

(1985) 08 CAL CK 0003**Calcutta High Court****Case No:** C.R. NO. 5213 (W) of 1983

M.K. Mishra, Travelling Ticket
Examiner, S.E. Rly.

APPELLANT

Union of India

Vs**RESPONDENT****Date of Decision:** Aug. 5, 1985**Acts Referred:**

- Constitution of India, 1950 - Article 311(2)

Citation: 90 CWN 128**Hon'ble Judges:** B.C. Ray, J**Bench:** Single Bench**Advocate:** R.N. Mitra and B.P. Pariari, for the Appellant; B.S. Bagchi, for the Respondent

Judgement

B.C. Ray, J.

This rule is at the instance of the petitioner, a railway servant, employed as a Traveling Ticket Examiner impeaching the validity of the alleged order of termination dated 30th March, 1983 made under memo No. P/SC-Comml/SP-B/S/82-2 issued by the General Manager, South Eastern Railway as well as the charge-sheet No. DCS/Con/Vig./6/79/MKM dated the 15th January, 1980 issued by the Divisional Commercial Superintendent, Khurda and enquiry report submitted by the Enquiry Officer, South Eastern Railway. It has been alleged that there has been a patent violation of the principles of natural justice by the Enquiry Officer, one J. N. Adak, in not giving the petitioner the reasonable opportunity of examining the prosecution witnesses in his presence and permitting him to cross examine those witnesses and also the enquiry officer having acted with a bias. The short fact of the case is that on 8th May, 1979 while the petitioner was on duty as a Traveling Ticket Examiner in 141 Up Coromondal Express Ex-Howrah to Khurda he was in charge of two 3 Tier Sleeper Coaches Nos. 7124 and 7134 and he was hauled up by the vigilant personnel for not issuing tickets to five passengers who traveled in that train with the platform tickets in spite of his receiving from them certain

sums of money. The EET passenger foil being ticket; No. 697020-(local) and 628614(foreign) were seized by the vigilance people and he had to hand over the amended chart of the Coach No. 7124 and 7134 while he left the train at Khurda. On 14th May, 1979 the Divisional Commercial Superintendent, Khurda Divn. the respondent No. 3 issued an order suspending the petitioner under proviso to Rule 1 of the railway Service (Disciplinary & Appeal) Rules, 1968 suspending him from service with immediate effect on the ground that a disciplinary proceeding is contemplated against him. On 15th October, 1978 this order of suspension was however revoked. On 15th January, 1980 a charge-sheet was issued by the respondent no. 3 to the petitioner and this charge-sheet contained the following charges :

1. Had failed to collect the excess charges due from 5 passengers traveling in Coach Nos. 7124 and 7134 without a proper ticket till such time they were detected by the Vigilance Squad of the Railway Board.
2. Had failed to collect the lower excess charges from the above five (5) passengers who intimated him prior to detection as per section 113 of the Indian Railway Act; but collected only the actual fare and other charges.
3. Had failed to issue EFT immediately for Rs. 50/- received from passengers holding platform tickets who were allotted berth no. 47 in Coach No. 7134.
4. Had overlooked the priority of a long distance passenger traveling from Gauhati against N.F. Railway quota, and allotted berth to an unreserved passengers with platform tickets.
5. Had willfully non-co-operated with the Vigilance Special Squad after he was detected of the irregularities and caused obstructions to its lawful discharge of duties and adopted vague and dilatory tactics.
6. Had failed to produce his Rough Journal Book for inspection when demanded by the Vigilance Special Squad.

Along with the charge-sheet a statement of imputations of misconduct in respect of each of the charges framed against the petitioner was also given. A list of documents on the basis of which the articles of charges were framed against the petitioner and the charges leveled against the petitioner are proposed to be substantiated have also been given. In the list the following documents, amongst other things, are referred to :

1. Local EFT Nos. 697020 to 697027 in book No. 697000 to 697049.
2. Foreign EFT No.. 628615 in book No. 628600 to 628649.
5. Original and amended chart of coah no. 7124 and 7134 (5 pages).

