* IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Reserved on: 26th May, 2026***
Pronounced on: 7th September, 2026
Uploaded on: 7th September, 2026

\# CNR No : DLHC010296812004

\+ **W.P.(C) 8888/2004**

SHRI K.P. SHARMA
S/O SHRI PARMANAND SHARMA.
R/O H-32, SECTOR 39,
NOIDA-201 301, (U.P.) .....Petitioner

Through: Mr. Abhay Singh, Ms. Veena Singh, Ms. Vindhya Singh and Mr. Prakash Gautam, Advocates.

versus

M/S. INDIAN OIL CORPORATION LTD.
THROUGH ITS CHAIRMAN
SCOPE COMPLEX CORE-2.
7, INSTITUTIONAL AREA. LODHI ROAD.
NEW DELHI- 10003. .....Respondents

Through: Mr. V. N. Koura, Ms. Paramjeet Benipal, Mr. Shaurya Dahiya and Mr. Aditya Sharma, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

1. The Writ Petition has been filed under Article 226 of the Constitution of India, by the petitioner, seeking the issuance of an appropriate writ, order or direction for quashing and setting aside the impugned ***Order of Dismissal***

dated 27.04.2004, passed by Sh. M.S. Ramachandran, Chairman of the Respondent, M/s Indian Oil Corporation Limited *(hereinafter referred to as "IOCL")*, whereby *the Petitioner has* ***been dismissed from service*** *with immediate effect, and for the grant of all consequential service and monetary benefits including* full back wages, service benefits and compensation.

2. The ***facts in brief*** are that the Petitioner, Sh. K.P. Sharma, was employed with the Respondent Corporation as a Mechanical Engineer and was, over the course of his service spanning *approximately twenty years*, promoted to the post of Chief Manager in Grade 'F', vide Appointment Letter No. P/65537 dated 13.04.1998 issued by Sh. A.K. Arora, Director (Refineries), and posted as Chief Projects Manager at the Panipat Refinery, of the Respondent Corporation.

3. The Respondent Corporation's Panipat Refinery comprised, *inter alia*, of a Hydrocracker Unit *(hereinafter referred to as "HCU")* and a Hydrogen Generation Unit *(hereinafter referred to as "HGU")*. The mechanical completion of both Units was accomplished on 30.11.1998, whereafter pre-commissioning activities commenced.

4. During the pre-commissioning stage, the Process Licensor, UOP-USA, whose commissioning engineer was present at site, found that the flange joints in the high-pressure section of the Hydrocracker plant, had been boxed up with grease. This was a defect of a serious nature relating to the safety of the plant, since the presence of grease between the flange joints could form carbon at the operating conditions of the Hydrocracker plant, which operated at 175 bar pressure and temperatures exceeding 650°C, leading to the risk of fire and explosion. The Process Licensor accordingly recommended, on an urgent basis, that all flange joints in the high-pressure section be opened, the damaged metallic ring gaskets replaced, and the entire section re-boxed, prior to commissioning.

5. A High Powered Committee *(hereinafter referred to as "HPC")* was constituted at the Panipat Refinery, comprising Sh. S.S. Saini, Executive Director, Sh. H.K. Bakshi, General Manager (Projects), and Sh. R. Shankar, Chief Finance Manager. The HPC exercised the financial powers of a Director. Given the urgency of the work, which was further compounded by the proposed visit of the Prime Minister to inaugurate the Refinery, the HPC directed that available contractors at site be contacted to undertake the work immediately.

6. Three contractors, namely *M/s Dodsal*, *M/s L&T* and *M/s Petron*, were approached, but each expressed inability to take up the work on account of pre-occupation with commissioning activities of other units. *M/s Gayatri Engineering Company* (hereinafter referred to as "M/s GEC"), a Vadodara-based engineering company which was already engaged in catalyst-loading work at the Hydrogen Unit and whose performance was stated to be satisfactory, agreed to mobilise and undertake the work immediately.

7. Since finalisation of rates was likely to take time and the work was of an urgent nature, *M/s GEC was permitted to commence the work with effect from 08.01.1999*, on the basis of verbal approval of the HPC, which was subsequently ratified by Process Note dated 07.01.1999. The Process Note was signed by eight officers, namely Sh. Parimal Kumar, DM(ML), the Petitioner Sh. K.P. Sharma, CPJM, Sh. A.K. Marchanda, DGM (Materials), Sh. M.R. Verma, DGM (Technical Services), Sh. R. Shankar, CFM, the

SM(PJ), Sh. H.K. Bakshi, GM (Projects), and Sh. S.S. Saini, Executive Director.

8. *An estimate of Rs.60.34 lakhs was prepared by Sh. A.K. Kulshreshtha, Senior Mechanical Engineer (SMLE)*, on the basis of a fax copy of a Purchase Order No. VCM/PVC:H2155:VMA dated 02.04.1996, purportedly placed by M/s Finolex Industries Ltd., on M/s GEC for a similar job. The estimate was checked by Sh. A.K. Marchanda, DGM (Materials), Sh. M.R. Verma, DGM (Technical Services), Sh. R. Shankar, CFM, Sh. H.K. Bakshi, GM (Projects), and approved by Sh. S.S. Saini, Executive Director, Panipat Refinery.

9. On 03.03.1999, the HPC approved the proposal for award of the work to M/s GEC for Rs.60,35,728/- on a single-tender *post-facto* basis, after comparison and negotiation of the quoted rates, which were found to be more or less matching with the estimate. A Fax of Acceptance was conveyed to M/s GEC on 04.03.1999 by Sh. V.K. Rai, Chief Engineering Services Manager. **The Petitioner, Sh. K.P. Sharma, was designated as the Engineer-in-Charge for the work.**

10. On *09.08.1999, the Petitioner submitted his resignation* to the Respondent Corporation, giving three months' notice, as required under his service conditions. The resignation was ***not accepted*** by IOCL and no reason was assigned for the non-acceptance.

