
(1986) 09 CAL CK 0003
In the Calcutta High Court
Case No : A. O. D. No. 1245 of 1986

Bimalendu Chanda

APPELLANT

Vs

Steel Authority of India Ltd. and Others

RESPONDENT

Date of Decision : 04-09-1986

Acts Referred:

Citation : 91 CWN 745

Hon'ble Judges : P.K. Mukherjee, J;G.N. Roy, J

Bench : Division Bench

Advocate : Arun Prokash Chatterjee and Swapan Dutta, for the Appellant; Debi Pal and Narayan Bhattacharya for the Respondent Nos. 1, 4 to 6, for the Respondent

Judgement

G.N. Ray, J.—This appeal is directed against judgment dated April 21, 1986 passed in C. O. No. 15908(W) of 1985 by which the writ petition made by the appellant against his order of transfer and also initiation of a disciplinary proceeding by issuing a charge-sheet by the respondents Steel Authority of India Limited and its officers was dismissed by the learned Trial Judge. It appears that the appellant was acting as a senior Assistant in the Experts Accounts Section, Branch Transport & Shipping office of the Steel Authority of India Limited at Calcutta. As a Senior Assistant of the said department, the petitioner was entrusted to verify the work orders and the type of operations performed by the contractor while processing the bills for payment. On 21st November, 1985, the Deputy Chief Personnel Manager of the Steel Authority of India Limited directed for a transfer of the appellant to Branch, Transport of Shipping Office, Paradip for a period of two years with immediate effect. It was mentioned in the said order that the appellant would be entitled to transfer benefits and joining time as per rules and it was also noted that the said order of transfer was made with approval of the competent authority. On the very same day, a memorandum containing a charge-sheet and imputations relating to the said charge-sheet were also issued to the appellant. It appears from the Statement of imputations of misconduct or misbehavior in support of the article of charge framed against the

appellant that the appellant while processing the bills for payment to M/s. Marine Corporation who was Wedging and Propping Contractor did not verify the original work orders with the yard copies which were vital documents for checking purpose before releasing payment and because of the intentional violation of the procedure for processing the bills of the said M/s. Marine Corporation, the said M/s. Marine Corporation received over payment on account of some of the bills and by such lapses, the appellant failed to maintain absolute integrity and devotion to duty and committed dishonesty. thereby violating Rule 3 of the Conduct rules and rules 5(x) and 5(xx) of the Discipline and Appeal Rules of the Company.

2. The appellant's case is that in the month of March, 1984 the appellant detected certain discrepancies and irregularities in respect of two bills dated 12.2.84 and 27.2.84 of M/s. Marine Corporation and he submitted the same before the Accountant for Verification. The appellant had also brought to the notice of the Accountant that certain additions, alterations and deletion were made in the concerned work order dated 31.12.83. it was further detected that the work order dated 21.12.83, was signed by two different Senior Executives, viz. Sri B. R. Saha and Sri S. K. Chakraborty. As the work order is usually signed by a single officer, suspicious arose in the mind of the appellant as to the genuineness of the signature and/or operation of the said work order dated 31.12.83. Other irregularities were also detected in some of the bills of the said M/s. Marine Corporation. Thereafter the aforesaid two bills dated 12th February, 1984 and 27th February, 1984 along with original work orders were placed before the Assistant Manager, Finance and Deputy Manager, Finance for proper verification of the discrepancies detected by the appellant sometime in the month of March, 1984 through the accountant of the Company. The further case of the appellant is that at the instance of the appellant the Accountant Sri S. P. Sarkar brought to the notice of higher authorities the aforesaid discrepancies and irregularities in respect of the said two bills. The Accountant was therefore directed not to make payment whatsoever to M/s. Marine Corporation. Subsequently an investigation was made by Sri K. Vardhan, the Manager, Finance and after investigation was made an interim report was submitted by the said Manager. Finance on 28th June, 1984. The appellant contended in the writ petition that Sri Sujit Kumar Chakraborty, Senior Executive (Marketing) being respondent No. 12 in the writ petition was solely responsible for tampering the work orders and an excess payment to the tune of about Rs. 3 lakhs was made to M/s. Marine Corporation during 1983-84. The appellant further contended that because of the detection of the said irregularities for which the said over payment by tampering the bill of M/s. Marine Corporation was unorthodox, the appellant became an eye sore to the officers concerned, particularly to Sri Sujit Kumar Chakraborty senior Executive (Marketing) and Sri Asok Kumar, Chief Eastern Region. Transport & Shipping, Viz., Respondent No. 6 in the writ petition and they became vindictive towards the appellant and they had been trying to do harm to the appellant. The matter with regard to manipulation and hampering of the records in respect of wedging and propping operation in Branch Transport &

