(1989) 09 CAL CK 0044

In the Calcutta High Court

Case No : Civil Rule No. 212 (W) of 1989

Anil Kumar Ghosh APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 15-09-1989

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 14(14), 14(18), 14(3), 14(4)
Constitution of India, 1950 — Article 12, 226
Council of Medical Research Rules, 1977 — Rule 39, 40, 41, 42, 45
Penal Code, 1860 (IPC) — Section 21
Societies Registration Act, 1860 — Section 12

Citation : (1993) 2 ILR (Cal) 466

Hon'ble Judges : Mahitosh Majumdar, J

Bench : Single Bench

Advocate : Debi Pal and Ashoke Ganguly, for the Appellant;R.N. Mitra and M.M. Mallick, for the Respondent

Judgement

Mahitosh Majumdar, J.—The writ petition is directed against an order bearing No. P-7(269)/53/PER (Pt. IV) dated January 10, 1979. The said order is quoted below Whereas on consideration of the record of disciplinary proceedings instituted against Dr. A.K. Ghosh, Assistant Director, Cholera Research Centre (now National Institute of Cholera and Enteric Diseases), Calcutta, and the representation made by the said Dr. A. K. Ghosh, Assistant Director, in reply to the notice calling upon him to show cause against the action proposed to be taken against him, the Executive Committee of the Council is satisfied that good and sufficient reasons exist for imposing upon the said Dr. A. K. Ghosh, Assistant Director, the penalty hereafter specified.

Now, therefore, the Executive Committee of the Council by virtue of the provisions contained in Rule 41 of the Rules and Regulations of the Indian Council of Medical Research and Bye-law 15(a) governing the conditions of service of the employees under the Council hereby orders that the said punishment may be specifically imposed and ordered.

Dr. A. K. Ghosh, Assistant Director of the National Institute of Cholera and Enteric Diseases, Calcutta, is accordingly removed from the service with disqualification for future employment under the Council.

This order will be. effective from the date oP the receipt by Dr. Ghosh.

2. The facts of the case in brief are as follow:

The Petitioner after passing the Bachelor of Medicine and Bachelor of Surgery Examination of the Calcutta University and also passing of Diploma in Tropical Medicine and Hygiene Examination of the Calcutta University obtained a degree of Doctor of Philosophy (Med.) Immunology. The Petitioner has to create experience of research in Medical Microbiology and Immunology. The Petitioner further obtained post-Doctoral Research Grant of the World Health Organisation, Geneva, and worked at the Department of Microbiology, University of Chicago, United States of America. The Petitioner also was invited to present his work in the International Symposium Vibrio Para-haemolyticus at Tokyo in the month of September 1973. It is also to be noted that the Petitioner did work as officiating Director of Cholera Research Centre when the post of Director of the said Centre was lying vacant. The Petitioner is the only Scientist and Research Guide of the said Centre under whom two students obtained their Ph.D. degree in Microbiology from the University of Calcutta which has already been recorded in the Annual Report of the said Centre.

3. The Petitioner, the seniormost officer of the Centre on the basis of the length of service joined Cholera Research Centre in August 1964. On the basis of the selection, the Petitioner was promoted to the post of Senior Research Officer (Cadre) in the year 1968 and subsequently to the post of Assistant Director, Cholera Research Centre, Calcutta, one of the permanent Institutes of the Indian Council of Medical Research (for short I.C.M.R. hereafter) in January 29, 1973.

4. The Governing Body of I.C.M.R. issued the order of appointment of the Petitioner dated January 29, 1973, to the post of the Assistant Director of the Cholera Research Centre at Calcutta on a scale of pay of Rs. 900 per month in the scale of pay of Rs. 900-3--1300 plus non-practising allowances and other allowances on probation for two years.

5. The Petitioner after joining the Cholera Research Centre (for short the said Centre hereafter) was permitted by the different Directors or Director-Generals of the said Centre and I.C.M.R. respectively to draw house rent allowance (for short H.R.A. hereafter) as per rule of I.C.M.R. as applicable particularly in the case of the Petitioner. The H.R.A. thus drawn by the Petitioner was always according to that indicated by the appropriate authorities of I.C.M.R. and/or Director of the said Centre in the pay-slips issued to him from to time.

6. The Petitioner resides in his own house at P-284, Mudialy Road, Calcutta, under the Garden Reach Municipality (for short the said Municipality hereafter).

7. The pay-slips of the Petitioner were issued after the Directors/Director-General/ Appropriate Authorities had to be satisfied that the monthly rental valuation certificate of the house of the Petitioner issued by the said Municipality and the tax receipts and other documents as produced by the Petitioner were correct documents needed for fixing and sanctioning all the allowances including H.R.A. Dr. S. C. Pal (for short the said Director hereafter) joined as Director of the said Centre in 1974. Even after his joining, the pay-slips were issued to the Petitioner and the monthly H.R.A. were allowed to be drawn by the Petitioner and, accordingly, the Petitioner allowed to draw the H.R.A. strictly on the basis of the pay-slips issued by the said Director and the other previous Directors and authorities. The Petitioner referred to the details statement as regards the H.R.A. paid to the Petitioner for the period between August 1974 and September 1975. The said statements in details were prepared by the authorities. Further, reference is made to the photo copy of the pay-slips two in number being Annex. C to the writ petition were also issued by the said Director and by the authorities. The H.R.A. payable to the Petitioner was suddenly stopped at the instance of the said Director as averred in para. 5 of the writ petition. The legitimate claim of H.R.A. of the Petitioner was withheld.

8. On June 5, 1976, Dr. G. Gopalan, Director-General of the said Council, issued a Memorandum whereby he proposed to take disciplinary action against the Petitioner under r. 14 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 (for short the said Rules hereafter).

9. The said Director all on a sudden stopped payment of H.R.A. to the Petitioner as would appeal from para. 7 of the writ petition issued to him on October 1, 1975. The Petitioner was served a Memorandum dated September 30, 1975, issued by the said Director informing him. of the decision of the authority: to stop the payment of H.R.A. without giving any chance to the Petitioner to know the reasons for such decision. The Petitioner in reply to the Memorandum requested the Director to return to him the original monthly rental valuation certificate, already submitted to the office of the Director so that he could clarify the points involved. Neither the original records were returned to him, nor any reply to his letter was communicated to him. On June 5, 1976, the Director-General of I.C.M.R. issued a Memorandum bearing no, P-7(269)/53-Personnel dated June 2, 1976, together with Article of Charge. The Article of Charge reads thus:

Article of Charge -- I

That the said Dr. A. K. Ghosh declared in 1964 that the rental value of his own house in 284, Mudially Road, Calcutta-24, was Rs. 160 p.m. or Rs. 1920 per annum as actually assessed for municipal purposes while in actual fact the annual value of the house as assessed by the Garden Reach Municipality for the house of Dr. Ghosh for the years, 1961-62 to 1965-66 was Rs. 235 for the years, 1966-67 to 1970-71, Rs. 260 and for the years 1972-73 to 1976-77, Rs. 290 only.

Article of Charge -- II

That Dr. Ghosh claimed House Rent Allowance of Rs. 16,819.95 P. which was not admissible to him for the period from August 1954 to August 1975 by submission of false documents.

10. By the said Memorandum, the Petitioner was informed that the concerned authority proposed to initiate disciplinary proceedings against the Petitioner under Rule 14 of the Central Civil Services (Corporation, Control and Appeal) Rules, 1965, (for short the said Rules hereafter).

11. The Petitioner submitted a representation on June 17, 1976 with the statement of defence whereby the Petitioner requested for payment of H.R.A. and withdrawal of the charges. The Petitioner did not receive any communication from the Respondent No. 2 in reply to his letter dated June 17, 1976, nor the charges were withdrawan. The Petitioner, however, was not granted any H.R.A. By a Memorandum dated November 24, 1976, Dr. A. P. Tripathy (for short the Respondent No. 5 hereafter), the Director of I.C.M.R. Madras, was appointed as Inquiring Authority to enquiry into the charges levelled against the Petitioner. The Respondent No. 5 commenced, continued and concluded the said enquiry. The last sitting of the enquiry was held on June 4, 1977, at the said Centre. Mr. D. K. Guha, Administrative Officer of the said Centre, acted as the Presenting Officer, representing the I.C.M.R. On February 2, 1977, the Petitioner received a'' cheque for the month of January 1977 whereby the Petitioner received less amount to Rs. 500 from what he used to receive.

12. On February 2, 1977, the Petitioner was served a Memorandum by the Respondent No. 3 which, inter alia, stated that there would be a deduction of Rs. 500 from the monthly salary of the '' Petitioner every month by 34 instalments to the extent of Rs. 16,819-95 P. Copy of the said Memorandum dated February 2, 1977, reads thus:

The Director General of Indian Council of Medical Research has decided that hosue rent allowance of Rs. 16,819-95 P. overdrawn by Dr. A. K. Ghosh, Assistant Director, during the years 1964-65 to 1975-76, to which he was not entitled, should be recovered from him forthwith.

The overdrawn amount will be recovered from Dr. Ghosh''s salary in 34 monthly instalments made up of 33 instalments of Rs. 500 each and last instalment of Rs. 313-95 P.

Recovery will commence from the salary to Dr. Ghosh for the month of January 1977.

13. It is an admitted position that during the pendency of the enquiry proceedings by the Respondent No. 5, the said Memorandum was served upon the Petitioner. The Respondent No. 5 has been impleaded by name in the writ petition. The Petitioner in the context of deduction of Rs. 500 per month referred to the Government of India, Ministry of Finance, Office Memo. No. P-2(37)-

EII(B)/64 dated November 27, 1967, since amended from time to time subsequent Circular being No. GIMPOM No. FN 11012/3E-/II(B)/75 dated April 26, 1975, in respect of H.R.A. Rules of Government of India with effect from April 1, 1975, which, according to the Petitioner, is applicable to the case and the said Memo, was duly forwarded to the office by the Ministry of Health & Family Welfare, Government of India, bearing No. A 45016/1/74 Estt-1 (Vol-I) dated May 28, 1975, to I.C.M.R., the Respondent No. 4. The said Memorandum specifically provided that "the. cases already decided otherwise need not to be reopened".

14. Before the completion of enquiry proceeding, the decision to adversely affect the Petitioner by monthly deduction of Rs. 500 was assailed by the Petitioner on the ground of violation of principles of natural justice. The Petitioner claimed even the documents submitted by the Petitioner could not be treated as false documents inasmuch as he submitted the said original documents issued by the ChaTrman, Vice-Chairman and Secretary of the said Municipality from time to time.

15. Mr. D. K. Guha, during the course of the enquiry proceeding, never disputed the genuineness of the said documents. After expiry of more than 15 months from the last sitting of the enquiry held on June 4, 1977, the Petitioner was served on September 17, 1978, with a Memorandum dated February 2, 1977, issued for and on behalf of the Director-General of I.C.M.R. together with the copy of the enquiry report submitted by the Respondent No. 5, on July 21, 1977, without enclosing any annexure. From the said Memorandum, it appears that the Executive Committee of I.C.M.R. came to the conclusion that the Petitioner was not a fit person to be retained in service. Accordingly, the Executive Committee proposed to impose penalty for removal from his service with disqualification for future employment under the I.C.M.R. The said Memorandum as contained in Annex. G to the writ petition is as follows:

The undersigned is directed to enclose a copy of the inquiry report submitted by Dr. S. P. Tripathy, Director, Tuberculosis Chemotherapy Centre, Madras, who was appointed to inquire into charges against Dr. A. K. Ghosh, Assistant Director, Cholera Research Centre, Calcutta.

On a careful consideration of the inquiry report aforesaid the Executive Committee of the Council agrees with the findings of the Inquiry Officer and holds that the articles of charge are proved. The Executive Committee of the Council, has, therefore, provisionally come to the conclusion that Dr. A. K. Ghosh is not'' a fit person to be retained in service and so the Executive Committee of the Council proposes to impose on him the penalty of removal from service with disqualification for future employment under the Council.

Dr. A. K. Ghosh is hereby given an opportunity of making representation on the penalty proposed but only on the basis of the evidence adduced during the inquiry. Any representation which he may wish to make on the. penalty proposed will be considered by the Executive Committee of the Council. Such, representation, if any, should be made in writing and submitted so as to reach the undersigned not later than fifteen days from the date of receipt of the Memorandum by Dr. A. K. Ghosh. Receipt of the Memorandum should be acknowledged.

16. The Petitioner was not found to be a fit person to be retained in service after the appointment of Sharma Sarkar Commission by the State Government for having probe into the question as to under what circumstances the toxic drug Fanasil was used on even school children. The Petitioner was made responsible for exposing the harmful and irresponsible use of the drug Fanasil and it was the Petitioner who was cross-examined by the Deputy Director-General Health Service, Drug Controller, Government of India, Health Inspector, the Vaccinators and Director-General, Research Institute, Kasauli, Himachal Pradesh and otheRs. Such disclosure by the Petitioner was brought to the notice of the ''authorities of the I.C.M.R. and that was the reason even after the imposition of final punishment of deduction from salary of Rs. 500 per month, the Executive Committee, after expiry of more than IS months issued the Memorandum requiring the Petitioner to show cause why he should not be removed from his service.

