
(1974) 02 CAL CK 0008
In the Calcutta High Court
Case No : C.R. No. 2385 (W) of 1972

Ananta Prosad Sett

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-02-1974

Acts Referred:

Government of India Act, 1935 — Section 241, 243
Police Act, 1861 — Section 1, 2, 7

Citation : 79 CWN 264

Hon'ble Judges : K.J. Sen Gupta, J;A.K. Sinha, J

Bench : Division Bench

Advocate : A.P. Sarkar, Mahitosh Mazumdar and Rupen Mitra, for the Appellant;P.K. Sengupta and Wilson D''Rose, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sinha, J.—This Rule was obtained by the petitioner for quashing certain disciplinary proceedings by the respondents against him briefly in the stated circumstances as follows. After the establishment of the office of Superintendent of Police (Cordoning) by the State Government, the petitioner was appointed sometime in 1965 Head Clerk in the Cordoning Section by the same Superintendent of Police. The petitioner was placed under suspension by an order made on or about 20.1.67 by D.I.G. of Police, C.I.D. & E.B., on charges of misconduct for accepting illegal gratification and indulging in other corrupt practices. On or about 22nd January, 1967, the petitioner was charge-sheeted by the same authority with as many as six separate items of charges of accepting illegal gratification of various amounts on different dates and other misconduct with statement of allegations in support of those charges. The petitioner submitted his explanation pleading his innocence to all the material allegations. The petitioner also questioned the power and jurisdiction of the disciplinary authority to hold the proceeding and to impose penalty upon him. An inquiry into the charges was started by one D. Halder, a" Superintendent of Police, who rejected the prayer of the petitioner for assistance of a lawyer. Another Enquiring

Officer was appointed who recorded the evidence and submitted his report stating that the disciplinary authority had jurisdiction and on a finding that the charge Nos. 3, 4, and 6 were established and although he thought dismissal was the proper punishment in this case he recommended for lesser punishment having regard to the age and efficiency of the petitioner.

2. Thereafter the matter was taken up by the D.I.G., Enforcement Branch, respondent No. 2, who came to a finding that all the charges namely Charge Nos. 2, 3, 4 and 6 were established and the other charges namely 1 and 5 were highly suspicious and after examining his character roll came to a provisional finding that the petitioner should be dismissed from his service. Accordingly, he served a second show cause notice upon the petitioner to submit an explanation against finding and provisional order of dismissal. That is how in short the petitioner felt aggrieved and obtained the present Rule.

3. Upon these facts quite a large number of grounds were taken but at the hearing first point taken is that the Deputy Inspector General of Police (Enforcement) not being the appointing authority had no power and jurisdiction to adopt the disciplinary proceeding and to inflict any punishment upon the, petitioner. The second ground is that the entire proceeding culminating in the issue of second show cause notice upon the petitioner suffered from violation of rules and principles of natural justice in that the petitioner was not given, firstly, the assistance of a lawyer in the inquiry proceeding; secondly, certain copies of material documents were not supplied to him; thirdly, in the second show cause notice the petitioner was not given opportunity of making representation against the finding on charges other than those found to have been established by the Enquiring Officer as also against the imputations on the basis of the Character Roll of the petitioner taken into consideration and consequently, against the proposed order of dismissal of the petitioner from his service. The third point raises the question whether entire disciplinary proceeding was vitiated by bias. Lastly, it is said that the entire disciplinary proceeding was malafide.

4. Before we take up the first point for consideration we must notice that this Rule, as appears, though issued in writ jurisdiction by a learned Judge of this Court sitting singly has been referred to the Division Bench for hearing in view of the points raised in the Rule.

5. Now, as regards the first point the admitted facts are that the petitioner was appointed by the Superintendent of Police (Cordoning) but the Deputy Inspector General of Police (Enforcement) initiated the disciplinary proceeding by issuing charge-sheet, appointing Enquiry Officer and then on consideration of the inquiry report submitted by the Enquiry Officer, he found that certain charges other than those found to have been established by the Enquiring Officer, were also proved against the petitioner and taking into consideration the petitioner's character roll issued a notice for the second time to the petitioner to show cause against finding and the proposed order of his dismissal from service.

