
(2006) 11 CAL CK 0023
In the Calcutta High Court
Case No : Writ Petition No. 11344 (W) of 2003

Dilip Kumar Chakraborty

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 30-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Electricity Board Employees Service Rules — Rule 33(1)
West Bengal State Electricity Board Employees Service Regulations — Regulation 2, 33, 33(1), 59, 60

Citation : (2008) 1 CHN 355

Hon'ble Judges : Maharaj Sinha, J

Bench : Single Bench

Advocate : Arunava Banerjee, for the Appellant; Sumit Panja and Mitali Bhattacharya, for the Respondent

Judgement

Maharaj Sinha, J.—Way back in the year 1973, to be precise on 6th June, 1973, the writ petitioner first joined the West Bengal State Electricity Board (Board in short) in its Kharagpur Branch, "as an assistant" and since then had been posted as "assistant" in different places. Eventually, the petitioner became a permanent employee of the Board and continued to serve as an assistant as before. The case of the petitioner is that he became a victim of acute depression and as such was unable to work and to attend his office since 12th October 1992 till 13th August, 1997. For this long period he had to undergo treatment and the case of his mental depression and consequent disability on his part to attend his office was duly certified by the Doctor who treated him, namely, one Dr. S. Chakraborty who the petitioner has described in paragraph "2" of the petition as "mental heart specialist". For the sake of convenience the text of the certificate issued by Dr. Chakraborty is set out below:

Certified that Sri Dilip Kumar Chakraborty attached to Kamarpukur Group of Electric Supply W.B.S.E.B., resident of Vill.-Malancha, P.O.- Rakhajungle, P.S.- Kharagpur, Dist.- Midnapore (Paschim) was under my treatment from 12.10.1992

to 23.8.1997 and was suffering from mental depression.

He is now cured and fit to resume his duties, but his disease may relapse if he is given hard and laborious duty. His proper treatment and care is needed for which his service may be utilised near about his residence.

2. During the illness of the petitioner the wife of the petitioner first wrote to the Station Superintendent of the Board, at Kamarpukur, in the district of Hooghly on 16 February, 1993 that her husband Dilip Kr. Chakraborty was "not behaving with" her and her "two daughters in a normal way". She "consulted with a Doctor in this connection who intimated that" her husband "not physically fit and mentally alert to perform any official duty". Her husband was not, therefore, "in a position to join" the office "due to his mental disability". On the above basis the wife requested the Station Superintendent "to take a considered view in this regard" till her husband's recovery.

3. The wife wrote yet another letter to the Divisional Engineer, Serampore, in the district of Hooghly on 1st June, 1993 where the wife of the petitioner again said that her husband was suffering from mental depression since 12th October, 1992. The husband was advised by the Doctor to take rest and not to attend the office, then she wrote as follows:

In the present situation I am hardly managing my family with great difficulties and counting days of sorrow and despair of my life.

I, therefore, earnestly pray to your Lordship that you will be kind enough to make necessary arrangements to offer medical assistance for my ailing husband.

Yours faithfully, [Krishna Chakraborty]

4. Both the above letters are annexed to the writ petition and appearing respectively at pages 19 and 20 thereof.

I, on my part, have no hesitation to hold that these two letters were, in fact, duly received by the Board or rather by the officers of the Board concerned and the Board or rather the concerned respondents herein, have not denied the receipt of the above two letters in due course in their affidavit-in-opposition either.

However, on 20th November, 1995, the Board the service of the writ petitioner with effect from 12th October, 1994. The text of the order of termination for the sake of convenience and proper appreciation of the merits of the petitioner's case is set out below:

Office Order No. C/IR/NT/148

Dated: 20/11/1995

The services of Shri Dilip Kumar Chakraborty, Assistant, last attached to Kamarpukur Group Electric Supply under Serampore (Dist.) Division, WBSEB, are hereby terminated w.e.f. 12.10.94 (F.N.), consequent upon his continuous absence from duty exceeding the prescribed maximum limit of 2 (two) years

since 12.10.92 (F.N.) in terms of regulation 33-1(iii) of the W.B.S.E.B. Employees' Service Regulations.

(N.C. Das) Chief Personnel Manager.

5. Needless to mention, the termination of the petitioner's service was brought about by the above order of the Board without holding any inquiry whatsoever and without giving the petitioner even the minimum opportunity of hearing.

6. On 24th August, 1997 the petitioner by a representation to the Chief Personnel Manager of the Board requested withdrawal of the above order of termination of his service and sought for reinstatement. The petitioner on 21st October, 1997 was asked by the Senior Personnel Administrative Officer of the Board to furnish the copies of the communication made by the petitioner or his wife or by other member of the petitioner's family to the Board intimating the Board of the petitioner's illness. The petitioner thereafter, however, submitted the necessary documents as sought for by the Personnel and Administrative Officer.

Since the representation of the petitioner to the Board did not bring about any fruitful result, in spite of submission of the necessary documents as sought for by the Personnel and Administrative Officer, the writ petitioner had to approach the General Secretary of the State Committee of the Board and the Secretary having been satisfied with the genuineness of the case of the writ petitioner approached the Senior Personnel and Administrative Officer by his letter dated 16th March, 1998 to consider the case of reinstatement of the petitioner upon revocation of the order of termination issued against the petitioner. The Secretary in his letter said that the family of the petitioner was "starving and living in a precarious condition".

7. When the earlier representation of the petitioner and the letter of the Secretary dated 16th March, 1998 proved practically nothing the writ petitioner invoked the jurisdiction of this Court for the first time in the year 1999 by moving a writ petition. W.P. No. 9989 (W) of 1999, and on 18th June, 2002 after expiry of more than two years from the initiation of the writ proceeding the said order of termination dated 20th November, 1995 was set aside and the petitioner was directed to be treated as in "deemed suspension" and the Board was directed to initiate disciplinary proceeding in accordance with the relevant rules, meaning thereby the West Bengal State Electricity Board Employees' Service Regulations.

8. The said order dated 18th June, 2002 of Justice Asim Kr. Banerjee has, in my opinion, a very important hearing upon the merits of this writ petition. The said order is set out below:

The writ petitioner was absent for about two years. He was summarily dismissed by the respondent authority by an order dated 20th November, 1995 appearing at page 13 of the writ petition by virtue of Rule 33(1)(III) of the West Bengal

Electricity Board Employees" Service Regulations.

The relevant rule under which the writ petitioner was terminated is quoted as follows:

33. Unless otherwise specified in the appointment order in any particular case, the service of a permanent employee of the Board may be terminated without notice:

***** (iii) If he remains absent from duty, on leave or otherwise, for a continuous period exceeding 2 years.

In my view, the said rule is contrary to the provision of our Constitution and is violative of the principle of natural justice guaranteed to the writ petitioner by the Constitution.

