(1993) 03 CAL CK 0056

In the Calcutta High Court

Case No : C.O. No. 1021 (W) of 1991

Dwipendra Nath Mukherjee APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 17-03-1993

Acts Referred:

Calcutta Port Trust Employees (Classification, Control and Appeal) Regulations, 1987 — Regulation 7, 8A(1)
Constitution of India, 1950 — Article 226, 311(2)

Citation : (1993) 2 CALLT 233 : 98 CWN 164 : (1995) 1 ILR (Cal) 98

Hon'ble Judges : Paritosh Kumar Mukherjee, J

Bench : Single Bench

Advocate : Moni Bhusan Sarkar and Gita Gupta, P.K. Mullick, Alok Banerjee and Subimai Mukherjee, for the Appellant;Naren Debnath and Saptangshu Basu, for the Respondent

Judgement

P.K. Mukherjee, J.—This writ petition was heard-in-part in the presence of Mr. Moni Bhusan Sarkar and Mrs. Gita Gupta, learned Advocates for the petitioner, Mr. P.K. Mullick, Mr. Alok Banerjee and Mr. Subimai Mukerjee, learned Advocates for the Calcutta Port Trust authorities and Mr. Naren Debnath and Mr. Saptangshu Basu, learned Advocates appearing for Union of India, on different dates, that is, on January 19, 1993 and February 10, 1993, and during the "cease work" of this Court, on February 26, 1993, when Mr. Dwipendra Nath Mukherjee, the petitioner appeared "in person".

2. Today (March 17, 1993), judgment is being delivered in the presence of Mr. Moni Bhusan Sarkar, learned Advocate for the petitioner and Mr. Aloke Banerjee, learned Advocate for the Port Trust authorities.

3. The petitioner moved the present writ petition challenging, the validity of the impugned order passed by the Chairman and the disciplinary authority dated June, 23, 1990, thereby, imposing penalty of compulsory retirement upon the petitioner, which is set out at Annexure ''P'' at page 119 of the amended writ

petition.

4. The petitioner having preferred the appeal, the appellate authority, being the Joint Secretary, Government of India, under Memo No. C-16018/ 29/90-PE : II dated March 6, 1991 had confirmed the penalty of compulsory retirement, as imposed upon the petitioner.

5. In or about 1983, the petitioner was holding the post of Superintendent (Section) in Traffic Department, under the establishment of Calcutta Port Trust.

6. Being the seniormost Superintendent in Traffic Department, the petitioner sometimes rendered his duties in the post of Deputy Dock Manager (Operation). While the petitioner was posted at Netaji Subhas Dock, the petitioner was either holding the post of Superintendent (Section) or holding the post of temporary Deputy Dock Manager and rendered supervision duties over all sections.

7. According to the petitioner, physical verification of cargo not being a part of the job of Superintendent and the Deputy Dock Manager, as appears from Annexure ''C, regarding the principles of duties of the Superintendent and the Deputy Dock Manager, he could not be held responsible for verification of cargo.

8. In fact, the Dock is consisted of several sheds. Sheds are used for placement of cargo in course of loading and unloading the same into vessels. Shed Cheker, Shed Writer and Shed Head Clerk render duties as subordinate staff in each shed. Moreover, one Assistant Superintendent is posted in each shed.

9. According to the petitioner, the following norms and procedures are adopted and maintained by the Port Trust Authority for shipment :

"At first shipper/clearing agent submits cargo with dock challan stating the quantity, number of bags and nature of cargo which will be shipped, before the Port Trust Authority with requisite freight. Subsequently, the Port Trust Authority stores such quantity of cargo in the transit shed at a time or by installments for shipment. Said cargo are being loaded to a ship by the labourers of the Calcutta Port Trust Authority.

10. Sometimes, the authority of the ship refuses to accept cargo packed in bags for shipping on the reason that the said bags are not as per specification. The said bags are called as Sweeping Bags. The authority of the ship issues full mate''s receipt after completion of full shipment and the mate''s receipt is collected by the respective shed writer.

11. Afterwards, the respective shed staff hands over the mate''s receipt to the shipper on demand. The shipper/clearing agent also are allowed to take back the remaining sweeping/shut out bags on payment of shed rent according to procedure of Port Trust Authorities.

Port Trust Authority is used to check up weighment of 10% of the export bag cargo which are being shipped and issues certificate of weighment.

12. In fact, the respective Superintendent or Deputy Dock Manager never physically verify the remaining part of the cargo lying in the shed nor is responsible for handing over the said mate''s receipt and the remaining part of the cargo to the shipper.

13. In the absence of the said weighment certificate, Assistant Superintendent, Head Shed Clerk and Shed Writer may allow the shipper or the clearing agent to take back the remaining part of the sound/sweeping bags lying in the shed on written undertaking given by the shipper/clearing agent according to the circular of the Dock Manager, being Annexure ''D'' to the amended writ petition. Shipper/ clearing agent has to pay less shed rent for the sweeping bags, as per schedule.

14. There are four charges in the memorandum of charge sheet, which was issued by the Chairman and disciplinary authority on September 16, 1985, in respect of the petitioner, which has been set out at Annexure ''B'' at page 51 to the amended writ petition.

The said charges are set out hereinbelow : -

'''ARTICLE I :

THAT the said Shri D. N. Mukherjee while functioning as Superintendent, NSD/ GRJ on 9.6.1983 and as Dy. Docks Manager (Operation), NSD/GRJ on 10.6.1983 failed to exercise proper supervision on the Shed cargo at 4 N.S.D. Shed as a result of which considerable number of machine stitched sugar bags a/c. Tarapada Suhasini Marine Contractors (Pvt) Ltd. were wrongly treated as sugar sweeping bags.

