
(2020) 03 CAL CK 0015

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 5342 (W) Of 2016

Dipankar Bandopadhyay

APPELLANT

Vs

Durgapur Chemicals Ltd. & Ors

RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Factories Act, 1948 — Section 2(1)

Citation : (2020) 03 CAL CK 0015

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Subir Sanyal, Sumouli Sarkar, Ranjay De, Basabjit Banerjee

Final Decision : Dismissed

Judgement

Amrita Sinha, J

The final order dated 30th December, 2015 passed by the Disciplinary Authority, dismissing the petitioner from service, is impugned in the instant writ

petition. The petitioner challenges the said order of dismissal inter alia, on the grounds of bias, perversity of evidence, non-application of mind and mala

fide on the part of the respondents.

FACTS:

The petitioner was serving as Assistant Engineer (Chemical) in Durgapur Chemicals Ltd. hereinafter referred to as "the Company". On 11th

November, 2010 when the petitioner went to the plant laboratory of the Company at about 10:40 a.m. he was assaulted by some other officers of the

Company. According to the petitioner he was severely beaten and harassed, both physically and mentally. The petitioner had to be treated by the in-

house doctors of the hospital of the Company. He drew attention of the Director-in-Charge of the Company by a letter dated 11th November, 2010

and also lodged a police complaint on 15th November, 2010.

The petitioner was served with a charge sheet-cum-suspension order dated 13th November, 2010 in view of the incidents which took place on 11th

November, 2010. The petitioner controverted the allegations made in the aforesaid charge sheet by his letter dated 16th November, 2010. A

supplementary article of charges was issued against him on 19th November, 2010. The petitioner replied to the supplementary charge sheet by his

letter dated 6th December, 2010.

The Director-in-Charge of the Company by a communication dated 14th December, 2010 advised the petitioner to present himself in the enquiry to be

held on 24th December, 2010. The name of the inquiry officer was mentioned in the said communication. The petitioner contested the inquiry

proceeding which commenced on 24th December, 2010 and continued till 8th November, 2014. He was served with the inquiry report dated 16th

September, 2015 by a memo dated 23rd September, 2015. The inquiry officer opined that the allegations levelled against the petitioner stood proved.

The Director-in-Charge of the Company, being the disciplinary authority, after taking into consideration the records of the case, imposed the impugned

order of punishment of dismissal of the petitioner from service by a memo dated 30th December, 2015.

SUBMISSIONS OF THE PETITIONER:

The initial charge sheet-cum-order of suspension reveals only bare facts and does not impute any charges against the petitioner. The charge sheet is

vague, incomplete, unauthorised and hence non est in the eye of law. The list of documents and the list of witnesses in support of the alleged charges

were not supplied to the petitioner. The Company, after receiving the reply of the petitioner in response to the initial charge sheet issued a

supplementary article of charges whereby the Company has tried to fill-in the lacunae which were pointed out by the petitioner in his reply to the initial

charge sheet.

The supplementary charge sheet also did not specify the acts of alleged misconduct or violation of the Rules by the petitioner. The supplementary

charge sheet was equally vague, not clear, ambiguous and suffered from non-

application of mind. The witnesses mentioned in the supplementary charge sheet were deliberately included as the said persons intended to take revenge against the petitioner because he protested against the formation and/or election of an association of officers comprising of those witnesses. The petitioner argued that due to non-existence of any service Rules of the Company the charges levelled against the petitioner is liable to be treated as non est in law.

CHALLENGE AGAINST THE REPORT OF THE INQUIRY OFFICER:

The acts of the petitioner which were allegedly held to be proved against him in the inquiry proceeding were completely different from the charges levelled against the petitioner in the article of charges.

The inquiry officer failed to appreciate the true intent and purport of the evidence put forth by the witnesses. The depositions of the witnesses were

false, concocted, meritless and contradictory in nature. The inquiry officer made wrong recording of the depositions of the witnesses. He erroneously

relied upon hearsay evidence without assigning any reason. He failed to consider or overlooked vital and relevant pieces of evidence. The inquiry

officer failed to deal with the charges separately and individually. The report of the inquiry officer is baseless, arbitrary, based on no evidence and

suffers from total non-application of mind and contrary to the principles of natural justice and fair play. The report is simply based on preponderance

of probabilities. Due to wrong appreciation of the evidence the entire decision making process suffers from gross irregularities and illegalities.

BIAS:

The petitioner has alleged that the inquiry officer acted in a biased manner with a closed mind set. The inquiry officer, Shri Bhaskar Sinha is a

chamber junior/junior advocate to Shri Ranjay De, advocate of the Company who is also the chamber junior/junior advocate to Shri Dipak Ghosh,

learned advocate representing the Company. The act, conduct and the inquiry report of the inquiry officer suffered from reasonable likelihood of bias.

