

(2012) 02 CAL CK 0022

In the Calcutta High Court

Case No : W.P.S.T. No. 166 of 2010 with C.A.N. 461 of 2012

Sri Satyabrata Bhattacharjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Marine Products Export Development Authority Act, 1972 — Section 33

Citation : (2012) 1 CALLT 430 : (2012) 5 CHN 476

Hon'ble Judges : Subhro Kamal Mukherjee, J; Nishita Mhatre, J

Bench : Division Bench

Advocate : Lakshmi Kumar Gupta, Mr. Kallol Bose and Mr. Himadri Sekhar Chakraborty, for the Appellant; Debangshu Basak and Ms. Munmun Tewari, for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—By this writ application the petitioner has impugned the judgment and order of the West Bengal Administrative Tribunal dated 27th January, 2010. The Tribunal has rejected the original application filed by the petitioner by concluding that the action taken by the respondent against the petitioner of dismissing him from service was justified and commensurate with the misconduct proved against him. The facts in the present case fall within a narrow compass. The petitioner was issued a charge-sheet on 19th July 2002 alleging that while he was working as a Sub-Inspector and an Officer-In-Charge of the Joynagar Police Station he had extorted Rs. 10,000/-, through his agent, from one Ashok Biswas, by threatening to implicate him in a criminal case. While the departmental enquiry in respect of this charge sheet was pending, a second charge-sheet was issued to the petitioner. The allegation was that he had permitted his wife to accept a gift of landed property worth Rs. 3,25,000/- from her father without obtaining permission from the competent authority. The third charge sheet issued against the petitioner on 13th of November 2002 described several other charges against him, namely, that he had extorted money from the

owners of the local nursing homes while he was working as the Officer-In-Charge of the Joynagar Police Station to cover up certain illegalities and the suspicious deaths of certain patients in those nursing homes. Besides this the allegation was that he extorted money from them on every festival.

2. After a preliminary investigation was carried out and a report was submitted, a departmental enquiry was conducted against the petitioner. Evidence of several witness on behalf of the respondent was led before the inquiry officer. The petitioner was given an opportunity to cross-examine those witnesses. The inquiry officer submitted her findings on 16th June 2003. It was held that all the charges contained in the three charge-sheets issued to the petitioner had been proved beyond doubt. By an order dated 17th July 2003 the Disciplinary Authority accepted the report of the inquiry officer and held that the petitioner was guilty of gross dereliction of duty and misconduct. He was, therefore, dismissed from service with effect from 18th July 2003.

3. The petitioner preferred a departmental appeal that was decided by the Deputy Inspector General of Police, Presidency Range, confirming the order of the Disciplinary Authority.

4. The petitioner then preferred original Application No. 179 of 2005 before the West Bengal Administrative Tribunal. The contentions raised by the petitioner in his application were, inter alia, that the inquiry officer was biased; that the Disciplinary Authority had acted with a close mind and with preconceived notions while imposing the punishment; that the inquiry officer had not evaluated the evidence laid before her in the proper perspective and that none of the charges leveled against him had been proved.

5. The State filed its reply supporting the action taken by it in dismissing the petitioner.

6. As Stated earlier the Tribunal dismissed the original application on the ground that the petitioner had participated in the proceedings before the inquiry officer and had been permitted to cross-examine the witness. Therefore, according to the Tribunal, there was no illegality or infirmity in the conduct of the departmental proceedings. The Tribunal was not impressed with the petitioner's contention that the inquiry officer was biased. It was of the view that there was sufficient evidence from Government Officials and private individuals to corroborate the charges leveled against the petitioner.

The Tribunal then observed the judicial review of a departmental enquiry was permissible only when there were procedural lapses in the conduct of the enquiry or the inquiry officer had passed an order without any supporting evidence showing perversity and vindictiveness.

7. Mr. Gupta, the learned senior counsel appearing for the petitioner submitted that the charge sheets issued to the petitioner disclosed a closed mind and that there was no evidence at all against the petitioner to substantiate the charges.

