IN THE HIGH COURT OF SINDH AT KARACHI

Miscellaneous Appeal No.112 of 2025

(*Salman Masud v. Institute of Chartered Accountants of Pakistan*)

Before:

Sana Akram Minhas, J

Appellant:	Salman Masud Through, Mr. Muhammad Immad Qamar Advocate
Respondent:	Institute of Chartered Accountants of Pakistan Through, M/s. Shahzad Afzal & Haider Ali Khan Advocates
On Court Notice:	Mr. Zul Hasnain Shah Bukhari, AAG, Sindh
Dates of Hearing / Re-Hearing:	**7-4-2026, 16-4-2026, 7-5-2026, 25-5-2026 & 28-10-2026**
Date of Decision:	**4-11-2026**

J U D G M E N T

1. **Sana Akram Minhas, J**: Through the present Appeal – instituted under Section 20K[1] of the *Chartered Accountants Ordinance, 1961* **("Ordinance")** – the Appellant has assailed the Order dated 19.7.2025 **("Impugned Order")** passed by the Council[2] of the Respondent, namely *Institute of Chartered*

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[1] Section 20K: **Appeal and Revision:** (1) Any member of the Institute aggrieved by an order of the Council imposing on him any of the penalties referred to in Section 20D may, within sixty days of the date of communication of such order to him, prefer an appeal to the High Court.

(2) The High Court may, on its own motion or on an application made to it, call for the record of any case in which the Council has made an order under Section 20D and may-

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order;

(c) remit the case to the Council for such further inquiry as the High Court may consider proper in the circumstances of the case; or

(d) pass such other order as it may deem fit:

Provided that no order of the Council shall be modified or set aside unless the Council has been given an opportunity of being heard and no order imposing or enhancing a penalty shall be passed unless the person concerned has also been given an opportunity of being heard.

[2] The Council of ICAP is constituted under Section 9 of the Ordinance and is responsible for managing the affairs of ICAP and performing the functions assigned to it under the Ordinance.

Accountants of Pakistan **("ICAP")**, whereby he was held guilty of professional misconduct and, by way of penalty under Section 20D of the Ordinance, his name was removed from the Register of Members of ICAP (maintained under Section 18 of the Ordinance) for a period of one (1) year, commencing on 19.7.2025 and expiring on 18.7.2026.

Facts

2. The facts pleaded by the Appellant, in brief, are that:

i) He is a Chartered Accountant and sole proprietor of the firm Salman & Co., Chartered Accountants, with over four decades of professional standing and claims to have maintained an unblemished career and an established professional reputation.

ii) On 30.8.2024, ICAP issued a show-cause notice **("SCN")** to him under Section 20B(1) of the Ordinance, arising out of an Audit Practice Review conducted by ICAP's *Audit Practice Review & Support Program* **("APRSP")** Department. The SCN raised concerns regarding:

(a) the non-availability of audit working-papers in respect of two audit assignments; and

(b) the eligibility of the Appellant's firm to undertake audits of two large-sized companies without holding a satisfactory Quality Control Review[3] **("QCR")** rating, which was a prerequisite for conducting audits of large-sized companies under SRO No.1044(I)/2015 dated 22.10.2015.

iii) The Appellant submitted point-wise comments on 6.5.2024 to the Audit Practice Review report dated 25.3.2024, followed by a detailed reply dated 18.9.2024 to the SCN. However, finding the response unsatisfactory, ICAP issued a hearing notice dated 9.7.2025, scheduling a hearing for 19.7.2025.

iv) Following the hearing, the Council passed the Impugned Order on the same day (i.e. 19.7.2025).

v) Significantly, although the SCN had initially raised concerns in respect of four companies, the Council excluded three of them from its final

[3] A QCR-rated audit firm is one holding a satisfactory rating under ICAP's *QCR Programme*, which covers firms conducting statutory external audits of public interest and large sized companies. Non-QCR-rated firms, which do not hold such a rating, are covered by ICAP's *Audit Practice Review & Support Program* (APRSP) for firms engaged in audit, assurance and related services. The Appellant's audit firm had never undergone ICAP's *QCR Programme* and was, therefore, a non-QCR-rated firm.

conclusion, holding that the relevant provisions (namely, paragraphs 4.3.1(e) and (f)) of the APRSP framework, were not applicable when the respective audit reports were issued. The Council ultimately found the Appellant guilty of misconduct only in respect of Khan Engineers & Contractors Gilgit (Pvt) Ltd, for failure to produce the supporting audit working-paper file for the year ended 30.6.2023, in breach of the principles of professional competence and due care, and professional behaviour under the *Code of Ethics for Chartered Accountants* (*Revised 2019*).

