 2020, namely the ratification of the order revoking the penalty imposed upon the Petitioner.

40. He contended that there is no provision for review or revision of the order passed by the Appellate Authority. Moreover, the appellate order had already

been implemented. In support of his submission, he relied upon the decision reported at (2012) 7 SCC 200 (*Haryana State Industrial Development Corporation Ltd. vs. Mawasi & Ors.*) for the proposition that, since the power of review is a creature of statute, neither a Court nor a quasi-judicial or administrative authority can review its own order or decision in the absence of an express statutory provision permitting such review.

41. He further argued that respondent no. 2, WBSIDC Ltd., never challenged the order of the Appellate Authority, but instead allowed it to attain finality and duly implemented the same. Having done so, it cannot now question its own action. He contended that the issue of ratification of the appellate order was a clear afterthought, raised for the first time in the 362nd meeting of the Board of Directors only to appease the General Secretary.

42. He asserted that the conduct of the respondent authorities in reopening a settled appellate decision and in denying promotion to the Petitioner despite his securing the first position in the merit list is arbitrary, beyond their jurisdiction, and in violation of the principles of natural justice as well as the fundamental rights guaranteed under Articles 14, 16, and 21 of the Constitution of India.

43. In rebuttal, Mr. Bihani, learned Senior Advocate appearing for the respondents, also advanced arguments on behalf of the respondents and place written notes of argument. He argued that in his replies to the show cause notice and the charge sheet, as well as before the Appellate Authority, the Petitioner had unequivocally admitted his misconduct by stating that he was intoxicated and not in full control of his senses. He further submitted that the Petitioner had tendered an unconditional written apology for the entire episode.

44. Referring to Regulation 50(iii) of the Staff Regulations, he submitted that every employee is entitled to prefer an appeal against any punishment imposed under Regulation 45 before such authority or authorities as may be prescribed by the Board of Directors.
45. He contended that in its 198th meeting dated 4 May 1985, under Agenda No. 17, the Board of Directors had resolved that the Board itself would act as the Appellate Authority in matters arising out of disciplinary proceedings. He argued that the Executive Director had therefore committed a jurisdictional error in revoking the penalty, rendering the appellate order void ab initio. He further submitted that the question of an appellate order being null and void on account of lack of jurisdiction can be raised at any time and at any stage.
46. He contended that the Executive Director had overstepped his jurisdiction and acted beyond his statutory authority in condoning and revoking the penalty imposed upon the Petitioner. According to him, such a jurisdictional error in passing the appellate order could be corrected by the Board. Accordingly, in its 362nd meeting, the Board resolved to recall the appellate order revoking the penalty and to appoint a retired Judge to hear the appeal afresh. He informed the Court that appropriate action has been taken against the erring Executive Director.
47. He further contended that since an order suffering from nullity vitiates everything and can be questioned at any point of time, any delay in revisiting the appellate order is not fatal. He submitted that an administrative authority possesses inherent power to revoke its own order at any time by invoking Section 21 of the General Clauses Act, 1897. He also argued that the Board which revoked

the punishment imposed upon the Petitioner lacked the requisite quorum, namely one third of the members of the Board of Directors, at the time of taking such decision.

48. To invigorate his argument, he cited the decisions reported in (2009) 11 SCC 222(*Himachal Pradesh Road Transport Corporation & Anr. vs. Hukum Chand*) and (1971) 1 SCC 1(*ChannabasappaBasappaHappali vs. State of Mysore*) for the proposition that, where there is an admission of misconduct, there is no requirement of holding an enquiry.

49. He relied upon the decision of the Privy Council in *Nazir Ahmed vs. King Emperor* and the decisions reported in (1876) 1 Ch D 426(*Taylor vs. Taylor*), AIR 1964 SC 358(*State of Uttar Pradesh vs. Singhara Singh and Others*), (2001) 4 SCC 9(*Dhananjaya Reddy vs. State of Karnataka and Others*) and (2014) 2 SCC 401 (*J. Jayalalithaa and Others vs. State of Karnataka and Others*) for the proposition that, where a power is given to do a certain thing in a certain manner, the thing must be done in that manner or not at all, and that other methods of performance are necessarily forbidden.