11. After expiry of the Notice period, the Petitioner informed the Respondent Corporation by letter dated 30.11.1999 that it would not be possible for him to continue with IOCL w.e.f. 01.12.1999. The Respondent Corporation, by telegrams dated 11.09.1999 and 06.12.1999 and by registered letters dated 29.12.1999 and 08.02.2000, directed the Petitioner to report for duty.

12. The Petitioner thereupon instituted **Civil Writ Petition No. 725 of 2000 before this Court on 08.02.2000,** asserting that his resignation had automatically come into effect, on expiry of the notice period. The said Writ Petition was admitted on 30.10.2000, and remained pending.

13. Meanwhile, a ***Vigilance Inquiry*** was conducted into the alleged irregularities in the award of the contract to M/s GEC, culminating in a Report dated 29.09.1999 submitted by the Chief Vigilance Officer of IOCL, which recorded certain discrepancies and **found the Petitioner *primarily responsible* for the lapses.**

14. ***On the basis of the said Report***, the Respondent Corporation *lodged a complaint against the Petitioner, Sh. K.P. Sharma, and Sh. D.R. Patel,* a partner of M/s GEC, on 30.05.2000. **FIR No. 147** under Sections 420, 467, 471 and 120-B of the Indian Penal Code, 1860 was registered on 19.06.2000, at Police Station Matlauda. The charge-sheet was filed on 30.04.2001 before the Judicial Magistrate, First Class, Panipat, *additionally invoking Sections 7, 12 and 13(d) of the Prevention of Corruption Act, 1988*. No FIR was lodged against the remaining seven officers involved in the processing and approval of the award.

15. **Departmental Charge-sheets dated 30.08.2000 were thereafter issued against the remaining seven officers,** namely Sh. S.S. Saini, Executive Director, Sh. H.K. Bakshi, GM (Projects), Sh. R. Shankar, CFM, Sh. A.K. Marchanda, DGM (Materials), Sh. M.R. Verma, DGM (Technical Services), Sh. Parimal Kumar, DM(ML) and Sh. A.K. Kulshreshtha, SMLE.

16. On 02.12.2002, the Judicial Magistrate, First Class, Panipat returned the criminal charge-sheet for presentation before the Special Court, for want of jurisdiction to try offences under the Prevention of Corruption Act, and the matter was transferred to the Court of the Additional Sessions Judge, Panipat. On 22.02.2003, the Ld. Public Prosecutor moved an Application under Section 319 of the Code of Criminal Procedure, 1973, before the Court of Sh. H.P. Singh, Ld. Additional Sessions Judge, Panipat, seeking to summon the remaining seven officers as accused, on the ground that there was *sufficient evidence* against them.

17. The Respondent Corporation thereupon, filed *Criminal Misc. No. 10726 of 2003 under Section 482 Cr.P.C.* before the High Court of Punjab and Haryana on 10.03.2003 and obtained a stay of the proceedings, thereby preventing the hearing of the said Application.

18. A **departmental Charge-Sheet No. P/65537 dated 06.09.2000 was issued against the Petitioner,** alleging gross misconduct in connection with the award of the work to M/s GEC for Rs.60,35,728/-, alleging *inter alia* that the Petitioner had, at his directions, caused the preparation of an estimate of Rs.44.78 lakhs in the first week of March 1999, but backdated to 06.01.1999; *that a fresh estimate of Rs.60.34 lakhs was thereafter, prepared on the basis of a forged fax of a Purchase Order dated 02.04.1996*, purportedly issued by M/s Finolex Industries Ltd. to M/s GEC; that the first page of the proposal was substituted to reflect the enhanced estimate; that the proposals for negotiation and award were likewise, backdated; and that the Petitioner had unduly favoured M/s GEC with dishonest intention and for personal gain, causing huge financial loss to the Corporation.

19. **The Charge-sheet** alleged violations *of Rules 7(1), 7(2), 7(5), 7(9), 7(29) and 7(30), as well as Rule 6(1)(i), (ii) and (iii) of the Conduct, Discipline & Appeal Rules, 1980 (hereinafter referred to as "the CDA*

Rules").

20. The *Departmental Inquiry* was conducted by the Inquiry Officer Sh. Ashok Lokhanpal, Commissioner for Departmental Inquiries, nominated by the Central Vigilance Commission. The Presenting Officer produced 48 prosecution documents PEX.1 to PEX.48 and ***examined 15 prosecution witnesses PW.1 to PW.15***. The Petitioner produced 9 defence documents DEX.1 to DEX.9 and ***examined 5 defence witnesses, DW.1 to DW.5.***

21. The Inquiry Officer submitted his Report, on 30.04.2003. The findings of the Inquiry Officer, Sh. Ashok Lokhanpal, charge-wise, were as follows:

> *(a)* ***Charge 1*** *— that the work was awarded to M/s GEC at exorbitant rates: the Inquiry Officer found that the Petitioner had an active role and that over-enthusiasm in the award was visible, but held the allegation only "****partly proved.****"*
>
> *(b)* ***Charge 2 — that the estimate of Rs.44.78 lakhs was backdated****: the backdating was found established. However, the Inquiry Officer expressly recorded that "there are no malafides attributable on account of such backdating." The allegation was held "****partly proved.****"*
>
> *(c)* ***Charge 3 — that the estimate was substituted from Rs.44.78 lakhs to Rs.60.34 lakhs****: the Inquiry Officer found that the higher estimate had been prepared on the basis of the forged fax received by the Petitioner, and his involvement in procuring and relying upon the forged document was found established. However, the Inquiry*

*Officer expressly recorded that "regarding substitution of the figure of Rs.44.78 lakhs by Rs.60.34 lakhs by Sh. Kulshreshtha or the CO could not be proved as there was no evidence to show clear involvement of these officials." The allegation was held "**partly proved.**"*

*(d) **Charge 4 — that the negotiation proposal dated 15.02.1999 was backdated**: held "**proved.**"*

