

**(1997) 05 CAL CK 0026**  
**In the Calcutta High Court**  
**Case No : C.O. No. 1795 (W) of 1991**

Kasim Ali

APPELLANT

Vs

Indian Iron and Steel Co. Ltd. and Others

RESPONDENT

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**Date of Decision :** 05-05-1997

**Acts Referred:**

**Citation :** (1998) 2 LLJ 97

**Hon'ble Judges :** Gitesh Ranjan Bhattacharjee, J

**Bench :** Single Bench

**Advocate :** T.K. Banerjee, Arun Kumar Maiti and Asoke Kumar Maiti, for the Appellant; Chandrima Bhattacharjee, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Gitesh Ranjan Bhattacharjee, J.—In this writ petition the petitioner who was a driver employed in Burnpur Works under the respondent Indian Iron and Steel Company Ltd. prays for quashing the impugned final order of discharge dated November 15, 1990 issued by the Executive Director (Works) of the respondent Company and also prays for reinstatement in service. The petitioner joined the service in the said Company in July, 1982 as a helper to driver and was thereafter appointed as driver. A charge sheet dated June 8, 1989 was issued to the petitioner by the Deputy General Manager which is Annexure B to the writ petition. The allegation in the charge sheet is that on June 5, 1989 in D shift the petitioner was assigned to drive truck No.WMH 6238 for Power Engineering Department and at about 12.35 p.m. on that date while he was taking out the said truck unauthorisedly through New Gate he was stopped by Security staff for checking and on" checking, nine pieces of billets and some steel pieces were found in the said truck which the petitioner was taking out stealthily. It was also stated in the charge- sheet that the acts of the petitioner mentioned therein amounted to misconduct in accordance with clauses Nos.25(iii), (viii) and (xi) of the certified Standing Orders of Burnpur Works. It may be noted here that Clause 25 (iii) includes theft in respect of Company's property, Clause 25 (viii) includes

neglect or negligence of duty and Clause 25(xi) includes any act subversive of discipline. The petitioner was asked to explain in writing within seven days as to why disciplinary action should not be taken against him for the above noted charge. The petitioner thereafter submitted explanation and then a disciplinary enquiry was held by the enquiry officer appointed for the purpose. In the enquiry witnesses were examined on behalf of the department and they were also cross-examined on behalf of the charge sheeted employee, namely, the petitioner and the petitioner took the assistance of a co-worker for helping him in the enquiry. The petitioner also examined himself in the enquiry. The enquiry officer after completing the enquiry submitted his report and thereafter the Executive Director (Works) issued the second show cause notice dated July 11, 1990 Annexure C to the writ petition recording therein that he had carefully gone through the relevant papers in connection with the case as well as the enquiry proceedings and the findings of the enquiry officer and had come to the conclusion that the charges levelled against the petitioner had been established beyond doubt, and proposed to impose the punishment of discharge from service and asked the petitioner to show cause as to why the proposed punishment should not be imposed. Thereafter the petitioner asked for copies of the proceedings, findings of the enquiry officer, FIR, theft report and report on which charge sheet was issued. The petitioner's grievance is that only the copies of the proceedings and the findings of the enquiry officer were supplied to him. The petitioner submitted his show cause reply dated October 19, 1990 Annexure G to the writ petition in response to the second show cause notice issued to him. Subsequently the Executive Director (Works), as already noted, after considering the matter including the show cause reply of the petitioner issued the impugned order dated November 15, 1990 discharging the petitioner from the service. It is inter alia stated in the said discharge order, Annexure H to the writ petition, that there is no extenuating circumstance calling for any lesser punishment, and since the charges proved against the petitioner were serious in nature he was discharged from the service of the Company with immediate effect. Thereafter the petitioner moved this writ petition challenging his discharge from the services of the Company.

