
(1978) 06 BOM CK 0047

In the Bombay High Court

Case No : Spl. Civil Application No. 3576 of 1976

R.M. Shah

APPELLANT

Vs

Bombay Port Trust and Another

RESPONDENT

Date of Decision : 23-06-1978

Acts Referred:

Citation : (1978) 2 LLJ 263

Hon'ble Judges : P.N. Sawant, J;N.B. Naik, J

Bench : Division Bench

Judgement

Sawant, J.—By this petition the petitioner seeks to challenge the order of his dismissal from service.

2. Briefly stated the facts leading to the petition are as follows :

The petitioner was at the relevant time employed as a Foreman at Pipeline Manifold, Pir Pau with the Ist respondent, Bombay Port Trust. On receipt of complaints of misconduct by the petition he was suspended from service with effect from March 20, 1973. It appears that the Ist respondent had also handed over the investigation into the misconduct to the Central Bureau of Investigation. Thereafter on May 2, 1974, a chargesheet containing three charges was served upon the petitioner and an enquiry officer was appointed to hold an enquiry on June 25, 1974. Along with the letter appointing the enquiry officer it was also mentioned that one Mr. Pavade, an officer of the Central Bureau of Investigation would act as a presenting officer at the time of the enquiry and one Mr. Singanamalli was designated as a co-ordinating officer. Thereafter on August 18, 1975 an additional chargesheet containing the 4th charge was served upon the petitioner.

3. It appears that the earlier enquiry officer Mr. Mavji retired from service and thereafter on September 11, 1975, a new enquiry officer Mr. Chowdhury was appointed to conduct the enquiry. It appears further that before the earlier inquiry officer Mr. Mavji two objections were raised on behalf of the petitioner,

viz., that Mr. Pavade who was the police officer could not be presenting officer at the enquiry and that Mr. Singanamalli was a witness in the enquiry and he could not act as co-ordinating officer. Mr. Mavji rejected the first objection holding that there was nothing in the rule to prohibition a police officer from being a presenting officer. He also held that is one of the enquiries held by him earlier, a police officer did act as a presenting officer. As regards the second objection he found that there was some substance and he wanted the charge sheeting authority, viz., the Chief Mechanical Engineer to consider the position with regard to Mr. Singanamalli. Mr. Mavji then adjourned the enquiry to a further date.

4. It appears that thereafter the petitioner preferred an application to the Chairman of the Port Trust raising the said two contentions and asking for his ruling on the same. The Chairman did not reply. In the meanwhile Mr. Mavji retired from service and the second enquiry officer was appointed on September 11, 1975. The enquiry commenced on the very day. One Dr. Maitra was representing the petitioner at the enquiry. After about 7 witnesses were cross-examined by Dr. Maitra, on October 6, 1975, the petitioner walked out of the enquiry. The enquiry, therefore, proceeded ex parte against him and it was completed on October 18, 1975. The enquiry officer submitted his report on November 27, 1975, giving a finding that on the basis of the oral and documentary evidence produced before him, the petitioner was found guilty of the charges levelled against him. On the basis of this finding, a show cause notice was issued to the petitioner on December 9, 1975, to which the petitioner submitted his reply on December 17, 1975. After considering the reply, the petitioner was dismissed from service by the impugned order dated February 26, 1976.

5. Dr. Kulkarni who appears for the petitioner has attacked his order of dismissal in all on five grounds. His first ground is that this entire enquiry was held at the behest of the Central Bureau of Investigation, the 1st respondent Port Trust merely acted as a tool of the police and as such the enquiry itself was vitiated in law. In fact, it appears that this is the main blunt of the attack against the dismissal order. For this purpose he relied upon the fact that there was an investigation conducted by the Central Bureau of Investigation into the charges levelled against the petitioner as per the chargesheet. The C.B.I. for reasons best known to them did not proceed against the petitioner in a criminal Court and, thereafter wrote a letter to the Port Trust on February 8, 1975 requiring the Port Trust to proceed against the petitioner by a departmental disciplinary action. By this letter they had submitted the report of their investigation and had given an opinion that as per the report there was sufficient material for initiating such a departmental action. They had also sent along with the letter statements of allegations, list of witnesses and documents and had further stated that the services of the investigating officer of the C.B.I. would be available to the enquiry officer for securing the attendance of the witnesses, producing documents and exhibits and explaining the gist of the evidence available and for giving such clarification as may be required. An offer was also made by the said letter that it

was open to the enquiry officer to make use of the investigating officer in any other manner as he might deem necessary. The investigating officer so named was Mr. A. R. Khan, who, it was stated in the letter would present the case before the enquiry officer, and he might be nominated for the purpose at the appropriate time.