*(e) **Charge 5 — that the award proposal dated 03.03.1999 was backdated:** held "**proved.**"*

*(f) **Charge 6 — non-utilisation of the estimate prepared for the M/s Technocrates Construction Services contract dated 12.11.1998 for Rs.11,27,616/-:** the Inquiry Officer found that the scope of work was different and held the allegation "**not proved.**"*

*(g) **Charge 7 — that the Petitioner had procured the unrealistic estimate with dishonest intent and for personal gain**, and had documents manipulated and backdated at his direction: considered in three parts. On dishonest intent to favour M/s GEC, held "partly proved" on the same basis as Charge 3. On manipulation of documents at the Petitioner's direction, held "**not proved**", since the senior officers had signed "in their own right" and were "not prone to receive any directions from him." On backdating at the Petitioner's direction, held "**not proved**", the backdating being found a collective exercise across the entire chain of officers rather than one directed by the Petitioner alone.*

(h) ***Charge 8 — that the Petitioner had manipulated the forged Purchase Order dated 02.04.1996 and thereby caused huge financial loss:*** *the Inquiry Officer found that the fax was indeed forged, as established by PW.13, Sh. M.S. Arora, but expressly recorded that "there is no direct evidence provided by the prosecution to show such direct complicity of the CO with M/s GEC."* On financial loss, the Inquiry Officer held that *"the statement of financial loss to IOC is considered purely hypothetical." The estimate, though initiated at the Petitioner's instance, was routed through and signed by five senior officers, none of whom verified its basis, and "the CO cannot thus be held fully and completely responsible for this lapse." The allegation was held "**partly proved.**"*

22. The Inquiry Officer thereafter examined the statutory misconduct provisions of the CDA Rules attracted on the above factual findings on the Charges, and recorded the following:

(i) ***Rule 7(1) — fraud and dishonesty*** *(arising from Charges 3, 7 and 8): held "partly proved", since "the prosecution has not provided any direct evidence to prove fraud and dishonesty."*

(ii) ***Rule 7(2) — illegal gratification*** *(arising from Charge 7): held "**not proved**", as no documentary or oral evidence established receipt of any bribe.*

(iii) ***Rule 7(5) — conduct prejudicial to the interests of the Corporation*** *(arising from Charges 4, 5 and 8): held*

*"**proved.**"*

*(iv) **Rule 7(9) — negligence in performance of duty** (arising from Charges 4, 5 and 8): held "**proved.**"*

*(v) **Rule 7(29) — acts subversive of discipline** (arising from Charge 7): held "**not proved.**"*

*(vi) **Rule 7(30) — abetment of misconduct** (arising from Charge 7): held "**partly proved.**"*

*(vii) **Rule 6(1)(i), (ii) and (iii)** — the omnibus conduct rule (covering the overall conduct): held "**partly proved.**"*

23. The Inquiry Officer observed that **all officers, namely** Sh. A.K. Kulshreshtha, SMLE, and Sh. Parimal Kumar, DM(ML), **the Petitioner**, Sh. A.K. Marchanda, Sh. M.R. Verma, Sh. R. Shankar, Sh. H.K. Bakshi, and Sh. S.S. Saini, Executive Director, had signed the relevant documents in the same backdates. The Inquiry Officer accordingly, held ***that the Petitioner's conduct was "not thus viewed as a sole case of a conduct unbecoming of a responsible officer" and that the charge stood "diluted" to the extent of the shared institutional responsibility.***

24. On 09.03.2004, the **Competent Disciplinary Authority, Sh. M.S. Ramachandran, Chairman of IOCL**, forwarded the Inquiry Officer's findings to the Petitioner and sought a written Representation, within ten days. The Petitioner, *Sh. K.P. Sharma, submitted his Representation on 12.04.2004*, contending *inter alia* that his nearly twenty years of unblemished service demonstrated his integrity; that he possessed no financial power to award the contract; that the Fax had been obtained pursuant to the HPC's own directions, as confirmed by Sh. R. Shankar, CFM and Convener of the HPC; that the moment the forgery came to his notice, he had stopped all payments to M/s GEC; and that *the Inquiry Officer's own findings did not sustain the charges of fraud, dishonesty, financial loss or sole responsibility*. The Petitioner specifically identified the contradiction between the Inquiry Officer's findings and the conclusions proposed to be drawn from them.

25. In the impugned Order dated 27.04.2004, the Competent Disciplinary Authority, Sh. M.S. Ramachandran, Chairman of IOCL, observed as under:

> ***"ORDER***
>
> *This has reference to the Charge-sheet of even number dated 6.9.2000 and the subsequent Departmental Inquiry held in this connection against you. The Inquiry Officer has submitted report vide letter dated 10.6.03 and the same was forwarded to you vide letter of even reference dated 9.3.04. Your representation dated 12.04.04 against the findings of the Inquiry Officer is available on record.*
>
> *I have carefully gone through the Report/Findings of the Inquiry Officer along with the proceedings of the inquiry and your representation dated 12.04.04. I find that you were given full and fair opportunity for conducting your defence by examining the witnesses in the Inquiry and the inquiry was conducted by following the principles of natural justice. From your representation, I find no new facts have been brought out for my consideration.*
>
> *Having applied my mind to the facts and circumstances of the case, I agree with the findings of the Inquiry Officer and find that:*
>
> ***1.** You played an active role in award of the work to M/s GEC at an exorbitant rate.*

2. The proposal dated 7.1.99 was actually prepared during the first week of March 1999 but was signed in back date. The proposal note dated 15.2.99 proposing price negotiation and the proposal note dated 3.3.99 for award of work to M/s GEC have also been signed in back date.

3. You were found to be involved in substituting the estimate of Rs.44.78 lakh by Rs.60.34 lakh suggesting fraud & dishonesty on your part. Moreover, this estimate was based on a forged document and you relied on this document without checking its veracity.