The biasness of the inquiry officer is explicit from the report, wherein he formed his personal opinion over the issue, which the disciplinary authority

chose not to proceed with. The inquiry officer relied upon the alleged hearsay evidence of the witnesses and banked upon uncorroborated evidence

with total non-application of mind. There is reasonable apprehension of partiality

on the part of the inquiry officer.

DECISIONS RELIED UPON BY THE PETITIONER:

The petitioner relied upon the following judgments in support of his case:

1) AIR 2006 SC 1748 (paragraph 44) Narinder Mohan Arya â?"vs- United India Insurance Co. Ltd. & Or so.n the issue that the evidence adduced

on behalf of the management must have nexus with the charges. The inquiry officer cannot base his findings on mere hypothesis. Mere ipse dixit on

his part cannot be a substitute of evidence.

In the instant case the petitioner submits that the report of the inquiry officer is not based upon the evidence produced before him. The evidence does

not have any nexus with the charges levelled against him. The inquiry officer has arrived at his own independent findings based on surmises and

conjectures.

2) (2008) 5 SCC 209 (paragraphs 6, 7, 8, 13, 15 and 16) Nahar Singh â?" vs- Food Corporation of India & Or.s on the issue of preponderance of

probabilities.

According to the petitioner had the inquiry officer appreciated the depositions and evidences laid before him in its proper perspective there would have

been no scope to come to a finding that the charges levelled against him stood proved.

3) (2009) 8 SCC 520 (paragraphs 34-37) Indian Oil Corporation Ltd. & Ors. â?"vs- Raja Transport Pvt. Lt.d on the issue of reasonable apprehension

about impartiality of the inquiry officer.

The petitioner submits that as the inquiry officer was a chamber junior/junior to the advocate representing the Company there exist a reasonable

apprehension about the impartiality or independence of the inquiry officer. The Company ought not to have appointed the junior of the learned

advocate representing the Company as inquiry officer in the instant case.

4) (2005) 5 SCC 181 (paragraphs 15, 16 and 21) State of NCT of Delhi & Anr. â?"vs- Sanjeev @ Bitto oon the scope for judicial interference by the

High Court.

It has been submitted that the High Court can exercise its power of judicial review as and when there is illegality, irrationality and procedural

impropriety. In the instant case the inquiry officer arrived at an erroneous

conclusion due to non-application of mind to the relevant facts. The inquiry officer grossly failed to appreciate the evidence led before him. The inquiry officer being the fact finding authority failed to perform his duties properly. He took into consideration irrelevant fact which is impermissible. The conclusion of the inquiry officer does not stand the test of the Wednesbury principle.

5) (2003) 3 SCC 186 (paragraph 37) Cellular Operators Association of India & Ors. vs- Union of India & Ors wherein the court held that the power of judicial review of the High Court although is of wide amplitude, certain restrictions by way of basic discipline are imposed. The power of judicial review can be exercised when illegality, irrationality or impropriety is found in the decision making process of the authority.

In the instant case the report of the inquiry officer is absolutely irrational. The disciplinary authority acted illegally by relying upon the said report of the inquiry officer and arrived at an erroneous conclusion. The entire decision making process suffers from gross irregularities.

6) (2002) 7 SCC 142 (paragraph 7) Sher Bahadur vs- Union of India & Ors. on the issue of insufficiency of evidence.

The petitioner submits that in the instant case there is no evidence, far less, some evidence to arrive at the conclusion that the charges levelled against the petitioner are proved. There is no document/evidence in support of the said charges. The inquiry officer erroneously relied upon hearsay evidence of the witnesses without calling for any documentary or circumstantial evidence.

7) 2005 (3) CHN 385 A.K. Mukhopadhyay @ Amiya Mukhopadhyay vs-Union of India & Ors. on the issue of bias.

The conduct of the inquiry officer in the manner he conducted the inquiry leads to reasonable apprehension of bias in favour of the Company. As the decision making process itself was vitiated by bias, accordingly, the conclusion arrived thereat and the consequential order of his dismissal from service is liable to be set aside by this court.

The petitioner relies upon the note at page 451 of the book Administrative Law 9th Edition (Indian Edition) by HWR Wade and CF Fersyth on the issue of Rule against bias. The writing deals with the legal maxims *nemo judex in re sua* no man can be a judge in his own cause. The writing

mentions that "justice should not only be done, but should manifestly and undoubtedly be seen to be done".

The petitioner strenuously harps upon the point that as the inquiry officer was associated with the learned advocate representing the Company,

accordingly, there appears to be a reasonable apprehension of bias and hence, the report of the inquiry officer and the consequential order passed by

the disciplinary authority is liable to be set aside for ends of justice.

