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**(2009) 06 CAL CK 0035**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 11366 (W) of 2003**

Rafiq Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision : 22-06-2009**

**Acts Referred:**

All India Services (Discipline and Appeal) Rules, 1969 — Rule 8, 8(2), 8(5), 8(6), 9  
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14(5)  
Constitution of India, 1950 — Article 14, 141, 311, 311(2)  
Railway Protection Force Rules, 1987 — Rule 153  
South Bengal State Transport Corporation Employees Service Regulations —  
Regulation 38

**Citation : (2009) 06 CAL CK 0035**

**Hon'ble Judges :** Dipankar Datta, J

**Bench :** Single Bench

**Advocate :** Manas Kumar Kundu, for the Appellant; Debayan Bera, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Dipankar Datta, J.—The petitioner is an employee of the South Bengal State Transport Corporation (hereafter the Corporation). He was placed under suspension in terms of order dated 19th May, 2001 in contemplation of disciplinary proceedings. Charge-sheet dated 28th June, 2001 was issued by the Divisional Manager of the Corporation alleging that while the petitioner was discharging duty on 4th May, 2001 as bus conductor on the Durgapur-Digha (Up) route, he had committed misconduct. The allegations were that he had in his cash bag Rs. 1267/- in excess against actual sale of Rs. 2802/-; that he did not close down the last number of tickets in the appropriate stages thereby leaving scope for re-sale of tickets; and that he did not note down the total number of passengers of different stages in the way-bill. A second charge-sheet followed on 6th July, 2001 issued by the same officer whereby it was alleged that in trying to explain his conduct pertaining to the disposal of a claim for refund of Rs. 1,250/-

forming part of the first charge of the former charge-sheet, he tried to mislead the management.

2. The petitioner was informed vide the two charge-sheets that Mr. Kartick Chandra Purkait, Internal Auditor, Durgapur Division had been appointed Enquiry Officer to enquire into the charges leveled against him and that he may submit his written statement of defence before the said Enquiry Officer and to state whether he desires to be heard in person. He was further informed that enquiry would be held only in respect of those charges as are not admitted and, therefore, he ought to specifically admit or deny the charges.

3. Upon receipt of the charge-sheets, the petitioner duly replied thereto by representations dated 2nd August, 2001 and 26th December, 2001.

4. Thereafter, enquiry followed wherein he participated. The Enquiry Officer submitted his report dated 12th May, 2003 holding the first charge of the former charge-sheet established against the petitioner. So far as the second and third charges of the former and the sole charge of the latter charge-sheet, no evidence was led and, therefore, the petitioner was not held to be guilty of the same.

5. The report of the Enquiry Officer was furnished to the petitioner by the Divisional Manager of the Corporation seeking his comments. The petitioner initially prayed for time to give his comments by letter dated 9th June, 2003. In fact he prayed for supply of legible copies of deposition of the prosecution witnesses and legible copies of the documents relied on in the enquiry. However, without commenting on the enquiry report, he preferred the present writ petition on 25th July, 2003 questioning the order of suspension, the charge-sheets and the enquiry report.

6. On 29th July, 2003, a learned Judge of this Court had directed maintenance of status quo with regard to service of the petitioner for a limited period. The interim order was subsequently extended until further orders as a consequence whereof the issue of passing final order in connection with the disciplinary proceedings is resting before the disciplinary authority.

7. Mr. Kundu, learned Counsel appearing on behalf of the petitioner invited my attention to the impugned charge-sheets wherein the disciplinary authority while naming the Enquiry Officer observed that the petitioner may file his written statement of defence to him and to state whether he desired to be heard in person. According to him, the disciplinary authority did not wait for the petitioner's reply to the charges and that is suggestive of the mindset that enquiry into the petitioner's conduct would follow irrespective of the merits of his reply and that such course of action having been held to be impermissible by the Apex Court in *State of Punjab v. V.K. Khanna* reported in AIR 2001 SC 343 and followed by this Court consistently, he urged me to set it aside by following suit.

8. He relied on paragraph 34 in *V.K. Khanna (supra)* wherein the Apex Court

ruled as follows:

34. The High Court while delving into the issue went into the factum of announcement of the Chief Minister in regard to appointment of an enquiry officer to substantiate the frame of mind of the authorities and thus depicting bias - what bias means has already been dealt with by us earlier in this judgment, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindset viz.: the inquiry shall proceed irrespective of the reply - is it an indication of a free and fair attitude towards the officer concerned? The answer cannot possibly be in the affirmative. It is well settled in service jurisprudence that the authority concerned has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative - the inquiry follows but not otherwise and it is this part of service jurisprudence on which reliance was placed by Mr. Subramaniam and on that score, strongly criticised the conduct of the respondents (sic appellants) herein and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record.

9. According to him following the said decision, this Court (Division Benches as well as Single Benches) has been consistently holding that appointment of an Enquiry Officer simultaneously with issuance of the charge-sheet itself without waiting for a reply from the employee charged in respect of the accusations levelled against him and asking him to submit his reply before such Enquiry Officer is demonstrative of a pre-judged mind of the disciplinary authority. Resultantly, disciplinary proceedings have been interdicted on the ground that the same are vitiated by bias. Reference in this connection was made to the following decisions:

- (i) Sanjoy Singh v. Union of India reported in 2002(2) SLR 266, (SB);
- (ii) Suresh Chowdhury v. Union of India and Ors. reported in 2003 (2) SLR 426, (SB);
- (iii) Tea Board and Another Vs. Rasamoy Roy and Others,
- (iv) unreported decision dated 18th August, 2008 on W.P. No. 11614 (W) of 2008 (Biman Garai v. Union of India and Ors.), (SB);
- (v) unreported decision dated 10th November, 2008 on M.A.T. No. 580 of 2008 (Union of India v. Sri Dilip Kumar Palit), (DB);
- (vi) unreported decision dated 10th November, 2008 on M.A.T. No. 429 of 2008 (Union of India 7 Ors. v. Ram Parwesh Dubey and Anr.), (DB);
- (vii) unreported decision dated 11th March, 2008 on W.P. No. 4100 (W) of 2008 (Ashok Kumar Ghosh v. State of West Bengal and Ors.) affirmed by the Division Bench on 24th September, 2008 in MAT No. 567 of 2008 (South Bengal State

Transport Corporation v. Ashok Kumar Ghosh and Ors.).

10. In course of advancing argument in support of the prayer as noted above, Mr. Kundu also invited my attention to the applicable regulations for holding disciplinary proceedings framed by the Corporation in terms of power conferred on it by the Road Transport Corporations Act. Upon a comparative analysis of the regulations in terms whereof the petitioner has been proceeded against departmentally (hereafter the present regulations) and the earlier regulations, he contended that while in terms of the earlier regulations an Enquiry Officer could be appointed alongwith issuance of charge-sheet, the same was not permissible in terms of the present regulations. The charge-sheet, therefore, is bad as it is not in accordance with the rules. On this further score, he prayed for quashing of the charge-sheet.

