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Calcutta High Court

Case No: C. R. No. 10875 (W) of 1986

P. Kusheri	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision: April 7, 1989

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 145

Citation: 94 CWN 80

Hon'ble Judges: Mohitosh Majumdar, J

Bench: Single Bench

Advocate: S. Pal, R.N. Pal and S. Mitra, for the Appellant; B.N. Sen, Hiranmoy Dutta, S.K. Bose and Kalyan Kumar Bandopadhaya, for the Respondent

Judgement

Mohitosh Majumder, J.
The Writ Petition is directed against the entire disciplinary proceedings, the appointment of the Enquiry Officer, the order of suspension, the enquiry report, the order of dismissal dated March 25, 1986 and the order of the Appellate Authority dated July 8, 1986. The petitioner at the relevant time was the Assistant Branch Manager of Central Bank of India posted at Japlaiguri (hereinafter referred to as "the said Bank"). Prior to the posting as Assistant Branch Manager of the said Bank at Jalpaiguri, the petitioner held the post of Depuity Chief Officer (Branch Manager) at Tufangung.

2. The broad facts are as follows:

The Chief Manager of the said Bank by Memo dated September 29, 1984 directed the petitioner to explain certain irregularities regarding the functions of Tufangung Branch, with reference to his visit to Tufangung on September 27, 1984. After receipt of the said Memo, the petitioner submitted a reply explaining, inter alia, therein the facts and circumstances in support of the action taken. The petitioner, inter alia, pointed out the

urgent need to increase the man-power of the said Branch for its smooth functioning and also stated that the deposits and profits were made by the said Branch after the appointment of the Branch Manager of the said Branch. The petitioner, thereafter, was transferred as As Branch Manager of the Jalpaiguri Branch. While posted at Jalpaiguri. a Memorandum dated June 11, 1985 issued to the petitioner by Sri J. J. Bhattacharjee (for short the Regional Manager hereafter), the Regional Manager acting as the Disciplinary Authority. Certain allegations were made against the petitioner as regards the excessive expenditure incurred on account of entertainment expenses during his stay at Tufangung Branch as Branch Manager. The Regional Manager issued another Memo dated June 12, 1985 that since the petitioner did not reply to Memo dated April 9, 1985 by April 30, 1985 it should be construed that the petitioner no explanation to offer. The petitioner duly replied to the said memorandum by a letter dated June 22, 1985.

3. By a letter dated July 2, 1985 issued by the Regional Manager, the petitioner was informed that the reply given by him under the cover of the letter dated June 22, 1985 was unsatisfactory and another Memo would be issued regarding the irregularities committed by him as Branch Manager of Tufangung Branch of the said Bank. On or about 3/8.10.85,.the Regional Manager who issued the Memorandum dated June 11, I985 as the Disciplinary Authority sent a Memorandum containing Articles of Charges against the petitioner. By the said Memorandum the petitioner was directed to submit point-wise written explanation in respect of all charges specified in the Annexure of the said Memo. The petitioner was further directed to show cause why the disciplinary action should not be taken against him for his misconduct. It was further made clear that in the even, the petitioner did fail to submit his written explanation within seven days from the receipt of the said Memo, it would be presumed that he had no explanation to offer and such action as the undersigned might deem fit should be taken against him.

4. The said Memorandum dated 3/8.10.85 was sent by the. Regional Manager who had earlier appointed himself as Disciplinary Authority and had also issued the Memo dated June 11, 1985 and memo, dated June 12, 1985. On October, 29, 1985, the Regional Manager, wrote to the petitioner informing him that he would have to submit his written explanation latest by November 15, 1985 failing which it would be taken for granted that he had no explanation to offer. By letter dated November 12, 1985, the petitioner prayed for inspection of records lying at Tufangung Branch which was prepared during his tenure as Branch Manager of the said Bank in order to enable him to prepare his reply to the said Memorandum. The said prayer of the petitioner was made by a letter dated November 12, 1985, which is set out below:

With reference to your above Memo I like to state that it is difficult for me to give reply to your above mentioned. Memo along with charges unless I go through the records of the office which were prepared during the period when I was in charges of Barnches. I will also verify the correctness of your charges as mentioned.