Shipping Office stock-yard was referred to the Vigilance by the respondent No. 6, Asoke Kumar, who according to the appellant, was in league with Sri S. K. Chakraborty. The appellant contended that because of the said malice against the appellant, the order of transfer dated 21st November, 1985 was issued but the said order was not served on the appellant. It may, however, be noted that the appellant has annexed a copy of the transfer order in the writ petition. The appellant has contended that the order of transfer is the manifestation of bias, Vindictiveness and malafide attitude of the respondents at the instance of respondents Nos. 6 and 12. The appellant also received a charge-sheet on 25th November, 1985 containing the imputations of misconduct constituting the said charge-sheet. The appellant thereafter moved the writ petition before the trial court challenging the said order of transfer and also initiation of disciplinary proceeding by issuing a charge-sheet against the appellants. The appellant contended in the writ petition that the appellant processed the bill as the same was signed and certified by the respondent No. 12, Sujit Kumar Chakraborty, the Senior Executive (Marketing) and the appellant duly discharged his duties and functions as were required to be performed by him and for the manipulations made by others, the appellant could not be held responsible. The appellant contended that the order of transfer was a glaring instance of malafide and colourable exercise of power and the same was issued as a measure of punishment and not for administrative reason. The appellant also contended that the charge-sheet contained allegations against the appellant without analysing and considering the duties of the appellant. It may be noted in this connection that in the grounds set forth in the writ petition the appellant has not challenged the charge-sheet as invalid on the score of bias and closed mind of the disciplinary authority which can be demonstrated from the charge-sheet itself. The appellant has, however, contended that the charge-sheet is otherwise invalid and malafide and the same does not disclose any specific act of misconduct and the specific duties of the appellants as Senior assistant.

3. The appellant also contended that although the respondent No. 12, Sujit Kumar Chakraborty, was really responsible for manipulation of the bills of M/s. Marine Corporation, resulting in excess payment to the said M/s. Marine Corporation, no action was taken against the said Sujit Kumar Chakraborty but at the instance of the said Sujit Kumar Chakraborty and some other officers, the appellant was sought to be penalised by transferring him at a distant place at Paradip from Calcutta and initiating the disciplinary proceedings by issuing a charge-sheet. It appears that at the hearing before the learned trial Judge the order of transfer was sought to be challenged on the ground that same was made for collateral purpose in order to inflict punishment on the petitioner, although in the facts and circumstances of the case the order of transfer was not warranted for the exigency of the administration. It was also contended that the said order of transfer was made in violation of clause 23 of the tripartite agreement entered between the company and the Union to which the appellants was one of the members. Clause 23 of the said tripartite agreement provides

that before passing the order of transfer. The All India Co-ordination Committee should be consulted but in the instant case, no consultation was made with the said Co-ordination Committee and the management took an ex parte decision in transferring the appellant to Paradip from Calcutta. So far as the initiation of the disciplinary proceedings by issuing charge-sheet is concerned, it appears that it was contended before the learned trial Judge on behalf of the appellant at the hearing that the said charge-sheet was issued with a closed mind and as such the charge-sheet was liable to be quashed. It was also contended that the appellant having been transferred to Paradip it was very difficult for the appellant to conduct the disciplinary proceeding from such a distant place at Calcutta and the said order of transfer was intended by way of penal measure to create such difficulties for the appellant.