Hence, the order of termination appearing at page 13 of the writ petition is quashed and set aside.

The writ petitioner be treated as in deemed suspension and be proceeded departmentally in accordance with the relevant rules pertaining to the disciplinary proceeding.

9. Although it was specifically directed in the above order that "the disciplinary proceeding" must be completed within a period of three months from the date of the order, it took the Board little less two months to issue the chargesheet against the petitioner. The charges as framed against the petitioner are set out below:

ARTICLE OF CHARGES

Whereas Shri Dilip Kr. Chakraborty during his incumbency at Kamarpukur Gr. Elec. Supply from 01.07.92 was absenting from duty without intimation from 12.10.92, he was advised by his controlling officer to resume duty vide office Memo. No. SRPD/Estb./Conf./2033 dated: 07.05.93 followed by series of letter shearing Memo. No. SRPD/Estb./Conf./87 dated: 28.7.94 and SRPD/Estb./Conf./104 dated: 26.9.94.

AND

Whereas on receipt of memo, of the controlling officer in question, Shri Chakraborty did not resume duty at Kamarpukur Gr. E/S. He had continued absence with effect from 12.10.92 till issuance of order of termination of his service by the Board under Memo. No. C/IR/NT/148 dated: 20.01.95.

AND

Whereas after issuance of termination order, Shri Chakraborty had pleaded his absence from duty on medical ground and accordingly he was advised to appear before WBSEB's Medical Board on 24.9.98 when the Medical Board on thorough examination has observed that the prolonged absence of Shri Chakraborty

cannot be considered to be on the ground of psychosis as the delinquent employee was failed to produce any certificate or documents for his illness from any qualified psychiatrist.

AND

Whereas such absence from duty without intimation exceeding 2(two) years is a clear violation of Regulations 59,60,61(a),(b) & (c) of W.B.S.E.B.E.S.R.

AND

Thus it appears that Shri Dilip Kr. Chakraborty, Assistant, Kamarpukur Gr. E/S (under suspension) has wilfully and deliberately violated the rules of the Board as noted above by absenting himself from duty without intimation to his Controlling Officer w.e.f. 12.10.92 and if those misconduct noted above are proved same shall call for severe punishment as per Regulation 33(1)(iii) of W.B.S.E.B.E.S.R.

10. In issuing the chargesheet the disciplinary authority (A.K. Pal, Chief Personnel Manager) had, in my opinion, pre-judged the issue as in the last paragraph of article of charges he stated that "Shri Dilip Kr. Chakraborty (the petitioner), Assistant, Kamarpukur Gr. E/S (under suspension) has wilfully and deliberately violated the rules of the Board as noted above by absenting himself from duty without intimation to his Controlling Officer...." and then observed "if those misconduct noted above are proved same shall call for severe punishment as per Regulation 33(1)(iii) of W.B.S.E.B.E.S.R."

11. The last paragraph of article of charges against the petitioner (quoted above) promptly reminds me the observations of His Lordship Justice G.N. Roy (as His Lordship then was) in S.C. Das v. State of West Bengal and Ors. reported in 86 CWN 232 when His Lordship in dealing with the validity of the charge-sheet in question was pleased to observe:

Whether a chargesheet has been issued with a closed mind or not cannot always be decided by a mere reference to the chargesheet itself. The language used in the chargesheet certainly renders a very important indication in the matter but other attending circumstances may at times throw light on the real intent and import of the charge-sheet. It is true that the charges levelled against a delinquent officer must be clear and unambiguous, but at the same time the chargesheet should not be issued with a biased and closed mind. The real purpose of initiating a disciplinary proceeding is to enquire as to whether the facts, prima facie ascertained against a delinquent officer, are correct or not. The purpose of a disciplinary proceeding cannot be to cause a secret enquiry against a delinquent officer and to form a positive and firm view about his complicity in the alleged misconduct and thereafter to give him an opportunity to dispel the conclusion already drawn against him. If therefore from the attending circumstances and also from the language of the chargesheet, it appears that the disciplinary authority has really drawn a positive conclusion against a delinquent

officer and thereafter has started a disciplinary proceeding by issuing a chargesheet only to afford him an opportunity to dispel the conclusion drawn against him then such disciplinary proceeding must be held to be bad, being vitiated by bias and a closed mind and having been all intents and purpose, started to complete a formality in law.

12. In S.C. Das (supra), the Court found from the language of the chargesheet that the same was issued clearly alleging that the petitioner was guilty of the alleged offences and the Court found further that the disciplinary authority did not form its opinion but was influenced by the findings of the Vigilance Department and relying on such findings of the said department the chargesheet was issued clearly indicating that the petitioner was guilty of the alleged misconduct. The Court, therefore, was of the opinion that the charge-sheet was issued with a "closed mind" and as such both the chargesheet and the disciplinary proceeding initiated on the basis of the said chargesheet were quashed.

Having read the article of charges in the present case, it would be extremely difficult on my part to even suggest that the said chargesheet was not issued with an absolute closed mind or rather the disciplinary authority before issuing the said chargesheet already decided that the petitioner was guilty of misconduct and initiation of the disciplinary proceeding against the petitioner was nothing but a mere formality or rather a face saving operation. Indeed, the Board on 20th November, 1995 without holding any disciplinary proceeding, without complying with any of the provisions of the Service Regulations terminated the service of the petitioner on the alleged plea of the petitioner's continuous absence from duty exceeding maximum limit of two years which order of termination, as aforesaid, was set aside by the said order dated 18th June, 2002 by Justice Asim Kr. Banerjee and it was because of His Lordship's specific mandatory order the Board was compelled to hold a disciplinary proceeding against the petitioner as directed in the said order.

13. In such a situation, it would not be improper to presume that the Board framed the charges against the petitioner with a pre-determined mind to inflict the same punishment as it inflicted upon the petitioner before, namely, termination of the petitioner's service on the alleged plea of "continuous absence with effect from 12th October, 1992" till the issuance of the order of termination of his service by the Board on 20th November, 1995 (wrongly mentioned in the article of charges as 20th January, 1995).

14. Although the Board or rather its disciplinary authority framed the alleged charges against the petitioner but it did not hold disciplinary proceeding and complete the same within a period of three months as directed by the said order dated 18th June, 2002 of this Court. The petitioner also did not receive any subsistence allowance as he was supposed to receive by virtue of the said order dated 18th June, 2002. The petitioner, therefore, had to visit this Court once again with his second writ petition. W.P. No. 14266 (W) of 2002.

