

IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)
ORIGINAL SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPO/487/2021

Avishek Sarkar

-Vs.-

The State of West Bengal & Ors.

For the Petitioner : *Mr. Indranil Chakraborty*
Mr. Apurba Ghosh
Ms. Esha Banerjee

For the Respondent : *Mr. Soumya Majumdar*
Ms. Sharmila Das

Heard on : *27.07.2023*

Judgment on : *30.08.2023*

Partha Sarathi Chatterjee, J.:-

1. By this writ petition, the writ petitioner has called in question the defensibility and/or tenability of the charge-sheet-cum-suspension order

dated 22.10.2019, the enquiry report dated 16.06.2020, the order of punishment dated 01.12.2020 and prayed for re-instatement in service with full back wages.

2. Necessitous facts required to be frescoed for the purpose of effective adjudication of the writ petition are that the petitioner joined as Sub-Assistant Engineer (in short, SAE) in West Bengal Agro Industries Corporation Ltd. (hereinafter referred to as the Corporation) at its Malda Office on 26.06 2014. By an order dated 12/14.08.2014, he was transferred to its Pursurah Officer wherein he joined on 01.09.2014. Subsequent thereto, by an order dated 18.02.2015, the petitioner was declared as 1st Officer i.e. the Officer-in-charge of the Pursurah Office and he was duly authorised to operate the bank account jointly with the 2nd Officer of Pursurah Office.
3. As per the scheme of the Corporation, like other branches, Pursurah Office of the Corporation used to sell various agricultural implements like Power Tiller, Pump Set etc. to the cultivators and/or agriculturists in the locality. On being so approached by the petitioner, the Project Manager *vide* his letter dated 02.05.2016 accorded permission to collect a booking money of Rs.500/-in advance from the intending buyers and accordingly, the staffs of the Pursurah Office started acceptance of Rs.500/-each as advance from the intending buyers. In the Sale Implement Session 2016-17, the Pursurah Unit received advance of Rs. 8,35,000/- from various intending buyers for supplying 1670 numbers of implement and out of which 529 numbers of implement were supplied before June, 2017.

4. Sometimes in May, 2017, a few staffs and some intending buyers made a complain to the petitioner that one Sukamal Mukherjee, an Office Support Staff (in short, Sukamal) was alluring the intending buyers by making false promise that the State Government would grant subsidy to them. The petitioner made a preliminary inquiry and found substance in the complaint and even on 27.04.2017, Sukamal gave an undertaking on a white paper that he would take appropriate steps to ensure so that the farmers would get subsidy but before taking any action against Sukamal, some staffs by giving a letter dated 31.05.2017 informed the matter to the respondent no.4 seeking his intervention in the imbroglio.
5. In reference to the letter of the staffs of Pursurah Unit dated 31.05.2017, the Executive Engineer and Dy. Chief Accounts Office of the Corporation held enquiry and made the following remarks in their enquiry report dated 12.06.2017:-

“It is concluded that Officer-in-charge (Sri Avisek Sarkar) has shown mere negligence in performing his duties and was dependent on Sri Sukamal Mukherjee for generating business of Pursurah Office. He has also lack of understanding and knowledge of Govt. working procedure/schemes. Sri Sarkar has kept this office in dark and has not taken any consent about acceptance of application form farmer mentioning “Govt. Subsidy”. He has not sent copy of application to Head Office before acceptance. He has supported and accepted unethical working procedure of Sri Sukamal Mukherjee.

Further, Shri Sukamal Mukherjee is only responsible to mislead the farmers. He has given false assurance of getting subsidy to the farmers which has in turn affected the Corporation's reputation and image. He has accepted the allegation against him made by the petitioners before us as well as all the staff members of Pursurah Office.

Shri Soumen Ghosh, is also responsible because being a Cashier of the Unit, he had accepted all the advances and remitted the same to Head Office accounts inspite of knowing the unethical working procedure of Sri Avisek Sarkar & Sri Sukamal Mukherjee. He had accepted and issued money receipt (Copy enclosed) to the farmers against advance and mentioning "Govt. Subsidy" on the top of the money receipt.