2. This charge sheet has been annexed as annexure A to the petition. On 27th February, 1980 the petitioner sent a letter to the divisional Commercial Superintendent that on going through the records he could not find the following documents, that is, amended chart of coach no. 1 and coach no. 2 as amended by him. It has been stated that the amended chart which is presented in the file does not belong to him, but it belongs to the South Central Railways staff X-Wal-BZA. Secondly, EFT passenger foil taken from the local and foreign EFT book 697020 (local) 628614 (foreign) by the Rly. Board Vigilance people. This letter has been annexed as Annexure D to the Writ petition.

3. The Divisional Commercial Supdt., respondent no. 3, sent a reply to this letter on 27th March, 1980 asking the petitioner to indicate the relevancy of the above documents concerning the case in order to enable his office to take necessary further action. It has been further pointed out in the said letter that in accordance with the extent rules the delinquent employee has to submit his explanation on the basis of the relied upon documents. Additional documents, if required, will be furnished at the time of enquiry. The petitioner was directed to submit his explanation within ten days from the receipt of the said letter. Therefore, on 24th April, 1980 the respondent no. 3 appointed J.N. Adak, Enquiry Officer, South Eastern Rly, garden Reach as enquiry officer in this particular case. On the 29th September, 1980 the Enquiry was held by the enquiry officer at garden reach and the petitioner made a fresh demand for the relevant records, as mentioned above. This will be evident from the proceedings of the enquiry of 29th September, 1980 a copy whereof has been annexed as Annexure G to the Writ application. It also appears that a note was made by the enquiry officer in the said proceedings that every afford would be made to produce those documents referred to by the Disciplinary Authority during the next sitting of the enquiry. It has been stated that on the 29th September, 1980 the enquiry officer informed the petitioner that the records demanded would not be produced by the department. On 28th March, 1981, in the evening session of the enquiry when the prosecution tried to introduce Biplab Kumar Majumdar as the prosecution witness, the defence helper objected to the examination of such a witness on the ground that his bonafide must be proved first before he is examined as a prosecution witness in the enquiry. It appears that this objection was not properly considered by the enquiry officer and the prosecution witness No. 6 was permitted to be examined. As a protest against this the petitioner and his helper refused to participate in the enquiry proceedings so far as examination of this witness is concerned. On 30th March, 1981 it has been stated that the petitioner appeared to attend the enquiry proceedings at the scheduled time, that is, at 11 a.m. and he entered into the chamber of the enquiry officer and found that the evidence of another prosecution witness no. 7 was being taken in presence of the presenting officer. The enquiry officer asked him to go out and the petitioner had to leave the chamber of the enquiry officer. At about 11-20 a.m. his defence helper reached there. Then he and his defence helper entered into the