4. You had also not stated the reasons for non-availability / non-applicability of the SOR in the instant case before suggesting approval of the proposal dated 7.1.99 for award of work in favour of M/s GEC.

5. You got the estimates prepared by SMLE and DMMI by changing the basis to the said forged document of M/s Finolex faxed by M/s GEC, which amounts to encouraging abetment of acts of omission and commission.

By the above acts of omission and commission, you have failed to maintain absolute integrity and devotion to duty in contravention of Rule 6(1) (i) & (ii) and acted in a manner unbecoming of a public servant in contravention of Rule 6(1) (iii) of the CDA Rules, as OCL applicable to you. You had also committed fraud & dishonesty in connection with the business and property of the Corporation under Rule 7(1) and acted in a manner prejudicial to the interests of the Corporation under Rule 7(5) of the CDA Rules. Further, you had been negligent in performance of duties under Rule 7(9) and had also encouraged abetment of acts amounting to misconduct under Rule 7(30) of the CDA Rules.

Taking into consideration the facts and circumstances of the case, acts of omissions & commissions and the gravity of proven charges and acts of misconduct, I impose the penalty of "Dismissal" upon you with immediate effect.

You are advised to collect your dues from Panipat Refinery after obtaining necessary clearances.

(M.S. Ramachandra)
Chairman

Competent Disciplinary Authority”

26. The Disciplinary Authority, thus, imposed the penalty of *dismissal from service* upon the Petitioner, with immediate effect.

27. The Petitioner has challenged the impugned Order on the grounds that:

(i) the Disciplinary Authority, Sh. M.S. Ramachandran, while recording that he agreed with the findings of the Inquiry Officer, proceeded to record findings materially more adverse than those actually recorded by the Inquiry Officer, Sh. Ashok Lokhanpal, on three separate charges, without recording reasons for such departure and without affording the Petitioner an opportunity to meet it, in violation of Rule 32(2) and Rule 34 of the CDA Rules;

(ii) that the Petitioner was the only officer dismissed out of eight charge-sheeted for the very same transaction, while the remaining officers were either promoted or given minor penalties;

(iii) that the Chairman, who under the Schedule to the CDA Rules is the designated Appellate Authority for officers of the Petitioner's grade, passed the impugned Order as the Disciplinary Authority, thereby extinguishing the Petitioner's right of appeal since no new Appellate Authority was ever notified;

(iv) that the penalty of dismissal is shockingly disproportionate to the misconduct actually found proved, having regard to the Inquiry Officer's express findings that no direct evidence of fraud or dishonesty existed, that illegal gratification was not proved, that the claim of financial loss was purely hypothetical, and that the Petitioner could not be held fully and completely responsible; and

(v) that the impugned Order is illegal, arbitrary, discriminatory and vitiated by mala fide, in violation of Articles 14, 16 and 21 of the Constitution.

28. ***Per contra*, the Respondent Corporation has stated in its Counter-Affidavit,** affirmed by Sh. N.K. Parmar, Chief Employee Relations Manager, Refineries Division, that the present Writ Petition is misconceived and not maintainable; the relationship between the Petitioner and the Corporation being purely contractual. It is contended that IOCL is a Company registered under the Companies Act, 1956, with no statutory powers or functions, and *that the CDA Rules are purely contractual in character.*

29. It is further contended that the Petitioner *had suppressed material facts, had taken employment abroad in Bahrain, had expressed no interest in rejoining the Corporation, and had failed to exhaust the alternative remedy of Appeal to the Board of Directors, under Rule 38 of the CDA Rules.*

30. ***On merits***, the Respondent submitted that the Petitioner, as Chief Project Manager, held a position of trust and was responsible for overseeing construction and commissioning; that the Petitioner had entered into an arrangement with M/s GEC at exorbitant rates, ignoring prevailing site rates on the basis of which the value of the work should not have exceeded Rs.2,33,902/-; that the Petitioner had procured manipulated *Regret Letters* from contractors, caused the proposals and estimates to be backdated and substituted, and placed the forged fax on record; **and that this resulted in an overpayment of approximately Rs.38.33 lakhs.**

31. The Counter-Affidavit further alleged **for the first time, that the Petitioner had arranged to receive ten percent of the total contract value as his personal share.** This allegation did not form part of the Charge-sheet dated 06.09.2000, was never investigated in the Departmental Inquiry, and found no mention in the Inquiry Report dated 30.04.2003. The Inquiry Officer had, to the contrary, expressly held the charge of illegal gratification under Rule 7(2), as **"not proved."**

32. As to the treatment of the remaining seven officers, *the Respondent stated **that all eight officers had been charge-sheeted**, and that on the basis of the Inquiry Report and in consultation with the CVC, **major penalty was imposed upon three officers** and **minor penalty upon the remaining four,** namely Sh. R. Shankar, Sh. M.R. Verma, Sh. Parimal Kumar and Sh. A.K. Kulshreshtha, for procedural lapses. **These four officers were subsequently promoted, in the ordinary course**.* The Respondent submitted that no officer had been exonerated and that the differential treatment disclosed no selective victimisation.

33. **The Petitioner, in his *Rejoinder Affidavit***, reiterated his averments and specifically contested the preliminary objection as to maintainability, contending that IOCL is a Public Sector Undertaking and an instrumentality of the State, within the meaning of Article 12 of the Constitution.