Sri Gopal Saha, 2nd Officer-in-charge is also responsible because he remained silent knowingly and did not enlighten the matter to the higher authority."

6. On 06.06.2017, the petitioner was relieved from the duty of the 1st Officer of Pursurah Office and one Rajib Samaddar, Jr. Engineer assumed charge of 1st officer of the office and on 30.08.2017, the respondent no. 4 issued a notice asking the petitioner to show cause, within 05(five) days from the date of receipt thereof, as to why appropriate penal action should not be taken against him as the petitioner had spread false promise of granting 'Government Subsidy' to the farmers and accepted Rs.500/-from each farmer as booking advance on the basis of false promise. On 04.09. 2017, the petitioner replied to the show cause notice refuting the allegation of spreading false promise of grant of Govt. subsidy to the farmers but on 08.09.2017, he was placed under suspension.

7. The petitioner submitted two representations on 13.11.2017 and then again on 12.9.2018 to the respondent no. 4 making a prayer for withdrawal of his suspension but in vain. Hence, challenging the order of suspension and seeking a direction upon the concerned respondent to allow the petitioner to resume his duties, the petitioner preferred a writ petition vide. W.P. no. 6714(W) of 2019 which was disposed of by Amrita Sinha J. on 04.04.2019 by directing the respondent no. 4 to dispose of the disciplinary proceedings, if any, that had been initiated against the petitioner in accordance with law within a period of four weeks from the date of communication of that order.
8. By an order dated 08/09.04.2019, two officials of the Corporation were appointed as the enquiry officers and Smt. Sweta Agarwal, the Secretary-cum-Chief Personnel Officer was appointed as the presenting officer. On 26.04.2019, the petitioner appeared before the enquiry committee, as directed.
9. It is condign to note that no charge-sheet and the enquiry report were provided to the petitioner yet the respondent no.4 passed the order of punishment on 03.05.2019 directing stoppage of increment of the petitioner for three years from the date of passing that order.
10. However, the petitioner assailed the order of punishment dated 03.05.2019 by preferring a writ petition vide. W.P. no. 18117(W) of 2019 which was disposed of on 27.09.2019 by setting aside the order of the punishment. However, liberty was given to the respondents to dispose of the disciplinary proceeding, pending against the petitioner, strictly, in

accordance with law, within six weeks from the date of communication of a copy of the order.

11. On 22.10.2019, the respondent no. 4 again issued a charge sheet-cum-suspension asking the petitioner to submit his reply within 48 hours. In the charge-sheet-cum-suspension, the following charges were brought against the petitioner:-

“ i) Failure to discharge duties honestly and faithfully to the best of skill and ability and not promoting the interest of the Corporation.

ii) Behaving in a manner unbecoming of an employee and derogatory to the prestige of the Corporation.

iii) Deliberately spreading false information with a view to bringing about disruption of the Corporation's normal work.

iv) Intentionally giving false information to superior and misleading superior in obtaining approval.”

12. The petitioner submitted his detailed reply dated 7.11.2019. In his reply, the petitioner categorically denied and disputed all allegations levelled against him and he made a prayer for release of his salary from September, 2017 till May, 2019 i.e. the period for which he was placed under the suspension but since the salary as prayed for by the petitioner was not released, the petitioner preferred another writ petition vide. W.P. no. 180(W) of 2020 which was disposed of on 13.1.2020 by giving liberty the petitioner to raise his demand for release of salary for the period before the disciplinary authority which was directed to consider such

demand in accordance with law and the disciplinary authority was further directed to conclude the disciplinary proceeding within a period of eight weeks from the date of receipt of a copy of the order.