chamber of the enquiry officer who stated that the evidence of the prosecution witnesses have been taken already as they were late in attending the enquiry. The petitioner immediately submitted an appeal to the enquiry officer drawing his attention to the Discipline and Appeal Rules whereon the enquiry officer gave them spare memo reflecting therein that the petitioner and his defence helper attended the enquiry at 11-30 a.m. when the enquiry was already over. This was challenged as grossly inaccurate and was seriously objected to by the petitioner and his defence helper. On 30th March, 1981 an application was made to the Deputy Senior General Manager, Vigilance South-Eastern Railway stating all these facts and praying for his immediate intervention so that impartiality of the enquiry is maintained. This is annexed as annexure J to the said petition. The petitioner also on that very day gave another letter to the enquiry officer requesting him to invite three defence witnesses named therein whose journey ticket nos. were also duly mentioned in the said application for examining them as defence witnesses. An application was also made to the respondent no. 3 complaining therein that the enquiry officer was wholly biased against the petitioner as he has taken extraneous matters into consideration in course of the enquiry and examined some witnesses behind the back of the petitioner and without permitting the petitioner to be present when the evidence, particularly, of prosecution witness No. 7, was being recorded by the enquiry officer in his chamber. It was also prayed that such a biased enquiry officer should not be allowed to proceed with the enquiry any farther as it will seriously prejudice him and the enquiry officer should immediately be changed by another impartial and unbiased officer. This letter is dated 16th May, 1981 and has been annexed as annexure "K" to the petition. It has been stated that on the 23rd July, 1981 a letter was received by the petitioner under the signature of the respondent no. 3 intimating that his request for change of the enquiry officer at that stage cannot be entertained. Thereafter, on 27th April, 1981 the respondent no. 3 placed the petitioner under suspension again. On 31st January, 1982 the enquiry officer retired from service and in his place a new officer was appointed. On 15th March, 1982 an application was made to the newly appointed enquiry officer requesting him that the evidence of prosecution witnesses who have been examined at the back of the petitioner should not be accepted at all until and unless their bona fide is established. It has also been prayed that cognizance should not be taken of the prosecution witnesses examined behind his back in spite of the petitioner being physically present with his defence helper on the date of enquiry. The enquiry was held by the new enquiry officer before whom written briefs were submitted both on behalf of the petitioner and also on behalf of the prosecution.

4. It has been submitted that the entire enquiry proceeding was vitiated by bias of the enquiry officer and also by gross violation of the principles of natural justice. It has been stated that the copy of the report submitted by the enquiry officer was not given to the petitioner and as the petitioner was on leave and the order of termination of his service has not yet been served on him. On these statements and

allegations the instant application has been moved before this Court and the instant Rule was issued. There was also an interim order of maintaining status quo as on the date of issuance of the Rule for a limited period. This interim order is, however, continuing till to-day.

5. It is pertinent to mention here that no affidavit-in opposition has been sworn on behalf of the Railway authorities controverting any of the specific statements and allegations made on oath in the writ application on behalf of any of the respondents.

6. Mr. R.N. Mitra learned Advocate for the petitioner has urged in the first place that the initiation of the disciplinary proceeding by the respondent no. 3 who is an officer lower in rank than the appointing authority i.e., the General Manager of the S. E. Rly. is illegal and bad being in contravention of the provisions of the Discipline and Appeal Rules 1968, more particularly. Rule 8 of these rules. It has been submitted by Mr. Mitra that sub-rule (1) of Rule 8 expressly provides that it is only the president or any other authority appointed by him by general or special order who may direct a disciplinary authority to institute any disciplinary proceeding against a railway servant on whom the authority is competent to impose any of the penalties specified in these rules. It has been next submitted by Mr. Mitra that there has been a patent and gross violation of the principles of natural justice by the enquiry officer in proceeding with the enquiry proceedings, and as such, the entire enquiry proceeding from the beginning to the end, is wholly illegal and bad and it is liable to be quashed, cancelled and set aside. Mr. Mitra has further submitted in this connection that the prosecution witness no. 6 who was introduced by the presenting officer on behalf of the Railway as a prosecution witness was seriously objected to by the petitioner and his helper on the ground that his bona fide and relevance should be established first by the railway authority concerned before examining this witness. In spite of their failure to do the same, the enquiry officer on a very irrelevant ground has permitted this witness to be examined on behalf of the prosecution. Similarly, prosecution witness no. 7 has been examined behind the back of the petitioner by the enquiry officer even though the petitioner was present and he in fact entered into the chamber of the enquiry officer, but he was illegally directed to go out of the chamber. In spite of repeated requests for re-examination of this witness in their presence it was not given any heed to by the enquiry officer. It has also been submitted in this connection by Mr. Mitra that a petition was made immediately before the enquiry officer for the manner in which he conducted the enquiry proceedings and also an application was made before the respondent no. 3 for change of the enquiry officer on the ground of bias and pre-conceived notion prejudicing the enquiry against the petitioner. Mr. Mitra has submitted with reference to some rules that there was no consideration of the objection filed by the petitioner by the authority empowered to consider. It has been lastly submitted by Mr. Mitra that his client has not been given any opportunity to inspect the vital documents which have been specifically mentioned in the charge sheet. As such, the

said order of termination is vitiated and liable to be quashed and set aside.

