**(1983) 08 CAL CK 0007**

**In the Calcutta High Court**

M.K. Guha APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 09-08-1983

**Acts Referred:**
Constitution of India, 1950 — Article 12, 14, 16, 226, 310

**Citation :** 88 CWN 173

**Hon'ble Judges :** Amitabha Dutta, J

**Bench :** Single Bench

**Advocate :** Dipankar Ghosh, Samarjit Gupta and Sitesh Singha, for the Appellant;D.K. Sen, S.B. Mukherji and D.K. Dhar, for the Respondent

## Judgement

Amitabha Dutta, J.—These two Rules which have been heard together are directed against (i) a charge sheet dated 20th December 1977 and an order of imposition of penalty of Censure dated 14th August 1978; (ii) a second chargesheet dated 25th July 1980 and the enquiry proceeding initiated pursuant thereto and (iii) an order of transfer dated 28th July 1980. The petitioner Shri Manindra Kumar Guha was appointed on or about 1st of April 1970 by the Fertilizar Corporation of India Limited as Manager (sales) at Trombay, Bombay, While in Bombay in April 1971 he was promoted to the next higher post of Regional Manager. He was transferred to Calcutta from Trombay in September 1973 and thereafter in February 1974 he was further transferred to Durgapur from Calcutta, In November 1976 the petitioner was transferred again from Durgapur to Calcutta. In December 1977 he was further promoted to the Senior scale of Regional Manager in the pay scale of Rs. 1800 to 2250/- which now stands revised at Rs. 1850 to Rs. 2300/- with retrospective effect from 1st July 1974. In September 1978 the petitioner was promoted to the post of Marketing Manager in the scale of pay of Rs. 2050 to 2550/- with effect from 1.1.1978. The petitioner now holds the same post. He was assesse and cleared for the said promotion, by the Selection Committee of the Corporation to the aforesaid post of Marketing Manager with effect from 1st July 1977 but the effect of his promotion was delayed by a period of six months because of the penal order of

Censure passed against him.

2. Disciplinary proceedings for minor penalty ware initiated against the petitioner the then Regional Manager under rule 22 of the F.C.I. Limited Employees (Conduct, Discipline & Appeal) Rules, 1972 in respect of the following charge :

Sri M.K. Guha while functioning as Regional Manager during the year 1971-74 delayed the processing of legal action against M/s Chemfert Traders, Baroda for recovery of the outstanding dues of F.C.I. He thus exhibited lack of devotion to duty and thereby violated rule 5 of the Fertilizer Corporation of India Employees (Conduct, Discipline & Appeal) Rules, 1972.

The chargesheet was issued to the petitioner on 20.12.1977 by his then disciplinary authority viz. Chairman and managing Director, Fertilizer Corporation of India Limited.

3. The petitioner''s case is that he was chargesheeted for an alleged act of other officers at Trombay with which he was not at all directly connected and was not responsible, during the enquiry period the petitioner asked for relevant papers for his defence but he was denied the opportunity to have access to those relevant files and connected papers in gross violation of the principles of natural justice. Ultimately by an order dated 14th August 1978 a penalty of Censure was imposed on the petitioner. The petitioner preferred an appeal against the said order and the appeal is still pending before the top management and has not been disposed of inspite of several reminders.

4. On or about 29th July 1980 the petitioner received a second chargesheet dated 25th July 1980 in which it was proposed to hold an enquiry against him under rule 23 of the aforesaid Rules on the following articles of charge :

Shri M.K. Guha while functioning as Regional Manager, F.C.I., Bombay during the year 1972 committed negligence of duty detrimental to the interest of F.C.I. inasmuch as;-

(i) he failed to ensure that open tender system was followed for disposal of damaged suphala and allowed Sri V.B. Apte, Manager (Sales) to approach only one party viz. M/s, Mahendra Kumar & Co. for lifting the material;

(ii) he failed to safeguard the financial interest of the F.C.I. in that he agreed that payment would be settled on the basis of the report of M/s Itlab a private laboratory as to nutrient content of the damaged suphala when F.C.I. to prepare an effective defence the petitioner was to travel to Bombay to look into the files and documents for several times as he hardly remembers anything at present. But simultaneously with the second chargesheet there came a hurried transfer order had their own laboratory directed him to go to Raipur.

(iii) he failed to ensure proper handlings of the supplies tried to thereon, out of the damaged suphala for disposal in that the samples were sent over to M/s. Italab Pvt. Ltd. after a long gap of time for analysis.

 

Shri M.K. Guha thereby contravened rule 3(i)(ii) of the Central Civil Services (Conduct), Rules 1964 corresponding to rule 5 of the Fertilizer Corporation of India Limited Employees (Conduct, Discipline and Appeal) Rules 1972.

5. The petitioner''s case is that there has been serious failure of justice as the authorities concerned have malafide issued a second vague chargesheet against the petitioner while they conveniently forgot to dispose of his appeal case pending before the appellate authorities against the penal order passed in respect of the first charge. The subject matter of the alleged charge-sheet relates to the years 1972 while he was at Trombay. To prepare an effective defence the petitioner has to travel to Bombay to look into the files and documents for several times as he hardly remembers anything at present. But simultaneously with the second chargesheet there came a hurried transfer order dated 28th July 1980 which directed him to go to Raipur within the shortest possible time. The respondents in bad faith tried to land petitioner in trouble and stress and strain. The second chargesheet is malafide and cannot be sustained in law.

6. The impugned order of immediate transfer to Raipur in Madhya Pradesh is arbitrary and invalid as there is no sanctioned post of the Board at Raipur of the same rank and position as is held by the petitioner. He is now Senior Marketing Manager in the scale of pay of Rs. 2050 to Rs. 2550 which is a sanctioned post of the Board. The Board sanctioned the only post of Chief Manager (Marketing) at Headquarters of the Corporation. Raipur in M.P. is only having a Regional Office and a Regional Manager In the scale of pay of a Regional Manager and/or now a Zonal Marketing Manager. Only one sanctioned post in the scale of Rs. 2050 to 2550 could exist for the corporation for handling marketing and distribution job at headquarters of the Marketing Division in Calcutta. The purported transfer is malafide, illegal and highly irregular being vindictive, arbitrary, capricious and an act of high handedness on the part of the authority and/or the respondents which cannot be sustained in law. They have in fact reduced the petitioner''s rank and position by issuing the impugned transfer order which has the effect of reducing him in rank. The respondents had no jurisdiction to issue the impugned order reverting the petitioner from his higher substantive post of Senior Marketing Manager down to a place where there is no such post at all. In fact there is only one officer in marketing discipline in the scale of pay of Es. 2050 to 2550/- in the whole marketing division and that is the petitioner himself, at divisional headquarters in Calcutta. Dr. S.P. Dhua, the respondent No. 4 was Chief Agricultural Scientist of Hindustan Fertilizer Corporation Ltd. and was made General Marketing Manager, Marketing Division, Calcutta in or about April/May, 1979. He is an officer from a different discipline and has no marketing background. In fact the petitioner being the senior most officer of the marketing discipline should have been made the General Marketing Manager. But the petitioner was discriminated against and ignored. Hence Dr. Dhua immediately on joining the Marketing Division was trying his best to drive the petitioner out of his office and belittle him as he knew that the petitioner enjoyed much more