13. By an order dated 26.11.2019, the respondent no. 4 observed that petitioner's reply was not satisfactory and one learned advocate namely, Siraj Kishore Banerjee was appointed as the enquiry officer and Mr. Kalyan Bikash Koner (in short, Mr. Konar), who on earlier occasion held enquiry against the petitioner, was appointed as the presenting officer.
14. The petitioner *vide* his letter dated 10.12.2019 requested the enquiry officer to allow him to engage one learned advocate to defend him and supply the '*approval and applying letter*' and *manual of service procedure, duty manual/office order/notification about running a office as a charged officer*'.
15. On 10.12.2019, the enquiry officer refused to allow the delinquent to be represented by an advocate. However, he permitted Mr. Koner, the presenting officer to submit list and copies of documents and the presenting officer assured that the documents, which the petitioner had asked for, would be provided. On 27.12.2019, the presenting officer supplied some documents to the petitioner.
16. The enquiry proceeding was conducted on diverse dates. On 17.1.2020, the presenting officer supplied the petitioner a list of witnesses of the management. By giving a letter dated 17.01.2020, the petitioner requested the respondent no.4 and the enquiry officer to provide certain documents ,namely, i) copy of FSSM scheme, documents relating to working

procedure/scheme under Corporation was being ran , attendance register from September, 2014 to September, 2017, stock register for Agril- implement from September, 2014 till September, 2017 , the indents placed by him to the Head office of the Corporation and order making over his charge of Rajeeb Sammadder on 6.6.2017. The petitioner requested the respondent no. 4 to replace Mr. Konar since he conducted the enquiry on earlier occasion and he prayed for permission to cross-examine Mr. Konar and Mr. Sujoy Kr, Pal who conducted the enquiry earlier.

17. On 17.1.2020, the enquiry officer held that there was no impediment for Mr. Konar to act as the presenting officer despite the fact that he had acted as enquiry officer earlier. In course of enquiry proceedings, the management adduced oral accounts of one Satadal Bag, Soumen Ghosh and Putual Bandopadhyay who were examined as MW-1, 2 & 3 respectively and the management tendered some documents which were admitted in evidence. Petitioner submitted his written submission and the petitioner was cross-examined by the presenting officer.

18. On 21.1.2020, the petitioner submitted a list of seven witnesses to be summoned but the enquiry officer refused to summon them and asked the petitioner to summon those witnesses himself and the petitioner wanted to examine Mr. Konar, the presenting officer but by a letter dated 5.2.2020, the respondent no. 4 informed the petitioner that Mr. Konar would not depose and the documents sought for by the petitioner had not been provided to him. The petitioner had requested the enquiry report to ask the management to produce the order of termination of Sukamal but

the same was also not produced on a plea that the letter was confidential letter.

19. The enquiry officer submitted his report dated 16.06.2020, *inter alia*, holding that all the charges levelled against the petitioner stood proved and the petitioner submitted his response to such enquiry report on 03.08.2020. The respondent no. 4 issued second show-cause notice dated 5.10.2020/4.11.2020 stating that management proposed to dismiss the petitioner from service and the petitioner was asked to submit his response thereto within 48 hours from the date of receipt of the notice. The petitioner submitted his reply to the second show cause notice on 13.11.2020 and by an order dated 01.12.2020, the petitioner was dismissed from service with immediate effect.
20. The respondents have filed their exception to the writ petition and the petitioner has also filed his response to the exception, as directed.
21. Mr. Chakraborty, learned advocate for the petitioner contends that the respondents in a pre-conceived mind, in gross violation of the principles of natural justice and in derogation of the Service Rules contemplated and concluded the disciplinary proceeding and the punishment imposed by the disciplinary authority is disproportionate.
22. In elaboration of his such contention, he submits that On 27.04.2017, by executing one document, Sukamal admitted his guilt that he had spread false promise regarding grant of Govt. Subsidy and even, from the letter of the staffs dated 31.05.2017, it would be explicit that Sukamal had sent messages and even some money to the farmers from his own cell phone.

Drawing my attention to the enquiry report dated 12.06.2017, Mr. Chakraborty argues that in the enquiry report dated 12.06.2017 also, it was concluded that Sukamal was only responsible to mislead the farmers by giving false assurance of getting subsidy and he accepted his guilt before the enquiry officers and the staffs of Pursurah Office.

23. The enquiry officers came to a finding that the petitioner was negligent and dependent upon Sukamal and he had lack of knowledge and understanding of Govt. working procedure/schemes and he kept the head office in dark regarding acceptance of application form the farmers mentioning 'Govt. Subsidy' and he accepted and supported the unethical works of Sukamal. In the enquiry report, it was categorically held that the cashier, Soumen Ghosh, who accepted all the advances and remitted the same to head office and issued money receipt, was also responsible and one Gopal Saha, 2nd Officer of the Unit was also responsible.