PRAYER MADE BY THE PETITIONER:

The petitioner prays for issuance of a writ of Mandamus directing the respondent authorities not to give any effect or further effect to the outcome of

the disciplinary proceeding, including the impugned order of dismissal passed against him. The petitioner further prays for a direction upon the

respondent authorities to allow him to join his duties.

SUBMISSION OF THE RESPONDENTS:

The learned advocate appearing for the respondents vociferously denies the allegations of bias raised by the petitioner. It has been submitted that the

inquiry officer conducted the inquiry for a prolonged period of four years comprising of ninety-four sittings. The petitioner never raised any allegation

or objection against the inquiry officer throughout the entire period during which the inquiry proceeded. The recording of the daily proceedings was

handed over to the petitioner on regular basis which he duly accepted without raising any objection. The petitioner was given adequate opportunity to

defend his case. He was also afforded opportunity to be represented by his lawyer, which the petitioner refused. The petitioner proceeded with his

case himself.

The petitioner intentionally and deliberately did not cross-examine the management witness nos. 2 to 6. Out of total seven management witnesses the

petitioner examined only two of them. Even though the petitioner was aware of the appointment of the inquiry officer way back in 2010 he never

raised any issue with regard to the same.

The inquiry officer enquired into the facts and dealt with the issues raised by the petitioner. The officer relied upon the evidence placed by the

witnesses. He considered the charge sheet, supplementary charge sheet, and the replies given by the petitioner in response to the same.

It has been contended that bias has not been proved even remotely by the petitioner. The petitioner has not pleaded prejudice. The scope and power of judicial review by the High Court is extremely limited. Requisites for judicial review is not present in the instant case. There is no bar in appointing a lawyer of the Company as the inquiry officer in a disciplinary proceeding is settled law. The disciplinary proceeding is not to be decided relying upon the strict rules of evidence. The same depends upon preponderance of probabilities. The fact that the petitioner has himself admitted that there is some evidence, is enough on the part of the inquiry officer to arrive at the decision complained of by the petitioner.

The High Court is not the appellate forum to review the order that has been passed by the disciplinary authority. The disciplinary authority applied its own mind and upon perusal of the report of the inquiry officer passed the order of removal of the petitioner from service. The said order ought not to be interfered with by the High Court. The possibility of availability of a second view is also not a ground to exercise judicial review.

The learned advocate refers to the definition of "worker" as appearing in the Factories Act, 1948. The respondents submit that each and every employee of the Company is a worker and deserves equal treatment. There is no distinction between an employee in the officer grade and an employee in the lower grade. The disciplinary authority has given enough reasons for accepting the report of the inquiry officer.

The proportionality of the penalty imposed upon the petitioner is not required to be reviewed by the High Court. Permitting the petitioner to continue with his work will demoralise the employees of the Company. The petitioner has taken recourse to highly illegal and arbitrary act by issuing pamphlets/leaflets inside the Company premises imputing nasty comments in respect of the employees of the Company. For the purpose of maintaining proper discipline in the Company premises the presence of the petitioner is not desirable. The working atmosphere of the Company will get vitiated if the petitioner is permitted to resume his duties upon setting aside the impugned order of penalty imposed upon him.

DECISIONS RELIED UPON BY THE RESPONDENTS:

The respondents rely upon the following judgments in their support:

1) (2013) 10 SCC 185 Davalsab Husainsab Mulla vs- North West Karnataka on

the issue of proportionality of the order of penalty, where the court held that when the employer had chosen to exercise its power of discharge and dismissal for stated reasons and proven misconduct, the interference with such order of punishment cannot be made in a casual manner or for any flimsy reasons. Any misplaced sympathy would cause more harm to the establishment which provides source of livelihood for many number of employees, than any good for the employee concerned.

In the instant case the conduct of the petitioner is extremely derogatory and his presence in the Company premises will do more harm to the organisation and its employees than good to the employee concerned.

2) (1982) 1 SCC 143 J. D. Jain â?vs- Management of State Bank of India & An ro.n the ground of admissibility of hearsay evidence. The court held

that the law relating to domestic inquiry is well settled, where the strict rules of evidence are not applicable. In the said case the court relied upon a

judgment delivered in the case of State of Haryana & Anr. â?vs- Rattan Singh wherein it has been held that â??all materials which are logically

probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibilityâ??.

In the instant case the evidences of the management witnesses were very probable and credible. No doubt has been raised with regard to the

credibility of the evidence given by the witnesses. The petitioner has himself refused to cross-examine the witnesses and accordingly he ought not to

raise the issue of admissibility of hearsay evidence.