He submitted that the findings of the inquiry officer were contrary to the charges leveled against the petitioner. The learned counsel criticized the judgment of the Tribunal by contending that neither the inquiry officer nor the Tribunal had dealt with the evidence led before the inquiry officer by evaluating the same and assessing whether the evidence in fact proved the charges leveled against him. The learned counsel, further, submitted that the charges of extortion of money as the witness, Anil Biswas, who alleged that he had been falsely implicated in a murder trial had categorically stated that the petitioner had not demanded any amount from him. As regards the second charge sheet the learned counsel pointed out that since the petitioner had disclosed that the landed property was gifted to his wife by her father in his asset declaration form there was no question of there being any dereliction of duty or misconduct on his part. As regards the third charge-sheet, the learned counsel submitted that the petitioner was posted in the Joynagar police station from May 1999 to June 2002 where as the allegations contained in the charge sheet pertained to incidents which had allegedly occurred beyond this period. The learned counsel then submitted, by relying on various precedents to which we will presently advert, that the inquiry officer had abdicated his duty while conducting the departmental enquiry and, the Tribunal had erred in dismissing the original application. While dealing with the impugned order of the Tribunal, the learned counsel has pointed out that it has not considered whether the evidence led before the inquiry officer was sufficient to bring home the charges leveled against the petitioner and in fact the Tribunal had refused to exercise its jurisdiction by observing that judicial review could be exercised only in very specific circumstances.

8. Mr. Basak, the learned counsel for the State on the other hand has submitted that this Court should not interfere with the decision of the Tribunal as it has not committed any jurisdictional error nor is there any perversity in its findings. The learned Counsel, relying on several judgments of the Supreme Court which we will presently advert to, submitted that the scope of judicial review of a departmental enquiry is very limited and therefore this Court should not exercise its writ jurisdiction in the present case. He pointed out that the charge sheets, if read in their proper perspective, do not disclose a closed mind nor could there be any apprehension of bias. He submitted that the findings of the inquiry officer are based on the evidence on record and that neither the Tribunal nor the writ Court should delve into these findings. According to him a fair and proper enquiry had been conducted against the petitioner and the evidence on record proved the guilt of the petitioner beyond reasonable doubt. The learned counsel then submitted that the petitioner had in fact pleaded for mercy as recorded by the appellate authority and this according to the learned counsel amounted to an admission of his guilt. A plea for mercy would indicate inherently that the person was guilty, according to the learned counsel.

9. Before we proceed to consider each charge-sheet it would be appropriate for us to consider the scope of judicial review in a case such as the one before us. The learned counsel for the State had submitted before us that the Writ Court

should not ordinarily interfere with the judgment and order of a tribunal or questions of fact. It is trite that the writ court has the jurisdiction to interfere with the decision of a quasi-judicial authority or tribunal, both on the findings of fact recorded as well as law. It is a self-imposed restraint that the writ court would normally exercise in not disturbing the findings of fact recorded by the quasi judicial authority. However it is equally well settled that when there is a palpably perverse finding recorded by the authority, which is not based on the material on record the writ Court would interfere with such a finding. Several judgments of the Supreme Court and this Court underscore the manner in which the power of judicial review must be exercised. The Division Bench of this Court in the case of Collector of Customs, Calcutta & Ors. v. Biswanath Mukherjee reported in 1974 CLJ page 251 has observed that after considering a catena of judgments of the quoted with approval, the observations of a learned single judge of this Court in the case of the Additional Collector of Customs and Ors. v. Padam Kumar Agarwalla & Anr. reported in 1974 CW page 313 as follows:

It is, however, equally well settled that even in a writ petition under Article 226, the Court is entitled to interfere with the finding of the Tribunal on any question of fact which the Tribunal is competent to decide, if the Court is satisfied that the finding of the Tribunal is perverse and the finding of the Tribunal is considered to be perverse, if -

- (a) The Tribunal has come to the finding on no evidence.
- (b) The Tribunal has based the finding on materials not admissible and has excluded relevant materials.
- (c) The Tribunal has not applied its mind to all the relevant materials and has not considered the same in coming to the conclusion.
- (d) The Tribunal has come to the conclusion by considering material which is irrelevant or by considering material which is partly relevant and partly irrelevant.
- (e) The Tribunal has disabled itself in reaching a fair decision by some considerations extraneous to the evidence and the merits of the case.
- (f) The Tribunal has based its finding upon conjectures, surmises and suspicion.
- (g) The Tribunal has based the finding upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found.
- (h) If the Tribunal in conducting the enquiry has acted in flagrant disregard of the rules of procedure or has violated the principles of natural justice, where no particular procedure is prescribed.