 

reputation as a marketing expert then Dr. Dhua in the trade circle. He therefore, started all kinds of malafide activities and it is he who is responsible for the impugned order of transfer.

7. Both the Rules stand discharged against the respondent No. 1, Union of India. The respondents Nos. 2, 3 and 4 have opposed the Rules by filing counter affidavits. Their case is that both the applications under Article 226 of the constitution filed by the petitioner are not maintainable as the respondent No. 2 is not an agency on instrumentality of the Central Government and petitioner is seeking to enforce or to restrict the enforcement of the terms contained in the contract of service with him. According to the letter of appointment addressed to the petitioner in March 1970 and duly accepted by him he is required to serve anywhere in India at the discretion of the management and rule 4 of the F.C.I. Employees (Conduct, Discipline and Appeal). Rules also provides that the employee shall serve the Corporation in its business in such capacity and at such places as he may from time to time be directed. There has been no violation of principles of natural justice in the proceeding arising out of the first chargesheet against the petitioner which was issued to him on 20.12.1977. For replying to the Memorandum of Charges the petitioner requested for perusal of certain records under his representation dated 6.1.1978. He was afforded the opportunity of inspecting the documents which were relevant to the charge against him including files relating to the processing of the legal action against M/s Chemfert Traders, Baroda and the correspondence with Solicitors in that regard. He was also furnished with a copy of each of his depositions before two committees which had inter alia looked into the matter earlier. He was also granted sufficient extension of time to enable him to inspect the documents at Trombay and submit his reply to the chargesheet. No such pleas as has been raised in the present applications, was raised by the petitioner in his reply dated 26.6.78 to the chargesheet. It is not correct to say that he was chargesheet for the acts of other officers. Under Rule 30 of the C.D.A. Rules an appeal against a penalty would lie to the authority to which the authority imposing the penalty as immediately subordinate. The penalty of Censure was imposed on the petitioner by the Managing Director, H.F.C. under his order dated 14.8.1978. The appeal if any in the case would lie to the Board of Directors of the H.F.C. against the order of Censure. But no appeal was received in the Corporation from the petitioner. In terms of rule 31 of the C.D.A. Rules and appeal is to be preferred within one month from the date of the order appealed against. Till date (i.e. 4.12.1980) there has been no appeal against the order of censure from the petitioner.

8. The further case of the respondents is that the second chargesheet dated 25.7.80 which was received by the petitioner on 29.7.80 relates to an alleged misconduct on his part in a different matter viz. disposal of damaged suphala by the Trombay Marketing organisation of pre reorganised F.C.I. during the year 1972. The petitioner was posted as Regional Manager at the relevant time in the said organisation and was concerned with the said disposal. It has no relevance or connection with previous first chargesheet which related to a delay in

 

processing of legal action against M/s. Chemfert Traders, Baroda. The second chargesheet arises out of certain investigation by the Central Bureau of Investigation. It is always open to the petitioner to ask for inspection of relevant documents for preparation of his defence in the proceedings. The relevant papers are not at Calcutta and the presence of the petitioner at Calcutta does not confer any special advantage to him. In case, any papers which are in Bombay or Delhi, are required the petitioner can as easily get them at Raipur as Calcutta. The transfer of the petitioner from Calcutta to Raipur is in no way connected with the charge sheet issued to him. His visits to out station for purposes connected with the proposed enquiry including inspection of documents will be treated as official tours. No material difference will be caused to the petitioner whether he is posted at Calcutta or Raipur for the purpose of the proposed enquiry. The allegations of malafide made against the respondents is baseless and is denied.

9. Regarding the necessity of transfer of the petitioner to Raipur the respondents have pleaded that the Regional office of the Marketing Division at Raipur in Madhya Pradesh is an important office. It controls 46 districts with high potentiality. The said area is at present not fully developed but it has very high potentiality. There is also been competition from other fertilizer producers such as Dharmasi Moraji, Sriram Fertilisers and others and sales by the respondent corporation have to deal with such competition. The factory of Hindustan Fertilizer Corporation at Haldia is nearing completion, and it is necessary to organise sales in areas where sales of fertilizer are low. The sales in areas like Calcutta are well organised with hardly any scope for further increase. It was therefore, considered by the respondents No. 4 to be necessary that a Senior Officer with the exprience of the petitioner, should be posted at Raipur in Madhya Pradesh for the purpose of organisation and increasing sales of fertilisers of the corporation there. The decision was taken by him after carefull consideration and the approval of the Chairman and the Managing Director was sought before the order of transfer was made. The respondent no. 4 was the seniormost candidate in the scale of Deputy General Manager and he was selected for the post of General Marketing Manager which is the post in a General Manager Cadre open to persons belonging to other disciplines also by a committee consisting of the Chairman and Managing Director of public sector fertilizer companies and a representative of the Bureau of Public Enterprises. The petitioner being an officer in the scale of Rs. 2050 to 2550/- his next promotion would be in the scale which would be a step below that of the General Marketing Manager. The question of the petitioner being the General Marketing Manager never arose. The respondent no. 4 was never trying to drive the petitioner out of the marketing office or to be little him. He never started or took part in any activity which can be called malafide. In-December, 1978 the designation of the post of Regional Manager in respect of the officers who were in the scale of Rs. 1850 to 2250/- was changed to that of marketing Manager. The petitioner was promoted to the post of Marketing Manager in the scale of Rs. 2050 to 2500/- with effect from the 1st of January, 1978 in the Eastern Marketing Zone. It is denied that a Marketing

 

Manager cannot be posted at Raipur or that the petitioner''s transfer is tantamount to reduction in rank.