17. On September 15, 1978, and again on October 6, 1978, the Petitioner made a representation to the Minister; Health and Family Welfare, Ex-Officio President of the Governing Body of I.C.M.R., through proper channel against the said Memorandum and the said enquiry report of the Respondent No. ''5 in the writ application. By an order dated January 17, 1979, the Petitioner was served an order bearing No. P-7(269)/53/PER/(Pt.IV) dated January -10, 1979, issued by the Director-General, I.C.M.R., removing the Petitioner from service which was received by the Petitioner under protest.

18. The Petitioner was not paid any salary nor the legitimate dues of the Petitioner was paid by the Authorities, although the Petitioner was served with the order of removal from his service. Again on January 17, 1979, a Memorandum bearing No. 22-2/64 dated January 17, 1979, was issued by the Director, National Institute of Cholera and Enteric Diseases (the said Centre) of I.C.M.R. with the direction upon the Petitioner to hand over the charges to. him before 4-30 p.m. on that date.

19. The grievances of the Petitioner are that the Executive Committee of I.C.M.R. performs the current duties of I.C.M.R. are would appear from Rule 41 of the Rules and Regulations and Bye-law of the Council. The disciplinary proceedings and/or the Memorandum proposing to impose punishment upon the Petitioner and the removal from the service of the Petitioner were effected by the Director-General and the Executive Committee of the said Council, but the penalty sought to be imposed up to the Petitioner by the Authority was never placed before any of the meetings of the Governing Body, nor any approval was obtained from the Governing Body of I.C.M.R., and hence all the impugned actions and penalty thus

imposed upon the Petitioner were assailed on the ground of illegality and gross violation of the Rules of the I.C.M.R. The Petitioner also referred to the writ Petitioner (C.R. No. 8331 (W) of 1976) filed by him before this Court against the order of imposing of censure upon him. This Court disposed of the writ application by directing, inter alia, as follows:

The Petitioner''s candidature for the post, of Deputy Director, Cholera Research Centre, will be considered without the censure which has been made against him. In view of the said statement, I do not think that the Petitioner can have any grievance.

20. Again the said judgment, an appeal being No. FMAT 3108 of 1976 was filed, and at the material time, the said appeal was pending.

21. In the background of the facts and circumstances as stated above, the writ application was presented before this Court and a Rule was issued on January 24, 1979, and, thereafter, several orders were passed. The power was filed on behalf of the Respondents Nos. 2 to 6 and, thereafter, the matter was heard on number-of days and number of affidavits have been filed on behalf of the parties to which a reference will be made later on.

22. The Petitioner filed affidavits in support of the service of the copy of the writ petition upon the respondents Nos. 1 to 5 and acknowledgement cards are also annexed along with the affidavit-in-opposition. Power has also been filed on behalf of the Respondents Nos. 2 to 6.

23. In affidavit-in-opposition affirmed on behalf of the Respondents Nos. 3, 4 and 6 on February 27, 1979, the said Respondents claimed that the writ petition was not maintainable as the Petitioner''s service was a contract service not enforceable under the ordinary law of Master and Servant ; that (b) no writ lies against a Society registered under the Societies Registration Act as per Memorandum of Association of I.C.M.R. which is not created by any Statute ; that (c) furthermore, the Union of India could not be made a party because the Secretary, Ministry of Health and Family Welfare'', is the Ex-Officio member and Vice-President of the Council; that (d) the Petitioner is the only Scientist and Research Guide for Ph.D. Degree in Micro-biology is not correct as there are other guides also ; (e) that the Petitioner claimed H.R.A. on the basis of certificates issued by the Chairman of the said Municipality is not the authenticated certificate on assessment on rental value ; (f) that the Respondents further stated that if the Petitioner submitted the actual rental valuation of his house as assessed for municipal purposes, the Petitioner would hot have been entitled to any H.R.A.; (g) that the Disciplinary Authority simply relying upon the Memorandum No. P-7(269)/53-Personnel dated June 2/5, 1976, that the submission of the rent "receipts duly certified by the said Authority are false inasmuch as they were not authenticated ; such stand of the Respondents in so far as the submission of rent receipts, according to the Petitioner, could not be accepted inasmuch as such receipts were duly certified by the said Authority.

24. Respondent''s further claimed that the Memo, of the Ministry of Finance regarding the verification of house rent receipt is not applicable in the Petitioner''s case as the Petitioner''s service condition is governed by the Society Registration Act; that it is a case of Master and Servant.

25. Respondents denied that the penalty of removal from service imposed upon the Petitioner had any connection with the case pending before the Sharma Sarkar Commission of Enquiry ; that the Respondents asserted that the Petitioner was not paid any salary on the ground that the Petitioner did not hand over the charge.

26. In his reply, the Petitioner claimed (a) that the Executive Committee of I.C.M.R. consists of President, Vice-President and the Secretary, all are officials of the Ministry of Health and Family Welfare, and there is mention in Rule 40 of the Rules and Regulations of I.C.M.R. which is audited by the Controller and Auditor-General of India under Rule 44 of I.C.M.R.; (b) the salary of the staff are entirely funded by the Government of I dia; (c) under bye-law 12 of I.C.M.R. governing the conditions of service of the employees and the budget estimate of I.C.M.R. are also required to be submitted to the Controller and Auditor-General of India. In this connection, the Petitioner made a reference of the case of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, where the learned Judges of the Supreme Court held that although the Jammu &'' Kashmir Regional Engineering College, Srinagar, is registered as a Society under the Society''s Act, is a ''State'' under Article 12 of the Constitution and amenable to the writ jurisdiction ; (d) the Petitioner further claimed that the said Rules apply to the employees of I.C.M.R.; that the question whether the I.C.M.R. is created by a Statute is immaterial because, whatever, be its genetically origin, it would be an ''authority'' within the meaning of Article 12 of the Constitution as. it is an instrumentality or agency of the Government as evident from the relevant factors stated earlier; that the Petitioner was appointed by the Governing Body of I.C.M.R. which is a higher Body than the Executive Committee; order of removal from service communicated to the Petitioner by the Authority is illegal and liable to be set aside ; that the order impugned is in violation of the provisions of the said Rules.

27. The Petitioner further claimed that the original tax receipts issued by the said Municipality in respect of his own house were produced by the Petitioner. Since the date of his joining I.C.M.R., H.R.A. were being paid to the Petitioner, and nowhere in the Rules, Regulations and Bye-laws of I.C.M.R. mentions about the Rules on H.R.A. to be followed by the staff of the I.C.M.R. that the order of enquiry by the Director-General of I.C.M.R. being subordinate to the appropriate Authority of the Petitioner is wholly illegal inasmuch as he is not competent to pass such order of enquiry of the Petitioner. No opportunity was given to the Petitioner to cross-examine the witnesses in support of his defence in spite of several requests by the Petitioner and thus denied principle of natural justice. In terms of Rule 41 of the Rules, Regulations, Bye-laws of I.C.M.R., the Executive

Committee so framed by the order of the Director-General of I.C.M.R. is subordinate to the appropriate Authority of the Petitioner''s, the functions of the Executive Committee is to perform the current duties of the I.C.M.R. and, as such, the action taken is illegal and mala fide.

28. In the supplementary affidavit filed on behalf of the Respondents, they stated that on the basis of the Internal Audit Report under the Rules, the actual assessment of rental value for fixation of municipal rates is to be taken into consideration and not ''safely committed value'' and that is why there is over-payment of H.R.A. to the Petitioner ; that the certificates shown cannot be treated as municipal document, nor has it any relation with the municipal assessment.

29. The Petitioner in his reply to the supplementary affidavit filed on behalf of the Respondents claimed that the Government of India, Finance Department, Memo No. P-2(37)-Eii(B)(4) GINEON No. F 11012/3E/ll(B)/75 dated April 26, 1975, in respect of H.R.A. with effect from April 1, 1976. This fact was not shown to the Internal Audit Check-up Party by the Respondents purposely and with ill-motive during pendency of the enquiry proceedings ; that the decision to effect the deduction of Rs. 500 per month is illegal. and arbitrary inasmuch as the Petitioner ought to have been accorded an opportunity of hearing before the decision to the effect that deduction of Rs. 500 from monthly salary was passed. The aforesaid decision, according to the Petitioner, involved consequences. It is clear that the I.C.M.R. is under the control of Government of India (Annex. XX and Annex. XX(2)) where it reads "The centre was advised to send a debit bill to A.G.C.R."

30. In accordance with revised procedure and effect the recovery at an early date. In reply to objection raised by the Auditor from the Head-quarter Office of I.C.M.R., it has been stated by the Respondent No. 3 that Debit Bill has been sent to A.G.C.R. 31. The Petitioner claimed that the quarterly tax receipt of the said Municipality did not contain Annual Valuation of the house, but it probably reflected that the tax was fixed on the basis of the Annual Valuation of house for municipal purposes. Therefore, nothing was kept secret and the Petitioner provided the genuine tax receipt documents for approval of H.R.A.

32. In reply to the supplementary affidavit of the Petitioner, the Respondents Nos. 2 to 6 stated that although the H.R.A. was allowed to be drawn by the Petitioner on the basis of the Certificates issued by the Chairman, Garden Reach Municipality, but during the course of Audit Check, the Audit Party raised objection to the effect that no house rent was admissible on the basis of the Certificates issued by the Municipality and the Petitioner was asked to produce monthly rental valuation certificate for current year, but, the Petitioner submitted again the Certificate issued by the Municipality stating that the rental value of the premises may be safely committed @ Rs. 250 per month and in spite of specific demand to produce monthly rental valuation certificate of the Municipality and the property tax payment receipt, the Petitioner intentionally

withheld such documents. Respondents further took up the stand that by Memo No. O & H/7/74-OT.II dated September 23, 1975, issued by Director-General of I.C.M.R. by which the Governing Body of the I.C.M.R. in exercise of power conferred upon it by Rule 39 of the Rules, Regulations and Bye Maws of the Council decided to delegate further the power. The said Memo, provides that powers of making the appointment to posts under the I.C.M.R. in the Director-General for Class-I is the appointing authority, the pay-scale of which did not exceed Rs. 1800 and that at the relevant time the Petitioner''s pay-scale was Rs. 1200 to Rs. 1700 and, as such, his appointing authority is the Director-General under Rule 42 of the I.C.M.R.''s Rules.

33. Before I enter into the merits of the case, it is necessary to examine the challenge of Respondents that the I.C.M.R. being a Society registered under the Societies of Registration Act, 1860, does not come within the ambit of Article 12 of the Constitution.

34. Mr. R. N. Mitra, the learned Counsel appearing for the Respondents duly assisted by Mr. Madan Mohan Mullick, referred to various objections as raised in supplementary affidavit solemnly affirmed on July 22, 1988. The said objections were specifically taken in the said supplementary affidavit relating to control instrumentality and funding sources. The objections taken in the said supplementary affidavit along with the copy of the judgment of this Court. F.M.A. No. 252 of 1979 was placed in details by Mr. Mitra before this Court.

35. Mr. Ganguly, the learned Advocate appearing for the writ Petitioners, while dealing with the said objections touching the question of control instrumentality and funding sources of I.C.M.R. claimed and contended that the Executive Committee of I.C.M.R. which runs the organisation consists solely of the Government Officials as provided in Rule 40 of the Rules and Regulations of the I.C.M.R. 1977; that the powers and functions of the Executive Committee are set out in the Bye-laws of I.C.M.R. as contained in Annex. A to the supplementary affidavit-solemnly affirmed by the Petitioner on August 17, 1988 ; that the Account of I?C.M.R. shall be maintained by the Director-General and audited by the Controller and Auditor-General of India as mentioned in Rule 40 of Rules and Regulations of I.C.M.R. Rule 63 of the Rifles and Regulations of I.C.M.R. was also referred to. The said Rule 68 provided that an annual report of the proceedings of the I.C.M.R. and of all work undertaken during the year shall be prepared by the Governing Body for the information of the Government of India and of the members of the Council. Rule 68 of the Rules and Regulations of I.C.M.R. provided that no proposal for altering or amending or the objects and purposes for which the Council is established or for amalgamating the Council with any other Association or Society shall be taken into consideration as contemplated in Section 12 of the Act XXI of 1860 without the, previous approval of the Government of India.

36. Rule 45 of the Rules and Regulations of I.C.M.R. provided that the Bankers of I.C.M.R. shall be the State Bank of India. All funds shall be paid into I.C.M.R.''s

account with the State Bank of India and shall not be withdrawn except on a cheque signed by such officer of the Council as may be duly empowered in this behalf by the President and countersigned by the President or by an officer authorised by the President in this behalf.

