

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side**

F.M.A. 839 of 2021

With

I.A. No. CAN 1 of 2021

Manoj Kumar Singh

Vs.

Union of India & Ors.

With

FMA 840 of 2021

With

CAN 1 of 2021

Sachin Kumar Mondal

Vs.

Union of India & Ors.

With

FMA 841 of 2021

With

IA No. CAN 1 of 2021

Shobhakant Kumar

Vs.

Union of India & Ors.

FMA 842 of 2021

With

IA No. CAN 1 of 2021

Rajnarayan Kumar

Vs.

Union of India & Ors.

FMA 843 of 2021

With

IA No. CAN 1 of 2021
Ashim Kumar Chaudhury
Vs.
Union of India & Ors.
FMA 844 of 2021
With
IA No. CAN 1 of 2021
Sri Gurudev
Vs.
Union of India & Ors.
With
FMA 845 of 2021
With
IA No. CAN 1 of 2021
Sri Hemant Kumar
Vs.
Union of India & Ors.
FMA 846 of 2021
With
IA No. CAN 1 of 2021
Rajanish Kumar Ranjan
Vs.
Union of India & Ors.

The Hon'ble Justice Subrata Talukdar
&
The Hon'ble Justice Lapita Banerji

For the Appellant in all the
Appeal

: Mr. Achin Kumar Majumder
Mr. Pratik Majumder

For the Respondents : Mr. Partha Ghosh
/Union of India Mr. Dilip Kumar Chatterjee

Hearing concluded on : 18.07.2022

Judgment on : 25.08.2022

Lapita Banerji, J.:-This writ appeal and application arises out of an Order dated February 22, 2021, whereby, the Hon'ble Single Judge refused to pass an interim order staying the enquiry proceedings against the appellant/writ petitioner initiated on the basis of the Memorandum of Charges dated December 16, 2020.

2. The writ petitioner/appellant was a Constable in the Railway Protection Force (RPF), Eastern Railway. While he was on duty, Railway materials of approximately Rs.27 lakh were found to be stolen on June 18, 2019.
3. A criminal case was instituted against the writ petitioner in the Court of Learned Chief Judicial Magistrate, Howrah being Case No. 3 of 2019 dated June 19, 2019 under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966. The Enquiry Officer arrested the writ petitioner on August 3, 2020 and referred the case to the Chief Judicial Magistrate, Howrah. Subsequently, on August 8, 2020, the writ petitioner was released on bail.
4. A separate disciplinary proceeding was initiated under the Railway Protection Force Act, 1957 by issuance of a Charge Sheet dated

December 16, 2020 vide Memo No.RPF/CS/153(GD)/14/2020.Prior to that, a preliminary enquiry was held by the Senior Divisional Security Commissioner, RPF, Eastern Railway, Kolkata. A report was submitted by him on June 25, 2019 to the I.G. cum Principal Chief Security Commissioner holding the writ petitioner along with some other officers/custodians as well as RPF personnel/constables guilty. A detailed preliminary report was submitted by the Senior Divisional Security Commissioner confirming theft.

5. After the preliminary enquiry report, the Assistant Security Commissioner (ASC)/respondent No.4 conducted the enquiry proceedings and issued the Charge Sheet dated December 16, 2020. The document “impugned” in the writ petition is the “charge sheet”.
6. A detailed representation/defence was submitted by the writ petitioner/appellant on December 26, 2020 before the disciplinary authority. Challenging the said **Charge Sheet** and, inter alia, praying for cancellation/withdrawal of the same, the writ petitioner filed the present Writ Petition being W.P.A. No. 3051 of 2021.
7. By the Impugned Order dated February 22, 2021 the Hon’ble Single Judge rejected the prayer for interim order on the following grounds:
 - (i) The Assistant Security Commissioner/respondent No.4 had the power/authority to issue the **Charge Sheet** under Schedule – III of the RPF Rules, 1987. Hence, no jurisdictional error could be found vitiating the issuance of the **Charge Sheet**.

(ii) Since the proceedings with regard to enquiry had only commenced, the question whether the allegations/issues in the **Charge Sheet** were pre-judged, could not be ascertained at that stage. It could only be ascertained after the enquiry was concluded.

(iii) There is no bar to the departmental proceedings and the criminal proceedings being held simultaneously.