3) (2011) 14 SCC 692 Sanjay Kumar Singh â?vs- Union of India on the ground of prejudice wherein the court relied upon the decision in the case of

Managing Director, ECIL Hyderabad & Ors. â?vs- B. Karunakar & Ors. (1993)4 SCC 72 t7hat, unless and until it is shown that prejudice has been

caused it cannot be said that the inquiry proceeding is vitiated or there is any violation of the principles of natural justice. It is for the departmental

authorities to conduct an inquiry in accordance with the prescribed Rules. The role of the court in the matter of departmental proceedings is very

limited and the court cannot substitute its own view or findings by replacing the findings arrived at by the authority on detailed appreciation of the

evidence on record.

In the instant case the inquiry officer conducted the inquiry for approximately

four years and held ninety-four sittings. The inquiry officer scanned the evidence and prepared his report. The disciplinary authority perused the said report and gave reasons for arriving at its conclusion to pass the final order of penalty against the petitioner. There is no impropriety in conducting the disciplinary proceedings and the same ought not to be interfered by the court.

4) (2015) 3 SCC 101 G. M. (Operations SBI) vs- R. Periyasam on the ground of sufficiency of evidence. The court held that the observation that there is no clinching evidence in support of the charges is another way of saying that the evidence is insufficient or inadequate, is not permissible. An administrative authority cannot be put to prove all the facts or conditions on which the validity of orders must depend, unless the respondent can produce evidence which will shift the burden of proof on the shoulder of the appellant.

In the instant case the petitioner had enough opportunity to disprove the charges levelled against him by cross-examining the witnesses produced by the management. The petitioner has himself cross-examined only two witnesses out of seven and as such lost his opportunity to raise any question with regard to the sufficiency of evidence against him.

5) (2013) 2 SCC 740 State Bank of India vs- Narendra Kumar Pandey on the issue that the High Court under Article 226 of the Constitution does not act as an appellate authority. The court held that the High Court while exercising powers under Article 226 of the Constitution is confined to correct an error of law or procedural error, if any, resulting in any manifest miscarriage of justice or violation of the principles of natural justice. The court cannot re-appreciate the evidence acting as a court of appeal.

In the instant case there has been no miscarriage of justice and the principles of natural justice have been strictly followed by the respondents.

6) (2012) 13 SCC 142 Avinash Sadashiv Bhosale vs- Union of India wherein the court held that it is a settled proposition of law that the findings of the inquiry officer cannot be nullified so long as there is some relevant evidence in support of the conclusion recorded by the inquiry officer.

In the present case the report of the inquiry officer was based upon substantial evidence by the management witnesses which the petitioner failed to disprove in his cross-examination.

7) (2011) 10 SCC 249 State Bank of India â"vs- Ram Lal Bhaska rwherein the court held that in a proceeding under Article 226 of the Constitution

the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary

authority are supported by some evidence the High court does not re-appreciate the evidence and come to a different and independent finding on the

said evidence.

8) AIR 2013 SC 1513 Nirmala J. Jhala â"vs- State of Gujarat & An. rwherein the court held that a disciplinary proceeding is not a criminal trial and

in spite of the fact that the same are quasi-judicial and quasi criminal, doctrine of proof beyond reasonable doubt, does not apply in such cases, but the

principle of preponderance of probabilities would apply. The court has to see whether there is evidence on record to reach the conclusion that the

delinquent had committed a mistake. The said conclusion should be reached on the basis of test of what a prudent person would have done.

In the instant case the disciplinary authority passed the penalty order on the basis of the evidence on record and going by the principle of

preponderance of probabilities the impugned judgment ought not to be interfered with by this court.

9) LLR 2012 732 Shri Farid Khan Jabber Khan â"vs- Wipro Co. Ltd. wherein a learned single Judge of the High Court of Bombay held that â"??I

donâ"??t see any bias on the part of the inquiry officer, an advocate, even if he was engaged for conducting the cases on behalf of the Company,

however, by that itself will not mean the advocate, in the capacity as inquiry officer has favoured the Company, has activated with biasâ"??.

The petitioner in the instant case has failed to prove any bias on the part of the inquiry officer for the entire period of four years during which he

conducted the disciplinary proceeding. Not a single objection has been raised by the petitioner against his approach or his conduct.

10) (2009) 10 SCC 32 Biecco Lawrie Ltd. & Anr. â"vs- State of West Bengal & An.r wherein the court held that the inquiry officer who was also

the Company lawyer cannot be considered as being â"??bias and partisanâ"?? who favoured and was partial towards the management of the Company.

As proper opportunity was afforded by the inquiry officer to the petitioner to disprove the charges levelled against him, the allegation of bias raised by

the inquiry officer in the present petition does not have any leg to stand upon.

11) AIR 1963 SC 1914 Sur Enamel & Stamping Works Pvt. Ltd. vs-Their Workmen wherein a three-judge Bench of the Hon'ble Supreme

Court held that an enquiry cannot be said to have been improperly held if the employee proceeded against has been clearly informed of the charges

levelled against him, the witnesses are examined in the presence of the employee in respect of charges, the employee is given fair opportunity to

cross-examine the witnesses, he has given a fair opportunity to examine witnesses himself in his defence, if he so wishes on any relevant matter and

an inquiry officer records his findings with reasons for the same in his report.