24. He arduously contends that the scenario gradually started to change and since the petitioner approached this court and preferred the writ petitions, the respondents were infuriated and then adopting a revengeful attitude towards the petitioner, disciplinary proceeding was contemplated with a view to prove by hook or crook that either the petitioner alone or in connivance with Sukamal spread the false promise among the farmers. He submits that for any unknown reason, no proceeding had been initiated against Soumen Ghosh or Gopal Saha.

25. He argues that the respondents tactfully utilized the liberty granted by the court while disposing of the writ petition being W.P. no. 18117(W) of

2019 and issued a peculiar type of order say, the charge-sheet-cum-suspension order wherein no list of documents and list of witnesses were disclosed. During enquiry proceeding, the management disclosed the particulars of witnesses and documents sought to be relied upon by the management.

26. He vociferously argues that in the charge sheet cum suspension itself, the petitioner was confronted with adjudication of his guilt and hence, the subsequent proceedings were mere formalities. The documents sought for by the petitioner had not been provided to him and even, the enquiry officer refused to summon the defence witnesses and both the enquiry officer and disciplinary authority held that it was the duty of the petitioner to summon them and the petitioner wanted to examine Mr. Konar but the respondent no. 4 by giving a letter straightway stated that Mr. Konar would not depose.

27. He strenuously submits that the cashier, Soumen Ghosh, who was also initially held responsible, was produced as management witness and on the same allegation of misconduct, the same disciplinary authority, which had awarded penalty of stoppage of three increments earlier, on subsequent occasion imposed the punishment of dismissal from service. He asserts that the punishment is shockingly disproportionate. He submits that the entire disciplinary authority stood vitiated and the charge-sheet-cum-suspension order, the enquiry report and the order of punishment cannot be sustained and the petitioner deserved to be reinstated with full back wages. To buttress his argument, he places reliance upon the

judgments delivered in cases of *B.C. Chaturvedi –vs- Union of India & Ors.*, reported in (1995) 6 SCC 749, *State of U.P. & Ors. –vs- Saroj Kumar Sinha*, reported in (2010) 2 SCC 772, *Sawai Singh –vs- State of Rajasthan*, reported in (1986) 3 SCC 454, *Sher Bahadur –vs- Union of India & Ors.*, reported in AIR 2002 SC 3030, *Narinder Mohar Arya -vs- United India Insurance Co. Ltd & Ors.*, reported in (2006) 4 SCC 713, *Kartick Chandra G8hosh –vs- Union of India*, reported in 2015(3) CHN (Cal) 44.

28. In response, Mr. Majumder, learned advocate for the respondents submits that there is an alternative remedy of appeal against the order of punishment and the petitioner did not exhaust the remedy. He contends that the petitioner tried to project that only Sukamal spread the false promise behind his back but the applications of the farmer mentioning ‘Govt. subsidy’ were addressed to the petitioner and hence, as an officer-in-charge of the unit, he cannot deny his liability. Drawing my attention to reply of the petitioner to the charge-sheet, Mr. Majumder claims that the petitioner cannot deny that he was not in know of the fact that Sukamal had spread false promise of grant of govt. subsidy. He states that infuriated farmers staged agitation and put the office under lock and key. Drawing my attention to the second show cause notice, he vehemently contends that the delinquent was given opportunity to submit reply to the charge-sheet and he was given scope to cross-examine the management witnesses and copies of the documents were furnished to him but the petitioner failed to produce defence witness. He further argues that the petitioner sought for some irrelevant documents and for justified reasons,

the management refused to furnish those documents. He argues that the enquiry officer analysed all the evidence placed on record and returned a reasoned finding and he contends that the disciplinary authority had independently applied his mind and painstakingly noted each point and adopted holistic approach. He submits that the second show-cause notice was issued to the delinquent and by passing a speaking order, the punishment was awarded. He claims that the plea of non-examination of Sukamal was nothing but an after-thought plea taken by the delinquent. He further argues that the charged employee could have summoned Sukamal.

