
(1984) 11 CAL CK 0011
In the Calcutta High Court
Case No : Civil Order No. 18299 (W) of 1984

Ram Gopal Bhattacharyya

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 14-11-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)(f), 19(1)(g), 19(5)

Citation : 91 CWN 716

Hon'ble Judges : Bhagabati Prosad Banerjee, J

Bench : Single Bench

Advocate : Kashi Kanta Moitra and Arup Kumar Lahari, for the Appellant; R.N. Kandari for the State, for the Respondent

Final Decision : Allowed

Judgement

Bhagabati Prasad Banerjee, J.—In the writ application, the petitioner challenged the validity of the continuance of a departmental proceeding after retirement of the petitioner from the service on attaining the age of superannuation and also challenged the validity of the departmental proceeding inter alia on the ground that on these self-same charges the petitioner was exonerated earlier and a fresh proceeding was drawn up after a lapse of a few years. The fact of the case is that the petitioner joined the Calcutta Police as a Constable in the year 1946 and in the year 1953 the petitioner was promoted to the post of assistant Sub Inspector of Police and thereafter the petitioner was promoted to the post of Sub Inspector of Police. While the petitioner was posted as Sub-Inspector of Police Brigade Ancillary Armed Police, Calcutta, the Commissioner of Police, Calcutta drew up a departmental proceeding against the petitioner which was registered as Proceeding No. 39 dated 11th April 1978. The petitioner was served with a charge sheet in which the petitioner was served with gross misconduct unbecoming of an officer of the Calcutta Police Force. The charges against the petitioner were as follows :

1) Being a public servant and being legally bound not to engage yourself or any

member of your family in business, you, without obtaining permission from the competent authority as per Rule 16 of the West Bengal Government Servant's Conduct Rules, 1959, permitted your wife Sm. Arati Bhattacharjee to be a partner of M/s. R.K. Traders of 77, Desha Pran Sasmal Road, Calcutta and to be one of the Directors of M/s. Bengal Tools & Engineering Co. Pvt. Ltd. of 74/1 A, Golf Club Road, Calcutta, specially when M/s. R.K. Traders dealt in musturd oil and Vansapati and you when posted, in the Enforcement Branch for a long period, to deal with finding out demand, supply and prices of various essential commodities including musturd oil and Vanaspati.

2) You took active interest in the management of the said M/s. R.K. Traders and were found present at the godown of the said firm at 74/1 A, Golf Club Road when the officers of the Enforcement Branch, West Bengal searched the said godown while making an enquiry on or about 2.10.77 and also to help the said business in contravention of Rule 17 of the West Bengal Government Servant's Conduct Rules, 1959.

3) You did not obtain permission from the competent authority before permitting your wife to acquire the landed property at 40, Golf Club Road, Calcutta 33 jointly with your brother Nanda Gopal Bhattacharjee in contravention of Rule 18 of West Bengal Government Servants' Conduct Rules, 1959.

2. Shri T. Chattapadhyay, D. C. (II), D.D., Calcutta Police was appointed an enquiring Officer. It was alleged that the said Enquiring Officer Shri T. Chattapadhyay who started the enquiry with the charges, but could not conclude the same as the enquiring Officer was transferred from the said post and thereafter Shri D. C. Biswas, Deputy Commissioner of Police (II), Special Branch, Calcutta Police was appointed afresh as the Enquiring Officer to enquire into the charges. It was further alleged that Shri D.C. Biswas, Enquiring Officer held the enquiry and after conclusion of the enquiry submitted a report on 4th June, 1979 and that in the said enquiry report, the said Enquiring Officer, Shri D.C. Biswas found that the petitioner was not guilty of the charges, inter alia, observing that "The charges leveled against the delinquent were very serious but these were not framed after collection of necessary material evidence. During enquiry, the prosecution also could not place sufficient evidence to substantiate any one of the charges. Under the circumstances, the delinquent automatically stands exonerated of all the charges brought against". Thereafter it appears that on 7th July, 1981, the Commissioner of Police, Calcutta passed an order quashing the enquiry conducted by Shri D. C. Biswas, Deputy Commissioner of Police (II), Special Branch, Calcutta who was appointed Enquiring Officer. The relevant extract of the said order passed by the Commissioner of Police, Calcutta on 7th July 1981 was as follows :

There has been practically no enquiry in the proceeding. The enquiry conducted is quashed. Shri S.K. Mukherjee, D.C., S.B.(I) will conduct a fresh enquiry and complete the same within 2 months. A copy of the order may be given to the delinquent.