Whether The Appeal Has Been Rendered Infructuous

3. On a query from the Court as to whether the Appeal had been rendered infructuous in view of the expiry of the period of removal and the subsequent restoration of the Appellant's name to the Register of Members, learned Counsel for the Appellant submitted that the Appeal continued to raise a live issue, as the impugned punishment carried an enduring stigma with potential adverse consequences for the Appellant's professional standing, reputation, livelihood and career, notwithstanding the expiry of the one-year period of removal on 18.7.2026 and the subsequent restoration of his name to the Register.

4. Having considered the matter, the Court is satisfied that the Appeal has not been rendered infructuous. The expiry of the period of removal and the subsequent restoration of the Appellant's name to the Register do not, by themselves, efface the stigma attached to the impugned punishment or its continuing adverse implications for his professional reputation and career. The question of the legality and proportionality of the punishment, therefore, survives and warrants adjudication on merits. In this regard, reference may be made to ***Allah Bux Brohi v. Government of Sindh*** **(2024 MLD 1927)**, ***Javed Ahmed Jatoi v. State*** **(2016 PCr.LJ 1804)**, and the judgment dated 13.11.2021 of the Supreme Court of India in ***Gurjant Singh v. State of Punjab*** in Criminal Appeal Nos.1385–1386 of 2021.

Scope Of Adjudication

5. The scope of adjudication in the instant Appeal is confined to the question of proportionality and legality of the penalty imposed upon the Appellant. During the course of arguments, Counsel for the Appellant stated that he would confine his challenge to the imposition of the penalty, inter alia, on the grounds

that it was arbitrary and disproportionate, particularly as no reasons had been assigned for imposing the severest category of penalty prescribed under Section 20D of the Ordinance, out of the three sanctions enumerated therein. Accordingly, the present Appeal shall be examined within the aforesaid limited scope, and the finding of professional misconduct recorded by the Council shall remain undisturbed and shall not be reopened or reconsidered in these proceedings.

Respective Submissions

6. Learned Counsel for the Appellant contended that the penalty of removal of the Appellant's name from the Register of Members of ICAP for a period of one year was arbitrary, unjustified, and disproportionate to the allegations; that the audits conducted by the Appellant had been questioned by ICAP on the basis of its own review, without any external complaint having been received in respect thereof; that no financial loss had been suffered by any of the audited companies; that the penalty seriously impaired the Appellant's ability to practise his profession and earn a livelihood, thereby affecting the fundamental rights guaranteed under the *Constitution of Pakistan, 1973*, and carried serious professional and reputational consequences; that the Appellant had maintained an unblemished professional record spanning over four decades; that the instant matter was his first instance of disciplinary proceedings and imposition of a disciplinary penalty; and that, while explaining the circumstances which led to the non-maintenance of audit working-papers, he had expressed his willingness to ensure compliance with the relevant requirements in future; that these mitigating circumstances, along with the absence of any external complaint or financial loss, warranted due consideration in determining the appropriate penalty; and that the Council had failed to adequately account for these circumstances or assign reasons for imposing a penalty of such severity. The Impugned Order was, therefore, assailed as disproportionate and reflective of an arbitrary exercise of the powers vested in the Council under Section 20D of the Ordinance.

7. Conversely, learned Counsel for ICAP supported the Impugned Order, contending that the penalty had been imposed in accordance with law after due consideration of the matter. It was further submitted that, since the Ordinance permits removal from the Register of Members for a period of up to five (5) years, the imposition of a penalty of only one year demonstrated that the Council had exercised restraint and imposed a measured punishment in the circumstances of the case.

Question For Determination

8. The question that falls for determination is whether the penalty imposed upon the Appellant under Section 20D of the Ordinance is arbitrary, disproportionate and unsupported by adequate reasons.