50. He referred to the decisions reported in (2008) 11 SCC 278(*Management, Assistant Salt Commissioner vs. Secretary, Central Salt Mazdoor Union*) and (2007) 2 SCC 481(*National Institute of Technology and Others vs. Niraj Kumar Singh*) for the proposition that, if an action is taken by a statutory authority having no jurisdiction to take such action, the action would be a nullity and the Government cannot be held to be bound by such act.

51. Drawing inspiration from the provisions of Section 21 of the General Clauses Act, 1897, Mr. Bihani argued that the power to issue a notification, circular

and/or order includes the power to recall, amend and modify such notification, circular and/or order and that, if an order is found to be illegal, the Government can recall the same and the principle of promissory estoppel would not apply in the present case. In support of such contention, he relied upon the decision reported in (2011) 3 SCC 193(*Shree Sidhballi Steels Ltd. & Ors. vs. State of U.P. & Ors.*).

Analysis and conclusion:

52. Therefore, upon a perusal of the pleadings and documents relied upon by the parties, and having regard to the facts and circumstances of the case as well as the submissions advanced on their behalf, it, in substance, emerges that the pivotal issue for consideration in the present case is whether the Board of Directors was justified in recalling the order of the Executive Director dated 13.07.2020, whereby the punishment imposed upon the petitioner vide order dated 31.03.2018 was revoked, and in directing a fresh hearing of the appeal; and further, whether the Selection Committee and/or the Departmental Promotion Committee was justified in withholding the promotion of the petitioner until a decision is taken by the Appellate Authority.

53. As previously noted, upon conclusion of the disciplinary proceeding, the Disciplinary Authority, being the Managing Director of the Corporation, imposed upon the petitioner a punishment of reduction of pay by two stages in the time scale of pay for a period of two years under Rule 45(b) of the Staff Regulations, with cumulative effect, resulting in the postponement of any increment of pay during the said period as well as future increments.

54. An order imposing any penalty specified under Rule 45 of the Staff Regulations is appealable in terms of Regulation 50(iii) of the said Regulations. To shed light on the issue involved in the writ petition, it would be apt to reproduce Regulation 50(iii) of the Staff Regulations, which reads as follows:

“ 50(iii) – Every employee shall be entitled to appeal from an order passed by an authority imposing on him any of the penalties specified in Rule 45 to such authority or authorities as may be prescribed by the Board of Directors.”

55. The minutes of the 198th meeting of the Board of Directors, under Agenda No. 17 (Annexure-R-1, page 19 of the affidavit-in-opposition), reveal that the following resolution was adopted by the Board of Directors:

“The proposal for prescribing an authority as appellate authority as contemplated by the Regulation 50 (iii) of the WBSIC Staff Regulation was considered.

It was decided that the Board of Directors should be the appellate authority for disposal of appeal petitions in the matter of departmental proceedings.”

56. Thus, the Staff Regulations governing the field mandate that a statutory appeal preferred under Regulation 50(iii) of the Staff Regulations against an order of penalty imposed under Rule 45 shall be heard and/or disposed of by the Board of Directors. However, in the present case, the Executive Director, vide Order No. 28 dated 13.07.2020 (Annexure-P-7 to the writ petition), revoked the

penalty imposed upon the petitioner by the Disciplinary Authority, being the Managing Director, vide order dated 31.03.2018. The order dated 13.07.2020 records that the same was issued with the concurrence of the Hon'ble Chairman and Managing Director.

57. Indisputably, it is a well-settled proposition of law that, where a power is conferred by a statute or a piece of legislation to do a certain thing in a certain manner, the thing must be done in that manner or not at all, and that other modes of performance are necessarily forbidden, as laid down in *Taylor vs. Taylor(supra)*, *Nazir Ahmed vs. King Emperor(supra)*, *Singhara Singh and Others(supra)*, *Dhananjaya Reddy(supra)* and *J. Jayalalithaa and Others(supra)*.

58. Therefore, it is needless to state that the statutory appeal was neither heard nor disposed of in the manner mandated by the Staff Regulations or by the authority prescribed by the Board of Directors. Furthermore, the Executive Director had no jurisdiction to dispose of the appeal. Consequently, the order dated 13.07.2020, despite having been issued with the concurrence of the Chairman and Managing Director, is a nullity and void *ab initio*, fortified by the settled principle that an order passed by an authority lacking inherent jurisdiction is null and void.

59. The next question that falls for consideration is whether, in the absence of any express provision for review and/or revision of the order of the Appellate Authority, the Board of Directors could recall the order dated 13.07.2020, more so when the said order had already been implemented.

