(1993) 04 CAL CK 0057

In the Calcutta High Court

Case No : C.O. No. 13752 (W) of 1988

Subal Chandra Saha — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 22-04-1993

Acts Referred:

Citation : 97 CWN 977 : (1994) 2 LLJ 287

Hon'ble Judges : Ajit Kumar Sengupta, J

Bench : Single Bench

Advocate : Samir Chakraborty and Sanjay Baid, for the Appellant;Sukumar Guha, for the Respondent

Final Decision : Allowed

Judgement

Ajit Kumar Sengupta, J.—In this writ application the petitioner who was the employee of Calcutta Dock Labour Board has challenged the entire disciplinary proceeding initiated by a charge-sheet dated December 23, 1986, and culminating in an order of compulsory retirement dated September 13, 1988 as amended by the order dated September 23, 1988. By the said order of compulsory retirement the petitioner was retired from service just 17 days prior to his retirement upon attaining the age of superannuation with stipulation that the petitioner''s pension or Employer''s Contribution to Contributory Provident Fund should not exceed two-thirds of what the petitioner was entitled to under the Rules.

2. Shortly stated the facts are that the petitioner joined the services of the Calcutta Dock Labour Board as a Senior Accounts Assistant on October 11, 1953. On December 1, 1953 the petitioner was promoted to the post of Accountant of the Board, and on May 30, 1958 the petitioner was promoted to the post of Accounts Officer of the Board. On August 1, 1965 the petitioner was further promoted to the post of Chief Accounts Officer. On June 16, 1983 the petitioner was promoted to the post of Administrative Superintendent (Chipping and Painting) of the Calcutta Dock Labour Board. The petitioner was to retire in the

normal course upon attaining the age of superannuation on September 30, 1988.

3. On December 23, 1986 a charge-sheet was issued to the petitioner by the Board whereby he was informed that it was proposed to institute disciplinary proceedings against him in respect of the articles of charges framed against him as contained in Annexure "I" to the chargesheet. The said Articles of Charges related to the incidents alleged to have taken place during the years 1976 to 1978. The petitioner was called upon to submit a written statement of defence within 10 days from the date of receipt of the Memorandum. He was further required to inform whether he desired to be heard in person and to furnish names and addresses of the witnesses, if any, whom he wished to sail (call) in support of his defence and also to furnish list of documents, if any, which he desired to produce in support of his defence.

4. The petitioner ultimately filed his reply to the charge-sheet on May 11, 1987 whereupon an Enquiry Officer was appointed by the Board to conduct the enquiry. Thereafter a domestic enquiry was held and the Enquiry Officer submitted a report holding that both the charges against the petitioner as made in the charge-sheet were established and proved. On the report of the enquiry, the Chairman, Calcutta Dock Labour Board, the Disciplinary Authority passed an order of punishment on September 13, 1988 imposing penalty of compulsory retirement from service upon the petitioner with immediate effect with the stipulation that his pension/employer''s contribution to the Contributory Provident Fund should not exceed 2/3rd of the pension/Contributory Provident Fund admissible to him under the Rules on the date of his compulsory retirement On September 30, 1988 the petitioner was served with a corrigendum dated September 23, 1988 rectifying therein certain typographical errors.

5. Against the said proceedings culminating in the said order of compulsory retirement the petitioner moved this Court in October 1988 when directions were given for filing of affidavits. After the affidavits have been filed the matter was heard at length.

6. Several contentions have been raised regarding the validity of the impugned order.

7. It has been contended on behalf of the petitioner that:-

(a) The charge-sheet is ex facie illegal, invalid and bad. As such all proceedings in terms thereof or thereunder including the enquiry proceedings, the enquiry report and the order of punishment are all ab initio illegal, invalid and bad.

(b) Further and in any event the enquiry proceedings and consequently the enquiry report of the Enquiry Officer have been conducted in gross violation of the principles of natural justice and fair play and contrary to the prescribed rules and procedures therefor. As such the enquiry proceedings and consequently the enquiry report are illegal, invalid, perverse and bad. Therefore, the order of punishment based on such enquiry proceedings and enquiry report are also illegal, invalid and bad.

(c) Even otherwise the order of punishment is bad having been passed without complying with the statutory requirement therefore and being contrary to the prescribed rules and procedures. The said order is the culmination of the mala fide proceedings initiated with an ulterior motive and/or for collateral purposes to deny and deprive the petitioner of his rights.

(d) In any event the order of punishment is unjust, unfair, oppressive, harsh and uncalled for on the facts and in the circumstances of the case.

8. On the other hand the contention on behalf of the respondents is that in the writ petition and in the departmental proceedings the petitioner could not make out any substantial defence against the charges made against him and the charges made against him in the charge-sheet were conclusively proved. The respondents have relied on the findings of the Enquiry Officer in support of their contentions. Relying on the decision of the Supreme Court in the case of New Bank of India Vs. N.P. Sehgal and Another, and the decision of the Division Bench of this Court in the case of Board of Trustees for the Port of Calcutta v. T.K. Chowdhury (1992) 2 CHN 1 it has been contended on behalf of the respondents that there was no infirmity in issuing the charge-sheet and conducting the departmental enquiry in respect of the charges relating to the earlier period, in spite of promotion being granted thereafter to the petitioner, and/or consequent passing of the order of premature compulsory retirement.

9. To appreciate the contentions it is necessary to set out the background of the issue of the charge-sheet, the report of the Enquiry Officer and the order passed by the disciplinary authority on the basis of the report of the Enquiry Officer.

10. The charge-sheet which was issued on December 23, 1986 contained two specific charges against the petitioner relating to certain transactions which have taken place during 1976-78, i.e., nearly 10 years before the impugned charge-sheet was issued.

11. The two articles of harges read as follows:-

ARTICLE-I

Shri Subal Chandra Saha while functioning as Chief Accounts Officer, Calcutta Dock Labour Board, during 1976-78, misused his official position and extended pecuniary advantage to the Syndicate Bank, Calcutta by depositing excess amount of money than that of the approved ratio in violation of the orders of the then Deputy Chairman, Calcutta Dock Labour Board, as a consideration of the employment of his son, Shri Subhas Chandra Saha, in the Syndicate Bank.