10. Before coming to the other submissions made on behalf of the parties in this case it is necessary to decide the controversy whether or not Hindustan Fertilizer Corporation Limited is an authority under the control of the Government of India as contemplated in Article 12 of the Constitution of India which defied ''the State'' for the purpose of Part III of the Constitution. Admittedly Hindustan Fertilizer Corporation Limited is a Government company incorporated under the Companies Act, 1956 on and from 14.3.78 having its registered office at Madhuban, 55, Nehru Place in New Delhi and the head quarters of its Marketing division at 41, Chowringhee Road in Calcutta. Its share capital is subscribed by the President of India and its business is production and sale of fertilizers. It is one of the five corporations formed by restructering the all India structure of Fertilizer Corporation of India Limited and National Fertilizers Limited (wholly owned by Government of India). The F.C.I. Limited was formed with effect from January 1, 1961 by virtue of the Fertilizers & Chemicals Companies Amalgamation Order 1960 (8/1/60/C--III) dated 23rd November, 1960 issued by the Government of India. In terms of the said order to distinct fertilizer companies were amalgam-ted viz. Sindri Fertilizers & Chemicals Limited and Hindustan Chemical and Fertilizers Limited, Nangal and thereupon the name of the late company was changed to the Fertilizer Corporation of India. Both the companies which were amalgamated had started as departmental fertilizer projects of Government of India, the project at Sindri in 1946 and the Nangal project about 10 years later. The essential terms of the formation of the F.C.I. Ltd., includes inter alia that the president would have the power to remove any Director including the Chairman, the Managing Director and the Resident Director from office at any time and in his absolute discretion. The President may empower the Chairman to exercise the function of the Managing Director who will be the Chief Executive officer of the company. The Financial Advisor at the headquarters of the company will be appointed by the President in his discretion. The Chairman of the Board of Directors and Directors representing the Government shall be appointed by the President of India (vide Financial Hand Book of the F.C.I. Ltd. January 1978 pp 1-4 and 22). It has been already stated that the respondent no. 2 H.F.C. Ltd. is one of the five restructured Units of the F.C.I. Ltd., having all its features. It has been held by the Supreme Court in Some Prakash vs. Union of India AIR 1981 S.C. 212 in its majority judgment delivered by His Lordship V.R. Krishna Iyer J. that the criteria laid down by the court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, are to be applied to determine whether a statutory corporation, a Government company, a co-operative society and other registered society or body comes within the definition of ''the State'' under Article 12 of the Constitution. The tests are : (1) whether the entire share capital of the corporation is held by Government: (2) existence of deep and pervasive state controls : (3) whether the corporation enjoys monopoly status (4) whether the

 

functions of the corporation are of public importance and (5) specificially if a department of Government is transferred to a corporation being an instrumentality or a agency of Government. When the cumulative effect of all the relevant factors set out above is assessed and the body is found to be an instrumentality or agency of Government, the further conclusion emerges that it is state and is subject to the same constitutional limitation as government. It has been observed in para 57 of the majority judgment that the common sense signification of the expression "other authorities under the control of the Government of India" is plain and there is no reason to make exclusions on sophisticated grounds such as that the legal person must be a statutory corporation, must have power to make laws and must be created by and not under a statute and so on. Having regard to the law laid down by the Supreme Court in Som Prakash''s case, it must be held that the respondent No. 2 HFC Ltd. is an agency or instrumentality of the Government of India and "State" for the purpose of Part III of the Constitution.

11. It has been held in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, that where a corporation is an instrumentality or agency of government the rule inhibiting arbitrary action taken by government must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise and it can not act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be inconformity with some principle which meets the test of reason and relevance. This rule also follows directly from the doctrine of equality embodied in Article 14. It is now well settled as a result of the decisions of the Supreme Court in E.P. Royappa Vs. State of Tamil Nadu and Another, and Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that the State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory; it must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality (vide paragraphs 20 and 21).

12. It has been contended by Mr. Ghosh appearing for the petitioner that the first charge-sheet issued to the petitioner under Order dated 20th December 1977 and the proceedings pursuant thereto and culminating in the punishment of Censure imposed on the petitioner by order dated 14th August 1978 are not sustainable on the following grounds :- (1) The charge relates to an incident of 1970. Thereafter the petitioner was promoted twice, in June 1971 and again in December 1977. The impugned chargesheet is in respect of matters of 1970 anticedent to his promotion and was without jurisdiction in view of the decisions in the case of The State of Punjab Vs. Dewan Chuni Lal, , Muralidhar Basu v. Union of Infra 1977 CHN 878, Collector of Customs v. Rebati Mohan 1976(2) SLR 897 and Union of India vs. H.M. Haque 1978(1) SLR 748, all of which give support to the view that promotion amonuts to a condonation or obliteration of adverse remarks for the period prior to promotion. (2) The charges is that the

 

petitioner delayed the processing of legal action against M/s Chemfert Traders and thereby exhibited lac of devotion to duty and violation of rule 5. But the matter of processing legal action was entrusted to one Mr. N.S.L. Sinhan, Assistant Finance Manager, FCI, Trombay and was not being handled by the petitioner. Thereafter a committee was appointed on 18th March, 1972 by the management at Trombay to handle this matter. The papers were handed over to the Solicitor in Bombay. The committee submitted report in January 1974 and the management could come to the decision of filing the suit only in June 1974 and the suit was ultimately filed in November 1975. Long before that the petitioner was transferred from Trombay on or about 21st September 1973. In these circumstances no one could reasonably come to the conclusion or make any allegation that the petitioner had delayed in taking legal action. Moreover to rake up the matter after 8 years on 20th December 1977 is absolutely malafide and on the face of it the chargesheet does not disclose any offence.

(3) The chargesheet is extremely vague and in the absence particulars it was not possible to reply effectively to the same.

(4) The disciplinary proceeding is also bad for failure to comply with the rules of natural justice as inspection of vital documents asked for was refused by the authorities in gross violation of rule 22 of the Conduct Rules.