7. Mr. Bagchi, learned advocate appearing on behalf of the Railways has taken immense trouble to place from the records of case that there has been no violation of the rules of natural justice in the matter of the proceeding. It has been next submitted by Mr. Bagchi that there has been no illegality or irregularity on the part of the respondent no. 3, as in view of the provisions of the Discipline and Appeal Rules, particularly. Rule 8(2) such an initiation of disciplinary proceeding the appointment of the enquiry officer can validly be made as he is competent to impose some of the punishments specified in Rule 6 of the Rules.

8. On a consideration of the provisions of the Rules, mentioned above, it appears very clear to this Court that a disciplinary authority who is competent to inflict or impose any of the penalties specified in clauses (i) to (iv) of Rule 6 can initiate disciplinary proceeding. As such, in my considered opinion, in accordance with the provisions of Rule 8(2) the initiation of the disciplinary proceedings by the respondent no. 3 cannot be questioned as illegal or without jurisdiction..

9. The next very vital question which passes for decision before this Court is whether there has been a violation of the principles of natural justice by the enquiry officer in the enquiry proceeding against the petitioner. It is now well-settled that the dividing line between an administrative order or a quasi-judicial order is becoming very thin day by day, and it is needless to cite authorities in this respect. However, cannot but am tempted to refer to the observations made the State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, at 1271 where it has been observed :

It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed, it need not be shown to be superadded; if there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particularly case.

In this background, let us consider how far, the enquiry proceedings have been conducted by the enquiry officer in accordance with the principles of natural justice. It appears from the charge-sheet that the Dcharge no-1 relates to the collection excess charges from five passengers traveling in coach 7124 and 7134 without a proper ticket till such time they were detected by the Vigilance squad of the Railway Board. In the statements of imputations relating to the said charge no. 1, the following documents have been referred to :

1. Foreign EFT No. 638615 for Rs. 112.50 for 2 passengers, ex-HWH to BZA,

2. Local EFT No. 697021 for Rs. 27.30 for 1 passenger ex-HWH to BBS.
3. Local. EFT No. 697022 for Rs. 44.50 for 1 passenger Ex HWH to WAT.
4. Local EFT No. 697027 for Rs. 44.50 for 1 passenger Ex HWH to WAT. and in the list of documents mentioned thereafter the following documents have been mentioned in Item Nos. 1, 2. and 5 :
 1. Local EFT Nos. 697020 to 697027 in book no. 697000
 2. Foreign EFT No. 628615 in book no. 628600 to 628649.
 5. Original and amended chart of coach Nos. 7124 and 7134 (5 pages),
10. it also appeals from a letter issued under the signature of the respondent no. 3 dated 13.2.80 addressed to the petitioner that he was directed to attend office on 27.2.80 to inspect and take extract from documents available as per item No. 2 of the memorandum dated 15.1.80. Accordingly, the petitioner inspected those documents on 27.2.80 and after going through the documents, the petitioner found that some of the documents mentioned in the statements of imputations accompanying the charge-sheet regarding charge no. 1 as well as in the list of documents following the statements of imputation have not been produced for inspection of the petitioner. As such the petitioner by letter dated 27.2.80 addressed to the respondent no. 3 intimated that matter. Thereafter by letter dated 27.3.80 issued by the respondent no. 3 the Divisional Commercial Superintendent, Khurda Road, the petitioner was asked to intimate what was the relevancy of the above documents concerning his case in order to enable the respondent no. 3 to take necessary further action. It was also mentioned in para 2 of the said letter that as per existing rules the petitioner has to submit his explanation on the basis of relied upon documents. Additional documents, if required, will be furnished at the time of enquiry. The petitioner was directed to submit his explanation within ten days from the date of receipt of this letter. This letter has been annexed as annexure "E" to the Writ petition. It appears from the enquiry proceeding dated 29th September, 1980 annexed as annexure "G" to the writ petition that the defence counsel submitted for production of the following documents at the next sitting of the enquiry : (1) Amended chart of coach Nos. 7124 and 7134 which the defendant worked Ex HWH-KUR and handed over the Amended Chart prepared by him to the conductor whom he made over the charge to the conductor at KUR to indicate the position of the coaches as to the travel of the occupants of the said coaches; (2) passenger foil of EFT Nos. 697020 (local) and 628614 (Foreign) which were seized by the raiding vigilance squad and taken away from him after blocking the EFTS; (3) Relevant platform tickets which were mentioned in the statement of allegations in para no. 5 of the Imputations.
11. There was also an observation to the effect that every effort will be made to produce these documents referred to by the Disciplinary Authority during the next