3. Thereafter Shri S.K. Mukherjee, Deputy Commissioner of Police, Special Branch started the enquiry into the charges, but as per the direction issued by the Commissioner of Police, the said enquiry could not be compleaded by the said Enquiring Officer. The said order of stay is the said enquiry was passed by the Commissioner, West Bengal and accordingly the said enquiry was kept in abeyance and that the said decision was communicated to the petitioner by the Memo dated 9th December, 1981 which is Annexure "C" to the petition. By the letter dated 30th April, 1982 the petitioner requested the said Enquiring Officer for supply of the advice of the Vigilance Commissioner whereby the said Enquiring Officer was directed to keep the said enquiry in abeyance. During the period when the second enquiry was kept in abeyance, the petitioner attained the age of superannuation and ultimately retired from service with effect from 31st May, 1983. After the petitioner had retired from service, the petitioner received a Memo dated 21st June 1983 from Shri A. K. Mitra, Deputy Commissioner for Department Enquiry, Vigilance Commission, Government of West Bengal, whereby the petitioner was informed that the said Shri A. K. Mitra, Deputy Commissioner for Departmental Enquiry, Vigilance Commission was appointed as an Enquiry Officer to enquire into the charges. Before the Respondent No. 3 Shri A. K. Mitra, the petitioner duly appeared and pointed out that no charge sheet was served in respect of the departmental proceeding in which the said Shri A. K. Mitra, the respondent No. 3 was appointed as an Enquiring Officer. Thereafter it was alleged that on 14th of July, 1983, the petitioner appeared before the said Enquiring Officer and came to know that on 27th May, 1983, when the petitioner was on medical leave and was lying ill, copy of the charges sheet was affixed on the front door of the House of the petitioner. The said charges sheet was issued under Proceeding No. 31/39 dated 2nd May, 1983. The charges that were framed afresh in the proceeding No. 39 dated 2nd May, 1983 were as follows :

(i) It appears that you Shri Ram Gopal Bhattacharjee while functioning as Sub-Inspector of Police, Calcutta during the period from 1966 to 1977 acquired assets to the tune of Rs.74,451.70 in the form of Bank Accounts and cash certificates in the name of self and wife and gold. Out of the aforesaid amount a sum of Rs. 67,470.25 for which your explanation does not seem to be convincing, appears to be disproportionate to your sources of income. Details are given in the statement of imputation. Your such conduct prima facie shows lack of integrity and is improper and unbecoming of a public servant and as such violative of Rule 3 and 4 of the West Bengal Government Servants' Conduct Rules, 1959 read with Rule 9(2) of the West Bengal Services (Duties, Rights and Obligation) Rules, 1980.

(ii) It appears that you Shri Ram Gopal Bhattacharjee Sub-Inspector of Calcutta Police suppressed and concealed the existenance of a bank locker No. C-11A, in the name of his wife. Stmt. Arati Bhattacharjee with the United Bank of India, Tollygunge Branch, Calcutta since 17.12.74 which is violative of Rule 15(4) of the West Bengal Government Servants' Conduct Rules, 1959 read with Rule 8(2) of the West Bengal Services (Duties, Rights and Obligations) Rules, 1980.

(iii) It appears that you Shri Ram Gopal Bhattacharjee, Sub-Inspector of Calcutta Police did not obtain permission from the competent authority before permitting your wife Smt. Arati Bhattacharjee to buy a land at total cost of Rs. 19,231/- at Golf Club Road, Calcutta in 1974 jointly with your brother Shri Nanda Gopal Bhattacharjee vide deed no. 5827/1974 of S.O. Office, Alipore which is violative of Rule No. 15(2)(a) of the West Bengal Government Servants' Rules, 1959 read with rule 8(2) of the West Bengal Government Services (Duties, Rights and Obligations) Rules, 1980.