13. On the other hand it has been submitted by Mr. Mukherji appearing on behalf of the contesting respondents that this Court exercising its powers under Article 226of the Constitution will not act as a court of appeal to assess the evidence in support of the charge in the chargesheet dated 20.12.1977. No contemporations document has been disclosed by the petitioner to substantiate the allegations that he was denied the opportunity of having excess to relevant files and connected papers nor have any particulars been given of such files and papers. In any event the allegation, being baseless and without any merit cannot be entertained in this writ petition in view of the alternative remedy available to the petitioner and in view of the fact that the order imposing Censure has already been implemented by postponing the promotion of the petitioner to the post of Marketing Manager in the scale of Rs. 2050 to 2550 by a period of six months as stated in paragraph 9 of the writ petition. The petitioner was entitled to prefer an appeal from the order imposing penalty of Censure to the Board of Directors under rule 30 of the Conduct Rules within 30 days from the date of the order dated 14th August 1978. He however, has not chosen to do so and he cannot after two years of the imposition of the said penalty challenge the same or reopen the investigation in this writ petition. It is further submitted that there is nothing in the records of the respondent No. 2 to show that any appeal has been preferred. The documents disclosed also do not show that any appeal was preferred or that the appeal was in accordance with the rules. Mr. Mukherji contends that the decisions cited on behalf of the petitioner do not apply in this case as they relate to the status and protection of government employees under Articles 310 and 311 of the Constitution and Statutory rules governing their

 

service while the petitioner is not the holder of any civil post under the Union and his conditions of service are purely contractual and governed by the Employees (Conduct, Discipline and Appeal) Rules, 1972 made by the Board of Directors in exercise of powers conferred by Article 68(14) of the Articles of Association and such rules are not statutory rules.

14. The fact remains that the petitioner did not prefer any regular appeal against the order of Censure dated 14.8.1978 before the Board of Directors within time under rules 30 and 31 of the Employees (C.D.A.) Rules, 1972 and the said order has been implemented by withholding the promotion of the petitioner to the present post for six months. There is a vague statement in annexure ''C'' to the supplementary affidavit of the petitioner affirmed on 16.5.83 that the petitioner submitted a representation to the competent authority, But it is nowhere stated that any regular appeal was filed before the Board of Directors against the order of Censure by the Managing Director. I propose to deal with the other aspects of the matter after referring to the submissions made on behalf of the parties regarding the second chargesheet and show cause notice dated 25.7.80.

15. By a Memorandum dated 25th July 1980 (annexure ''E'' to the writ petition in C.R. No. 939 (W) of 1981) the Chairman and Managing Director proposed to hold an enquiry against the petitioner under rule 23 of the Employees (C.D.A.) Rules 1972 on the following charges;

Sri N.K. Guha while functioning as Regional Manager, F.C.I. Bombay during the year 1972 committed negligence of duty detrimental to the interest of F.C.I. inasmuch as :

(i) he failed to ensure that open tender system was followed for disposal of damaged suphala and allowed Sri V.B. Apte, Manager (Sales) to approach only one party namely M/s. Mahendra Kumar Co. for lifting the material;

(ii) he failed to safeguard the financial interest of the FCI in that he agreed that payment would be settled on the basis of the report of M/s Italab, a private laboratory as to the nutrient content of the damaged suphala when FCI had their own laboratory;

(iii) he failed to ensure proper handling of the samples drawn out of the damaged suphala for disposal in that the samples were sent over to M/s Italab Pvt. Ltd. after a long gap of time for analysis. Sri M.K. Guha thereby contravened rule 3(i) (ii) of the Central Civil Services (Conduct) Rules 1964 corresponding to rule 5 of the Fertilizer Corporation of India Limited Employees (Conduct, Discipline & Appeal) Rules 1972.

16. It has been submitted on behalf of the petitioner that the impugned order dated 25th July 1980 is bad for the following reasons :

(1) The respondents had no jurisdiction to issue a chargesheet against the petitioner on the basis of antecedent matters of 1972 after the petitioner received two promotions on 6th December 1977 when he was promoted as

 

Regional Manager (Senior Scale) with effect from 1st July 1974 and on 6th September 1978 when he was promoted to the post of Marketing Manager with effect from 1st January 1978.

(2) As misconduct does not ordinarily cover acts of negligence and as there is no allegation in the chargesheet that the petitioner knowingly did anything detrimental to the interest of the corporation and in any event, as mere negligence cannot attract major penalty the respondents had no jurisdiction to invoke rule 23 of the Rules and there is no breach of rule 5 at all which does not cover negligence.

(3) The impugned order is arbitrary and malafide as no reason has been given why in 1980 the old matter relating to 1972 was raked up after 8 years and it will appear from annexures ''X II'' and ''X-III'' to the supplementary affidavit affirmed on 9th January 1981 that the orders passed by the petitioner were confirmed by the Marketing Manager and also by the General Manager and there is no reason why the petitioner Who had no authority to grant approval should be singled out for discriminatory treatment.

17. In support of the first ground reliance has been placed on the decision in the case of State of Punjab vs. Dewan Chunilal AIR 1970 SC 2086. It was a civil appeal against the decision of Punjab High Court which upheld a decree of the Subordinate Judge, Gurgaon. The respondent, a Sub-Inspector of Police was called upon to answer a charge framed setting forth extracts from his confidential character roll showing his inefficiency and lack of probity while in service from 1941 to 1948 and to submit his answer to the prima facie charge of inefficiency as envisaged in paragraph 16.25(2) of the Punjab Police Rules. It was the common case of the parties that the respondent was allowed to cross efficiency bar in 1944. The Supreme Court held that the reports against the respondent earlier than 1944 should not have been considered at all inasmuch as he was allowed to cross the efficiency bar in that year. The court observed :

It is unthinkable that if the authorities took any serious view of the charge of dishonesty and in efficiency contained in the confidential reports of 1941 and 1942 they could have overlooked the same and recommended the case of the officer as one fit for crossing the efficiency be- in 1944.

Reference has also been made to the decision in the case of Muralidhar Basu vs. Union of India 1977 CHN 878 in which the learned Judge T.K. Basu J. observed that if certain adverse remarks were made in the confidential character reports of a particular officer and he is thereafter allowed to cross the efficiency bar the adverse remarks for the prior period are deemed to have been either condoned or not taken notice of and promotion amounted to a condonation or obliteration of the adverse remarks for the period prior to promotion. Reliance has also been placed on a Division Bench decision of this Court in Union of India vs. M.H. Haque 1978(1) SLR 748. In that case the authorities concerned considered the fact that the respondent officer of the Calcutta Customs was charged for misconduct '' and was penalised by the reduction of his pay and that after such consideration he was found fit for promotion and was granted promotion. On these facts it was held that the authorities had condoned the misconduct of the respondent for which he had been punished and his state had been wiped clean and the subsequent show cause notice for enhancement of penalty was illegal. Reference has also been made to the decision in the case of Collector of Customs vs. Rebati Mohan 1976 (2) SLR. 897 in support of the contention.