6. The question therefore is whether the Deputy Inspector General of Police (Enforcement) who is superior to the Superintendent of Police (Cordoning) in rank was competent to inflict punishment upon the petitioner after initiating a disciplinary proceeding against him. It appears, amongst other things, from a copy of the letter dated 15.1.65 (Ann. A) addressed by the Assistant Secretary, Government of West Bengal to the Accountant General, West Bengal, not disputed by the respondents, that the Superintendent of Police (Cordoning) will be the appointing authority in respect of the staff of his own office and will also be the drawing and disbursing Officer in respect of pay, allowance and travelling allowance and also with regard to the contingencies. It further appears from Annex. 'A' to the supplementary Affidavit affirmed on 22.9.1973 by one Suresh Chandra Som, D.I.G. of Police, attached to the office of the Superintendent of Police (Cordoning) that at the material time the Deputy Inspector General of Police (Enforcement) was given power by certain order issued by the Government in the Department of Food and Supplies, West Bengal, dated June 18, 1965 to countersign the T.A., bills of Superintendent of Police (Cordoning). No other authoritative order issued by the State Government was issued by the respondents showing that the Deputy Inspector General of Police (Enforcement) had the administrative control over the entire establishment of Superintendent of Police (Cordoning)". Nevertheless, it appears from the same annexure to the Affidavit that the question was considered at some stage by the Additional Inspector General of Police, West Bengal, and it was stated by him on 19.1.1965 that the "S.P. (Cordoning) will function under the control of D.I.G.; E.B. The two D.S.Ts. and the vigilance staff should be attached to the S.P. (Cordoning) office". Similar question was again agitated at the instance of the petitioner about the power and jurisdiction to pass order of suspension or adopt any disciplinary proceeding and the Additional Inspector General of Police virtually reiterated his earlier statement, inter alia, as follows :

The establishment of S.P. (Cordoning) has always been attached with D.I.G., E.B. from the very beginning and as such administrative control over S.P. (Cordoning) and his office has always been with the D.I.G., E.B. Administrative control also includes disciplinary control. This has nothing to do with counter-signing or passing T.A. bills. In a district although the District Magistrate passes S.P.'s T.A. bills, the administrative control rests with the Range D.I.G.

7. Although such is the position as stated by the Additional Inspector General of Police, Mr. Sarkar on behalf of the petitioner contends that the petitioner was not bound by such statement or decision as the Additional Inspector General of Police was not the authority to decide the question. It may be, it is said, his own opinion but that cannot confer any power or jurisdiction upon the D.I.G., E.B. as the administrative head of S.P. (Cordoning) unless at least State Government would decide the question and pass appropriate order. We, however, think that if the office of the S.P. (Cordoning) is a part or the entire police establishment then clearly, the Superintendent of Police will come in usual course under the administrative control of his superior officer namely, the D.I.G. But in view of the

fact that the D.I.G. is not one but many each one of them being over the head of different organisations under one police establishment of West Bengal, further question may arise as to who amongst these several D.I.Gs. of Police would be deemed to be the controlling; authority of the administration over Superintendent of Police. In such a situation when the petitioner could not show any other D.I.G., we think, the ordinary and usual practice that has been followed as revealed in the decision or the opinion whatever it may be, recorded by the Additional Inspector General of Police, must be given effect to. This view finds support from a Bench decision of this Court State of West Bengal Vs. Rajat Kanti Sarmadhikary, cited by Mr. Sengupta on behalf of the respondents, where while considering the question as to who was the appointing authority, it has been held amongst other things that in case of doubts and difficulties in finding out law or in case of ambiguity the meaning of the Statutes or statutory rules the practice followed in administrative set up should be adhered to. In this case, of course, we shall presently show that the D.I.G. of Police is empowered under the Rules to exercise powers of punishing authority. But then this question assumes importance only because the practice found to have been prevailing is that the particular Officer namely, D.I.G., E.B. has been exercising powers as controlling authority over the Superintendent of Police (Cordoning). In that event, it must be said that that practice has to be followed in absence of any express provisions of statute or statutory rules or regulations conferring powers on any one of several Officers.