15. Apart from praying for a direction upon the respondent for grant of subsistence allowance, the petitioner also pointed out that the disciplinary proceeding was not completed within the period of three months as directed by this Court and on the basis of the earlier order on the first writ petition he was entitled to receive the "full salary" in terms of the said order. The second writ petition of the petitioner was also disposed of by Justice Asim Kr. Banerjee on 30th September, 2002. After recording the submissions on behalf of the Board the following direction was made:

I grant extension of time to the Board to complete the proceeding peremptorily within three months from date. It is made clear that in case the proceeding is not complete within the stipulated period despite petitioner's co-operation the petitioner would be automatically entitled to full salary in terms of my earlier order dated 18th June, 2002.

The petitioner would be entitled to engage friend to assist him in the proceeding. Such friend must be an employee of the State Electricity Board.

Writ petition is disposed of. There would be no order as to costs.

16. After the disposal of the second writ petition the Enquiry Officer appointed by the Board or its disciplinary authority to inquire into the alleged charges against the petitioner held the proceeding for a few days and, thereafter, made his report. It is the report of the Enquiry Officer which is of immense importance as the Enquiry Officer, I find, at least tried to consider the correctness of the alleged charge or charges against the petitioner after taking into account the relevant factors and after considering the facts as to why the petitioner was unable to serve the Board for such a long period of time (exceeding two years) mentioned in the article of charges.

17. Before the material portions of the enquiry report are set out, it is to be pointed out that the disciplinary authority in imposing the same punishment of termination of the petitioner's service said that in imposing such punishment the disciplinary authority agreed with the findings of the Enquiry Officer. The entire report of the Enquiry Officer, read as a whole, in my opinion, goes completely in favour of the writ petitioner but in imposing punishment of termination upon the petitioner the disciplinary authority simply said that as the allegations against the petitioner were proved beyond reasonable doubt the disciplinary authority upon concurrence with the findings of the Enquiry Officer decided to terminate the petitioner's service.

18. Thus, for the sake of proper appreciation of the findings of the Enquiry Officer the material portions of the report are set out in somewhat detail:

POINTS OF LAW BEFORE THE ENQUIRY OFFICER:

19. Regulations 33(1)(iii) of W.B.S.E.B.E.S.R. with respect to charge as referred to by Presenting Officer through written argument dated 8.11.02 on record is not materially relevant since the chargesheet states in the concluding paragraph that

the delinquent would be punishable as per Regulation 33(1)(iii) but the chargesheet does not state that he is charged under the above regulation. In fact, Regulation 33 under Chapter-III (General Conditions of Service) deals with termination. The delinquent is booked under Regulation 33(1)(ii) as per order dated 18.6.02 of the Hon"ble High Court of Kolkata. In pursuance of such order the employee need be proceeded with as per Regulation 33(1)(ii) read with Chapter IV of W.B.S.E.B.E.S.R. titled as "Conduct, Discipline, Punishment & Appeal". Regulation 66 of W.B.S.E.B.E.S.R. is very material where it is categorically stated that "if the suspended employee is found to be guilty he shall be liable to be punished to the extent provided under Regulation 62".

20. I now take up all the charges concurrently (since those are inter-related) for analysis, Sri Chakraborty during his incumbency at Kamarpukur Gr. E/S of W.B.S.E.B. whether had absented himself from duties without intimation from 12.10.92 and whether he continued his absence till 20.1.95 i.e. day when the order for termination of his service was issued. Simultaneously I shall also analyse whether he was advised by his Controlling Officer to resume duty as contained in the chargesheet. It shall also be analysed as to whether above Act of Sri Chakraborty is violative to Regulations 59, 60, 61(a), 61(b), & 61(c) of W.B.S.E.B. Employees Service Regulations.

21. With regard to above chargesheet for absence from duty Regulations 59, 60, 61(a) & 61(b) are materially relevant. As already pointed above, Regulation 61(a) is relating to misconduct committed by way of resorting to unpunctuality and irregular attendance or absence without permission. Through chargesheet punctuality is not charged. It is stated through chargesheet that the employee concerned under suspension committed misconduct of absence from duty without intimation and even failed to resume in spite of repeated letters from his Controlling Officer advising him for resumption of his duties. So, the charge is basically for irregular attendance without intimation whereas Regulation 61(a) so far as absence is concerned says of irregular attendance without permission.

22. The charged employee during enquiry either through his own testimony or through cross-examination of the management witnesses i.e. P.W.-1, P.W.-11 & P.W.-111 have never put forward any claim that he did not absent himself from duty as charged.

23. Through his documents on record and Exhibits as D-1 to D-7 he had never argued that he did not receive the letters of instructions/advice of the Controlling Officer for resumption of duties i.e. Exhibit Nos. P-2, P-3, P-4 & P-5. The charged employee stated that he had given due intimation through his wife that he was not physically fit and mentally alert to perform any official duty on 16.2.93 and 1.6.93 requesting for necessary arrangements to offer medical assistance (Exhibit No. D-1 and D-2). The charged employee also furnished proof of such letter sent to Sm. Supdt. and D.E. by his wife under certificate of posting as on record as Exhibit D-3 & D-1. Besides the above, the charged employee had also submitted Exhibit D-7 i.e. a certificate dated 23.8.97 of Dr. S. Chakraborty. But

so far as the question of absence without intimation is concerned it appears that the prosecution did not question the veracity/authenticity of proof submitted by the charged employee from Postal Authority i.e. Exhibit D-3 & D-4. Therefore, I as Enquiry Officer have reasons to believe that such intimation was sent by the wife of the charged employee under certificate of posting as contended which might be lost and/or misplaced in transit so the employee need be given reasonable benefit of doubt in this regard. So I do not have sufficient material evidence on record to hold him guilty with certainty for non-intimation of reasons for his absence from duty in view of material documents produced by him from Postal Authority.

24. The prosecution as well as the charged employee heavily relied on the report of the Medical Board dated 24.9.98 to further their own points and arguments. The prosecution desired to prove that the charged employee absented himself from duty without sufficient satisfactory reasons for such absence during the period from 12.10.92 to 20.11.95 while the charged employee argued that he absented from duties with sufficient satisfactory reasons.

25. The prosecution stated that on examination on 24.9.98 it was ascertained that the delinquent was found to be physically fit and mentally alert (reference examination and cross-examination of DW-1). It was also stated by DW-1 that Doctor with just M.B.B.S Degree is not competent enough for treating a Psychiatric having continuous ailment of such long period of about 5 years (Reference examination-in-chief and cross-examination of DW-1). But the prosecution did neither refer to any existing rule, nor had submitted any document to this effect.