11. Next, he argued that the expressions used in the charge-sheet disclosed closed and pre-judged mind of the disciplinary authority. The petitioner on perusal of the charge-sheet could get the impression that a finding of guilt has already been reached and that the proceedings had been initiated against him to complete a formality in law. Reliance in this connection was placed on the decisions in Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant, reported in AIR 2001 SC 24, Bimala Kanta Mukherjee v. State of West Bengal and Ors. reported in 1980 (2) CHN 35, and Sunil Kumar Mukherjee v. State of West Bengal and Ors. reported in 1977 CHN 1014.

12. Prayer for interfering with the disciplinary proceedings was also made on the ground that the same had been conducted in clear breach of principles of natural justice. It was contended by Mr. Kundu that relevant documents relied on in the enquiry had not been furnished to the petitioner and therefore he was deprived of reasonable opportunity of defence. That apart, a vital witness being the passenger in question whose money the petitioner had found on the floor of the bus had not been produced. The enquiry report was thereafter placed by him to show the perversity therein in support of his contention that it is not worthy of being acted upon.

13. The decisions in Manindra Nath Ghosh v. State of West Bengal and Ors. reported in 1979 (2) CLJ 127 and Sri Bhowchand Singh v. Union of India and Ors. reported in 2000 (2) CLJ 148 were relied on for the proposition that if in conducting enquiry there occasions breach of principles of natural justice, a writ petition at the second show cause notice stage would be maintainable.

14. He accordingly prayed for quashing of the order of suspension, the charge-sheets and the enquiry report and for a direction upon the Corporation to extend to him full service benefits as if had he not been proceeded against.

15. Answering the contentions raised on behalf of the petitioner, Mr. Bera, learned Counsel for the Corporation submitted that the writ petition being premature, it does not warrant interference. According to him, the report of the Enquiry Officer could not be acted upon because of injunction granted by the

Court while admitting the writ petition. The petitioner, he contended, would have a further opportunity of submitting his representation against the Enquiry Officer's report before his disciplinary authority proceeds further on the basis thereof. Additionally, the petitioner has a right of appeal in terms of the present regulations if at all a penal order is passed against him. He, accordingly, prayed for dismissal of the writ petition and liberty to the petitioner's disciplinary authority to proceed further. To support his submission, he relied on the decisions in AIR 1976 SC 1821 : Chanan Singh Vs. Registrar, Co-op. Societies, Punjab and Others, : Union of India and others Vs. A.N. Saxena, : State of Uttar Pradesh Vs. Brahm Datt Sharma and Another,

16. Mr. Bera relied on the decision in Employers of Firestone Tyre and Rubber Co. Ltd. Vs. Their Workmen, to contend that non- grant of opportunity to a charged employee to reply to the charge(s) before a decision is taken to conduct enquiry against him by appointing an Enquiry Officer does not offend any principle of natural justice and thus the enquiry cannot be held to be vitiated. He submitted that although he had relied on this decision before the learned Single Judge in the case of Ashok Kumar Ghosh (supra), the same was distinguished and the learned Judge had proceeded to grant relief in that case to the petitioner based on the decision in V.K. Khanna (supra). He conceded that the Division Bench, in the intra-Court appeal filed by the Corporation held against it vide order dated 24th September, 2008 but he hastened to add that the Apex Court was moved by the Corporation questioning the correctness of the said Division Bench decision and an order has been passed on 23rd January, 2009 staying implementation of the directions contained therein. He, therefore, contended on the basis of the interim order of the Apex Court that this Court may not rely on the decisions of the Division Benches of this Court taking a similar view while interfering with the impugned charge- sheets.

17. He next urged that there is no pleading in the petition as to how the petitioner felt prejudiced by reason of appointment of Enquiry Officer simultaneously with issuance of charge-sheet. Having regard to the settled law that violation of principles of natural justice has to be judged on the touchstone of prejudice, he urged that the Court ought not to be swayed merely because in some of the decisions the procedure of appointing Enquiry Officer alongwith issuance of charge-sheet has been faulted by the Court. On the point of prejudice suffered by the petitioner not having been demonstrated, he relied on the decisions in (1996) 3 SCC 364 : State Bank of Patiala and others Vs. S.K. Sharma, : Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, : Bank of India and Others Vs. T. Jogram, .

18. Lastly, it was contended by him that the concerned Officer, being the petitioner's disciplinary authority, against whom he in course of argument has alleged bias has not been arrayed as respondent eo nomine and therefore the Court may not take judicial notice of the same. In this connection he relied on the decisions in (2004) 12 SCC 390 : Medley Minerals India Ltd. Vs. State of

Orissa and Others, : M.V. Thimmaiah and Others Vs. Union Public Service Commission and Others, and (2007) 8 SCC 418 : Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttaranchal and Others, where the Apex Court declined to entertain allegations of malafide leveled against a person not a party to the proceedings. According to him, the same principle ought to apply where allegations of bias are leveled and the Court ought not to make a fishing enquiry.

19. Based on the aforesaid submission, he prayed for dismissal of the writ petition to enable the disciplinary authority of the petitioner to proceed further in accordance with law.

20. In reply, Mr. Kundu submitted that though not specifically pleaded in the petition, the petitioner in his reply to the charge-sheet duly objected to appointment of an Enquiry Officer without there being any decision of the disciplinary authority on consideration of such reply that an enquiry is warranted. Since the reply is part of the writ petition, he submitted that the same merits consideration by me. That apart, he reiterated his earlier submissions to contend that the petitioner deserves relief and the petition ought to be allowed by granting his prayers.

21. I have heard learned Counsel for the parties.

22. It would be appropriate to deal with the first and foremost contention of Mr. Kundu regarding the issue of legality and/or propriety of issuance of charge-sheets against the petitioner requiring him to submit his written statement of defence before the Enquiry Officer. For giving a decision on this issue, it would be my endeavour to find out whether there is any decision directly on the issue that is binding on me.

23. The decision in V.K. Khanna (supra) appears to be the sheet anchor of Mr. Kundu's argument and hence needs consideration in some detail. The officer concerned was the former Chief Secretary to the Government of Punjab who had approached the Administrative Tribunal questioning the charge-sheet issued against him. The challenge having failed, he approached the High Court and was granted relief. The Apex Court upheld the judgment of the High Court. The dispute before the Apex Court has been summarized in paragraph 4 of the decision, which reads as follows:

4. The dispute in the appeals pertain to the last phase of the earlier Government and the first phase of the present Government in the State of Punjab: Whereas the former Chief Secretary of the State of Punjab upon obtaining approval from the then Chief Minister of Punjab initiated proceedings against two senior colleagues of his in the Punjab State Administration but with the new induction of Shri Prakash Singh Badal as the Chief Minister of Punjab, not only the Chief Secretary had to walk out of the administrative building but a number seventeen officer in the hierarchy of officers of Indian Administrative Service and working in the State of Punjab as a bureaucrat, was placed as the Chief Secretary and within a period of 10 days of his entry at the Secretariat, a notification was

issued, though with the authority and consent of the Chief Minister pertaining to cancellation of two earlier notifications initiating a Central Bureau of Investigation (CBI) inquiry - the charges being acquisition of assets much beyond the known source of income and grant of sanction of a government plot to the Punjab Cricket Control Board for the purposes of stadium at Mohali. A worthwhile recapitulation thus depicts that a government servant in the Indian Administrative Service being charged with acquiring assets beyond the known source of income and while one particular Government initiates an inquiry against such an acquisition, the other Government within 10 days of its installation withdraws the notification - is this fair? The High Court decried it and attributed it to be a motive improper and mala fide and hence the appeal before this Court.