37. The Ministry of Health and Family Welfare, Government of India, is the Ex-officio President of I.C.M.R. Bye-law No. 26 of the I.C.M.R. provides that the functions of the Auditor of I.C.M.R. shall be exercised by the Controller and Auditor-General of India or any person appointed by him in this behalf. Bye-law No. -28 of I.C.M.R. lays down that the Controller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the I.C.M.R. shall have the same rights, privileges and authority in connection with such audit as the Controller and Auditor-General of India has in connection with the audit of Government accounts and, in particular'', shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the officers of the Council. By-law 30 of the I.C.M.R. as also referred to and relied on provides that the accounts of the Council shall be subject to audit annually by the Controller and Auditor-General or by the person authorised by him in this behalf and any expenditure incurred in connection with such audit shall be payable by the Council to the Controller and Auditor-General. Bye-law 31 of I.C.M.R. provides that the accounts of the Council, as certified by the Controller and Auditor-General of India or by any other person appointed by him in this behalf, together with audit report thereon shall be forwarded annually to the Ministry of Health and to the Governing Body of I.C.M.R. Report of the Controller and Auditor-General of India for the year 1985-86 commented on the utilisation of fund of I.C.M.R. Relevant portion of the report is contained at p. 14 of the said supplementary affidavit as follows:

All India Institute of Medical Sciences blocking of funds due to non-installation of imported equipments by the Indian Council of Medical Research.

Blocking of funds due to non-installaion of imported equipments by the Indian Council- of Medical Research.

Thus, due to hick of proper planning, there was not only blocking of funds of Rs. 3.14 lakhs for more than 3 years in the case of the camera and Rs. 9.42 lakhs for more than 1 1/2 years in the case of collator machine but also non-utilisation of these costly imported equipments.

The main activity of the Indian Council of Medical Research, which was set up in 1912, is to promote medical research in a wide-range of disciplines in the various Medical Colleges and Research Institutes in the country. The Government of India finances the Council entirely which, in turn, gives financial support to a large number of research projects received by it in addition the Council has at present seven permanent Research Institutes/Centres.

The Indian Council of Medical Research which is an apex body in India entrusted with the task of promoting biomedical research in the country with a view to improving the health status of its people has intensified its efforts in recent years. A modified research strategy and plan of action have been launched consistent with the philosophy of bringing about a confluence between the various biomedical research programmes and the national health priorities. Active involvement of the scientific community has been ensured and in areas of priority concerning health problems; a Task Force approach has been adopted by developing time bound and specific goal-oriented research programmes together with an improved system of monitoring and evaluation.

The research priorities of the I.C.M.R. coincide with the national health priorities, viz. control and management of communicable diseases. Fertility control, promotion of material and child health control and prevention of Nutritional and major metabolic disorder and non-communicable diseases such as cancer, cardiovascular disease, blindness, diabetes, drug research (including the Traditional Systems of Medicine) and developing alternative strategies for health-care delivery system through the primary health care approach.

38. The I.C.M.R. is thus recognised by the Government of India as quasi-Institution under the Ministry of Health. The Government of India Performance Budget, Ministry of Health and Family Welfare, 1983-84, describes the I.C.M.R. as an instrumentality of the Government of India for promoting biochemical research in the country. This is the only organisation for promotion of the aforesaid research. Promotion of such research is an public interest and this institution enjoys a monopoly in the promotion of such research under the direct supervision, patronage and control of the Central Government.

39. Therefore, it is an agency or instrumentality of the Central Government which exercises deep pervasive and complete control over the activities. (As such, this I.C.M.R. is a State or other authorities within the meaning of Article 12 of the Constitution of India.) An extract of the relevant portion of the said Performance Budget is also contained in Annex. C to the supplementary affidavit. Bye- laws of I.C.M.R. governing the conditions of service of the employees provide that the Central Civil Services (Control) Rules and also the Classification Control and Appeal Rules of the Government of India will mutatis mutandis apply to the employees of the Council. The officers of the Indian Administrative Service and Indian Audit and Account Services are deputed by the Government of India in Indian Council of Medical Research in the post of Deputy Director-General (Administration) and Financial Adviser respectively to control the administration and finance of I.C.M.R. From I.C.M.R. Circular No. 32 of 1988 dated June 27, 1988, it appears that grant of non-practising allowance by I.C.M.R. to the Assistant Research Officer (Medical) is subject to the approval of the Ministry of Health. Thus, the I.C.M.R. is subject to the control of the Ministry of Health and Family Welfare of the Government of India. The said Circular is Annex. D to the said supplementary affidavit. The letter dated April 25, 1988, in that annexure and the letter dated ''April 5, 1988, are filed in the said supplementary affidavit

being Annexs. s. E and F respectively in support of the contentions made in sub-para, (o) of para. 6 of the said supplementary affidavit.

40. In my view, the Court should not be oblivious of the fact that the founding father of the Constitution, while engrafting the remedies meant for the citizens clearly departed from the principles of law as obtaining in England. Article 226 of the Constitution as it stands now does not exclude ''any person'' from its sweep and any person or authority appearing under Article 226 should not be construed rigidly. The expansive and extra-ordinary power of the High Court cannot be restricted, nor can be curtailed inasmuch as the amplitude of the said Article 226 indicates that it can affect any person and it might bind a private individual also but that not its the only point. The focal point on this aspect is that the High Court should be controlled by self-restraint but at the same time should not allow the meaning of any person appearing under Article 226 of the Constitution to be interpreted narrowly and rigidly. The materials placed before this Court clearly furnish the ground for treating I.C.M.R. an authority within the meaning of Article 12 of the Constitution, but the term ''any person'' should not be overlooked. Article 12 of the Constitution may cover any person or body performing public duty. What is the test to apply to find out any person or authority to be within the ambit of Article 12 of the Constitution ? The nature of duty imposed upon the authority or person is to be viewed from the angle of the legal perspective where any person affected by an action of, any other authority can ask for judicial interdict or mandate on the ground that the positive obligation is required to be'' discharged by any other person or authority to the person adversely affected. When the right of the person in the instant case the Petitioner is affected by I.C.M.R., the Court is bound to take into account the public duties performed by I.C.M.R., say for instance the I.C.M.R. in the instant case is required to discharge positive obligations. No better power can be imposed upon the Court, nor do the Court suffer from any constraint and limitations in the cases where enough materials are available for treating a particular organisation or institution as an authority or any person. The High Court can issue directions, orders of writs other than the prerogative writs. I.C.M.R. has positive obligation to discharge, and it cannot be permitted to take up the plea that it does not come within the reach and ambit of Article 12 of the Constitution on the ground as are advanced by Mr. Mitter. This Court would not have discussed on the aspect of any person appearing in Article 226 of the Constitution of India since Mr. Mitter referred the Vasandi''s case which is clearly distinguishable in the facts of the case, it is fit and proper for this Court to find out the tests found by the Supreme Court in various decisions which apply here also. The plea of the Respondents and the decision of the Division Bench of this Court are inapplicable in the facts and circumstances of the case. The term ''authority'' appearing in Article 226 should not be given restricted and narrow meaning thereby and abruptly Article 12 of the Constitution. Although test is applicable to the facts of the case inasmuch as I.C.M.R. is an authority within the meaning of Article 12 of the Constitution of India. Seventh Five Year Plan, 1985-86-90, Vol.11, issued by the Government of

India, Planning Commission shows that I.C.M.R. is an agency instrumentality of the Government of India on medical research. Relevant portion pf the said Plan is contained in Annex. G to the supplementary affidavit is as follows:

Medical Research: Medical research covers a broad spectrum of discipline, from basic work at the frontiers of modern biology to innovations for ensuring the most effective application of available knowledge. Medical research, is carried out principally under the auspices of the Indian Council of Medical Research (I.C.M.R.). A detailed account of the work done under the I.C.M.R. is given in Chapter 17-A.

The Indian Council of Medical Research would continue to play a pivotal and coordinating role in medical research.

The Indian Council of Medical Research (I.C.M.R.) is the apex body for the formulation, coordination and promotion of biomedical research. The programmes are implemented through its permanent research institutes centres of advanced research, research units, national multi-centric co-ordinated research programmes and research that it supports in institutions and universities. The research priorities have been identified according to the national health priorities, viz. control of communicable diseases (tuberculosis, leprosy, malaria, filariasis, cholera, typhoid and other enteric disorders virus diseases).

41. It is emphatically reiterated by Dr. Ganguly in denial of the paras. 2(a) and (b) of the said supplementary affidavit. I.C.M.R. is an apex body for the formulation co-ordination and promotion of biomedical research and is recognised by the Planning Commission, Government of India, in the Seventh Five Year Plan and also the department of Health and Family Welfare, Government of India, ant the department of Health and Family Welfare" recognizes this as a quasi-Government institution and the said quasi-Government institution is fully controlled by the Ministry of Health and Family Welfare, Government of India, and it is also effectively denied that the Government of India will not take special interest in the said organisation, that the official members of the organisation are not public servants. They are public servants within the meaning of Section 21 of the Indian Penal Code and they are governed by the provisions of the said Rules.

42. After pleading all the relevant paragraphs Mr. Ganguly referred to para. 10 of the said supplementary affidavit in support of the contention and also relied on the rules and regulations and bye-laws of I.C.M.R. It is clear that I.C.M.R. is under the complete control of Government of India. No amendment of the aims and objects of I.C.M.R. can be made without the previous approval of the Government of India. The amendment of the Rules and Regulations would involve the participation of the members of the Governing Body in which the vast majority of the members are representatives of the Government and, as such, the amendment, if approved, would mean the approval of the Government. The Executive Committee is entirely manned by the Government officials. Mr.

Ganguly further contends that the learned Council has no power to punish any of the officials. The entire jurisdiction of the Council over its employees is for the purpose of imposing penalties after following the statutory rules, namely, the said Rules, 1965, and according to Mr. Ganguly, it is within the ambit and reach of Article 12 of the Constitution. The application of entire fund of I.C.M.R. is under the control of the Government of India, which bears the entire financial burden.

43. Apart from that, Government has earmarked various amounts for the said organisation under Five Year Plans, copies whereof are annexed to the said supplementary affidavit. The entire functioning of the Executive Committee is controlled by the Central Government and I.C.M.R. is a State or an authority within "the meaning of Article 12 of the Constitution. Mr. Ganguly referred to the number of decisions in support of the contention, the ratio of judgment of Appeal Court annexed to the application has impliedly been overruled. The decisions cited by Mr. Ganguly are, inter alia, as follows: Ajay Hasia v. Khalid Mujib Sehravardi (Supra) '' and P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others,

44. After careful perusal of all the documents and/or the supplementary affidavit and counter-affidavits filed on behalf of the parties and the contentions of the rival parties. I am of the view that it is too late in the year 1989 tb contend the I.C.M.R. is not a State or authority within the ambit of Article 12 of the Constitution and, therefore, the writ jurisdiction of this Court can be involved in the facts of this case. The decisions cited by Mr. Mitra in the case of Sabhajit Tewary Vs. Union of India (UOI) and Others, '' and Tekraj Vasandi v. Union of India 988 (1) S.C. 236 '' inapplicable in the facts of the present case. The relevant portion of the judgment in Vasandi''s case is quoted below:

For appropriate consideration of the question whether I.C.M.R. is ''State'' within the meaning of Article 12 of the Constitution, it is necessary to look into the constitution of the body, the purposes for which it has been created, the manner of its functioning including the mode of its findings and the broad features which have been found by the Supreme Court in several decisions to the relevance in the matter of determining a dispute of this type. There cannot be a strait-jacket formula. It is not necessary that all the tests should be satisfied for reaching the conclusion either for or against holding an institution to be ''State''. In a given case some of the features may emerge so boldly and prominently that a second view may not possible. There may yet be other cases where the matter would be on the borderline and it would be difficult to take one view or the other outright. A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experience in view -so as to reach a responsible conclusion.

The I.C.P.S. is neither an agency nor an instrumentality of the State so as to come within the purview of ''other authorities'' in Article 12. I.C.P.S. is a case of its type -- typical in many ways and the normal tests may perhaps not properly apply to cost its character. It was born out of a feeling that there should be a voluntary association mostly consisting of Members of the two Houses of Parliament with some external support to fulfil the objects which were adopted by the Society. Services of some of the employees of Parliament were lent to the Society. But while Article 12 refers to Parliament as such, a few Members of Parliament cannot be considered as Parliament so as to constitute that body as referred to in Article 12. Individual Members of Parliament and the corporate body known as Parliament are certainly two different concepts. The Speaker and the Ministers who joined as Vice-President of the Society were there in their individual capacities and not as Ministers, though designations were indicated. In the category of Vice-Presidents, Executive Chairman, Treasurer and members, there were many people who were recalled not a part of Government as such and some of them did not belong to Parliament. The objects of the Society were not related to Governmental business but were related to the aspects which were expected to equip Members of Parliament and the State Legislature with the requisite knowledge and experience for better functioning. Many of the objects adopted by the Society were not confined to the two Houses of Parliament and were intended to have an impact on society at large.

The accounts of the Society are separately maintained and subject to audit in the same way a the affairs of societies receiving Government usually impose certain conditions and restriction when grants are made.

No exception has been made in respect of the Society and the mere fact that such restrictions are made is not a determinative aspect.