Shri Subal Chandra Saha by his above acts exhibited lack of integrity and conduct unbecoming of an officer of Calcutta Dock Labour Board.

ARTICLE-II

Shri Subal Chandra Saha did neither obtain approval from the competent authority nor send official intimation, on his own, to the competent authority about the fact of employment of his son, Shri Subhas Chandra Saha, in the Syndicate Bank with which he was having official dealings as Chief Accounts Officer, Calcutta Dock Labour Board, during 1976-78.

Shri Subal Chandra Saha by his above acts exhibited lack of integrity and highly irresponsible conduct of committing administrative impropriety of serious nature which is unbecoming of an officer of Calcutta Dock Labour Board.

12. The respondents have based their case before me primarily on the findings of the Enquiry Officer. In his report the Enquiry Officer has come to the conclusion that the petitioner had extended pecuniary advantage to Syndicate Bank to get employment for his son. In coming to his findings on the involvement of the petitioner the Enquiry Officer relied upon the sequential events relating to the opening of the Accounts with the Syndicate Bank and the employment of the petitioner''s son in the Syndicate Bank. He has further held that the petitioner extended substantial pecuniary advantage to the Syndicate Bank by depositing funds much in excess in Syndicate Bank in violation of the direction of the Deputy Chairman.

13. As the findings of the Enquiry Officer are based substantially on the sequential events of the opening of the Account with the Syndicate Bank and the employment of the petitioner''s son in the said bank, it is necessary to examine the role of the petitioner in the opening of the Account with the Bank and alleged extension of pecuniary advantage to the Bank to get employment of his son in the Bank.

14. Syndicate Bank is a Nationalised Bank and not a private Bank. The decision to open account with the Syndicate Bank was taken by the Chairman. In the year 1976 problem arose with the Calcutta Dock Labour Board regarding making of payment of dues to the retiring workers and pursuant to that discussion took place in this regard between the Deputy Chairman and the Board''s Ministry. The Deputy Chairman was advised by the Ministry to explore the possibility of opening a branch office of any bank for the purpose. Syndicate Bank was the banker of the Board''s Ministry.'' The then Chairman after due discussion with the Manager of Syndicate Bank (N.S. Road Branch) Calcutta requested the Bank''s Manager to open a temporary branch office in the Board''s own office for the purpose of making payment of dues to the retiring officers. In the confidential note dated November 10, 1976 the Deputy Chairman proposed to open a current account with the Syndicate Bank and keeping the deposit with the same for the aforesaid purpose. The Chairman duly approved the said proposal. The said confidential note is as follows:-

"10-11-76. Chairman

You are quite aware that a sum of Rs. 3.00 crores has already been sanctioned by Govt. as loan to our Board for the purpose of financing our Scheme for retirement of surplus workers. The amount has been received through the Syndicate Bank, Netaji Subhas Road Branch, Calcutta.

2. The Ministry has instructed me verbally to explore the possibility of opening a Branch Office of any suitable Bank for facility of very quick payment to retiring workers. In anticipation of your approval, I have already asked the Manager of the Syndicate Bank (Netaji Subhas Road Branch) which is now the Banker to the Ministry of Shipping and Transport to arrange for opening a temporary Branch at our Call point from the beginning of December, 1976. Pending ratification of empanelment of the Syndicate Bank at the next Board meeting, the opening of a Current Account with that Bank and keeping deposits with them may kindly be approved.

Sd/- B.N. Poddar Deputy Chairman 10-11-76 .

Approved Sd/- P.C. Mitra Chairman 10/11."

14(a). Sometimes in the month of Nov. 1976 an amount of Rs. one lac was deposited with the said bank to open the Current Account as per instruction of the Deputy Chairman as would be evident from the confidential letter bearing No. DC/CON/330 dated November 23, 1976. The said letter records as follows:

"No. DC/CON/330

The Manager, Syndicate Bank, 6. Netaji Subhas Road, Calcutta -700001

Dear Sir,

Sub: Opening of a Current Account

I forward herewith a copy of my note on the above mentioned subject and the Chairman''s orders thereon. It would appear from the copy of the said note that my Chairman has approved of the opening of a Current Account with your Bank pending ratification by the Board in due course. I enclose herewith a cheque for Rs. 1,00,000.00 (Rupees one lac) only No. 932726 dated November 23, 1976 on the State Bank of India, Strand Road, Calcutta drawn in your favour and it is requested that a current account in the name of "Calcutta Dock Labour Board" be opened and the amount of Rs. 1,00,000.00 (Rupees one lakh) only of the enclosed cheque may be credited to the said current account.

The Board''s Resolution in this respect would be sent to you in due course. In the meantime the proposed Current Account would be operated by Chairman and myself severally. The card of my specimen signature is enclosed. As my Chairman is out of station the card of his specimen signature would be sent to you after he returns to the station.

Thanking you, Yours faithfully, Sd/- Deputy Chairman Enclo: As stated C.D.L.B. for information Copy to : and necessary action. The Chief Accounts Officer, Sd/- Deputy Chairman 23-11-76"

14(b). On December 23, 1976 a confidential letter of the Syndicate Bank to the

Deputy Chairman contained in a request for transfer of Board''s main account with them. The said letter was endorsed to the petitioner. In consideration of the work of the said bank the Deputy Chairman endorsed in the said letter of the bank to the petitioner as advised him in the following manner:

"We should try to accommodate them to some extent as they have helped us so much."

It is necessary to set out the said letter which is as follows:"

No. 2761/CDLB/9500/76

The Dy. Chairman, Calcutta Dock Labour Board, Strand Road, Calcutta-1,

Dear Sir,

I confirm having discussed the following matters with you.

At your request we have on 4th and 5th of December, 1976 discussed the retirement benefits to the retiring employees of the Dock Labour Board aggregating to about 3000. We are given to understand by you that their Provident Fund and Gratuity payment are to be disbursed on 29th and 30th December, 1976 and 4th January 1977. You will appreciate that in view of the closing of Bank accounts the personnel are fully engaged in the closing work. However, in view of the assurances given by you that the main account of the Dock Labour Board will be shifted to us and the surplus funds as far as possible will be deposited with this Bank in future, we have contacted our Dy. General Manager at Delhi and he has agreed that we may undertake this payment on December 30, 1976 and January 4, 1977. We will be making payments to about 700 workers on December 30, 1976 and rest payments will be made on January 4, 1977. Even this we have to do by getting reinforcement of officers from Delhi. Please confirm that your main accounts will be passed on to our Bank from January 1977 and surplus funds will be deposited with us as far as possible, so that we can make immediate arrangements to get the necessary reinforcement.