6. The second circumstance on which Mr. Kulkarni relied upon to make good the said submission is from the fact that the 4th charge was added only on August 18, 1975 and that the papers in support of the said charges which together ran into 77 pages and consisted of statements of various witnesses recorded by the C.B.I. were handed over to the petitioner on September 11, 1975. He also relied upon the circumstances that in fact an officer from the Central Bureau of Investigation acted as the presenting officer at the said enquiry. He also pointed out that even as early as on June 25, 1975 when the first enquiry officer was appointed, Mr. Pavade an officer from the C.B.I. was named as the presenting officer at the enquiry.

7. There is no doubt that the letter appointing Mr. Mavji as the first enquiry officer did mention Mr. Pavade as the presenting officer. There is also no dispute that the Port Trust had received the letter dated February 8, 1975 and the 4th charge was added on August 18, 1975 on the basis of the report and the documents submitted by the Central Bureau of Investigation under their said letter. It is also not disputed that one of the officers of the C.B.I. did act as a presenting officer at the said enquiry. However, according to us none of these acts either taken singly or together was held at the instance of the C.B.I. and the Ist respondent thus acted merely as a tool in the hands of the police to punish the petitioner. The suggestion underlying this charge is that the Ist respondent Trust had no desire or intention to proceed against the petitioner departmentally, and were it not for the C.B.I., they would not have taken any disciplinary action against the petitioner. The contention is that since the enquiry was held at the behest of a third party like the police the enquiry is vitiated in law. It is not disputed that immediately the petitioner was suspended from service in March, 1973, the investigation was handed over to the C.B.I. by the Ist respondent Trust and the C.B.I. was investigating into the matter till February 8, 1975, when they wrote the said letter to the Ist respondent Trust enclosing therewith their own report in the matter and the evidence collected by them. It is also not disputed that long before the said letter was received from the C.B.I. on May 2, 1974, i.e., about 9 months earlier the Ist respondent Trust had served upon the petitioner their chargesheet dated May 2, 1974 containing the first three charges. They had also appointed the first enquiry officer on June 25, 1974. This fact alone is sufficient to repel the contentions that the first respondent Trust had initiated the disciplinary proceedings at the instance of the C.B.I. and that left to themselves they would not have taken disciplinary action against the petitioner. The circumstances that Mr. Pavade, police officer, was named as presenting officer even at the time of the appointment of the first enquiry officer as early as in June, 1974 will be of no avail to the petitioner to reinforce his said contentions

that it was the C.B.I. who was at the bottom of holding the disciplinary proceedings against the petitioner. As we will deal with this point a little later, suffice it to say at this stage that naming a police officer, as a presenting officer at the enquiry is neither illegal nor irregular much less can it lead to the inference that because of the presence of the police officer the enquiry was initiated at the instance of the police. This is apart from the fact that the letter dated February 8, 1975 written by the C.B.I. cannot be read to the light to which Dr. Kulkarni wants us to read. Since the investigation was already handed over to the C.B.I. it was their duty to make a report on the said investigation and that is what exactly they purported to do by the letter in question.