In the instant case there is documentary evidence to show that enough reasonable opportunity was provided to the petitioner to defend the charges

against him. The charge sheet mentioning the charges clearly was provided to him. Opportunity was given to the petitioner to examine his witness and

to cross-examine the management witnesses and the inquiry officer has recorded his reasons in support of his report and the disciplinary authority has

also recorded the reasons for accepting the contention of the inquiry officer and accordingly there is no reason to interfere with the proceeding

impugned herein.

12) AIR 2018 SC 4668 M. L. Singla vs- Punjab National Bank & An. wherein the court held that in the absence of any proof to show that the

domestic inquiry suffers from any procedural lapse or there has been any violation of the principle of natural justice thereby causing prejudice to the

rights of the appellant there is no reason to interfere with the said proceeding.

The petitioner has miserably failed to prove that the domestic inquiry suffers from any procedural lapse or there has been violation of the principle of

natural justice.

13) (2011) 2 SCC 316 State Bank of India vs- Bidyut Kumar Mitra wherein the court held that except in the cases falling under 'no notice',

'no opportunity' and 'no hearing' categories the complaint of violation of procedural provision should be examined from the point of view of

prejudice viz. whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively.

In the instant case the petitioner was given sufficient notice and opportunity to support his stand. Reasonable opportunity of hearing was also given to

the petitioner. No prejudice whatsoever has been caused and/or alleged to have been caused to him.

The respondents pray for dismissal of the writ petition.

OBSERVATION OF THE COURT:

The petitioner is an employee of the Company which do not have a separate, independent service rule. The Company adopted and followed the West

Bengal Service Rules for their smooth functioning and management.

Admittedly, an untoward incident took place in the Company premises on 11th November, 2010. A disciplinary proceeding was initiated against the

petitioner alleging his involvement in the incident on the said date. A charge sheet cum order of suspension was issued to him. The petitioner filed a

reply to the same. A supplementary charge sheet was issued against him with opportunity to reply. The petitioner duly replied to the same. An inquiry

officer was engaged to enquire into the matter, who after enquiry, filed a detailed report before the disciplinary authority. The inquiry officer

conducted the inquiry for four long years stretching over ninety-four sittings.

The names of the witnesses were forwarded to the petitioner along with the charge sheet. Opportunity was given to the petitioner to cross-examine

the witnesses of the management. The petitioner refrained from cross-examining quite a few of the witnesses. The inquiry officer upon perusal of the

documents reported against the petitioner. The disciplinary authority applied its mind and accepted the reasons forwarded by the inquiry officer by

adopting his report. The disciplinary authority imposed the penalty of dismissal of the petitioner from service.

The petitioner avers that as he was not aware about the service law and the conditions governing his service, he was unaware of the appellate forum

before which he could place his case, and accordingly he preferred the instant writ petition for necessary relief.

It appears from records that the petitioner was given several opportunities to place his case before the inquiry officer.

The primary allegation of the petitioner is perversity in the evidence adduced by the witnesses. The petitioner alleges insufficiency of evidence to

prove the charges levelled against him. He takes recourse to the plea of bias on the part of the inquiry officer being a junior attached to the learned

advocate representing the Company. According to the petitioner the inquiry

officer wrongly recorded the evidence deposed before him.

From the recordings of the daily proceedings annexed with the writ petition it appears that recordings were regularly read over and explained to the

petitioner and copies thereof were provided to him. On accepting the daily proceedings, the petitioner duly signed on the body of the minutes recorded

on the day of hearing. Though the petitioner has raised the allegation of bias, the petitioner never made any allegation against the inquiry officer during

the entire stretch of four years when the inquiry officer was in seisin over the matter. No prayer or request was ever made by the petitioner before

the disciplinary authority for changing/ removing the inquiry officer. No allegation of favouritism by the inquiry officer in favour of the Company was

ever made. The petitioner never alleged that he was prejudiced due to any action, inaction and/or excess action on the part of the inquiry officer. Only

after completion of the entire proceeding the petitioner got to learn that the inquiry officer happened to be associated with the lawyer of the Company

at some point of time. Drawing an analogy from the association of the inquiry officer with the learned advocate representing the Company the

petitioner has tried to make out a case of bias. Though bias has been heavily relied upon by the petitioner to challenge the impugned order, but apart

from the fact, that the inquiry officer received a copy of a notice on behalf of the learned advocate of the Company, that too, long before he was

appointed as Inquiry Officer in the instant case, no other material document in support of the allegation of bias has been produced or annexed with the

writ petition.