34. *On the alternative remedy,* the Petitioner submitted that, as per the Schedule to the CDA Rules, the Disciplinary Authority for Officers in Grade D, E and F in the Refineries Division is the Director (Refineries), and the Appellate Authority is the Chairman. Although Rule 35 was invoked to appoint the Chairman, Sh. M.S. Ramachandran, as Common Disciplinary Authority for all eight charge-sheeted officers, the Respondent Corporation failed to amend or notify a new Appellate Authority, in consequence. *The Petitioner was therefore, denied any effective right of Appeal, since the same person who had passed the impugned Order of Dismissal was the one designated to hear his appeal.*

35. The Petitioner further alleged that after his resignation and commencement of employment with M/s Lurgi India Ltd., New Delhi, as Deputy General Manager (Projects), Mr. Thomas Antony, DGM (HR), Headquarters, IOCL, wrote a letter dated 31.01.2000 to Sh. Onkar Gupta, Director, M/s Lurgi India, stating that *the Petitioner had been "absconding from his duties from 23rd December, 1999" and that "some vigilance enquiries are going on against Shri K.P. Sharma in connection with some purported fraud."* The Petitioner contended that on the date of this Letter, the *Vigilance Inquiry Report* had already been submitted on 29.09.1999, and that the Letter contained false information, which caused him to lose his employment at Lurgi India, forcing his resignation on 08.02.2000.

36. The Petitioner further contended that *the Disciplinary Authority had adopted findings which were directly contradicted by the Inquiry Officer's own Report*, and that the impugned Order had been passed with a pre-determined mind, *in violation of Rule 32(2) and Rule 34 of the CDA Rules and the principles of natural justice.*

37. Learned counsel for the Petitioner, in his *Written Submissions*, has asserted that the impugned Order dated 27.04.2004 is illegal, arbitrary, discriminatory and passed with mala fide intentions; that the Petitioner had no say or role in awarding the contract as neither did he possess the financial power nor did he award the contract to M/s GEC; that the Inquiry Officer himself concluded that no loss had been caused to IOCL and that the forged fax originated from M/s GEC without any proven direct complicity of the Petitioner; and that the Petitioner is a law-abiding senior citizen with no gratuity or pension, having twice suffered heart attacks in 2010 and 2019. Reliance was placed on Articles 14, 16 and 21 of the Constitution.

38. In the ***Additional Written Submissions*** dated 21.12.2023, the **Petitioner supplemented his case** with the submission that the rectification work was to be borne by the Process Licensor, UOP-USA, and not by IOCL, and that the costs were in any event recovered from the Process Licensor; that the M/s Petron contract for similar work on the same Hydrocracker Plant, awarded through independent tendering by the Contract Cell, was at a rate 16.70% higher than the M/s GEC awarded rate; and that the Petitioner had not been paid since 01.12.1999, although the Order of Dismissal was passed only on 27.04.2004.

39. *Per contra*, the learned counsel for the Respondent, in his ***Written Submissions***, has contended that the **Writ Petition is not maintainable** for enforcement of contractual rights. Reliance is placed on *Bareilly Development Authority v. Ajai Pal Singh*, (1989) 2 SCC 116; *State of U.P. v. Bridge & Roof Co.*, (1996) 6 SCC 22; *Kerala State Electricity Board v. Kurien E. Kalathil*, (2000) 6 SCC 293; and *National Highways Authority of India v. Ganga Enterprises*, (2003) 7 SCC 410. It is further submitted, relying on the Constitution Bench judgment in *Sirsi Municipality v. Cecelia Kom Francis Tellis*, AIR 1973 SC 855, that Article 226 cannot enforce a contract of employment, *except where Article 311 is contravened, a mandatory statutory obligation is breached, or the principles of natural* *justice are violated.*

40. On interference with findings, reliance is placed upon *Indian Oil Corporation Ltd. v. Ashok Kumar Arora*, JT 1997(2) SC 367 and *Apparel Export Promotion Council v. A.K. Chopra*, JT 1999(1) SC 61.

41. On proportionality, reliance is placed upon *Union of India v. Ex. Constable Ram Karan*, (2022) 1 SCC 373 and *Indian Oil Corporation Ltd. v. Rajendra D. Harmalkar*, 2022 SCC OnLine SC 486, to contend that the Court will not interfere with the punishment, unless it shocks the conscience of the Court.

Submissions heard and record perused.

42. Briefly stated, the Petitioner, *Sh. K.P. Sharma, then serving as Chief Project Manager in Grade 'F' at the Panipat Refinery*, was charge-sheeted along with seven other officers, *for irregularities in the award of pre-commissioning work to M/s GEC for Rs.60,35,728/-.*

43. The Inquiry Officer, Sh. Ashok Lokhanpal, of the eight factual Charges, held two **"proved"** (Charges 4 and 5, both relating to backdating), five *"**partly proved**"* (Charges 1, 2, 3, 7 and 8) and one **"not proved"** (Charge 6). As a legal consequence of these factual findings, under the statutory misconduct provisions of the CDA Rules, Rule 7(5) (conduct prejudicial to the Corporation) and Rule 7(9) (negligence in performance of duty) were held **"proved"**; Rules 7(1) (fraud and dishonesty) and 7(30) (abetment of misconduct) were held *"partly proved"*, and Rules 7(2) (illegal gratification) and 7(29) (acts subversive of discipline) were held as **"not proved."**

44. The Disciplinary Authority, Sh. M.S. Ramachandran, Chairman of

IOCL, recorded that he agreed with the Inquiry Officer's findings **and imposed the penalty of dismissal from service.**

<u>I. Whether the Respondent-IOCL is an instrumentality of the State and whether the present Writ Petition is maintainable:</u>

45. *The first question that arises is whether this Writ Petition is maintainable.* Learned counsel for the Respondent has urged that the relationship between the Petitioner and the Respondent Corporation is purely contractual, that the CDA Rules are not s**tatutory in character,** and that the Petitioner's remedy lies in a civil suit.

46. This submission does not withstand scrutiny. *The Petitioner does not seek enforcement of the terms of his contract of employment or damages for breach of it. He seeks quashing of the Order of Dismissal on the ground of violation of natural justice and of Articles 14, 16 and 21 of the Constitution.*

47. The Respondent Corporation is a Public Sector Undertaking and has been expressly recognised by the Supreme Court as an *"organ of the State"* or an *"instrumentality of the State"* within the meaning of Article 12 of the Constitution. In *<u>Mahabir Auto Stores & Ors. v. Indian Oil Corporation & Ors</u>.*, (1990) 3 SCC 752, the Supreme Court specifically held that, in the facts and circumstances of that case, the respondent-company, Indian Oil Corporation, was an organ of the State or an instrumentality of the State, as contemplated under Article 12 of the Constitution. The Supreme Court further held that the action of such a State instrumentality is amenable to scrutiny under Article 14 and must satisfy the requirements of reasonableness and non-arbitrariness.