It was alleged that the said charge sheet was issued in violation of the Rule 9(3) of Schedule II of the Calcutta and Suburban Police (Subordinate Ranks) Recruitment, Conditions of Services and Discipline Rules, 1962 inasmuch in the charge sheet it was not indicated who was the Enquiring Officer and no time was fixed for submission of written statement of defence. Before the Enquiring Officer, the petitioner took two fold preliminary objection namely, (a) the provision of Rule 9(3) of the said Rules was violated, (b) that the departmental proceeding against the petitioner could not be continued after the retirement of the petitioner from service inasmuch as the relationship between the Government and the petitioner as the master and servant had come to an end on attaining the age of superannuation and no punishment could be awarded after the retirement from service and the provision of West Bengal Service (Death-cum-Retirement Benefit) Rules 1971 was not applicable in respect of the petitioner whose conditions of service were governed by the provision of the Calcutta Police Act, 1866 and special provision so far as the member of the Police Officers had been made in respect of the departmental proceeding and as such the provision of the said Rule could not be made applicable. Thereafter, the said Enquiring Officer concluded the departmental proceeding and according to the Respondent No. 3, the enquiring officer, the petitioner was guilty of all the charges framed in this behalf.

4. Against the said finding of the Enquiring Officer in which the petitioner was found guilty of the charges the petitioner moved this court. It was contended on behalf of the petitioner in the first place that the departmental proceeding against the petitioner could not, be contained and/or concluded after the retirement of the petitioner from service. It was next contended that no departmental proceeding could be initiated in the year 1983 relating to the alleged incident allegedly took place during the period of 1966 to 1977, and that on account of inordinate delay in initiating the proceeding, the petitioner had been denied reasonable opportunity of being heard in the matter. It was next contended that the rule 15(2)(a) of the West Bengal Government Servants Conduct Rules, 1959 was violative of the provision of Article 19(1)(f) of the Constitution of India and was void. It was further contended that once the petitioner was exonerated in respect of the self same charges, the respondents had no authority and/or jurisdiction to hold a fresh enquiry in respect of the self same charges and the same was barred by the principle analogous to resjudication and/or barred in the absence of any provision for re-opening the

departmental proceeding after exonerating from the charges, it was lastly contended that the finding of the Enquiring Officer was not binding upon the Disciplinary Authority and as such, the disciplinary authority could have disregarded with the finding made by Shri D. C. Biswas who found the petitioner not guilty of the charges and that the disciplinary authority could have proceeded on the basis of the evidence and materials on record and could have found the petitioner guilty of the charges. But in the absence of any specific provision in this behalf, the disciplinary authority had no authority or jurisdiction to set aside or quash the finding made by the Enquiring Officer and to appoint another Enquiring Officer to hold a fresh enquiry when there was no material on record to hold that the view of the previous enquiry officer was perverse or biased.

5. It was further contended that "Bank locker" as provided in charge no. 2 was not a moveable or immoveable property or assets within the meaning of Rule 15(4) of the West Bengal Government Servants' Conduct Rules, 1959 (hereinafter referred as the Conduct Rules). It was further contended that Rule 15(2) of the said Conduct Rules which provides that the Government Servant shall not permit any member of his family to acquire or dispose of any property by lease, mortgage, purchase, sale or gift or otherwise is ultra vires the provision of Article 19(1)(f) of the Constitution of India as it stood at the relevant time when the said Conduct Rules were framed in the year 1959. It was further contended that the acquiring of assets allegedly disproportionate to the known sources of income as mentioned in charge No. 1 did not and could not amount to any misconduct and violative of the provisions of Rule 3 and 4 of the said Conduct Rules.

6. The respondents filed affidavit-in-opposition and it was contended that the charges framed against the petitioner clearly amounts to misconduct and that the Respondents had authority and/or jurisdiction to continue with the departmental proceeding even after the retirement from the service in view of the provision of Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 (hereinafter referred to as the Retirement Benefit Rules), it was further alleged by the Respondents that it was an inherent power on the disciplinary authority to drop one proceeding and/or to initiate another proceeding on the basis of the self same charges and particularly with regard to the charge No. II and III which was the subject matter of the earlier enquiry also. The disciplinary authority had also jurisdiction to initiate fresh proceeding after he was clearly exonerated by the earlier Enquiring Officer.