26. The prosecution also emphasised that the charged employee was treated only with one anti-depression medicine, which was insignificant in nature for his prolonged treatment (Reference cross-examination of DW-1 on record).

27. The prosecution also submitted through argument that the charged employee could not produce certificates showing his treatment from time to time instead he submitted only one certificate for the entire period of about 5 years (Reference arguments dated 22.10.02 and 8.11.02 of the Presenting Officer).

28. The points of argument of the charged official are as hereinbelow:

That the certificate of illness dated 23.8.97 was of Dr. S. Chakraborty, M.B.B.S. (Exhibit D-7) who was Asstt. Chief Medical Officer of Midnapore District at that material point of time. But he did not submit any material document and evidence in support of his above contention.

29. That the delinquent was in acute financial distress for which he could not even afford to receive treatment from a psychiatrist/Specialist.

30. That the Medical Board did not conduct any test physically but reached the conclusion in arbitrary manner.

31. I would like to refer to Appendix-II of WBSEB (Medical Attendance and Treatment) Regulations, 1964 which forms part of West Bengal State Electricity Board Employees' Service Regulations governing the Service conditions of the employees. Regulation 2(b) of the Regulations states "Authorised Medical Attendant" Means a Medical Officer of the Board if there is one or in other case, any medical practitioner registered under the Bengal Medical Act of 1914, Paschim Banga Ayurvedic System of Medicine Act, 1961, and the West Bengal Homeopathic System of Medicine Act, 1963". The prosecution could not produce or even refer to sanction of Regulation which debars an MBBS degree holder from issuing sickness certificate and fitness certificate in respect of an employee suffering from mental sickness as contended by the Medical Board as well as DW-1 and even the Presenting Officer in its argument. So, the question is as to whether the delinquent employee had complied with minimum requirement of law. An employee person is expected to be guided by the advice of a registered medical practitioner which is exactly done in the instant case. The minimum requirement of law as we find from W.B.S.E.B.E.S.R. is that the certificate of sickness from a registered medical practitioner would usually be accepted. So a certificate to that effect from a registered Doctor with MBBS Degree is sufficient as acceptable grounds for absence from duty unless otherwise proved. The DW-1 in his evidence stated that the medical certificate of Dr. S. Chakraborty, Exhibit D-7 to be genuine in nature not a fake one. The prosecution through evidence on record as well as through arguments did not disclose as to whether the Medical Board of the WBSEB, the report on which the prosecution stands was constituted with any Psychiatrist and Specialist in it. So the report of Medical Board stands on the same footing as that of the certificate/report of the Doctor of the delinquent.

32. The Medical Board has given its opinion so far as the better treatment is concerned which does not essentially mean that the opinion shall be administratively in conformity with relevant provision of rule of the Board. The Medical Board did not specify that non-consultation of a Psychiatrist was infringement of any particular rule in force or laid down Regulations of W.B.S.E.B.

33. It is also observed from the report of Medical Board that "from the history and records available Medical Board does not find any rational reasons for his prolonged absence on medical ground since he was not suffering from any form of psychosis. Moreover, he was never examined by a qualified psychiatrist during the whole period of his illness".

34. In view of the analysis of documents and arguments on record I hold that the charge of failure to produce legally acceptable medical certificate in support of sickness by the charged employee is not proved. The charged employee substantiated clearly that he observed minimum requirement of Rule which is sufficient to accept that he had sufficient reasons for absence from duties. Therefore, to the above extent he has complied with requirement of Regulations 59 and 60 of W.B.S.E.B.E.S.R.

35. The prosecution has not mentioned anything with regard to charge of misconduct under Regulation 61(c) of W.B.S.E.B.E.S.R. that what material loss was caused by the employee to the organization. The chargesheet does not as well certain any specific charge with regard to material loss inflicted caused directly or indirectly by the charged employee. So the charge under Regulation 61(e) of W.B.S.E.B.E.S.R. is also not proved.

36. From the above findings of the Enquiry Officer, I repeat, I have no doubt that the findings of the Enquiry Officer upon correct interpretation of the relevant provisions of the Medical Attendance and Treatment Regulations, 1964 had gone entirely in favour of the writ petitioner. The observations of the Enquiry Officer in his report in the second paragraph at page 4 thereof "that the charge of irregular attendance i.e. absence from duties with effect from 12.10.92 to 20.11.95 without permission and without intimation as per Regulations 61(a) and 61(b) is proved beyond doubt which is also violative to Regulations 59 and 60 of the West Bengal State Electricity Board "Employees" Service Regulations are utterly inconsistent and run contrary to his findings made in his Report. The inconsistency and also absurdity in the above observations of the Enquiry Officer in his Report formed the basis of the decision of the disciplinary authority in terminating the service of the petitioner on the ground of the continuous absence of the petitioner exceeding two years "without intimation to his employer, the Board".

37. The Enquiry Officer himself found that the main allegation against the petitioner of continuous absence exceeding two years were never disputed. Therefore there was nothing to prove beyond reasonable doubt or any doubt as it was and is an admitted position that the writ petitioner was absent for more than two years and as a result of which his service was terminated without any notice to him and the order of termination was set aside by this Court in the earlier writ proceeding as this Court, inter alia, found that the said termination was brought about without complying with the fundamental principles of natural justice as no disciplinary proceeding was held against the petitioner, no opportunity of hearing was given to the petitioner and in quashing the said order of termination this Court termed the said Regulation 33(1)(iii) as unconstitutional and violative of principles of natural justice.

38. The only question that was to be decided by the Enquiry Officer was whether the Board was informed by the petitioner or by anybody else on behalf of the petitioner for the petitioner's prolonged absence from his duties and the reason and/or reasons for such absence. The Enquiry Officer in no uncertain terms came to a positive finding that the wife of the petitioner by her letters (dated 16th February, 1993 and 1st June, 1993) informed the Board that her husband, namely, the petitioner was suffering from depression and as such was unable to attend office. In fact, the wife of the petitioner earnestly prayed the petitioner's employer, namely, the Board by addressing her letter to the Divisional Engineer of the Board by calling the Divisional Engineer "Lordship" that you will be kind

enough to make necessary arrangements to offer medical assistance for my ailing husband". This is the second letter of the wife of the petitioner, in the first letter the wife even informed "that her husband's behaviour with her and two daughters" was not "normal" and the Doctor who opined that the husband (the petitioner) was not physically fit and mentally alert to perform any official duty and as such the petitioner was not in a position to attend the office because of his "mental disability".