Assuring you of our best services at all time:

Yours faithfully, Sd/- B. Vasanthan Manager

Copy to: Sri S.C. Saha, Dated 23-12-76 Chief Accounts Officer- for present information Endorsement No. DC/CON/451

Regarding ''X'' above, we should try to accommodate them to some extent as they have been helping us so much.

Sd/- Deputy Chairman."

15. It appears that Subash Chandra Saha son of the petitioner had submitted an application dated November 24, 1976 to the Manager, Syndicate Bank, Netaji Subhas Road, Calcutta for employment in Syndicate Bank. Any unemployed youth has got a right to find out a suitable employment. The mere making an

application to the bank which might be Board''s banker cannot by itself go against the petitioner. Mere fact of the employment of the petitioner''s son in the Syndicate Bank cannot have any reflection on the integrity and honesty of the petitioner, provided there is no other reason to suspect involvement of the petitioner in relation to the charges that were levelled against the petitioner.

16. By letter No. DLB/ACO/17 dated January 13, 1977 the petitioner submitted a proposal to the Deputy Chairman after due regard to this endorsement of the Deputy Chairman. By the said letter it was recorded inter alia that the Board had been maintaining account with the State Bank of India for a long time. Therefore it would not be desirable that the major part of the Board''s transaction be withdrawn and be given to the Syndicate Bank. It is necessary to set out the said letter dated January 13, 1977 which is as follows:

"N.DLB/ACO/17

The Deputy Chairman, Calcutta Dock Labour Board.

Kindly refer to your endorsement No. DC/CON/451 dated December 23, 1976 on the copy of the letter of the Syndicate Bank No. 2761/CDLB/9500/76.

Other than the current account very recently opened with the Syndicate Bank to deal with the transactions relating to the payments of retirement benefits to the retired workers only we have the Current Accounts with the State Bank of India and the United Bank of India during the period from January 1976 to December 1976 as indicated in the list against each. From the said list it would appear that we have got only one Current Account with the United Bank of India and the amount of cheques deposited to this current account may continue undisturbed. Adjustment might, however, be done in respect of the Current Accounts maintained with the State Bank of India only.

The request as contained in the above mentioned letter of the Syndicate Bank was raised by them in many of their discussions with you during the last two months. They appeared to have expected that at least 60%, if not more, of our cheques transactions might be done through them with immediate effect. We have been maintaining accounts with the State Bank of India for a long time and it may not be desirable that major part of our cheques transaction is withdrawn from them suddenly and given to the Syndicate Bank.

The Syndicate Bank is the Banker of our Ministry. We came in contract with them at the instance of our Ministry only. For the payments of the dues to our retired workers during the last two months they helped us very much. Their sincerity, promptness and the personnel attention was really appealing. We were satisfied with the services rendered by them to us during the last two months. In consideration of their services satisfactorily and also the other points as stated above I recommend that the cheques of the General Fund of the Registered Scheme, i.e. item No. l(a) of the enclosed list be dealt with between the State Bank of India and the Syndicate Bank say in equal ratio approximately pending review in the light of our future experience of transaction with the Syndicate bank. The other Current Accounts with the State Bank of India may continue with them as at present. Even if we deposit about 50% of the cheques of the General Fund to the Syndicate Bank as recommended above, it would constitute about 31% of the total amount of all the cheques covering the different funds of the Board only. I think that this is reasonable.

Submitted for your kind consideration and approval please.

Sd/- Chief Accounts Officer.

Encl: as above.

Discussed with C. A.O. over phone. I agree to the proposal but the ratio of deposit into S.B.I, and Syndicate Bank should be 60%.: 40% for the present.

Sd/B.N. Poddar/ 15-1-77 Deputy Chairman. Accounts Officer is GA/CR Please note for action accordingly.

Sd/- S.C. Saha 17-1-77"

16(a). In respect of the first article of charge it is evident that the proposal of the petitioner dated January 13, 1977 was made as per the endorsement of the Deputy Chairman dated December 23, 1976 on the letter of the Syndicate Bank. The petitioner''s proposal provided for deposit of cheques to the State Bank of India and the Syndicate Bank in the ratio of 50:50. This proposal was submitted before the Deputy Chairman for his consideration and approval. The Deputy Chairman after consideration and discussion with the petitioner recorded by an order dated January 15, 1977 that he agreed to the proposal of the petitioner but the ratio of the deposit into the State Bank of India and the Syndicate Bank should be 60%:40% for the present. Two statements of balances in the banks on some dates of the two periods March 10, 1977 to March 10, 1978 and July 1, 1978 were furnished along with the charge-sheet and in para 5 of the Imputation of Misconduct it was alleged that the petitioner had deposited an excess amount of approximately Rs. 4 lakhs with the Syndicate Bank in violation of the order of the Deputy Chairman and thereby had extended pecuniary advantage to the said Bank.

16(b). Sometime in the month of March 1977 the Cash Section of the Board was facing some difficulties with the State Bank of India. Despite the assurance given by the State Bank of India the difficulties continued to persist. The Cash Section put up a note dated March 24, 1977 recording their experience and also opinion that the service of the said bank was better. The petitioner by a letter dated April 5, 1977 to the Deputy Chairman of the said Board submitted a proposal for increase in the ratio of the volume of work with the said bank. On the basis of the note initiated by the Cash Section the petitioner made the proposal in the interest and economy of the work of the said Board and the said proposal was sent to the Deputy Chairman for his consideration. The Deputy Chairman duly endorsed the view of the petitioner and passed direction in the matter.

The said letter dated April 5, 1977 is as follows:

"The Deputy Chairman Calcutta Dock Labour Board.