Extract Of Relevant Statutory Provision

9. The present Appeal primarily concerns the legality and proportionality of the penalty imposed upon the Appellant. Accordingly, Section 20D of the Ordinance, which empowers the Council to impose penalties upon a member found guilty of professional misconduct, is reproduced below for proper appreciation of the controversy involved:

> Section 20D of Ordinance
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> 20D. **Orders by the Council if member found guilty:** (1) If, on receipt of the report under Section 20B, the Council is of the opinion that the member of the Institute has been guilty of any professional misconduct specified in Schedule I, it may, after affording such member an opportunity of being heard, either personally or through counsel or another member of the Institute, make any of the following orders, namely:-
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> (a) reprimand or warn such member;
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> (b) impose such penalty as it may deem necessary not exceeding one thousand rupees; and
>
> (c) remove the name of such member from the Register for a period not exceeding five years:
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> Provided that, where it appears to the Council that the case is one in which the name of such member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order but shall refer the case to the High Court with its recommendations thereon.
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> (2) If the Council is of opinion that the member of the Institute is guilty of professional misconduct specified in Schedule II, it shall refer the case to the High Court with its recommendations thereon.

10. The submissions advanced have been considered, and the available record examined.

Decision

Proportionality Of The Penalty And Adequacy Of Reasons

11. Section 20D(1) of the Ordinance provides a graduated framework of disciplinary sanctions where a member is found guilty of professional

misconduct falling within Schedule I. Under clause (a), the Council may reprimand or warn the member; under clause (b), it may impose a monetary penalty not exceeding Rs.1,000/-; and under clause (c), it may remove the member's name from the Register for a period not exceeding five (5) years. The provision thus vests in the Council the discretion to select from three distinct categories of sanctions, having regard to the nature and gravity of the misconduct and the circumstances of the case.

12. It is evident from the statutory scheme that removal from the Register is qualitatively the most severe of the three categories of sanction. It carries consequences substantially more serious than a reprimand, warning, or monetary penalty, as it deprives the member of the ability to practise as a chartered accountant during the period of removal and may adversely affect his professional standing, reputation, and livelihood. The fact that the Council imposes removal for one year, rather than the statutory maximum of five years, does not alter the nature or severity of the category of sanction selected. The choice of the category of punishment must, therefore, be distinguished from the determination of its duration.

13. Although the Council is empowered to order removal where the circumstances warrant such action, the existence of that power does not render its exercise immune from judicial scrutiny. The discretion must be exercised judiciously, having regard to the nature and gravity of the misconduct, the circumstances of the member and the objectives sought to be achieved through disciplinary action. The question, therefore, is not whether the Council was legally competent to remove the Appellant from the Register, but whether the selection of that sanction was supported by adequate and discernible reasons in the Impugned Order.

14. The requirement to give reasons does not oblige the Council to exhaust the lesser sanctions before resorting to removal, nor does it curtail its statutory discretion. Where, however, the Council selects the severest category of sanction available under Section 20D(1), its order must disclose sufficient reasons to demonstrate why that sanction was considered warranted, particularly where relevant mitigating factors have been brought to its notice. The requirement is simply that the choice of punishment be supported by reasons demonstrating that the discretion was exercised lawfully, rationally and not arbitrarily.

15. In the present case, the Council found the Appellant guilty of professional misconduct under Clause (3) of Part 4 of Schedule I of the Ordinance, for failure to comply with the principles of professional competence and due care and professional behaviour under the *Code of Ethics for Chartered*

Accountants (Revised 2019). The finding rested upon his failure to produce the audit working-paper file supporting the audit opinion issued on 2.12.2023 in respect of Khan Engineers & Contractors Gilgit (Pvt) Ltd for the financial year ended 30.6.2023

16. Since the finding of misconduct is not under challenge in the present Appeal, it is neither necessary nor appropriate for this Court to revisit the underlying professional obligations or re-examine the correctness of that finding. However, the establishment of misconduct and the determination of the appropriate sanction are distinct matters, and the former does not, by itself, determine the measure of punishment warranted. The Council was, therefore, required to assess the circumstances of the misconduct ultimately sustained, together with the relevant mitigating factors, before selecting the appropriate sanction. The Court's task is correspondingly limited to examining whether the decision to remove the Appellant from the Register for one year reflected a reasoned and proportionate assessment of those circumstances.