8. While submitting their report the C.B.I. also pointed out in the said letter that the report in question showed sufficient material for initiating and departmental action against the petitioner. When they thereafter proceeded to state that the services of the investigating officer of the C.B.I. would be available to the enquiry officer for securing the attendance of witnesses, producing documents and exhibits, explaining the gist of the evidence available and for giving such clarification as may be required, all that they wanted to convey by the said letter was that if the 1st respondent Trust decided to hold an enquiry on the basis of the said report their service in the manner stated therein were always available to the enquiry officer. This was merely, therefore, an opinion given on the basis of the report and as offered to the 1st respondent Trust by the C.B.I. It is impossible to read in this letter that the C.B.I. insisted that on the basis of the said report a departmental action should be initiated against the petitioner. In fact the C.B.I. could never make any such demand, since they had no authority to insist that an employee of the first respondent Trust must be dealt with departmentally nor could the 1st respondent Trust have agreed to proceed against the petitioner because the C.B.I. wanted to take such action. It was within the powers of the 1st respondent Trust either to take or not to take any action against its employee. This is apart from the fact that as stated above the 1st respondent Trust had already initiated a departmental enquiry against the petitioner long before the said letter and the report were received from the C.B.I. All that they did after the receipt of the said report was to add one more charge which was communicated to the petitioner on the August 18, 1975, since the said charge was spelt out from the evidence which was made available by the C.B.I. to the Trust. We are, therefore, unable to agree with the contention that the departmental enquiry was initiated against the petitioner at the instance of the C.B.I. and that left to itself the 1st respondent would not have taken any action against the petitioner.

9. The second attack against the dismissal order was that the enquiry was vitiated for five reasons. The first reason was that the enquiry officer proceeded ex parte in spite of a valid objection taken by the petitioner to the continuance of the enquiry. The second reason urged in this connection is that the police officer was present as a presenting officer. The third reason is that witness No. 10 Taj Ahmed Yusuf Sheikh was examined as a witness although he was not cited as

such along with the chargesheet. The fourth reason is that although an adjournment was sought for preferring an appeal to the Chairman against an order of the enquiry officer, the said adjournment was not given and the fifth reason was that a bunch of papers running into 77 pages was handed over to the petitioner for the first time on September 12, 1975 in support of the charge which was made out on August 18, 1975.

10. Coming now to the first ground urged for vitiating the enquiry, the facts show that the enquiry commenced on September 15, 1975. The procedure which was agreed to at the enquiry was that all the witnesses on behalf of the first respondent would be examined first and the cross-examination of the said witnesses would be made after they were examined on behalf of the Trust. It appears that this arrangement was arrived at in order to accommodate Dr. Maitra who was representing the petitioner in the enquiry. After all the witnesses were examined on behalf of the Trust on behalf of the petitioner about seven witnesses were cross-examined upto October 2, 1975. On October 2, 1975, an application for adjournment was made on behalf of the petitioner. The occasion for making the adjournment application was an objection raised by Dr. Maitra that a copy of the statement of witness Taj Ahmed Yusuf Sheikh, who was examined on behalf of the 1st respondent, was not given to the petitioner by the charge-sheeting authority, viz., the Chief Mechanical Engineer along with the other statements which were handed over to him, and, therefore, it was not open for the Trust to examine him. The enquiry officer had overruled this objection on the ground that the statement of the said witness was given to the petitioner on September 11, 1975 when the bunch of statements was handed over to him with liberty to file an additional reply. On this ruling, Dr. Maitra, representing the petitioner, wanted an adjournment of the enquiry sine die pending the appeal to the Chairman on the said issue. The enquiry officer held that it was not necessary to postpone the enquiry sine die or to postpone the examination or the cross-examination of the witness. He, therefore, ordered that the cross-examination of the witness should proceed. However, after passing the said order the enquiry was in fact adjourned to October 6, 1975.

11. On October 6, 1975, two witnesses were cross-examined by Dr. Maitra on behalf of the petitioner. After the cross-examination of the second witness, being witness No. 16, the presenting officer Mr. Pavade submitted before the enquiry officer that he would produce the pipe being the rubber pipe which was used as one of the adjuncts to the sample cock for taking out the oil from the tanker. He also further requested that the said witness be recalled for identification of the pipe. To this request Dr. Maitra on behalf of the petitioner objected stating that the charge-sheeting authority had not indicated anywhere in the records that any pipe had been allowed to be taken away by the C.B.I. and, therefore, the question of the presenting officer producing the pipe and getting it identified by any witness did not arise and that if such identification was allowed it would be illegal. The enquiry officer thereafter gave his ruling and held that since the pipe was used for removing the oil through the sample cock it was an important piece

of evidence and was relevant for coming to a just conclusion. He, therefore, overruled the objection and granted the request of the presenting officer for producing the pipe and for recalling the witness for identification of the said pipe.