18. In all the aforesaid decisions the authority allowed the employee concerned to cross the efficiency bar or granted promotion to him, with knowledge of the adverse remarks in his confidential character roll or his misconduct for which he could be punished or was punished and in these circumstances the court held that the authority must be deemed to have taken no serious view of such adverse remarks or condoned such misconduct. But the distinguishing feature in the present case is that there is nothing to show that the authority which granted promotion to the petitioner in 1977 and 1978 know about the alleged misconduct of the petitioner committed in 1972 and so the question of condoning it does not arise. On the other hand it appears that the chargesheet was issued to the petitioner by the Disciplinary Authority after receipt of a report of the CBI on 5.7.80. So the first ground cannot stand.

19. Regarding the second ground it is necessary to refer to rule 5 of the Employees (C.D. A.) Rules 1972 which runs as follows :

Every employee of the Corporation shall at all times maintain absolute integrity and devotion of duty, shall conform to and abide by these and other rules of the corporation and shall observe, comply with and obey all lawful orders and directions which may, from time to time, be given to him in the course of his official duties by any person or persons under whose jurisdiction, superintendence or control he may, for the time being be placed.

20. Rule 20 of the said Rules refers to minor penalties and major penalties which may for good and sufficient reasons and in the manner provided be imposed on an employee "who commits a breach of rules of the corporation or who knowingly does anything detrimental to the interest of the corporation or in violation of the instructions or who acts in a manner subversive of discipline or is guilty of any other act of misconduct or mis-demeanour".

21. Rule 23 lays down the procedure for imposing major penalties including framing of definite charges on the basis of the allegations against him and so on.

22. It has been submitted that the word "misconduct does not ordinarily cover acts of negligence. In support of this contention reliance has been placed on the decisions in The Madras and Southern Maratha Railway Vs. Jumakhram Parbhudas, (at page 506), and M. and S.M. Ry. Co. Ltd. Vs. Sunderjee Kalidas, (at page 744) and their cases have been referred to in support of the proposition that misconduct is not necessarily established by proving even culpable negligence and that misconduct is something opposed to negligence. Reference

 

has also been made to Presidency Talkies vs. Natarajan AIR 1969 Madras 121 at 123 (para 6) in which it was held that even after the management took a view that the employee was not as diligent in the performance of his duties as he might have been, that would not amount to misconduct. It is also argued that there is no jurisdiction to invoke rule 23 for misconduct that may lead to imposition of a major penalty even if it be assumed that mere negligence is a matter in respect of which disciplinary proceedings can be taken against an employee.

23. On the other hand it has been submitted on behalf of the respondents that rule 5 speaks of maintaining absolute integrity and devotion to duty and the charge if proved, would come within the ambit of this part of rule 5. The established practice in the corporation is that all goods to be procured or sold are to be so done by open tender, In the Financial Hand-book of the corporation it has been so stated-clearly in para 6.03 at page 249, para 6.10 at page 250 and para 6.49 at page 289. Para 6.49 deals with disposal of surplus stocks and scrap and provides that after the approval of the competent authority has been obtained for disposal of the surplus stores (sic)ems or the scrap, the sale can be made either by inviting tenders or public auction. It is also submitted that when there is a full fledged laboratory of the corporation for chemical tests there was no point in engaging an outside agency. The test would be to find out whether the petitioner safeguarded the financial interest of the corporation or committed negligence of duty detrimental the interest of the corporation. All these, it is submitted/ would come within the mischief of the breach of rule 5.

24. Regarding the third ground taken on behalf of the petitioner referring to the delay in issuing charge sheet about 8 years after the incident and malafides it is submitted on behalf of the respondents that the contention is baseless, that there was a CBI enquiry and the charge-sheet was issued on 28.7.80 only upon receipt of the report of the CBI on 5.7.80 that the point of delay has not been taken in writ petition and that the charge of malafides in wholly baseless and without any basis whatsoever. It is also pointed out that this Court has not granted any stay of the enquiry proceedings in respect of the second chargesheet against the petitioner and that the enquiry has been completed but due to the interim order dated 20th August 1980 directing the respodents not to pass any final order therein without leave of the court no final order could be passed awaiting decision of this case. Reference has been made to a decision in the case of The Management of the Syndicate Bank Ltd. Vs. The Workmen, in which it has been held that the finding of malafides should be reached only if there is sufficient and proper evidence in support of the finding and it should not be reached capriciously or on flimsy grounds. Reliance has been placed on the decision in E.P. Royappa Vs. State of Tamil Nadu and Another, in which the Supreme Court observed in paragraph 92 at page 586 that the burden of establishing malafides is very heavy on the person who alleges it. The allegations of malafides are often more easily made then proved and the very seriousness of such allegations demands proof of high order of credibility.

 

24A. In my view, as the rules governing the terms and conditions of service of the petitioner viz. Employees (CDA) Rules 1972 and other rules of the corporation, are not statutory rules, it cannot be said that the corporation committed an illegality or breach of statutory obligation or executed jurisdiction conferred on it by law, in framing the impugned charges against the petitioner. The only question is whether the corporation as an authority under Article 12 of the Constitution acted arbitrarily in violation of Articles 14 in framing the Impugned charges or in other words whether the corporation departed from the norms set to itself in the aforesaid rules by framing the charges for disciplinary action against the petitioner. Considering the facts and circumstances of this case, I find that so far as the second charge sheet is concerned the corporation has not acted with such arbitrariness as to call for interference by this Court. Negligence is breach of duty to take care. It betrays lack of devotion to duty on the part of the employee, which is required under rule 5 of the Service Rules. It may or may not amount to misconduct. Whether negligence amounts to misconduct or not depends on the facts and circumstances of each particular case. In the present case, paragraph 6.49 in Chapter VI at pages 288-9 of the Financial Hand Book of the Corporation shows that the sale of surplus stores item or the scrap can be made either by inviting tenders or public auction. There was also a full fledged laboratory of the corporation for testing the nutrient contents of the damaged suphala which was to be sold. In these circumstances, endorsement by the petitioner as Regional Manager of the proposal of the Manager (Sales) to accept the offer of a particular party to buy the old caked up suphala on payments to be settled on the basis of analysis report of a private laboratory, M/s. Italab Pvt. Ltd. as to the nutrient contents and delay in drawing the samples sent to the said laboratory on 19.4.72, that is, about two months after it ought to have been sent, may be regarded prima facie as negligence which is tantamount to misconduct attract in major penalty for the purpose of framing charges against the petitioners enquiry. Rule 20 covers "any other act of misconduct". The delay of about 8 years in drawing up the charges on 25.7.80 is explained by the fact that there was enquiry by the Central Bureau of Investigation into the matter and a copy of the CBI report was obtained on 5.7.80. The fact that the higher officers viz. the Marketing Manager and the General Manager also approved the proposal may mean that they also did not bestow due care in scrutinising it. But that does not exonerate the petitioner. It is not known whether they were in service of the corporation in July 1980 or whether any action could be taken against them by the corporation. In my view, no case of arbitrary action or hostile discrimination against the petitioner has been made out to justify interference by this Court.