By his above acts, Shri D. N. Mukherjee exhibited lack of integrity, devotion to duty and conduct unbecoming of a public servant.

ARTICLE II :

THAT the said Shri D. N. Mukherjee while functioning as Dy. Docks Manager (Operation) NSD/GRJ on 10.6.1983 endorsed his remarks on the application dated 10.6.83 of Messrs. Tarapada Suhasini Marine Contractors (Pvt) Ltd. to refer to Docks Manager''s circular dated 12.5.82 and to take necessary action at once on regard to handing over of in full Mate Receipt to the said party.

By his above act, Shri D. N. Mukherjee enables Messrs. Tarapada Suhasini Marine Contractors (Pvt) Ltd. to obtain in full Mate Receipt for the full quantity of 6000 M.T. (60,000 bags) sugar, when actually a large number of original bags of sugar had been short shipped and were lying in the Shed on 10.6.1983.

By his above acts, Shri D. N. Mukherjee exhibited lack of integrity and irresponsible conduct.

ARTICLE III:

THAT the said Shri D. N. Mukherjee while functioning as Dy. Docks Manager (Operation), NSD/GRJ passed verbal order on 10.6.1983 to deliver the bags of sugar as sweepings a/c. Messrs. Tarapada Suhasini Marine Contractors (Pvt.) Ltd. in spite of the fact that a large number of original bags of sugar had been short shipped and were lying in the shed on 10.6.1983.

By his above acts, the said Shri D. N. Mukherjee aided and abetted Messrs. Tarapada Suhasini Marine Contractors (Pvt.) Ltd. in attempting to remove 1542 original bags of sugar treating the same quantity as bags of sugar weepings.

By his above acts, Shri D. N. Mukherjee exhibited lack of integrity and conduct unbecoming of an Officer of the Calcutta Port Trust.

ARTICLE IV :

THAT the said Shri D. N. Mukherjee while functioning as Dy. Docks Manager (Operation) NSD/GRJ on 10.6.1983 endorsed the application of Messrs. Tarapada Suhasini Marine Contractors (Pvt.) Ltd. towards delivery of in full Mate Receipt as "please refer to Docks Manager''s circular and take necessary action at once" while in his deposition in the departmental proceedings on 15.6.1984 he added the remarks "it there was any irregularity those could have been incorporated on this application by the Shed" as part of the endorsement made by him in the application.

Thereby during a departmental proceeding as Prosecution Witness he made an incorrect statement about his own written endorsement made earlier.

By his above acts, the said Shri D. N. Mukherjee exhibited irresponsible conduct unbecoming of a public servant."

There was demonstration by the Trade Union of Dock Employees in view of removal of the Shed Checker and Shed Writer. The Dock Manager submitted report to the Traffic Manager concluding that the dock employees would not work under the petitioner.

15. According to the petitioner, in order to pacify such agitation, the Chairman, Calcutta Port Trust straightway issued such memorandum of charge sheet against the petitioner in pursuance of the said report of the Dock Manager and the said fact has been admitted in the affidavit in opposition.

The said charge sheet was issued after 2 years from the date of the alleged incident, and no criminal case was initiated against the petitioner.

16. At the time of hearing of the writ petition, Mr. Moni Bhusan Sarkar, learned Advocate appearing for the petitioner, submitted that it appears from the memorandum of charge sheet, that the charges were inter-mingled, inconclusive, and not definite in nature and was issued without any basis.

17. According to Mr. Sarkar, the Chairman and the disciplinary authority failed to apply his mind to the vital facts in issuing the charge sheet. The said charges are nothing but repetition of each and other charges. According to Mr. Sarkar, the disciplinary authority had issued the charge sheet with "closed mind".

18. According-to Mr. Sarkar, subsequently departmental enquiry was initiated against the petitioner in January 1986. The Traffic Manager was appointed as Enquiry Officer for holding such departmental enquiry against the petitioner. Such enquiry ended in April 1987. There was no evidence either to show that the petitioner had any knowledge of short shipment on June 10, 1983.

The Enquiry Officer submitted his enquiry report on September 14, 1987. The said enquiry report has been marked as Annexure ''G'' at pages 60 to 91 of the amended writ petition.

The Enquiry Officer, however, exonerated the petitioner from all the charges. The said enquiry report was, however, not served upon the petitioner at any material point of time.

It appears from the said report that the Enquiry Officer held that the endorsement of the petitioner did not enable the said clearing agent to obtain full mate''s receipt, and as such, the charge No. 2 was not proved.

19. The Enquiry Officer held that the failure to exercise proper supervision on the part of the petitioner had not been proved at all. The Enquiry Officer, the Traffic Manager, passed "a reasoned order" and gave explanation in details in absolving the petitioner from all the charges.

20. The relevant observations of the Enquiry Officer in the said report has been set out at page 80 of the amended writ petition, which is as follows :-

"Observation of the Enquiry Officer

P.O. has stated in his arguments for defence that those was a plan made by M/s. TPSM in which the Master of the Vessel and the Traffic Officer were parties. The plan was to have it declared by the Master that the entire quantity was shipped then the quantity of sound bags, not shipped, was to be declared by the Traffic Officer as sweepings for private gains to deprive the exporter. These private gains were to bo shared with the respective traffic officers. But the Master of the Vessel later on detected that the plan was going to be detected and got the Mates Receipt amended paste haste showing 1806 as shut out.