39. The Enquiry Officer also found upon evidence that such letters were, in fact, received by the Board as the Board was unable to prove that the letters were never sent from the petitioner's and "intimating or informing the Board of the petitioner's illness". The Enquiry Officer, in fact, observed "that the prosecution did not question the veracity/authenticity of proof submitted by the charged employee from postal authority...." (See at page 11 of this judgment).

40. Upon thorough scrutiny of the Inquiry Report and the documents disclosed by the Board and the writ petitioner herein in these proceedings it can safely be said that though the Board, in fact, received the letters from the wife by which the wife of the writ petitioner informed the writ petitioner's illness and sought for Board's help for the treatment of her husband. The Board in its turn thought it fit to terminate the service of the petitioner pleading its innocence of the petitioner's illness without giving the petitioner even the minimum opportunity of hearing, without bothering itself about the real reason for petitioner's absence, without rendering any help to the petitioner for medical treatment and without even bothering itself to give any reply to the letters of the petitioner's wife. The Board did not even think it fit to enquire as to why the petitioner was not attending office who happened to be a permanent employee of the Board and was serving the Board for more than 20 years since 1973, as the petitioner admittedly stopped attending his office since 12th October, 1992. It never occurred to the Board to make its own enquiry why the petitioner, who had an unblemished record of twenty years' service suddenly stopped attending office and had remained absent for so long.

41. This case is, in my opinion, a glaring example of the grossest neglect on the part of the employer to take care of an employee who was seriously ill and whose family was in acute distress because of the illness of its employee as evident from the letters of the petitioner's wife and subsequently the letter of the Secretary of the union concerned dated 16th March, 1998 (Annexure-K/7 to the writ petition).

42. In my opinion, the Board was unhesitatingly under a duty to enquire as to why the petitioner being a permanent employee was absenting himself from work even before the petitioner's wife, in fact, intimated to the Board by the said two letters about the petitioner's illness. The so-called responsible officers of the Board tried to keep their eyes shut to the obvious and merely pretended their ignorance and innocence of the petitioner's absence by writing the alleged letters mentioned in the second show-cause and disclosed perhaps in the

disciplinary proceeding (though no copies of such letters have been annexed to the affidavit-in-opposition). The way the Board or rather its so-called high officials had terminated the service of the petitioner by its order dated 20.11.1995 itself shows, to say the least, the utter high handedness and vindictive approach on the part of the Board in terminating the service of the petitioner which, as aforesaid, was set aside by this Court later.

43. Although the Board as a mere face-saving exercise asked the writ petitioner to appear before its Medical Board the so-called Medical Board instead of finding out as to why the petitioner was unable to attend his duties for a long period of more than two years merely opined that since the petitioner's medical certificate was not issued by a "qualified psychiatrist" the said certificate could not be accepted. The Medical Board admittedly did not have any psychiatrist when it examined the petitioner as the petitioner was called upon to appear before the Board at a time when the doctor who treated the petitioner already certified that the petitioner was fit to attend his office. The certificate dated 23rd August, 1997 issued in favour of the petitioner by the Doctor who treated the petitioner during his illness is the first annexure to the writ petition appearing at page 17 thereof.

44. The Enquiry Officer in his enquiry clearly held after considering and examining the Medical Attendance and Treatment Regulations, 1964 which form part of the West Bengal State Electricity Board Employees' Service Regulations that the medical practitioner who gave the certificate in favour of the petitioner certifying the petitioner's long illness and reasons for his absence from work had the authority under the said Regulations 1964 to issue such certificate in the first place. The Enquiry Officer said as quoted above and I repeat a few lines of his findings once again "the prosecution could not produce or even refer to sanction regulation which debars an M.B.B.S. degree holder from issuing sickness certificate and fitness certificate in respect of an employee suffering from mental sickness as contended by the Medical Board as well as D.W. 1 and even the Presenting Officer in its argument... so a certificate to that effect from a registered Doctor with M.B.B.S. Degree is sufficient as acceptable grounds for absence from duty unless otherwise proved." (See Enquiry Report at pages 13 & 14 of the judgment).

45. The Enquiry Officer also found that the authenticity of the certificate issued by the Doctor in favour of the writ petitioner was not doubted by the Board. Although in the chargesheet, allegations of violation of regulations 59, 60, 61(a), 61(b) and 61(e) of the West Bengal State Electricity Board Employees' Service Regulations were made but on a plain reading of these regulations it appears that the said regulations had and have no application to the only charge framed against the petitioner of his "continuous absence from duties without intimation". Such regulations were merely quoted in the article of charges only to confuse the real issue when even the said allegations under the said regulations against the petitioner were not proved as they could not be proved. The provisions contained in the said regulations also run contrary to the main allegation against the

petitioner of his continuous absence from duties and I do not think I need to spend much time to demonstrate that the regulations 59, 60, 61(a), 61(b) & 61(e) of the said service regulations have no application to the real and the only charge against the petitioner of his "continuous absence from work over two years without intimation".

46. The Enquiry Officer unhesitatingly held that the allegation against the petitioner under Regulation 61(e) amongst other allegations could not be proved "as the prosecution" did not even mention any charge of misconduct under Regulation 61(e) of the service regulations.

47. The disciplinary authority relying on the enquiry report, which, I repeat, had gone entirely in favour of the writ petitioner, merely stated that upon careful examination of the findings of the Enquiry Officer the disciplinary authority imposed the same punishment upon the petitioner as was imposed upon him by the said earlier order of termination dated 20th November, 1995 which order of termination, as aforesaid, was set aside by this Court.

48. It is impossible for a reasonable man with a reasonable and rational approach to appreciate why the disciplinary authority thought it fit to retain the earlier punishment of termination upon the petitioner even though the Enquiry Officer in his Report found practically everything in favour of the writ petitioner.

49. The disciplinary authority, in my opinion, merely picked up a few lines from the enquiry report to suit its purpose and in retaining the earlier punishment imposed upon the petitioner by the said first order dated 20th November, 1995. The disciplinary authority did not consider the report of the Enquiry Officer in its entirety. The disciplinary authority did not at all apply its mind to the relevant facts including the stand taken by the Board in treating the petitioner's case from the very beginning. The Enquiry Officer found that the petitioner's wife duly intimated the Board of her husband's illness twice, the Enquiry Officer found that there was nothing wrong on the part of an M.B.B.S. doctor in certifying the petitioner's illness and his recovery and that "the charge of failure to produce legally acceptable medical certificate in support of the sickness" of the petitioner was not proved. The Enquiry Officer found that the other allegations under the regulations 59, 60, 61, 61(a), 61(b) & 61(c) of the said Service Regulations were far from being proved in any real sense, the Enquiry Officer found that the regulation 61(e) was merely mentioned for the sake of making an allegation without bothering about the absurdity of such allegations against the petitioner in the facts and circumstances of the case and the nature of the real charge against the petitioner. All these most relevant findings of the Enquiry Officer in his report were not taken into account and considered by the disciplinary authority in passing the final order against the petitioner by which the authority repeated the earlier punishment imposed upon the petitioner, namely, termination of the petitioner's service under Regulation 33(1)(iii) of the Service Regulations.