Principles Governing Exercise Of Statutory Discretion

17. In the leading judgment of ***Chairman, Regional Transport Authority v. Pakistan Mutual Insurance Company*** **(PLD 1991 SC 14)**, the Supreme Court held that statutory discretion, however widely conferred, is not unfettered but must be structured and regulated by appropriate standards, principles or rules. Even an entirely discretionary power must be exercised reasonably, in good faith, fairly and without discrimination, having regard to relevant factors and excluding irrelevant or improper considerations. Failure to regulate or rationalise such discretion may render its exercise arbitrary or capricious. Significantly, the Court clarified that judicial intervention to identify manifest errors and indicate the standards governing the exercise of discretion does not amount to substituting the Court's own discretion for that of the competent authority. The judgment thus establishes that statutory discretion must be exercised in accordance with rational, consistent and legally sustainable standards.

Relevant Circumstances And Mitigating Factors

18. The record reveals that the Appellant had practised the profession for approximately four decades and maintained an unblemished professional record prior to the present proceedings, which were his first disciplinary proceedings, an assertion not controverted by ICAP. During the proceedings before the Council, he explained the circumstances relating to the maintenance of audit working-papers, referring to the increasing use of

computerised audit processes and the conduct of audits at clients' premises, and expressed his willingness to address the matter in future. The following circumstances are also material to the determination of the appropriate sanction:

i) Of the four companies initially under review, the Council excluded three – namely, Jilani Industrial Corporation (Pvt) Ltd, Hamdam Paper Products (Pvt) Ltd and Syntech Fibres (Pvt) Ltd – as the relevant provisions of the APRSP framework were not applicable when their respective audit reports were issued;

ii) The Investigation Committee did not sustain the charge under Clause (8) of Part I of Schedule II of the Ordinance concerning failure to obtain sufficient information to warrant the expression of an opinion; and

iii) The misconduct ultimately sustained was confined to the failure to provide the supporting audit working-paper file in respect of one company – namely, Khan Engineers & Contractors Gilgit (Pvt) Ltd – constituting professional misconduct under Clause (3) of Part 4 of Schedule I to the Ordinance.

19. These circumstances, particularly the Appellant's lengthy professional career, unblemished record, explanation and expressed willingness to ensure future compliance, together with the limited scope of the misconduct ultimately sustained, were relevant mitigating considerations which merited due consideration before resorting to removal from the Register, being the severest category of sanction available under Section 20D(1) of the Ordinance.

20. These considerations are relevant not to reopen the finding of misconduct (which lies outside the scope of the present adjudication), but to assess the proportionality of the penalty imposed. The severity of the sanction must be assessed with reference to the findings ultimately recorded in the Impugned Order, rather than the entirety of the allegations initially levelled against the Appellant. While the Council was entitled to take account of the deficiency in audit documentation, the nature and extent of the lapse, considered in its proper context, remained relevant to the selection of an appropriate sanction.

21. The Appellant's further contentions that no external complaint had been received and that no financial loss had been suffered by the audited companies do not, by themselves, negate the misconduct established. Disciplinary proceedings may legitimately arise from deficiencies identified through a professional review, and the obligation to maintain audit documentation serves purposes extending beyond the prevention of actual

financial loss. Nevertheless, the absence of an external complaint or demonstrated loss, considered alongside the Appellant's longstanding professional record, his explanation regarding the circumstances in which the working-paper file was not maintained, and his expressed willingness to ensure compliance in future, constituted relevant considerations in determining the appropriate sanction.

22. The submission advanced on behalf of ICAP that the imposition of removal for one year, as opposed to the statutory maximum period of five years, demonstrated restraint on the part of the Council has also been considered. The statutory maximum represents the outer limit of the Council's authority; the fact that the penalty imposed falls below that limit does not, by itself, render the penalty reasonable or proportionate. The question remains whether the Council had a sufficient basis for selecting removal from the Register, rather than either of the two lesser categories of punishment expressly provided by the legislature.

23. The Impugned Order records the finding of professional misconduct and, thereafter, states that the Council decided to remove the Appellant's name from the Register for one year under Section 20D of the Ordinance. It does not, however, adequately explain why a reprimand or warning under clause (a), or a monetary penalty under clause (b), was considered insufficient to address the misconduct established. Nor does it disclose a reasoned assessment of the Appellant's relevant mitigating circumstances in arriving at the decision to impose removal. The deficiency, therefore, lies not in any failure on the part of the Council to exhaust the lesser sanctions or to consider them in a prescribed sequence, but in its failure to disclose reasons demonstrating why removal from the Register, rather than either of the lesser sanctions, was considered warranted in the circumstances of the case.