8. The Hon'ble Single Bench passed directions for affidavits on the grounds aforesaid and did not stay the enquiry proceedings as initiated by the Impugned **Charge Sheet** dated December 16, 2020. Hence, the appeal.

9. Eight (8) Writ Petitions were filed by 8 Constables challenging their involvement in the common incident of crime dated June 18, 2019 leading to issuance of the common **Charge Sheet** dated December 16, 2020 before the Hon'ble Single Bench. All the eight (8) Writ Petitions/Appeals are based on a common set of facts. Eight Analogous Appeals were filed challenging the Common Order of the Hon'ble Single Bench passed on February 22, 2021 in separate Writ Petitions filed by each of the appellants. Accordingly, 8 appeals being analogous in nature are being dealt with by this common judgment.

10. When the present Appeal being FMA 839 of 2021 came up for hearing, the Hon'ble Division Bench by an Order dated November 8, 2021

directed as an Interim Measure that in the event of a final order being passed in the departmental proceedings, the same “*shall not be given effect to without the leave of court*”.

11. The said Interim Order dated November 8, 2021 was modified by an Order dated November 17, 2021, since it was brought to the notice of the Court that the final order in the disciplinary proceedings (DP) was already issued and communicated on November 8, 2021. Hence, the Interim Order was modified to the extent that “*the status quo as on date shall continue until further orders*”.

12. Pursuant to the leave given by this Bench, a Supplementary Affidavit annexing the Final Order of Removal dated November 8, 2021 passed by the Security Commissioner/respondent No.3 and the detailed defence/representation to the findings of the D&AR enquiry were brought on record.

13. The findings of the enquiry officer was dated September 30, 2021. A detailed representation/defence of almost 100 pages was submitted before the Hearing Committee against the findings of the Enquiry Officer, on October 11, 2021.

14. After considering the representation/defence of the appellant/writ petitioner, the respondent No.3/Security Commissioner (SC) vide Memo No. RPF/CS/153/M.K.S.-11/2020 dated November 8, 2021 passed a speaking order as to why the charges against the writ petitioner/appellant were proved under Rules 146.1, 146.2(i), 146(4),

147(i) & (ii) of RPF Rules, 1986 and 3.1(iii) of the Railway Service Conduct Rules, 1968. The appellant/writ petitioner was found not guilty of the charges under Rule 146.7(iii) of RPF Rules, 1987.

- 15.** The respondent No.3/SC held that the “*charges were very serious in nature as it showed acts of gross indiscipline and serious misconduct by a disciplined member of the Force*”.

Hence, by an Order dated November 8, 2021, major penalty of “**removal from service**” was awarded by the respondent No.3/SC.

- 16.** Mr. Majumder, Learned Counsel appearing for the appellant/writ petitioner argued that the initial **Charge Sheet** has been issued against the writ petitioner/appellant by the ASC/Respondent No.4, on December 16, 2020. The respondent No.4 is not the appointing authority of the writ petitioner and, therefore, he could not have issued the Charge Sheet. Hence, the same is vitiated in law.

- 17.** He argued that the **Charge Sheet** dated December 16, 2020 clearly indicated the mindset of the Disciplinary Authority. He prejudged the issues at the time of framing of the charges. Since the preliminary enquiry has been conducted by the Senior Divisional Security Officer, the respondent No.4 being a subordinate authority could not act as the disciplinary authority as there would not be any fair and impartial enquiry.

- 18.** Mr. Majumder further submitted that since the criminal proceedings and the disciplinary proceedings (DP) were based on

identical set of facts and the witnesses before both the proceedings were same, the DP should have been kept in abeyance by the Hon'ble Single Bench during the pendency of the criminal proceedings.

19. He contended that, the provisions of the Article 311(1) of the Constitution of India have not been complied with. There has been violation of the principles of natural justice and procedural illegalities/irregularities were committed during the D.P. Also, Rule 153 of the RPF Rules, 1987 was violated. He urged that the Enquiry Officer asked leading questions in cross-examination to the prosecution witnesses as well as the defence witnesses which was not permitted in law.

20. He argued that the main/prime allegations in the Charge Sheet were not proved and the writ petitioner was held guilty for tarnishing the image of the Force as he was arrested under Railway Property (Unlawful Possession) Act, 1966/RP(UP) Act. The same was purportedly reported in "Sangbad Pratidin" on August 5, 2020, but, despite repeated requests, the writ petitioner was not given a copy of the said newspaper which caused prejudice to his defence. Mr. Majumder invited this Court to evaluate the evidence with regard to the questions put in cross-examination and the documents relating to the call records of the writ petitioner etc. He urged that the punishment awarded to the writ petitioner/appellant was disproportionate to the gravity of the purported crime committed by him.