2. Various pleas have been taken by the petitioner, such as, that the charges are vague, the names of the witnesses are not mentioned in the charge sheet, no theft report was there, no case was reported to the police against the petitioner nor was any copy of paper supplied to the petitioner before holding the enquiry, etc. It is also the contention of the petitioner that the enquiry was not concluded within the prescribed period of three months as required by clause (i) of the Standing Order No.27(ii). It is also contended by the petitioner that in awarding the impugned punishment the authority concerned did not take into consideration the previous record of the petitioner as required by clause (g) of the said Standing Order No.27(ii). It is further contended by the petitioner that the findings arrived by the enquiry officer are also not sustained by the evidence. The clause (i) of Standing Order No. 27(ii) reads thus:

"27(ii)(i) The proceedings of the enquiry shall be completed within a period of three months. Provided that the period of three months may, for reasons to be recorded in writing, be extended by such further period as may be deemed necessary by the enquiry officer."

3. It is contended on behalf of the petitioner that in this case the enquiry was not concluded within three months nor did the enquiry officer record any reason to justify any extension of the period beyond three months for completion of the enquiry and as such the enquiry itself including the report submitted and the actions taken thereon culminating in the discharge of the petitioner are all bad in law. It is on the other hand submitted on behalf of the respondents that the enquiry proceedings had to be adjourned for reasons of the petitioner and the petitioner cannot take advantage of that. However it is also submitted on behalf of the respondents that the enquiry was completed within the prescribed period. From the records it appears that the first sitting of the enquiry was held on July 26, 1989 and on that day the petitioner himself took adjournment. The date for the second sitting was August 10, 1989 but on that date neither the petitioner nor any one on behalf of the department was present. In the third sitting on August 19, 1989 both parties however appeared. The fourth sitting was held on September 12, 1989, the fifth sitting on September 20, 1989 and the sixth and final sitting on October 3, 1989. Standing Order No.27(ii)(a) says that where an employee is charged with an offence which may lead to the imposition of the major penalty, he shall be informed in writing of the allegations against him and shall be given an opportunity to make representation within a period of not less than seven days and "on receipt of the employee's explanation, where the allegations are denied by him, an enquiry shall be held by an officer or officers nominated by the management" . So an enquiry has to be held only when the concerned employee denies the allegations in his representation. Evidently therefore the enquiry and for that matter, the proceedings of the enquiry relate to the stage subsequent to the submission of the explanation in response to the charge sheet. In view of the language of the Standing Orders of Burnpur Works it therefore cannot be said that the proceedings of the enquiry commenced on and from the date of issuance of the charge sheet. As we have seen in this case the proceedings of the enquiry commenced when the first sitting of the enquiry was held on July 26, 1989 and the period of three months for completion of the proceeding of the enquiry has to be reckoned from that date. The petitioner also has categorically stated in paragraph 8 of the writ petition that the domestic enquiry started on and from July 26, 1989 for enquiring into the alleged charge of misconduct. Since the starting point of the proceedings of the enquiry is July 26, 1989 and the last sitting of the enquiry proceedings was held on October 3, 1989, it is therefore evident that the enquiry proceedings had been completed within the prescribed period of three months. That being so, the contention of the petitioner that the enquiry proceedings had not been completed within the prescribed, period is misconceived.