4. An affidavit-in-opposition was filed on behalf of the respondents and it was denied that the order of transfer was made mala fide and/or out of malice and wrath and vengeance against the appellant. It was also denied that such order of transfer was passed at the instance of the said Sujit Kumar Chakraborty or any other officer. It was disclosed in the affidavit-in-opposition that on detection of some irregularities in some of the bills in favour of M/s. Marine Corporation, further investigation was made and it was detected that in a number of bills various irregularities had been committed for giving to the said M/s. Marine Corporation resulting in excess payment of Rs.2 lakhs in favour of the said M/s. Marine Corporation. It was revealed on such investigation that the appellant, Sri Bimalendu Chanda, the accountant, Sri S. P. Sarkar and the Senior Executive (Marketing), Sri Sujit Kumar Chakraborty were responsible for manipulation of bills in favour of M/s. Marine Corporation and the Vigilance Department had also noted that some of the documents and papers concerning the work orders of the said M/s. Marine Corporation were missing and on the basis of the report of the Vigilance Department, the General Manager was of the view that all the said three officers of the company should be transferred at different places so as to enable the department to make further enquiry in the matter. It was stated in the affidavit-in-opposition on behalf of the respondents that on 21st November, 1985, all the said three persons namely the appellant, the Accountant Sri S. P. Sarkar and respondent No. 12, Sri S. K. Chakraborty had been transferred in various places outside Calcutta and disciplinary proceedings had been initiated against all of them. The said Sujit Kumar Chakraborty has been, as a matter of fact, been transferred to Bombay from Calcutta. It may be mentioned here that the accountant Sri S. P. Sarkar had also moved a writ petition before this court challenging his order of transfer and initiation of disciplinary proceedings by issuing charge-sheet and the said writ petition out of which C. O. No. 1 5909 (W) of 1985 arose was also heard analogously with the writ petition of the appellant concerning C. O. No. 15908 (W) of 1985. It however appears that Sri Sujit Kumar Chakraborty has not moved any writ petition before this Court. The respondents denied the allegation that the appellant and/or the said S.P. Sarkar had been signed out and it was also denied that the appellant Sri Bimalendu

Chanda had discharged his duties and functions faithfully and he had no responsibility to scrutinise the bills with reference to the yard copies as contended by him. It was stated in the affidavit-in-opposition that it was his duty to verify the bills with reference to yard copies and if such verification had been made by him, the manipulation in the bills could have been easily detected by the appellant and there would not have been any occasion for him to pass the said bills in favour of M/s. Marine Corporation. The respondents also contended that although the allegations against the appellant and other two officers were very serious and all of them could have been suspended, the administration did not intend to suspend the appellant and the said other officers but it was decided by the administration that the transfer of all of them to different places were necessary for facilitating proper investigation in the matter more so when it was detected that some of the papers and documents relating to the work orders of M/s. Marine Corporation had been missing and it was thought that their presence in the same office was not at all desirable. The respondents contended before the learned Judge that there, was no bias or malice against the appellant and/or the other officers and imputations, were made so that there were no vagueness in the imputations and the appellant could understand the imputations clearly and face the charges leveled against him. It was contended on behalf of the respondents that the charge-sheet and imputations of allegations if examined properly will not reveal that the same has been issued with a closed mind so that on that score the charge-sheet is liable to be quashed by this court. The respondent also contended that under the relevant rules, the delinquent officer was entitled to traveling allowance for attending the disciplinary proceedings if held at Calcutta and the period spent for attending such departmental proceedings will be treated as. period spent on duty. The learned trial Judge by his order dated April, 21, 1986 dismissed the writ petition and disposed of CO. No. 15908 (W) of 1985 inter alia on the finding that the order of transfer was not passed out of malice and vindictiveness In order to penalise the appellant, but the said order of transfer was. made for valid reasons and on the basis of report of the Vigidore Department. The learned Judge was also of the view that from the charge-sheet it could not be said that the respondent had prejudged the involvement of the. petitioner and issued charge-sheet with closed mind and bias against the petitioner.

5. Being aggrieved by such adjudication of the learned trial Judge, the instant appeal has been referred by the appellant Sri Bimalendu Chanda.