24. It is noticed from the report that a charge-sheet containing several charges was served on the charged officer on 24th April, 1997 giving him 21 days to reply thereto. Soon after the issuance of the charge-sheet, however, the press reported on 27th April, 1997 a statement of the Chief Minister that a Judge of the High Court would look into the charges against him. This statement was ascribed to be malafide by counsel of the charged officer by reason of the fact that even prior to the expiry of the period pertaining to submission of reply to the charge-sheet, announcement regarding appointment of an Enquiry Officer was made. It was contended that it depicts malice and vendetta and the frame of mind so as to humiliate the former Chief Secretary. The time had not expired for assessment of the situation as to whether there was any misconduct involved; yet, a decision had been taken to proceed with the enquiry irrespective of merits of the reply that he might submit. The charged officer alleged that bias was the foundation of the disciplinary proceedings. On the basis of the facts presented, which were found glaring, it was held that there was real danger of bias and not a mere apprehension of bias and, accordingly, the challenge of the charged officer was upheld.

25. In my reading of the decision, announcement of the Chief Minister appointing an Enquiry Officer simultaneously with issuance of charge-sheet was one of several grounds on which the allegation of bias was founded and that weighed in the mind of the Apex Court to hold that the disciplinary proceedings were tainted with bias and that the circumstances clearly revealed a pre-judged and pre-determined mind. I have looked into the All India Services (Discipline and Appeal) Rules, 1969 (hereafter the AISDA Rules) considering it to be the applicable rules that govern disciplinary proceedings against a member of the All India Service holding equal rank as the charged officer. Rule 8 thereof contains provisions regulating the procedure for imposing major penalties. It would be profitable to note, at this stage, Sub-rules (5) and (6) of Rule 8. They read as under:

#### 8. Procedure for imposing major penalties

(5) The disciplinary authority shall deliver or cause to be delivered to the

member of the Service a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the member of the Service to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(6) (a) On receipt of the written statement of defence the disciplinary authority may appoint, under Sub-rule (2), an inquiring authority for the purpose of inquiring into such of the articles of charge as are not admitted, and where all the articles of charge have been admitted by the member of the Service in his written statement of defence, the disciplinary authority shall record its finding on each charge and shall act in the manner laid down in Rule 9.

(b) If no written statement of defence is submitted by the member of the service, the disciplinary authority may, if it considers it necessary to do so, appoint under Sub-rule (2), an inquiring authority for the purpose.

26. A bare reading of Sub-rule (6) makes the position clear that appointment of inquiring authority on receipt of written statement of defence from the charged officer denying the charges is not automatic but is necessarily within the discretion of his disciplinary authority. He may or may not appoint an inquiring authority in case of denial of the charges whereas if they are admitted, he has no other option but to record his findings on each charge and proceed to take action under Rule 9 of the AISDA Rules for imposing penalty. The use of the words "may" and "shall" in the same sub-rule is significant. In my reading, use of the words "may" implies that further action would be within the discretion of the disciplinary authority while the words "shall" have been used to emphasize that further action of the nature specified therein is imperative. Thus, the words "may" and "shall" need not be read inter-changeably.

27. Though Sub-rule (2) of Rule 8 of the AISDA Rules conferring power on the disciplinary authority to appoint an authority to inquire into the truth of any imputation of misconduct or misbehaviour against a member of the Service is placed above Sub-rules (5) and (6), the same does not come into play before the time to file written statement of defence has expired.

28. Having regard to the provisions of Rule 8 of the AISDA Rules, it was not open to the Chief Minister to announce appointment of a Judge of the High Court as inquiring authority before receipt of reply from the charged officer. It is in such circumstances that the Apex Court upheld the impugned order of the High Court granting relief to the officer. The ratio of the decision, to my mind, is whether there is a mere apprehension of bias or there is a real danger of bias has to be ascertained from the surrounding circumstances and a conclusion has to be drawn therefrom, and if the facts reveal a real danger of bias the administrative action cannot be sustained whereas a fanciful apprehension of bias would not be a ground for interfering with administrative action. The other principle that was

laid down is in paragraph 34 of the decision. Although the Apex Court ruled that "It is well established in service jurisprudence....", as extracted supra, the law enunciated ought to be read and understood in view of the concerned rule governing the proceedings. Although the relevant rule was not referred to in the decision, it stands to reason that while holding so, the Apex Court did bear in mind that in view of the extant rules, the inquiring authority could not have been appointed before consideration of the written statement of defence.

29. It is this decision of the Apex Court, according to Mr. Kundu, that the Division Benches and Single Judges of this Court have followed while granting relief to the aggrieved delinquents who had approached Court with similar grievance.

30. I shall now proceed to consider what exactly the Division Benches in the various decisions have held.

31. In *Rasamoy Roy* (supra), the Division Bench upheld the decision of the learned Single Judge whereby the disciplinary proceedings and the final order of penalty were interdicted. Several grounds were assigned for interference and the most important one was that a vital witness had not been produced by the prosecution for cross-examination by the delinquent despite a specific order to this effect having been passed by a learned Single Judge on a previous writ petition between the same parties. Another ground was that the Enquiry Officer having been appointed before consideration of the delinquent's reply to the charge-sheet, the same was reflective of a pre-judged mind. There, the proceedings were governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Rule 14(5)(a) thereof ordains that it is only on receipt of the reply to the charge-sheet that the disciplinary authority may itself enquire into the charge or appoint an Enquiry Officer therefore. Having regard to such clear provision, the Division Bench ruled in favour of the delinquent and against the employer.

32. Now the unreported Division Bench decisions in *Dilip Kumar Palit* (supra) and *Ram Parwesh Dubey* (supra) may be considered. The respective writ petitions, out of which the appeals arose, were filed by members of the Railway Protection Force who were sought to be proceeded against departmentally.