48. The objection that the Petitioner's relationship with the Respondent is contractual, therefore, cannot by itself conclude the question of maintainability. The Supreme Court in *ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd*., (2004) 3 SCC 553, has recognised that the mere existence of a contractual relationship does not constitute an absolute bar to the exercise of writ jurisdiction against an instrumentality of the State where the impugned action is amenable to judicial review on public law grounds.

49. In the present case, the Petitioner is not seeking enforcement of a purely contractual term; he assails an order of dismissal passed in disciplinary proceedings on the grounds of violation of the prescribed procedure, principles of natural justice and the constitutional requirement of non-arbitrariness.

50. The preliminary objection to maintainability is, accordingly, rejected.

II. Whether the Petitioner had an efficacious alternative remedy of Appeal under Rule 38 of the CDA Rules:

51. The next question is whether the Petitioner ought to have been relegated to the appellate remedy, under Rule 38 of the CDA Rules.

52. ***Rule 38 provides:***

> *"38. (i) An employee may appeal against an order imposing upon him any of the penalties specified in Rule 29 or against the order of suspension referred to in Rule 26. The appeal shall lie to the authority specified in the schedule.*
>
> *(ii)* ***An appeal shall be preferred within 60 days from the date of communication of the order appealed against. The appeal shall be addressed to the Appellate Authority***

specified in the schedule and submitted to the authority whose order is appealed against."

53. *Under* the Schedule to the CDA Rules, for Officers in Grade D, E and F in the Refineries and Pipelines Division, the authorities are specified as follows:

Category of Employees	***Disciplinary Authority***	***Appellate Authority***
Officers in Grade D, E and F	***Director***	***Chairman***

54. From the Rules, it emerges that for the Officers for whom the Disciplinary Authority, is the Chairman, the *Appellate Authority is the Board of Directors.* The Petitioner, Sh. K.P. Sharma, was an officer in Grade 'F'. Under the Schedule, *the Disciplinary Authority* for him was the Director and the *Appellate Authority* was the Chairman. **Rule 42 of the CDA Rules** addresses this question. It reads as under:

> *"42. The authorities specified in the schedule shall be prescribed and notified, as may be required from time to time, with the approval of Director/Chairman."*

55. Rule 42 CDA Rules contemplates that the authorities specified in the Schedule, are to be prescribed and notified, from time to time.

56. The however, was passed by the Chairman, Sh. M.S. Ramachandran, who acted as Disciplinary Authority and the impugned Order dated 27.04.2004 was made, in exercise of disciplinary jurisdiction, in terms of Rule 35.

57. The basis on which the Chairman Sh. M.S. Ramachandran assumed the role of Disciplinary Authority, is Rule 35 of the CDA Rules, which provides for common proceedings and reads as under:

> *"35. Where two or more employees are concerned in a case, the disciplinary authority, or an authority higher than it, who is competent to impose a penalty on such employees may make an order directing that disciplinary proceedings against all of them may be taken in a common proceedings* ***and specified authority may function as the disciplinary authority for the purpose of such common proceedings."***

58. Since all eight officers were charge-sheeted in the same case, Rule 35 was invoked to appoint the Chairman as the Common Disciplinary Authority, for the purpose of proceedings. Accepting that Rule 35 validly conferred the powers of the Disciplinary Authority upon the Chairman, the consequence must be noted. The Chairman, who under the Schedule is designated as the Appellate Authority for officers of the Petitioner's grade, has passed the impugned Order of Dismissal, as Disciplinary Authority. *The question that arises is, what then happens to the Petitioner's right of Appeal.*

59. In the present case, however, no material has been placed on record to show that consequent upon the Chairman being appointed as the Common Disciplinary Authority under Rule 35, any other authority was prescribed or notified as the Appellate Authority, as contemplated under Rule 38. The Schedule designate the Chairman as the Appellate Authority for officers in Grade D, E and F. Thus, on the material placed before this Court, there was no separately designated Appellate Authority to whom the Petitioner could have preferred an Appeal against the Order, passed by the Chairman himself.

60. The result is that, in terms of Rule 38, an Appeal against the impugned Order would have been addressed to the Chairman as the Appellate Authority, as specified in the Schedule, whose Order was under challenge**.** The same person cannot be the deciding Authority as well as the Appellate Authority The same authority would thus, be also the Appellate Authority, which is against the tenets of Service Jurisprudence..

61. In the absence of any material on record showing that an Appellate Authority was designated before whom the Petitioner could file an Appeal, it cannot be held that there was any effective appellate remedy, in terms of Rule 38, was available to the Petitioner.

62. Additionally, the rule excluding writ jurisdiction where an alternative remedy exists, is a rule of discretion and not one of compulsion. The Supreme Court in *Harbanslal Sahnia v. Indian Oil Corporation Ltd.*, (2003) 2 SCC 107, following *Whirlpool Corporation v. Registrar of Trademarks*, (1998) 8 SCC 1, held that the High Court may exercise its writ jurisdiction notwithstanding the availability of an alternative remedy, inter alia, where the petition raises a question involving violation of the principles of natural justice.

63. The present case involves such a challenge to the decision-making process, in addition to the fact that the efficacious appellate remedy itself has not been shown to be not available.