It was not been bourne out at the enquiry from the statements of witnesses or from the documents tendered as exhibits that there was any such plan as stated by P.O. P.O. did not put any question in this respect to any witness during the enquiry. P.O. states about participation of the Traffic Officer in the aforesaid plan but has not mentioned either the designation or the name of the officer. Hence the above argument of hatching a plan to which an unnamed or non-designated Traffic Officer was supposed to be a! party is considered by the undersigned as not acceptable as the same was based on presumption and not on the strength of recording of the witnesses at the time of enquiry. Moreover, the statement of P.O. that the Master got the Mate Receipt amended poste haste showing 1806 as shut out is not corroborated by the facts in as much as that it was on receipt of a letter on 1-8-83 from the owner''s agent M/s. United Liner Agency that the then

Traffic Manager ordered an investigation and it was detected by the Offg. Docks Manager, Shri A. P. Sen, on his physical checking that 1806 bags sugar were lying in the said after which a meeting was held in the room of the Docks Manager where the agents, exporter M/s. TPSM were present and after which the Mate Receipt was amended.

The second argument of P.O. is that Shri D. N. Mukherjee had received the morning position of the shed on 9.6.83 and 10-6-83. The morning position of 9-6-83 showed 64 T of sugar as shut out while the morning position of 10-6-83 showed 64 T of sugar as shut out and 140 T as sugar sweepings.. Shri Mukherjee did not raise any objection about the presence of 140 T sugar sweepings. No report was made by

Shri Mukherjee when the shed showed 140 T sugar as sweeping without having any further receipt of sugar bags on 9.6.83. It did not occur to Shri Mukherjee any abnormality by seeing the posting of 140 T of sugar sweepings which were not in the morning position of 9.6.83.

The undersigned asked Shri Mukherjee (CS) whether machine stitched and sweeping bags could not be left behind after full shipment specially when the party brought in only 640 bags in addition to the quantity of 60,000 bags for replacement of damaged bags.

Shri Mukherjee in his answer stated that nothing appeared to him abnormal because ships officers kept a strict watch on the quality of bags during their shipment from the shed, bags were being rejected by them as the jetty and being returned to the shed at random even for a negligible flaw or deficiency of bags. In view of the heave rejection of the bags by ship''s officer, he allowed, as Supdt. NSD, 2000 bags sugar if required for replacement. It was not known to him in the early morning of 9.6.83 how many bags were brought in by the shipper for replacement. When he visited 4 NSD in the morning of 9.6.83, the vessel had completed shipment on previous night and the entire ground floor of 4 NSD was littered with torn bags, burst bags, sweeping sugar, Bamboo mattings etc. and with those scattered round bags of sugar were lying. Just by looking at them on his morning rounds, it was not possible for him to ascertain whether there had been any short shipment and whether abnormal quantity of sound bags were lying.

In his statement of defence after the conclusion of the enquiry, the defence counsel stated that the Asstt. Supdt. of a shed is supposed to go round the shed and check every situation with his own eyes which is not possible for a superintendent or a Dy. Docks Manager who is the overall incharge for the management of an entire section comprising as may as 8/10 sheds. It is neither practicable nor expected of such an officer (DDMG/Supdt.) that after collecting the morning position of the sheds from a responsible Class-I officer like the Asstt. Supdt. he should go round every nook and corner of the sheds to verify the existence of each and every item of cargo shown as lying in the shed in the morning position. The functional responsibilities of the staff of the various cadres in a shed as well as their job descriptions are specific. The totally showing 1542 large sweeping was submitted by the shed Checker Shri A. K. Das as per instructions of Shri Ashok Ghosh, I.A.S. (This is as per statement of Shri Das given in this enquiry.) Shri Das on 10.6.83 detected number of original bags in the let of sweeping bags and brought this fact to the notice of the NSC Shri N. G. Kar. No effort was made by NSC to arrange for submission of a fresh tally after segregating the sound bags from the stock of sweeping bags. The defence counsel further stated that on 9.6.83, when Shri Mukherjee visited 4 NSD a cargo vessel was due to arrive at that shed on that very day and Shri A. Ahmed, D.D.M.O., NSD seeing the scattered bags ordered removal of all bags to the first floor. On 10.6.83, when Shri Mukherjee visited NSD as Dy. Docks Manager, the ground floor was empty and Shri Ashok Ghosh was working as Supdt. NSD gave him the position that bags of sugar had already been removed to the first floor as per programme on the previous day and as per restoring tally made 640 bags sugar were lying along with 140 T of sweeping bags on the first floor.