21. In support of his contention, Mr. Majumder relied on the cases of:

(a) **Union of India &Ors. vs. B.V.Gopinath**, reported in AIR 2014 SC 88 at Paragraphs 39, 40, 46 and 49, and

(b) **State of Tamil Nadu represented by Secretary to Government (Home) Vs. Promod Kumar IPS and another** reported in AIR 2018 SC 4060 at paragraphs 18 and 19 for the proposition that the **Charge Sheet** could be only issued by the appointing authority or with the approval of the appointing authority. Article 311(1) of the constitution of India ensures that no person who is member of a Civil service of the Union or all India service can be dismissed or removed by an authority subordinate to that by which he was appointed. Article 311(2) ensures that no Civil Servant is dismissed or reduced in rank except after an enquiry, held in accordance with the Rules of Natural Justice.

22. Satish son of **Ram Prasad Agnihotri** vs. **Union of India** decided on May 1, 2020, “Special Civil Application” No. 466 of 2019 of Gujarat High Court was cited for the proposition that the initiation of the disciplinary proceedings by an officer not competent under the RPF Rules, 1987 deserve to be vitiated.

23. Next reliance has been placed on **Kumaon Mondal Vikas Nigam Ltd. Vs. Girija Shankar Pant** reported in 2000(8) SLR 769 for the proposition that the language of the purported charge-sheet indicated the

closed mind set of the disciplinary authority. The disciplinary authority confirmed the conclusion of guilt at the time of issuing the charge-sheet and the same was tainted with bias.

24. In the case of **ORYX Fisheries Private Limited vs. Union of India and others** reported in (2010) 13 SCC 427, it was held that a quasi-Judicial authority, while acting in the exercise of statutory power must act fairly, with an open mind while initiating show cause proceedings. While issuing the charge-sheet without telling the delinquent the charges the authority could not draw a definite conclusion of his alleged guilt. It was also held that the show cause notices could not be read hyper-technically. The order of cancellation of the registration certificate only quoted from the show cause notices and was a non-speaking order and so was held to be non-est in the eye of law.
25. Mr. Majumder cited the decision in **Balbir Singh Sidhu Vs. Union of India and others** passed by a Co-ordinate Bench of this Hon'ble High court in FMA No. 3521 of 2014 dated August 31, 2017 for proposition that the disciplinary proceedings were required to be stayed and kept in abeyance till the disposal of the enquiry proceedings.
26. Reliance is placed on **G. ValliKumari vs. Andhra Education Society& Ors.** reported in (2010)2 SCC 497 for the proposition that the punishment of removal was disproportionate to the appellant since he was not found guilty of any serious misconduct. There was a complete

violation of natural justice in the manner in which the disciplinary proceedings were conducted.

27. In **Jai Bhagwan vs. Commissioner of Police** reported in (2013) 11 SCC 187, it was held that a reduction of the rank of the appellant to the grade of the constable would have been the appropriate punishment instead of dismissal from service so the punishment was disproportionate to the misconduct. It was held that in ordinary course the matter should have been remitted back to the disciplinary authority for passing a fresh order of punishment. The said course was avoided because the order of dismissal was passed at a distant point in time. The order of dismissal was passed in 2001 and the appeal was decided in 2013.

28. In **Collector Singh vs. L.M.L. Limited, Kanpur** reported in (2015) 2 SCC 410 it was held that the punishment of dismissal from service was disproportionate to the misconduct of using abusive language against the superior officer. No straightjacket formula could be evolved and each case had to be considered on its own facts.

29. In **State Bank of India and others vs. D.C. Aggarwal and another** reported in 1992(5) Service Law reported of 598, it was held that taking action against an employee on confidential documents which is the foundation of the order exhibits complete misappreciation about the procedure that is required to be followed by the disciplinary authority. Reliance on a central vigilance report as the basis of proving the charges

and not handing it to the delinquent employee led to the quashing of the order.