Principles Governing Proportionality Of Disciplinary Punishment

24. In ***Institute of Chartered Accountants of Pakistan v. Abu Baker Bilwani*** **(2009 CLD 735)**, this Court while examining disciplinary proceedings under the Ordinance, disapproved the Council's recommendation of debarment from membership for three years in the absence of reasons explaining why such punishment was warranted when a lesser penalty was available. The High Court emphasized that a severe disciplinary sanction must be justified by reference to the gravity of the misconduct and the circumstances of the case. The judgment thus reinforces the principle that statutory authority to impose a severe penalty does not dispense with the obligation to justify its selection.

25. In ***Water and Power Development Authority v. Muhammad Yousaf, Test Inspector*** **(1997 PLC (C.S.) 424)**, the Supreme Court of Pakistan recognized that the quantum of punishment must be determined in the light of the circumstances of each case so as to meet the ends of justice, The Court upheld the reduction of a major penalty by the Service Tribunal recognising that a lesser punishment may suffice where the circumstances of the case justify a lenient view.

26. In ***Auditor-General of Pakistan v. Muhammad Ali*** **(2006 SCMR 60)**, the Supreme Court upheld the reduction of the major penalties of removal from service and compulsory retirement, holding that the nature of the charge and the circumstances of the case, including the absence of wrongful gain through fraud, misappropriation or embezzlement, justified a lenient view. The judgment reaffirms that the existence of misconduct does not, by itself, determine the appropriate quantum of punishment.

27. In ***Secretary, Government of Punjab v. Khalid Hussain Hamdani*** **(2013 SCMR 817)**, the Supreme Court underscored that statutory discretion must be exercised reasonably, in accordance with law and upon consideration of the relevant material. A disciplinary decision may be set aside where it rests on extraneous considerations or the punishment is disproportionate to the gravity of the charge. While the determination of the appropriate penalty primarily rests with the competent authority, its discretion is not unfettered and remains subject to judicial review on established legal grounds.

28. In ***Postmaster General Sindh v. Syed Farhan*** **(2022 SCMR 1154)**, the Supreme Court reiterated that disciplinary punishment must be commensurate with the gravity of the misconduct and the degree of culpability established. Distinguishing ordinary negligence from gross negligence or recklessness, the Court observed that a mere failure to exercise proper care and vigilance does not invariably warrant severe punishment. It also emphasised that an extreme penalty for relatively minor misconduct may defeat the reformatory object of disciplinary justice.

29. In ***Ijaz Badshah v. Secretary, Establishment Division*** **(2023 SCMR 407)**, the Supreme Court reiterated that the reasonableness and proportionality of a disciplinary penalty must be assessed in the light of the gravity of the charges and the circumstances of the particular case. Although the choice of punishment primarily lies with the competent authority, and a Court must not substitute its own preference merely because another sanction might also have been appropriate, interference is warranted where the penalty is unreasonable, disproportionate or contrary to law.

30. In ***Shahida Siddiqa v. Allied Bank Limited*** **(2024 SCMR 92)**, the Supreme Court reiterated that the severity of punishment must correspond to the degree of culpability established. The Court considered compulsory retirement harsh in view of the negligence proved, the failure to establish embezzlement or collusion and the employee's lengthy and unblemished service.

31. In ***Faisal Ali v. District Police Officer, Gujrat*** **(2025 SCMR 92)**, the Supreme Court observed that although the imposition of punishment primarily falls within the domain of the competent disciplinary authority, the quantum of punishment is nevertheless subject to judicial scrutiny on the touchstone of reasonableness and proportionality. The test is whether the punishment bears a reasonable and proportionate relationship to the nature and gravity of the misconduct alleged, and whether it is so excessive, irrational or out of proportion that no reasonable person could have imposed it. The Court further held that, in exercising judicial review, the Court may examine whether the disciplinary authority has struck a proper balance between the public interest and the individual rights of the employee, and may interfere where the punishment is found to be disproportionate, unreasonable or lacking in a fair and harmonious relationship with the misconduct.