50. The only object of the disciplinary authority, it seems, was to maintain the punishment imposed upon the petitioner by the said first order of the Board dated 25th November, 1995, which was set aside by this Court. The Board or rather its disciplinary authority, in my opinion, had and has throughout treated the case of the petitioner with utter vindictiveness and with sheer malice.

51. The Board, in my opinion, instead of demonstrating its role of a model employer was determined to prove its mind by passing its order imposing punishment, namely, termination of service of the petitioner when upon repeated consideration of the facts and circumstances of the entire case, the records of the proceedings and more importantly the enquiry report, no case, in my opinion, of misconduct on the part of the writ petitioner could be established which warranted the termination of petitioner's service in the first place. In spite of taking a sympathetic attitude on the basis of the letters of the petitioner's wife, the Board as I have said more than once, terminated the petitioner's service, then, by virtue of the order of this Court though the Board initiated a disciplinary proceeding yet it moved through out with only one object and the object was to retain or maintain the first order of punishment upon the petitioner anyhow and by any means.

52. The pre-determined mind of the disciplinary authority is evident from the words used in the second show-cause notice dated 3rd January, 2003 against the petitioner, I have not been able to follow as to why the second show-cause notice had to be issued at all as the so-called second notice was nothing but a mere repetition of the first chargesheet against the petitioner. The second show-cause notice, in my opinion, was issued only to paint a picture as to how fair the Board was in deciding the case of the petitioner pursuant to the order of this Court made in the petitioner's first writ petition. In the second show-cause notice it was observed that since it had been "proved beyond doubt" that the petitioner remained absent from his duties continuously for a period of exceeding two years with effect from 12th October, 1992, the disciplinary authority proposed to impose upon the petitioner the same punishment as it did impose upon him by its earlier order dated 25th November, 1995. As I have said, the allegations against the petitioner for continuous absence for more than two years from work were an admitted position, therefore, there was nothing further to prove beyond reasonable doubt or beyond any doubt, the only thing that was to be ascertained whether there was sufficient cause for such absence. The Enquiry Officer in his report found that the writ petitioner duly intimated to the Board of his illness through his wife or rather his wife intimated the Board of her husband's prolonged illness and pleaded for Board's merely and financial help and secondly, the certificate issued by the medical practitioner who happened to be an M.B.B.S. is a valid certificate in view of the provisions of Medical Attendance and Treatment Regulations, 1964. The disciplinary authority did not or rather has not at any point of time questioned the correctness of the findings of the Enquiry Officer and further held that "charge of failure to produce legally acceptable medical certificate" in support of the petitioner's long illness was not proved.

53. It is interesting to note, however, that the chargesheet was issued by person claiming himself to be the disciplinary authority, one A. K. Pal, Chief Personnel Manager, the same person again issued the second show-cause notice against the petitioner proposing to impose the punishment of termination which was imposed upon the petitioner earlier and the same person again finally issued the order of termination dated 10th February, 2003 claiming himself to be the disciplinary authority which order is under challenge in this writ application and the same person, namely, A. K. Paul, Chief Personnel Manager of the Board also took the pain of communicating the decision of the "standing appellate committee" which committee, however, merely dismissed the petitioner's appeal stating that since the petitioner had not put forward any "cogent ground for review of the punishment awarded by the disciplinary authority", the appeal of the petitioner could not succeed. In communicating the decision of the "standing appellate committee" the Chief Personnel Manager stated the following:

The members of the Standing Appellate Committee-1 on consideration of entire matter and also on proper application of mind have observed that the petitioner has not put forward any cogent ground for review of the punishment awarded by the disciplinary authority & Chief Personnel Manager. Merely arguing that the charges levelled against him have not been proved to the hilt and the order of termination dated 10.2.2003 has been passed without going through the records and other relevant documents arbitrarily, cannot be valid & relevant grounds for consideration of his appeal petition against the punishment imposed upon him on the basis of the report of the Enquiry Officer.

In view of the above, the punishment of termination of service of Shri Chakraborty for continuous unauthorised absence exceeding two years is justified in consideration of the gravity of the misconduct. Therefore, the Committee rejects the appeal petition dated 26.3.2003 of Shri Chakraborty and upholds the order of punishment of disciplinary authority & Chief Personnel Manager vide office order No. C/IR/NT/108 dated 10.02.2003.

54. To say the least, decision or the order of the disciplinary authority of termination of service of the petitioner is perverse as no reasonable man in the facts and circumstances of the present case and the evidence on record and upon consideration of all the relevant factors and the legal position could come to the conclusion and pass such order as the disciplinary authority did in the instant case.

55. Apart from "perversity" in making the decision, the approach of the disciplinary authority has been vindictive throughout as is apparent from the order of the disciplinary authority itself. The disciplinary authority, as I said before, also did not take into account the enquiry report in its entirety or rather at all which had gone entirely in favour of the writ petitioner and merely picked up a few words from the second paragraph of page four of the report, which were used totally out of context and were utterly contrary to the findings of the Enquiry Officer in his report, to serve its purpose.

56. I do not think it even necessary to talk about the decision of the appellate authority as the appellate authority being too high up on the ladder, since same was consisted of the persons like Principal Secretary, Department of Power, Government of West Bengal, Chairman of the West Bengal State Electricity Board and one Member operation, thought it fit to merely observe that as no cogent ground was made out by the writ petitioner, there was no case for review.

57. The appellate authority also did not think it necessary to consider at least the findings of the Enquiry Officer in his report. Neither from the decision or the order of the disciplinary authority nor from the order of the appellate authority, it could be made out with ordinary prudence and with reasonable and rational approach whether the petitioner's case was at all considered by the said authorities from its real perspective, or, rather at all.

58. Both the disciplinary authority as well as the appellate authority was too pre-occupied to retain or maintain the order of punishment against the petitioner as imposed upon him earlier. No doubt, both the disciplinary authority and the appellate authority were very mighty to retain such punishment but in exercise of the writ jurisdiction of this Court under Article 226 of the Constitution, I must set aside the decision of the disciplinary authority as well as the appellate authority respectively dated 10th February, 2003 and 17th June, 2003. The order of the appellate authority was communicated to the writ petitioner by the Chief Personnel Manager by his letter dated 11th July, 2003.