12. After this ruling was given, Dr. Maitra on behalf of the petitioner along with the petitioner walked out of the enquiry stating that he did not wish to cross-examine any witness. Thereafter on that day since the other witnesses were not present the enquiry was adjourned to October 9, 1975 at the request of the presenting officer. On October 8, 1975, Dr. Maitra on behalf of the petitioner addressed a letter to the enquiry officer stating that he was preferring an appeal to the Chairman of the 1st respondent and that pending the final decision on the appeal and if necessary the decision of a Court of Law, it would not be possible for him and the petitioner to take part in the enquiry. The enquiry officer considered this letter on the said day and held that since he had not received any direction from the Chairman to stay the proceedings of the enquiry, the enquiry would proceed ex parte as the petitioner and his representative had chosen to remain absent. The enquiry thereafter proceeded ex parte and the enquiry officer submitted his report as stated earlier.

13. It would thus appear that the ground on which the enquiry was boycotted was the adverse ruling given by the enquiry officer the adverse ruling given by the enquiry officer on the question of the production of pipe. It must be remembered in this connection that admittedly the Chairman of the 1st respondent was not an appellate authority and he had no powers in appeal as such to order stay of the enquiry or even to decide on the merits of any interlocutory order which was passed by the enquiry officer. Assuming, however, that the Chairman had such authority since he had not granted any stay of the enquiry, the petitioner and his representative were not justified in not attending the enquiry on October 9, 1975 of which date they had knowledge, and further in continuing to boycott the further proceedings of the said enquiry. Since there was no valid ground for boycotting the enquiry the enquiry officer was justified in proceeding with the same. In the circumstances we are of the view that there was nothing illegal in the enquiry officer conducting the further enquiry ex parte. It is the petitioner who had to thank himself for boycotting the enquiry and should be held bound by the consequences which followed. It is not, therefore, for him to complain against the fact that the enquiry proceeded ex parte since the ex parte proceedings were of his own making.

14. As regards the presence of the police officer as the presenting officer at the enquiry we have not been pointed out any rule or regulation preventing the presence of such officer as a presenting officer in the domestic enquiry. It must be remembered in this connection that admittedly as soon as the petitioner was suspended, as stated earlier, the investigation was handed over to the C.B.I. The C.B.I. on their own had collected evidence in addition to the evidence which was collected by the Department. On behalf of the department a co-ordinating officer, viz., the said Mr. Singanamalli was deputed to remain present at the enquiry.

Since, however, it appears that much of the evidence was collected by the C.B.I. and the C.B.I. had volunteered to give assistance in the matter of production of the evidence, it was probably thought convenient to nominate one of the officers of the C.B.I. connected with the investigation as the presenting officer. The job of the presenting officer was only to produce evidence before the enquiry officer. There was no other role played by the presenting officer. In the circumstances we fail to understand as to what prejudice was caused to the petitioner if the officer from the C.B.I. acted as the presenting officer. This is apart from the fact as stated earlier, that there is no law against the appointment of a person outside the department as a presenting officer. We are, therefore, unable to appreciate the contention that because the presenting officer was a person from the C.B.I. the enquiry proceedings should be held to be illegal.

15. The third reason urged for challenging the enquiry proceedings is the examination of one witness Taj Ahmed Yusuf Shaikh without his having been cited as a witness in the chargesheet. It is not disputed that in the chargesheet it was mentioned that the petitioner had brought the drums on February 21, 1973 by a truck. The said Taj Ahmed was the driver of the truck. His statement was recorded by the C.B.I. and the same was handed over to the petitioner on September, 12, 1975 along with the other papers. He was in fact examined on October 6, 1975. Dr. Maitra on behalf of the petitioner declined to cross-examine the said witness on the said date. Although, therefore, it is true that the said Taj Ahmed was not cited as a witness on the day the chargesheet was handed over there was nothing illegal or improper in examining him when the copy of his statement was handed over to the petitioner about three weeks prior to his examination and when the petitioner knew the purpose for which the said witness was examined and his connection with the charge mentioned in the chargesheet. The mere fact, therefore, that he was not mentioned as a witness when the chargesheet was handed over will not render his examination as a witness illegal.