The Appellant also failed to establish that in the functioning of the Society there is deep and pervasive control of Government. Though the Minister has tried to exercise his authority as the controlling department of Government in the matter of making the grant but that itself may not be a conclusive feature.

In a Welfare State Governmental control is very pervasive and, in fact, touches all aspects of social existence. In the absence of a fair application of the tests to. be made, there is possibility of turning every non-governmental society into an agency or instrumentality of the State. A Society registered under the Societies Registration Act may be treated as ''State'' if either the governmental business is undertaken by the Society or what is expected to be the public obligation of the State is undertaken to be performed as a part of the Society''s function. Such is not the position here.

45. I.C.M.R., therefore, satisfies almost. all the aforesaid tests in order to become a ''State'' or authority within the meaning of Article 12 of the Constitution of India. The Division Bench of this Court is mainly confined to the question as to how I.C.M.R. is brought into existence but the functional aspect has not been considered by the Division Bench.

46. Apart from above, the decision of the Supreme Court in P. K. Ramachandra Iyer v. Union of India is binding upon me, the aforesaid decisions considered the

case of Shabjit Tewarl v. Union of India (Supra) '' and observed the ratio of Shabjit Tewari''s case is considerably watered down so as to be a decision confined to its own facts. It is also held in P. K. Ramachandra Iyer v. Union of India''(Supra) '' that the Indian Council of Agricultural Research and its affiliate Indian Veterinary Research Institute are such other -authorities as would be comprehended in the expression ''other authority'' in Article 12 of the Constitution of India. There is little doubt that I.C.M.R. is an instrumentality of or the agency of the State. Therefore, the writ petition against same is maintainable. The decision in Ramchandra Iyer is in any view squarely applicable in the facts and circumstances of the present case.

47. I.C.M.R. came into existence as a department of the Government, continued to be an attached office of the Government even though it was registered as a Society under the Societies Registration Act and wholly financed by the Government and the taxing power of the State was invoked to make it financially viable and to which independent research institutes set up by the Government were transferred. Thus, I.C.M.R. being almost an inseparable adjust of the Government of India having an outward form of being a Society, it could be styled as a Society set up by the State and, therefore, would be an instrumentality'' of the State.

48. The reliance, therefore, placed by the Respondents also on the judgment reported in Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, is of no assistance to Respondents. The decision in Tekraj Vasandi''s case (Supra) '' is presented the peculiar features of constitutional and Parliamentary Studies (for short I.C.P.S.). I.C.P.S. is a voluntary organisation (para. 15 p. 479) of the said judgment. The objects of I.C.P.S. are not governmental business (para. 17, p. 480). The learned Judges of the Supreme Court found that there is no deep and pervasive control of the Government (para. 12, p. 480). On these features, Supreme Court came to the conclusion at para 20, p. 481 that I.C.P.S. is a case of its type and typical in many ways and the normal tests may perhaps not apply. The decision, therefore, in my view, cannot be applied in the facts of the instant case inasmuch as I.C.M.R. satisfies all the tests in terms of Article 12 of the Constitution.

49. Mr. Ganguly while arguing the matter referred to the supplementary affidavit showing the performance budget of Government of India (1972-73) in the department of Health at p. 16 of the affidavit. Page 20 of the affidavit refe''rred to in the year 1983-84 than Mr. Ganguly referred to page 19 of the said affidavit showing that I.C.M.R. has the status of a quasi-Governmental Institution. The Executive Committee of I.C.M.R. which funs the organisation consists solely of the Government officials. All the basic features bringing the I.C.M.R. within the ambit of Article 12 are present. In this connection, the attention of the Court is specifically drawn to Annex. G to the supplementary affidavit. Annexure C shows that under the Seventh Five Year Plan (1985-90) I.C.M.R. is considered'' a major organisation for carrying out medical research (p. 37) and it is treated as an

Apex Body for co-ordination promotion and formulation of biomedical research (p. 41). Mr. Mitra''s contention is mainly founded upon the decision of the Shabjit Tewari v. and Vasandi''s (Supra) '' cases. I am unable to accept the contention of Mr. R. N. Mitra for the reasons as indicated above. The materials on record shows that I.C.M.R. comes within the reach of Article 12 of the Constitution. In view of the aforesaid reasons, I overrule the fundamental objection raised by Mr. Mitra and hold that I.C.M.R. is amenable to the jurisdiction of the writ Court as it satisfies all the tests in order to be a State or authority within the meaning of Article 12 of the Constitution.

50. The preliminary objection of Mr. Mitra mainly founded upon the decision in case of Shabjit Tewari v. Union of India (Supra) and also I.C.P.S. namely, the Vassandi''s case (Supra) '' are not applicable to the facts and circumstances of this case. Many of the Government Institutions are funded by outside agency but real tests which would bring the I.C.M.R. within the reach of Article 12 of the Constitution, namely, control agency and instrumentality as laid down by the Supreme Court in case of Ajay Hasia v. Union of India'' (Supra) and P. K. Ramachandra Iyer (Supra) \\ The tests are wholly fulfilled.

51. In view of the findings reached, I am not in a position to uphold the preliminary objection as raised by Mr. Mitra during his oral submissions supplemented by written argument.

52. Let us now turn to the factual matrix as cast in the writ application. Mr. Ganguly assailed the charge-sheet as being vague and also Mr. Ganguly referred to the decision in Sewia Sing v. Stale of Rajasthan AIR 1986 S.C. 935 '' where the Court quashed enquiry proceedings. The charge-sheet, namely, Articles of Charge without being supported by list of witnesses by whom the Articles of Charge are proposed to be sustained and no witness in support of sustaining the charges was produced. The proceeding, therefore, commenced, continued and commented in contravention of various submissions of Rule 14 of the said Rules. In particular, Rule 14 of the Central Civil Services are quoted below:

14(3):Where it is proposed to hold an enquiry against a Government servant under this rule and Rule 15, the disciplinary authority shall draw up or cause to be drawn up -

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviors in support of each article of charge, which shall contain -

(a) a statement of all relevant facts including any admission or confession made by the Government servant ;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

14(6):The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority -

(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour ;

(ii) a copy of the written statement of defence, if any, submitted by the Government servant ;

(iii) a copy of the statements of witnesses, if any, referred to in Sub-rule (3) ;

(iv) evidence providing the delivery of the documents referred to in Sub-rule (3) to Government servants ; and

(v) a copy of the order appointing the ''Presenting Officer''.

53. Mr. Ganguly also referred to and relied on Rule 14(3)-(b), Rule 14(4) of the said Rule. The Petitioner was also denied the opportunity of cross-examination of witnesses. It is also an admitted position that no witnesses were examined in support of the charges during the course of the enquiry proceeding. In paras. 28, 35 and 41 of the supplementary affidavit affirmed by Dr. Ghosh on March 28, 1988, the Petitioner high-lighted that throughout the proceeding, the Petitioner asked for examining the witnesses specially two Administrators of the said Municipality and the Accounts Officer. The stand of the Enquiring Officer as not calling those officers as stated is seriously assailed by Mr. Ganguly. The Petitioner also asked for calling the Accounts Officer or Internal Auditor to prove the Internal Audit Report. Mr. Ganguly referred to pp. 55 to 62 of the affidavit. Mr. Ganguly seriously assailed that the Enquiring Officer accepted the contention of Mr. Ghosh at the initial stage as valid. Ultimately, the audit party was not called on the ground that the report of the audit party was not to be taken into account in the enquiry. The Presenting Officer was Mr. D. K. Guha who summed up the case of the prosecution by saying that the entire enquiry commenced by the Internal Auditor of the I.C.M.R. (p. 66 of the affidavit). The report of the audit party was, in fact, the foundation of the case of issue of charge-sheet. The persons who made the report were not examined or Accounts Officer was not examined. No reliance could be said on the report. It is also contended by Mr. Ganguly that preliminary investigation or fact-finding/finding enquiry was held prior to the issue of Article of Charge. Directions were given to Sri D. K. Guha, the Administrative Officer, to initiate preliminary investigation in the office of the said Municipality and correspondence was exchanged. No copy of the said preliminary enquiry report was made available to the Petitioner despite his written protest was lodged. Non-supply of preliminary enquiry report as referred to by Sri D. K. Guha, the Presenting Officer, on June 4, 1977, amounts to failure of the Respondents to observe the rules of natural justice constituted complete departure from essentials of fairness and denial of the principles of natural justice. The entire enquiry was vitiated by administrative bias.

54. During the pendency of the disciplinary proceedings before the establishment

of charges whether the Petitioner had overdrawn the amount of H.R.A., the I.C.M.R. itself by an order dated December 21, 1977, decided that the Petitioner withdrew an excess amount as H.R.A. and decided to recover the same by monthly instalment. The entire issue, according to Mr. Ganguly, was prejudged and nothing was left out, that the Petitioner unnecessarily was victimised for his activities as the officer of the Association.

55. In para. 21 of the affidavit-in-opposition of Dr. S. C. Pal, there is no specified denial of the averments made in para. 19 of the writ petition. It appears very clear that the authors or writers of the documents were not examined and the Petitioner was not given any opportunity of cross-examination of the authors or writers of the documents, which were marked Exs. ''M series'', ''D series'' and ''P series'' by the enquiry officer only on July 21, 1977, i.e. after close of the enquiry proceedings that took place on June 4, 1977. The Presenting Officer instead of presenting the case of the management produced the documents and explained the same. It is well-settled that the Evidence Act is not applicable in the disciplinary proceedings conducted by the disciplinary authority or the Tribunals. The disciplinary authority or the Tribunals or the Enquiring Officer is required to observe the rules of natural justice while conducting the proceedings. The Petitioner was denied the opportunity of cross-examining the authors and writers of the documents subsequently marked exhibits. The said documents were marked exhibits on July 21, 1977 without giving any opportunity to the Petitioner to have his say in the matter. In this context, para. 14 at p. 35 of the supplementary affidavit is quoted below:

I request to the Inquiring Authority that the evidence of the two Administrators of the Garden Reach Municipality who had made written statement be recorded in person and the Inquiring Authority was kind enough to mention that he will examine the possibility. I am very much interested to get the evidence from the two Administrators and interested to know what is present position regarding their evidence in person as this is very vital. I request the Inquiring Authority to adjourn the inquiry further pending the evidence of the Administrators of the Garden Reach Municipality.

That the Director-General, I.C.M.R., has ordered for recovery of alleged overdrawn H.R.A. while this inquiry on that issue is going on, should be indicated at the outset. In this connection.

The Memorandum issued to me the Director, Cholera Research Centre (vide letter No. 14-5/71-CR dated January 28, 1977, issued to me on 2/2/77) and my reply may kindly be introduced.

The Inquiring Authority has not initiated what effort has been made to get the evidence of the two Administrators who were the key persons in this issue, though the Inquiring Authority had kindly agreed to it initially. It appears that no attempts have been made so far.

In my opinion, the Inquiring Authority is the right authority to request two

Administrators of the Garden Reach Municipality to put their evidences by person. However, no correspondence has been made in this connection by the Inquiring Authority to the Administrators, on the contrary, I was asked to present witnesses before the Inquiring Authority.

Neither the Director-General, in response to my statement of defence (vide my letter No. AKG/DG-/HRA/76 dated June 17, 1976) nor the Presenting Officer on behalf of the Council have submitted any evidence which of my documents are false. Therefore, how the charge of misconduct and misbehaviour comes in ?

It appears that the Council requisition against me rests on two tenets:

(A) Report of Internal Audit Party (1975)

(B) A certificate from the Administrator, Garden Reach Municipality, dated 27/1/76.

I like to request again the Inquiring Authority to write to two Administrators of the Garden Reach Municipality to be present for submitting their evidences in this connection.

From the certificate introduced as evidence today (10/2/77) it appears that some certificates state the non-practising allowance allowed while other do not. I hereby instruct the Presenting Officer to produce a tabulated statement regarding basic pay, non-practising allowance and the H.R.A. drawn by Dr. A. K. Ghosh from time to time.

Dr. Ghosh had made a request that the two Administrators who have made written statements be asked to present their evidence in person. I have, examined the two certificates given by the Administrators.

Dr. Ghosh, I have already given a ruling regarding the need or otherwise for calling two Administrators for giving their evidence.

The Presenting Officer is hereby, instructed to produce these documents to the Inquiry Officer by the 8th April, 1977, so that -a copy of each document can be sent to Dr. Ghosh. The next hearing will be at 10.30 a.m. on the 15th April.

You had also requested in your letter of 7th April that the Internal Auditor may be called in to prove the records. I have noted your objections regarding the validity of the Internal Audit Party report and will take this into consideration in submitting the final report.

The Internal Audit Report does not form a part of the Presenting Officer''s case. I do not need this document for the presentation of my case. The case can be decided on the basis of other documents supplied so far.

I would like to ask the Presenting Officer whether he accepts this document to be of evidentiary value, and if it is so, the Accounts Officer be presented in person. Otherwise, I cannot accept this document as evidence for defending my case properly.