On analysing the statement given by Shri Mukherjee and the defence argument given by the defence counsel, it is hard to accept P.O.''s contention that concerned about berthing of a cement ship was a plea of diverting the attention from the irregularity shown. In he morning position of 10.6.83 because the removal bags to the first floor was ordered by an officer of a higher rank than Shri Mukherjee on 9.6.83 and the existence of 10,6.83 of original bags should have been brought to the notice of Shri Mukherjee by the shed staff, or A.S. or the shed. When the shed position on 10.6.83 showed 140 T as sweeping the enquiry should have been started from the shed level. I am of the opinion that enquiry by a Deputy of a section normally starts after any report is received by him from the shed or from A.S. or Supdt. and not the other way round. Answer (1) and (2) to W. 5 of the undersigned given by Shri Mukherjee explains when he did not find any abnormality when he found a large quantity of both machine stitched and sweeping bags lying in the shed. P.O. in his written argument has referred to the statement of Shri N. R. Temer wherein he had stated that he (Shri Temer) would enquire presence of such a huge quantity of sugar bags but Shri Mukherjee is not feel the necessity of such an enquiry. 1 am sorry to point out that although Shri Temer felt the necessity of asking an enquiry he did not actually do so. On the contrary, I am to point out that Shri Temer received two letters (one from the surveyors M/s. S.G.E. Pvt. Ltd. and the other from M/s. South India Corporation) indicating that 2406 bags were short shipped and 90 sweepings were lying. But even after receipt of these vital letters no enquiry was made by Shri Temer as Assistt. Supdt. of the shed. In spite of the above two letters, the shed staff prepared bills on 10.6.83 and on 10.6.83 written delivery order for the same was given by Sri Ashok Ghosh working as Supdt. NSD/GRJ (old exhibit Nos.). There was also glaring instance of slackness of supervision by the shed staff inasmuch as when Shri A. K. Das on 10.6.83 pointed out to H & G about the existence of original bags in the shed, no action was taken by him.

Shed Writer, Sri M. S. Mukherjee requested NSC (New Exhibit No. 5) to check and to ensure that necessary entries were made in the shed diary. But the HSC Shri K. G. Kar did not come to the assistance of the shed writer nor did he check any record to keep necessary nothings of such a gross irregularity detected although he was the commercial head of the shed and had admitted in reply to my Question No. 3 that in case of any difficulty of the shed writer, as HSC he1 could advise him. He did not advise the shed writer to make any enquiry nor did he bring it to the notice of the Master or the agents about existence of a number of original bags issued in full Mate''s receipt by the vessel. In view of the reasons explained above, I am of the opinion that charge No. 1, i.e. failure to exercise proper supervision on the part of Shri Mukherjee has not been proved.

Article 2 of the charge relates to the fact that Shri Dipendra N. Mukherjee ordered on the application dated 10.6.83 of M/s. TPSM Pvt. Ltd. to refer to D.M.G.''s circular dated 12.5.82 and to take necessary action at once with regard to handing over in full mate receipt to the said party. By this above act, Sri Mukherjee enables M/s. TPSM Pvt. Ltd. to obtain in full mate receipt when actually a large number of original bags had been short shipped. In his argument for defence, the Presentation Officer stated that the letter of M/s. TPSM Pvt. Ltd. dated 10.6.83 (Exhibit No. 15) was signed afterwards by the Jetty Sircar of M/s. TPSM and was filed by Shri K. K. Mitra of the said company after dispensing with the Port officials, Jetty Sircar is an authority of the representative of the clearing agent to sign of letters. In this case, the letter was not first signed by him. Later on, he did so to regularise the matter, before the action was taken on the subject of the letter. There was, therefore, no violation of the rules. As regards P.O.''s contention was that the letter was filed by Shri N. K. Mitra of M/s. TPSM after discussing with the Port officials, the position has been explained by Shri Mukherjee by his answer (c) to my Question No. 9. Since the report from the Supdt. Coal regarding weighment charges had not been received at the shed No. 4 NSD, the party was instructed by the Supdt. Coal to apply in D.D.M.G. NSD for delivery of the mate receipt giving an undertaking that whatever charges would be due would be paid by them. On receipt of the application Shri Mukherjee verified the contents of the letter from the then Supdt. Coal, Sri K. Sengupta and got the details of DDMG''s circular No. and date from him and mentioned the particulars of the circular on the application assuming the NSD being an import shed night not be conversant with the D.M.G.''s aforesaid order which authorised the shed to deliver the mate receipt under similar circumstances.

The above answer of Sri Mukherjee explained the facts. It is, therefore, wrong to find any sinister design on the part of the shed staff of Supdt. Coal to instruct the party to apply to DDMG, NSD in this report. But the P.O.''s statement that the letter was filed by Shri K. K. Mitra of M/s. TPSM Pvt. Ltd. after discussing with the Port officials, hinted such a design, which is, however, believed by the facts.

The P.O. in his statement stated that Sri Mukherjee gave two endorsements on the letter, one to A.S. 4, NSD/RSD, 4 NSD and the other to HSC, 4 NSD. These two endorsements were made by him to bypass Supdt. NSD in order to accommodate M/s. TPSM in respect of delivery of bag sugar sweepings hurriedly in order to avoid future impediment that might come in the way of delivery of bag sugar sweepings. It has not been borne out by the answer of any witnesses in the enquiry that no endorsement was made by Sri Mukherjee to Supdt. NSD, in order to accommodate the party to take delivery of sugar sweeping, bags hurriedly. Hence this observation of P.O. was based on presumption and surmise and on the basis of any recorded evidence. I may mention here that P.O. was within his rights to cross examine the charged employee if he had any question his mind out in this enquiry be declined to put any question to Sri Mukherjee. Hence, any observation made by him afterward on the basis of presumption and surmise and not on the basis of recorded evidence cannot be accepted by the undersigned. In this connection, I may mention that Sri Mukherjee was asked by no during the enquiry why he had addressed the letter to EBG. In answer he stated that at such a distant date he could not possibly say the reason but thought that since HSC of the shed dealt this thing he might have addressed to him directly. If P.O. was not satisfied by this answer at the time of enquiry, he should have prayed to the undersigned and he should have put to Shri Mukherjee in the form of a question the observation which he had made in his written argument after the conclusion of the enquiry.

The P.O. in his written statement has taken cognizance of an endorsement made by Shri Mukherjee and subsequently scored out by him. When an endorsement was scored out subsequently by anybody it is not logical and right to read any interpretation in it. This is to be taken as non-existent. Hence, no cognizance is being given this observation of P.O.