32. In ***National Bank of Pakistan v. Roz-ud-Din*** **(2025 SCMR 160)**, the Supreme Court ruled that the punishment imposed upon an employee must be commensurate with the magnitude and gravity of the guilt established against him, and that the discretion vested in the competent disciplinary authority to award punishment cannot be exercised arbitrarily or discriminatorily. The Court reaffirmed that the punishment must bear a reasonable and proportionate relationship to the nature of the charge and the employee's established role and degree of culpability. Consequently, where the penalty imposed is unduly harsh, discriminatory or disproportionate to the misconduct proved, judicial interference with the quantum of punishment is warranted.

33. In ***Muhammad Nasir Ismail v. Government of Punjab*** **(2025 SCMR 708)**, the Supreme Court reiterated that statutory discretion to select from a range of penalties must be exercised in a structured and reasoned manner, consistent with the principles of proportionality and administrative fairness. The Court explained that proportionality requires an examination of whether the penalty bears a rational connection to the legitimate objective sought to be achieved, whether a less restrictive alternative could achieve the same purpose, and whether the burden imposed strikes a fair balance between the public interest and the rights of the individual. Applying these principles, the Supreme Court set aside the penalty of compulsory retirement imposed for an absence of 48 days, holding that it lacked a rational nexus with the misconduct and failed to take account of less restrictive alternatives.

Application Of Governing Legal Principles To The Impugned Penalty

34. The requirement to give reasons assumes particular significance where the exercise of statutory discretion has substantial consequences for an individual's professional life. Reasons serve to demonstrate that relevant considerations have been taken into account, irrelevant considerations have not improperly influenced the decision, and the sanction selected bears a rational relationship to the misconduct established. They also enable the affected person and the appellate forum to understand the basis of the decision. Where the severest category of sanction is selected, merely recording the finding of misconduct and announcing the penalty, without explaining why that sanction was warranted, does not adequately discharge the obligation to give reasons.

35. In the present case, this Court does not regard the misconduct established against the Appellant as inconsequential. The Court is conscious that the Council is the body entrusted by the Ordinance with regulating the accountancy profession and enforcing professional standards, and Its assessment of professional misconduct deserves due regard. The misconduct established against the Appellant is not being condoned. Nevertheless, the Impugned Order does not explain why the circumstances warranted resort to removal from the Register, being the severest category of penalty envisaged under Section 20D(1) of the Ordinance.

36. The proportionality of the penalty falls to be assessed in the light of the misconduct actually found established against the Appellant, rather than by the full range of allegations originally levelled against him. Of the four audit engagements initially examined, three were excluded from the Council's final determination. Furthermore, the separate charge under clause (8) of Part I of Schedule II of the Ordinance (concerning failure to obtain sufficient information to warrant the expression of an opinion), was not sustained by the Investigation Committee. The misconduct ultimately established was, therefore, confined to one audit engagement. The circumstances in which that misconduct arose, together with the extenuating factors already noticed, were consequently material to the determination of the appropriate penalty.

37. The Appellant, now in his late seventies, had practised the profession for approximately four decades, and his assertion of an unblemished professional record was not controverted by ICAP. The present proceedings constituted his first instance of disciplinary action. He explained the circumstances relating to the maintenance of audit working-papers and expressed his willingness to ensure compliance in future. Further, there was no finding of fraud, dishonesty, deliberate falsification or actual financial loss. While the

absence of such findings does not absolve the Appellant of the misconduct established, these circumstances constituted material mitigating factors which the Council was required to weigh in determining the appropriate sanction.

38. It is also significant that almost the entire Impugned Order is devoted to discussing allegations (particularly relating to Appellant's non-QCR rating) which were ultimately excluded from the Council's final determination, as falling outside the relevant period. By contrast, the Council devoted only a brief paragraph of approximately four lines to announcing its final decision and a further brief paragraph to imposing removal from the Register. The Impugned Order contains no reasons whatsoever explaining why, having regard to the nature and extent of the misconduct actually established and the Appellant's mitigating circumstances, removal, rather than either of the lesser sanctions expressly available under Section 20D(1), was considered warranted.

39. The present interference is not founded merely upon the availability of another possible sanction, but upon the Council's failure to justify its selection of removal from the Register in the context of the misconduct actually established and the relevant circumstances. The question is not whether the Appellant ought to have been subjected to disciplinary action, but whether the measure of punishment imposed was commensurate with the misconduct actually sustained. Nor does the fact that the period of removal imposed was shorter than the statutory maximum of five years, by itself, cure the Council's failure to provide reasons for selecting that category of punishment or establish its proportionality.