Mr. Guha: As I referred to earlier in the first proceedings of the present enquiry, the inquiry into the H.R.A. claim of Dr. A. K. Ghosh arose from the comments made by the Internal Auditors of the Council. The comments of the Auditors were communicated to Dr. A. K. Ghosh by a Memorandum No. 22-2/64-CR dated 30/9/75. He was specifically asked by the said Memo, to submit the gross rental value of his house as assessed for municipal purposes. However, Dr. Ghosh did not supply the information asked from him. Then we made preliminary investigation into his claim of H.R.A. Accordingly, we addressed a letter to the Secretary, Garden Reach Municipality, on 27/10/75 and this reference was made by Dr. Ghosh in his second evidence. As desired in the letter, the Secretary of the Municipality supplied the relevant extracts from their Assess- ment Register of the gross annual rental value of the house owned by Dr. Ghosh. These have been submitted to the Inquiring Authority.

But this cannot be taken as evidentiary value for reasons:

(i) the original were not produced, (ii) no witness was called to prove the records,

(c) On report of the Internal Audit Party - the documents were not proved and prosecution has stated that he does not want to use this to prove the charges. Strangely enough, the Presenting Officer (Prosecution) opened his sum-up statement with the Internal audit Report to substantiate his charges.

56. The Petitioner specifically raised the objection of bias of the Inquiring Officer and unauthorised act of the Director-Geneeral The Petitioner in his reply to the show-cause notice by his letter dated October 6, 1978, pointed out the incurable infirmities that crept in the proceedings. The said infirmities were specifically stated in paras. 2(1) and 2(2) and the basic objections contained in paras. 4, 5, 6, 7, 8, 9 and 10 of the said representations.

57. Mr. Ganguly assailed the enquiry proceedings the enquiry report and the impugned order by contending, inter alia, is as follows:

Serious charges against Respondent No. 5 herein were raised before the concerned Authority and also before Respondent No. 5. It is unfortunate that Respondent No. 5 did not file any affidavit-in-opposition. Hence all the allegations made against him go unchallenged. The said objections were effectively recorded in many of the representations in the writ application as also in the supplementary affidavit. It is also one of the grievances that none of the documents were marked exhibits during the course of the enquiry proceedings. It is also recorded in the said representation dated September 15, 1978, that Exs. 1, 3, 4, 5, 6, 8 and 9 as mentioned in the report were never supplied to the Petitioner by the Enquiring Authority, nor were the same received by the Petitioner from any other competent authority.

58. On October 6, 1978, as referred to in para. 16 of the writ application, the Petitioner made representations. The said representation was also a part of the present proceeding. A number of exhibits exhibited by the Inquiring Authority

were never supplied to the Petitioner by the competent authority.

59. The Presenting Officer produced documents as documentary evidence before the Inquiring Authority without any witness being examined on behalf of the Department. Internal Auditor was not examined, but the report made by the Internal Auditor was relied on. Respondent No. 5 conducted the enquiry in violation of various provisions of Rule 14 of the said Rules. Such grievances were raised specifically by the Petitioner. The said grievances are summed up as follows:

(a) Inquiry Authority did not inform Dr. Ghosh about the nature and particular of charges against the Petitioner before institution of the Inquiry in spite of Dr. Ghosh''s request thereby natural justice was denied to Dr. Ghosh (Inquiry Report);

(b) The Petitioner did not only insist upon the Presenting Officer for the production of original documents upon which the charges were framed against him and other relevant documents, but also the Petitioner categorically objected to the acceptance of the documents. The objection of the Petitioner was overruled;

(c) Inquiry Authority prevented the Petitioner from inspecting the records to prove the documentary evidence upon which the charges were framed. The Petitioner turned down several requests of Dr. Ghosh for calling the witnesses;

(d) Inquiring Authority did not record the several vital oral evidences of the Petitioner (as in the proceedings of the inquiry) in the Report of the enquiry (Proceeding Inquiry, p. 7, para. 3, p. 8, para. 6, p. 9, para. 8, p. 10, para. 11, p. 11, para. 14, p. 13, para. 15, p. 14, para. 16, p. 15, para. 17, para. 19).

60. The procedure followed in the matter of conducting the inquiry is illegal, irregular and in violation of the Rules. Bye-laws of the Council which include the said Rules. Moreover, the Inquiring Authority erred grievously in drawing his conclusion in the Inquiry Report. The Petitioner''s several important oral evidences supported by the documents although recorded In the proceedings were not considered and totally ignored by the Inquiring Authority. The Petitioner was not permitted by the Inquiring Authority to examine/cross-examine the witnesses, i.e. the authors and writers of the documents submitted by the Presenting Officer in support of the sustaining charges.

61. Inquiry report was furnished to the Petitioner after more than one year from the date of conclusion of enquiry proceedings. Three documents were supplied on request amongst the complete set asked for after furnishing of the enquiry report, as a result, the Petitioner was denied a reasonable opportunity of defending the case.

62. The main grievance of the Petitioner apart from the other infirmities as clearly pointed out is that the Inquiring Officer failed to act in compliance with the provisions as contained in Rule 14 and its sub-Rules of the said Rules. Rule

14(3)(b) of the said Rules which require that the list of witnesses by whom Article of Charges are proposed to be sustained should be followed inasmuch as the said provisions of Rule 14(3)(b)(ii) should be observed without any departure and the said provision is mandatory in character. Such non-compliance not only constituted the violation of the rules of natural justice, but also amount to denial of a reasonable opportunity.

63. Violation of Rule 14(3)(b)(ii), namely, that the documents were sought to be proved without any witness constituted a procedural impropriety. In such a situation, the Court is required to examine whether the documents could be exhibited without the authors or writers of the documents being produced. It is an admitted position that the Petitioner asked for the copies of the documents and lodged his objection that the preliminary investigation which was referred and relied on by Sri D. K. Guha on June 4, 1977, was held behind his back. The Petitioner till the disclosure of the documents pertaining to preliminary investigation did not know the name of the person. Mr. D. K. Guha contacted the Municipal Authority for acceptance of certain facts and reports made to Dr. S. C. Pal by Sri -D. K. Guha.

64. The Petitioner repeatedly asked for examination and cross-examination of the Accounts Officer, I.C.M.R., Internal Audit Party who could speak about the audit report. The Presenting Officer claimed that Internal Audit Report did not form part of the Presenting Officer''s case and further observed, "I do not need this document for the presentation of my case". The case can be decided on the basis of other documents supplied so far. The report of the Internal Audit Party ought not to have been taken as a document of any evidentiary value unless the Accounts Officer of the Internal Audit Party could speak about it.

65. The Petitioner was not given 48 hours'' time for the purpose of summing up his case. It appears from the records of the case that Mr. D. K. Guha being the Investigating Officer could only offer himself as a witness not as a Presenting Officer. It appears that Dr. S. C. Pal asked Mr. D. K. Guha, Administrative Officer, to investigate into this matter. It further appears that the Director went on making correspondence with the Secretary of the said Municipality in respect of the matter which ultimately culminated in the issue of the charge-sheet against the Petitioner.

66. It is appropriate for this Court to present a skeletal narration of the notes put by Sri D. K. Guha, the Administrative Officer.

66(a). Mr. M. M. Mallick, submitted an affidavit of document affirmed by Sri Narayan Chandra Adhikary on January 12, 1989. The important aspects as would appear from the affidavit -are as follows:

66(b). Dr. A. K. Ghosh, the Assistant Director, has addressed a D.O. letter to the Administrative Officer in his official capacity. The letter is placed below. Dr. Ghosh in the letter desires to know the following:

(1) Rules related to general terms and conditions of appointment of I.C.M.R. Officers for the post of R.O., S.R.O. (Cadre) and A.D. in a permanent institute.

(2) Latest I.C.M.R. Conduct Rule.

(3) Delegations of power of A.D.

66(c). The above items mentioned relate to the administrative matters pertaining to the rank of R.O. and also the appointing authority of which is the Director-General of the Indian Council of Medical Research. In fact, the letter by which the Assistant Director wants to know the items at SI. Nos. 1 to 3, should have been addressed to the authority higher in rank than that'' of the Assistant Director or to the appointing authority itself and not to a person much lower in rank. If Director agrees, the draft letter placed below may be issued.

66(d). Si. Nos. 4 and 5 were removed from the file No. 22-2/64. A certificate issued by the Secretary, Garden Reach Municipality, regarding the ''safely committed'' rented value, for the purpose of rental value. Auditor from the Head Quarters raised a question that ''safely committed'' rental value is not to be taken into consideration. It is the rental value, as assessed for municipal purposes, will have to be takes into consideration and, accordingly, made their note on internal test check.

66(e). The Secretary, Mr. Sheik Mohammad Allauddin, informed on phone that the issuance of the certificate appeared to be doubtful as no certificate was issued showing the ''rental value'' on monthly basis.

66(f). Dr. S. C. Pal directed Sri D. K. Guha to visit the Secretary, Garden Reach Municipality, Calcutta, on September 27, 1975, and make preliminary investigation.

66(g). Director: Some more papers have been traced and are placed in the file in the following manner:

SI. No. 3-A: A copy of the letter from Sri Abdullah, M.L.A., Chairman, Garden Reach Municipality. The letter seems to have been issued on December 23, 1964. Si. No. 8-A: A letter from the Director-General I.C.M.R. requesting to submit the details of accommodation with size of each rooms etc. in the Petitioner''s house, property- and tax receipt (in original).

SI. No. 12: As instructed by the Director, the letter at SI. No. 12 has been personally handed over to the Secretary, Garden Reach Municipality, by me. The Secretary after going through the contents of the letter, issued from their Assessment Register two copies of each five yearly assessment review of the years, 1966-67 to 1970-71 and 1972-73 to. 1976-77, the annual assessment value for the reviewing periods being Rs. 260 and Rs. 290 respectively. The copies have been placed in file.

SI. No. 6: Regarding the certificate submitted by Dr. A. K. Ghosh from the Vice-Chairman of the Garden Reach Municipality on the ''safely committed'' rental value. Submitted to the Inquiry Officer.

66(h) Documents cannot be marked at random without having the author or the writer of the documents who should have been produced for the examination and cross-examination of the witnesses.

67. It is, therefore, clear that Mr. D. K. Guha pursuant to the direction given to him by Dr. S. C. Pal initiated the preliminary objection in the office of the said Municipality and correspondence was exchanged. No copy of the preliminary enquiry report which operated to the prejudice of the Petitioner was ever made available to the Petitioner as indicated below:

From a reference of the supplementary affidavit affirmed on March 28, 1988, it appears that" the Petitioner recorded an objection in the manner following:

You held a fact-finding enquiry at the office of the said Municipality against me, without informing me in any manner and in my absence, on the basis of which the charges of misconduct and misbehaviour with a proposal to take disciplinary action against me, appear to have been framed (Your ref. No. P-7 269)/53-Personnel dated June 2/5, 1976. In the premises, the entire proceedings are illegal and void.

It is further evident from the fact that the Director, Cholera Research Centre, has issued a Memorandum (No. 14-5/71-CR) dated January 28, 1977 to me, on your directive, informing that you have decided to recover Rupees sixteen thousand eight hundred nineteen and ninety five paisa allegedly paid in excess to me on account of H.R.A. during the pendency of the inquiry proceedings before Dr. Tripathi initiated at your instance and the said Dr. Tripathi having already held the inquiry on December 31, 1976 and January 17, 1977 and having adjourned the same to February 7, 1977, as the next hearing date of the said inquiry proceedings. While the matter whether the alleged excess amount is really excess is a subject-matter of inquiry by Dr. Tripathi, your interference in such matter is unwarranted and without jurisdiction as aforesaid.

It warrants serious comment that Mr. Gupta being the Investigating Officer in respect of preliminary enquiry was appointed as a Presenting Officer and, thereby, the right of the Petitioner to cross-examine Mr. Guha was denied. The Petitioner made a serious grievance on this aspect and claimed that the appointment of Mr. Guha as Presenting Officer operated to the prejudice of the Petitioner and the same was violative of the rules of natural justice and fair play in action.

68. In this connection, it may be referred that Mr. D. K. Guha held prior consultation with the Director in the matter of the holding of the enquiry. The Director before the issue of the charge-sheet duly participated in the matter by holding dialogue with the Investigating Officer and had correspondence with the Director-General who in his turn issued direction. It, further, appears that from the record, a draft letter to the Secretary, Garden Reach Municipality, was

prepared on the lines as revealed. From the records it appears that Mr. S. C. Pal, Director approved the draft. Dr. S. C. Pal himself participated in the preliminary investigation. Dr. S. C. Pal, Director, instructed Mr. Guha, the Presenting Officer, to hand over the letter to the Secretary, the said Municipality. It also appears that the Secretary, the said Municipality, after going through the contents of the letter issued from the Assessment Register two copies of each five yearly assessment review of the years, 1966-67 to 1970-71 and 1972-73 to 1976-77. The copies were duly placed in file. It appears from the said notes that regarding the certificate submitted by Dr. A. K. Ghosh from the Vice-Chairman, the said Municipality, on the ''safely committed'' rental value or submitted to the Inquiry Officer.