59. Before the said orders are formally set aside, it should be pointed out that in the notes of argument filed on behalf of the Board an attempt has been made to justify the order of punishment imposed upon the petitioner by the disciplinary authority and as affirmed by the appellate authority merely on the ground that as the petitioner was not able to obtain a medical certificate from a psychiatrist, the case of the petitioner for continuous absence from his work for his mental illness could not be accepted though the said certificate was issued by a duly qualified medical practitioner with M.B.B.S. degree. The Enquiry Officer, as I have said above, himself accepted the legal ability of the doctor who issued such certificate and the validity of the certificate in no uncertain terms and held that the charge of failure to produce legally acceptable medical certificate against the petitioner was not proved.

60. The disciplinary authority also in its decision said that it concurred with the findings of the Enquiry Officer, yet the findings of the Enquiry Officer in their true perspective were, in fact, rejected by the disciplinary authority. The appellate authority in its turn, in fact, did not consider anything neither the report of the Enquiry Officer, nor the contentions of the writ petitioner as raised in his appeal petition dated 26.3.2003 by him before the appellate authority and lastly, the Learned Counsel appearing on behalf of the Board without stating any reason of whatsoever nature and for no reason whatsoever merely pleaded that the order of the disciplinary authority as affirmed by the appellate authority should be held to be valid as the petitioner was unable to produce any certificate of his

prolonged illness of a "psychiatrist".

61. At this stage, perhaps it would not be out of place to refer to the decision of the Division Bench of this Court in *Dipankar Sengupta v. United Bank of India*, reported in 1998(2) C.L.J. 204. The Division Bench of this Court (the Court in short) therein was concerned with a case where major punishment were imposed upon of both the petitioners namely Dipankar Sengupta and Chittaranjan Samanta, by reducing their basic pay by two stages lower in their existing pay in the time scale with immediate effect. The Court found that both the petitioners in their respective capacities as officers of the bank were acting as "recommending authority" and their recommendations were, however, subject to the sanction of the sanctioning authority and the sanctioning authority was no doubt a higher authority and the sanctioning authority was in fact empowered to sanction the amount of loan/loans in question.

62. Speaking for the Court His Lordship Justice S.B. Sinha (as his Lordship then was) was pleased to observe: - "It appears from the inquiry report that both in relation to Dipankar Sengupta and Chittaranjan Samanta, he found most of the charges as not proved. It was further found that there was no evidence of motive or mala fide intent on the part of the writ petitioners with regard to their conduct. However, they were found to be guilty in respect of certain procedural and supervisory lapses". (See paragraph 3 at page 210 of the report).

63. His Lordship again observed (in paragraph 21 at page 215 of the report): - "It is, therefore, evident that although the Enquiry Officer had recorded that the charges had partly been established, in fact, the petitioner had substantially been exonerated from all the charges except lapses of certain procedural aspects or supervisory duty. Such lapses even according to the Enquiry Officer was not done with any ill motive or mala fide on his part.

64. The Court thought that the disciplinary authority imposed the "major punishment" upon the petitioners without at all considering the report of the Enquiry Officer where the report made by such officer should have been considered more carefully and there was an obligation, on the part of the disciplinary authority to consider the said report in its true perspective. On the contrary it was found that the disciplinary authority imposed the major punishment upon the writ petitioners without applying its mind to the relevant facts and without taking into account the relevant factors, namely the enquiry report, the facts and circumstances of the case, the evidence on record, the charges framed against the petitioners, the reply of the petitioners to the show-cause and other relevant documents.

65. I, on my part, have tried to read the above judgment and the said observations of the Court more than once. I have referred to the above judgment and set out the reasons as to why the Court thought that the imposition of the major punishment upon the petitioners in that case by the disciplinary authority was wholly unwarranted in the facts and circumstances and the evidence on

record of that case. The Court in that case also took into account various decisions of the Supreme Court and considered them in the background of the facts and circumstances of that case and eventually held that the decision of the disciplinary authority in imposing major punishment could not at all be sustained as the same was a product of utter non-application of mind. It was also based on irrelevant considerations and not at all on relevant factors.

66. In my opinion, the Court in the above case was primarily concerned with a case where the allegations against the petitioners could not strictly speaking be termed as misconduct in the first place within the meaning of the relevant provisions of the Regulations of the bank concerned.

67. The facts and the circumstances of the present case, in my opinion, stand on a much stronger footing than the case with which the Court was concerned in *Dipankar Sengupta* (supra). In that case, though the Enquiry Officer found some of the charges against the petitioners were proved yet considering the enquiry report in its entirety the Court thought that the disciplinary authority imposed major punishment upon the petitioners without applying its mind to the facts and the circumstances of the case and the enquiry report in particular. The decision of the Court was primarily based on the most important factor and that was that the Enquiry Officer in that case found most of the charges against the petitioners were not proved.

68. The only charge against the petitioner in the present case, namely, long absence from work without intimation cannot at all in my opinion be termed as misconduct as the petitioner was found to have duly informed or intimated his employer i.e. the Board of his illness through his wife and apart from the only charge of long absence over two years without intimation no real charge or charges or allegations of misconduct had been framed against the petitioner and the only charge of so-called misconduct under the Regulation 61(e) of the said Service Regulation had miserably failed. I would also mention once again that the Enquiry Officer having accepted the validity of the medical certificate issued in favour of the petitioner in no uncertain terms held that "the charge of failure to produce legally acceptable medical certificate against the petitioner was not proved.

69. Having considered the decision in *Dipankar Sengupta* (supra), in detail, I am of the opinion that the said decision fully come in aid of the petitioner's case as the case of the petitioner herein, as I have said above, in fact, stands on a much stronger footing than the case with which the Court was concerned in *Dipankar Sengupta* (supra).

70. Last but not the least, the order of the disciplinary authority, in my opinion, was made in clear breach of the order of this Court as the disciplinary authority was in any event under an obligation to complete the disciplinary proceeding by passing its final order within a period of three months from the date of the order passed on the petitioner's second writ petition on 30th September, 2002. In

granting the extension of time to complete the disciplinary proceeding this Court directed in clear terms that the Board should complete the proceeding peremptorily within three months from the date of the order, namely, 30th September, 2002. The exact direction passed by this Court on 30th September, 2002 has already been quoted above. It should, however, be pointed out that the second extension of time to complete the disciplinary proceeding was granted by this Court on the second writ petition moved by the writ petitioner. It was also specifically made clear in granting the second extension that if the proceeding was not completed within the period of three months the petitioner would automatically be entitled to "full salary" in terms of the earlier order of this Court i.e. (Order dated 18th June, 2002 of Asim Kr. Banerjee, J.).