8. Mr. Sarkar then contends that the petitioner is not a member of the police force for he is merely an accounts clerk in the office establishment of the Superintendent of Police, (Cordoning). It is said that the word "Police" as appears from the interpretation clause u/s 1 of the Police Act, 1861 shall include "all persons who shall be enrolled under this Act".. But the petitioner is not a person who was enrolled under this Act and therefore cannot be included as a member of police force under the entire police establishment of the State as provided u/s 2 of the same Act. It is therefore argued that neither Section 7 of the Police Act which provides for appointment, dismissal etc. of inferior officers nor Rule 879 of the Police Regulations Bengal, 1943, which was framed by several notifications from time to time in exercise of the powers conferred by clause (b) sub-section (2) of S. 241 of the Government of India Act, 1935 and Section 2 of the Police Act, 1861 read with Section 243 of the Government of India Act, 1935, has any application to the petitioner's case and necessarily Bengal Subordinate Service (Discipline and Appeal) Rules, 1936, which provides amongst other things for appointment a; also imposing penalties of dismissal, removal etc. of the Head clerks and accountants in district police office by the D.I.G. of Police as also by the Superintendent of Police in case of minor penalties and also for appeal to the higher authorities by the delinquent servant cannot be made applicable to the petitioner. This argument though appears to be quite attractive at the first blush cannot bear closer examination. For, Section 2 of the Police Act which provides for constitution of the force runs thus :

The entire police establishment under a State Government shall, for the purposes of this Act, be deemed to be one police force, and shall be formally enrolled : and shall consist of such number of officers and men, and shall be constituted in such manner*** as shall from time to time be ordered by the State Government.

Subject to the provisions of this Act, the pay and all other conditions of service of members of the subordinate ranks of any police force shall be such as may be determined by the State Government.

9. From a fair reading of the above provision it seems quite clear that the entire police establishment shall not only include the actual police force but shall "consist of such number of officers and men and shall be constituted in such manner as shall from time to time be ordered by the State Government and the entire police establishment thus constituted shall be deemed to be one police force in the whole State." It follows that where a separate section has been organised and established under one S.P. (Cordoning), there can be little doubt that such a section also will come under the entire police establishment and shall be deemed to be one police force under the State Government and the office staffs including head clerks, accountants in the office of the Superintendent of Police shall clearly come within the meaning of "one police force". That being so, it seems quite clear that Police Act will apply to the petitioner's case. Necessarily therefore the D.I.G. of Police amongst others must be held to have sufficient power and jurisdiction to impose the penalties upon a delinquent servant subject to the provisions of Art. 311(2) of the Constitution and such rules as the State Government may from time to time make under this Act. It also follows therefore that the D.I.G. will exercise the power of punishing authority in accordance with the Bengal Subordinate Service (Discipline and appeal) Rules, 1936 which has been made applicable under Rule 879 under the Police Regulations which provides that "in matters of discipline, punishment and appeals clerks of the police department shall be governed by Bengal Subordinate Service (Discipline and Appeal) Rules, 1936". We must notice in this connection that Bengal Subordinate Services Rules 1936 has been replaced by West Bengal Subordinates Rules Service 1971 but in this case we are not concerned with the later Rules. For, at the material time Rules of 1936 were in full force. It is, however, contended by Mr. Sarkar that neither Police Regulations nor the Bengal Subordinates Rules, 1936, could be made applicable to the petitioner as the entire Cordoning section came to be established long after these Regulations or Rules were framed. Short answer to this argument is that these Regulations or Rules were made applicable not to any specified establishment or branch of the administration of the State actually existing at the time when they came into force but they would be equally applicable to all persons employed in any establishment or organisation that may be constituted in future by the State provided these employees fit in with other requirements under these Rules and Regulations.