The delay on the part of the State Bank of India to deliver the cash against our cheque drawn on them was one of our difficulties. The matter was discussed from time to time with the officers of the State Bank of India and we had written to them also explaining the difficulties and requesting them to kindly take the necessary action to remove our difficulties. They promised that they would give a better service. In this connection copies of our letter No. DLB/Cash/9 dated September 7,1976 and their reply No. 22/Cash/1118 dated October 9, 1976 are enclosed. But unfortunately in spite of our even subsequent personal approaches they had failed and our difficulties have been persisting. In this connection copy of the note dated March 24, 1977 submitted by the Assistant Cashier as enclosed may kindly be seen. It appears that we are not given by the State Bank of India the due personal attention as is required for the interest of our efficient work and economy. We had another Current Account also with the Syndicate Bank and the Assistant Cashier has stated that the services rendered by the Syndicate Bank was satisfactory for the purpose of our requirements. So long as we are to maintain the account with the State Bank of India, possibly this difficulty cannot be completely eliminated. As was approved by you vide copy of your order dated January 15, 1977 as enclosed bank transaction of the General Fund of the General Scheme only is done with the State Bank of India and the Syndicate Bank in the ratio of 60:40. To reduce the extent of the difficulties raised by the Cash Section you may however consider whether the said bank transaction might be done in the ratio of say 40:60.

Submitted for your kind consideration and decision please.

Sd/-Illegible 5-4-77 Chief Accounts Officer.

"Present practice may continue. We may, however, write to Chief Manager, S.B.I, expressing our present difficulty.

Deputy Chairman 6-4-77

CAO

Pl. put up and write to the SBI about our difficulties."

17. The total period of deposit of cheques as covered by the charge-sheet read with the said order dated January 15, 1977 of the Deputy Chairman was from January 15, 1977 to December 31,1978. In the petition a reference has been made in paragraph 15 to three statements, Annexure ''E'', which were prepared and signed by the Assistant Security Officer (Vig.) and presentation officer. In the three statements comparative positions of the amount of deposits made in the Banks the State Bank of India and the Syndicate Bank and the ratio thereof during the periods April 10, 1977 to March 10, 1978, July 1, 1978 to first December 1978 and January 15, 1977 to December 31, 1978 were shown and it

appears therefrom that the ratio of deposits during the three periods to the State Bank of India and the Syndicate Bank was 61.02%: 38.98% for the period April 10, 1977 to March 10, 1978, and 58.21% : 41.79% for the period July 1, 1978 to December 1, 1978, whereas the said ratio was 62.22% : 37.78% for the total period January 15, 1977 to December 31, 1978 respectively.

18. The Enquiry Officer in his findings had only referred to the statement of the period July 1, 1978 to December 1, 1978 wherein a sum of Rs. 11,54,957.23 p was deposited in excess to the Syndicate Bank which in terms of the approved ratio in percentage terms is only by 1.79%. The Enquiry Officer completely ignored the other two periods which are also very material and relevant The same would show that deposits to the Syndicate Bank was in fact less by 1.02% during the period April 10, 1977 to March 10, 1978 and was less by 2.22% during the whole period in question i.e. January 15, 1977 to December 31, 1978. It is also important to note that the shortfall in deposit to the Syndicate Bank for the total period in question i.e. January 15, 1977 to December 31, 1978 was to the tune of Rs. 65,51,920.36p. Further it is relevant to note that there was a shortfall of Rupees 15,20,715.37p in the deposit to the Syndicate Bank during the period April 10,1977 to March 10, 1978 and this had taken place during the period immediately after the employment of the petitioner''s son on February 17, 1977 in the Syndicate Bank. The excess deposit of Rs. 11, 54, 957.23p. which was referred to by the Enquiry Officer arose during the period July 1, 1978 to December 1, 1978 i.e. after about 18 months of the appointment of the petitioner''s son in the Syndicate Bank and as such it could not be alleged that the petitioner had extended pecuniary advantage to the Syndicate Bank by depositing excess amount over that of the approved ratio in violation of the order of the Deputy Chairman as a consideration of the employment of his son in the Syndicate Bank. The marginal difference as aforesaid in the ratio during some period is quite natural and to some extent unavoidable, considering the fact that transactions of crores of rupees were involved.

19. It is seen from the records that when the details of the said excess deposit of Rs. 4 lakhs were asked for, the respondents could not furnish it and issued a modified statement of imputation of the misconduct relying on the deposit of cheques to the Current Accounts with the two Banks stating that there had been an excess deposit of Rs. 11, 54,957.23 p made to the Syndicate Bank during the period from July 1, 1978 to December 1, 1978. Although the deposit of cheques to the Current Accounts with the two Banks as covered by the aforesaid Order of the Deputy Chairman was taken into consideration here, the figure was compiled for the period from July 1, 1978 to December 1, 1978 only. This period was arbitrarily chosen. The period of deposit of the cheques to the Current Accounts with the two Banks and the closing balances on some dates have been arbitrarily filed. This is erroneous. From the above it would be clear that during the total period as covered by the charge-sheet, read with the order of the Deputy Chairman alleged to have been violated, there was no excess deposit with the Syndicate Bank, on the contrary there was a reduced deposit of cheques to the

tune of Rs. 65,51,920.36 p. to the Syndicate Bank.

20. Further, from the records it is seen that on or about November 24, 1978 the Board obtained a loan to the tune of Rs. 360 lakhs from the Government of India to meet some arrears of payments to its workers. This amount was not received in cheques and not deposited by the Board''s cash section to the Syndicate Bank. It was directly credited to the Board''s account with the Syndicate Bank, Calcutta, by the Syndicate Bank, Delhi, being the bankers for the Board''s Ministry, through telex transfer on November 24, 1978, i.e. only a few days before the said date of the last balance shown, i.e. December 1, 1978. The amount of such credit by transfer from New Delhi was not covered by the order of the Deputy Chairman dated January 15, 1977 which related only to deposit of cheques. Further, the workers were pressing for payment of their arrears. The amount was withdrawn subsequent to December 1, 1978 for payment of arrear dues to the Board''s workers with effect from December 12, 1978. Therefore, by necessary implication this purely temporary amount in transit meant for specific purpose and withdrawn with effect from December 12, 1978 had to be excluded from the balance with the Syndicate Bank as on December 1, 1978. After it is so excluded, the balance in the Current Account with the Syndicate Bank as on December 1, 1978 would be Rs. 5.17 lakhs approximately only, as against the balance of Rs. 30.08 lakhs in the Current Account with the State Bank of India on the same date, i.e. December 1, 1978.