33. In *Dilip Kumar Palit* (supra), the Division Bench was called upon to consider the correctness of the impugned judgment of the learned Single Judge who interfered with the charge-sheet on twin grounds of delay and of the accepted procedure in service jurisprudence not being followed. The discussion on the delay aspect need not detain me. Quoting paragraph 34 of the judgment in *V.K. Khanna* (supra), the Division Bench held that the same "recognizes that a disciplinary authority had to obtain a preliminary response from the concerned employee before deciding whether the process of enquiry was necessary to go into the charges leveled against the employee." The learned Single Judge had also relied on paragraph 34 referred to above and granted relief. The Division Bench found no infirmity in the order under appeal and dismissed it.

34. In *Ram Parwesh Dubey (supra)*, the order under appeal was passed in the second round of litigation between the parties. The first round of litigation ended with an order recording the concession of the employer that the impugned charge-sheet would be withdrawn and a fresh one issued after deleting the portion by which the Enquiry Officer was appointed. The operative portion of the order recorded that if the employer served identical charge-sheet by deleting the portion showing the appointment of an Enquiry Officer, the member of the Force would be at liberty to use a reply which would be considered by the appropriate authority in accordance with the relevant rules. The employer then repeated the same charge-sheet by only removing the name of the Enquiry Officer who had been originally appointed without, however, deleting paragraphs 3 and 4 thereof which gave particulars of the date and venue of enquiry and called upon the delinquent member to attend it. The delinquent member complained of mechanical action on the part of the disciplinary authority without application of mind. The challenge succeeded before the learned Single Judge who placed reliance on the dictum in *V.K. Khanna (supra)*. The Division Bench held that the disciplinary authority construed the earlier order of the learned Single Judge far too literally; if there was no Enquiry Officer, there was no question of issuing directions of the nature contained in paragraphs 3 and 4 of the impugned charge-sheet. On a reading thereof it was clear that the member of the Force was being conveyed that an enquiry proceedings had been put in place and that is what precisely fouled the dictum in the *V.K. Khanna* decision. The appeal was accordingly dismissed granting liberty "to the disciplinary authority to seek a preliminary response from the writ petitioner and then decide if an enquiry is necessary to consider the allegations against the writ petitioner."

35. There is another unreported decision of the Division Bench, comprising of the same learned Judges, which decided *Dilip Kumar Palit (supra)* and *Ram Parwesh Dubey (supra)*. That decision, dated 17th November, 2008, was rendered on MAT No. 530 of 2008 (*Union of India and Ors. v. Champa Das and Anr.*). There, the Division Bench was considering the correctness of the order dated 2nd April, 2008 passed by the learned Single Judge. His Lordship had rejected the argument of learned Counsel for the disciplinary authority who contended that "the relevant R.P.F. Rules do not speak of giving an opportunity to submit any explanation or show cause prior to initiation of the enquiry" by holding that "this Court does not find any convincing argument since an opportunity to the charged officer to explain his conduct or to show cause as regards the charges is the foundation of the principles of natural justice. By no means such an opportunity can be denied. In fact, it is for the authority to give the concerned official an opportunity to explain the charges against him/her and thereafter, if the authority concerned is not satisfied with such explanation, then only the question of enquiry arises." Ultimately, it was held that initiation of an enquiry in the manner proposed is not legally permissible and as such the impugned charge-sheet was set aside. However, the respondents were granted liberty to initiate enquiry in accordance with rules. The Division Bench while dismissing the appeal,

ruled as follows:

We have heard learned Counsel for the parties at length. We have also perused the record. The charge sheet issued to the employee dated 15th February, 2008 clearly indicate that one Sri A.K. Kundu has been nominated as an Enquiry Officer. This enquiry has been initiated without seeking any explanation from the employee. The Enquiry Officer has been immediately directed to hold an enquiry against the employee. Such a course is not permissible in view of the law laid down by the Supreme Court in the case of *Union of India and Another Vs. Tulsiram Patel and Others*, and in the case of *State of Punjab v. V.K. Khanna* reported in (2001) 2 S.C.C. 330. In view of the above, we see no reason to interfere with the order passed by the Trial Court. We may notice that the Trial Court has specifically mentioned that passing of the impugned order, by no stretch of imagination, can stop the respondent-authority for initiating any enquiry against the writ petitioner in accordance with the rules. In such circumstances, we are of the opinion that no manifest injustice has been done to the appellant. We see no merit in the appeal. The appeal is accordingly dismissed treating the same as on day's list. The application for stay is also dismissed.

36. It is noticed that the Division Bench in *Champa Das (supra)* also ruled that the course of action adopted by the appellants in initiating enquiry without seeking any explanation from the employee and directing the Enquiry Officer to immediately hold an enquiry against the employee is not permissible in view of the law laid down by the Apex Court in the case of *Tulsi Ram Patel (supra)*. Since the Division Bench in *Champa Das (supra)* relied on it to dismiss the appeal before it, I have considered it necessary to find out to what extent the decision is applicable for an answer to the issue before me.

37. In that case the Constitution Bench of the Apex Court was called upon to consider, having regard to conflict of opinion between two Benches of equal strength, the effect of the second proviso to Article 311(2) of the Constitution which permits the appointing authority to dispense with formal enquiry and to impose either of the punishments mentioned in Clause (2) thereof without granting any opportunity of hearing both before the finding of guilt is arrived at and the punishment is imposed. The decision in *Divisional Personnel Officer, The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, was found to be in conflict with the decision in *M. Gopala Krishna Naidu Vs. State of Madhya Pradesh*, A reference was laid before the Constitution Bench of five learned Judges. Exposition of law in regard to the true meaning and content of the "pleasure doctrine" and its implications and impact is discernible therefrom. The majority speaking through Hon'ble Madon, J. ruled that the *audi alteram partem* rule was excluded expressly by the second proviso to Article 311(2) of the Constitution and therefore there was no need to hear the delinquent even at the stage of imposition of penalty.

38. Even though the issue considered and decided by the Apex Court in *Tulsi Ram Patel (supra)* is not quite the same I have been called upon to decide, the

said decision deals in extenso with applicability of principles of natural justice and throws sufficient light on compliance therewith in disciplinary proceedings. Relevant portions from the decision are quoted below:

96. The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, the *audi alteram partem* rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. ...If we look at Clause (2) of Article 311 in the light of what is stated above, it will be apparent that that clause is merely an express statement of the *audi alteram partem* rule which is implicitly made part of the guarantee contained in Article 14 as a result of the interpretation placed upon that article by recent decisions of this Court. ...If, therefore, an inquiry held against a government servant under Clause (2) of Article 311 is unfair or biased or has been conducted in such a manner as not to give him a fair or reasonable opportunity to defend himself, undoubtedly, the principles of natural justice would be violated, but in such a case the order of dismissal, removal or reduction in rank would be held to be bad as contravening the express provisions of Clause (2) of Article 311 and there will be no scope for having recourse to Article 14 for the purpose of invalidating it.

97. Though the two rules of natural justice, namely, *nemo iudex in causa sua* and *audi alteram partem*, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal straitjacket. They are not immutable but flexible. These rules can be adapted and modified by statutes and statutory rules and also by the constitution of the Tribunal which has to decide a particular matter and the rules by which such Tribunal is governed. \*\*\*\*\*

98. In India, in *Suresh Koshy George Vs. University of Kerala and Others*, this Court observed:

The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions.