The other allegation of insufficiency of evidence by the Company also does not appear to be well-founded. If the petitioner was at all dissatisfied with

the depositions made or the witnesses produced against him he ought to have controverted the said witnesses in the cross-examination. It appears that

the petitioner has voluntarily refrained from cross-examining the witnesses produced by the management. In not cross-examining the witnesses the

petitioner failed and/or neglected to controvert and/or deny the allegations or the evidences given against him. He ought to have cross-examined the

management witnesses to disprove the allegations. As long as the deposition/ evidence of the management witnesses remains unchallenged, the same

stands uncontroverted by the petitioner.

The petitioner has admitted that the scope of judicial review by the High Court under Article 226 of the Constitution of India is extremely limited.

What falls for consideration before this court is whether on the facts and circumstances as pleaded by the petitioner, the penalty imposed upon him, is such, that it shocks the conscience of the court, justifying interference.

DISCUSSION BY THE COURT:

The first allegation made by the petitioner is that the charge sheet is defective. The same is vague. The concerned service rule is not mentioned. On perusal of the initial charge sheet and the supplementary charge sheet it appears that the service rule which was invoked to take steps against the petitioner was clearly mentioned therein. It is not the case of the petitioner that he is not covered by any service rule. The submission of the petitioner is that, as the service rule pursuant to which steps were taken against him was not mentioned in the initial charge sheet, he could not defend his case properly. The aforesaid submission of the petitioner cannot be accepted, in view of the fact that, though the initial charge sheet mentioned that he was placed under suspension as per rules, the said rule was not mentioned therein, but after receiving the reply of the petitioner, the Company thought it fit to intimate the petitioner that, he was being prosecuted in accordance with the West Bengal Service Rules. The petitioner being an officer of the Company ought to have known the service rule according to which he is guided. The petitioner feigned ignorance about the service rule guiding him and accordingly, the Company mentioned the service rule in the supplementary charge sheet and, as such, the allegation of the petitioner that the service rule was not intimated to him falls flat.

The allegation of insufficient evidence for the purpose of proving the charges levelled against the petitioner also does not appear to be a well-founded one. The petitioner has relied upon the judgment delivered in the case of Narinder Mohan Arya (*supra*) wherein the court held that the evidence ought to be linked to the charges levelled. The petitioner has annexed the depositions of the witnesses wherefrom it appears that the copy of the daily proceedings was provided to him after every sitting, meaning thereby, that the petitioner was all along aware as to how the proceedings against him proceeded. The petitioner had ample opportunity to raise objection if there was any departure from the regular process. The very fact that the

proceeding continued for a considerable period of time i.e. from 2010 till the final order of dismissal in December, 2015 suggests that the proceeding

continued at a steady pace. The Company did not act in a hasty manner to arrive at a conclusion. Reasonable opportunity was provided to the

petitioner at each and every stage.

The petitioner has admitted that there is some evidence of the incident which resulted in the initiation of the disciplinary proceeding. The inquiry officer

and thereafter the disciplinary authority have applied their mind, and came to a conclusion, that the evidence was sufficient and enough to prove the

charges against the petitioner. The Supreme Court has consistently held that as long as there is some evidence, the Writ Court ought not to

interfere in the departmental proceeding. Sufficiency of evidence is not a matter to be decided by the Writ Court.

With regard to the allegation of bias, it appears that, it is a mere apprehension on the part of the petitioner that the inquiry officer may have acted in a

manner favouring the Company. It is not the case of the petitioner that the inquiry officer was an employee of the Company. The inquiry officer

happens to be an independent legal practitioner, and may have been attached with the learned advocate(s) representing the Company, at some point of

time, but the same ipso facto is not a ground to doubt his honesty and integrity. In the absence of any specific and categorical allegation against the

inquiry officer showing instances of favouritism or bias on his part, one ought not to point a finger towards his conduct and trustworthiness.

An inquiry officer is appointed by the Company to enquire into the charges levelled against a delinquent employee. The inquiry officer is not the

disciplinary authority. Had the petitioner been aggrieved by any action of the inquiry officer he ought to have raised the issue before the disciplinary

authority, but by not doing so, the petitioner as a last resort, has raised the issue of bias before the writ court for the first time. It appears that the same

is an afterthought of the petitioner, after he learnt that the inquiry officer, in the past, was associated with the legal team representing the Company.

It is trite law that the outcome of a disciplinary proceeding can be interfered with by the Writ Court only when certain conditions are met.

The Honorable Supreme Court in the matter of Bidyut Kumar Mitra (supra) referred to a judgment of the Supreme Court in the matter of Sate

Bank of Patiala & vs- S. K. Sharma [1996 (3) JT 722]wherein the court held that violation of any and every procedural provision cannot be said to

automatically vitiate the inquiry held or order passed. Except in cases falling under "no notice", "no opportunity" and "no hearing"

categories the complaint of violation of procedural provision should be examined from the point of prejudice viz. Whether such violation has prejudiced

the delinquent officer/employee in defending himself properly and effectively.