21. The balance in a bank account is the net result of the deposit minus withdrawal. A deposit may again be in the form of cheques and/or credit by transfers etc. In other words "deposit of cheques" + credit by transfer, etc - withdrawal = balance. The deposit of cheques is only one of the components of the balance. The balance and the deposit of cheques are, therefore, not one and the same thing and as such the position of the balances with the two banks as referred to in the charge-sheet was not relevant to the charges as the Deputy Chairman''s orders alleged to have been violated related to the deposit of cheques to the two banks only. In the two statements of accounts as referred to in para 4 of the Statement of Imputation of the Misconduct there were balances on 18 dates with two banks shown, out of which as stated in the said amended Statement of Imputation of the Misconduct dated March 9, 1988 the balances in the Current Account were more with the Syndicate Bank on April 10, 1977, September 10, 1977, December 10, 1977, January 10, 1978, February 10, 1978, October 1, 1978, November 1, 1978 and December 1, 1978, i.e. on 8 dates only in other words the balances in the Current Account with the State Bank of India were more on 10 dates. In terms of the number of dates of excess balances also there was no advantage given to the Syndicate Bank.

22. There is another aspect of the matter. The Deputy Chairman of the Calcutta Dock Labour Board in his direction did not mention about the ratio to be maintained into two banks on each and every day, as this is neither feasible nor practical. In any bank operation day-to-day maintenance of any fixed ratio is not

practicable because of various inherent difficulties. It is also seen from the statements that the Board obtained loans and other remittances from the Ministry of Shipping and Transport from time to time for payment of dues to the workers under different heads of A/cs. which were directly credited to the Board''s Bank A/c. by the Syndicate Bank as they happened to be the Banker of the Ministry of Shipping and Transport. The outflow of such remittances from the bank would naturally be for the purpose for which such remittances were made. In terms of deposit, one cheque irrespective of the amount would have to be deposited in one bank and the same cannot be split into two so as to maintain any fixed ratio. Similarly, while making payment to a party against the outstanding amount the same is normally made out in one cheque rather than in two different cheques on two different banks so as to maintain any fixed ratio of balances on day-to-day basis. The problem becomes more acute while dealing with large sums as in the instant case. One has to take a rational and practical view of the Deputy Chairman''s order which is more by way of broad policy outline and the same cannot be taken literally.

23. The first article of charges, therefore, is on the face of it unsustainable.

24. As regards the second article of charges, the petitioner''s son was appointed in the Syndicate Bank on or about February 17, 1977. At the relevant point of time, there was no requirement or obligation under any of the service rules and regulations which applied to the petitioner, to obtain approval of the competent authority or to send official intimation on his own about the fact of employment of, inter alia, his son in the Syndicate Bank. Calcutta Dock Labour Board approved the introduction of Service Conduct Rules of the Officers from May 10, 1980. The said Rules were challenged before this Court and ultimately on December 9, 1987 the writ petition challenging the said Rules was dismissed and the interim order of injunction was vacated. Thereafter, Board at its meeting held on December 24, 1987 passed a resolution for implementation of the said Rules with retrospective effect from May 10, 1980. The provisions contained in the Calcutta Dock Labour Board Class-I and Class-II Officers'' Conduct Rules were brought into effect much later on or about December 24, 1987 with effect from May 10, 1980. Moreover, Clause (11) of the said Conduct Rules related to engagement in private organisations. The Syndicate Bank was at the material point of time and is a Public Sector Organisation under the control of the Ministry of Finance, Banking Division. Hence, in any event, the said provision was inapplicable. Further it becomes relevant to examine the deposition of PW 1 Shri M. Ganesh Bhat, Assistant General Manager, Syndicate Bank which is Annexure ''F'' to the writ petition. Shri Bhat stated that as per the procedures for recruitment of clerical hands during the period from 1976 to 1978, generally the bank used to advertise the vacancies and candidates were called for written test followed by interview before they were finally selected. There were also cases where the Chief Executive of the Bank could appoint clerks directly without going through the normal procedure. This discretionary power of the Chief Executive was withdrawn after the formation of the Banking Service Recruitment Board in

1979. In the present case, the Chairman used his discretionary power after recommendation was made by the Deputy General Manager. From the evidence of Shri Ganesh Bhat it further appears that in the recommendation letter of the Deputy General Manager, Syndicate Bank, dated January 21, 1977, it was specifically observed that the Chairman, Calcutta Dock Labour Board, Calcutta recommended the application of the petitioner''s son. The said Mr. Bhat in his examination-in-chief said as follows:

"The applicant submitted the application through the N.S. Road Branch to the Regional Office at Delhi on November 24, 1976 and the Regional Office recommended to the Chairman and the Chairman permitted the candidate to go through the training programme for the purpose of determining the aptitude. After getting a satisfactory report from the training college, he was given the appointment order on February 5, 1977."

In his cross-examination he said as follows:

"The D.G.M. Delhi through his letter dated December 8, 1976 got the prescribed application form from the applicant and permitted him for appearing for the training course, which has been approved by the Chairman in the letter dated January 24, 1977 which has been approved by the Chairman. It appears that Shri Saha joined the training on January 13, 1977 and the approval was obtained later on from the G.M.D. In the recommendation letter of the Dy. G.M. Syndicate Bank January 21, 1977 it was written while forwarding the application of Shri S.C. Saha to the GMD that the Chairman of Dock Labour Board, Calcutta has recommended his application,"

Therefore, it is apparent that the employment of the petitioner''s son in the Syndicate Bank was more upon the recommendation of no less a person than the Chairman, Calcutta Dock Labour Board. Therefore, Article-II of the charges on the face of it is also unsustainable and perverse.

It may be mentioned here that in paragraph 22 of the affidavit-in- opposition filed on behalf of the respondent it has been, inter alia, stated as follows:

"It is stated and submitted that the writ petitioner being a senior Class-I Officer of the CDLB it was his moral obligation to inform the competent authority about the fact of his son''s employment in the Syndicate Bank, particularly when the CDLB was having business interest with the bank and the son of the writ petitioner was appointed in the circumstances stated hereinbefore. It is submitted that the writ petitioner has committed administrative impropriety of serious nature without bringing this fact to the notice of the competent authority which was unbecoming of a Class-I Officer of the CDLB."