29. Mr. Majumder further argues that the scope of judicial review should be confined to decision making process and the court cannot sit in appeal over the decision. He submits that court can interfere if it is found that disciplinary proceeded with *mala fide* intention and there were procedural irregularity and disproportionality of the punishment. He contends that there were no procedural irregularities warranting interference. According to Mr. Majumder, the court can disagree with the decision but such disagreement is outside the purview of perversity.
30. In reply, Mr. Chakraborty submits that the respondents did not raise the point of maintainability when the writ petitioner was entertained by the court and affidavits were exchanged and hence, such point cannot be raised at the stage of final hearing and in support of his such contention, he cited one unreported judgment of this court passed in WPA No. 21399 of 2007 with CAN 1 of 2007(Vinay Kumar Singh –vs- Kolkata Port Trust

& Ors.). Mr. Chakraborty contends that the service rules do not prescribe any provision making prescription for the appeal against the order passed by the Managing Director. He argues that non-interference by the writ court in case of existence of alternative remedy is self-imposed restriction and in case of violation of principles of natural justice, the writ court can interfere despite having alternative remedy.

31. Admittedly, plea of non-maintainability of the writ petition owing to existence of alternative remedy has been raised for the first time at the stage of final hearing and even, such point has not been raised by the respondents in their exception also. In the judgment of *Kanak (Smt.) and another –vs- U.P. Avas Evam Vikash Parishad*, reported in (2003)7 SCC 693 [the judgment was referred in case of Vinay Kumar Singh (*supra*)], it was held that such issue of maintainability cannot be raised at the final stage of hearing. So, at this stage, the respondents cannot be permitted to raise this point.

32. Suffice it to note that non-entertainment of petition under writ jurisdiction by the High Court in case of existence of an efficacious alternative remedy is a rule of self-imposed limitation and/or restriction. It is essentially a rule of policy, convenience and discretion rather than a rule of law and not a rule of jurisdiction. There cannot be a blanket ban. Whether or not the extraordinary jurisdiction would be invoked is to be decided in the context of the facts and circumstances of case at hand. It is well-acclaimed proposition of law that despite existence of efficacious alternative remedy, writ petition can be entertained if the same is filed for

enforcement of any of the Fundamental Rights or where there has been violation of principle of natural justice or where the order or proceedings are wholly without jurisdiction or where *vires* of an Act is challenged.

33. It is apposite to refer an authoritative pronouncement made in case of *Union of India –vs- R. Reddappa* reported in (1993) 4 SCC 269 wherein it was ruled that once the Court is satisfied of injustice and/or arbitrariness, then the restriction, whether self-imposed or statutory goes removed and no rule or technicality on exercise of power can come in the way of rendering justice.
34. The basic concept and/or theory of fair play in action is squarely applicable in administrative, judicial and quasi-judicial field. When an authority assumes jurisdiction to discharge quasi-judicial function, then such authority must act fairly, impartially and without any bias or pre-determined mind. If the court finds that authority has acted arbitrarily with closed mind and in violation of rules of natural justice and in derogation of the statutory rules, the Court can extend the compass of judicial review to render justice.
35. The scope of judicial review grounded on illegality, irrationality say, *Wednesbury* unreasonableness and procedural impropriety. The doctrine of reasonableness gives way to doctrine of proportionality also. Judicial review of administration action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and *mala fides*. The basic requirement of Article 14 is fairness in action by the State. Admittedly, scope of judicial review must be confined to decision making process but if

it is found that decision is perverse, irrational or grossly disproportionate, that decision will come under the purview of judicial review.