69. Therefore, both the Directors, Dr. S. C. Pal and Mr. Guha, participated in the preliminary enquiry. It has been seriously commented that Mr. D. K. Guha who all throughout acted as Investigating Officer and held discussion with Dr. S. C. Pal, Director, was appointed as a Presenting Officer so as to deprive the Petitioner of his right to cross-examine him. Further challenge of the writ Petitioner as effectively put forward by Mr. Ashoke Ganguly, the learned Advocate, that the entire enquiry stands vitiated by bias. During the course of the enquiry subject-matter of which is whether Dr. Ghosh had overdrawn the amount of H.R.A., the Council itself by an order dated December 21, 1977, decided that Dr. Ghosh had withdrawn excess amount as H.R.A. and also decided to recover the same by monthly instalment.

70. During the pendency of the enquiry, such decision as taken demonstrated that the entire issue was pre-judged and the enquiry proceedings has, thus, become fait accompli. The enquiry, according to the Petitioner, was vitiated by clear bias. Reference was made to the decisions of the Supreme Court in the following cases: Ranjit Thakur Vs. Union of India (UOI) and Others, Ashok Kumar Yadav and Others Vs. State of Haryana and Others, and S. Parthasarthi Vs. State of Andhra Pradesh, .

71. The Petitioner made a serious grievance about the refusal of the Inquiring Officer to call the Internal Auditor to speak about the audit report. It would appear from the records of the proceedings that the Respondent No. 5 duly recorded the request of the Petitioner in the manner following:

(1) Dr. Ghosh made a request that two Administrators who have made written statements be asked to present their evidence in person. I have examined the two certificates given by the Administrators.

(2) Dr. Ghosh, I have already given a ruling regarding the need or otherwise for calling two Administrators for giving their evidence. You have not so far given me any list of any other witnesses whom you would like to produce as witnesses on your behalf. Indeed, on the 10th. February, 1977, you had said that you had closed your defence. Nevertheless I wish to give you further opportunity to defend your case since you now express your desire to produce your witnesses at

a later date.

(3) The information required is in respect of (a) Rules of H.R.A. in existence in August 1964 and (b) any subsequent modification or new rules till the present date. The Presenting Officer is hereby instructed to produce these documents to the Inquiring Officer by the 8th April, 1977, so that a copy of each document can be sent to Dr. Ghosh. The next hearing will be at 10 a.m. on the 15th April.

(4) You had also requested in your letter of 7th April, that the Internal Auditor may be called in to prove the records. I have noted your objections regarding the validity of the Internal Audit Party Report and will take this into consideration in submitting the final report.

72. The Inquiring Officer further recorded on June 3, 1977, that the Petitioner in his letter dated May 30, 1977, stated that he would let Accounts Officer be present the person to prove the records and to help him in defence. Mr. Guha who initially acted as Investigating Officer, while discharging his function as the Presenting Officer recorded that the Internal Audit Report did not form part of the Presenting Officer''s case.

73. Therefore, it is clear that the Petitioner although took the stand the Internal Audit Report could not be taken into account without cross-examination of the Accounts Officer, but the Audit Party was not called on the ground as stated above. It is shocking and startling that the Presenting Officer while summing up of the case initiated in the manner following:

As I referred to earlier in the first proceedings of the present enquiry, the inquiry into the H.R.A. claim of Dr. Ghosh arose from the comments made by the Internal Auditor of the Council. The comments of the Auditor were communicated to Mr. Ghosh by a Memorandum No. 22-2/6-CR dated September 30, 1975. He was specifically asked by the said Memorandum to submit the gross rental value of his house as assessed for municipal purposes. However, Dr. Ghosh did not supply the information asked from him. Then he made preliminary investigation into his claim of H.R.A. Accordingly, we addressed a letter to the Secretary of the said Municipality on October 27, 1975, and the reference was made by Dr. Ghosh in his second evidence.

74. Preliminary investigation by the Investigating Officer in respect of the preliminary enquiry shows that even though the report of the Audit Party was instrumental in initiating the charge-sheet, the person who made the report were summerised before the Enquiry Officer and the Petitioner was deprived of an opportunity to cross-examine them. The Inquiring Officer as claimed by Mr. Ganguly failed to act fairly by not calling the Accounts Officer or the Internal Auditor.

75. The next contention of the Petitioner is that there was -violation of the provisions of Rule 14(18) of the said Rules. Mr. Ganguly, the learned Advocate for the Petitioner, referred to a decision of the Supreme Court in case of Sunil Kumar

Banerjee Vs. State of West Bengal and Others, '' with special reference to para. 3 thereof. In the said decision, the Petitioner duly examined and cross-examined as such no prejudice was caused, but in the instant case, the Inquiring Officer acted arbitrarily by not affording the Petitioner an opportunity of cross-examining the persons who are the authors or writers of the documents. The Petitioner''s stand is that the Governing Body is the Appointing Authority of the Petitioner, but dismissal of the Petitioner was effected by a lower authority, namely, the Executive Committee, taken by the Petitioner.

76. Mr. Ganguly further referred to Regulation 41 of I.C.M.R. Regulation. The said Regulation shows that the Executive Committee is the authority subordinate to the Governing Body. The order of dismissal not having been passed by the Appointing Authority, according to Mr. Ganguly, cannot be sustained.

77. The Notice dated September 2, 1978, and also the enquiry report were assailed on the ground, namely that the enquiry proceeding was not conducted in accordance with the rules of natural justice, which resulted in complete miscarriage of justice that the authors or the writers of the documents were not examined. Therefore, the reliance on the documents which were allowed to be let in by the Presenting Officer who acted as the Investigating Officer in full-fledged manner was not permissible under law on the ground of violation of rules of natural justice and absence of fairness. The enquiry report was perverse. The representation made by the Petitioner on September 15, 1975, was not at all considered by the concerned authority and the order of dismissal dated January 10, 1979, by the Executive Com- mittee by reasons of the inherent infirmities could not be sustained.

78. Since I have over-ruled the objection of the Respondents that I.C.M.R. not being a ''State'' within the meaning of Article 12 of the Constitution of India, is not amenable to the writ jurisdiction, it is not further necessary to dilate on this aspect.

79. Mr. Mitter duly assisted by Mr. Madan Mohan Mullick claimed that the Governing Body of the Petitioner is the appellate authority of the Petitioner ; that the Petitioner did not file any appeal to the appellate authority, though at interlocutory stage the appeal was filed before the appellate authority. The order of disciplinary authority was ratified by the Governing Body vide p. 59 of the affiavit-in-reply, but writ Petitioner did not challenge the order of the appellate authority and, as such, the writ Petitioner is totally misconceived. Even if such order has not been challenged the Court can take notice of the subsequent events to avoid multiplicity of proceeding to mould relief not to deny reliefs to the Petitioner on merely, technical and procedural grounds. The view taken by me finds its support from the decision in case of B.R. Ramabhadriah Vs. Secretary, Food and Agriculture Department, Andhra Pradesh and others, '' as cited by Mr. Ganguly.

80. Mr. Mitter also seriously joined the issue on the question of initiation of

proceeding. Mr. Mitter refers to the service career of the Petitioner and also referred to r. 39 conferring delegation of power of appointment of all Class I Officers to the Director-General. On June 2/5, 1976, when the Petitioner became the Assistant Director, power to appoint had already been delegated to the Director- General. Therefore, initiation of the proceedings by the Director-General was perfectly valid.

81. On the question of imposition of penalty Mr. Mitter claimed and contended that the Rules and Regulations of the I.C.M.R. are warranted to be taken into account. At that material time, the Executive Committee was empowered to impose penalty. Such power was changed from 1985. It is clear from the aforesaid facts that the charge-sheet had been issued by the Director-General, Enquiry Officer had been appointed by him ; penalty had been imposed by the Executive Committee at its 54th meeting while ratification was made by the Governing Body in its 49th meeting.

82. Mr. Mitter further made a frontal attack on the challenge of the writ Petitioner to the holding of the enquiry. According to Mr. Mitter, the enquiry was held validly, legally and bona fide that the Petitioner could not have any valid grievance as regards the enquiry held against him on any ground that the Petitioner was shown all the documents asked for by him. It was not necessary for the Inquiring Officer to examine any municipal witness. The municipal papers are public documents and the Inquiring Officer rightly admitted the same in evidence without formal proof. It was, further, claimed by Mr. Mitter that no evidence in rebuttal thereof was forthcoming from the side of the writ Petitioner. The Petitioner declined to examine the Municipal Officer. The Petitioner never made any grievance as regards the non-supply of documents and no ground was taken on this score and that the Petitioner had full knowledge of the Internal Audit Report. Exhibit D & (5) Append, (iv) were documents submitted by the Petitioner himself. In the supplementary affidavit it is averred that the copies that were asked for were duly supplied to the Petitioner. Despite the request made to the Petitioner, the Petitioner did not produce the municipal tax receipt. This was clearly an evasive method resorted to by the Petitioner. The Respondent obtained certified copies of the same and produced the same before the Inquiring Officer on the failure on the part of the Petitioner to produce the same.

83. Thereafter, Mr. Mitter referred to the fact that the Petitioner was acting in a planned and deliberate manner to make illegal gains stood averred by the certificates produced by him. The Petitioner did not produce the original municipal tax receipt. First certificate shows that the rental value of his house was Rs. 160 per month. This enabled him to draw H.R.A. as he was at that point of time drawing a salary of Rs. 510. The second certificate shows an enhanced rate of- rental value of Rs. 260. The rental value had to be enhanced by him to enable him to draw the H.R.A. as at that point of time he was drawing Rs. 720. Third enhancement had gain to be shown as at that relevant point of time his pay was Rs. 11,250. A further certificate showing enhancement of monthly rental

@ Rs. 450 was produced to enable him to draw the H.R.A. as his salary at that point of time was Rs. 1,650. This act of the Petitioner, according to Mr. Mitter, was intended to receive the H.R.A. to which he was not entitled; regard being had to the fact that his actual rental valuation was less than 10 per cent of his salary; that this could not be an act of accidental omission on his part and that is the reason he persistently refused to produce the tax receipt which would have been the best evidence in support of his claim of H.R.A. The internal audit merely pointed this out and did nothing more. The letter of the Administrator of the said Municipality did also rightly point out that the said certificates produced by the Petitioner were of no value.

84. At p. 52 of the supplementary affidavit affirmed by the Petitioner on March 28, 1988, it will be seen that the certified copies of the municipal records were produced as also true copy of the original audit report were produced and verified by the Petitioner. The Petitioner confirmed that he did not have any witness that p. 58 of the said affidavit reveals that other documents as asked for by the Petitioner were also produced ; that fullest opportunity was given to the Petitioner to defend himself. Relevant documents relied on by the department, according to the Respondents, were made available to him, that there was a full and fair enquiry and no objection on any score could possibly be taken by the Petitioner. Documents on which the enquiry was held and the charges was sought to be proved were all duly shown to the Petitioner.

85. The Petitioner did not ask for inspection of any other documents and the Inquiring Officer in his report considered only those documents and none other.

86. Mr. Mitter submitted that Mr. D. K. Guha, the Administrative Officer of the Institution, was asked to make certain enquiry in the Municipality Office and this had happened before an enquiry was even in contemplation and, as such, there was nothing wrong for Mr. Guha acting as a Presenting Officer; that he did not try to impart any personal knowledge into the proceeding; that he relied very fairly on the documents which had been produced by him before the Inquiring Officer. That it is clear from the above averments, made by Mr. Mitter, that though the Inquiring Officer was not required to follow the procedure of a Court of law, he had in fact strictly adhered to the provisions of the Evidence Act and that there had been no violation of the rules of natural justice and the Petitioner had been given fullest opportunity to defend himself.

87. In the background of the contentions of the rival parties, the central point that requires consideration is whether the enquiry was validly and legally commenced, continued and concluded and whether the enquiry report, the show-cause notice proposing punishment and the order of removal are valid, legal and improper.

88. To deal with this aspect, it is proper for this Court to examine (a) charge-sheet; (b) enquiry proceeding; (c) enquiry report and (d) show-cause notice.

89. It is appropriate for this Court to go in for a cat-scan of charge-sheet issued

dated June 6, 1976, and the show-cause notice dated September 3, 1978, proposing to impose punishment and the order of removal from service. It is an admitted position that the disciplinary proceeding was concluded in terms of the said Rules, 1965. Rules 14 and 15 and various sub-paragraphs of the said Rules are relevant for the purpose of determination of the challenge of the Petitioner as mentioned about enquiry. It appears from p. 3 of the Appendix that the signatures of the Petitioner and the Presenting Officer were not obtainers, but the Respondent No. 5 put his signature on July 21,1977. Page 3 of the Appendix of the original records shows that Mr. D. K. Guha, the Presenting Officer, submitted 23 documents as exhibits before the Inquiry Authority who marked them as exhibits only on July 21, 1977, i.e. six weeks from the date of close of the enquiry. Memorandum of charges forming the basis of the inquiry with Annexs. I, II and IV. Reply to the charges were treated exhibits. Exhibits Nos. P-9, P-10 and P-16 are not public documents. Twenty seven documents are treated as Exs. M series. The Respondent No. 5 signed the list of miscellaneous documents on July 21, 1977. Here also the Petitioner and the Presenting Officer did not sign the said list of miscellaneous documents.