10. Mr. Wilson De Rose on behalf of the State has cited before us a passage from

Maxwell's Interpretation of Statutes 11th Ed. p. 76 to show that such type of Statute or Statutory Rules will apply even to any branch or department or organisation which was at the material time not in existence. This statement of law backed by several English decisions lends support to the view we have taken. In any case the point seems to be free from any doubt and need no further elucidation. In our opinion, the petitioner though accounts head clerk must be deemed to be included under "one police force" under the State and therefore the D.I.G. of Police concerned clearly has enough jurisdiction to exercise powers as punishing authority. It is true that the S.P. (Cordoning) was the appointing authority of the petitioner but Art 311(2) of the Constitution forbids imposition of penalty by any authority subordinate in rank to the appointing authority. It is open to the State Government to confer powers upon any such officer higher in rank than the appointing authority to impose penalties upon the delinquent servant (See The state of U.P. and Others Vs. Ram Naresh Lal,). In the present case therefore though the S.P. (Cordoning) was made the appointing authority by the order of the State Government, the D.I.G. of Police, nevertheless, would remain the authority empowered to impose the penalties under the Bengal Subordinate Services Rules, 1936, so far as the head clerks and accountants of the District Police offices are concerned. This being the position, there is no difficulty in holding in view of what we have already stated above that D.I.G., E.B. has jurisdiction to exercise power of the disciplinary authority and impose penalties in a disciplinary proceeding initiated by him. The first point raised by Mr. Sarkar therefore fails.

11. We now proceed to examine the correctness of the contention raised on the second point which comes under three sub-heads. In the first place, it is contended that the assistance of a lawyer (in the inquiry proceeding) was refused. It appears that one D. Halder a Superintendent of Police (Cordoning) was appointed the first Enquiring Officer and, as appears from a copy of his order dated 6.3.1967 (Ann. "I" to the petition) rejected the petitioner's prayer for assistance of a lawyer and fixed a later date for examination of certain witnesses. But before he actually could take up the examination of the witnesses, he proceeded on study leave. Thereafter one S. Bhattacharyya, S.P. (Cordoning) was directed to hold enquiry in the disciplinary proceeding by the D.I.G., E.B. It is not disputed before us that the State Government by two successive orders dated 15.6.1960 and 20.8.1960 decided that the Enquiring Officer would have the discretion to allow representation of a lawyer in disciplinary cases according to the merits and circumstances of each case and further a lawyer should or should not be allowed to represent the person charged will depend on the nature of the charges and the ability of the government servant to appreciate the charges and answer them. In the Enquiry Report submitted by the subsequent Enquiring Officer the prayer of the petitioner for engaging a lawyer was again considered and the Enquiring Officer thought that his predecessor was right in disallowing him the services of the lawyer as the charges were not of complicated nature. This officer clearly therefore used his discretion for not allowing