30. Mr. Ghosh, appearing for the respondents, argued that the disciplinary proceedings have already been concluded. The same has culminated in the **Order of Removal** dated November 8, 2021, passed by the respondent No.3/SC. The said Order is appealable under Rule 212 of the RPF Rules, 1987. The Order of the Appellate Authority can also be reviewed under Rule 219 of 1987 Rules.

31. He submitted that under Schedule – III of the 1987 Rules, the Assistant Security Commissioner (ASC) was entitled to issue a charge sheet in respect of major punishments. The relevant provision was Rule 153 of the 1987 Rules. Besides suspension, ASC could also impose following major punishments:

Sl. No.5 – Reduction in rank or grade;

Sl. No.6 - Reduction to a lower stage in the existing scale of pay.

Therefore, no procedural breach has been committed by the respondent No.4 in issuing the Charge Sheet or conducting the enquiry proceedings.

32. Schedule – III of the RPF Rules, empowers the Divisional Security Commissioner/Security Commissioner/Commanding Officer/Senior Security Commissioner to pass an order of **dismissal or removal** of a

Constable. In the instant case, the preliminary enquiry was conducted by the Divisional Security Commissioner, disciplinary proceedings conducted by ASC/Respondent No.4 and the “**Order of Removal**” was passed by the Security Commissioner (SC)/Respondent No.3 who is the competent authority. Therefore, no breach of statutory procedure or rule was committed.

33. Considering the gravity of the offence, the ASC/respondent No.4 forwarded the file to the SC/respondent No.3. The respondent No.3/SC after applying his mind independently to the findings of the Enquiry Officer and upon consideration of the representation/defence passed the “**Order of Removal**”. Also, the writ petitioner/appellant failed to explain as to how he was prejudiced by the Charge Sheet being issued by the respondent No.4/ASC.

34. Under Section 9 of the RPF Act, 1987, any superior officer may impose punishment including suspension, removal and dismissal upon any “Enrolled Member,” subject to Article 311 of the Constitution of India. The writ petitioner is an “Enrolled Member” of the RPF i.e. a Constable.

35. As per Rule 151.1 the disciplinary authority in respect of any “Enrolled Member” of the Force shall be the authority specified in Schedule – III of the Rules. As per Schedule – III, the respondent No.4/ASC is the disciplinary authority and had been conferred with the power of suspension as well as the power to award a major punishment

e.g. reduction rank or pay in the existing grade. Therefore, the issuance of **Charge Sheet** and initiation of disciplinary proceedings are within the jurisdiction and authority of Respondent No.4/ASC.

36. Rule 152.2 clearly provides that a disciplinary authority competent to impose minor punishment may also initiate DP for imposition of any major punishment notwithstanding the fact that the disciplinary authority cannot impose such major punishment. Under Rule 154.2 if a disciplinary authority is of the opinion that the punishment warranted is not within its competence, then, the records of the enquiry shall be forwarded to the appropriate disciplinary authority.

37. He submits that no violation of Rule 153 relating to the procedure to be followed for imposition of major punishments have been made. In other words, in the present case all the procedures laid down under Rule 153 were followed. After a preliminary enquiry was made by a fact-finding authority in June 2019, investigations were made. The **Charge Sheet** was issued on December 16, 2020.. The confidential report/preliminary findings of the Senior Divisional Security Officer dated June 25, 2019 was handed over to the appellant/writ petitioner. Based on the preliminary report the **Charge Sheet** was issued on December 16, 2020. A detailed defence/representation was made against the allegations made in the **Charge Sheet** by the appellant. The appellant attended all the dates of enquiry proceedings, got the opportunity to cross-examine all the witnesses presented against him,

inspected the records/documents produced during the enquiry and got copies of the evidences/statements of the prosecution witnesses. Thereafter, at the second stage upon the findings of the Enquiry Officer, the appellant/writ petitioner, also got a chance to make a second defence/detailed representation. The witnesses were examined and cross-examined prior to submission of his second defence/written statement. 11 witnesses were produced by the appellant during the enquiry. He also produced various defence documents.

38. Mr. Ghosh contended that the appellant could not establish that all the witnesses in DP and criminal case are exactly same and identical or that the charges in both the cases are same and identical. There are as many as 33 witnesses in the criminal case out of which only 4 were common ones. Though the criminal case was initiated on June 19, 2019, not much progress has been made in it. The criminal case under Section 3(a) of the RP(UP) Act, 1966 was for the purpose of punishing the accused persons for theft of railway property, in case the crime was established. Whereas, the DP was initiated for serious lapses and negligence in the performance duties by the writ petitioner/appellant and also for tarnishing the image of the Force.