7. The points raised in the writ application and the submissions made by Mr. Kashi Kanti Maitra, learned Advocate for the petitioner, require serious consideration inasmuch as these are matters of great importance in so far as the employees under the State Government are concerned. With regard to the submission that no disciplinary proceeding could be initiated and/or continued after the retirement of the petitioner from the service, it appears that under Rule 10(1) of the West Bengal Services (Death-cum-retirement Benefit Rules, 1971)

(referred to as Retirement Rules), the powers were conferred to initiate and/or continue disciplinary proceeding even after retirement under certain conditions. Rule 10(1) of the said Retirement Rules provides that

Right of the Governor to withhold Pension in certain cases : (1) The Governor reserves to himself the right of withholding or withdrawing a pension or a part of it whether permanently or for a specified period and the right of ordering recovery from pension of the whole or a part of the pecuniary loss caused to government if the pensioner is found in a departmental or judicial proceeding have been guilty of gross misconduct or negligence, during the period of his service including service rendered on the employment after retirement; provided that (a) such departmental proceedings, if instituted, while the officer was in service, whether before his retirement or during his re-employment shall after the final retirement of the officer be deemed to be a proceeding under this Article and shall be continued and concluded by the authority by which it, was commenced in the same manner as if the officer had continued in service.

8. It is not necessary for the present case to set out the other portions of the said Retirement Rules. It was also contended by Mr. Maitra, that the disciplinary proceeding was initiated by the respondent under the provision of the Calcutta and Suburban Police (Sub-ordinate Ranks Recruitment Conditions of Service and Discipline) Rules, 1962 and that Schedule 2 of the said Rules provides for disciplinary proceeding and punishment. The said Rules under which disciplinary proceeding was initiated, provides several punishments which could be inflicted in a departments proceeding, but none of the punishment of dismissal, removal from service, reduction, deprivation of approved service increments, warning, censure etc., could be inflicted if the employee concerned had retired from service and that the said Rules under which the departmental proceeding was initiated, had not provided any provision for continuance or initiation of a departmental proceeding after retirement. Mr. Maitra relied on decision of Supreme Court of India in Deokinandan Prasad Vs. The State of Bihar and Others, in which the Supreme Court held that "Pension is not a bounty payable at the sweet will and pleasure of the government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.....". Having regard to the above decision, we are of the opinion that right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order, the State had no power to withhold the same. Similarly the said claim is also property under Article 19(1)(g) and it is not saved by Sub Article (5) of Article 19. Therefore, it follows the order dated June 12, 1968 denying the petitioner's right to pension affects the fundamental right of the petitioner under Article 19(1) (f) and 31(1) of the Constitution and not saved by clause (5) of Article. 19. It was clearly established that the pension which is a property could not be denied and/or deprived save by authority of law and that right to hold such property as guaranteed under Article 19(1)(f) of the Constitution of India could not be interfered with and/or curtailed by imposing any reasonable restriction as provided under Article 19(5) of the Constitution, of India. If the citizen's

fundamental right to hold, acquire and dispose of property is held to be an absolute right and no restriction whatsoever could be imposed under Article 19(5) of the Constitution of India, in that event, the impugned Rule 10(1) of the Retirement Benefit Rule was violative of the provision of Article 19(1)(f) of the Constitution of India. Of course, by the 44th Amendment of the Constitution, Article 31(1) of the Constitution of India along with Article 19(1)(f) of the Constitution of India had been deleted altogether and Article 300 A of the Constitution had been incorporated by which the right of property which is a fundamental right has now been converted into a mere constitutional right. But the Articles 19(1)(f) as well as 31(1) of the Constitution of India when the West Bengal Services (Death-cum-Retirement benefit) Rules, 1971 was made and as such it was contended that the said Rule was still-born piece of subordinate legislation and as under the provisions of Articles 19(1)(f) of the Constitution as interpreted by the Supreme Court in Deokinandan Prasad's case, such a law could not be made taking away the right to get pension, which is a property. In my view, since pension was held to be a property under Article 19(1)(f) of the Constitution of India and since it was not saved by Sub clause (5) of Article 19 of the Constitution of India, the State had no jurisdiction or authority to make any law imposing any restriction on such right to acquire, hold and dispose of such property. As such, Rule 10 of the West Bengal Service (Death cum Retirement Benefit) Rules, 1971 must be declared ultra vires the provision of Article 19(1)(f) of the Constitution of India in view of the pronouncement of the Supreme Court of India in Deokinandan Prasad Vs. The State of Bihar and Others, .