The case at hand does not fall under any of the categories mentioned by the Hon'ble Supreme Court.

It is settled law that the High Court does not act as an appellate authority over the findings of the disciplinary authority. As long as the findings of the

disciplinary authority is based on some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding

on such evidence [Ram Lal Bhaskar & Ors. (supra), Abhinash Sadashiv Bhosle (supra)].

The Hon'ble Supreme Court in the matter of Nirmal J. Jhala (supra) held that the disciplinary proceeding is not a criminal trial and in spite of the

fact that the same are quasi judicial and quasi criminal, doctrine of proof beyond reasonable doubt, does not apply in such cases, but the principle of

preponderance of probabilities would apply. The court has to see whether there is evidence on record to reach the conclusion that the delinquent had

committed misconduct. However, the said conclusion should be reached on the basis of the test of what a prudent person would have done.

The petitioner has heavily harped on the point that the petitioner suffered prejudice, which arose out of perversity of the decision arrived at by the

inquiry officer upon consideration of the evidence placed before him. It has been strenuously argued that there is no evidence on record to show that

the petitioner actually distributed leaflets, but there is uncontroverted evidence that the petitioner kept the leaflets on the tables of the staff of the

Company. The inquiry officer interpreted the same by holding that the petitioner distributed the leaflets. The same cannot be faulted. The inquiry

officer having found some evidence of the alleged leaflets being circulated in the factory premises concluded that the petitioner distributed the leaflets

amongst the employees. Though the petitioner has submitted that "some evidence" is not enough to prove the guilt of a delinquent, but the

evidence has to be relevant to prove the said guilt. According to the petitioner keeping the leaflets on the table is not relevant to arrive at a conclusion

that the petitioner was distributing leaflets. The petitioner though in his evidence has denied that he distributed the leaflets, but the petitioner did not

cross-examine the witnesses who deposed against him. Thus the evidence against the petitioner remained uncontroverted, hence admitted.

The Honâ??ble Supreme Court in the matter of Narendra Kumar Pandey (supra) held that the High Court while exercising powers under Article 226

of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct an error of law or procedural error

resulting any manifest miscarriage of justice or violation of the principles of natural justice.

In R. Periyasamy (supra) the Supreme Court held that sufficiency or adequacy of evidence is not the ground on which the findings of facts may be set

aside by the High Court under Article 226. The exercise of analysing the findings of the inquiry officer as the delinquent was deprived of his livelihood

is wholly untenable.

In Sanjay Kumar Singh (supra) the Supreme Court held that the role of the court in the matter of departmental proceedings is very limited and the

court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on

record.

The petitioner has extensively argued that the inquiry officer acted with bias. The petitioner has stated that the moment he got to know about the fact

that the inquiry officer was previously attached to the chamber of the learned advocate representing the Company, he immediately wrote to the

disciplinary authority for replacing him. It has been submitted that the Company had initially given the idea that the inquiry officer was an outsider of

the Company, and accordingly the petitioner expected him to act in a fair and independent manner. But thereafter it transpired that the inquiry officer

was attached to the office of the learned advocate representing the Company, and as such, acted on its behalf.

According to the petitioner the inquiry officer being the fact finding authority ought to have dealt with the facts in a proper and unbiased manner,

whereas in the case at hand, the inquiry officer has put in his own findings at

every stage. He offered his own explanation with regard to the scuffle in between the employees, and also with regard to the factum of distribution of leaflets. The fact finding authority ought to have restricted himself only with the factual aspect of the matter and ought not to have dealt with the same. The inquiry officer went on to support his findings by relying upon decisions of court, which is not permissible.

It appears that even though the petitioner was supplied with the recordings of the daily proceeding on regular basis the petitioner failed to make out a case that the inquiry officer was acting in a biased manner. The same goes to prove that the allegation of bias raised by the petitioner, is an afterthought, only after the petitioner came to know about the association of the inquiry officer with the learned advocate representing the Company.

The petitioner has not been able to put forth a single instance in support of his allegation of bias on the part of the inquiry officer. In the absence of any clinching evidence of bias against him it is not open for the court exercising jurisdiction under Article 226 to accept the contention of bias.

The Honâ??ble Supreme Court in the matter of Biecco Lawrie (supra) held that the inquiry officer, who was also the Company lawyer cannot be considered as being â??biasedâ?? and â??partitionâ?? who favoured and was partial towards the management of the Company.

In Cantonment Executive Officer â??vs- Vijay D. Wani reported in (2008) 12 SCC 230 the Supreme Court held that bias is always a question of fact and has to be proved. Bias should be a real one and not a likelihood of bias. The court has to be vigilant while applying the principle of bias as it primarily depends on the facts of each case.