24B. As regards the earlier chargesheet issued to the petitioner on 20.12.77 there was an enquiry and the petitioner was awarded the minor penalty of Censure on 14.8.78 by the Chairman and Managing Director of the Corporation. The petitioner did not prefer any appeal against that order before the Board of Directors and the order was implemented by withholding promotion of the petitioner to the present post for six months, about two years before the present writ petition was made There is nothing to show that the authority which granted promotion to the petitioner in December 1977 and September 1978 was aware of the alleged misconduct which was the subject matter of the charge issued on 20.12.77 and so subsequent promotion cannot be deemed to have the effect of condonation of such misconduct. In the circumstances, it will not be proper to interfere with the order of Censure dated 14.878. It can not be said that the charge was framed against the petitioner arbitrarily and without reason.

25. It may be stated at this stage, that on 20.8.80 the petitioner made an application to this Court under Article 226 of the Constitution before D.K. Sen J. challenging the orders dated 14.8.78, 25.7.80 and the order of transfer dated 28.7.80 and praying for Writs of Mandamus, Certiorari, Prohibition and injunction to restrain the respondents from giving effect to the impugned proceedings and orders. On the exparte application, on 29.8.80 the learned Judge passed Civil Order restraining the respondent No. 2 Corporation from giving effect to the order of transfer of the petitioner dated 28.7.80 and it was further ordered that the proceedings for disciplinary action initiated by the show cause notice dated 25.7.80 would continue-. But the respondent was directed not to pass any final order without the leave of court. Subsequently on 29.8.80 the court ordered that the interim order already granted would continue but the petitioner was directed not to join his office in the meantime and that this order would not disentitle the petitioner from being considered for any other post in accordance with the rules and regulations. Subsequently on the said writ petition a Rule was issued by T.K. Basu, J. on 25.2.81 giving rise to the case No. C.R. No. 939(W) of 1981. But no other interim order was passed on that date. The petitioner before that date made another application under Article 226 of the Constitution on 7.10.80 with almost similar averments and prayers before another Bench of this court presided over by S.C. Ghosh, J. to get an interim order of injunction restraining the respondents from carrying on the enquiry proceedings in respect of the second chargesheet dated 25.7.80, but did not succeed in getting any such interim order. S.C. Ghosh, J. issued a Rule and made an interim order that such enquiry proceeding might continue but no final order was to be passed therein till 24.11.80, with liberty to apply for its extention. So the other case being C.R. No. 15542(W) of 1981 came in to existence for similar reliefs. The enquiry proceedings against the petitioner have since been completed but final order has not been passed during pendency of these cases.

26. The petitioner has also challenged the order of transfer dated 28.7.1980 the relevant portion of which is as follows :

Sri M.K. Ghosh, Marketing Manager presently assigned the job of High seas operation and EDP is hereby transferred with immediate effect to Raipur (M. P) he will be in overall charge of marketing activities of Madhya Pradesh.

The petitioner has challenged the order of transfer on varioas grounds viz.-(1) There is no sanctioned post of Marketing Manager in the scale of the pay of the petitioner at Raipur. So the petitioner could not be transferred to Raipur. (2) In the garb of transfer, the rank, status and responsibility of the petitioner is sought to be reduced. (3) The order of transfer was made because of manifest malice and malafide motive on the part of the respondent Nos. 4 and 5. (4) It is discriminatory and violative of Articles 14 and 16. (5) The order is vindictive and the decision was taken by Dr. S.P. Dhua, the respondent No. 4 who was not competent to take such decision and (6) The impugned order of transfer was served all with the second chargesheet dated 25.7.80 and this is itself evidence of malafides of the transfer order.

27. Regarding the first ground it is submitted that in 1971 there was no sanctioned post of Marketing Manager. It appears from annexure ''M-5'' to the affidavit-in-reply filed on 11.3.83 that the Board of Directors by their order dated 20th September 1971 approved the creation of various posts in marketing division of the corporation. In the Eastern Marketing. Zone six posts of the Regional Manager were created. The Zone was divided into regions such as Assam, West Bengal, Orissa, Bihar and Madhya Pradesh with a Regional Manager for each region. There was one post of Regional Manager for other work. Subsequently U.P. was added as a region of Eastern Zone. The post of Marketing Manager was created with effect from 1st January 1978. The inter office memo No. CO/PERS/1(125/6332) dated 2nd September 1978 (annexure ''A'' to the supplementary affidavit on behalf of the petitioner filed on 16.5.83) from Personnel Manager New Delhi to General Marketing Manager, Eastern Marketing Zone, Calcutta conveyed the decision to promote the petitioner who was Regional Manager as Marketing Manager in the scale of Rs. 2, 000/- 2500/- with effect from 1.1.78 in "EMZ, Calcutta itself against an available vacancy". The petitioner was promoted to the said post by a letter dated 6.9.78 with effect from 1.1.78. He was the first incumbent of this post. The post of marketing Manager was "in Calcutta itself". The scale of pay was subsequently raised to Rs. 2050-2550/- and the headquarters of the post is in Calcutta. In fact it is the only sanctioned post in the aforesaid scale in the Marketing Division, Calcutta in the entire corporation. The post is not transferable and as it is inseparable from the headquarters. In December 1978 the Regional Managers in the senior scale of Rs. 1850/- 2350/- were for the first time designated as Marketing Managers, although there is only one sanctioned post of Marketing Manager in the scale and grade of Rs. 2050/- 2550/- which was held by the petitioner. The respondent corporation by a resolution dated 28th May 1981 upgraded Sri R.N. Prasad who was the Regional Manager in the senior scale and designated as Marketing Manager to the scale of Rs. 2050/- -- 2550/- as personal to him and the post would revert to the lower scale when vacated by Sri Prasad. This device was resorted to because there was only one sanctioned post of Marketing Manager in the scale of Rs. 2050-2550/-. There is no sanctioned post of Marketing Manager at Raipur and the head of the Regional Office at Raipur, M.P. where the petitioner was transferred was then having the scale of pay of Rs. 1550/- Rs. 2050/- which is the zonal scale of Regional Manager. It has been submitted that the petitioner