From the facts and circumstances mentioned hereinbefore it would be evident that there was no breach of any rule governing Service Conduct of the Officers. If it was a moral obligation, no punishment can be inflicted upon the incumbent for breach of a moral obligation. A father has also a moral obligation to see his son employed so that his son can have a meaningful existence. In my view, therefore, the second article of charge cannot stand at all.

25. The charges in any event were stale. The charge-sheet dated December 23, 1986 was is sued almost after a decade of the alleged inci dents having occurred. As has been held in the case of Samarendra Narayan Ghosh v. State of West Bengal reported in (1984) 1 Cal LJ 56 and in The State of Madhya Pradesh Vs. Bani Singh and another, the charge-sheet is, therefore, violative of the principles of natural justice and thus illegal, invalid and bad. Conse quently all steps taken on the basis thereof or thereunder are also illegal and bad.

26. Further in between the occurrence of the alleged incidents between 1976 and issuance of the charge-sheet on December 23, 1986 the petitioner was promoted to the post of Administration Superintendent (Chipping and Painting) on June 16, 1983. This amounted to condonation of alleged lapses/charges. Hence the question of issuance of the charge-sheet on these alleged charges could not or did not arise.

27. In the case of R.K. Gupta Vs. Coal India Ltd. and Others, it has been held by this Court that the fact that promotion was granted to the petitioner therein on several occasions after alleged irregularity made by him and in view of the fact that he was selected by the Departmental Promotion Committee is to be construed to mean that misconduct, if any, prior to the date of promotion was in fact condoned by the authority concerned. In coming to the said decision the Learned Judge relied upon the Division Bench decisions of this Court in the case of Union of India v. Mohammed Habibula Haque, reported in (1978) 1 SLR 748 and the Collector of Customs v. Rebati Mohan Chatter-jee, reported in (1976) 2 SLR 897. In the said decision in R,K. Gupta''s case (supra) the Learned Judge also held that the disciplinary proceedings were liable to be quashed on the ground of inordinate delay after the incident over which the proceedings was drawn had happened. The aforesaid decisions of this Court are applicable in all force to the instant case.

28. Heavy reliance has been placed by the Id. Advocate for the respondent on the recent decision of the Supreme Court in New Bank of India v. N.P. Sehgal (supra). In that case at the relevant time respondent 1 was an officer being the Manager in the Hardwar Branch of the appellant Bank, a Government of India Undertaking. On April 2, 1982 a show cause notice was served on respondent 1 in respect of several irregularities, lapses, acts of omissions and commissions. On May 4, 1982 respondent 1 submitted his reply to the said show cause notice denying the charges made against him and asking for the holding of an enquiry into the allegations. On July 17, 1984 respondent 1 was promoted from Scale II to Scale III by the appellant. It appears from the record that disciplinary action was contemplated against respondent 1 but in November 1984, disciplinary proceedings contemplated against respondent 1 were kept in abeyance as some of the allegations against him were under investigation by the Central Bureau of Investigation (CBI). On March 11, 1988 interviews for promotion from Scale III

to Scale IV were conducted and respondent 1 was one of the officers interviewed for promotion. On April 27, 1988 a charge sheet was served on respondent 1. On May 27, 1988 an enquiry was ordered against him and the Commissioner of Departmental Enquiries, Government of India, was appointed as the Enquiry Officer. On June 30, 1988 respondent 1 filed a suit in the Court of Sub-Judge Second class, Jalandhar for a declaration that the order dated April 27, 1988 by which respondent 1 was served with charge sheet was illegal and in violation of the Service Regulations and unsustainable in law and prayed for a permanent injunction restraining the appellant and others from proceeding with the enquiry on the basis of the said charge- sheet. One of the main contentions urged on behalf of respondent 1 in the said suit was that by reason of the promotion granted to him from Scale II to Scale III on July 17, 1984 as aforesaid, which was after the irregularities and misconduct alleged against him had been committed, and in view of the said promotion the appellant must be deemed to have condoned the earlier misconduct, if any, of respondent 1; and thereafter it was not open to the appellant to take any action against respondent 1 in respect of the said misconduct. This contention found favour with the learned trial Judge who made a declaration that the order serving the charge sheet on respondent 1 was illegal and restrained the appellant and others from proceeding with the enquiry on the basis of the said charge sheet. An appeal was preferred by the appellant against the said order in the Court of learned Additional District Judge, Jal-landhar but it was dismissed as learned Additional District Judge accepted the reasoning and conclusions of the learned Trial Judge. The second appeal against the decision of learned Additional District Judge was dismissed by the High Court and then an appeal was directed against the judgment of the High Court.

There a contention was raised by the Id. Counsel for the Bank that promotion granted to respondent No. 1 from Scale II to Scale III on July 17, 1984 could not be regarded in law as the condonation of the earlier acts of misconduct committed by the respondent No. 1. There the Supreme Court considered the relevant rule and observed as follows (at p. 572)

"In considering the submissions of the respective parties, we have to bear in mind that it is accepted before us that in law the mere fact that disciplinary proceedings are contemplated or under consideration against an employee does not constitute a good ground for not considering the employee concerned for promotion if he is in the zone of consideration nor would it constitute a good ground for denying the promotion if the employee is considered otherwise fit for promotion. In the present case, we find that this legal position is reinforced by Clause (9) of the Promotion Policy of the appellant Bank. Clause (9) reads as follows:

"(9) Officers in respect of whom disciplinary action is in process will be permitted to take part in the promotion process, subject to the condition that the promotion (if they are selected) will be withheld until the officer is exonerated from the charges. In such an event the promotion will be given effect to from the date on which it would have been otherwise effective but for the disciplinary action. The officer will not be eligible for promotion if punishment, except censure, was awarded as a result of the disciplinary action."