16. The fourth ground urged in this connection was that the enquiry proceedings were not adjourned in spite of the fact that an appeal was made to the Chairman objecting to the presence of the police officer as a presenting officer and of Mr. Singanamalli as a co-ordinating officer. We have already dealt with this point earlier and we have pointed out that it is not shown to us that the Chairman was an Appellate Authority over the enquiry officer. It has also been pointed out that the Chairman has not granted any stay of further proceedings. Further on behalf of the petitioner while applying for adjournment it was stated that if necessary the petitioner would also approach a Court of law thereby implying that if he did not get a favourable order from the Chairman he would approach a Court of Law. Admittedly the petitioner had neither obtained a stay of the further proceedings from the Chairman nor had he gone to the Court. In the circumstances we find that the enquiry officer had done nothing improper if he had refused to adjourn the enquiry proceedings on the mere allegation that the petitioner wanted to approach the Chairman or the Court of law. It must be remembered in this

connection that there was sufficient time between the date when the application was made or the threat of such appeal to the Chairman was given and the next date of hearing in the enquiry to enable the petitioner to approach the Chairman and obtain a stay of further proceedings.

17. The last ground urged in this connection is that it is the enquiry officer who examined the witnesses of the 1st respondent, which he was not authorised to do since by that act he combined the post of the Prosecutor and the Judge. It is not disputed before us that the enquiry officer only recorded the examination-in-chief of the witnesses cited on behalf of the 1st respondent. The statement containing the gist of such examination were already in the hand of the petitioner. No objection whatsoever was raised in the enquiry when the enquiry officer recorded the said examination-in-chief of the witnesses. It must be remembered in this connection that according to the procedure which was adopted all the witnesses of respondent No. 1 were examined in chief before their cross-examination started and it was after about seven witnesses were cross-examined that the enquiry proceeded ex parte. Therefore, during the examination-in-chief the petitioner was very much present to witness the proceedings of the enquiry. There is further nothing in law which prohibits a presiding officer from conducting the examination-in-chief. We are, therefore, of the view that the examination-in-chief conducted by the enquiry officer is neither illegal nor improper nor has it in any way prejudiced the petitioner. We are, therefore, unable to agree with any of the grounds raised on behalf of the petition for attacking the legality of the enquiry held.

18. The third point which was raised by Dr. Kulkarni was in connection with the legality of the finding recorded by the enquiry officer. He attacked the said legality on four grounds. His first ground is that documents which were disowned by the witnesses were relied upon by the enquiry officer to arrive at his finding and, therefore, the finding was illegal. For this purpose he relied documents Exts. N.O. and R. produced by the co-ordinating officer. Admittedly these documents are complaints of Technical Supervisor who is alleged to have given the information to the 1st respondent that there was a misconduct committed by the petitioner. There is nothing in the finding recorded by the enquiry officer which shows that these documents were relied upon by him for drawing the conclusions to which he has arrived. In fact these documents are nowhere discussed in the report. All that has been pointed out in this connection by Dr. Kulkarni is paragraph 54 of the enquiry officer's report which has in general terms referred to all the documents as follows :

"In conclusion, I have to observe that every piece of material evidence that has gone to build up this case against the C.S.E. has been corroborated either by oral, documentary or circumstantial evidence and, therefore, I have no hesitation in coming to the conclusion as stated above."

It is, therefore, obvious that the aforesaid observations which are in general terms and do not mention any specific document cannot be construed to mean

that the findings arrived at by the enquiry officer were based on the statement made in the said Exts. N, C and R.

19. The second reference to these documents appears in paragraph 12 of the enquiry report. While narrating the history of the case the enquiry officer stated as under :

"..... Shri Singanamalli accordingly enquired into the matter and during the course of his investigation, he recorded the statements which are at Exhibits D, E, F, G, H, I, J, K, L, M, N, O and P. He also collected statements from Technical Supervisors"

20. A mere reference to the statements as statements collected by Shri Singanamalli will not lead to the conclusion that the enquiry officer had in fact relied upon the said statements. What is more, it is not disputed that apart from the said complaints Exts. N, O and R signed by the concerned witnesses, the witnesses had made separate statements and the said statements were not disowned by them. These statements were handed over to the petitioner and the oral testimony given by the said witnesses was not at variance with the said statements additionally recorded. It is not the grievance of Dr. Kulkarni that the findings which were recorded by the enquiry officer were either inconsistent with these additional statements or with their testimony which was the substantive evidence before the enquiry officer. In the circumstances assuming that the original complaints Exts. N, O and R were disowned by the witnesses that circumstance alone will not vitiate the finding given by the enquiry officer.