After referring to this case, in *A.K. Kraipak and Others Vs. Union of India (UOI)*

and Others, Hegde, J., observed:

What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

99. Again in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, it was said:

It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

101. Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded.... So far as the *audi alteram partem* rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the *audi alteram partem* rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . If legislation and the necessities of a situation can exclude the principles of natural justice including the *audi alteram partem* rule, a fortiori so can a provision of the Constitution, for a constitutional provision has a far greater and all- pervading sanctity than a statutory provision. In the present case, clause (2) of Article 311 is expressly excluded by the opening words of the second proviso and particularly its keywords "this clause shall not apply". As pointed out above, Clause (2) of Article 311 embodies in express words the *audi alteram partem* rule. This principle of natural justice having been expressly excluded by a constitutional provision, namely, the second proviso to Clause (2) of Article 311, there is no scope for reintroducing it by a side-door to provide once again the same inquiry which the constitutional provision has expressly prohibited....

(underlining for emphasis)

39. The decision in Tulsi Ram Patel (supra) although recognizes that Article 311(2) embodies in express words the audi alteram partem rule and in its fullest amplitude includes granting of an opportunity to a delinquent to submit his explanation to the charges, in my reading, it does not go so far to suggest that opportunity to reply to the charges and consideration thereof by the disciplinary authority before it proceeds to decide whether enquiry ought to be conducted or not is a course of action that is required to be followed in consonance with audi alteram partem principles and that the enquiry would stand vitiated for a failure to follow such course. On the contrary, it approves the warning of Hon'ble Megarry, J. in Hounslow London Borough Council v. Twickenham Garden Developments Ltd. (1970)3 All ER 326 that the principles of natural justice must be confined within their proper limits and not allowed to run wild.

40. Be that as it may, Their Lordships of the Division Benches upon appreciation of the principle of law laid down in V.K. Khanna (supra) and Tulsi Ram Patel (supra) have applied the same in the respective appeals before them and held that the course of action adopted by the respondents was not permissible.

41. Apart from the decisions in Rasamoy Roy (supra) and Ashok Ghosh (supra), the other decisions cited in support of the petitioner's contention (by Division and Single Benches) reveal a common feature. The respective Judges were approached by members of the Railway Protection Force against whom disciplinary proceedings were initiated under the Railway Protection Force Rules.

42. With respect, I may note that the impact of provisions contained in Rule 153 thereof on the contention raised on behalf of the delinquent members of the Force does not appear to have been considered.

43. I have looked into the decision of the learned Single Judge on the writ petition filed by Ashok Kumar Ghosh (supra), since affirmed in appeal. This appears to be the only case involving a staff of the Corporation. As has been noted earlier, the directions contained in the Division Bench decision have been stayed by the Apex Court. Though the order of stay does not wipe out the existence of such decision, it is unimplementable between the parties thereto and the binding effect is certainly eroded permitting me the scope to decide the issue on the basis of my own understanding of the law on the subject.

44. At this stage, I must remind myself the principle of law laid down in Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, regarding what constitutes ratio decidendi of a decision. It reads as follows:

9.\*\*\*\*It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates-(i) findings

of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.

(underlining for emphasis)

45. Having regard to Dhanwanti Devi (supra), if the judgment in V.K. Khanna (supra) is read as applicable to the particular facts proved, or assumed to be proved and the generality of the expressions found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are found, there is scope to contend that the dictum with which I am concerned requires to be read bearing in mind the rules governing the enquiry and not divorced from it. To my mind since each case requires examination to a very large extent on its specific facts vis-a-vis the law applicable thereto, attempting universal application of a law laid down in the context of a rule not quite similar to the one at hand might lead to unwarranted and undesirable results.

46. Since a different statutory rule was involved in the authorities cited, blind reliance thereon would not be proper on the authority of the decisions of the Apex Court in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, and State of Orissa and Others Vs. Md. Illiyas, I thus hold the authorities to be distinguishable and that the issue raised by Mr. Kundu is not directly answered by any of the decisions cited by him.

47. So far as holders of civil posts are concerned, Article 311(2) of the Constitution postulates an inquiry to be conducted before a person [as specified in Clause (1) thereof] is dismissed or removed or reduced in rank. In consonance with natural justice principles (read *audi alteram partem*), in such enquiry the person concerned has to be informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The requirement as spelt out in *V.K. Khanna* (supra), in my humble view, has not been recognised in any previous decision of the Apex Court concerning disciplinary proceedings/domestic enquiry to be a part of "reasonable opportunity of being heard" either enshrined in Article 311(2), statutory rules for conducting disciplinary proceedings or in procedures governing domestic enquiry. Reference in this connection may be made to the decision in *Khem Chand Vs. The Union of India (UOI )and Others*, wherein the Apex Court considering Article 311(2) had the occasion to lay down that "reasonable opportunity of hearing" would include:

19. To summarise: the reasonable opportunity envisaged by the provision under consideration includes:

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant.

48. The observations in *Tulsi Ram Patel* (supra) on the point of applicability of principles of natural justice in proceedings under Article 311 of the Constitution have been noticed earlier and hence are not repeated. In *Meenglas Tea Estate Vs. Its Workmen*, the Apex Court (albeit in respect of a domestic enquiry, validity of which was questioned before an industrial adjudicator) ruled that:

4. \*\*\*\*\*It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws

the burden upon the person charged to repel the charge without first making it out against him. \*\*\*\*\*

49. In *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, the Apex Court laid down the ingredients that are required to be satisfied for holding an enquiry to be fair and proper, which are as follows:

An enquiry cannot be said to have been properly held unless,

(i) the employee proceeded against has been informed clearly of the charges levelled against him,

(ii) the witnesses are examined- ordinarily in the presence of the employee-in respect of the charges,

(iii) the employee is given a fair opportunity to cross-examine witnesses,

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

(v) the enquiry officer records his findings with reasons for the same in his report.

50. In its decision in *Firestone (supra)* the Apex Court was considering a case where the charge-sheet that had been issued without calling for an explanation from the employee charged was claimed to have vitiated the domestic enquiry. It was ruled that non-grant of opportunity to a charged employee to reply to the charge(s) before a decision is taken to conduct enquiry against him by appointing an Enquiry Officer does not offend any principles of natural justice. Relevant portions of the decision read thus:

5. The Tribunal gave several reasons for its conclusion that the enquiry was not properly conducted. These were:

(a) That the inquiry was held immediately after the investigation without taking the explanation of the workman;

(b) \*\*

(c) \*\*

(d) \*\*

6. The Company now contends that none of these grounds has any validity. It has tried to meet each of the grounds and in our opinion successfully. We shall take these grounds one by one and indicate the submissions which in our opinion must be allowed to prevail. As regards Ground (a) it is clear to us that, although it may be desirable to call for such an explanation before serving a charge-sheet, there is no principle which compels such a course. The calling for an explanation can only be with a view to making an enquiry unnecessary, where the explanation is good but in many cases it would be open to the criticism that the defence of the workman was being fished out. If after a preliminary enquiry

there is prima facie reason to think that the workman was at fault, a charge-sheet setting out the details of the allegations and the likely evidence maybe issued without offending against any principle of justice and fair play. This is what was done here and we do not think that there was any disadvantage to the workman.