9. It was next contended that after the retirement of the petitioner from service, the relationship between the petitioner and the State, as employee and employer had come to an end by reason of retirement of the employee and that the employee was beyond the disciplinary control of the employer and in connection with this proposition reference was made to the Full Bench Judgment of the Kerala High Court in the case of R.P. Nair and Another Vs. Kerala State Electricity Board and Others, , where the Full Bench of the Kerala High Court considered a provision which was in pari materia with that of the provision of Rule 10 of the said Retirement benefit Rules and the Full Bench of the Kerala High Court on interpretation of the Kerala Rules which was in the same terms as that of the impugned Rule held at page 137 that "The Rule does not authorise continuance of disciplinary proceeding as such against a government servant after his retirement. Both on principle and on authority, such a position cannot be easily countenanced. It allows only a limited type of enquiry to be proceeded with, namely an enquiry in regard to withholding or withdrawing pension, or of ordering recovery from pension by reason of any misconduct or negligence during the period in service of the employee. Under Clause (a) of the proviso to the Rule, the departmental proceedings, if instituted, during the service of the employee is to be deemed to be a proceeding under the Rule and may be continued and completed even after his retirement. To this limited extent alone is provision made under the Rule, for continuance of a disciplinary enquiry beyond

retirement. That too is by transmuting it by fiction to be an enquiry under the Rule. Beyond this, we cannot understand the rule as in any way permitting the authorities either to launch or to continue disciplinary proceeding after the retirement of the employee. That would be destructive of the concept of relationship of the employer and employee which has come to end by reason of retirement of the employee, beyond which, disciplinary control cannot extend". In order to establish this proposition, the Full Bench of the Kerala High Court considered the principles laid down by the Supreme Court in *S. Pratap Singh Vs. The State of Punjab*, *State of Bihar v. Abdul Majid* reported in AIR 1954 SC page 245 *The State of West Bengal Vs. Nripendra Nath Bagchi*, *B.J. Shelat Vs. State of Gujarat and Others*, *State of Punjab Vs. Khemi Ram*, *V.P. Gidroniya Vs. The State of Madhya Pradesh and Another*, . It is not necessary to discuss in detail the principles laid down by the Supreme Court in those cases inasmuch as the Full Bench of the Kerala High Court in the said judgment had duly considered all these cases and came to the above conclusion. Relying upon the principles laid down by the Supreme Court which was summarised by the Full Bench of the Kerala High Court I am of the view that Rule 10(1) had a very limited and narrow application. The said rule could at best be invoked for the purpose of recovery of the pecuniary loss caused to the Government by the pensioner because of gross misconduct or negligence during the period of service. In other words, if a government servant had caused pecuniary loss to the Government while he was in service because of his gross misconduct or negligence, under Rule 10(1) of the said Rules, the disciplinary proceeding could be continued and concluded for the purpose of recovery of such a loss from the pensioner payable by the Government by ordering recovery by withholding or withdrawing the whole pension or a part of it whether permanently or for a specified period. So unless there was a definite charge against a pensioner that he had caused loss to the government while he was in service by committing grave misconduct or negligence, in that event, the proceeding could be continued so that if he is ultimately found guilty of the same in that event, the loss actually caused to the government might be recovered from the pension payable by the government to the pensioner. Save and except for this specific purpose, Rule 10(1) of the said Rules had no manner of application whatsoever looking to the charges framed against the petitioner, I find that there was not a single charge against the petitioner for causing any pecuniary loss to the Government and as such the question of invoking the provisions of Rule 10 of the said Rules for recovery of the loss caused to the Government did not and could not arise at all. Disciplinary proceeding on the basis of the charges as framed, in my view, could not be continued or concluded against the petitioner after, the petitioner had retired from service. I respectfully agree with the above decision of the Full Bench of the Kerala High Court in the case mentioned above and hold that the departmental proceeding on the basis of the charges framed against the petitioner could not be continued and concluded after the retirement of the petitioner as there was no charge for causing any pecuniary loss to the Government while the petitioner was in service and as such, the proceeding could not be continued against the

petitioner in the instant case. I am constrained to take this view in the interest of social justice and as the retired employees had no social security excepting the retire-mental benefits.