assistance of a lawyer on the view that there was no complexity in the case as the charges were not of complicated nature. Since this Court is now sitting as a Court of Appeal over the decision of the Enquiring Officer we think it would not be open to this to take a different view of the matter and exercise its own discretion unless order of refusal passed by the Enquiring Officer was perverse or mala fide or results in denial of reasonable opportunity to the delinquent servant in defending his case as envisaged in Art. 311(2) of the Constitution. Mr. Sarkar contends that there were enough complexities in the case as in the inquiry proceeding 9 witnesses were examined on behalf of the disciplinary authority and 3 witnesses were examined by the petitioner and a number of documents were also exhibited in the case. But we think these facts by themselves cannot establish that the discretion used for refusal of assistance of a lawyer to the petitioner was perverse or such refusal results in denial of reasonable opportunity to the petitioner to defend his case. It is stated in the petition that by a letter dated 1.3.1967 the petitioner has prayed for assistance of a lawyer but that letter or the copy of any such letter has not been produced. In any case, the grounds for assistance of a lawyer appears to be that the petitioner being a mere clerk and having had no education in law or training in examination or cross-examination of witnesses would be seriously prejudiced if in defending his case in a proceeding drawn up on false and vexatious charges involving examination of a large number of witnesses including superior Officers and recording voluminous oral and documentary evidence. It is also stated that D. Halder, the then Enquiring Officer did not give any reason but his decision was based as already noticed, on a Government Order dated 20.8.1962. We do not think that there are too many charges or there were voluminous oral or documentary evidence. But in any case these are all questions of fact and the Enquiring Officer would be quite competent to go into such facts and decide the matter entirely using his discretion either to refuse or allow the petitioner's prayer for assistance of a lawyer. It is, however, submitted that the Enquiring Officer in refusing the prayer for a lawyer did not consider as to whether the nature of the charges and the ability of the Government servant to appreciate the charges and answer them nor assign any reason whatsoever. But the matter was reconsidered by the next Enquiring Officer and though he agreed with the order passed by the Enquiring Officer he gave his reasons, as already noticed, that the charges were not of complicated nature. Mr. Sarkar, then, relying on a Special Bench decision of the Calcutta High Court in *Nripendra Nath v. Government of West Bengal*, AIR (1961) Cal. P. 1 (S.B.), has argued that where the evidence both oral and documentary are voluminous and the petitioner himself was quite inexperienced in the field of law should be allowed the assistance of a lawyer, otherwise, unless such assistance of a lawyer is extended to him, he would be denied reasonable opportunity of defending his case. We have already noticed that there is nothing on record to show that the oral evidence of the witnesses examined in this case were voluminous or numerous documents were exhibited. On the facts of this case we do not think that by refusal of the assistance of a lawyer the petitioner has been denied reasonable

opportunity of defending his case. Mr. Sarkar has then contended relying on a Supreme Court decision in *C.L. Subramaniam Vs. Collector of Customs, Cochin*, that the petitioner has a right to engage a legal practitioner to defend him and denial of such assistance resulted in violation of principles and rules of natural justice. In this case, what happened was that one E.B. Subramaniam was appointed to present the case before the Enquiring Officer in support of the allegations made against the delinquent servant. He was a trained police prosecutor. In spite of this fact the petitioner's prayer in this case for assistance of a lawyer was refused on the ground that Subramaniam though legally trained was not a legal practitioner. In that context, the Supreme Court held that the "fact that the case against the appellant was being handled by a trained prosecutor was a ground to engage a legal practitioner to defend him lest the scale should be weighed against him". In the case under consideration before us no such prosecutor to present the case before the Enquiring Officer, it is admitted, was engaged. We think while the proposition laid down in the Supreme Court decision cannot be disputed the case is distinguishable on facts. We therefore do not think there is much of substance in the point raised.

12. We now pass on to the next sub-head under the second point which raises the question whether or not certain copies of material documents were supplied to the petitioner. It appears in paragraph 20 of the substantive writ petition it is stated by the petitioner that the Enquiring Officer did not furnish him with the statements of witnesses and the copies of the Exhibits Nos. 6, 6(1) and 6(a) before the commencement of the hearing. As a matter of fact, it is further stated, copies of the same were furnished to him only on 2nd and 8th November, 1967 that is, after completion of enquiry by him and after furnishing his findings and report. But this statement is categorically denied in paragraph 20 of the supplementary affidavit affirmed by Dulal Krishna Mazumdar, a Deputy Superintendent of Police (Cordoning), on 12.7.71. It is stated, inter alia, that the petitioner was furnished with the statements of all witnesses and copies of the exhibits before the hearing of his case. In reply to this the petitioner in his affidavit-in-reply affirmed on 2nd August, 1971, after repeating the statement made in paragraph 16 of the substantive petition has tried to set up a new case to the effect that "the documents which were otherwise relied upon by the Enquiring Officer were not supplied to the petitioner in spite of petitioner's written demand or request". He, however, prayed for leave to refer to the Order-sheet to test the veracity of the statements made by him. In the report submitted by the second Enquiring Officer, it is, however, recorded that "the delinquent was given copies of the charges together with statement of allegations and also copies of exhibits cited in this proceeding. It is also recorded that altogether 9 prosecution witnesses were examined with 8 paper exhibits as relevant documents Nos. 1 to 6(a) and 6(1) and the delinquent examined 3 defence witnesses and 2 papers as defence exhibits". The Enquiry proceeded all throughout in presence of the petitioner and the documents in question were marked exhibits in his presence. It is not the case of the petitioner that he did