40. In these circumstances, the Court is unable to conclude that removal from the Register for one year was reasonably necessary to achieve the legitimate objectives of maintaining professional standards, ensuring compliance with audit requirements and deterring similar lapses. A less onerous sanction was available under Section 20D(1)(a) of the Ordinance, which could adequately mark the Council's disapproval of the misconduct and reinforce the professional obligation to maintain proper audit documentation. Having regard to the limited scope of the misconduct ultimately established, the Appellant's advanced age, he being now in his late seventies, his four decades of professional practice, his otherwise unblemished disciplinary record, his explanation regarding the audit working-papers and his immediate expression of willingness to ensure future compliance, as well as the absence of any finding of fraud, dishonesty, deliberate falsification or actual financial loss, the serious professional consequences attached to removal from the Register for one year were excessive and disproportionate. The penalty, therefore, cannot be sustained.

Determination Of Appropriate Penalty By The Court

41. Having found the penalty of removal from the Register for one year to be disproportionate, the question that remains is that of determining the appropriate sanction to be imposed. Section 20D(1) of the Ordinance expressly provides for reprimand or warning, monetary penalty and removal from the Register. In the circumstances of the present case, this Court considers a formal reprimand, rather than a warning, to be the appropriate penalty under Section 20D(1)(a) of the Ordinance. The fact that the provision places both expressions in the same clause does not render them interchangeable in their ordinary disciplinary connotation. A warning is generally cautionary in nature, whereas a reprimand conveys a more formal expression of censure for misconduct already established. In the present case, having regard to the importance attached by ICAP to the maintenance and availability of audit working-papers as an essential component of the audit process, a mere warning may not adequately convey the seriousness of the misconduct formally established.

42. Section 20D(1)(b) further empowers the Council to impose a monetary penalty not exceeding Rs.1,000/-. However, this Court does not consider such a penalty necessary or appropriate in the circumstances. The misconduct established relates to the failure to make available the audit working-papers and is more appropriately addressed through a formal disciplinary expression of censure. A monetary penalty would serve no additional disciplinary purpose.

43. On the other hand, the limited scope of the misconduct ultimately sustained, the exclusion of the other three audit engagements from the Council's final determination, the absence of any finding of fraud or dishonesty, and the mitigating circumstances relating to the Appellant's long professional career and previously unblemished disciplinary record do not warrant the serious professional consequences of removal from the Register. A formal reprimand would, in the circumstances, appropriately reflect the seriousness attributed to the misconduct by the Council, mark its disapproval and reinforce the importance of maintaining proper audit documentation, without imposing a disproportionate sanction.

44. This Court is empowered under Section 20K(2)(a) and (b) of the Ordinance to set aside the order of the Council and to impose any penalty authorised by law. Since the relevant facts, the circumstances of the misconduct and the mitigating considerations are already available on the record, and both parties have been heard through their respective Counsel on the question of penalty, there is no warrant for remitting the matter to the Council for reconsideration,

particularly when such a course would only prolong the proceedings. The proviso to Section 20K(2) has, accordingly, been complied with, as the statutory requirements concerning the opportunity of hearing have been duly observed.

Conclusion

45. For the foregoing reasons, the Miscellaneous Appeal is ***allowed to the extent of the challenge to the quantum of penalty***. The portion of the Impugned Order dated 19.7.2025 directing removal of the Appellant's name from the Register of Members of ICAP for a period of one year is hereby ***set aside***, and a formal reprimand is recorded in its place, with effect from 19.7.2025, being the date of the Impugned Order. Since the Appellant has confined the present Appeal to the penalty imposed by the Council and has not challenged the finding of professional misconduct, the said finding shall remain undisturbed. The formal reprimand recorded by this Court shall constitute the sole and final disciplinary sanction in respect of that misconduct.

46. Although the Appellant has, in the meantime, already undergone the period of removal from the Register, commencing on 19.7.2025 and expiring on 18.7.2026, and his name has since been restored to the Register, the removal penalty having been set aside by this Court, ICAP shall accordingly make the necessary consequential corrections in its records to reflect the finding of professional misconduct and the formal reprimand imposed by this Court, without attributing any continuing legal or administrative consequence to the removal penalty hereby set aside. There shall be no order as to costs.

JUDGE