39. Having considered the rival submissions of the parties and the material placed on record, this Court is of the view that:

- (i) There was no jurisdictional error in the respondent No.3/Assistant Security Commissioner (ASC) in issuing the Charge Sheet dated

December 16, 2020 and also in conducting the disciplinary proceedings as the Enquiry Officer.

- (ii) Schedule – III of the RPF Rules clearly stipulates that the Assistant Security Commissioner is a disciplinary authority and can award major punishments like reduction of rank/scale of pay in the same rank to an enrolled member/Constable. Upon assessing the gravity of the misconduct, reduction of scale of pay/rank was not considered to be sufficient punishment by the ASC/ Respondent No.4 and he transmitted the file to the SC/Respondent No.3 for awarding the appropriate punishment of “**Removal**”. The **major** punishment of “**Removal**” has been awarded by the respondent No.3/Security Commissioner (SC) as per Schedule III of the RPF Rules, 1987.No violation of the statutory provisions/rules can be urged in that respect.

- (iii) Furthermore, there are several decisions including that of the Apex Court which clarify the position:

- (a) In **P.V. Srinivasa Sastry and others vs. Comptroller and Auditor General and others** reported in(1993)1 SCC 419, paragraph 4, it was held:

“Article 311(1) does not say that the departmental proceeding must be initiated only by the appointing authority. However, it is open to Union of India or a State Government to make any rule prescribing that the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the

appointing authority. Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holder of a civil post. But in absence of any such rule, this right or guarantee does not flow from Article 311 since initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences. At the same time this will not give right to authorities having the same rank as that of the officer against whom proceeding is to be initiated to take a decision whether any such proceeding should be initiated. In absence of a rule, any superior authority who can be held to be the controlling authority, can initiate such proceeding. In the present case it has not been shown that any rule prescribes that the Accountant General, who was the appointing authority of the appellant – Auditors, alone could have initiated a departmental proceeding.”

(b) **In Director General, ESI and another Vs. T. Abdul Razak** reported in (1996) 4 SCC 708 at paragraph 13, it was held:

“It is not necessary that the authority competent to impose the penalty must initiate the disciplinary proceedings and that the proceedings can be initiated by any superior authority who can be held to be the controlling authority who may be an officer subordinate to the appointing authority. The Regional Director, being the officer-in-charge of the region, was the controlling authority in respect of the respondents. He could initiate the disciplinary proceedings against the respondents even in the absence of specific conferment of a power in that regard.”

(c) In **P. Man Vs. The Chief Engineer Tamil Nadu Electricity Board Coimbatore & another** reported in 1995 LAB I.C. 2401 (MAD) the same view of the Apex Court has been reiterated. Para 4 read thus:-

“..... There must clear indication that the punishment alone has to be imposed by the named punishing authority and the disciplinary proceedings can be initiated by some other authority. Therefore, it is not possible to find fault with the initiation of disciplinary proceedings. In fact, the Supreme Court has now taken the view that so long as the service Rules do not contain a Rule that the departmental proceedings should be initiated only by the punishing authority, the same cannot be nullified under Article 311(1) of the Constitution of India. Reference may be usefully made in P.V. Srinivasa Sastry v. Comptroller and Auditor General, (AIR 1993 S.C. 1321) and Register of Co-operative Societies, Madras, v. F.X. Fernando (1994) 2 S.C.C. 746. Therefore, I reject the first contention of the learned counsel for the petitioner.”

- (iv) The aforesaid decisions clearly hold that unless there are contrary service rules regulating the terms of service, the appointing authority need not always be the disciplinary authority.
- (v) There is a clear indication that the punishment alone has to be imposed by the named punishing authority and the disciplinary proceedings can be initiated by some other authority. Therefore, it is not possible to find fault with the initiation of disciplinary proceedings. In fact, the Supreme Court has now taken the view that so long as the service Rules do not contain a Rule that the

departmental proceedings should be initiated only by the punishing authority, the same cannot be nullified under Article 311(1) of the Constitution of India.