not have access to these documents for inspection or he had to proceed for cross-examining the witnesses without even having inspection of these exhibited documents. This Enquiry report appears to have been submitted on September 15, 1967. In any case, there is nothing on record to show that the petitioner made any such objection or wanted copies from the Enquiring Officer to enable him to effectively cross-examine the witnesses even then the copies were not supplied and the statement made by the Enquiring Officer in his report is not correct. After this enquiry report was submitted, the matter was taken up by D.I.G., E.B. and on consideration of the report of the Enquiring Officer he issued show cause notice upon the petitioner against the proposed order of dismissal in the circumstances already noticed by us. It is only after the receipt of the second show cause notice the petitioner possibly moved the D.I.G. for certain copies of the documents exhibited during the enquiry proceeding which though belated were allowed to be supplied by the D.I.G. (E.B.) by his order dated November 6, 1967 (Ann. "J" to the writ petition). Then the petitioner by a further order dated 9.11.1967 was allowed time till 23.11.1967 to submit his explanation in compliance with the directions given in the second show cause notice. Thereafter, on 29.11.1967 the petitioner obtained Rule from this court. Thus it seems clear that the petitioner wanted copies of the documents as appears from the order dated 6.11.1987 to enable him to submit explanation against second show cause notice and not in connection with the enquiry proceeding. Such being the position, we think the petitioner has failed to substantiate any case of infraction of the rules and principles of natural justice by non-supply of copies of certain documents in the enquiry proceeding.

13. We now pass on to the third sub-head of the second point to see whether the second show cause notice as given can be sustained as valid. It appears from the second show cause notice that the disciplinary authority did not agree with the finding of the Enquiring Officer in the sense that according to him charge No. 2 was also proved and the delinquent behaved in irregular and gravely suspicious manner in respect of charge Nos. 1 and 5 although at the same time he has held that the charge No. 1 was not proved. It was said on charge No. 5 that this charge was added with a view to proving the inadequate conduct of the delinquent and effort therefore was made to prove that the delinquent did this to facilitate making money illegally. Even so, the punishing authority did not come to any positive finding with regard to these charges. If the charges are not proved but merely create suspicion then the conduct of the delinquent servant on mere suspicion on charges cannot be taken into consideration in awarding punishment and equally for the same reason the delinquent servant cannot be asked to show cause against mere suspicion of the disciplinary authority on charges of misconduct. Further, as appears, if the Charge No. 1 is found not to have been proved we fail to see how charge No. 2 which is entirely dependent upon proof of Charge No. 1 can be said to have been established. For, in Charge No. 1, it is stated that on 27.12.1966 the petitioner accepted illegal gratification from an outsider in the office and in Charge No. 2 on the same date the