sitting of the enquiry. This proceeding, it appears, was signed by both the defendant and his counsel as well as by the enquiry officer. It appears that these documents were never produced for inspection by the petitioner though as I have stated hereinbefore, the charge No. 1 is based on these documents and in the statement of imputation relating to charge no. 1. It was specifically mentioned that these documents will be relied upon in proof of the allegation contained in charge no. 1. It has been tried to be submitted on behalf of the railway that these documents were not in possession of the Railways and as such it could not be possible for them to produce the same for inspection by the petitioner. It has also been submitted in this connection before this Court that the EFT passenger Foil ticket was seized and taken possession of by the Vigilance Squad and they did not handover the same to the Railway authorities. It has also been tried to be submitted that the amended chart of coach no. 7 124 and 7134 was not handed over to the railway authorities by the petitioner while handing over charge of the said two coaches at Khurda. These submissions on behalf of the Railways are wholly untenable inasmuch as all these documents were undoubtedly in possession of the Railways, otherwise how without being in possession of these vital documents and without going through the documents it was possible for the disciplinary authority, that is, the respondent no. 3, an officer of the status of Commercial Superintendent, South-Eastern Railways, to draw up the articles of charges to draw up a statement of imputation of mis-conduct and mis-behaviour in support of the said articles of charges against the petitioner wherein in support of article No. 1 of the charges specific reference has been made to these documents and it is also very relevant to notice in this connection that in the list of documents by which the articles of charges framed against the petitioner were proposed to be substantiated in item no. 5 and amended chart of coach no. 7124 and coach no. 7134 (five pages) was mentioned, it clearly goes to show that the above submissions tried to be made on behalf of the Railways by the learned Advocate have got no leg to stand upon and it is wholly devoid of any substance whatsoever.

12. Moreover, it is very relevant to notice in this connection that in the evening session of the enquiry proceeding on 28th March, 1981, the presenting officer on behalf of the Railways wanted to introduce one per list of witnesses. The defence counsel immediately objected to the introduction of B.K. Malakar as a prosecution witness on the ground that before such introduction, his bonafide and relevancy should be clearly established. In other words, the ticket and reserve ticket should be collected that he was a bonafide passenger traveling in either of the two aforesaid coaches being nos. 7124 and 7134 of 141 Up Coromondal Express leaving Howrah on 8th May, 1979. It has also been stated by the defence counsel that it has to be proved from which station the alleged passenger, Biplab Kumar Malakar, commenced his journey by the said train. Curiously enough, it appears from the proceeding of that date which have been annexed as annexure "H" to the writ application that "Sri Siddique, I.I(V)/Rly. Bd. in his deposition in reply to EQO No. 17