- (vi) The cases of **B.V. Gopinath** (Supra) and **Promod Kumar IPS** (Supra) do not come to the aid of the appellant since the ASC/respondent No. 4 can also issue the charge sheet as a superior authority of the appellant and also under Schedule III of the RPF rules as the authority in the instant case. In both the cases the mandatory requirement of Rule 14 of Central Civil Service (Qualification Control and Appeal) Rules, 1965 which is *Pari Matera* with Rule 8(4) of the All India Service (Discipline and Appeal) Rules, 1969 mandating the disciplinary authority to “draw and/or cause to be drawn up” the charge memo was violated. Paragraph 46 of **B.V. Gopinath** (Supra) has relied upon the judgment of **Shrinivasa Sastry**(Supra) on the issue that Article 311(1) does not stipulate that departmental proceeding must be initiated only by the appointing authority.
- (vii) The said judgment of **Satish Agnihotri**(Supra) can be distinguished as Rules 152.2 and 152.4 of RPF Rules were not considered. It was also not relied upon by another Division Bench judgment passed by the High court of Judicature at Bombay in Civil appellate jurisdiction Writ Petition No. 310 of 2019 (**Sanjay Nhabat Singh vs. Union of India**). This Court agrees with the

reasonings of the Hon'ble Bombay High Court in **Sanjay Nhobat Singh** having regard to the principles laid down in the judgments of Hon'ble Supreme Court cited above.

- (viii) The Hon'ble Single Judge held by the Impugned Order dated February 22, 2021 that in the case of **Cap. M. Paul Anthony vs. Bharat Gold Mines Limited & Anr.** reported in (1999) 3 SCC 679 at paragraph 22, it was decided that there was no bar to departmental proceedings and criminal proceedings being conducted simultaneously. The Court on facts found that the charges and the witnesses could not be said to be identical, whereby, the disciplinary proceedings should be kept in abeyance till the disposal of criminal proceedings.
- (ix) Factually the instant appeal is far removed from **Balbir Singh Sidhu's case**(Supra). The Criminal proceedings in the instance case has 33 witness whereas only four prosecution witness (2,3,4 and 5) were argued to be common witness. The Criminal case was for theft, whereas, the DP was for negligence/derelection of duty leading to tarnishing of the image of the Force. As noted by the Hon'ble Single Judge it is now a well settled principle of law after the Apex Court's Judgment in the case of **Cap. M. Paul Anthony** (Supra) at paragraph 22 that there is no bar to departmental proceedings and criminal proceedings being conducted simultaneously.

- (x) The question whether the Enquiry Officer could put leading questions to the prosecution witness in examination-in-chief to prove the prosecution case and whether the appellant/“delinquent” employee was given a chance to cross the witness after the enquiry authority put questions to the prosecution witness to arrive at the truth/“to obtain clarification” are questions where the evidence needs to be evaluated by the appellate authority. The writ court is limited in its jurisdiction to sift the evidence and re-appreciate the same. Evaluation of the evidence is within the scope of the jurisdiction of Appellate Authority.
- (xi) On the question of breach of principles of Natural Justice, this Court is of the view that given the fact that detailed representations were considered at the time of conducting of the enquiry as well as after the findings of the Enquiry Officer and upon production of several witnesses along with 11 defence witnesses and cross-examination of prosecution witnesses, the Enquiry Officer came to his findings. Every opportunity of hearing was given to the writ petitioner/appellant to present his case.
- (xii) The appellant was present in each and every hearing and admittedly inspected the documents barring the ‘News Paper’ which was in any event a document that has been circulated in public. It was not a document that was within the

possession/custody of his employers. Therefore, there is no violation of the principles of Natural Justice in the present case.

- (xiii) Further, the charge of tarnishing the image of the Railway Protection Force was not only proved on the basis of the newspaper “Sangbad Pratidin”, but, also on the basis of other evidences oral/documentary. Therefore, the enquiry cannot be vitiated on the ground of “non-production” of the Newspaper “Sangbad Pratidin”.
- (xiv) In **GirijaSankar Pant** (Supra) the Managing Director of the company withdrew the duties of the General Manager (GM) on 27 September 1993. On 28 September, 1993 all financial and administrative powers of the GM were withdrawn with immediate effect. On 1st October, 1993 a show cause cum charge-sheet with 13 allegations were issued by the enquiry officer was under the direct supervision of the Managing Director (MD). The General Manager’s request for supply of documents necessary for his defence went unheeded. There was no Presenting Officer. No opportunity of hearing was given. Defence witnesses were not allowed. No opportunity was given to cross-examine the prosecution witnesses despite specific request. No hearing was held on the scheduled date of hearing i.e. November 25, 1993 because the MD was not available. The GM had to present himself before the MD at 4 pm on November 26, 1993. An order consisting of 18 pages was delivered at the residence of the GM (writ

petitioner) by about 7:30 p.m., on the same date i.e. November 26, 1993. In such a case, it was held that there was a positive and cogent evidence of bias and the letter of termination was held to be unsustainable.