4. It is contended on behalf of the petitioner that the charge against the

petitioner is vague. On a perusal of the charge sheet which I have already mentioned, I however find that there is no such vagueness in the charge as could vitiate the charge sheet on that ground. It is argued on behalf of the petitioner that in the charge sheet it is mentioned inter alia that on checking nine pieces of billets and some steel pieces were found in the concerned truck without mentioning the exact number of steel pieces and that makes the charge vague. In my opinion this argument is not tenable. That some steel pieces along with nine pieces of billets were recovered from the truck which the petitioner was driving is not a disputed fact. The petitioner has himself admitted in the written explanation submitted by: him as quoted in the report of the enquiry officer- (which has been placed before me at the time of hearing as I wanted to peruse the same although not annexed to the writ petition) - that nine pieces of billets and some steel materials-were taken out of the truck (meaning, found in the truck on checking by the security staff). His entire plea was and is that he did not keep those billets and steel pieces in the concerned truck and he had no knowledge of the existence of those materials in his truck. In view of this admitted fact that nine pieces of billets and some steel pieces were recovered from the truck by the security staff by checking in the presence of the petitioner, there is no question of the; chargesheet being vitiated on the ground that instead of giving the exact number of steel pieces recovered from the truck it is stated in the chargesheet that some steel pieces were recovered along with nine pieces of billets. The plea I of vagueness of the charge therefore stands overruled. As regards the plea that the chargesheet does not contain the names of the witnesses it has to be stated that the witnesses were examined on behalf of the department in the enquiry in the presence of the petitioner and the co-worker who assisted the petitioner in the enquiry and those witnesses were also cross-examined on behalf of the petitioner. It is not that in the enquiry proceedings the petitioner at the very initial stage wanted to know the names of the witnesses to be examined on behalf of the Department but he was not supplied with such names. It is not that the witnesses who were examined on behalf of the Department in the enquiry were earlier examined or their statements were earlier recorded in writing in any preliminary enquiry. Had it been so that their earlier statements were recorded in writing in any preliminary enquiry and the petitioner wanted such statements for using the same in the enquiry and were not supplied with the same in that case the position perhaps could have been different. But here it is not so. It is also not that the petitioner wanted adjournment for cross-examining the witnesses but that was refused. As regards the question of reporting the incident to the police the fact is that the incident was not at all reported to the police. Non-reporting of the fact to the police obviously does not vitiate the enquiry proceedings. It has come in evidence adduced by the Department in the enquiry that the incident was not reported to the police nor was the petitioner handed over to police after recovery of the materials from his truck as in that case the Company's truck also would have been seized by the police. The point is quite understandable. If for avoiding the seizure of the truck by the police the incident was not reported to the police

for starting a police case, that does not give any benefit or advantage to the petitioner in the departmental enquiry which has to be considered on its own merit.

5. The petitioner's case is that on the said date he was assigned duty with the particular truck although that was not the truck which he usually used to drive, and he was asked to perform duty in the Power Engineering Department. It is his case that on that date he reported for duty at about 8 a.m. and on being assigned to drive the particular truck and go to the Power Engineering Department he went with the truck to the Power Engineering Department at 9 a.m. Admittedly at about 12.35 p.m. the petitioner went to the New Gate with his truck and stopped the truck near the Iron Section Canteen there. The New Gate as usual was closed at 12.30 p.m. for a certain length of time. In his written explanation the petitioner said that he went with the truck at 9 a.m. without checking the truck. He also said that he left the truck for a little while for going to the toilet. Even according to the petitioner these were his mistakes and apologized for the said acts in the written explanation and even prayed for being forgiven for his negligence and promised that he would be very careful in future and would never leave the vehicle in unauthorised way. His reply to the second show cause notice shows that in the past also disciplinary action was taken against some drivers for recovery of unauthorised materials from their trucks and he was aware of the same. It is the case of the respondents that in the Iron Canteen no meal is served between 12 noon and 1 p.m. In his cross-examination in the enquiry the petitioner however says that he did not take 1 meal in the Iron Canteen as there was a big crowd, He also says that the meal had started at that time. But in answer to the question put to him by the presenting officer whether he knows that the Iron Canteen does not serve meal between 12 noon and 1 p.m. he says that he had no knowledge about the same. This is also something peculiar. In his reply to the second show cause notice which is Annexure "G" to the writ petition the petitioner however says that the contention of the enquiry officer that no food is supplied in the Canteen between 12 noon and 1 p.m. has no relation with the charge and he had gone there in the Iron Canteen to collect his lunch box that was usually delivered by his brother and when he did not find the box he preferred to wait in the canteen as food would have been served from 1 p.m. when the security people had called him out and searched the truck. So this version of the petitioner in his second show cause reply is not consistent with what he stated in his evidence before the enquiry officer. Before the enquiry officer while cross-examining the petitioner did not tell anything about the collection of lunch box from his brother as a usual feature. On the contrary he wanted to say that he went to the Iron Section Canteen to take his meal but he could not take his meal because of crowd there while as a matter of fact and it is also admitted by him in his second show cause reply that no meal is served in that canteen between 12 noon and 1 p.m. Prima facie it would appear that the petitioner at the subsequent stage when he filed his second show cause reply introduced a new case of collecting lunch box from his brother in that canteen