21. The second ground urged in this connection is that the conclusions arrived at are based on the statements recorded by the C.B.I. and not on the evidence recorded in the enquiry. This reason for attacking the finding has only to be stated to be rejected for admittedly all the witnesses who had made the statements before the C.B.I. and which statements were tendered in evidence were examined before the enquiry officer. They have not only owned the said statements but even corroborated all the facts stated by them therein in their oral testimony before the enquiry officer. It is, therefore, incorrect to urge that the conclusions arrived at by the enquiry officer were not based on the evidence recorded in the enquiry proceedings.

22. The third ground of attack against the finding is that there was new material introduced for the first time at the time of the enquiry, viz., the rubber pipe. We have already referring to this rubber pipe earlier while discussing the ground of adjournment sought to be urged for attacking the validity of the enquiry. It is true that the presenting officer had sought the production of this pipe after witness No. 16 Shankar Raghav Patil was cross-examined by Dr. Maitra on behalf of the petitioner. However, it must be remembered that the rubber pipe which was an instrument fitted to the sample cock for removing the oil very much figured in the chargesheet. The witnesses who deposed to the pipe were at no stage cross-examined to show that there was no such pipe. The rubber pipe is

not an uncommon pipe and the proof of the existence of a particular pipe was not, therefore, of much importance. If, therefore, there was a mention of the modus operandi of removing the oil, viz., the rubber pipe specifically in the chargesheet and the witnesses had already deposed to the said modus operandi and they were not cross-examined the production of the pipe which was actually used for the purpose was really of no importance. Even without the production of such a pipe on the basis of the testimony of the witnesses, the charge would have been amply proved against the petitioner if all other circumstances connected with the said operation of removing the pipe were proved as indeed it is not disputed that the same have been proved. The production of the pipe was, therefore, not as introduction of a new material in the evidence nor was it of any consequence to the enquiry. In the circumstances we are satisfied that the order made by the enquiry officer for producing the pipe even at that stage was not an improper order. The petitioner would have cross-examined the witness after the production of the said pipe. In fact there was a request made on behalf of the presenting officer himself that the witness in question should be recalled for identification of the said pipe.

23. The last ground urged for attacking the validity of the finding is that the statements running into 77 pages and recorded by the C.B.I. were not produced at the time of the chargesheet. We find that there is no substance in this contention either. Admittedly as stated earlier, the said statements which were statements of the various witnesses recorded by the C.B.I. were handed over to the petitioner on September 11, 1975 and he was given time to file his additional reply on or before September 29, 1975. The said statements related to the 4th charge which was for the first time added on August 10, 1975. Although, therefore, it is true that these statements running into 77 pages were not supplied to the petitioner on August 18, 1975 when the 4th charge was served upon him, it cannot be said that the delay between August 18, 1975 and September 11, 1975 caused any prejudice to the petitioner. The reason for supplying the delinquent with the copies of the statements relied upon for proving the charge is that the delinquent should have sufficient time to study the evidence sought to be tendered against him to enable him to prepare his defence. Since the petitioner was given time till September 29, 1975 and in fact the cross-examination of the relevant witnesses started only in October, 1975, it cannot be said that the petitioner was in any way prejudiced because of the delay in supplying the said statement.

24. For all these reasons we are of the view that there is no merit in the attack against the validity of the findings. It must be remembered in this connection that Dr. Kulkarni has not made any grievance with regard to the merits of the findings or has pointed out to us that the findings arrived at are without any evidence on record or that the inferences drawn from the said evidence are in any way unreasonable or perverse. He had only raised the aforesaid technical objections with regard to the validity of the findings.