64. *The objection is accordingly, rejected.*

III . Scope of Judicial Review:

65. Before turning to the impugned Order, it is necessary to state the scope within which this Court exercises its power of judicial review. The Supreme Court in *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749, held that judicial review is not an Appeal from a decision, but a Review of the manner in which the decision was made. The Court does not sit as an appellate authority over the findings of the Disciplinary Authority and does not reappreciate evidence. The Court is concerned to see whether the inquiry was held by a *competent authority*; whether the *rules of natural justice were complied*, and whether the *findings are based on some evidence.*

66. This Court has, accordingly, not to go into the sufficiency of the evidence before the Inquiry Officer, Sh. Ashok Lokhanpal. The questions which fall for examination are:

(i) whether the Disciplinary Authority, Sh. M.S. Ramachandran, in recording findings on three separate charges that were materially more adverse than the conclusions actually reached by the Inquiry Officer, complied with the requirements of Rule 32(2) and Rule 34 of the CDA Rules;

(ii) whether the impugned Order relies upon any matter that was not part of the Departmental Charge-sheet dated 06.09.2000 or the Inquiry record; and

(iii) whether the penalty of dismissal is proportionate to the misconduct actually found established."

(i). Whether the Disciplinary Authority departed from the findings of the Inquiry Officer without following the prescribed procedure:

67. Turning now to the impugned Order dated 27.04.2004 and its co-relation with the findings recorded in the Inquiry Report dated 30.04.2003, three critical departures are evident, which are set out in seriatim below.

Sr. No.	Subject	Inquiry Officer's Finding	Disciplinary Authority's Finding in the Impugned Order
1.	Substitution of the estimate from Rs.44.78 lakhs to Rs.60.34 lakhs	*"regarding substitution of the figure of Rs.44.78 lakhs by Rs.60.34 lakhs by Sh. Kulshreshtha or the CO* ***could not be proved*** *as there was no evidence to show clear involvement of these officials."*	*"**was found to be involved** in substituting the estimate of Rs.44.78 lacs by Rs.60.34 lacs suggesting fraud and dishonesty on your part."*
2.	Fraud and dishonesty under Rule 7(1)	*"the **prosecution has not provided any direct evidence** to prove fraud and dishonesty"* — charge held only *"partly proved."*	*"**had also committed fraud and dishonesty in connection** with the business and property of the Corporation under Rule 7(1)."*
3.	Abetment under Rule 7(30)	*"could be partially construed as misconduct"* — charge held only *"partly proved."*	***"encouraged abetment of acts of omission and commission."***

68. In each of the three matters set out above, an allegation which the Inquiry Officer had either found not established for want of evidence or held only *"partly proved"* with express caveats, **was treated by the Disciplinary Authority as fully established against the Petitioner**. In none of the three allegations, did the Disciplinary Authority record any disagreement with the Inquiry Officer's finding, furnish reasons for the departure, or afford the Petitioner an opportunity to meet the proposed departure.

69. Equally significant is the findings of the Inquiry Officer, which the impugned Order does not address.

70. The Inquiry Officer, at paragraph 5.16 of his Report, held that *the claim of financial loss to the Corporation* was *"**purely hypothetical.**"* The impugned Order does not address this finding at all, notwithstanding that it bears directly on the gravity of the misconduct and the proportionality of the penalty.

71. It bears emphasis that the Petitioner, Sh. K.P. Sharma, placed these very contradictions before the Disciplinary Authority, in his statutory Representation dated 12.04.2004, quoting the specific findings of the Inquiry Report and pointing out that those findings did not support the conclusions the Disciplinary Authority proposed to draw. The impugned Order responds to that Representation only with the general recital that *"**no new facts have been brought out for my consideration.**"*

72. A Representation that identifies with precision, findings the Disciplinary Authority, cannot be brushed aside by merely stating that the Representation raised nothing new, when the legal infirmities in the reasoning process itself, had been specifically highlighted.

73. ***Rule 32(2) and Rule 34 of the CDA Rules*** are central to the determination of this question. Rule 32(2) reads as under:

"32. (2) The disciplinary authority shall if it disagrees with the findings of the inquiring authority on any charge, record ***its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose****."*

74. Rule 34, the corresponding provision governing communication of orders, provides:

"34. Orders made by the disciplinary authority under Rule 31 or Rule 33 with regard to its findings on each charge shall be communicated to the employee concerned who shall also be supplied with a copy of the inquiry report, if any.

Explanation: Where an inquiry is held by an inquiring authority appointed by the disciplinary authority ***and the disciplinary authority disagrees with any or all the findings of the inquiring authority on each of the charges, orders of the disciplinary authority will also state the reasons for his disagreement*** *with the finding of the inquiring authority."*

75. The requirement embodied in these provisions, was recognised as a principle of natural justice, in *Punjab National Bank v. Kunj Behari Misra*, (1998) 7 SCC 84, where the Supreme Court held that a Disciplinary Authority proposing to disagree with an Inquiring Authority's findings, must give the delinquent employee a further opportunity to represent against the proposed departure.

76. The Disciplinary Authority, Sh. M.S. Ramachandran, *did not record that he disagreed with the Inquiry Officer's findings*. He recorded that ***he agreed***, but recorded the findings which were materially different from those that were actually reached the Inquiry Officer. This is not a case of a Disciplinary Authority openly disagreeing and recording reasons, which

Rule 32(2) permits. This is a case of a ***Disciplinary Authority claiming to agree, recorded contradictory findings***, which apparently is misreading of the conclusions of the findings of the Inquiry officer, which forecloses even the procedural safeguard that Rule 32(2) provides.

77. ***The impugned Order is accordingly, vitiated for non-compliance with Rule 32(2) and Rule 34.***

(ii) Whether the impugned Order relies upon any matter that was not part of the Departmental Charge-sheet dated 06.09.2000 or the Inquiry Record:

78. Further, the Respondent Corporation in its Counter-Affidavit alleged for the first time, that the Petitioner had arranged to receive ten percent of the total contract value, as his personal share. ***This allegation did not form part of the Charge-sheet dated 06.09.2000, was never investigated in the departmental inquiry***, was never put to the Petitioner, and found no mention in the Inquiry Report dated 30.04.2003. The Inquiry Officer had, to the contrary, expressly held the charge of illegal gratification under Rule 7(2) as ***"not proved."***

79. It is a foundational principle of administrative law, stated in *Mohinder Singh Gill v. Chief Election Commissioner,* (1978) 1 SCC 405, that the validity of an Order must ordinarily be tested on the reasons contained in the Order itself and cannot be supplemented in judicial proceedings by reasons which did not form part of the decision-making process.