36. The petitioner has specifically raised this point that disciplinary proceeding has been contemplated in violation of the statutory rules and also in violation of principles of natural justice and hence, I am inclined to entertain the writ petition to find justification of the issues raised by the petitioner.
37. Admittedly, Sukamal by executing one written document admitted that he spread the false promise regarding grant of Govt. Subsidy and the letter of the staff dated 31.05.2017 postulates that Sukamal sent messages to farmers from his own cell phone and Sukamal also sent some money to some farmers also.
38. Suffice it to observe that in the enquiry report dated 12.6.2017, Sukamal was held to be only responsible for spreading such false promise and the Cashier, Soumen Ghosh was also held responsible. At the cost of reiteration, it can be stated that in the enquiry report, against the delinquent, the following remarks were made:-

“...Officer-in-charge (Sri Avisek Sarkar) has shown mere negligence in performing his duties and was dependent on Sri Sukamal Mukherjee for generating business of Pursurah Office. He has also lack of understanding and knowledge of Govt. working procedure/schemes. Sri Sarkar has kept this office in dark and has not taken any consent about acceptance of application form farmer mentioning “Govt. Subsidy”. He has not sent copy of application to Head Office

before acceptance. He has supported and accepted unethical working procedure of Sri Sukamal Mukherjee.”

39. It is condign to note that at that time, no charge-sheet was issued and the enquiry report had not been provided to the delinquent but punishment of stoppage of three increments was imposed. Consequently, the order of punishment had been set aside by the Hon'ble Court. Imposition of penalty in such fashion speaks about the mind of the respondents.
40. In the charge-sheet-cum-suspension, the disciplinary categorically mentioned that it appeared to him that the delinquent had spread misleading news to misrepresent to farmers regarding grant of Govt. Subsidy.
41. I may profitably refer the judgment delivered in the case of *Oryx Fisheries Pvt. Ltd. –vs- Union of India & Ors.* reported in (2010) 13 SCC 427, it was observed that *‘it is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show cause proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice’.*
42. In the judgment of *Oryx Fisheries Pvt. Ltd. (supra)*, it was also held that *‘...at that stage the authority issuing the charge- sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony’.*

43. On reading of the show cause notice, the person against whom it has been issued must have confidence that if he can show acceptable and/or satisfactory cause, he can prove his innocence but if he finds that the submission of show cause would be mere empty formality as the authority has already made up its mind, then basing upon such cause notice a fair proceeding cannot be conducted.
44. In the case at hand, if the disciplinary authority before holding the enquiry proceeding himself held that the delinquent had spread the misleading news, which is one of the facts-in-issue to be determined in the proceeding and it is obvious that the subsequent proceedings would be mere formalities. So, such observation only speaks about the pre-conceived mind of the disciplinary authority.
45. It is also to be noted that in the charge sheet-cum-suspension, it was mentioned that the petitioner in collusion with Sukamal had spread misleading news to misrepresent to farmers regarding grant of Govt. Subsidy and then, it was alleged that it was cursorily revealed that the delinquent had played active role to defraud the farmers. However, four charges were levelled against the petitioners, namely, i) failure to discharge duties honestly and faithfully to the best of skill and ability and not promoting the interest of the Corporation, ii) behaving in a manner unbecoming of an employee and derogatory to the prestige of the Corporation, iii) deliberate spreading false information with a view to bringing about disruption of the Corporation's normal work and iv) intentionally giving false information to superior and misled the superior in obtaining approval.

46. So, gradually, the charge has been changed. The enquiry report claimed that the delinquent was dependent upon Sukamal and he supported and accepted unethical working procedure of Sri Sukamal and kept the head office in dark but in the charge-sheet-cum-suspension order, it was alleged that the delinquent in collusion of Sukamal had spread the misleading news and the delinquent had played an active role to defraud the farmers. However, the charges were brought alleging that the delinquent himself deliberately spread false information with a view to bringing about disruption of the Corporation's normal work and he had failed to act with honesty and faithfully and he had intentionally gave false information to the superior.
47. Settled law of service jurisprudence is that charge must be specific and not vague. The charges are to be supported by the statements of allegations and there should be particulars and details. There were not statements of allegation in support of the charges and no particulars and/or details had been mentioned, particularly, in support of first and second charge. It is well settled proposition of law that the delinquent must be given a reasonable time and opportunity of meeting the allegations contained in the charge-sheet. In the charge-sheet, only 48 hours was given to the delinquent to meet the allegations levelled in the charge-sheet. In the second show cause notice also, the delinquent was given only 48 hours to submit reply. Such conduct also speaks about the closed mind of the disciplinary authority. The authority was interested to somehow complete the formalities.