with a view to explaining his presence at that time with his truck there. Now if the petitioner's plea of going there for taking or collecting his lunch becomes doubtful for reasons noted above the very purpose of his going there at the New Gate with the truck becomes exposed to question. It is in evidence that by the time the petitioner reached there with the truck the gate was closed and therefore it was not possible for the petitioner to pass through the gate. He had to stop there. But at that time instead of stopping in the queue on the left side he of course parked the vehicle near the canteen on the right side. Since the petitioner was assigned duty at the Power Engineering Department prima facie he went near the New Gate with the truck in an unauthorised way. The Department has adduced oral evidence to the effect that a telephonic information from an unidentified caller was received at the security control at about 12.30 p.m., that this truck would go out of the Works with steel materials without valid pass and that is why the security personnel approached the truck after it arrived there and searched the same in the presence of the petitioner and recovered unauthorised materials mentioned in the charge-sheet from that truck. The members of the security staff who made the recovery from the truck were also examined by the Department and their evidence also has been considered by the enquiry officer. The enquiry officer on considering the facts, circumstances and evidence on record has recorded findings against the petitioner. This Court sitting in its writ jurisdiction cannot enter into a reappraisal of the evidence. But as we have seen this is not a case of no evidence. It also cannot be said that the findings of the enquiry officer are in any way perverse. The fact that the petitioner was not made over to the police is inconsequential. The writ Court which is not exercising the function of an appellate authority in the matter has no scope to interfere with the findings of the enquiry officer which are based on evidence. This Court could have interfered had it been a case of no evidence or had it been a case of perverse findings of the enquiry officer which is not the case here. It was argued by the learned Advocate for the petitioner that there was no theft report of any department. The question whether there was a theft report is also not of much significance. The fact remains that the materials recovered from the truck which was being driven by the petitioner were the materials of the Burnpur Works and there was no valid authority for carrying the same in the truck. As we have already noted some of these unauthorised materials were recovered from inside the driver's cabin. Absence of theft report has no significance in this connection.

6. It is argued on behalf of the petitioner that the discharge order is bad because in passing the said order the concerned authority did not take into consideration the service record of the petitioner., The petitioner has annexed a letter dated ] September 21, 1988 issued by the Managing Director of the Company to the petitioner which is Annexure A to the writ petition. In that letter the Managing Director noted that he was happy that during the crisis situation which occurred- on September 14,1988 when a Statewide Bandh call was given the petitioner was one of the few persons who reported for work in G shift. It is also noted in