 

could not for any reason be transferred to Raipur where there was no sanctioned post of Marketing Manager in the scale of the petitioner and the only sanctioned post of that grade was in Calcutta itself. A Regional Manager of one region can be transferred as Regional Manager of another region because the sanctioned post of Regional Manager exists in each region. But that is not so in the case of Marketing Manager with headquarters in Calcutta which was the only sanctioned post. In this connection, reference has been made to page 110 of the Financial Hand Book where in paragraph 5.1 on Chapter V it has been laid down that wherever the corporation has not framed its own rules in various matters affecting the service conditions of its whole time employees, they are governed by the rules as may be applicable in case of Central Government employees. It is submitted according to rule 15 of the Fundamental Rules called F.R. 15, the President may transfer a government servant from one post to another. This means that there must be a post to which the Central Government employee can be transferred. A similar rule applies in the case of the petitioner.

28. In connection with the second ground of challenge it is submitted that in the garb of transfer the status and responsibilities of the petitioner is being reduced. In other words he is being demoted The petitioner as Marketing Manager in the headquarters has been discharging the following duties : (1) high Seas operation i.e. import of fertilizer for entire marketing division of the corporation and marketing and distribution of the imported fertilizer throughout the marketing division through all regional offices. By this operation the petitioner controls all regional offices, (ii) Electronic Data processing which is the only unit of the entire Marketing Division of the Corporation, (iii) management services covering the entire marketing division, (iv) training and conferences covering the entire marketing division and (v) administrative control of a regional office. The concerned regional heads have to report to Marketing Manager. If the petitioner has to join the regional office at Raipur the effect will be that he will have to report as a Regional head to Sri R.N. Prasad who is junior to him and was holding a post in the lower scale, when the petitioner was appointed as Marketing Manager and whose substantive post is that of Regional Manager in senior scale designated as Marketing Manager although the higher scale of Rs. 2050 --2550/- has been granted to him with effect from 1.1.79 as personal to him, while the petitioner has been holding the substantive post of Marketing Manager in that scale with effect from 1.1.78. In this connection reference has been made to the decision of the Supreme Court in E.P. Royappa vs. State of Tamil Nadu AIR 1974 Supreme Court 555 at page 566 paragraph 37, in which the Court held that there is no hostile discrimination in transfers from one post to another when the posts are of equal status and responsibility. The reported case arose out of the transfer of the petitioner Sri E.P. Royappa from the post of Chief Secretary, Tamil Nadu to the post of Deputy Chairman, Planning Commission and officer on special duty. Similar view was taken by the Supreme Court in the case of N.C. Singhal vs. Union of India 1980 S.C. 1255 at page 1262 (paragraph 12). It is argued that in the present case the post to which the petitioner has been transferred by the

 

impugned order is of lower status and responsibility. The petitioner was incharge of important and vital spheres of work in relation to the entire marketing division of the corporation and by virtue of the impugned order he is in effect denoted to the status and responsibility of a mere regional head under the administrative control of the Marketing Manager, Head Quarters, Calcutta, So the impugned order of transfer is arbitrary and cannot be given effect to in view of Article 14 of the Constitution.

29. Regarding the third ground of challenge it is submitted that the transfer of the petitioner is the result of manifest malice and malafide motive on the part of the respondent Nos. 4 and 5. It has been stated in the affidavit of the respondents that the petitioner has been transferred because of his failure in the High Sea Operation and it was rightly felt that the petitioner was suitable for other duties. These allegations regarding the alleged poor performance of the petitioner are false. It has been alleged In the affidavit-in-opposition that after the petitioner was transferred the performance of the high sea operation was much better than during the comparable period prior to July 1980 when the petitioner was in charge of such operation. But a subsequent event cannot possibly be the reason for a prior order and this shows the reason for transfer given is false and malafide. Besides, during the comparable period prior to July 1980 the petitioner was admittedly out of India, in USA and the operation was handled by the respondent no. 4 Sri Dhua himself.

30. Regarding the fourth ground of challenge it is submitted that the Regional Manager in the scale of Rs. 1850-2350/- at Durgapur, Patna and Calcutta Division have been working continuously for 11 years but the petitioner was discriminated against and singled out for transfer to Raipur, although he suffered these transfers in three years as Regional Manager before the impugned order of transfer. So the impugned order is discriminatory and violative of Articles 14and 16.

31. In connection with the fifth ground it is submitted on behalf of the petitioner that the respondent No. 4 Sri Dhua is ill disposed towards him because the petitioner and Sri Dhua were the competitors for the post of General Marketing Manager for which Sri Dhua was chosen from a different discipline in preference to the petitioner and the petitioner made a representation against such selection. The decision to transfer the petitioner has been taken by Sri Dhua himself as admitted by him in the affidavit-in-opposition. He simply got the Chairman and Managing Director who had joined only on 10th July 1980 to rubber stamp the decision. Sri Dhua had no authority to take decision and he did not out of vindictive motive.

32A. In relation to the sixth ground it has been submitted that the petitioner was served with the impugned order of transfer and the second, chargesheet dated 25th July 1980 simultaneously which itself shows the malafides of the transfer order.

 