25. The fourth contention urged on behalf of the petitioner is that this was in fact a police enquiry and not an enquiry conducted by the department. In support of his contention he has relied upon the fact that such indulgence was shown to the presenting officer by granting him several adjournments, by permitting him to produce the statements running into 77 pages at a late stage and also by permitting him to produce the rubber pipe. He also contended in this behalf that the police had procured the witnesses and not the department, which should normally be the case. The last circumstance which he emphasised in this connection was that this enquiry was in fact initiated at the instance of police and a repetition of the argument in connection with the first contention with which we have already dealt. The mere fact that the proceedings were adjourned from time to time for the convenience of the presenting officer will not go to show that the enquiry was in fact a police enquiry. In fact, this argument is more pedestrian than legal, to say the least with respect to the counsel. We have already referred to the circumstances in which the statements running into 77 pages were produced at the late stage and the opportunity given to the petitioner to prepare his defence on the basis of the said statements. We have also pointed out that the production of the rubber pipe at a subsequent stage had no material bearing either on the proceedings or the findings of the enquiry officer. Therefore, this ground urged to point out that the enquiry was a police enquiry and not a departmental enquiry has to be rejected at the outset.

26. As regards the allegation that the witnesses were produced by the police, beyond pointing out the statement in the letter dated February 8, 1975 to which we have already made a reference, wherein C.B.I. had offered the assistance of one of its investigating officer for production of the evidence, Dr. Kulkarni has not shown any other circumstance to make good his submission. He could not point out a single witness who was unwilling to give evidence at the enquiry but was forced to come to the enquiry and to depose against his will. This is apart from the fact that it is also not pointed out to us that any of the witnesses examined at the enquiry were in fact procured by the police. In the circumstance, the said contention is without any basis.

27. With regard to the last contention which we have already point out is a repetition of the first major contention. Dr. Kulkarni relied upon a statement in paragraph 17 of the affidavit in reply filed on behalf of the 1st respondent. The statement is as follows :

".... The C.B.I. in fact framed certain charges against the petitioner above named and forwarded the same together with their letter No. 3/CR/17/73BOM/C-477 of 8-2-1975. Herewith annexed and marked Ext. "3" calling upon the respondents above-named to take disciplinary action against the petitioner. I submit that, therefore, the question of cancelling the suspension order and putting the petitioner back in employment did not arise."

28. Relying upon the phrase in the aforesaid statement, "calling upon the respondent to take disciplinary action against the petitioners", Dr. Kulkarni urged

that this also shows that this was nothing but a police enquiry, since the enquiry was at the insistence of the police. It must be remembered in this connection that the said statement in paragraph 17 of the affidavit in reply is in reply to the contents of paragraph 8 of the petition which are as follows : "Pursuant to the suspension order dated 20-3-1973 for investigation of criminal offence, the case was handed over to the Special Police Establishment who conducted exhaustive enquiries and acquitted the petitioner from all charges. The logical course for the respondent was to cancel the suspension order and put back the petitioner to duty."

29. The argument advanced in the aforesaid paragraph in the petition was that since the C.B.I. did not proceed with the investigation by following the prosecution of the petitioner in the criminal Court, it should be deemed that he was acquitted by the C.B.I. of all the charges and, therefore, the suspension order itself should have been cancelled, by the 1st respondent. It is to meet his argument that the author of the affidavit-in-reply has stated that far from the C.B.I. acquitting the petitioner of the charges, they had in fact stated in their letter that the petitioner should be proceeded against departmentally. It was in these circumstances that the cancellation of the suspension order and the reinstatement of the petitioner was uncalled for. If we read the said statement in the affidavit-in-reply in the context in which it has been made not only in the said paragraph but in the context of other statements in the affidavit-in-reply, it will be found that it is far from supporting the contention of Dr. Kulkarni that the enquiry was a police enquiry or that it was instituted at the instance of the police. This is in addition to what we have already stated while dealing with the first contention. The result is that there is no substance in this contention at all.