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(underlining for emphasis)

51. A search for precedents on the point reveal contrasting judicial pronouncements of different High Courts of the country, other than those cited before me, regarding initiation of enquiry without waiting for a reply from the charged employee.

52. The Madras High Court in its decision in *Anglo American Direct Tea Trading Co. Ltd. v. Labour Court, Coimbatore and Anr.* reported in 1971 I LLJ 147 after considering the decision of the Apex Court in *Sur Enamel (supra)* proceeded to observe that "the fact that the charge -sheet did not expressly call upon the workman to offer his explanation cannot be said to have vitiated the enquiry. Even if the charge-sheet had not called upon the workman to offer his explanation, nothing prevents him from offering an explanation himself before the enquiry is commenced. Therefore, I cannot hold that the first ground given by the Labour Court in support of its conclusion is legally tenable."

53. Incidentally, the view expressed by the Madras High Court in *Anglo American (supra)* has been accepted by the Gauhati High Court in its decision in *The Secretary, Assam Chah Majdoor Sangha, Sonari Branch v. The Presiding Officer, Labour Court, Dibrugarh and Ors.* reported in 1981 LAB I.C. 93. In paragraph 13 of the decision, it was held that calling upon the concerned employee to submit his explanation to the charge sheet issued in connection with a domestic enquiry into his misconduct is not a pre-requisite and hence failure of the employer to call for such explanation would not vitiate the enquiry.

54. Similar issue was also considered by the Rajasthan High Court in *Balvir Kumar Arya v. Rajasthan State Road Transport Corporation, Jaipur and Anr.*, reported in 1982 LAB I.C. 61. The Court was called upon to consider Standing Order No. 35 which, inter alia, dealt with the procedure of enquiry. It read:

35. (i) Competent authority may suspend a worker for any act or omission of misconduct as described in Standing Order No. 34 by an order in writing and serve the worker with a chargesheet containing specific charges on which each charge is based and asking him to state whether he desires to be heard in person:

(ii) A worker shall be required to submit his explanation in writing not exceeding a week from the date of service of charge-sheet and if he desires to be heard in person a summary enquiry shall be held.

In paragraph 11 of the decision, the Court held as under:

11. Before discussing the authority cited by Mr. Sharma, I may right away state that there is nothing in the language of Standing Order No. 35 (i) and (ii) reproduced above which may be reasonably construed to divide the entire process relating to suspension and dismissal of a workman into two watertight compartments like those suggested by counsel. Standing Order 35(i) which provides for suspension of a workman or any act or omission of misconduct, lays down that the order of suspension must be reduced to writing and that the workman must be served with a charge-sheet requiring him to state whether he desires to be heard in person. Standing Order 35 (ii) lays down that the workman shall be required to submit his explanation in writing within a period not exceeding a week from the date of service of charge-sheet. If the workman desires to be heard in person, a summary enquiry must be held into the charge-sheet in accordance with the other clauses of Standing Order No. 35. It will thus be seen that there is no requirement of this order that the entire procedure must be divided into two separate stages and that one stage must be dealt with by the disciplinary authority and the other by the Inquiry authority. The disciplinary authority is under no legal obligation to obtain the explanation at his own level and to consider it personally. Of course, before the enquiry is commenced, the delinquent must be called upon to file his explanation to the charge-sheet and thus given an opportunity of explaining his side of the case. In case, he admits the charge-sheet he removes the necessity of holding the summary enquiry. The case then goes back to the disciplinary authority for consideration of the question of punishment. If however he does not admit the charge and renders some explanation of his own it is a matter for enquiry and the inquiring authority must hold the enquiry according to law and submit his report to the disciplinary authority. The entire process commencing with the passing of the order of suspension and service of the charge-sheet and the eventual exoneration or punishment of the workman, as the case may be, is a continuous and integrated process and is not susceptible of any such artificial division into watertight compartment as suggested by counsel for the appellant.

55. While giving its decision, the Rajasthan High Court considered the decision of the Allahabad High Court in *Hindustan Lever Ltd. v. Their Workmen and Anr.* reported in 1974 (29) F.L.R. 305 and distinguished it on the basis of the language of the Standing Order which fell for consideration before the Allahabad High Court.

56. It would be interesting to note what the Allahabad High Court held in *Hindustan Lever* (supra). It was considering provisions of Standing Order No. 23(c), which read:

No order of dismissal or suspension under Standing Order 23(a) for misconduct shall be made unless the workman concerned, if present, is informed in writing of the misconduct alleged against him and is given an opportunity to produce evidence in his defence

The Court proceeded to observe as follows:

It can be easily gathered from the tenor of the above provision that the Standing Orders contemplate two stages applicable to the dismissal or suspension of a workman, namely, the one anterior to the enquiry and another posterior thereto. In the stage preceding the actual enquiry, the management is required to serve a charge-sheet on the workman concerned and also afford him an opportunity of offering an explanation. It is only when this has been done that the next stage is reached, namely, the commencement of the actual enquiry, and there it is essential that the workman should be given an opportunity to produce evidence in his defence. In my opinion, this is substantially a complete procedure, which is enshrined in the Standing Order, and the management cannot with impunity disregard any of the vital steps in this entire procedure. It is not open to the management either to deny altogether to a workman the opportunity of submitting an explanation in writing or to defer it by telescoping it somewhere in the midst of the actual enquiry. In my opinion, the provision for demanding an explanation in writing serves a salutary purpose, and is not merely a ritual which may or may not be performed. It is essential to the maintenance of industrial harmony that a workman should not be unnecessarily harassed by the employer by holding an enquiry against him. One cannot also ignore the fact that in industrial disputes the motive of the employer is a very important factor to be considered. So often, a workman raises the plea of unfair labour practice or victimisation on account of his trade union activities. It, therefore, serves as a brake on the management to comply with this preliminary step of asking for an explanation and reducing it to writing from the workman and thereafter proceeding to hold an enquiry, if the explanation is not satisfactory.