48. The service conditions of the officers and employees of the Corporation are governed by the provisions of the West Bengal Agro-Industries Corporation Ltd. Service Rules, 1972 (in short, the Service Rules). Rule 90(iii) of the Service Rules mandates that charge-sheet shall contain a list of documents by which, and a list of witnesses by whom, the articles of charges are proposed to be sustained. The Charge sheet-cum-suspension dated 22.10.2019 did not contain any list of documents and/or list of witnesses. The list of witnesses were supplied during the enquiry proceeding. Hence, it is clear as day that the charge sheet-cum-suspension order was issued in violation of the Service Rules.
49. Procedural fairness in a departmental enquiry demands proper disclosure of materials to be used against the delinquent. There are repetitive pronouncements on the proposition that non-disclosure and non-supply of the documents to the delinquent employee would amount to violation of natural justice and if it is found that the documents are voluminous and it is impracticable to supply the copies to the delinquent, the disciplinary authority must afford an opportunity to the charged employee to inspect the documents and the omission to supply the documents or to afford an opportunity to inspect the document, as the case may be, would vitiate the entire decision making process and/or the disciplinary proceeding.
50. The disciplinary authority has exercised its plenary power to appoint a learned advocate, who is outsider, to act as the enquiry officer but prayer of delinquent to engage one learned advocate to defend himself has been

turned down on the ground that the presenting officer namely, Mr. Konar was not an advocate.

51. In the given case, the delinquent submitted a list of witness in his defence but the enquiry officer did not summon those witness and took decision that production of witness is the responsibility of the delinquent. It is well-acclaimed proposition of law that decision of the enquiry officer asking the delinquent to produce the witnesses on his own responsibility is unjustified. One outsider was appointed as an enquiry officer. When any officer shall be appointed as the enquiry officer and when such officer shall assumed the jurisdiction of quasi-judicial authority, he must be empowered to summon the witnesses either for the management or for the defence.

52. Rule 90(iv) of the Service Rules speaks that simultaneously with the framing of charges, the disciplinary authority will appoint an officer other than the complainant to conduct the enquiry. The name of the enquiry officer shall be stated in the charge-sheet. The enquiry officer cannot be stated to be the officer of the Corporation and the name of the enquiry officer, who was appointed later on by one memo. dated 22.11.2019, has not been mentioned in the charge-sheet-cum-suspension. Hence, the appointment of the enquiry officer de hors the statutory rules and omission to mention the name of the enquiry officer in the charge-sheet is clear violation of the Service Rules.

53. It is to noted that although at the initial stage, from a domestic enquiry it came out that Mr Soumen Ghosh, the cashier and Mr. Gopal Saha were

also responsible but no proceeding has been initiated against them rather Mr. Soumen Ghosh was used as one of management witnesses against the delinquent. Although it was claimed that the petitioner in collusion with Sukamal had spread the false promise but Sukamal has not been produced and even, the termination order of Sukamal was also not provided to the petitioner claiming that the same was a confidential document and ultimately, the disciplinary authority. The disciplinary authority while issuing second show-cause notice observed that on earlier occasion, without conducting in-depth enquiry, punishment of stoppage of increment was awarded and on the basis of the enquiry conducted basing upon the charge sheet –cum-suspension, it came out that the petitioner is the king-pin of entire episode. Such instances clearly speaks about the pre-determined mind of the disciplinary authority. It goes without saying that initiation of a disciplinary proceeding in a pre-determined mind is also violation of principles of natural justice.

54. In view of foregoing analysis, I have no qualm to hold that the disciplinary proceeding was contemplated and concluded in a pre-conceived mind and in derogation of the Service Rules and also in violation of the principles of natural justice.

55. As a result, the charge sheet-cum-suspension dated 22.10.2019, the enquiry report dated 16.06.2020, the order of punishment dated 01.12.2020 are set aside and the respondent no. 4 is directed to reinstate the petitioner with all consequential benefits including back wages within two weeks from the date of receipt of a copy of this order.

56. With these observation and order, the writ petition is being **WPO/487/2021** stands thus **disposed of**, however, without any order as to the costs.

57. Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

58. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Partha Sarathi Chatterjee, J.)