asserted that Sri Biplab Kr. Malakar had reservation in Cp. no. 7124 which the defdt. was manning. But after perusal of the Reservation Charts of the two coaches 7124 and 7134 manned by the defdt. he could not but admit in reply to Q. No. 22 that he was not a passenger of any of the two coaches. As such he has no relevancy in the present case." It has also been stated by the enquiry officer in the proceeding that one of the signatories in the statement, Mr. Solemon cited as P. W. 2 could not be contacted as the address was fake and the letter sent to him returned with the remark "untraceable". Curiously enough, though the prosecution failed to establish the bonafide of Biplab Kumar Malakar as a person traveling in coach no. 7124 as has been alleged in the train, Coromondal Express leaving Howrah on 8th May, 1979, yet the Enquiry Officer has stated that by producing the envelope along with original letter sent from the Office of the Railways to Biplab Kr. Malakar, which he received, it is proved *prima facie* that this witness is actually Biplab Kr. Malakar and as such he found that he had no hesitation to allow him to depose as prosecution witness as cited by the disciplinary authorities in the Charge Sheet and so he might be examined as a prosecution witness. This observation and/or finding of the enquiry officer is *per se* irrelevant and wholly a perverse finding, entirely extraneous to the vital question or objection raised by the defence counsel as to the bonafide of relevancy of this particular witness,. P. W. 6, to be proposed to be examined in this case. Undoubtedly, the onus is on the. Railways who were trying to prove the allegations made in the Charge Sheet to establish beyond any reasonable doubt that Biplab Kr. Malakar is a relevant witness, whether he was a bonafide passenger traveling in coach no. 7124 of 141 Up Coromondal Express leaving Howrah on 8th May, 1979. There is not a single whisper on behalf of the prosecution in this respect, yet the enquiry officer by relying on an extraneous and irrelevant matter, namely, an envelope sent to Biplab Kr. Malakar jumps up to conclude that he was a relevant and material witness to prove the charges mentioned in the charge sheet. What a more extraneous consideration can be contemplated rather than this and it is impossible to imagine that an officer who is vested with or conferred with the solemn duty to enquire into the serious charges against an employee will behave in such arbitrary and capricious fashion. Not only this is the end. It is more suppressing to see that in the next sitting which was held on 30th March, 1981, the petitioner presented himself before the enquiry officer to participate in the enquiry proceeding at 11 a.m. but the petitioner was not allowed to be present even though the prosecution witness no. 7, Sir. K.K. Premanathan, was at that time deposing in the presence of the presenting officer and his deposition was being recorded. The enquiry officer directed the petitioner to go out of his chamber and at 11-20 a.m. when the petitioner and his defence helper who came at that time again entered into the chamber of the enquiry officer, the enquiry officer told them that the enquiry was closed and recording of evidence of P.W. 7 was concluded. To this a written appeal was filed objecting to this wherein they were presented with a spare memo that the petitioner and his defence counsel appeared at 11-30 a.m., that is, after the close of the enquiry. Immediately, thereafter the petitioner sent a letter to the Divisional

Commercial Superintendent intimating all these facts and stating specifically the bias of the enquiry officer and praying for change of the enquiry officer by an un-biased and impartial enquiry officer for the ends of proper enquiry in accordance with the terms of Railway Board's letter No. E(D&F) 70RJ-614(1) dated 19th June, 1974.

13. When such an application has been made by a Railway servant against the enquiry officer on the grounds of bias, the departmental proceeding had to be stayed and the application of the delinquent employee along with other relevant materials had to be forwarded to the appropriate reviewing authority for consideration of the application and passing appropriate order thereon expeditiously. In this case, however, it appears that the said application was sent to the Divisional Railway Manager for consideration but unfortunately it appears from the records produced before this Court by Mr. Bagchi, learned advocate on behalf of the Railways, that there does not appear that the D.R.M. has made any consideration of the representation made by the petitioner. Moreover, one line formal order was recorded to the effect that no change of enquiry officer at this stage can be made. This is patently no order in compliance with the Railway Board's order, inasmuch as, the said order of the Railway Board clearly enjoins that such representation will be considered by the reviewing authority. In other words, there must be a due consideration of the representation made and the authority must pass an order recording some reason which will on the face of it or exercise show that he has in fact reviewed and considered the representation and made the order rejecting the prayer contained in the representation. Therefore, this stereotyped one-sentence order, in my considered opinion, is no order at all as contemplated in the Railway Board's Order and I am pained to say that a responsible officer like the D.R.M. can act in such an arbitrary and carious manner in dealing with a representation made by, a delinquent employee in connection with an enquiry proceeding and making serious allegation of bias against the enquiry officer which has undoubtedly got far-reaching effect on the enquiry proceeding held by the enquiry officer.