57. A Division Bench of the Orissa High Court while considering Sub-rules (2), (3) and (4) of Rule 15 of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 in its decision in Jagannath Mohapatra v. Utkal University reported in 1979 (1) SLR 828 held as follows:

From the above provisions in the said Rules it is absolutely clear that after the charges are framed against an employee that should be sent to the delinquent with a statement of the allegations on which they are based, and he shall be supplied with all records on which the allegations are based, and he shall be permitted to inspect and take extracts from such other official records as he may specify, provided that such permission may be refused for reasons stated in Sub-rule (3) quoted above. After that, if the delinquent submits his written statement or he does not submit the same, then only the disciplinary authority may itself inquire into the charges framed against the delinquent as are not admitted, or, if he considers it necessary so to do, appoint a board of inquiry or an inquiring officer for the purpose. Therefore, it would not be illegal to appoint the inquiring officer simultaneously with the framing of the charges and to direct the delinquent to submit his explanation on the charges to the inquiring officer so that he will directly deal with the same from that stage. Therefore, the

appointment of the inquiring officer before the submission of the written statement of defence by the delinquent cannot be supported. The above provisions are wholesome, for there may not be any necessity to appoint an inquiring officer in case the delinquent admits the charges or the disciplinary authority finds that the allegations against the delinquent have been suitably explained in the written statement of defence. My above view gets support from the observations made by a Division Bench of this Court in *Rabindranath Mohanty v. Government of Orissa and Anr.* (4) based on similar provisions in Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969.

The word "not" in bold font in the extracted portion appears to be a misprint since it cannot be reconciled with the principle laid down therein.

58. The aforesaid decisions have been referred only to emphasize that the decisions of the High Courts on the issue are not uniform and consistent.

59. Now turning to the facts of this case, I find that in terms of the earlier regulations, procedure for imposing penalties had been laid down in Regulation 38 thereof. To the extent relevant for a decision here, it read thus:

38 Procedure for imposing penalty:

1. \*\*\*

2. \*\*\*

3. The disciplinary authority shall deliver or cause to be delivered to the employee a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour prepared under Clause (ii) of Sub-regulation (2) and shall require the employee to submit to the inquiring authority within such time as may be specified a written statement of his defence and to state whether he desires to be heard in person.

Regulation 38 of the present regulations reads thus:

38(1) No order of dismissal, removal or reduction shall be passed on an employee of the Corporation (other than an order based on facts which had led to his conviction in a criminal court) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires or if the authority concerned so directs an oral inquiry shall be held. At that inquiry oral evidences shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross examine the witness, to give

evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and grounds thereof.

60. The impugned charge-sheets have now to be tested in the light of Regulation 38 supra. For noting what they actually sought to convey, the identical introductory part of both the charge-sheets is quoted below:

The undersigned proposes to hold an enquiry under Regulation 38 of the SBSTC Employees Service Regulations against ....

61. It is clear from a bare perusal thereof that the disciplinary authority in no uncertain terms expressed that it proposed to hold an enquiry against the petitioner under Regulation 38 and the grounds therefore being the statement of the allegations on which each charge is based and other circumstances which it proposed to take into consideration in passing orders in relation to such proceedings, were conveyed calling upon the petitioner either to deny or admit the same and also to state whether he desired to be heard in person. It is at this stage, according to Mr. Kundu, that part of Regulation 38 to the effect "If he so desires or if the authority concerned so directs an oral inquiry shall be held" comes into play and that the decision to hold an oral enquiry must be preceded by a consideration of the written statement of defence particularly in view of amendment of the earlier Regulations which specifically authorized appointment of Enquiry Officer while issuing a charge-sheet.

62. I do not feel persuaded to agree. Change in language of the concerned Regulation i.e. Regulation 38 (as it presently stands) does not tilt the scales in favour of the petitioner. The portion of Regulation 38 extracted above in the preceding paragraph cannot be read in isolation but must be read together with the whole of Regulation 38 and more particularly the requirement of informing the "grounds on which it is proposed to take action" and on affording adequate opportunity of defending to the charged employee. While it is true that consideration of the reply to the charges before directing enquiry might in some cases obviate the necessity of holding enquiry, the particular regulation under consideration in the present case does not oblige the disciplinary authority to defer appointment of an Enquiry Officer till expiry of the time to file reply, where it is not filed, or till consideration of such reply, if filed. The opinion of the disciplinary authority to conduct an enquiry into the conduct of a subordinate employee for taking disciplinary action on the basis of the materials before him is a condition precedent for issuance of a charge-sheet. The enquiry, in my opinion, would follow as a matter of course where the delinquent denies the charge since the onus is on the prosecution to prove it upon leading evidence before the Enquiry Officer. If, however, the delinquent admits the charge and does not desire to be personally heard, the requirement of holding a formal enquiry may not arise. Nothing in the Regulations prevents the disciplinary authority from

recalling the order directing enquiry if he is otherwise satisfied with the reply to the charge, either before the enquiry commences or even during its continuance. To contend that a charge-sheet must fail because an Enquiry Officer has been appointed thereby despite the clear language of Regulation 38 and its tenor read with the impugned charge-sheets does not commend to this Court to be the correct proposition of law.

63. It is on record that after inspection was conducted on 4th May, 2001 by the inspecting staff and bag checking report was prepared by them, the petitioner was granted opportunity to explain the circumstances leading to detection of excess amount in his possession. In his own handwriting the petitioner had offered an explanation on the reverse side of the bag checking report. There is no warrant for the proposition that the impugned charge-sheet dated 28th June, 2001 was issued without noting such explanation. A prima-facie view that misconduct has been committed calling for investigation was required to be formed whereupon the charge-sheet was issued. In such circumstances to hold that appointment of an Enquiry Officer should be made only on consideration of the reply to the charge-sheet is to introduce a step in the disciplinary proceedings not enjoined by the relevant regulations governing the same. The contention that the charge-sheet must be interdicted is devoid of merit and accordingly stands overruled.

64. This takes me to the second point urged by Mr. Kundu that expressions used in the charge-sheet reflect the closed mind of the disciplinary authority and that it was initiated only to complete a formality in law.

65. It seems to me to be settled law that the real purpose of initiating a disciplinary proceeding is to enquire as to whether the facts prima facie ascertained against a delinquent officer are correct or not. The purpose cannot be to cause a secret enquiry against him and to form a positive and firm view about his complicity in the alleged misconduct and thereafter to give him an opportunity to dispel the conclusion already drawn against him.

66. Charges framed must be clear and must not suffer from any ambiguity or vagueness. If the charge is not expressed in clear and certain terms, then he is likely to be misled and suffer prejudice for the vagueness in the charge-sheet, not knowing the case he has to meet.