We entirely agree with this statement of law on the question of the High Court's powers while exercising its jurisdiction of judicial review.

10. Mr. Basak has relied on the judgment of the Supreme Court in the case of

State of U.P. and others Vs. Nand Kishore Shukla and another, where the Supreme Court has held that the Court should not consider the proportionality of the punishment as that question is within the domain of the powers to be exercised by the disciplinary authority. The learned Counsel then laid great emphasis on the judgment of the Supreme Court in the case of Union of India (UOI) and Others Vs. Narain Singh, While reiterating its view recorded in two earlier judgments the Supreme Court has held that where the material on record supports the conclusion that the delinquent is guilty, the adequacy or reliability of the evidence cannot be questioned before High Court. The High Court cannot interfere with the punishment imposed unless it so disproportionate with the proved misconduct that it would shock the conscience of the Court.

11. On scrutinising the impugned order of the Tribunal we find that it has merely paraphrased the arguments of the counsel appearing for the petitioner and the State without evaluating the evidence before the inquiry officer. This has been done on the specious ground that judicial review is permissible only when there have been procedural lapses in the conduct of the departmental enquiry or the finding of the inquiry officer is unsupported by the evidence on record or the finding is perverse. It is true that the scope of judicial review is limited. However, the Tribunal in our opinion has not considered the well settled parameters for judicially reviewing a departmental enquiry.

12. Mr. Gupta, the learned senior counsel for the petitioner, argued as mentioned earlier, that there was an apprehension of bias as the charge-sheet disclosed a closed mind of the disciplinary authority. In the case of State of Punjab v. V.K. Khanna & Ors., reported in AIR 2001 SC 343, the Supreme Court observed:

The test is as to whether there is a mere apprehension of bias or there is 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 there from. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefore would not arise.

We have considered the charge sheets issued to the petitioner and we do not find that the submission of the learned counsel for the petitioner is substantiated. Merely, because the charge sheets contained the words "are charged with gross dereliction of duty and gross misconduct unbecoming of a disciplined posts" they do not, in our opinion, reflect a closed mind or bias.

13. In the case of Meena Janah v. The Deputy Director of Tourism (Headquarters) Home (Tourism) Department, Government of West Bengal and Ors. reported in 1974 (2) Service Law Reporter page 466 a learned single judge of this court has observed that, if it appears even on the basis of the charge-sheet itself that the disciplinary authority has failed to keep an open mind in regard to the alleged offence committed by the delinquent employee it would have to be held that the

principles of natural justice would be violated and the charge sheet would have to be set aside. In the present case we do not find that the charge sheet has been issued with a closed mind and therefore this judgment need not detain us.

14. We will now deal with the duty cast on an Inquiry officer while conducting an enquiry. It is trite that a departmental enquiry is not an empty formality. It is not mere lip service to be rendered to a delinquent employee but must in real terms be a forum which is quasi judicial in character where he can defend himself against the allegations leveled against him. The opportunity to be given to him to do so must be fair and reasonable. The enquiry must not only be procedurally fair and reasonable but the findings of the enquiry officer should not be perverse and must be based on the evidence led before him. For, the aspect of perversity is not de hors but a part and parcel of the principles of natural justice.

15. In the case of Anil Kumar Vs. Presiding Officer and Others, , the Supreme Court observed that:

A disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the enquiry officer has a duty to act judicially.

The enquiry officer must assign reasons as to why the evidence produced by the parties was found creditworthy or the reason for which the evidence produced by one party appealed to him in preference to that produced by the other. The conclusion by the enquiry officer must be supported by the reasons. The Supreme Court has observed that the report by the enquiry officer must permit "a peep into his mind" as to why the evidence produced has been accepted.