6. Mr. Arun Prakash Chatterjee, the learned standing Counsel being ably assisted by Mr. Dutta has contended that the order of transfer can certainly be made on administrative reasons if in the facts and circumstances of the case such order of transfer is fair and just, but the order of transfer cannot be passed for collateral purpose or with a motive to penalise an employee. Mr. Chatterjee has contended that in the instant case in the backdrop of. events, resulting in the purported order of transfer and initiation of disciplinary proceedings are considered in the proper perspective, it will be revealed beyond any doubt that the disciplinary

proceeding was initiated on grounds wholly untenable and the sole intention of the concerned authorities was to penalise the appellant and with that and in view a charge-sheet was issued containing untenable grounds and the appellant was transferred at a distant place at Paradip for causing hardship and prejudice to him. Mr. Chatterjee has contended that in the instant case both the order of transfer and the charge-sheet must be considered together for appreciating the vindictiveness on the part of the administration and the intention to penalise the appellant. He has submitted that if on consideration of attending facts and circumstances, it is revealed that the real cause of the order of transfer is vindictiveness and for causing injury and prejudice, such order of transfer passed mala fide is liable to be set aside and the court has a duty to look into the real cause of transfer. In this connection, Mr. Chatterjee has referred to a decision of Kerala High Court made in the case of P. Pushpakaran v. The Chairman, Coir Board, Cochin, reported in 1979 (1) S.L.R. 309. In the said case, a Lower division Assistant was transferred to Bombay Office to fill up a temporary vacancy of an U.D. Assistant who was on leave for 45 days only. What prompted the Administration to choose the employee concerned for transfer had not been explained to the satisfaction of the Court. It was held that the order of transfer appeared unexceptionable but that was expensive in the transfer order might not be the real object and behind the mask of innocence there might be a desire to take revenge, a desire to get rid of an inconvenient employee. When the court is alerted, the court can and should if it is alleged that the real object of transfer is not what is apparent examine the facts, deciding what is the real object. Mr. Chatterjee has contended that it was for the detention by the appellant of the irregularities in respect of two bills of M/s. Marine Corporation, the involvement of the respondent No. 12, Sri Sujit Kumar Chakraborty was unearthed. It is only unfortunate that for an honest endeavour of the appellant to detect irregularity in the matter of payment of bills in favour of M/s. Marine Corporation the appellant had to incur displeasure of some of the erring officers and only in order to take revenge and to get rid of an innocent employee, he had been transferred to Paradip and a disciplinary proceeding has been sought to be initiated on untrue allegations. Mr. Chatterjee has contended that in the special facts of the case the court should come to the finding that the said order of transfer is not for any administrative reason but is the result of malice and vindictiveness against the appellant. Mr. Chatterjee has also contended that when the administration has entered into a tripartite agreement with the Union to which the appellant belongs, the respondents are committed to comply with the said terms of the tripartite agreement. He has referred to Rule 23 of the said tripartite-agreement which provides that before an employee is transferred, the Co-ordination Committee should be consulted by the management. Mr. Chatterjee has contended that in the instant case admittedly no consultation was made with the Co-ordination Committee. Hence the order of transfer is bad on the ground of infringement of clause 22 of the agreement and the learned trial judge has also found that on the ground of expediency the reasons could not be disclosed to the Co-ordination Committee. He has submitted that the learned trial judge has

misconceived the provisions of clause 22 and clause 23. He has contended that although the respondents in their affidavits have stated that there was a report from the Vigilance Department that some of the papers and documents concerning the work orders of the said Marine Corporation were missing and although it was contended by the respondents that in such circumstance, it was thought that the appellant and other two delinquent officers should be transferred from the said office for the purpose or proper investigation, the said facts having been placed in the affidavit-in-opposition could have been easily placed before the Co-ordination Committee for complying with clause 23 of the agreement. Mr. Chatterjee has, contended that the reasons since disclosed in the affidavit-in-opposition cannot be stated to be secret reasons, so that the same would not be disclosed to the Co-ordination Committee in compliance with clause 23. The respondents deliberately from the norin laid down in clause 23 of the agreement about the requirement of consultation prior to the order of transfer. He has contended that if a rule or regulation or a norm concerning transfer has been made and such rule or regulation or norm becomes a condition of service, infringement of such rule or regulation or norm is not permissible and the order of transfer on infringement of the same must be held bad. In support of this contention, Mr. Chatterjee has referred to a bench decision of this court made in the case of Guruprosad Mazumder v. Railway Board reported in 72 C.W.N. 245 Mr. Chatterjee has therefore contended that the order of transfer is liable to be quashed both on the ground of malafide and also on the ground of deliberate infringement of clause 23 of the agreement constituting condition of transfer.