On a plain reading of this clause it is clear that even if disciplinary action is in process against an officer of the appellant Bank, that would not entitle the appellant Bank to exclude from consideration for promotion of the officer concerned if he is otherwise entitled to be so considered. The only right given to the appellant in such cases is that, in case such an officer is otherwise found fit for promotion and selected for promotion, that promotion can be withheld until the officer is exonerated from the charges. It is significant that the said clause goes to state that in case such an officer is exonerated from the charges, promotion will have to be given effect to from the date on which it would have been otherwise effective but for the disciplinary action. This rule gives rise to the implication that till disciplinary action is in process or initiated, the officer concerned against whom allegations of misconduct might be made, can neither be excluced from consideration for promotion if he is entitled to be considered otherwise nor can the promotion be denied to him. In these circumstances, when the promotion from Scale II to Scale III was granted to respondent 1 on July 17, 1984, there could be no question of condonation of the earlier acts of misconduct by reason of this promotion because in law and in view of the said Clause (9) the appellant had no option but to consider respondent 1 for promotion and, if he was otherwise found fit for promotion, to promote him. In view of this conclusion, it must follow that the charge sheet submitted against respondent 1 and the disciplinary proceedings pursuant to the said charge sheet cannot be said to be bad in law and cannot be interfered with on the ground of condonation. In our view, the courts below were in error in holding that the earlier alleged acts of misconduct of respondent 1 had been condoned by the appellant and basing their conclusions thereon."

29. The decision of the Supreme Court in N.P. Sehgal (supra) is therefore clearly distinguishable. Therein the promotion policy of the Bank provided that till disciplinary action is in the process of initiated the officer concerned against whom allegations of misconduct might be made, can neither be excluded from consideration for promotion if he is entitled to be considered otherwise nor can the promotion be denied to him. It was in these circumstances that promotion from Scale-II to Scale-III was granted to the respondent. There could, therefore, be no question of condonation of the earlier acts of misconduct by reason of promotion because in law in view of the promotion policy the Bank had no option but to consider the employee for promotion and, if he was otherwise found fit for promotion, to promote him. Further in the said case the show cause notice in respect of act of misconduct had already been served upon the respondent therein and his reply was also received and thereupon he was promoted from Scale-II to Scale-III.

In the instant case the promotion policy of the Board did not contain any such provisions or stipulation. In the premises the question of the Board being bound in law or in view of the promotion policy of the Board to consider the petitioner for promotion even if there was any disciplinary action contemplated against him could not or did not arise.

30. It may be mentioned that in N.P. Sehgal (supra) the decisions of the Supreme Court in The State of Punjab Vs. Dewan Chuni Lal, and D. Ramaswami Vs. State of Tamil Nadu, were not considered at all. In Dewan ChuniLal (supra) the Supreme Court has observed (at p. 2089):

"In view of reports earlier than 1944 should not have been considered at all inasmuch as he was allowed to cross the efficiency bar in that year, it is unthinkable that if the authorities took any serious view of the charge of dishonesty and inefficiency contained in the confidential reports of 1941 and 1942 they could have overlooked the same and recommended the case of the officer as one fit for crossing the efficiency bar in 1944. It will be noted that there was no specific complaint in either of the two years and at best there was only room for suspicion regarding his behaviour."

It may also be mentioned that the Supreme Court in D. Ramaswami (supra) held that where charges were framed on the basis of adverse entry, in the confidential roll of the concerned officer which were dropped and he was subsequently, not only promoted to selection post but also appointed to very responsible position on such promotion, his compulsory retirement shortly after such promotion was invalid and unsustainable. In that case the Supreme Court considered amongst others the decision passed in the case of Dewan ChuniLal (supra).

31. Similarly the decision of the Division Bench of this Court in the case of Board of Trustees for the Port of Calcutta v. Tarun Kumar Chowdhury (supra) does not support the respondent''s case. On the contrary it has been specifically held that an order for compulsory retirement cannot be passed as a punishment in disguise. It has also been held therein that an order for compulsory retirement can be challenged if it is abritrary, mala fide or passed on collateral considerations or if it is passed vindictively or mechanically or by taking into account absolete service records which are to be the category of irrelevant material. The facts of the said case are totally different from herein. Therein the writ petitioner was an employee under the Board of Trustees for the Port of Calcutta. After an investigation against certain charges against him the Chief Vigilance Officer of the Port Trust recommended compulsory retirement of the Writ Petitioner, a Review Committee of the Port Authorities approved of the same and the Chairman passed an order of compulsory retirement of the petitioner stating therein his own satisfaction about the requirement being in the public interest. This order was passed in exercise of power conferred by Rule 56(J) of the fundamental Rules adopted by the Port Trust Authorities which reads as follows:-

"56. (J) Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice.

(i) If he is in Group ''A'' or Group ''B'' service or post in a substantive, quasi-permanent or temporary capacity or in a Group ''C'' post or service in a substantive capacity, butofficiat-ing in a Group ''A'' or Group ''B'' post or service and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years.

(ii) in any other case-after he has attained the age of fifty-five years."

It was held by the Division Bench that such an order for compulsory retirement is not a punishment as the same did not in any manner fix any guilt upon the writ petitioner. Such is not the case here. In the instant case the order of compulsory retirement has been passed as and by way of punishment. Moreover a part of the retiral benefits of the petitioner has also been taken away.

32. The enquiry proceedings were also conducted in violation of the principles of natural justice rendering the same and consequently the enquiry report ab initio void. It is seen from the records that for the purpose of preparing his defence to the purported charges the petitioner prayed for inspection of certain vital documents from the disciplinary authorities in terms of his letters dated December 27, 1986, February 7, 1987 and February 20, 1987. The disciplinary authority after permitting inspection of certain documents refused to give inspection of the remaining documents asked for by the petitioner in gross violation of Clause 10(e) of the Calcutta Dock Labour Board Supplementary Service Rule No. 8 without recording any reasons in writing as to how in the opinion of the disciplinary authority such records were not relevant for the purpose or how it was against the public interest to allow the petitioner access thereto. The Enquiry Officer carried on with the enquiry proceedings following his own procedure dehors the Calcutta Dock Labour Board Supplementary Service Rules being Rule No. 8. The Presenting Officer taking advantage of such irregularity on the part of the Enquiry Officer introduced several extraneous matters which did not form part of the charge-sheet, in the written brief submitted on behalf of the Board before the Enquiry Officer. These extraneous materials and matters were taken into consideration by Enquiry Officer to come to a conclusion against the petitioner, in spite of specific objection being raised by the petitioner in this respect. Such action amounted to denial of reasonable opportunity to a charge-sheeted employee rendering the enquiry proceedings ab initio void.