I, therefore, request you to kindly allow me time upto 30th November, 1985 and give me your permission to go through the records of the Branch so that I can get help and co-operation from our Tufangung Branch.

Your sympethetic consideration will be much helpful for me". Inspection of documents as asked for by the petitioner was not allowed.

5. Despite the prayer of the petitioner for inspection of records, not being accorded, reply to the Memorandum dated 3/8.10.85 was submitted by a letter dated November 28, 1985. Inspection of records was not accorded at all.

6. Without inspection of records, the petitioner had to submit his reply dated November 28, 1985. While denying the allegations as made in the said Articles of Charges, the petitioner, inter alia, stated in the said reply that he did not sanction irregular advances during the period between 1983 and 1984 by misrepresenting facts in sanction proposals, that the advance was made according to the minimum requirement of the borrower for development of Retail Trade Business and it was within the notice of the Regional Office, Cooch Behar for which regular proposals were made, that he had submitted Pre and Post Inspection Reports prepared in terms of the procedure alter obtaining reports from the local market about business integrity and goodwill, that the fake Pre and Post Inspection Report was denied by the petitioner, that about investment in business, it was mentioned in financial reports Sale and Purchase figures, that Pre and Post Inspection Reports could be made by one officer but it did not mean the same were written in one sitting, Preparation of balance sheet and statement thereof was the responsibility of borrower but for that, Branch Manager could not be fastened with responsibility. The petitioner denied the allegation as figures shown in various heads "in Trading" P.& L. Accounts and balance sheet prepared by the petitioner on behalf of borrower"s in consideration of some commission". The petitioner in the said reply further effectively dealt with and denied the allegations made therein and also inter alia, asked for certain clarification of the records and vague allegations made in the said Articles of Charges. By a letter dated December 23, 1985, the Regional Manager, who issued earlier show cause notice in respect of almost self-same charges issued a Memo dated December 23, 1985 which is quoted below:

As the Management is not at all satisfied with his reply given on 28/1 1/85 on the Memo No. CRO/PRS/DWA/85/C-80/3 dated 8/10/85, Mr. S.N. Kushari is hereby informed that the Management is proceeding further in the matter.

7. By a Memo dated February 19, 1986 issued by the Regional Manager, the attention of the petitioner was drawn to his conduct of abusing his official position as Branch Manager of Tufangange Branch in Cooch Behar District by sanctioning loans/advances to the tune of Rs. 6,91,000 in violation of Bank"s norms, laying down procedures, lending policies and/or his discretionary powers with malafide. intentions by spending unauthorisedly Bank"s funds towards entertainment expenses and by engaging unauthorisedly casual

labour at Tufangunge Branch. By the aforesaid Memo, the petitioner was placed under suspension from the Bank service with effect from November 19, 1986. The petitioner was further informed that the petitioner shall be paid subsistence allowance from the date of suspension to his date of retirement from Bank"s Services on March 31, 1986 by reason of his attaining the date of superannuation.

8. Mr. K. Mukherjee, the Disciplinary Authority assumed the role of disciplinary authority and informed that the Regional Manager would be appointed to act as an Inquiring Officer. Mr. S. K. Sikdar was appointed as a Presenting Officer to present the Bank"s case against the petitioner. The Branch Manager served a Memo dated March 6, 1986 enclosing chargesheet dated February 21, 1986 which was issued and signed by the Disciplinary Authority. Chargesheet contains 21 pages.

9. The petitioner by a letter dated March 10, 1986 issued by the Regional Manager was informed, inter alia, that the preliminary hearing would be held at Regional Office, Cooch Behar on March 13, 1986 at 12 P.M. The Regional Manager informed the petitioner by notice dated March 8. 1986 that preliminary enquiry would be held on March 13, 1986 at 12 P.M. in which a Charged Officer and Presenting Officer were requested to attend with all relevant papers and documents. The Presenting Officer was requested to bring all documents with two copies thereof. The Charged Officer should bring the list of witnesses and documents if he proposed to piead not guilty to the charges. The charges as contained in the Memo dated February 21, 1986 were almost similar and identical to the Articles of Charges framed in the earlier Memorandum dated 3/8.10. 1985 issued by the Regional Manager.