7. Dr. Pal, the learned counsel appearing for the respondents has, however, contended that although the appellant sought to make out a case in the writ petition that the respondent No. 12, Sujit Kumar Chakraborty was responsible for manipulation of the bills in favour of M/s. Marine Corporation but he had been left out and the appellant and another officer were singled out for punishment because they took initiative in unearthing the said irregularity and involvement of the said Sujit Kumar Chakraborty in making every payment to M/s. Marine Corporation, the said basis of attack by the appellant is absolutely wrong in view of the fact that all the three erring officers against whom prima facie materials have been found have been subject to same treatment and all of them have been transferred in different stations outside Calcutta on the very same day. As a matter of fact, disciplinary proceedings have also been initiated against all the said officers including the said Sri Sujit Kumar Chakraborty. As Sri Sujit Kumar Chakraborty was a very senior officer, the disciplinary proceeding could not be initiated by the officers of the Exports Accounts Section, Branch Transport & Shipping Office but the same had to be initiated by a superior officer for which there was about a month's delay in initiating the disciplinary proceeding by issuing a charge-sheet against Sri Sujit Chakraborty but the order of transfer was passed against all of them on the same day. Dr. Pal has contended that it has been explained to the satisfaction of the learned trial Judge with reference to the records that on prima facie investigation, the complicity of the said three officers

had been prima facie found and on the basis of the report of the Vigilance Department that relevant files and documents were missing from the office it was proposed that all the said erring officers should be transferred from the said office pending further investigation. Hence, the attention of the General Manager was drawn and the General Manager had approved the proposal of transfer. In the aforesaid circumstances, the learned Trial judge was quite justified in coming to the finding that the said order of transfer had not been made out of spite or vindictiveness against the appellant or the said two other officers but such order of transfer was made bonafide and for good reasons. Dr. Pal has also submitted that clause 23 and clause 22 of the agreement should be read together for the purpose of appreciating the true import of the agreement. In the matter of routine transfer clause 23 is attracted and the said clause envisages that prior to effect such routine transfer, the Co-ordination Committee should be consulted by the administration so that their views may be taken into consideration before passing such routine order of transfer. Clause 22 envisages that where the reasons cannot be disclosed to the representative of the Co-ordination Committee for effecting an order of transfer, the order of transfer can be passed without such consultation. Clause 22 in its essence envisages an emergent situation wherein it is not physically possible because of the urgency involved to explain the reason and/or for the interest of the administration the reasons should not be disclosed to the representative of the Co-ordination Committee. In the instant case it has been stated in the affidavit that there is a report of the Vigilance Department that some of the relevant files and documents were missing. As such it was thought expedient that all the three officers whose complicity in the matter of overpayment made to M/s. Marine Corporation was prima facie found should be transferred out of the said office immediately. These facts were secret and on the score of expediency were not required to be divulged to the representative of the Co-ordination Committee. Hence clause 22 of the Agreement was squarely attracted in the facts of the case. Dr. Pal has contended that simply because the aforesaid facts were stated in the affidavit since the order of transfer was challenged on the ground of malafide, it cannot be contended that such disclosure was also to be made to the representative of the Co-ordination Committee in compliance with clause 23. Dr. Pal has further contended that there was a serious urgency in passing the order of transfer and the very purpose of giving effect to the order of transfer with immediate effect would have been frustrated if recourse to consultation. He has, therefore, submitted that the order of transfer was not vitiated either on the score of malafide or on the score of infringement of any rule or regulations or norm governing the transfer of an employee.

8. In our view, Dr. Pal is quite justified in his contention and we thoroughly endorse the submissions made by him. It appears to us that the appellant was not singled out for being transferred to Paradip in order to wreck wrath and vengeance on him, but such order of transfer was made because it was felt necessary that the said officer should not remain in the said office for proper