The P.O. has stated that in the circular referred to by Shri Mukherjee, there was no specific clause regarding written application to be made any party for obtaining the mate receipt. Hence, this application has been construed by P.O. to have been accepted by out of the way. As already stated, Shri Mukherjee''s answer (C) of Question No. 9 of the undersigned explained why the party applied to DDMG, NSD. Hence, P.O.''s contention that the party''s application was accepted by out of the way cannot be accepted by the undersigned as a sound argument.

If the circular referred to by Shri Mukherjee while endorsing the party''s application, is carefully analysed, it will reveal that it relates to the delivery of mate receipt in absence of weighment certificate/ measurement only. If any officer endorses to the shed to take notice on the basis of this circular, it should be construed a hearing effect in the context of non-availability of weighment/ measurement certificate. Hence, any endorsement in this respect if given by any Port Officer, should not be interrupted as a blanket endorsement of giving delivery of mate receipt despite all difficulties. The prosecution witnesses by their statements made in the enquiry, tried to establish that this partial/qualified endorsement by Shri Mukherjee was construed by them as a blanket order of giving delivery of mate receipt because the subject matter was discussed in the room of A.S., 4 NSD on 10.6.83. This argument is very hard to accept because the circular referred to by Shri Mukherjee in his statement is very specified circular giving authority to the shed to deliver mate receipt in absence of weighment/measurement certificate on receipt of an undertaking from the party. This endorsement of Shri Mukherjee passed through responsible hands of NSD, Shri N. G. Kar and Shed Writer, Sri M. S. Banerjee. If they had thought the endorsement to be an unqualified order of the DDMG, NSD, to take delivery of mate receipt, in all fairness, they should have recorded their observation on the letter itself and sought further clarifications from Shri Mukherjee. If on being referred to, Shri Mukherjee had again passed any order for the delivery of mate receipt, then the endorsement could have been construed as a blanket order with regard to the delivery of the mate receipt. In view of the reasons, explained above, I am of the view that by his endorsing his remarks on the application dated 10.6.83 of M/s. T.P.S.M. (Pvt.) Ltd. to refer to D.M.G.''s circular dated 12.5.82, Shri Mukherjee did not enable M/s. T.P.S.M. (Pvt.) Ltd. to obtain in full Mate Receipt for the full Quantity of 60000 bags sugar. Hence charge No. II has not been proved.

The charge No. 3 stated that Shri D. N. Mukherjee while functioning as Dy. Docks Manager (O) passed verbal order on 10.6.83 to deliver the bags of sugar as sweepings a/c. M/s. Tarapada Suhasini Marine Contractor Pvt. Ltd. in spite of the fact that a large number of original bags of sugar had been short shipped and were lying in the shed on 10.6.83.

By his above acts, Shri Mukherjee aided and abetted M/s. Tarapada Suhasini Marine Contractor Pvt. Ltd. in attempting to remove 1542 original bags of sugar treating the same quantity as bags of sugar sweeping. By his above acts, Shri D. N. Mukherjee exhibited lack of integrity and conduct unbecoming of the officer of the Calcutta Port Trust. The charge, therefore, consists of the following parts :

(i) Shri Mukherjee passed verbal order on 10.6.83 to deliver bags of sugar as sweeping.

(ii) A large number of original bags of sugar had been short shipped and were lying in the shed on 10.6.83.

(iii) Shri Mukherjee aided and abetted M/s. Tarapada Suhasini Marine Contractors Pvt. Ltd. in attempting to remove 1542 original bags of sugar treating the same as bags of sugar sweeping.

While discussing the item (i), we have to examine whether Shri Mukherjee passed verbal order on 10.6.83 to deliver the bags of sugar as sweeping. The charge is not whether Shri Mukherjee passed verbal order on 10.6.83 to deliver sugar sweepings bags a/c. TPSM but the charge is that Shri Mukherjee passed verbal order to deliver bags sugar as sweeping. Hence, it presumes as has been enumerated in item (ii) above, the existence of original bags of sugar lying in the shed on 10.6.83 consequent upon short shipment, therefore, we have to examine whether Shri Mukherjee passed verbal order to deliver original sugar bags as sugar sweeping bags and not. whether Shri Mukherjee passed verbal order to deliver sugar sweeping bags. While discussing the point we have to carefully examine whether :

(i) The delivery of sugar sweeping bags was within the knowledge of Shri Mukherjee.

(ii) Whether he was aware of existence of original bags of sugar lying in the shed and whether the fact of any short shipment was brought to his knowledge on 10.6.83.

P.O. in his written argument after the conclusion of the enquiry stated that on 10.6.83 morning, Shri A. K. Das, Shed Checker went to the shed and found a large number of sound bags lying in the shed. He informed this matter to Shri N. G. Kar, HSC and wanted to sound the approximate tally for 1542 bags of sugar shown as sweeping on 9.6.83. Shri Kar advised him to prepare a memo addressed to A.S. and seek his, instruction for amendment of tally. Shri N. G. Kar, HSC prepared a memo addressed to the A.S. on the basis of the chit given by Shri A. K.. Das. This memo was handed over to Shri A. K. Ghosh, who gave it to Shri D. N. Mukherjee, P.O. further stated that in the aforesaid written argument letter (page 17) that all the staff present in the A.S.''s room on 10.6.83 at about 12 noon and also Shri Ashim Kumar Das stated that a memo has given to Shri A. K. Ghosh, A/S on that day intimating the presence of huge number of original sugar bags which M/s. T.P.S.M. (P) Ltd. were trying to take delivery as sugar sweepings."