16. In the case of Union of India and Ors. v. Gyan Chand Chattar reported in (2009) 12 SCC 78 the Supreme Court observed that while dealing with the serious charge of corruption an enquiry officer should consider whether the charge is proved to the hilt as it attracts both civil and criminal consequences upon the employee concerned. Such a charge cannot be proved merely on probabilities and considering the gravity of the charge of a quasi-criminal nature it must be proved beyond any shadow of doubt and to the hilt.

17. In the present case as reflected in the first and third charge sheets the charge is of extortion of money which would certainly visit the petitioner with civil and criminal consequences. Therefore, such charges were required to be proved beyond any shadow of doubt and to the hilt. The evidence adduced cannot be perfunctory.

18. In the case of ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others, the Supreme Court considered the submission made before it that the show cause notice issued indicated that the respondent in that case had completely made up his mind and reached a definite conclusion about the alleged guilt by the appellant which rendered the subsequent proceedings an idle formality. While considering the duties of a quasi-judicial authority, albeit not an enquiry officer in a disciplinary enquiry, the Supreme Court has observed thus:

24. This Court finds that there is a lot of substance in the aforesaid contention. It is well settled that a quasi judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show-cause proceeding. A show-cause proceeding is meant to given the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice."

25. Expressions like a "a reasonable opportunity of making objection" or "a reasonable opportunity of defence" have come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in *Khem Chand v. Union of India*, of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.

26. S.R. Das, C.J. speaking for unanimous Constitution Bench in *Khem Chand* held that the concept of "reasonable opportunity" includes various safeguards and one of them, in the words of the learned Chief Justice, is "(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based.

27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.

28. Justice is rooted in confidence and justice is the goal of a quasi judicial proceeding also. If the functioning of a quasi judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.

29. In the instant case from the underlined portion of the show-cause notice it is clear that the third respondent has demonstrated a totally closed mind at the stage of show-cause notice itself. Such a closed mind is inconsistent with the scheme of Rule 43 which is set out below. The aforesaid Rule has been framed in exercise of the power conferred u/s 33 of the Marine Products Export Development Authority Act, 1972 and as such that Rule is statutory in nature.

31. It is of course true that the show-cause notice cannot be read hyper technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a

reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against especially when he has the power to take a punitive step against the person after giving him a show-cause notice.

33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it.

19. While dealing with the issues as to whether a civil court or the writ Court is entitled to enquire in a case where the report of the enquiry officer is based on no evidence, the Apex Court in the case of *Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others*, observed thus:

26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the enquiry officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ Court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (See *State of Assam v. Mahendra Kumar Das*) (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (See *Khem Chand v. Union of India and State of U.P. v. Om Prakash Gupta.*) (3) Exercise of discretionary power involves two elements-(i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. (See *K.L. Tripathi v. State Bank of India.*) (4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (See *Sawai Singh v. State of Rajasthan.*) (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal. [See *Director (Inspection & Quality Control) Export Inspection Council of India v. Kalyan Kumar Mitra*] (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ Court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. (See *Central Bank of India Ltd. v. Prakash Chand Jain, Kuldeep Singh v. Commr. of Police.*)

Similarly in the case of State of U.P. and Others Vs. Saroj Kumar Sinha, has Observed that the enquiry officer is a quasi-judicial authority and must act as an independent adjudicator. In paragraphs 28, 29 & 30 the Court has observed:

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un-rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

20. We have examined the report of the enquiry officer as in our opinion the Tribunal has unfortunately abdicated its duty by failing to consider the same. From the report of the enquiry officer it is discernible perverse. The witness Ashok Biswas in his deposition had not in any manner indicated that the petitioner had demanded any amount from him despite which the enquiry officer has found that the charge of extortion had been proved. In fact this witness had stated that it was one Shyamal Chakraborty, who had asked for some amount which was allegedly to be given to the Officer-In-Charge. However, Shyamal Chakraborty who was also examined denied having asked for any amount or having stated that the amount was to be paid to the petitioner. The allegation of Ashok Biswas that he was falsely implicated in a criminal case because he refused to pay the money demanded by the petitioner is not borne out from the evidence on record. The investigating officer of that case was examined and he has admitted in his cross examination that Ashok Biswas was implicated on the basis of the statement made by some other person. It is obvious from the record that this charge of extortion has not been proved to the hilt against the petitioner which is necessary in the case of a quasi-criminal charge like extortion as observed in the case of Union of India and Ors. v. Gyan Chand Chattar. In fact