investigation and conducting the disciplinary proceeding initiated against him. In the affidavit-in-opposition it has been explained why he had been transferred to Paradip and it has been stated that the nature of work being performed by the appellant was available at Paradip and there was also a requirement of a dealing Assistant there. Moreover, there is no allegation of any malice or malafide against the General Manager who had approved the order of transfer on the basis of the report of the vigilance Department and on consideration of the material facts. There is also no material warranting any malice or malafide on the part of the Deputy Chief Personal Manager who had issued memo dated 21st November, 1985 containing the order of transfer. It also appears to us that clause 22 of the agreement really provides that if the reasons cannot be disclosed the order of transfer can be effected without requiring the administration to make consultation under clause 23 with the Co-ordination Committee. Clause 22, in our view, contemplates a situation where because of the urgency invoked in a particular case it is not physically possible to comply with requirement of consultation as contained in clause 23 and it also contemplates the case where on the ground of expediency the real reason of transfer should not be divulged to the representative of the Co-ordination Committee. In the instant case, the case of urgency of transferring the appellant with immediate effect has been made out and the very purpose would be frustrated if any attempt or compliance with clause 23 had been made. That apart, the report of the Vigilance Department on the basis of which the decision of transfer had been taken was not required to be divulged to the Co-ordination Committee and clause 22, in our view, provides for such exigencies. Dr. Pal is therefore justified in his contention that since the challenge was thrown that the order of transfer was made malafide without any just cause the reasons had to be disclosed in the affidavit. It cannot be contended that when such reasons have been disclosed in the affidavit before this court the said reasons should have been disclosed before the Co-ordination Committee.

9. So far as the challenge on the validity of the charge-sheet is concerned, Mr. Chatterjee has contended that a charge-sheet, is issued only when there are prima facie materials for initiating a disciplinary proceeding against the delinquent officer. Up to that stage, the disciplinary authority only entertains a prima facie view and imputation made against the delinquent officer is only hortatory and subject to ultimate finding in the disciplinary proceeding after giving the delinquent officer a full and reasonable opportunity to meet the said charge. If the disciplinary authority on the basis of prima facie investigation makes up his mind about the guilt and complicity of the delinquent officer and on that basis comes to the firm finding that he is guilty of the charges levelled against him then the disciplinary proceeding initiated after such making up of mind of the disciplinary authority is only a formality and a pretence of reasonable opportunity of being heard. In such circumstances, the disciplinary proceeding cannot be held to be a proceeding initiated on a tentative finding with an open mind subject to ultimate finding to be made on the basis of the materials which would be disclosed in the disciplinary proceeding after giving the delinquent

officer reasonable opportunity of defending himself, the disciplinary authority is the ultimate authority who will impose punishment on the delinquent officer and if he has already decided that the delinquent officer was guilty and has issued the charge-sheet with a closed, mind the imposition of punishment will be a matter of course and in such circumstances, the disciplinary proceeding will be a mockery of a fair trial in the departmental proceeding. Mr. Chatterjee has contended that this Court and other Courts have often looked into the language of the charge-sheet and imputations of charges constituting the charge-sheet against the delinquent officer whenever such charge-sheet was challenged on the ground of closed mind and if on scrutiny of the charge-sheet and on consideration of the language used in the charge-sheet and imputations of charges it appeared to the Court that the said charge-sheet had been issued with a closed mind, the Court had no hesitation in quashing the charge-sheet. In support of such contention, Mr. Chatterjee has referred to several decision of this court viz. Bimalakanta Mukherjee v. State of West Bengal, reported in 1982(2) S.L.R. 232, Sunil Kumar Mukherjee v. State of West Bengal reported in 1977 Calcutta High Court Notes, 1014 Gouri Prasad Ghosh v. State of West Bengal, reported in 1968 Lab IC 798, The Collector of Customs, Calcutta and Others Vs. Biswanath Mukherjee, . This court after referring to the languages of the charge-sheet in those decisions came to the finding that the charge-sheets depicted a closed mind and bias and as such the same were untenable and liable to be quashed. He has also referred to a decision of the Supreme Court made in the case of Timblo Irmaos Ltd., Margo Vs. Jorge Anibal Matos Sequeira and Another, for contention that the mode of construing a document and the rules to be applied to extract its meaning correctly depend not only upon the nature and object but also upon the frame, provisions and language of the document. Mr. Chatterjee has also contended that both in the charge-sheet and also in the imputations of charges the language- has been used in such a manner which will leave no room for doubt that the disciplinary authority had formed a firm opinion and had not really come to a prima facie finding about the commission of guilt by the delinquent officer. He has submitted that for using expressions which are " less stringent and suggestive of bias and closed mind in the cases involved in the decisions cited hereinbefore, the court had taken the view that a case of bias and closed mind was depicted in the charge-sheets in question. He has, therefore, submitted that the charge-sheet must be quashed. Mr. Chatterjee has also contended that the charge-sheet has been issued on sustainable grounds because the delinquent officer was not required to verify the bills with reference to records of the dock yard. He has contended that the charge-sheet is therefore bound to fail but inspite of the fact that the charges are. not sustainable a charge-sheet has been issued to the delinquent officer in order to harass and penalise him in a long drawn procedure of departmental proceeding. The agony of the innocent delinquent officer must therefore be relieved by quashing the charge-sheet. Mr. Chatterjee has also contended that the charge-sheet has been issued by Additional Chief/SAIL/CMO/BTSO, but the said Additional Chief had no authority to issue the said charge-sheet. He has contended that the Additional