10. With regard to the contention that the Bank Locker as mentioned in the charge No. II was not a property within the meaning of Rule 15 of the said Conduct Rules I am of the view that the contention is well founded. The property, moveable or immoveable, has a well defined meaning. By any stretch of imagination holding of a Bank Locker cannot be said to be holding of a property. In this case the Bank is the owner of the Locker and the Bank lets it out to its customers the space on yearly basis for keeping therein the articles and things on payment of rents. The word "property" defined in Webster's Third New International Dictionary as "something that is or may be owned or possessed : WEALTH, GOODS, a piece of real estate, the exclusive right to possess, enjoy and dispose of a thing a valuable right or interest primarily a source or element of wealth..... something to which a person has a legal title : a subject intangible assets (as lands, goods, money) or intangible right (as copy rights, patents) or to which a person has a right protected by law". In order to become a property, the thing must be an article or goods, but mere having a locker in a Bank cannot be said to be possessing a property within the meaning of Rule 15 of the said Rules. In my view, it is preposterous to hold that a Bank locker is a property within the meaning of Rule 15 and the framing of a charge for having a Locker in violation of the Rule 15 of the said Rules in this behalf clearly indicated that the disciplinary authority did not apply its mind before framing charges and the Enquiring Officer also acted mechanically in the matter.

11. The next contention of the petitioner was that the petitioner could not be charged with misconduct in so far as the allegations mentioned in Charge No. 1. The allegation in charge No. 1 was that during the period 1966 to 1977, the petitioner acquired assets to the tune of Rs. 74,451.70 paise and that out of the aforesaid amount an amount of Rs. 67,470.20 paise for which the petitioner's explanation was not found to be convincing and as such the same was disproportionate with the petitioner's income and that for this the petitioner was charged for violation of Rule 3 and 4 of the Conduct Rules 1959 read with Rule 9(2) of the West Bengal Service Rules (Duties, Rights and Obligation) Rules, 1980. Before dealing with the charges one thing is clear that these allegations relate to the period 1966 to 1977 and as such the petitioner could not be charged with for violation of any Rules which were promulgated only in the year 1980. As such, the petitioner could not be charged at all for the violation of Rule 9(2) of the West Bengal Service (Duties, Rights and Obligations) Rules, 1980. Regarding the violation of Rule 3 and 4 of the Conduct Rules, 1959, it is necessary to examine this point. Rule 3 of the said Rules provide "Every government shall at all times maintain a very high standard of integrity, impartiality and devotion to duty". Rule 4 of the said Rules provides that "No Government servant shall behave in a manner which is improper and unbecoming of a public servant and derogatory to the prestige of the

government". In my view the allegations made against the petitioner which is a subject matter of Charge No. 1, per se did not and could not amount to misconduct in as much as the Supreme Court had on a number of occasions considered this aspect of the matter. The Supreme Court in case of Union of India (UOI) and Others Vs. J. Ahmed, held that misconduct means, misconduct arising from ill motive and that acts of negligence, errors of judgment or innocent mistake do not constitute misconduct and observed that "But anything because of failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty..... High Court was of the opinion that misconduct in the context of disciplinary proceeding means misbehavior involving some from of guilty mind or means rea. We find it difficult to subscribe to this view because gross or habitual negligence in performance of duty may not have involved means rea, but still constitute misconduct for disciplinary proceeding". The Supreme Court also held in the case of A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., also considered the scope and ambit of such similar rules, and held at page 1368 para 22 that "Rule 4 bears the heading "General". Rule 5 bears the heading "misconduct". The draftsman of 1975 Rules made a clear distinction about what would constitute, misconduct. A general exception of certain decent behaviour run respect of employees keeping in view corporation culture may be moral or ethical expectation. Failure to keep such high standard of moral ethical or the decorous behavior benefiting an officer of the company by itself cannot in any of the enumerated misconduct in Rule 5. Any attempt to telescope Rule 4 under Rule 5 must be looked upon with apprehension because a Rule 4 is vague and of general nature and what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on "the employer to specify and if necessary, to define it with precision and accuracy so that any ex-post facto interpretation of some incident may not be camouflaged as misconduct."