petitioner offered a sum of Rs. 25/- to Sri B. Palit, Stenographer. S.P. (Cordoning) W.B. to keep him silent as he had seen, him accepting money from an outsider in the office. If the acceptance of illegal gratification does not stand established necessarily the charge of offering another sum to a Stenographer in the same office on the same day to avoid detection of the petitioner's acceptance of such illegal gratification must fail. The finding, even if provisional on Charge No. 2 must be held to be perverse. On this reason alone, the second show cause notice cannot be allowed to stand. But then, there are better reasons too. Firstly, it is not stated that the finding on Charge No. 2 is provisional and from the tenor of the finding it seems to us that on these, charges disciplinary authority clearly made up its mind. It is well-established that if the notice for the second time is issued not with, an open mind then that will invariably end in empty formalities and result in contravention of rules and principles of natural justice. Then again, although it is open to the disciplinary authority to disagree with the finding of the Enquiring Officer it is clearly obligatory upon it at the same time to give opportunity to the delinquent servant to show cause why the charges on which he has disagreed with the Enquiring Officer, should not be held to have been established (See *State of Assam and Another Vs. Bimal Kumar Pandit*,). In this case, as we read the notice we do not find that any such opportunity has been given. Secondly, in proposing the order of dismissal the disciplinary authority has taken into consideration the character roll for the first time but at the same time the authority has not specified the particular part of the conduct of the delinquent servant as revealed in the character roll which influenced its consideration so that the petitioner might be able to know as to what were the imputations against him and against which part of the remarks in the character roll he was required to submit his explanation. In absence of such particulars, show cause notice against the character-sheet as a whole would end in fruitless proceeding and necessarily result in denial of reasonable opportunity to defend his cause. This finds support in a decision of the Supreme Court in *State of Mysore Vs. K. Manche Gowda*, . The *State of Mysore v. K. Manche Gowda* where while considering almost similar question, it has been held in substance that in absence of such particulars the second show cause notice would be totally ineffective and failure to furnish such particulars to the delinquent servant would contravene rules and principles of natural justice. It is, however, contended on behalf of the respondents relying on two decisions of the Supreme Court in *Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh*, and *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, that there has been substantial compliance with the principles and rules of natural justice and in fact the petitioner has been given an opportunity against the finding and the proposed order of dismissal. We think, however, that while the proposition laid down in the above decisions of the Supreme Court cannot be disputed, they are distinguishable on facts. In our opinion, on the facts of this case the notice issued for the second time upon the petitioner to show cause against his proposed order of dismissal from service suffered from serious infirmities and must be struck down as invalid.

14. It now remains to be seen whether the disciplinary proceeding suffered from bias or is otherwise malafide. We think having regard to the facts and circumstances of this case the petitioner has failed to substantiate any such case. On the question of bias it is argued that since the same D.I.G. who held a formal enquiry and then issued charge-sheet again made finding against the petitioner without open mind necessarily was acting with a bias against the petitioner. We, however, think that even if the disciplinary authority has held a formal enquiry prior to the issue of charges or has issued a notice for the second time which did not conform to the rules and principles of natural justice that will not necessarily show bias against the petitioner. It is not necessary to pursue the point further for we are satisfied on the facts of this case that no question of bias has been established against the petitioner.

15. Equally, we do not find anything on record to show that the disciplinary proceeding is malafide. In this case, the charges have been framed and the petitioner has been asked to show cause against these charges and an enquiry was held thereafter and on evidence the Enquiring Officer found that some of the charges were established. It may be that the disciplinary authority disagreed with that finding on all the charges and came to its own conclusion that some of the other charges were also proved. It may equally be that he proceeded also to decide provisionally for inflicting punishment of dismissal of the petitioner on suspicion about petitioner's conduct on some other charges but those facts by themselves without more could not establish that the disciplinary proceeding was malafide. We therefore do not find any substance in either of the contentions raised on behalf of the petitioner. In the result, for the reasons already given the second show cause notice (Ann. H) issued by the D.I.G., E.B., Respondent No. 2, is quashed and the respondents are directed not to give effect to the said notice. The Rule is made absolute to the extent indicated above. But there will be no order as to costs.

Let a Writ both in the nature of certiorari and mandamus be issued accordingly.

Sen Gupta, J.

I agree.