14. It is one of the essential ingredients of the principles of natural justice that a man should not be condemned unheard or in other words the principle of *audi alteram partem* had to be observed since our polity is governed by rule of law which shuns arbitrariness in any manner whatsoever in the matter of making order affecting prejudicially the rights of a party. This has been voiced in the case of Khem Chand Vs. The Union of India (UOI)and Others, at 307 para 9 wherein it has been observed that the reasonable principle envisaged in Article 311(2) includes, (a) opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based; (b) an opportunity to defend himself by cross-examination of the witnesses produced against him and by examining himself or any other witness in support of his defence. In the instant case as I have stated hereinbefore that the

prosecution witness no. 7 has been examined behind the back of the petitioner and the petitioner was directed by the enquiry officer to leave his chamber even though the witness is being examined and his evidence is being recorded. Not only that, even when the petitioner and his defence helper entered into the chamber of the enquiry officer, they were told that the evidence had been closed. It is unthinkable how such an enquiry officer can debar the petitioner to be present while a witness is being examined and how can the petitioner be prevented from cross-examining that witness. I have also stated hereinbefore that inspite of objection made by the defence counsel, bonafide and relevancy of a particular witness to be examined has to be established before permitting such a witness to be examined by the prosecution, the objection was overruled and the witness was permitted to be examined. Along with this also the other very relevant circumstance that the Railway authorities though mentioned some material documents which were proposed to be used to establish or bring home the charges mentioned in the charge-sheet purposely avoided inspite of repeated askance and requests on behalf of the petitioner for producing those documents for inspection.

15. Considering all these facts and circumstances, I cannot but hold that there has been a gross and patent violation of the principles of natural justice by the enquiry officer, J. N. Adak, who seems to be biased against the petitioner and as such the entire enquiry proceedings from start to end have been vitiated. In these circumstances I am constrained to hold that the findings as arrived at in this enquiry proceeding cannot at all be deemed under any circumstances to be proper enquiry and on the basis of such report the order of termination that has been made cannot be sustained under any circumstance.

16. I also cannot but mention in this connection that sensing these difficulties the Railway authorities did not venture to come forward to controvert the statements on oath denying the specific averments made in the writ application alleging bias, non-production of material documents for inspection of the petitioner and also the recording of evidence behind the back of the petitioner and shutting out the petitioner and his defence helper from attending the enquiry when the evidence of one of the witnesses, i.e. witness No. 7, is being recorded by the enquiry officer. It reminds me of the provision of order 8 Rule 5 of C.P. Code that allegation of facts which are not controverted specifically shall be deemed to have been admitted and it will not be unjust or unfair to make that presumption in the instant case.

17. For the reasons aforesaid, the only conclusion that follows is that the entire enquiry proceeding is vitiated by gross violation of the principles of natural justice and patent bias of the enquiry officer. The order or termination of service made against the petitioner on the basis of such enquiry report is therefore not sustainable at all.

18. Let a Writ of Mandamus issue commanding the respondents to forbear from giving effect to the order of termination of service dated March 30, 1983. Let a Writ

of Certiorari issue commanding the respondents to cancel, quash and set aside the order of termination as well as the enquiry proceeding.

19. The authorities concerned are directed to pay to the petitioner all his emoluments including bonus which he is entitled to under the extant rules within a period of four months as prayed for from this date by Mr. Bagchi.

20. The Rule is made absolute without any order for costs. In view of the order made hereinbefore I am not inclined to make any further order in respect of the contempt application which should be deemed to have been disposed of on the basis of the observations made in the judgment.