the evidence on record does not even indicate a preponderance of probabilities of the petitioner having committed the misconduct alleged. It appears that the enquiry officer was acting, not as an unbiased person and an independent adjudicator, but as a representative of the departmental/disciplinary authority/government which has resulted in injustice to the petitioner.

21. While dealing with the second charge sheet the enquiry officer has found that since the petitioner had not sought permission from the competent authority to accept the gift, it amounted to a breach of Rule 10(1) of the West Bengal Service Rules. We have perused Rule 10 of the West Bengal Service Rules and in our opinion it has no relevance to the charge framed against the petitioner. However Rule 10(1) of the West Bengal Government Servants' Conduct Rules 1959 deals with gifts to either a government employee or any member of his family. There is no doubt that the gift was made by the petitioner's father-in-law to the petitioner's wife, obviously out of love and affection for his daughter. Rule 10(1) provides that if a Government employee or any member of his family cannot, without causing undue offence, refuse a gift of substantial value, he may accept the same, but the fact should be reported by the Government employee to the appointing authority who may in his discretion either permit him or the member of his family to retain the gift or direct him to return it to the donor or to deliver it to Government.

22. In the present case the second charge sheet itself discloses that the petitioner's wife had received a gift of landed property from her father and that the petitioner had disclosed this fact in his declaration of assets. However, he had not taken any prior permission from the competent authority to accept the same. Obviously this gift was made out of love and affection by the petitioner's father-in-law to the petitioner's wife. She could not have refused the gift without causing undue offence to her father and, therefore, she had accepted the same. The petitioner had disclosed the fact that she had received the gift in his declaration of assets as required under Rule 10(3). There is no prohibition for accepting a gift from a member of the family without the previous sanction of his appointing authority, if the refusal of the same would cause undue offence. There is no material on record produced by the State to indicate that the gift received by the daughter could have been refused by her without causing undue offence to her father. Rule 10(1) has no application in the present case. In our opinion the charge leveled against the petitioner of gross dereliction of duty in accepting the gift without permission is not proved and the finding recorded by the enquiry officer in this regard is perverse.

23. The third charge also involves the allegation of extortion of money from owners of nursing homes within the jurisdiction of Joynagar Police Station. One of the doctors who was examined has denied any demand being made by the petitioner. It appears from the record that the other doctor was indulging in various nefarious activities. His evidence contains several contradictory statements. The petitioner was not posted at the Joynagar police station on the

dates the alleged demands were made. On one occasion, though the petitioner was the officer in charge he was on leave because of the demise of his infant son. The doctor's allegations against the petitioner have not been proved to the hilt although they are quasi-criminal in nature.

24. Unfortunately, the enquiry officer has not weighed the evidence led before her in its proper perspective. She has not assessed the same in order to ascertain whether the charges have been proved against the petitioner. It is true that in the case of a departmental/domestic enquiry the evidence must indicate by a preponderance of probabilities that the charge against the delinquent employee has been proved. However as we have already noticed, the Supreme Court in the case of *Union of India v. Cyan Chand Chattar* (supra) has observed that in the case of a quasi-criminal charge, such as extortion, it must be proved to the hilt.