90. Till July 21, 1977, i.e. six weeks from the date of close of the enquiry, the documents were not marked as exhibits in the presence of the Petitioner. The documents thus made exhibits on July 21, 1977, were treated as M series, D series and P series. Mr. Guha produced three documents as would appear from p. 26 of the supplementary affidavit affirmed on March 28, 1988 (for short the said affidavit hereafter). Copy of the proceedings of the enquiry was asked for, but the Enquiring Officer observed that the copy of the proceedings would be made available at the end of the enquiry.

91. Next session of the enquiry proceedings took place on January 17, 1977, when the Petitioner introduced certain documents in evidence. It was pointed out by Mr. Ghosh that no reference was made by the Director-General, I.C.M.R., received from the Director, Cholera Research Centre, nor did he receive any communication from them regarding on the statement of defence sent on June 17, 1976. The Inquiring Officer did not give any reply related to his aforesaid letter. Thereafter, Mr. D. K. Guha referred to the note made by Internal Audit from inspection of the record of the Cholera Research Centre that the Internal Audit Party did not mention about the drawing of the H.R.A. Charge No. 1 referred to the declaration made by the Petitioner in 1964 about the claim of H.R.A. The Petitioner did not get back the original rental receipt certificate issued by the said Municipality, nor did he receive any response to his letter dated October 22, 1975. A letter No. 1592 dated January 27, 1976, issued by the Administrator of the said Municipality was introduced by Mr. D. K. Guha. The Presenting Officer submitted the said letter of the Administrator would be taken into account.

92. It further appears from the said recording of the Minutes of proceedings on January 17, 1977, that the said letter was collected from the Administrator of the

said Municipality for giving evidence before the Enquiry Authority. Page 35 of the said affidavit shows that the Petitioner requested the Enquiry Officer that the evidence of the two Administrators of the said Municipality who made the written statement be recorded in person. The Petitioner further requested the Enquiry Officer that he was very much interested to get the evidence from the two Administrators and interested to know what was the present position regarding their evidence in person as this was very vital. The Petitioner requested the Enquiry Officer to adjourn the enquiry further pending the evidence of the Administrators of the said Municipality. It was submitted by the Petitioner before the Enquiry Officer on January 17, 1977, that the correspondence so far made with the Administrator of the said Municipality and the Enquiry Authority and the necessary reply, if any, received, if any from them be introduced.'' The Enquiry Officer further recorded as regards the request of the Petitioner that he would like the evidence of the two Administrators of the said Municipality be taken in person. It is further recorded in the Enquiry proceedings held on February 10, 1977, that the Director-Geaeral, I.C.M.R., has ordered for recovery of alleged overdrawn H.R.A., while this enquiry on that issue ''is going on'' should be indicated at the outset. Before Enquiring Authority, the Petitioner further claimed that a Memo was ussed to the Petitioner by the Director, Cholera Research Centre, (vide letter No. 14-5/71-CR dated January 28, 1977, and served on February 2, 1977) and his reply kindly be introduced. The Petitioner further pointed out before the Enquiry Authority that the Enquiry Authority had not intimated what effort had been made to get the evidence of the two Administrators who were the key persons in this issue, though the Enquiring Authority had agreed to it initially. The Petitioner further requested the Enquiring Authority that the two Administrators of the said Municipality be called for giving evidence, but on the contrary the Petitioner was asked to present witnesses before the Enquiring Officer.

93. It appears that the documents thus filed by the Presenting Officer without being exhibited were treated as Exhibits after the close of the enquiry proceeding, that is on July 21, 1977. It further appears that the Enquiry Officer directed the Presenting Officer to send copies of certain documents to the Petitioner which would be evident from the letter of the Presenting Officer addressed to the Petitioner.

94. During the course of the enquiry proceeding, the Enquiring Officer received a letter dated April 4, 1977, from Dr. S. C. Pal that the Enquiring Officer sent a letter dated December 31, 1976, to the Presenting Officer and the Petitioner to the following effect:

Dr. Ghosh, I have already given a ruling regarding the need or otherwise for calling two Administrators for giving their evidence.

95. From a reference to the said letter, it would be clear that Dr. D. K. Guha, the Presenting Officer, presented the evidence. The documents presented by the Presenting Officer bringing certain documents under different heads. Appendix VI

refers to miscellaneous documents. There were about 27 miscellaneous documents. The said documents were treated as Exhibits after conclusion of the enquiry, i.e. on July 21, 1977. Be it recorded in this connection that the enquiry was concluded on June 4, 1977, and the documents were exhibited after six weeks from the date of the close of the enquiry proceedings. A list of documents submitted by the Presenting Officer, who also presented the evidence, were treated as Exhibits after conclusion of the enquiry proceedings. The said documents were exhibited by the Respondent No. 5. It is, therefore, clear from the records that the documents tendered by the Presenting Officer were not exhibited during the course of the enquiry proceedings.

96. From the enquiry report, it also appears that Mr. D. K. Guha, the Presenting Officer, as also the Enquiring Officer departed from Rule 14(3)(ii)(b) of the said Rules which requires that there should be a list of witness/exhibits by whom and by which the Articles of Charges are proposed to be sustained. The Enquiring Officer in the instant case allowed the Presenting Officer to present evidence and accepted the statement of the Presenting Officer (p. 33 of the said affidavit) by allowing the Presenting Officer to act as witness. It is well-settled that a witness cannot be a Presenting Officer. Dr. D. K. ''Guha as would appear from the details mentioned above acted as an Investigating Officer and that fact was known to the authorities concerned including the Inquiring Authorities. Even then, the Disciplinary Authority appointed Mr. D. K. Guha to act as a Presenting Officer with a view to enable the Inquiring Authority to secure the reception of the documents from Mr. D. K. Guha as evidence in complete breach of Rule 14(3)(ii)(b) of the said Rules.

97. Mr. Mitter claimed that the role of Mr. D. K. Guha as the Presenting Officer cannot be criticised inasmuch as he presented the public documents. Such submissions of Mr. Mitter cannot be accepted. Despite repeated protests and representations of the Petitioner, the two Administrators of the said Municipality and the Accounts Officer were not produced for examination before the Inquiring Officer and, thereby, the Disciplinary Authority and the Inquiring Authority acted in breach of rules of natural justice and the course of justice was deflected."

98. Reference is made by Mr. Ganguly to the decision of the Supreme Court in the case of State of Uttar Pradesh and Another Vs. Sri C.S. Sharma, .

99. Dr. S. C. Pal who wrote letters to the said Municipality was not examined the two Administrators of the said Municipality as indicated above although repeated requests were made by the Petitioner and were not produced for examination and cross-examination. The Inquiring Officer without assigning any reason turned down the requests of the Petitioner. On this respect it may be noted that the witnesses by whom the Articles of Charges proposed to be sustained are to be produced before the Inquiring Authority. That requirement being mandatory in nature the prayer of the Petitioner for calling for two Administrators of the said Municipality as also the Accounts Officer of the organisation was rejected without assigning any reason to the prejudice of the Petitioner. The Inquiring Authority

while holding the enquiry was required compliance of Rule 14(14) of the said Rules.

100. Mr. D. K. Guha was the Investigating Officer and thereafter acted as witness (p. 33 of the said affidavit) and lastly acted as the Presenting Officer. The disciplinary authority and/or the Inquiring Officer ought to have allowed the Petitioner to have inspection of the documents which were relied on by the Presenting Officer. Relevant records pertaining to the preliminary investigation were relied on the Presenting Officer, but the Presenting Officer without producing the same referred to and relied on preliminary investigation on June 4, 1977, when the Presenting Officer presented the case. All the relevant papers relating to the preliminary investigation are annexed at pp. 65 to 70 to the affidavit of documents affirmed by Narayan Chandra Adhikari, the Administrative Officer of the said Institute, on January 19, 1988. Had the relevant reports been produced it would have established that Mr. D. K. Guha was incompetent to act as a Presenting Officer inasmuch as he combined himself into the role of (i) the Investigating Officer, (ii) Presenting Officer and (iii) witness. The documents that were exhibited by the Respondents during the proceedings, only after the close of the enquiry could not be acted upon, nor could be referred to and exhibited without giving the Petitioner an opportunity to cross-examine the authors or the writers of the said documents.

101. Reference is made to the decision of the Supreme Court in the case of State of Uttar Pradesh v. C. S. Sharma''(Supra) '' which clearly applies to the facts of the case. The deliberate rejection of the prayers of the Petitioner to examine the two Administrators and the Accounts Officer of the said organisation amounted to denial of reasonable opportunity which resulted in miscarriage of justice. It is true that the Evidence Act does not apply to the departmental proceeding, but the decision cited by Mr. Ganguly in the case of Bereilly Electricity Supply Corporation v. Their Workmen'' '' deals with the situation where the Court considered that the application of the principle of natural justice in the departmental proceeding vis-a-vis application of the Evidence Act. The learned Judges of the Supreme Court held in the manner following:

No doubt the procedure prescribed in the Evidence Act by first requiring his chief-examination and then to allow the delinquent to exercise his right to cross-examine him was not followed, but that the Enquiry Officer took upon himself to cross-examine the witnesses from the very start. It was contended that this method would violate the well-recognised rules of procedure.

102. The decision in the case of Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others, '' was referred to and relied on the decision of the Union of India (UOI) Vs. T.R. Varma, ''. The principles laid down in Bereilly Electricity Supply Co. v. Their Workmen fully apply in the facts of the case. I cannot but hold that the two Administrators of the said Municipality and the Accounts Officer ought to have been produced for cross-examination by the Petitioner so as to prevent the course of justice from being deflected by reason of the deliberate

refusal and/or rejection of the repeated prayers of the Petitioner for production of the two Administrators of the said Municipality and the Accounts Officer or the Internal Auditor. The Petitioner made a serious charge of bias against Respondent No. 5 as stated above. The charge of the Petitioner is that Respondent No. 5 acted with bias in not taking into account the irreputable charge that the Director-General, I.C.M.R., unlawfully has started recovering the amount by way of H.R.A. from the pay, allegedly overdrawn by the Petitioner which is the subject-matter of this enquiry. The said impugned action of the Director-General, I.C.M.R., has already rendered the ''Enquiry'' illusory. The said deduction of the amount from the salary of the Petitioner was effected during the pendency of the enquiry proceeding. The Petitioner raised his grievance before Respondent No. 5 that he expected a more impartial attitude from Respondent No. 5 who seemed to be biased. It appears that Respondent No. 5 did not consider on several requests of the Petitioner, nor did the Enquiry Officer insist on the relevant rules of H.R.A.

103. When the enquiry report was furnished to the Petitioner, the Petitioner placed on record by letter dated September 15, 1978, that the Exs. marked as P-3, P-4, P-18 and P-19 mentioned in the report were not supplied to him by the Respondent No. 5, nor were those received by the Petitioner from any other competent authority. The Petitioner further raised his objection to the effect "I could not follow at all, what was meant by the Exs. D-28, P-17, Appen. I, II and IV". Again by his letter dated October 16, 1978, addressed to the Director-General, the Petitioner recorded that the Exs. P-4, P-5 and P-6 were never supplied to the Petitioner and the attested true copies of the said document were never supplied to the Petitioner as mentioned in his letter dated September 15, 1978, i.e. after conclusion of the enquiry proceedings and the enquiry report, that none of the Exhibits/Annexures/Appendices were marked during the course of the enquiry. Respondent No. 5 relied on certain documents as exhibits which were never marked in the enquiry proceedings, nor the copies thereof were made available to the Petitioner. There cannot be any worst form of violation of natural justice than the present one. The exhibits P-13, P-14 and P-15 were the extracts from the Assessment Register. Exhibit P-17 also was not served upon the Petitioner. It will further appear from the records of the enquiry as placed before this Court that all the exhibits marked as M series, D series and P series were marked only on July 21, 1977, by the Respondents in the absence of the Petitioner. The Petitioner also recorded that Exs. P-13, P-14 and P-15 were known to him only on September 13, 1978. The said exhibits were neither supplied to the Petitioner, nor the contents thereof made known to him till September 13, 1978, whereas the enquiry proceeding was closed on June 4, 1977.

104. On the question of bias, the Petitioner raised his grievance before Respondent No. 5 that he prevented the Petitioner from examining and cross-examining the witnesses. Respondent No. 5 turned down several requests of the Petitioner for calling the witnesses as would appear from the enquiry proceedings at p. 18 of the enquiry report of Respondent No. 5 which was founded upon the

undisclosed documents. The undisclosed documents were never supplied to the Petitioner till September 15, 1978. The enquiry proceeding was thus vitiated by violation of natural justice and denial of reasonable opportunity. On the question of bias, Mr. Ganguly submitted that the principles enunciated by the decisions cited above clearly lay down what are elements forming the basis of bias. Respondent No. 5 has been impleaded by name, but he did not file any affidavit. In-the case of Ranjit Thakur v. Union of India (Supra) '' the learned Judges of the Supreme Court while dealing with the question of bias, inter alia held that it Is the essence of a judgment that it is made after due observance of the judicial process, that the Court or Tribunals passing it observed at least the minimum requirements of natural justice and is composed of impartial persons acting fairly and without bias and in good faith. In the result, a judgment of bias for want of impartiality is a nullity and the trial ''coram non-judice''. The test of real likelihood of bias is whether a reasonable person was likely to be biased and whether the authority concerned was likely to be disposed of to decide the matter only in a particular way. The proper approach for the Judge is not to look at his own and ask himself, however, honestly, ''Am I biased ?'' but to look at the mind of the party before him. In the present case having regard to the antecedent events, the participation of the officer concerned in the Court Martial rendered the proceedings coram non-judice.