- (xv) In the present case a detailed representation was made against the memorandum of charges as well as against the findings of the Enquiry Officer. Several witnesses were examined and cross examined. Upon consideration of the oral and documentary evidence, the disciplinary authority found only some of the charges to be proved. Several charges were held not to be proved due to the lack of documentary evidences. Therefore, the argument that with a closed mindset and bias, the DP was conducted is unsustainable. The case of **Girija Shankar Pant** (Supra)and **ORYX Fisheries** (Supra) are factually different from the present case and does not aid the appellant.
- (xvi) The misconduct in **ValliKumari**(Supra)related to the appellant reporting to duty 3 days after the expiry of leave period without prior permission. The same cannot be equated with negligence in performance of duty that led to theft of approximately 27 lakhs of Railway materials which led to tarnishing of the Force's image. Similarly in the case of **Jai Bhagwan**(Supra) the punishment was reduced by the Court instead of the Disciplinary Authority because it was ordered in a distant point in time. Such is not the situation

in the present case. The appropriate authority to decide whether or not the punishment was disproportionate to the misconduct proved, is the Appellate Authority, given the facts of the present appeal.

- (xvii) The observation in **Collector Singh**(Supra) does not come to the aid of because the facts are distinguishable.
- (xviii) The case of **State Bank of India**(Supra) does not come to the aid of the appellant since no report on confidential document was obtained from any third party behind the appellant's back, based on which the order of the disciplinary authority was passed. A fair opportunity was granted to the appellant to show cause why the charges framed against him, should not be proceeded with. Also after the findings were made by the Enquiry Officer, second representation/defence made by the appellant was considered. The "newspaper report" that was allegedly not produced, was one of the evidences relied on by the Enquiry Officer and not the primary/sole document. In any event, a newspaper report cannot be held to be a confidential document in sole custody and possession of the employer.
- (xix) The issues with regard to the evidence not being evaluated properly by the disciplinary authority or the punishment being disproportionate to the gravity of the offence should be agitated

before the appellate authority as per the statutory rules as the said issues do not go to the root question of jurisdictional error.

(xx) It is well settled that a writ court is not a court of appeal in cases of departmental proceedings.

40. In the light of the discussions above, this court holds that there is no reason to interfere with the order dated February 22, 2021 passed by the Hon'ble Single Bench. There is no jurisdictional error in the **Charge Sheet** being issued by the Assistant Security Commissioner/Respondent No.4 or the disciplinary proceedings being conducted by him. The major punishment of **Removal** has been passed by the **respondent No. 3/Security Commissioner** who is the appropriate authority. There is no reason to set aside the impugned **Charge Sheet** dated December 16, 2020 which culminated into the final order of **Removal** dated November 8, 2021 in the disciplinary proceedings. In case the appellant is aggrieved by the evaluation of the evidence or by the quantum of punishment as opposed to the gravity of the misconduct, the appellant may approach the Appellate Authority in accordance with the statutory rules. In case the appellant approaches the Appellate Authority he shall be entitled to seek condonation of delay in preferring the appeal. The appeal being **FMA No. 839 of 2021** along with the application for stay being **CAN 1 of 2021** are **dismissed**.

With analogues appeals **FMA No. 840 of 2021 along with CAN 1 of 2021 with FMA No. 841 of 2021 along with CAN 1 of 2021 with FMA No. 842 of 2021 along with CAN 1 of 2021 with FMA No. 843 of 2021 along with CAN 1 of 2021 with FMA No. 844 of 2021 along with CAN 1 of 2021 with FMA No. 845 of 2021 along with CAN 1 of 2021 with FMA No. 846 of 2021 along with CAN 1 of 2021** stand accordingly **dismissed.**

- 41.** However, there will be no order as to costs.
- 42.** Parties shall be entitled to act on the basis of a server copy of the order placed on the official website of the Court.
- 43.** Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Subrata Talukdar, J.)

(Lapita Banerji, J.)