21. It appears from the letter dated April 9, 1988 issued by the Chairman and disciplinary authority which is Annexure "H" at page 92 of the amended writ petition, that the matter was referred back to the Enquiry Officer with a direction to re-enquire into the matter and to submit a report in respect of the past cases of shipment of export sugar.

22. Being aggrieved with the said order, the petitioner earlier moved a writ application before this Court, in Matter No. 1699 of 1988 on April 5, 1989. The High Court was pleased to quash the impugned order.

23. The High Court was also pleased to direct that it will be now open to the disciplinary authority to deal with the enquiry report in accordance with the provisions of the regulation, and he must do so, within a period of one month from the date of communication of the order, and in accordance with the relevant regulation.

24. The petitioner apprehended at the time of moving of the earlier writ petition that the respondents were attempting to place the petitioner under compulsory retirement, but the same was, however, denied by the respondents in the affidavit in opposition, to the earlier writ petition.

25. The petitioner, subsequently, received the order dated April 27, 1989, of the

disciplinary authority placing the petitioner under compulsory retirement, which has been impugned in the instant writ petition.

25. According to Mr. Sarkar, the disciplinary authority did not, however, give any cogent reason for disagreement with the findings of the enquiry officer. The disagreement report of the disciplinary authority is not substantial for the reasons, as stated in paragraph 45 of the amended writ petition.

26. It was also submitted by Mr. Sarkar that the disciplinary authority imposed punishment of compulsory retirement, without considering the materials on record.

27. Moreover, the disciplinary authority imposed such penalty of compulsory retirement upon the petitioner in disagreeing with the findings of the enquiry officer, without, giving any reasonable opportunity of hearing to the petitioner. The said order was passed by the Chairman only to materialise his personal grudge against the petitioner, as alleged by Mr. Sarkar, as he had moved earlier writ petition before this Hon''ble Court and became successful.

28. The disciplinary authority imposed the major punishment of compulsory retirement as provided under Clause 7(vii) of the Calcutta Port Trust Employees'' (Classification, Control, and Appeal) Regulation, 1987, upon the petitioner for committing of offence, as alleged.

29. The disciplinary authority imposed such punishment of compulsory retirement upon the petitioner, whereas, the disciplinary authority imposed minor punishment against another Traffic Superintendent, who was alleged to be found guilty almost on same charges, as levelled against the petitioner.

30. Turning to the finding of the appellate authority, Mr. Sarkar submitted that the appellate authority remitted the matter back to the disciplinary authority to pass suitable order on the basis of the enquiry report and evidence on record being Annexure ''O'' at page 116 of the amended writ petition. Clause V of the findings of the appellate authority runs as follows : -

"It seems quite natural that the disciplinary authority should have taken note of the vast disparity in the number of bags of sweepings arising from broadly comparable total quantities of sugar shipped on M. V. Indian Valour and M. V. Solange P. However, before considering this aspect as a ground in arriving at his findings, it seems only fair that the appellant should have been given an opportunity to refuse the imputation. This aspect did not form part of the inquiry report and to that extent constitutes extraneous consideration in the Chairman arriving at his findings. This, therefore, militates against principles of natural justice and is also violative of the 1987 Regulations."

The Chairman and disciplinary authority further revived and reaffirmed the earlier order of his predecessor confirming the major punishment of compulsory retirement of the petitioner by order dated June 23, 1990.

The said impugned order has been set out at page 119 of the amended writ petition.

31. Mr. Sarkar submitted that the impugned order was not passed in conformity with the directions passed by the appellate authority.

32. The disciplinary authority passed the order mechanically and without considering the materials on record and even the said enquiry report submitted by the enquiry officer. Even the disciplinary authority placed the petitioner under compulsory retirement without giving any opportunity to the petitioner to defend the case. The impugned order is nothing but a rubber stamp of the earlier order. The disciplinary authority was pre-deter-mined and/or pre-judged to place the petitioner under compulsory retirement only to materialise the demand of the trade union,

33. Mr. Sarkar further submitted that an appeal was preferred on August 28, 1990, before the Central Government against the impugned order of the disciplinary authority placing the petitioner further under compulsory retirement. The said appeal was not disposed of by the appellate authority in spite of several reminders by the petitioner.

34. Ultimately, when the petitioner moved the instant writ petition before this Court on February 5, 1991, challenging the validity of the impugned order of the disciplinary authority placing the petitioner under compulsory retirement, the appellate authority rejected the appeal of the petitioner, and confirmed the order of disciplinary authority whereby the order of compulsory retirement dated March 6, 1991 was passed and the same was communicated to the petitioner.

35. So, according to Mr. Sarkar, both the original order of compulsory retirement dated June 23, 1990, and the appellate order dated March, 6, 1991, should be set aside by issue of appropriate writ in the nature of Certiorari.

36. Before parting, Mr. Sarkar submitted that the disciplinary authority having imposed the major penalty of compulsory retirement upon the petitioner after adjudging the guilt in respect of Charge Nos. I and II, as alleged, whereas the enquiry officer admittedly exonerated the petitioner from all the charges and, as such, the imposition of major penalty of compulsory retirement upon the petitioner which was disproportionate to the charges, was unwarranted, and should be set aside.

37. In this connection, he has placed reliance on the observation of the Supreme Court in the case of Bhagat Ram Vs. State of Himachal Pradesh and Others, wherein Supreme Court observed that it is equally true that the penalty imposed must be commensurate with the gravity of misconduct and that any penalty disproportionate to the gravity of mis-conduct, would be violative of Article 14 of the Constitution.