12. It was contended relying upon the aforesaid two decisions of the Supreme Court that the allegations complained in Charge No. I did not amount to misconduct". It was further contended that the acquisition of assets for which explanations were not found to be satisfactory, has not been made a misconduct and in view of the decision of the Supreme Court in A. L. Kalra's case, the same does not and cannot come within the purview of Rules 3 and 4 of the said Rules which were vague and general in nature. There is another aspect of the matter that the disciplinary authority found that for the period 1966 to 1977 the petitioner was in possession of certain assets for which the explanation of the petitioner was not found to be convincing and this period 1966 to 1977 was characterised as a check period. It is not understood what is meant by check

period inasmuch as in the instant case, the petitioner has entered into the Police Service as far back as in the year 1946 and not in the year 1966 and that it is preposterous to suppose that when one enters into government service, he enters empty handed without having any assets whatsoever and that if certain assets are found to be in possession of such an employee at any point of time, in that, event, the entire period of service has to be taken into account for the purpose of assessing whether it was possible to acquire such assets moveable or immovable during the period of service. Further it is also to be taken into account whether the employee concerned had any assets or had acquired any assets by acquisition or by inheritance at or before the time of entering into the government service. In this connection, it may be mentioned that acquisition of certain assets disproportionate to his own source of income may be an offence u/s 5 of Prevention of Corruption Act, 1947 which provides that "A public servant is said to commit a criminal misconduct;..... (e) If he, or any person on his behalf is in possession of or has any time during the period of his office, been in possession for which the public servant cannot satisfactorily account to pecuniary resources or property disorientate to his own source of income" and that u/s 4 of the said Prevention of Corruption Act, 1947, the presumption in such a case is that where such person was found to be in possession of such property, it should be taken for granted that unless contrary is proved, he accepted or obtained or agreed to accept or admitted that gratification or valuable in such case may be as a motive or reward. This position is an exception to the ordinary law of the land. The concept of "criminal misconduct" as expressly provided in Prevention of Corruption Act, 1947, could not be allowed to be imported in the Service Jurisprudence unless the provisions regarding presumption as provided in Section 4 of Prevention of Corruption Act, 1947 is expressly introduced by the law and such a concept could not be introduced through the back in a disciplinary proceeding started by the disciplinary authority, where the onus of proof that the charged officer is guilty of the charges, lies on the disciplinary authority and that in such a disciplinary proceeding, the benefit of presumption as provided in Rule 4 of Prevention of Corruption Act, 1947 could not be invoked. It appears that in the instant case, the enquiring office relying, on the principles regarding presumption as specifically provided in the Prevention of Corruption Act, 1947, proceeded on the footing that the charges as framed against the petitioner had to be disproved by the petitioner and the onus of disproving the charges was shifted on the petitioner. Such is not the law, because the onus of proof of the charge is upon the disciplinary authority. Further, there could not be any charge that the explanation, was not satisfactory. It is to be proved by evidence or otherwise that somebody was in possession of some property which such an officer could not acquire and that such acquisition was made by way of illegal gratification and/or illegal considerations while discharging the official duties. In the instant case, it is not understood why the period under the charge was counted from 1966 to 1977 and how the family expenses of the petitioner from 1965 was computed and on what basis and further the petitioner before framing the charges, submitted certain explanations which were allegedly found to be

unsatisfactory by the disciplinary authority. Without going into the matter further, in my view, it is crystal clear that disciplinary authority, it appears had committed itself to a view in advance of an enquiry prejudicially against the petitioner. The question of consideration of the petitioner's explanation could only arise if the charges are framed and the evidence is adduced. On the face of the charge No. 1, it is evident that the disciplinary authority had made up its mind and proceeded in the matter from the beginning with a closed and a biased mind and that it was held by a Division Bench of this court in the case of *Sunil Kumar Mukherjee v. State of West Bengal and Ors.*, reported in 77 C W N 1014 and also in the case of *Bimalakanta Chatterjee v. The State of West Bengal and Ors.*, reported in 1980 (1) S.L.R. 232 wherein on identical charges Their Lordships of the Division Bench held that the proceeding had been vitiated inasmuch as the charges were framed with a bias and a closed mind and that because the disciplinary authority proceeded in the matter from the very beginning with a closed mind, the enquiry was nothing but an idle formality, and that the whole thing was vitiated and as such in my view, applying the principles laid down in the aforesaid two Division Bench judgments of this Court, the proceeding is vitiated as there was no scope for holding of an enquiry with an open and unbiased mind in view of the conclusive finding made by the Disciplinary Authority in the charge sheet and further I do not find any basis for calculating the income and expenditure of the petitioner from 1966 instead of 1946. I am further of the view that, the allegations contained in charge No. 1 did not and could not amount to a misconduct within the meaning of Rules 3 and 4 of the said Conduct Rules and as such no enquiry could be made on the basis of such charge. It is now firmly established principle that the provisions of Article 14 are violated by powers and procedures which in themselves result in unfairness and arbitrariness.