10. Mr. Amitava Bhattacharjee, a defence representative of the petitioner on the date of preliminary hearing that is on March 13. 1986 made a written prayer for extension of time for 15 days in order to prepare his defence on behalf of the petitioner which prayer was, however, summarily rejected by the Regional Manager. The petitioner by a letter dated March 13, 1986 addressed to the Disciplinary Authority, challenged the impartiality of the Regional Manager and prayed for appointment of impartial and independant person as the Inquiring Officer on the ground that the Regional Manager was the same officer who issued the Memorandum of Charge dated June 11, 1985, memo dated June 12, 1985 and memo dated July 2, 1985. The petitioner also expressed his reasonable apprehension that the enquiry proceedings would not be conducted impartially by the Regional Manager. The said request of the petitioner, was, however, turned down; The said letter of the petitioner was received by the Regional Manager on March 13, 1986 at 3 P.M. The petitioner, inter alia, stated in the leter dated March 13, 1986 as follows:

11. No reasonable time was allowed to the petitioner to appear" before the enquiry, that the Regional Manager with bias fixed the date of enquiry motivatedly without giving the petitioner and his defence representative reasonable time to prepare the defence.

12. That Memo, of Cooch Behar B.O. referred to in the letter dated March 13, 1986 was signed by the Regional Manager, Cooch Behar, it would definitely appear that the Regional Manager, Cooch Behar while submitting his findings should be prejudiced, that the petitioner felt that the enquiry would not be impartial and reasonable opportunities would be denied to. the petitioner, in course of enquiry, that the petitioner felt that the Regional Manager against whom the petitioner alleged would not be impartial to the petitioner, that in order to provide natural justice to the petitioner an impartial and unbiased officer should be so appointed. Request for time for submission of written statement of defence, inspection of documents and examination of witness was turned down. The said request was, however, turned down in violation of Regulations 6(3). 6(l0)(a) and (b) of the said Regulations. Finally by an order dated March 25, 1986 issued by the Disciplinary Authority which was communicated to the petitioner by a Memorandum issued by the Regional Manager dated March 27, 1986 the petitioner was dismissed from service. The order of dismissal was served upon the petitioner only five days prior to the petitioner''s due date of retirement from the services of the Bank which was on March 31, 1986.

13. The Disciplinary Authority acted as a Rubber Stamp of the Inquiring Officer. The enquiry report was not furnished along with dismissal order dated March 25, 1986. The enquiry report was subsequently communicated to the petitioner by April 14, 1986.

14. Mr. B. N. Sen, the Senior Advocate duly assisted by Mr. Hiron-moy Dutta, the learned Advocate placed that the respondents filed affidavit-in-opposition sworn and affirmed by Kanan Kumar Mukherjee as Deputy General Manager of the Central Bank of India on December 4, 1986. Stand taken by the respondents in the affidavit-in-opposition is, inter alia, as follows:

The writ application does not disclose any cause of action, that there has been suppression of material facts, that in con of investigation in regard to the functions of the said Branch conducted by the Senior Officials of the Regional Office, Cooch Behar region, serious financial irregularities were detected and as such, the petitioner was issued a chargesheet in terms of Central Bank of India (Disciplinary & Appeal) Regulations (for short "the said Regulations" hereafter), that he was given full opportunity of self-defence, that the petitioner participated in the enquiry, that the petitioner from the very beginning was found to have taken an obstructive attitude only to delay the proceedings, so that the same may not be completed before his retirement on superannuation, that some of the allegations which are serious in nature were based on the documents on record, that the petitioner had practically no explanation to offer about his serious acts of omission and/or lapses.

15. Prior to the issuance of the said show cause notice a thorough investigation was conducted by Sri C. K. Das, Deputy Chief Officer which was submitted to the Regional Manager on September 16, 1985, that the explanation of the petitioner was not found to be satisfactory. The matter was referred by the Regional Manager to the Head Office in