Chief claims to have obtained the delegated authority from the Director (Commercial), but the Director (Commercial) was not authorised to delegate the power of initiating disciplinary proceeding against a delinquent officer to the Additional Chief. In any event, if a reference is made to order No. CD/12/(3)/84 dated 25th October, 1985 issued by the Commercial Directorate, Steel Authority of India Limited, it will be found that delegation of power to Personnel & Administration Department, Calcutta in respect, of all departments of Central Marketing Organisation and delegation of powers in administration matters to personnel and administration of department of Central Marketing Organization and Commercial Directorate, New Delhi has been made by the said office order dated October 25, 1985. In the said office order, the Additional Chief has no authority to initiate the disciplinary proceeding against a dealing assistant.

10. The aforesaid contentions, however, been seriously disputed by Dr. Pal, appearing for the respondents, Dr. Pal has contended that there is no dispute with the proposition that if the disciplinary authority has proceeded with closed mind, and bias and has framed his mind about the commission of the guilt by the delinquent officer and on such basis has issued a charge-sheet then such charge-sheet is certainly not sustainable and on the score of bias and malafide, the same is liable to be quashed. Referring to the decisions cited by Mr. Chatterjee, Dr. Pal has contended that in the facts and circumstances of the case and the language used in the charge-sheet the court came to the finding that the charge-sheet was issued with a closed mind and such case of closed mind was writ large on the charge-sheet itself. Hence the charge-sheet was quashed. Dr. Pal has further submitted that on interpretation of the expressions, used in the charge-sheet, this court has" also taken a contrary view and has held that the charge-sheet was not liable to be quashed, on the score of bias and closed mind of the disciplinary authority. Our attention has been drawn to the Bench decision of this court made in the case of Sudhir Chandra Chakraborty Vs. State of West Bengal, . He has also referred to another decision of this court made in the case of Satya Ranjan Dhar v. Life Insurance Corporation reported in 80 C.W.N. page 998. ft. has been held that in interpreting a charge-sheet for the purpose of deciding its validity on the score of bias and closed mind, the court should not be technical and as strict as in the case of a charge-sheet in a criminal trial. Similarly in. the decision made in the case of Dol Gobinda v. Union of India reported in 1981 (1) C.L.J. 461 this court has not quashed the charge-sheet on the ground of bias and/or closed mind. Dr. Pal has submitted that the court should take into consideration that the charges must be brought home to the delinquent officers and there should not be any ambiguity in the charges levelled against the delinquent officer, otherwise the officer will be deprived of meeting the charges properly. the instant case, the allegations have been made in clear term against the delinquent officer and the imputations are only allegations and not conclusive. Unless it is stated in the charge against the delinquent officer that he has deliberately done such act, it will not be possible for the delinquent officer to meet such charge at the time of trial. In the instant case, prima facie