32. On the other hand it has been contended on behalf of the respondents that the petitioner is liable to transfer from one station to another under his original letter of appointment and under rule 4 of the Service Rules. The regional office of the marketing Division at Raipur in Madhya Pradesh is an important office. It controls 46 districts with high potentiality. The area not being fully developed and as there was keen competition of private sector companies, it was considered necessary that a senior officer with experience be posted at Raipur for the purpose of organising and increasing sales of the company''s fertiliser. So the petitioner has been transferred to Raipur. By the order of transfer the petitioner was put in overall charge of the marketing activities of Madhya Pradesh and he was required to report to the General Marketing Manager. The petitioner was not in-charge of the entire marketing at the head office and the other Regional Managers except that of Bihar region was not reporting to him. By the order of transfer he was being put in charge of the entire marketing in the state of Madhya Pradesh, it is argued that the contention of the petition that the transfer amount to demotion is baseless. The petitioner was being transferred along with the post. The contention that there was only one sanctioned post of marketing Manager at Calcutta and there was no such sanctioned post at Raipur cannot be applied in the case of a limited liability company. The post sanctioned pertain to the Eastern Marketing Zone and not to any particular place in the region. In the memo dated 2.9.78 the decision was to promote the petitioner to the post of Marketing Manager in the eastern marketing zone itself, the head quarter of which is in Calcutta against an available vacancy and not that the post is for Calcutta office itself. The vacancy was in the eastern marketing zone, Calcutta. The decisions cited on behalf of the petitioner nor relate to government servants having statutory status under Articles 310 and 311 of the Constitution and they have no application to the instant case at all. It is submitted that the allegations of malafides, vindictiveness and malice are totally baseless and unwarranted by the facts and circumstances of the instant case. The central service rules have no application in so far as the question of the transfer of the petitioner is concerned The decision to transfer the petitioner taken by the respondent No. 4 was really in the nature of recommendation which was approved by the Chairman and the Managing Director of the Corporation. There is nothing to show that the Chairman did not apply his mind or mechanically approved the order of transfer. The mere fact that the order of transfer and the communication of show cause notice in relation to the second chargesheet were contemporaneous is not indication of malafides as the two matters are separate and the one had no bearing on the other.

33. On a consideration of the submissions made on behalf of the parties and the facts and circumstances of this case, I find that there is substance in the first two grounds of challenge aforesaid, of the impugned order of tranefer of the petitioner from the headquarters of the marketing division and of eastern marketing zone of the corporation in Calcutta, to Raipur in M.P. The order dated 2.9.78 on the subject of recruitment to the post of marketing Manager shows

 

that it was decided to promote the petitioner as Marketing Manager "EMZ, Calcutta itself against an available vacancy". Each post must have its headquarters for the purpose of taking charge, drawing travelling allowance and keeping records of the office of the post. It is clear from the aforesaid order dated 2.9.78 that the headquarters of the post of Marketing Manager to which petitioner was promoted is in Calcutta. It is not disputed that there is no other sanctioned post of Marketing Manager in the Marketing Division of the corporation and so there is no separate post of Marketing Manager at Raipur. The headquarters of the post of Marketing Manager held by the petitioner has not been changed or shifted from Calcutta to Raipur by the competent authority of the corporation. An employee can be transferred from one post to another of equal status and responsibility. In the present case the petitioner could not be transferred from the post of Marketing Manager in Calcutta to Raipur where there is no such post. I am unable to accept the contentions made on behalf of the respondent that the post of Marketing Manager is a zonal post and the petitioner will carry the same post and scale of pay with him when he goes to Raipur on transfer. The fact that each post was its head quarters is also apparent from the concept of headquarters in the travelling allowance rules of the corporation at page 177 of the Financial Hand Book. There is nothing to show that the post of Marketing Manager is a post with mobile headquarters in different regional offices within the zone. So the petitioner could not be reasonably transferred to Raipur and the order of transfer is arbitrary and has been made in violation of Article 14 of the Constitution.

34. I also uphold the challenge of the order of transfer on the ground that it has the effect of placing the petitioner In a position of lower status and responsibility not only because of the change in the nature and field of his work and responsibility but also because he will be liable to work under the control of a Marketing Manager posted in the headquarters of the marketing Division in Calcutta who is not only junior to him but also of lower status. Sri R.N. Prasad was given the scale of Rs. 2050 to 2550/- as personal to him with effect from 1.1.79 while the petitioner was appointed to the substantive post of Marketing Manager in that scale with effect from 1.1.78. The substantive post of Sri R.N. Prasad is that of Senior Regional Manager which was designated as Marketing Manager in December 1978 in order to give him the higher scale personal to him with effect from 1.1.79. It appears from annexure ''F'' to the affidavit-in-reply of the petitioner filed on 22.3.83 in C.R. No. 15542(W) of 1980 that Madhya Pradesh along with two other regions were placed under the administrative control of R.N. Prasad, Marketing Manager with direction that the concerned Regional heads would report to Sri Prasad in June 1982. No doubt, when the order of transfer was made the petitioner was placed under the General Marketing Manager, which was an extra ordinary measure as it appears that according to the established practice the regional heads were to report to the Marketing Manager in headquarters of the division in Calcutta. So, in my view the order of transfer is tainted with the vice of arbitrariness and it is so unreasonable

 

that it should be rendered in effective by a writ of Mandamus.

35. I am not satisfied with the other grounds of challenge of the impugned order of transfer taken by or on behalf of the petitioner.

36. The petitioner has been getting his salary and allowances except conveyance allowance without doing any work of the corporation since the interim order dated 29.8.80 of this Court that he would not join his office until further orders. The petitioner has made an application for direction to the respondents to release payment of conveyance allowance at Rs. 300/- per month to him with effect from 1.8.80. But it is not disputed that previously the petitioner had to draw conveyance allowance by furnishing certificate that expenditure incurred on his car for official purposes was not lower than Rs. 300/- per month. In the circumstances as the petitioner has not been doing any official work after the impugned order of transfer with effect from 1.8.80, he is not eligible to draw any conveyance allowance which is granted to reimburse expenditure incurred on use of a car for official purpose.

37. The petitioner has also in the same application prayed for injunction restraining the respondents from promoting Sri R.N. Prasad to the post of Deputy General Manager and appoint any officer from any discipline to the post of Deputy General Manager/ General Manager in the marketing division till the disposal of these Rules on the basis of various allegations. Those allegations have been denied by the respondents. It has been submitted on behalf of the respondents that promotion has not been granted to Sri R.N. Prased to the post of Deputy General Manager or any equivalent post. In my view, no further order is necessary in this matter except that the case of the petitioner along with others eligible for promotion will be considered for promotion to the next higher post after the disposal of these cases. In the result, the following order Is made. The respondent Nos. 2 to 5 are directed by a writ of Mandamus not to give effect to the order dated 28.7.80 purporting to transfer the petitioner to Raipur in Madhya Pradesh. They are further directed to consider the petitioner along with other eligible candidates for promotion to the next higher post. The respondent Nos. 2 and 3 or any of them will be at liberty to make final order in the enquiry proceeding against the petitioner initiated by order dated 25.7.80. The petitioner''s prayer for direction to pay conveyance allowance is disallowed. These Rules are made absolute to the extent indicated above by the same order and the application of the petitioner filed on 6th May 1982 is also disposed of. There will be no order as to costs.

On oral prayer on behalf the respondents nos. 2 to 5, the operation of the order is stayed for four weeks.

 