38. The said view was subsequently followed by A. P. Sen and Venkata chalia (the present Chief Justice) then was JJ. in the case of Ranjit Thakur v. Union of

India, reported in AIR 1987 SC 2288.

39. "The aforesaid two observations of the Supreme Court were based on the judgment of the House of Lords in the case of Council of Services Union v. Minister for Services reported in 1984(3) WLR 1174 (HL) wherein Lord Diplock observed that anything disproportionate should be discarded.

40. Mr. Sarkar also submitted that the disciplinary authority did not record any cogent reason as to why he has disagreed with the findings of the enquiry officer who had absolved the petitioner from all the charges. Such action on the part of the disciplinary authority was arbitrary and against the principles of fair play.

41. Mr. Aloke Banerjee, on the other hand, appearing on behalf of Calcutta Port Trust authorities, submitted the following facts.

42. On September 16, 1985, the Chairman and the disciplinary authority issued a charge sheet in exercise of the power conferred upon him under Rule 11 of the Calcutta Port Trust Employees'' (Discipline & Appeal) Rules, 1964, inter alia, on the ground that-(a) While the writ petitioner was functioning as Superintendent on June 9, 1983, and as Dock Manager (Operation) on June 10, 1983, failed to exercise proper supervision on the shed cargo at 4 Netaji Subhas Dock as a result of which considerable number of machine stitched sugar bags A/c. Tarapada Suhasini Marine Contractors Private Limited were wrongly treated as sugar sweeping bags. (b) While the writ petitioner was functioning as Dock Manager on June 10, 1983, endorsed his remark on the application dated June 10, 1983, of M/s. Tarapada Suhasini Marine Contractors Private Ltd., to refer to the Dock Manager''s circular dated May 12, 1982, and to take necessary action at once in regard thereto and handed over full mate''s receipt to the said party. (c) While the petitioner was functioning as Deputy Dock Manager (Operation), passed verbal order on June 10, 1983, to deliver the bags of sugar as sweeping A/c. M/s. Tarapada Suhasini Marine Contractors Private Limited in spite of the fact that the large number of original bags of sugar have been short shipped and was lying on June 10, 1983. (d) The writ petitioner, while functioning as Deputy Dock Manager (Operation), on June 10, 1983, endorsed the application of M/s. Tarapada Suhasini Marine Contractors Private Limited towards delivery of full mate''s receipt as "balance referred to the Dock Manager''s circular and take necessary actions at once". While in his deposition in the departmental proceedings, he added the remark ''if there was any irregularity those could have been incorporated on this application by the shed."

On February 3, 1986, the writ petitioner gave reply to the charge sheet.

43. On September 4, 1987, the enquiry officer submitted his report holding that the writ petitioner is not guilty of the charge brought against him.

44. On April 9, 1988, the Chairman and the disciplinary authority remitted the case back to the Enquiry Officer with a direction to re-enquiry into the matter.

Against that a Writ Petition being moved by the petitioner, on April 11, 1989, the

Hon''ble Justice Monoranjan Mallick had set aside the order remitting the case to the enquiry officer and further directed that it would be open to the disciplinary authority to deal with the enquiry report in accordance with the provisions of the Regulations.

45. Thereafter, on April 28, 1989, the Secretary, Calcutta Port Trust forwarded the order of the Chairman dated April 27, 1989, wherein the Chairman and the disciplinary authority found the petitioner guilty of the charges under Articles I and II and imposed a penalty under Regulation 7 of the Calcutta Port Trust Employees'' (Classification, Control and Appeal) Regulations, 1987, and imposed the penalty to the effect that the writ petitioner would be compulsorily retired from service with immediate effect.

On May 23, 1990, the appellate authority remitted the case back to the disciplinary authority for passing a suitable order on enquiry report and evidence on record.

46. On June 23, 1990, the Chairman and the disciplinary authority after considering the reports of the enquiry officer and evidence on record found the petitioner guilty of the charges brought against him under Articles I and II and held that the penalty of compulsory retirement as imposed upon the petitioner earlier, was fully justified and hence, ordered that the said penalty remained unchanged, which has been impugned in the present writ petition.

47. During the pendency of the writ petition, on March 6, 1991, the appellate authority having reconsidered the case on the basis of facts/records found no reason to interfere with the order of the disciplinary authority and rejected the appeal confirming the penalty of compulsory retirement upon the writ petitioner.

48. After placing the aforesaid facts from the pleadings of the writ petition and the affidavit, Mr. Banerjee submitted that Regulation 25 of the Calcutta Port Trust Employees'' (Classification, Control and Appeal) Regulations, 1987, (hereinafter referred to as the said Regulation) repealed the earlier Regulation and Clause 25(1)(b) of the said Regulations specifically provides that:

"Any proceeding pending under the old Regulations shall be continued and disposed of in accordance with the provisions of this Regulations."

49. He further submitted that as per Regulation 8A(1)(ii) wherein the following clause has been inserted to the effect:

"The disciplinary authority shall, if it disagrees with the findings of the Inquiry Officer on any article of charge, records its reasons for such disagreement and record its own findings on such charges, if the evidence on record is sufficient for the purpose."

50. Mr. Banerjee further submitted that in the instant case the enquiry officer exonerated the petitioner from all the charges brought against him, but the disciplinary authority after considering the report of the enquiry officer, and the

materials on record, found the petitioner guilty of the charges brought against him.