investigation has been made and prima facie the complicity of the three persons have been found and on that a charge-sheet has been issued by the disciplinary authority and the delinquent officer has been given chance to meet the said allegations. In the facts of the case, it cannot be contended that before the final conclusion of the departmental proceeding, the disciplinary authority has made a firm finding about the commission of his guilt so that no justice is expected from the delinquent officer" and the departmental proceeding is only a mockery and has been initiated in order to complete the formality of departmental proceeding. Dr. Pal has submitted that the learned trial Judge has therefore rightly held that the charge-sheet was not vitiated on the ground of closed mind, and bias. So far as the case of want of authority of the Deputy Chief to issue the said charge-sheet against the appellant is concerned, Dr. Pal has contended that the said argument is fallacious and in the trial court such ground has not also been taken and no argument has been advanced. He has also contended that the office order dated 25th October, 1985 since relied by the appellant refers to delegation of powers to all departments of C.M.O. at Calcutta and Commercial Directorate, New Delhi. The said office order has no manner of application in the instant case. He has contended that by an office order of the Commercial Directorate of Steel Authority of India bearing No. CD/12(3)/84 dated July 11, 1985, there has been delegation of powers to the Executives in respect of branches and their operation relating to Home Transport and Shipping Department. The appellant is admittedly an Upper Division Assistant in, the Shipping Department and as such he is squarely governed by the office order contained 11th July, 1985 and not by office order dated 25th October, 1985 as sought to be contended by Mr. Chatterjee. Under the said office order, power has been delegated to the Additional Chief relating to an employee not in the cadre of an Officer. The Upper Division Assistant is not in the cadre of officers and in his case the disciplinary authority will be Additional Chief. Dr. Pal also produced documents before this court to show that the Director (Commercial) was delegated with the authority of disciplinary proceeding with further authority to delegate his powers on other officers and on the strength of such delegation he has delegated the authority to the Additional Chief for certain classes of employees. Accordingly he had authority to initiate the disciplinary proceeding against the appellant. Dr. Pal has contended that precisely for the said reason no such ground was taken in the writ petition that the Deputy Chief had no authority to initiate disciplinary proceeding against the appellant and such argument was not also advance before the learned trial Judge.

11. After considering the respective contentions of the learned counsels appearing for the parties it appears to us that in the instant case although some expressions have been used in the charge-sheet and imputations of charges, it cannot be held that the disciplinary authority has framed its mind by forming a firm opinion about the complicity of the delinquent officer for the offence alleged in the charge-sheet and the imputations of charges. In our view, in the charge-sheet and the imputations of charges, the facts constituting the charges and

involvement of the delinquent officer must be said in clear terms and there should not be any vagueness in the charges levelled against a delinquent officer. In doing so, there may be occasions to use expressions from which it may apparently appear that a finding has been made against the delinquent officer. The court, in our view, will consider the facts and circumstances of each case carefully and if on consideration of such facts and circumstances comes to the finding that the expressions used in the charge-sheet and/or the imputations of charges in their real essence do not partake the character of tentative finding but essentially a firm finding has already been made, then and then only the court will proceed on the footing that the charge-sheet is vitiated on the score of a closed mind of the disciplinary authority and the real intention of the disciplinary authority is not to make a final finding after the conclusion of the disciplinary proceeding but the real intention is to give effect to the conclusion already drawn by completing the formality of a departmental proceeding. In the instant case, we do not think that the disciplinary proceeding has been initiated by making a firm finding by the said disciplinary authority and we endorse the view of the learned trial Judge that the charge-sheet was not vitiated on the ground of closed mind. We are inclined to accept the contention of Dr. Pal that the charge-sheet has been issued by the Additional Chief who had the authority to initiate disciplinary proceedings against the appellant. In our view, the Director (Commercial) had an authority to delegate the powers in the matter of initiating disciplinary proceeding to other officers and such authority has been delegated in respect of employees of the branches and their operations relating to Home Transport and Shipping Department by Memo dated July 11, 1985 of the Commercial Directorate. By the said memo, the Director (Commercial) has delegated his powers to the Additional Chief for initiating disciplinary proceeding against the employees not belonging to the officers' cadre. The appellant was an U.D. Assistant in the Shipping Department at the relevant time. Hence, the Deputy Chief had the authority to initiate the disciplinary proceeding. Accordingly, there, is no occasion to interfere with the judgment passed by the learned trial Judge and this appeal, therefore, fails and dismissed. There will be no order as to costs. We allow the appellant to join the transferred post within three weeks from to-day, and this period of three weeks and also the period already spent on leave in terms of the earlier direction of this court should be adjusted by the appropriate authority by granting a special extra-ordinary leave with pay, if no other leave is otherwise available to the appellant. The other appeal viz. F.M.A.T. No. 1246 of 1986 has been heard analogously with this appeal as the facts and circumstances are similar. The said appeal is also disposed of on similar terms.

P.K. Mukherjee, J.

I agree.