60. It is a settled proposition of law that a Court, Tribunal or quasi-judicial authority possesses inherent power to recall an order passed without jurisdiction, obtained by fraud, or rendered in breach of procedural requirements resulting in violation of the principles of natural justice. An order issued by an authority lacking inherent power or jurisdiction is fundamentally flawed and is treated as a nullity and void *ab initio* in the eye of law. Such a defect in jurisdiction goes to the root of the matter and is not curable. In the absence of any cogent reason to the contrary, this Court finds no reason as to why, if such power is available to a Court, Tribunal or quasi-judicial authority, the same cannot be exercised by an administrative authority as well. In the decision of *Budhia Swain vs. Gopinath Deb*, reported in (1999) 4 SCC 396, it was held that an order suffering from lack of jurisdiction or error of jurisdiction stands on a different footing and, accordingly, can be recalled even by an administrative authority.
61. Admittedly, while an authority generally cannot review its own order in the absence of a specific statutory provision, it does possess the power to recall an order which is a nullity on account of lack of jurisdiction. It is apposite to note that the power of recall is distinct from the power of review. The power of review is ordinarily confined to examining whether the order suffers from an error apparent on the face of the record, whether there has been discovery of new and important matter, or whether any other analogous ground exists. However, where an order, whether administrative or judicial, is passed without jurisdiction, it is fundamentally flawed and void *ab initio*, and such an order cannot be permitted to stand, as doing so would result in a miscarriage of justice.

62. Since an order passed without jurisdiction is void, any action taken pursuant thereto, including the implementation of the order revoking the penalty and the consequential restoration of benefits to the petitioner, is also devoid of any legal basis. Once the order dated 13.07.2020 revoking the penalty is found to be without jurisdiction, all subsequent proceedings emanating therefrom stand vitiated. The proper course, therefore, is to restore the parties to the position as it existed prior to the passing of the invalid order.
63. Admittedly, there is a catena of decisions laying down that the issue of an order having been passed by an authority lacking jurisdiction can be raised at any point of time. Therefore, the plea raised by the petitioner that, after the lapse of two years, the question of the order revoking the penalty, passed by the Executive Director without inherent jurisdiction, cannot be gone into, cannot be acceded to.
64. The petitioner contended that, by applying the principles of promissory estoppel, respondent no. 2, namely the Corporation, is estopped from reopening the disciplinary matter relating to the petitioner, particularly when the order revoking the penalty had been implemented. On this issue, this Court is in agreement with the contention of the respondents that an action taken by an authority lacking jurisdiction is not binding upon the State and/or the Government, and consequently, the State and/or the Government cannot be said to be estopped from recalling such order and restoring the petitioner to the position as it stood prior to the passing of the said order.
65. Therefore, in view of the finding that the order revoking the penalty imposed upon the petitioner was issued by an authority lacking jurisdiction and is void, and that the benefits flowing therefrom are also unsustainable in law, it follows

that the Board of Directors did not misdirect itself in recalling the said order dated 13.07.2020 issued by the Executive Director and in directing a fresh hearing of the appeal by the authority legally vested with such power.

66. Similarly, since the statutory appeal, which is a continuation of the disciplinary proceeding, is pending consideration, the decision of the Selection Committee and/or the Departmental Promotion Committee to keep the petitioner's promotion in abeyance until a decision is taken in the said appeal cannot be faulted, as consideration of promotion during the pendency of the statutory appeal and/or during the currency of punishment may legitimately be kept in abeyance.

67. There is no scintilla of doubt regarding the binding precedent laid down in *Haryana State Industrial Development Corporation Ltd. vs. Mawasi & Ors.(supra)*; however, the said precedent is not applicable to the facts of the present case.

68. Therefore, for the reasons and discussions recorded in the foregoing paragraphs, it is held that the contentions advanced by the petitioner are devoid of merit and cannot be accepted.

Order:

69. The writ petition is, thus, dismissed. There shall be no order as to the costs.

(Partha Sarathi Chatterjee, J.)

Later :

After the pronouncement of the judgment, Mr. Roy, learned Senior Advocate appearing for the writ petitioner, prays for a stay of the operation of this judgment.

I do not find any scope to pass an order staying the operation of the judgment dismissing the writ petition. Accordingly, the prayer is considered but rejected.

(Partha Sarathi Chatterjee, J.)