71. After the above order, the last day of the hearing before the Enquiry Officer took place on 13th November, 2002 and the Enquiry Officer made his report on 27th November, 2002. Instead of completing the disciplinary proceeding in terms of the above order dated 30th September, 2002, the disciplinary authority thought it fit to issue a second show-cause notice and that too after the expiry of three months from the date of the said order dated 30th September, 2002 by which time the disciplinary authority was obliged to complete the disciplinary proceeding under the said order of this Court.

72. By issuing the second show-cause notice the disciplinary authority merely repeated its earlier charges, as mentioned above, by inter alia stating that the writ petitioner did not reply to the enquiry report. In the order dated 30th September, 2002 it was made clear, as I have said before "that in case the proceeding is not completed within the stipulated period despite the petitioner's co-operation the petitioner would be automatically entitled to full salary in terms of the earlier order dated 18th June, 2002 and the order dated 18th June, 2002 made it specifically clear that "the disciplinary proceeding must be completed within a period of three months from date.

73. The effect of the combined reading of both the above orders dated 18th June, 2002 and 30th September, 2002, in my opinion, is that the disciplinary authority was directed and as such was obliged to complete the disciplinary proceeding against the petitioner by passing its final order within the period of three months from the date of the second extension. The period of three months, however, started running on and from the said second order dated 30th September, 2002.

74. The disciplinary authority, however, instead of completing the disciplinary proceeding by passing its final within a period of three months from the date of the second extension passed its final order of termination against the petitioner only on 10th February, 2003 much after the expiry of the time-limit for completion of the disciplinary proceeding in terms of the "second extension" as made by the order dated 30th September, 2002.

75. There was no and has not been any allegation against the petitioner that

there was any lack of co-operation on the part of the petitioner as the petitioner admittedly appeared before the Enquiry Officer when the Enquiry Officer conducted the inquiry proceeding and the dates of such proceeding held by the Enquiry Commission are mentioned in the report of the Enquiry Officer. The last of such date of hearing was 13th November, 2002 and the enquiry report was made on 27th November, 2002.

76. In the above circumstances what prompted the disciplinary authority not to complete the disciplinary proceeding within the time granted by this Court, namely, three months, cannot, however, be made out with any reasonable and rational approach. Merely passing of the order as the disciplinary authority did on 10* February, 2003, did not as it could not absolve the authority from its liability or its legal obligation to complete the disciplinary proceeding positively within a period of three months from the date of the second extension as granted by the said second order dated 30th September, 2002.

77. The disciplinary authority after having realised or rather after rising from its slumber that the time to complete the disciplinary proceeding had expired with the expiry of the year 2002, issued a second show-cause notice, again in my opinion, totally unnecessarily on 3rd January, 2003 asking the petitioner to represent against the proposed punishment within seven days from the date of the receipt of the second show-cause notice as a mere face saving operation.

78. If the disciplinary authority had sincerely wanted to issue the said second show-cause notice as it did on 3rd January, 2003 it should have issued the said second show-cause notice immediately after it received the copy of the enquiry report dated 27th November, 2002. It is not the case of the disciplinary authority as it cannot be that, did not receive the report of the Enquiry Officer dated 27th November, 2002 in due course the disciplinary authority in spite of the completion of the enquiry proceeding and the report by 27th November, 2002 did not complete the disciplinary proceeding by passing its final order within the time granted by the said second extension cannot, however, be made out from the records disclosed in this proceeding. I am, however, convinced that the disciplinary authority allowed the time-limit of three months to lapse quite deliberately and passed its final order of termination repeating its said first order of termination dated 20th November, 1995 which order, as aforesaid, was set aside by this Court by the order of this Court made on the petitioner's first writ petition.

79. The disciplinary authority not only failed to complete the disciplinary proceeding within the time-limit of three months by passing its final order but it did not even think it necessary to seek further extension of time to complete the disciplinary proceeding when the authority could not complete such proceeding by passing its final order within the time-limit granted by the said second order of this Court dated 30th September, 2002.

80. I have already held on merits that the said order of termination dated 10th

February, 2003 should be set aside and I further held that the order of termination is in any event a nullity as the same was passed in utter violation or breach of the order of this Court dated 30th September, 2002 fixing the time-limit of three months for completion of the disciplinary proceeding against the petitioner from the date of that order.

81. "It is now well-settled", observed His Lordship Justice Samaresh Banerjee, "that any action taken or any order passed in violation of order of Court is a nullity". See *Phul Chand Biswakarma v. Union of India*, reported in 1997 1 CLT 68. In this connection the decisions of the Supreme Court reported in *Satyabrata Biswas and others Vs. Kalyan Kumar Kisku and others*, and the decision reported in *Ram Chandra Tripathi Vs. U.P. Public Services Tribunal IV and Others*, are also referred to.

82. It is by now well-settled that a disciplinary or a departmental proceeding comes to an end only when the disciplinary authority either exonerates or imposes punishment on the delinquent. I may for this purpose very usefully borrow the expression of the learned author Mr. Samaraditya Pal in his Book "Service law relating to Government and Public Undertakings" 2nd Edition 2004:

Conclusion of Departmental Proceedings

Departmental proceedings are not concluded on the submission of the enquiry report. They come to an end only when the disciplinary authority on consideration of the report either exonerates or imposes punishment on the delinquent.

(See paragraph 163.24 at page 613 of the Book).

83. In view of the above, the impugned order of termination of the petitioner's employment as passed by the disciplinary authority on 10th February, 2003 and the order of the appellate authority, namely, "standing appellate committee" of the Board dated 17th June, 2003 as contained in the letter of the Chief Personnel Manager, A.K. Pal, addressed to the petitioner dated 11th July, 2003 are both set aside.

84. In consequence of the above, the petitioner is hereby reinstated in service and will be allowed to join his office forthwith. The petitioner will be entitled to receive 50% of his salary and 50% of his monthly allowance or allowances, if any, together with all increments as he would have been entitled to had he be in service throughout with effect from 12th October, 1992 till 23rd August, 1997 and he will be entitled to receive his full salary together with all other benefits with effect from 24th August, 1997 till the date of his joining pursuant to this order. However, the payments that he has received by way of subsistence allowance by virtue of the order of this Court will accordingly be adjusted against his salaries. The respondents or rather the Board is directed to make the above payments, namely, salaries and all other benefit or benefits, positively within a period of four weeks from the date of his joining in terms of this order.

85. The writ petition is disposed of as above.

There will be no order as to costs.

Urgent xerox certified copy of this judgment, if applied for, be given to the parties at the earliest.

Maharaj Sinha, J.