105. The challenge of the Petitioner against bias of the Respondent No. 5 was not made for the first time before this Court, but it was raised before Respondent No. 5 and, therefore, it was raised before the appropriate authority. Respondent No. 5 failed to act impartially by reason of the following fact:

(a) witnesses, namely, the two Administrators of the said Municipality and the Accounts Officer or Internal Auditor ought to have been produced before Respondent No. 5 during the course of enquiry proceeding for the purpose of their examination and cross-examination; (b) Sri D. K. Guha, Presenting Officer, should not have been allowed to act as witness and Respondent No. 5 should not have accepted the letter from the Presenting Officer Dr. D. K. Guha dated June 13, 1977; (c) the Respondent No. 5 should not have on his own marked the exhibits under three categories, namely, M Series, D series and P series on July 21, 1977, i.e. six weeks from the date of close of the enquiry proceeding ; (d) the Petitioner was not given any opportunity of cross-examining the authors or the writers of the said documents, the Inquiring Officer rejected the prayers of the Petitioners one after another for cross-examination of the two Administrators of the said Municipality and the Accounts Officer or Internal Auditor. Cumulative effect of the aforesaid conduct of Respondent No. 5 cannot but be said to be partial and biased. The decision cited by Mr. Ganguly in the case of Ranjit Thakur v. Union of India'' (Supra) requires some discussion. Similar is the case of State of Andhra Pradesh v. S. Parthasarathi(Supra) '' where the learned Supreme Court held that while dealing with the continuance of the enquiry by biased officer ceasing to officiate his officers appointed to enquiry, the same is bad in law. It was ''held that there must be real likelihood of bias, that means there must be real substantial possibility of bias. The Court will have to judge of a matter as the reasonable man in the conduct of his own business does. Rules of natural and procedural justice is to be tested and to be viewed from the angle of conduct of Respondent No. 5 and his failure to secure compliance of the procedural safeguards.

106. Respondent No. 5 allowed the Petitioner to go with the impression that he was condemned unheard with a sense of injustice, either before or during enquiry proceeding, Respondent No. 5, in actuality, left permanent impression that he failed to act without detachment and cold objectivity. The issue of bias is, therefore, to be examined from the perspective of conduct of the Respondent No. 5 himself. The test is whether reasonable and fair minded person who knows of the relevant facts, without reasonable suspicion could say that the fair trial or fair hearing for the Petitioner was possible. In fact, there is little difference between the test of real likelihood bias and reasonable suspicion of bias, the matter is to be examined from the basic objection of the Petitioner and has to be looked into objectively after keeping in mind the real likelihood of bias or the cardinal principle, that justice should not only be done but should manifestly and undoubtedly seem to be done. Here, application of objective test is warranted.

107. On careful scrutiny of the materials which are effectively and minutely detailed hereinabove, I am of the view that the role of Respondent No. 5 as the Inquiring Authority has been really challenged on the ground of bias inasmuch as his impartiality was vitiated by reason of vitiating factors. The fair procedure, as was required to be followed in terms of the said Rules was departed from by Respondent No. 5 who allowed Sri D. K. Guha to step into the role of witness.

108. On a careful consideration of the facts and circumstances of the case and the materials placed before this Court as also the way which the enquiry proceeding was conducted and the enquiry reports submitted and the punishment inflicted upon the Petitioner, I cannot but hold that Respondent No. 5 did not act fairly and impartially in accordance with the provisions as contained in the said Rules and prevented the Petitioner from examining the witnesses from examination or cross-examination and acted arbitrarily in receiving a letter dated June 13, 1977r The actions of Respondent No. 5 are illegal in relying on certain documents as referred to above during the course of enquiry proceeding without any opportunity of inspection of documents being accorded to the Petitioner till September 13, 1977, and allowing Mr. D. K. Guha, the Presenting Officer, to act as witness, but Respondent No. 5 thus failed to act impartially. The charge of bias as raised by the Petitioner during the course of enquiry proceeding, in particular on June 4, 1977, and also the rejection coupled with the facts indicated above goes unchallenged by reason of the failure of the Respondent No. 5 to file affidavit-in-opposition. While dealing with the aspect of failure of Respondent No. 5 to file affidavit-in-opposition, reference made by Mr. Ganguly in the case of Union of India v. Inder Nath 1978 (1) S.L.R. 1 in my view, is relevant. Mr. Ganguly pinpointed the charge of bias against Respondent No. 5 as

would be evident from the Minutes of the enquiry proceedings held on June 4, 1977. Respondent No. 5 did not act in terms of the provisions of Rule 14(iii)(b) of the said Rules which is mandatory in character.

109. Undisclosed documents after the conclusion of the enquiry proceeding thus marked as exhibits by Respondent No. 5, according to Mr. Ganguly, amounted to breach of natural justice and denial of reasonable opportunity, Mr. Ganguly referred to the decision of this Court in case of The Collector of Customs v. Md. Habibul Haque 1973 (1) S.L.R. 321. The said decision laid down the principles that a document, if relied it is not provided for in the Rules, is to be served upon the Government servant. Mr. Ganguly then submitted that it is incumbent upon the Disciplinary Authority to comply with the requirement, the petition should have been served copies of undisclosed documents.

110. In the instant case, certain documents which came within the ambit of Rule 14(iii)(b) of the said Rules were not made available to the Petitioner in breach of Rule 14(iii)(b) and Rules 14 and 15 of the said Rules.

111. The disciplinary authority while issuing show-cause notice proposing to impose punishment did not consider the grievances of the Petitioner as regards the infirmities that crept in the proceedings, nor did the disciplinary authority apply its mind to the materials on record and the fundamental objections of the Petitioner. It is incumbent upon the authors to have ''speaking order'' and should give the reasons in support therefore. The order proposing to inflict punishment, and the order of removal impugned in the writ Petitioner do not show as to what are the points raised by the Petitioner and why were the points found not to be tenable. The order in this situation is liable to be quashed on the grounds that it is not a ''speaking order''. The Disciplinary Authority is a quasi-judicial authority and his order is subject to an appeal. As a quasi-judicial authority, it is incumbent upon the Disciplinary Authority to write the reasoned order so that the delinquent may know as to whether his objections and inherent defects as crept in the proceedings were considered by the Disciplinary Authority or not. The Disciplinary Authority or the Punishing Authority should indicate the reasons, but no reasons could be found in order itself. The Disciplinary Authority before passing order of removal is required to apply his mind. The show-cause notice proposing to inflict punishment and order of removal could not be sustained in the absence of reasons being given in support of the order and failure on the part of the Disciplinary Authority to apply his mind to the records of the enquiry proceeding and also to decide the objections of the petition.

112. Reference made by Mr. Ganguly in the case of A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., '' squarely applies in the facts and circumstances of the instant case on the ground that the Disciplinary Authority did not apply his mind to the materials on record nor did he consider the objection raised by the Petitioner before Respondent No. 5 as also the reply to the show-cause notice. The principles laid down in A. L. Kalra''s case that the concerned Disciplinary Authority should indicate the reasons in support of the

order of removal passed by him. Here, the Disciplinary Authority did not record the reason while imposing punishment upon the Petitioner. The Petitioner raised the plea that Respondent No. 5 acted with bias for the reasons indicated in the submissions made before the Respondent No. 5 on June 4, 1977. This was very important plea amount the conduct of Respondent No. 5. If Disciplinary Authority inclines to accept the report of the Respondent No. 5, it could not but to give a finding that Respondent No. 5 was not biased. The order of removal of the Petitioner suffered from the infirmities as are detailed above. Mechanical acceptance of the enquiry report and agreement with the findings of Respondent No. 5 without taking into account the basic fundamental and inherent defects as were pointed out by the Petitioner before the respondent No. 5 as also in reply to the show-cause notice is illegal and inoperative. It is also to be taken into account further that the Petitioner was compelled to suffer the punitive order of deduction of Rs. 500 per month before the conclusion of the enquiry proceedings. The two-third of Rs. 16,000 odd was recovered before imposition of punishment. So far the alleged charges, there cannot be double punishment, the effect of deduction of Rs. 500 per month from the salary of the Petitioner on account of H.R.A. during the pendency of the enquiry and the other is removal from service on the self-same charge. The recovery of two-third of total amount having been effected during the pendency of the enquiry, further imposition of punishment of removal from service cannot but be considered as an action having wholly arbitrary, unauthorised and illegal. The Petitioner could not be compelled to suffer double punishments for the same subject-matter. A question thus posed to this Court what is meant by the word ''fairness'', how a person can be fastened with two panel orders in respect of the same charge.

113. Doctrine of fairness means that there should be rationality, legality and procedural propriety which the concerned authority should observe during the course of quasi-judicial proceedings, In the absence of fairness, disciplinary proceeding stands vitiated by irrationality, illegality and procedural impropriety. It seems strange and curious, if not shocking and startling, that the procedure thus resorted by Respondent No. 5 stands vitiated by absence of fairness for the reasons -- (a) that the Presenting Officer was allowed to function as a de facto witness ; (b) Presenting Officer allowed the evidence to be let in the disciplinary proceeding without the examination of the authors and writers of the documents on June 21, 1977, utilised as exhibits by Respondent No. 5, i.e. after six weeks from the date of the close of the enquiry; (c) Presenting Officer was allowed to make notes and to furnish undisclosed document without having them exhibited during the course of the enquiry proceedings; (d) The ad hoc procedure of Respondent No. 5 by treating the documents as exhibits constitutes incurable infirmities by reason of the violation of the rules of natural justice. What is not evidence cannot be acted as evidence and the Court is not oblivious of the well-settled principles that the Evidence Act is not applicable in the disciplinary proceeding. Even then the Court cannot ignore the essential of fairness and fundamentals of audi alteram partem. The documents be exhibited after six

weeks from the date without giving a reasonable opportunity to the Petitioner by cross-examining the witness. The author of the documents, if not otherwise available, his statements letter or any other documents would be taken as an evidence only by way of obtaining affidavit of the said author or the writers. The enunciation in the decision of Bareilly Electricity Corporation v. Their Workmen (Supra) is placed hereinbefore. The principles as laid down in A. L. Kalra''s case (Supra) '' are fully applicable in the facts and circumstances of this case. In the circumstances. I cannot but hold that the enquiry proceedings, the enquiry report, show-cause notice and the order of removal are vitiated by incurable infirmities.

114. That apart, the Disciplinary Authority was not fair and did not act fairly by imposing punishment of deduction of Rs. 500 per month from the salary of the Petitioner on the self-same matter, namely H.R.A., during the pendency of enquiry inasmuch as the amount thus recovered is the subject-matter of the charge-sheet. What is left after the recovery of two-third of the said amount ? Enquiry proceeding became fait accompli. Any order operating to prejudice of any person financially should be passed after giving the affected person an opportunity of hearing. Thus, the impugned order of deduction of Rs. 500 from the salary of the Petitioner as made in the concerned charge and the order of removal thus made by the Disciplinary Authority visited the Petitioner with civil consequence without following the fundamental of fairness or fair-play in action.

115. In view of the foregoing reasons, I cannot but hold that the enquiry proceeding, the enquiry report, show-cause notice and the order of removal are all illegal, inoperative and unwarranted. All the proceedings including the show cause notice, enquiry report and the order of removal are set aside. Accordingly, the Rule is made absolute to the extent indicated above. Let the appropriate Writ do issue.

116. Since the deduction of Rs. 500 per month which goes on the route of the matter has been effected to the extent indicated that the Petitioner shall be at liberty to make proper representation before the concerned authority in respect of the deduction of Rs. 500 per month effected by Respondents. Respondents shall deal with and dispose of the representation if the same is otherwise permissible in law within three months from the date of receipt of the representation after giving the Petitioner a reasonable opportunity of being heard. A reasoned order shall thereafter be passed by Respondents.

117. It is also directed that the Petitioner shall be paid all the service benefits which would have accrued to him had he not been removed from service within a period of two weeks from date of passing of the order. Respondents shall be directed to join the Petitioner his duties forthwith. Respondents shall be at liberty to proceed with the Article of Charges in accordance with law after giving a reasonable opportunity of being heard.

118. Mr. Mitra appearing for the Respondents prays for stay of operation of the

order. Stay of operation of this order is granted on the assurance given by Mr. Mitra that the Petitioner shall be paid eight months'' salary within two weeks from the date. On such payment being made, the stay thus granted shall continue till two weeks after long vacation.