25. The Tribunal has in our opinion abdicated the jurisdiction vested in it of considering whether a departmental enquiry against a delinquent employee has been conducted in accordance with the principles of natural justice. It is now well settled that when one considers whether the principles of natural justices have been violated, it is not merely the procedural aspect which has to be ascertained, but it is necessary to ascertain whether the findings of the enquiry officer are preserve and not based on the evidence led before him. In the present case as noted earlier the Tribunal has merely set out the submissions of the counsel appearing before it and has concluded that "the enquiry officer after discussing prosecution evidence held that all the charges framed against the petitioner were proved beyond doubt." The enquiry officer is not expected to merely discuss the prosecution evidence, but must also consider the evidence produced by the delinquent worker, if any. The Tribunal has found that there was no violation of principles of natural justice in the conduct of the enquiry against the petitioner as the enquiry officer was duty bound to accept the disciplinary evidence and to hold the charges were established when there was prima facie evidence which was not confronted by the delinquent. It is in our opinion difficult to accept this reasoning of the tribunal.

26. Another aspect which must be examined by us before we part with this judgment is as to whether the submission of the learned counsel appearing for the State that, the petitioner having pleaded for mercy amounted to an admission of his guilt, is tenable. We have scrutinized the order of the appellate authority in which it has observed that it had considered the entire proceeding file along with connected papers/records, findings of the enquiry officer and the final order passed by the Superintendent of Police, 24 Parganas (South). Besides this, the appeal memo submitted by the petitioner and the comments of the Superintendent of Police, 24 Parganas (South) were also considered by the appellate authority. The petitioner was given a personal hearing by the appellate authority on 24th of February 2004. The Appellate authority further observed that, "During personal hearing, he begged for mercy". There is no indication at

all that the petitioner had in fact pleaded for mercy in writing before the appellate authority.

27. The appeal memo submitted by the petitioner contains detailed grounds of challenge to the findings of the enquiry officer and the decision of the disciplinary authority which have not been dealt with by the appellate authority. Further it is not disclosed as to which language the personal hearing was granted. Presumably it was conducted in the vernacular in Bengali. The exact words used by the petitioner while "begging for mercy" have not been disclosed. Whether the words used by the petitioner have been translated correctly by the appellate authority cannot be ascertained. In fact the record reflects that the petitioner had contested the allegations against him and he had in all probability pleaded that justice be done to him, which has been translated to mean that he "begged for mercy". This submission of the learned counsel for the State is unacceptable that the petitioner had pleaded for mercy. It is well settled that a plea for mercy must be unequivocal and cannot be gathered from surmises or incorrect translations. In the case of *Bharat Singh and Another Vs. Bhagirathi*, the Supreme Court has held that admissions have to be clear and unequivocal if they are to be used against the person making them. In the present case as we have already noted merely pleading for mercy, if at all, is not an unequivocal admission or guilt.

28. The learned counsel for the State argued that even if one charge was proved against the petitioner he was required to be dismissed by relying on the judgment of the Supreme Court in the case of *State of U.P. and Ors. v. Nand Kishore Shukla and Anr. (supra)*. In the present case we have found that none of the charges have been proved and therefore, this judgment has no application. The learned counsel for the State has also relied on the judgment of *Union of India and Ors. v. Narain Singh (supra)* in support of his submission that the court must not interfere lightly with the punishment imposed as a consequence of a properly conducted enquiry when the guilt is proven. The Supreme Court has observed that the reduction of a sentence particularly in military, para-military or police service can have a demoralizing effect and would be a retrograde step so far as the discipline of the services is concerned. This judgment also in our opinion has no application as we have already noted it has not been proved that the petitioner is guilty beyond doubt when quasi-criminal charges have been leveled against him.

29. In our opinion, therefore, the tribunal has committed an error in not exercising its jurisdiction of judicial review by setting aside the order of dismissal which was founded on the report of the enquiry officer. The report of the enquiry officer discloses complete non application of mind and utter disregard of the principles of natural justice and fair play. The tribunal ought to have interfered in the matter considering the well settled principles of law in respect of judicial review. In our opinion, therefore, the impugned order of the tribunal deserves to be set aside and quashed.

30. Accordingly, the writ petition is allowed. The order impugned passed by the West Bengal State Administrative Tribunal is set aside. The order of dismissal passed against the petitioner is set aside. The petitioner is entitled to reinstatement in service with continuity and backwages, except for the period when he was gainfully employed.

In the facts and circumstances of the present case, there will be, however, no order as to costs.

Subhro Kamal Mukherjee, J.

I agree.