13. It was next contended by Mr. Maitra on behalf of the petitioner that no disciplinary proceeding could be started against the petitioner for the alleged acquisition of the property by the wife of the petitioner along with the brother of the petitioner. Rule 15(2) of the Conduct Rules provides that no government servant shall except with the previous knowledge of the appointing authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family nor shall permit any of the members of his family to do so. The employer can certainly put restriction upon the employees the right, to acquire property, but the employer cannot prohibit acquisition of property by any of the members of the petitioner family. Within the scope of the power under Article 309 of the Constitution of India, in my view, the government had the authority and/or jurisdiction to impose conditions that, the public servants should not acquire any property without previous knowledge of the appointing authority either in his own name or in the name of any other family member as benamdar from stranger or outsiders. These restrictions are necessary for maintaining integrity in public service. The scope of Rule 15 of the said Conduct Rules could

not be stretched too wide so as to bring within its ambit bonafide acquisition of property by the petitioner either in his own or in the name, of any of the members of the family. In any event, it cannot prohibit acquisition of property bonafide and independently by the members of the petitioner's family and accordingly, I hold that the allegations made in Charge No. III on the face of it did not disclose any misconduct which warrants any punishment. The rule provides that no government servant, except without the previous knowledge of the appointing authority, shall acquire any property, but in the charge it appears that the allegation was that the petitioner without obtaining any prior permission from the competent authority permitted the petitioner's wife to buy a land. The "knowledge" could not be equated without the word "permission" and as such the impugned charge was framed on a total misconception of the provisions of Rule 15(2) of the said Rules. Further, in any view, there could not be any letter on the power of any of the members of the petitioner's family to acquire property at the relevant time inasmuch as Article 19(1)(f) of the Constitution of India provided that a citizen could acquire, hold and dispose of property. Rule 15(2) of the said Rules in so far it is purported to restrict or prohibit upon the right of the members of the petitioners' family in acquiring property or hold property was violative of the provision of Article 19(1)(f) of the Constitution of India as it stood when the said Rule was framed.

14. The next contention of Mr. Maitra is that such successive departmental proceedings were not permissible and that when the petitioner was exonerated in respect of Charge No. 2 and 3, the respondents had no authority and/or jurisdiction to re-open the said charges. In my view, this contention must be upheld in view of the fact that unless there is a rule empowering the government to revive and/or to re-open any proceeding, the disciplinary authority has no jurisdiction to re-open and/or revive such a case and the Supreme Court of India in the case of *State of Assam and Another Vs. J.N. Roy Biswas*, held that such thing is not permissible.

15. Lastly, it was contended that the allegations regarding the incident of 1966 to 1977 could not be enquired into in the year 1983 as the charges were remote but it is not necessary to go into this question as I have already held that the said charges were not maintainable on the face of it and the departmental proceeding could not be continued after retirement in this case. In the result the writ petition succeeds. The Rule is made absolute. Let a writ to the nature of certiorari do issue quashing the departmental proceeding against the petitioner including the charge sheet, the finding of the enquiring officer which the Annexure "F" and "H" to the petition and the final order, if any, passed in the matter. Let a writ in the nature of mandamus do issue commanding the respondents to cancel, withdraw the charges and/or the entire departmental proceeding and forbearing them from proceeding with the enquiry and/or giving any effect or further effect to the said departmental proceeding and to pay to the petitioner the retire mental benefits on the basis that no enquiry was pending against the petitioner forthwith.