In Naresh K. Aggarwala â??vs- Canbank Financial Services Ltd. reported in (2010) 6 SCC 17 8the Supreme Court held that the allegation of bias and mala fide has to be proved by cogent and clear evidence.

The petitioner has tried to create a distinction amongst the â??officersâ?? and â??workersâ?? of the Company. It has been highlighted that no evidence was produced by the management as regard to the distribution of leaflets amongst the workers. Not a single worker was examined by the management. Thus the deposition has to be treated as a case of â??no evidenceâ?. The petitioner has tried to differentiate between the staff of the Company under two broad heads - â??officersâ?? and â??workersâ??.

The petitioner contends that such a difference was created by the Company itself in its charge sheet wherein allegation has been made that the

leaflets were distributed by the petitioner amongst the workers which resulted in a scuffle and mis-handling of the officers of the Company by the

workers. The petitioner contends that he examined the workers and none of the workers deposed that he distributed the leaflets. The inquiry officer

disregarded the evidence given by the workers of the Company and solely relied upon the deposition of the management witnesses which were

completely contradictory to each other and accordingly the inquiry report is absolutely perverse and bad in law.

The argument of the petitioner has been controverted by the Company. According to the respondents the petitioner was an employee of the Durgapur

plant of the Company. The same is a "factory" under the Factories Act, 1948. As per the said Act all employees working in a factory are

"workers" and there is no division amongst the employees.

The respondents have relied upon the definition of "worker" in Section 2(1) of the Factories Act, 1948 which says that any person employed in

the factory is a worker.

As the issue involved in the writ petition does not require this court to adjudicate whether the employees who deposed in the disciplinary proceeding

were workers or officers, accordingly the same is not dealt with in the instant petition. What is relevant to be decided is whether there was any

evidence before the inquiry officer to come to a conclusion that the petitioner was guilty of the charges levelled against him.

Stress has been laid on the fact that the inquiry officer acted on hearsay evidence. It has further been submitted that the hearsay evidence given by

the witnesses were contradictory to each other and the same cannot be treated as enough proof in support of the charges levelled against the

petitioner.

The Company has relied upon the judgment delivered by the Hon'ble Supreme Court in the matter of J. D. Jain (supra) wherein it has been held

that strict rules of evidence is not applicable in a domestic inquiry and there is no error if the finding of the domestic inquiry is based on hearsay

evidence. While delivering the said judgment the Supreme Court relied upon the decision delivered in the case of State of Haryana & Anr. "vs-

Rattan Singh wherein the court held that there is no allergy to hearsay evidence in a domestic inquiry, provided it has reasonable nexus and credibility.

The Honâ??ble Supreme Court in the matter of Sur Enamel & Stamping Works Pvt. Ltd. (supra) held that an inquiry cannot be said to have been

properly held unless:

(I) the employee proceeded against has been clearly informed about the charges levelled against him.

(II) the witnesses are examined-ordinarily in the presence of the employee-in respect of the charges.

(III) the employee is given a fair opportunity to cross-examine witnesses.

(IV) he is given a fair opportunity to examine witnesses, including himself in his defence, if he so wishes, on any relevant matter and;

(V) the inquiry officer records his findings, with reasons for the same in the report.

It appears from records that all the above factors have been duly complied with in the disciplinary proceeding undertaken by the Company. The

petitioner chose not to cross-examine a couple of management witnesses allegedly on the ground that they were partition witnesses. It does not

appear that there was any procedural lapse or violation of the principles of natural justice in the said proceeding. The allegation of bias raised by the

petitioner remains unsubstantiated. The punishment imposed upon the petitioner does not shock the conscience of the court so as to interfere with the

same.

Conclusion:

In view of the discussions made hereinabove the court is not inclined to interfere either with the disciplinary proceedings or the punishment imposed

upon the petitioner by the disciplinary authority. The employer is the ultimate authority to take a decision with regard to the quantum of punishment to

be imposed upon an employee. It is not proper for the Writ Court to interfere with the same unless the same shocks the conscience of the court. Such

is not the case at hand.

It is well within the jurisdiction of the employer to adopt means to ensure that its employees behave in a manner which is conducive to the

management and does not disrupt the day to day functioning of the Company. The Company has to follow the relevant rules in dealing with its

employees. The action of the Company ought not to be interfered with, as long as, the same falls in line with the relevant service rules and the law laid

down by the Honâ??ble Supreme Court. The facts and circumstances of this case do not call for any interference.

The writ petition fails and is hereby dismissed.

No order as to costs.

The department is directed to take immediate steps to reconstruct the missing order sheets dated 30th March, 2016, 6th April, 2016, 16th May, 2016,

15th July, 2016 and 4th August, 2016 and to ensure that the order sheets from the case records do not disappear in future.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties on compliance of usual legal formalities.