80. The basis for such allegation, may be the Criminal Charge-Sheet that came to be filed against the petitioner. However, an allegation of this gravity, which was never put to the delinquent officer and never tested**,** cannot be relied upon to sustain the impugned Order or to aggravate the misconduct for the purpose of determining proportionality. Pertinently, the criminal trial is still pending with no final decision.

81. This allegation can therefore, be not taken into consideration for any purpose, in the present Writ Petition.

<u>(iii). Whether the penalty of dismissal is disproportionate:</u>

82. The question that next arises is whether the penalty of dismissal, is proportionate to the misconduct actually found established.

83. Rule 29 of the CDA Rules provides a graded scale of penalties, divided into two categories. The ***Minor Penalties***, at clauses (a) to (e), range from Censure at the lightest end to Reduction to a lower stage in the time-scale of pay for a limited period at the heavier end. The ***Major Penalties***, at clauses (f) to (i), range from Reduction to a lower stage for a specified period, through Reduction to a lower grade or post and Removal from service, up to Dismissal at clause (i), which is the *ultimate penalty* in the scale. ***The Petitioner was visited with the most severe penalty of Dismissal, under clause (i).***

84. The standard which governs interference with the quantum of punishment is not whether the Court would itself have imposed the same penalty**, but whether the penalty is so disproportionate as to shock the conscience of the Court**, a standard developed in *<u>Ranjit Thakur v. Union of India</u>*, (1987) 4 SCC 611.

85. The findings of the Inquiry Officer in respect of Charges, was that the allegation of *illegal gratification* and the alleged substitution of the estimate from Rs.44.78 lakhs to Rs.60.34 lakhs was not proved for want of any documentary or oral evidence. The *non-utilisation of the earlier M/s TCS estimate was* **not proved**, as the scope of work being found different. The alleged substitution of the estimate from Rs.44.78 lakhs to Rs.60.34 lakhs *"could not be proved as there was no evidence to show clear involvement"* of the Petitioner. The claim of financial loss to the Corporation was held *"purely hypothetical."* The allegation of manipulation of documents at the Petitioner's direction, was held ***"not proved"***, the charged officers having signed ***"in their own right"*** and being ***"not prone to receive any directions from him."***

86. ***What stood established*** against the Petitioner, the backdating of the negotiation proposal dated 15.02.1999 and the award proposal dated 03.03.1999, and the failure to verify the forged Finolex fax, which were held ***"proved."***

87. The Inquiry Officer did not, however, find the Petitioner to be the sole author of the irregularities. The negligence in not verifying the forged document was also not attributable to the Petitioner alone. The estimate received through Finolex fax, was routed through and signed by the same five senior officers without independent verification, and the Inquiry Officer expressly held, thus ***"the CO cannot thus, be held fully and completely responsible for this lapse."*** The Petitioner's conduct was *"not thus viewed as a sole case of a conduct unbecoming of a responsible officer"*, and the charge under Rule 6(1) was held ***"diluted"*** to the extent of the ***shared institutional responsibility***.

88. Therefore, the only allegations proved against the Petitioner, was the shared negligence and ***institutional responsibility. No allegation of bribe or illegal gratification, has been proved.***

89. It is well settled that the punishment must correspond to the misconduct actually established in the disciplinary proceedings, and cannot be sustained by relying upon allegations which were not proved in the inquiry or by attributing to the Petitioner a degree of responsibility which the Inquiry Officer expressly declined to attribute to him.

90. The significant aspect in the present case, is that in respect of the same transaction, four of the remaining seven officers, namely Sh. R. Shankar, Sh. M.R. Verma, Sh. Parimal Kumar and Sh. A.K. Kulshreshtha, who also were sharing the same charges of *procedural lapses*, as shared *negligence and* the *institutional responsibility*, in handling the Project and were characterised by the Respondent as having committed procedural lapses, were visited with minor penalties and were subsequently, promoted in the ordinary course.

91. The decision of the Supreme Court in *Punjab & Sind Bank v. Raj Kumar*, 2026 INSC 313 also explained the principle that differential punishment among co-delinquents does not, by itself, amount to discrimination, particularly where their rank, responsibility or individual role differs.

92. The question here is not whether the Petitioner was necessarily required to receive the same punishment as the other officers, but what emerges from the aforesaid discussion is the discriminatory and unwarranted extreme punishment of Dismissal, **merely because he was the junior most in the hierarchy of the Charged officers who were held guilty of the same misconduct.** *The penalty of dismissal from service had* *no rational and proportionate relationship to the gravity of that misconduct actually found proved against the petitioner*. It is *grossly disproportionate to the misconduct established on the record.*

Conclusion:

93. In view of the foregoing discussion, the impugned Order of Dismissal dated 27.04.2004 cannot be sustained and is, accordingly, ***set aside***. Having regard to the nature and extent of the misconduct proved against the Petitioner, the finding of shared institutional responsibility, and the penalty imposed upon the co-officers involved in the same transaction for the procedural lapses found against them, ***the penalty of dismissal imposed upon the Petitioner is substituted with the minor penalty under Rule 29 of the CDA Rules.***

94. The Respondent Corporation shall give effect to the substituted penalty and carry out the consequential pay fixation and computation of the service and retiral benefits that become due to the Petitioner consequent upon such substitution and according to law. The Petitioner shall, however, not be entitled to any back wages for the intervening period.

95. The aforesaid consequential benefits shall be computed and released by the Respondent Corporation within a period of three months from the date of receipt of a copy of this judgment.

96. **The Writ Petition is allowed**, in the above terms. Pending applications, if any, are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 7, 2026/*va/RS*