51. On this branch of submission, he has placed reliance on the following authorities, namely, in the case of D.J. Warkari v. K.V. Karanjkar, reported in 1980(1) SLR 839 Bom and in the case of A.N. D''silva Vs. Union of India (UOI),

52. Mr. Banerjee further submitted that this Hon''ble Court sitting in writ jurisdiction, is not entitled to take a different view, when two views are possible on the question of appreciation of evidence and in support of this contention, he has relied on the observations made by the Supreme Court in the case of Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram,

53. In conclusion, Mr. Banerjee submitted that both the disciplinary authority as well as the appellate authority, after considering the matter from all perspective, and considering the report of the enquiry officer, and the materials on record, found the petitioner guilty of the charges, and as such, it will not be proper for this Court sitting under Article 226 of the Constitution, to substitute its own views, and interfere with the order of compulsory retirement.

54. After considering the rival submissions of both the parties, it will be necessary for me to scrutinise the order passed by the Chairman, which is, inter alia, as follows :

"(a) The appellate authority after considering the appeal of Sri Mukherjee (the petitioner herein) has come to the conclusion that the ground raised by him towards extraneous consideration of the past experience of the disciplinary authority in respect of sugar shipment by M. V. "Indian Valour" in November 1982, without giving an opportunity to Sri Mukherjee to refute this extraneous claim, is acceptable and as such, the appellate authority has remitted the case back to the disciplinary authority to pass a suitable order based on the enquiry report and evidence on record.

(b) The other ground raised by Shri Mukherjee, as mentioned against SI. Nos. (i) to (iv) of the said order bearing No. C-16018/15/89-PE. II dated 23.5.1990, have not been accepted by the Appellate Authority reasons of which have been stated elaborately in the mug order.

(c) Now, in compliance with the order of the Appellate Authority, the undersigned has carefully examined the enquiry report, evidence on record, order dated 27.4.1989 passed by the Disciplinary Authority and the Appeal of Shri Mukherjee thereon, my observations and conclusion are given below.

(d) The reasons of disagreement with the findings of the Enquiring Officer pertaining to the Articles of Charges I and II have been elaborately discussed by the Disciplinary Authority in his final order passed on 27.4.1989. The reasons of his disagreement were based on evidence on record excepting the consideration of the past experience in respect of sugar shipment by M. V. "Indian Valour1'' in November, 1982.

(e) I feel that the reasons of disagreement, which are based on evidence on record, cannot be set aside only because of the reference to and consideration of the case of "Indian Valour". In fact, the gravity of the reasons of disagreement pertaining to the Articles of Charge 1 and II remains unchanged even after withdrawal of the said extraneous consideration.

55. The Chairman and the disciplinary authority further observed as follows :

"On the other hand, letter No. S-1840/Export/Con dated June 27, 1983, which was exhibited in this departmental enquiry as a new exhibit No. VIII, clearly indicates that the matter pertaining to short shipment of 1806 bags of sugar abroad M. V. "Solange P" at No. 4 NSD was subsequently detected. This factual position was also accepted by the defence counsel of Shri Mukherjee (the petitioner herein) in the written argument of defence dated April 22, 1987.

The presence of 1806 bags of sugar in the shed after full shipment is definitely a most abnormal feature, which would have been enquired into by Sri D. N. Mukherjee himself before making delivery of full mate''s receipts to the shipper on June 10, 1983, but he failed to do so, As a result, considerable number of original bags of sugar were wrongly treated as sugar sweeping bags.

Considering the above mentioned facts and circumstances, I find that even if no reference is made to the experience with regard to "Indian Valour", the evidence on record shows the guilt of Sri D. Mukherjee, with regard to the Articles of Charges I and II.

56. The aforesaid findings and conclusion of the disciplinary authority, in my view, is nothing but perverse, as the disciplinary authority had merely reiterated the earlier final order passed by his predecessor-in-office dated April 27, 1989, and not proceeded with the case with an open mind after passing of the order of remand by the appellate authority.

57. Indeed, this Court sitting in Article 226 of the Constitution is not entitled to substitute its own views in place of the disciplinary authority, but this Court exists only to scrutinise as to whether the finding arrived at by the disciplinary authority for the second time, is based on evidence, or otherwise perverse.

58. In my view, the disciplinary authority proceeded with "a preconceived notion" only to substantiate the earlier finding of his predecessor-in-office dated April 27, 1989, in this matter, and has given a rubber stamp to the earlier order of compulsory retirement, because of the fact that the petitioner moved this Court on the earlier occasion and became successful.

59. In the result, the impugned order dated June 23, 1990, as well as the appellate order dated March 6, 1991, passed during the pendency of the instant writ proceeding, are quashed by issue of appropriate Writ in the nature of Certiorari.

60. The petitioner will be entitled to resume his duties forthwith, preferably

within 3 days from communication of xerox copy of the operative part of this judgment.

61. The petitioner will be entitled to be reinstated in the post from which he was compulsorily retired with full back wages from April 27, 1989 till the date of his joining.

62. The petitioner will also be entitled total promotional benefits, increments etc., accrued to him during this period, as if the order of compulsory retirement has not been passed in respect of the petitioner, and the respondents are directed accordingly.

The writ petition is allowed to the extent, indicated above.

In the circumstances of the case, there will be no order as to cost.

Prayer for stay of operation of the order made on behalf of Calcutta Port Trust authorities, is considered, and refused in the facts and circumstances of the case.

Let xerox copy of operative part of this judgment be supplied to the learned Advocates of all the parties, on usual undertaking.