30. The last contention raised by Dr. Kulkarni is that the enquiry was vitiated and the findings arrived at in such enquiry were not binding on the petitioner because he was not granted increased subsistence allowance to which he was entitled during the period of enquiry. For this proposition he relied upon an authority of the Supreme Court reported in *Ghanshyam Das Shrivastava Vs. State of Madhya Pradesh*, . In that case the Supreme Court had struck down the enquiry on the ground that the delinquent was not paid any subsistence allowance till the enquiry had commenced and had proceeded for some days. The delinquent had informed the enquiry officer that unless he was paid subsistence allowance he would not be able to face the enquiry proceedings. He had, therefore, refused to face the enquiry proceedings because he had no capacity to do so on account of acute shortage of funds. Apart from the fact that in fact he was not paid any subsistence allowance he had specifically pleaded before the enquiry officer that he was unable to face the same because of shortage of funds. The Supreme Court also held that this would prima facie suggest that he had no other source of income except his pay. Government had also not alleged that the delinquent had any other source of income except his pay. The delinquent was suspended on October 30, 1964 and he was not paid the subsistence allowance until March, 1965. The enquiry had commenced at Jagdalpur which was not the place of

residence of the delinquent. The case was heard on February 10, 11 and March 13, 1965. It was for the first time that on March 20, 1965 that the delinquent received his first instalment of subsistence allowance for the months of November and December, 1964 and January, 1965 and further evidence in the matter was recorded on April 3, 6 and 15, 1965. The second payment as subsistence allowance was made to him on May 13, 1965. The enquiry officer submitted his report to the Government on May 28, 1965. The Supreme Court concluded that these facts plainly showed that a part of the evidence had already been recorded before the first payment of subsistence allowance was made to the delinquent. It is in these circumstances that the Court held that the enquiry proceedings which had taken place prior to the receipt of the subsistence allowance, viz., the proceedings of February 9, 10, 1965 and March 13, 1965 were vitiated. The Court, therefore, set aside the order of dismissal which was based on the report of the enquiry officer based on the evidence recorded on the same dates, holding that the delinquent had no reasonable opportunity of defending himself in the enquiry proceedings.

31. In the present case, there is no dispute that the petitioner was paid the subsistence allowance at the rate of 50% of his salary right from the first day of his suspension order, viz., March 20, 1973. What is, however, urged by Dr. Kulkarni is that as per the rules he was entitled to an increased subsistence allowance for a period subsequent to the period of first six months if the enquiry was not delayed at the instance of the delinquent. Dr. Kulkarni urged that in this case there is nothing to show that the enquiry was postponed on account of the petitioner and, therefore, he was entitled to the increased subsistence allowance. The same having not been granted, it should be held on the authority of the aforesaid Supreme Court decision that the enquiry was vitiated.

32. Now the rule which is relied upon by Dr. Kulkarni for an increased subsistence allowance reads as follows :

".... (1) A subsistence grant equal to the leave salary which the employee would have drawn if he had been on leave or half-average pay or leave on half pay, as the case may be, provided that if the period of suspension exceeds six months, the Chairman or the Board may, in his/their discretion, vary the amount of the subsistence grant for any period subsequent to the period of the first six months as follows :

(i) the amount of the subsistence grant may be increased by a suitable amount, not exceeding 50 per cent of the subsistence grant admissible during the period of the six months, if in the opinion of the Chairman or the Board, as the case may be, the period of suspension has been prolonged for reasons to be recorded in writing not directly attributable to the employee;"

This rule will clearly show that the delinquent is not as a matter of right entitled to any increased subsistence allowance, but the increase in the subsistence grant depends upon the discretion of the Chairman or the Board as the case may

be. Therefore, it is not correct to say that the petitioner had a right to any increased subsistence allowance merely because the enquiry was held beyond a period of six months. Secondly, in the present case there was no such grievance made before the enquiry officer at any time that because the petitioner was not in possession of increased subsistence allowance he was in any way hampered in defending himself properly. For these reasons we are of the view that the authority relied upon by Dr. Kulkarni is not applicable to the facts of the present case. Hence, merely because the petitioner was not given an increased subsistence allowance, it cannot be said that the enquiry suffered from any defect in law.

33. Thus we find that there is no substance in any of the contentions raised on behalf of the petitioner for attacking the impugned order of his dismissal. The petition, therefore, fails and is hereby dismissed and the rule is discharged. In the circumstances of the case there shall be no order as to costs.