that letter that the petitioner's attachment to the organisation and his sense of duty were very much appreciated with the hope that this will inspire others also to endeavour to do the same. It is the grievance of the petitioner that this letter of appreciation issued by the Managing Director should have been taken into consideration in determining the question of punishment to be awarded to him which was not done although Standing Order No.27(ii)(g) provides that in awarding the punishment, the Management shall take into account the gravity of misconduct, the previous record of the workman or any extenuating or aggravating circumstances that may exist. The petitioner's grievance is that this provision was not complied with in awarding the punishment to the petitioner inasmuch as the said letter of appreciation issued to the petitioner was not considered by the concerned authority in determining the punishment to be awarded. It is presumed that barring this letter of appreciation there is nothing of any material concern in the service record of the petitioner. The petitioner also in his reply to the second show cause notice did not take any plea that this letter of appreciation should be taken into consideration by the concerned authority nor did he attract the attention of the concerned authority to this letter of appreciation. That being so it cannot be said that the non-consideration of this letter of appreciation by the authority concerned vitiates the impugned order of discharge. It is needless to mention that even if this letter of appreciation is a matter for consideration yet it is not for this Court to determine what punishment should be awarded to the petitioner in the facts and circumstances of the case and it is for the respondent authorities to determine the same. Even if the discharge order is quashed for non-consideration of that letter of appreciation and even if the respondents are directed to consider the matter afresh taking the said letter of appreciation into consideration yet the situation will not improve. In paragraph 7 of the affidavit-in-op-position it has been stated with reference to the said letter of appreciation that all the employees who had worked on September 21, 1988 which was a Bandh day, were given letters of appreciation by the Managing Director of the respondent Company and such letter has no relevance in the present context. Such an approach on the part of the respondent authorities regarding the said letter of appreciation cannot be said to be perverse or unreasonable or unsustainable. That being so even if the said letter of appreciation is taken into consideration by the respondent authorities the situation does not improve. Moreover I have pointed out that the petitioner did not also rely on this letter of appreciation in his reply to the second show cause notice or on his service record. Having regard to all the facts and circumstances of the case I find no justifiable reason to interfere in the writ jurisdiction with the impugned order of discharge of the petitioner from service.

7. It has been argued by the learned Advocate for the respondents that this writ petition is also maintainable inasmuch as the petitioner had alternative remedies. It is argued that there is provision for appeal in the Standing Order of Burnpur Works against such an order which has been challenged in this writ petition, but the petitioner, for no justifiable reason, did not avail of the remedy of appeal

under the Standing Orders. It is also argued on behalf of the respondents that the petitioner should have sought for remedy under the Industrial Disputes Act which also he did not do. It is argued on behalf of the petitioner that alternative remedy is no absolute bar. It is also argued on behalf of the petitioner that the respondents in their affidavit-in-opposition did not take the plea of bar of alternative remedy. This is however not correct. I find that in paragraph 25 in the affidavit-in-opposition the respondents have taken the plea that the petitioner has alternative remedy provided under the statute and cannot invoke the jurisdiction of: this Court. However the question of alternative remedy loses its importance in the present context in view of my finding that on merit also there is no scope for interfering with the impugned order in exercise of writ jurisdiction of this Court.

8. The learned Advocate for the petitioner referred to the decision of the Supreme Court in *Sawai Singh v. State of Rajasthan* (1986 11 LLJ 390) in support of his argument that vagueness of charge vitiates the proceeding. The proposition is indeed settled. But as we have seen in the present case there is no vagueness in the charge Drought against the petitioner. The learned Advocate for the petitioner also referred to the decisions of *Kashinath Bikshita v. Union of India* (1986-II-LU-468) and *Chandrama Tewari Vs. Union of India (UOI)* (through General Manager, Eastern Railways), in support of his argument that non-supply of vital documents to the petitioner will vitiate the disciplinary proceedings. In our present case it is not that the petitioners were not supplied with any vital document in existence or which was relied upon by the department in the enquiry proceedings against the petitioner. As we have seen there is no FIR in this Case and there was no preliminary enquiry and therefore the question of giving the papers relating to preliminary enquiry or copy of the FIR to the petitioner does not arise. Material facts relied upon by the Department in the enquiry proceedings have been introduced by the Department by examining witnesses in the enquiry proceedings with full opportunity to the petitioner to cross-examine them and the petitioner also cross-examined them at length. The petitioner was also allowed opportunity to adduce evidence on his behalf and he also examined himself. There is nothing from which it can be said that fair play was denied to the petitioner. In the circumstances there is no scope for this Court to interfere in the matter in its writ jurisdiction. This writ petition accordingly stands dismissed. No costs is however ordered.