67. I have considered the charge-sheets. The expressions used therein are not such so as to give rise to an apprehension in the mind of the petitioner that his guilt has been pre-judged. In my reading, the disciplinary authority has with sufficient degree of clarity expressed the alleged acts of misdemeanour of the petitioner which require investigation by conducting an enquiry. Had the charge sheet not been clear and certain, the disciplinary authority would run the risk of being charged with issuance of a charge-sheet that is vague, indefinite or unspecific. Whether or not a disciplinary authority has a closed and pre-judged mind at the inception of disciplinary proceedings cannot really be comprehended

only by having a look at the expressions used in the charge-sheet. Disciplinary proceedings may be held to have been initiated with closed and pre-judged mind if from the attending circumstances such a conclusion can reasonably be drawn even though there is a proliferation of expression in the charge-sheet like "alleged acts", "prima facie guilty", "tentative view", etc. and the charge-sheet appears to be perfectly worded, whereas proceedings initiated absolutely bonafide, may not be interdicted despite definite expressions in the charge-sheet which might give an impression in the mind of the delinquent that nothing remains to be decided and that the same have been initiated only to complete a formality in law, unless surrounding circumstances are such that the Court is convinced that there been deflection of justice. A charge-sheet has to be construed in a reasonable manner and too much legalism cannot be expected of a domestic enquiry [see *Firestone (supra)* and AIR 1972 Cal 401 : *The Collector of Customs, Calcutta and Others Vs. Biswanath Mukherjee*, ]. If apart from the inappropriately worded charge-sheet there is no other incriminating circumstance having the effect of vitiating the proceedings, it would be prudent exercise of judicial discretion not to interfere.

68. In criminal proceedings while a charge is framed by a Court, it often uses the expression, by naming the person accused of the offence, that on or about a certain date and at a certain time and place he committed an overt act mentioned therein and he thereby "committed an offence punishable" by a particular section of the Indian Penal Code or other penal statute, which the Court has taken cognizance. This, per se, does not presuppose that the Court has already held him to be guilty of the offence with which he is charged and about which he was called upon to answer the charge. It would be reading too much of a technicality in the charge itself, unless and until the conduct of the disciplinary authority is otherwise biased so as to rule out the possibility of a fair departmental proceeding at all and the delinquent facing the charge is otherwise prejudiced.

69. On a wholesome appreciation of the facts brought on record, I am of the clear view that the impugned charge-sheets do not merit interdiction on the ground as contended by Mr. Kundu.

70. The decision in *Kumaon Mandal (supra)* does not lend any assistance to the petitioner. Having regard to the facts and circumstances of that case wherein termination of service of the General Manager of the Nigam by its Managing Director was challenged, the Court noticed that the Managing Director was not well-disposed towards the General Manager, show cause notice was served on him without supply of necessary documents, enquiry was held without fixing date for examining witnesses, no Presenting Officer was appointed, representation against the report of enquiry was sought for on the next date and the dismissal order was passed few hours after personal hearing was given by the Managing Director. These circumstances were indicators of the impugned order being passed in the hottest of haste and it also suffered from bias of the Managing

Director. The Court held that the entire chain of evidence smacked of personal clash and adoption of a method unknown to law. Paragraph 32 of the decision being relevant is quoted hereunder:

The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom-in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained : If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular court, Tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in *Locabail* (supra).

71. As has been noticed above, the attending or surrounding circumstances do not enable me to come to a definite conclusion that the disciplinary authority of the petitioner was biased against him. In the present case, apart from initiation of the disciplinary proceedings by issuance of the impugned charge-sheet containing the order of appointment of Enquiry Officer, he has till date not played any further role in connection with the disciplinary proceedings.

72. Also, I am in complete agreement with Mr. Bera that since allegations of bias were levelled against the disciplinary authority, the concerned officer ought to have been impleaded *eo nomine* as a respondent to enable him counter the allegations levelled.

73. The decisions cited by Mr. Kundu have been considered. The respective Courts interfered having regard to expressions in the impugned charge-sheets issued against the delinquents before them vis-a-vis the attending circumstances. The law laid down therein is not in dispute but on facts of the present case, the authorities cited do not lend any assistance to the petitioner.

75. That apart, it is of vital importance that the petitioner never expressed any such apprehension in his reply to the charge-sheets that the disciplinary authority being biased, he would not receive justice from him. If indeed the charge-sheets were expressed in such language that the same were reflective of the pre-determined and pre-judged mind of the disciplinary authority, his reaction would have been spontaneous. An objection that the disciplinary authority was proceeding with a biased mind should have been raised at the very inception. However, no such objection was raised. It is only after the report of enquiry was submitted by the Enquiry Officer and he had been served a copy thereof seeking his comments that a grievance has been voiced in the writ petition for the first time in respect of expressions used in the charge-sheets. The petitioner did not also follow up his reply to the charge-sheets by recording that his participation in the enquiry was without prejudice to his rights and contentions. He did not approach the Court contemporaneously objecting to

continuance of the enquiry. Without raising any demur, the petitioner participated in the proceedings before the Enquiry Officer. An objection on the ground of bias may be waived, is well-recognised.

76. Having regard to such state of affairs, it is too late in the day for the petitioner to claim that the charge-sheets ought to be interfered with. This Court finds no reason to accept his plea.

77. The last ground urged by Mr. Kundu is that the departmental proceedings has been conducted against the petitioner in violation of principles of natural justice and that the report of enquiry is perverse. It has been alleged that documents relied on in the enquiry were not supplied. Non-production of the concerned passenger in the enquiry has also been cited by him as a flaw in conducting the same and thereby vitiating it.

78. To my mind, these are issues which ought to be allowed to be raised by the petitioner in his representation against the report of enquiry for due consideration thereof by his disciplinary authority before he decides to pass final order. No opinion is expressed in regard thereto lest it prejudices the interest of the petitioner. Although it is true that in an appropriate case a writ petition would be maintainable at the stage of issuance of second show cause notice, this is not an appropriate case where the court's interference is warranted. The facts on record do not manifest any act of the disciplinary authority in blatant disregard of rules governing the disciplinary proceedings or in abuse of his power or in excess of his jurisdiction. Decisions are legion that a Court of Writ must be circumspect in entertaining petitions questioning show cause notices and in passing interim orders. The order of the learned Judge granting injunction as prayed for in the petition does not record any reason in support thereof. For long six years, the present petition has been pending before this Court. The disciplinary authority is entitled in law to pass final order for bringing an end to the departmental proceedings. That has not fructified.

79. Having regard to the same, the disciplinary authority is granted leave to conclude the disciplinary proceedings in accordance with law, as expeditiously as possible. The disciplinary authority shall furnish to the petitioner legible copies of the depositions of the prosecution witnesses as well as legible copies of the documents relied upon by the Enquiry Officer during the proceedings, even though the same may have been furnished earlier, in terms of his request contained in his letter dated 9th June, 2003. The petitioner is granted leave to file his representation against the report of enquiry within a fortnight from date of receipt of all documents. He shall be entitled to raise all points therein that are available to him in law except those decided by me. The disciplinary authority shall consider the representation in the proper perspective and pass an appropriate order in accordance with law and communicate it to the petitioner. If no representation is received within the above time frame, the disciplinary authority shall be at liberty to act according to law.

80. The writ petition, accordingly, stands dismissed with the aforesaid directions. There shall be no order as to costs.

81. Urgent photostat certified copy of this judgment, if applied for, be furnished to the applicant within 4 days from date of putting in requisites therefore