33. In the case of Export Inspection Council of India v. Kalyan Kumar Mitra reported in (1987) 2 Cal LJ 344 it has been held by the Division Bench of this Court that non-supply of relevant documents amounted to violation of natural justice and render the disciplinary pro ceedings bad. In coming to the said

conclusion the Division Bench followed the decision of the Supreme Court in the case of Kashinath Dikshita Vs. Union of India (UOI)and Others, and another Division Bench of this High Court in the case of Anandram Jiandrai Vaswani Vs. Union of India (UOI) and Others, The principles laid down in the said decisions of the Supreme Court and this Court are fully ap plicable to the instant case. ;

34. Even otherwise the order of punishment dated September 13, 1988 having been passed without giving the petitioner an opportunity to show cause against the proposed punishment in violation of Rules 10(1) and 13 of the Calcutta Dock Labour Board Supplementary Service Rules, is illegal, invalid and bad, being violative of the mandatory provisions.

35. In the affidaivt-in-oppostion an attempt has been made to justify the action on the ground that it was not reasonably practicable and/or expedient to follow the prescribed Rules, in the circumstances of the present case which comes within the exception provided for in terms of Clauses (ii) and (iii) of Rule 13. The following sequence of events would show that such contention is without any substance whatsoever:-

(a) There has been no delay on the part of the petitioner and he had fully co-operated with the enquiry proceedings.

(b) There was inordinate delay and reluctance on the part of the department to furnish necessary documents for inspection. The petitioner had to plead before the Enquiry Officer who eventually allowed 12 out of 15 documents that he had requested for.

(c) Written statement of defence was submitted on May 11, 1987. The Board took nearly five months to appoint the Enquiry Officer which was done only on October 15, 1987.

(d) The Enquiry Officer submitted his report on May 31, 1988 whereas the order of compulsory retirement was issued on September 13, 1988, after nearly three and half months (that also without complying with the mandatory provision of issuance of a show cause notice). It was within the knowledge of the Disciplinary Authority that the petitioner was due to retire on superannuation on September 30, 1988. The petitioner had applied for leave which was sanctioned in the first week of July 1988 for the period from September 7, 1988 to September 20, 1988 so that he could avail of his Leave Travel Concession before his actual retirement.

(e) In any event the petitioner was to resume his duties on September 21, 1988 whereas his date of retirement was September 30, 1988 and there was still time for the Disciplinary Authority to comply with the mandatory provisions.

36. By the impugned order the petitioner has been denied full retirement benefits to which he is otherwise eligible under the service conditions. The curtailment of retirement benefit has been sought to be done by the Disciplinary Authority under the provisions of Clause 22(a) of Supplementary Service Rules-1

of the Board. Clause 22(a) is inapplicable in the instant case as the said Clause concerns only compulsory retirement in the normal course and not by way of punishment for which there is specific provision contained in the Disciplinary, Punishment and Appeal Rules, being Rule No. 8 of the Supplementary Service Rules. Clause 22(a) of SSR-1 provides for retirement with full retirement benefits. Sub-clause (v) of Clause 22(a) of SSR-1, provided for as follows:-

"Compulsory retirement by the Disciplinary Authority or by the Board with the specific provision that full retirement benefits will be allowed to the employee concerned."

The said Rule as a whole only stipulated that an employee when he retires or is forced to retire before the age of compulsory retirement shall be eligible to receive full retirement benefits. In this context Clause (v) is more an enabling provision which provides that even in cases where the employee is forced to retire and otherwise not eligible for full retirement benefits in the normal course, a discretion has been given to the Disciplinary Authority so as to enable it to allow the employee retirement benefits even though he is not otherwise eligible for full benefits. In the instant case, the Disciplinary Authority has, however, taken advantage of the said enabling provision to deprive the petitioner of the full retirement benefits to which he is otherwise eligible, as he has been made to retire compulsorily.

37. The Discipline, Punishment and Appeal Rules - SSR-8 provide for various penalties by way of punishments under Clause (6). The Note on Discipline, Punishment and Appeal Rules is very relevant inasmuch as Note 8 specially deals at length with Dismissal, Removal and Compulsory Retirement. Clause (d) of the said Note 8 provides as follows:-

"Compulsory retirement" when inflicted as a punishment does not include cases of compulsory retirement of employees in accordance with the provisions relating to superannuation or normal retirement. As a punishment it means forced termination of service before the expiry of the period prescribed for termination in the usual course. "Compulsory retirement" is considered a punishment less severe than that of "dismissal" or "removal". The stigma that is attached to the expression "dismissal" or "removal" is not attached to the expression "compulsory retirement" .

The agreed amount of notice or reasonable notice may have to be given in the cases of "compulsory retirement" but not so in the case of dismissal or removal. "Compulsory retirement" should be considered as a necessary incident of the right of an employer to terminate the service of the employee under terms and conditions of employment and denotes the operation of such part of the contract between them as relates to terminating it by giving the agreed amount of notice or by payment and acceptance of money in lieu of notice. The employee who is compulsorily retired, does not lose any part of the benefits that he has earned, shall be entitled to the full retirement benefits under the Rules and shall not be disqualified for future employment under the Board."

38. From the above provisions it will thus be clear that the petitioner cannot be denied the full retirement benefits. Admittedly there was no financial loss to the Calcutta Dock Labour Board. The order of punishment, therefore, on this ground also is bad.

39. For the reasons aforesaid this application is allowed. The charge sheet, the report of the Enquiry Officer and the order of punishment dated September 13, 1988, and corrigendum thereto dated September 23, 1988 are set aside and quashed.

40. The petitioner shall be treated as on duty till September 30, 1988 when he was to retire upon attaining the age of superannuation. He will be entitled to all service benefits including retirement benefits and other monetary benefits in full which he would have been entitled to had he retired on due date on superannuation. All arrears shall be paid to the petitioner within a period of four weeks from the date of communication of this order.

41. Let a xerox copy of this judgment be given to the parties upon usual terms.