Bombay as well as the Zonal Office and thereafter, the chargesheet was issued on February 21, 1986. The Disciplinary Authority under the provisions of the said Regulations was duly authorised and competent to initiate the proceedings and imposed penalty upon the petitioner who at the material time belonged to officer of middle management cadre. Under and in terms of the said Regulations, the Disciplinary Authority was competent to frame the charges and enquiry himself into "the truth of the imputations of misconduct or misbehaviour against the petitioner or appoint any other public servant to enquire into the truth thereof. The Regional Manager was appointed as Inquiring Officer. The chargesheet was issued bonafide as there were serious allegations of financial irregularities against the petitioner by forming an opinion that there existed grounds for enquiring into the truth of the said allegations which if proved would amount to gross misconduct. The enquiry was properly and validly held as would appear from the records of the enquiry, that there was no basis for any reasonable apprehension that the Regional Manager while conducting the enquiry would act with closed mind, not was there any basis for any allegation that the Disciplinary Authority did not apply its mind to the report of the Regional Manager as the Inquiry Officer to come with an independent finding before awarding punishment or that the Disciplinary Authority acted as a rubber stamp of the Regional Manager or Jailed TO apply his mind or that there was no warrant in law to forward the report of the Regional Manager along with the order inflicting punishment, that the petitioner particiated at every stage of the enquiry. Several documents were produced in the enquiry and marked exhibits. The Regional Manager on careful analysis of the evidence on record and after securing compliance of the said Regulation came to a finding holding the petitioner guilty of some of the charges and exonerated him from the other charges.

16. The Disciplinary Authority duly examined all the papers and documents including the entire records of the inquiry proceedings and applied to his mind to the materials on record and thereafter, agreed with the finding of the Regional Manager. The Disciplinary Authority found it fit and proper case for dismissal. The Disciplinary Authority passed the order keeping his conscience clear and in the interest of justice particularly in view of the fact that financial institution like Banks dealt with public money it is of utmost necessity that officers of the Bank who are entrusted with public money do not indulge in such activities which would shake the public confidence.

17. The respondents also claimed that the chargesheet in the matter was issued by the Disciplinary Authority on February 21, 1986 and the memos issued earlier thereto were all show cause Memo issued by the Regional Manager not in the capacity as Disciplinary Authority, that there was no disregard to the principles of natural justice or fair play or that the Memo dated June 11, 1985 or the Memorandum dated 3/8.10.85 were chargesheets as contemplated under the Disciplinary & Appeal Regulations, that all the charges enumerated in the chargesheet dated February 21, 1986 were not for the first time brought to the notice of the petitioner, that the allegations about his conduct enumerated in the chargesheet were brought to his notice by the said show cause notice dated

3/8.10.1985 issued by the Regional Manager calling upon him to offer explanation and the reply to the said show cause notice did not appear to be satisfactory, that it was neither imperative nor obligatory to give 15 days" time to give reply or that There has been any violation of Article 1.4 in the matter of initiating disciplinary proceedings or that there is any warrant in law which requires the disciplinary authority to give elaborate reason; in parsing the final order. The orders dated March 25, 1986 and July 8, 1986 passed by the Disciplinary Authority and the Appellate Authority were validly passed with any application of mind to the materials on cord. One of the basic objections of the respondents is that the petitioner apart from making bold allegation failed to substantiate the he had been in any way prejudiced by holding of the enquiry by the Regional Manager. Inasmuch as he had associated himself at every stage of the proceedings and the finding of the Regional Manager was mainly based on Bank"s documents.

18. The petitioner in reply to the affidavit-in-opposition denied the preliminary objections raised therein namely, the petition is not maintainable or that the petition does not disclose any cause of action or that the petition has been moved in gross abuse of the process of the Court by suppression of material facts. The petitioner further asserted that the petitioner was not given full opportunity of self-defence or that his attitude was never found to be obstructive or that the petitioner never intended to delay the proceedings and the petitioner had explanation offer as regards the alleged lapses, that no disputed question of facts is involved and the matter could be decided and adjudicated in the writ jurisdiction. The fundamental objections of the respondents as made in the writ application were effectively dealt with by the petitioner in the said reply. The petitioner, inter alia, claimed and contended that he duly replied to all the show cause notices issued from time to time early and the reply according to the petitioner was satisfactory and that there did not cast any justification for the issuance of the chargesheet on the basis of the said report submitted by Sri C. D. Das, Deputy Chief officer to the Regional Manager, that the chargesheet issued by Sri K. K. Mukherjee the respondent no. 2, is a verbatim production of the chargesheet dated 3/8.10.1985 which was issued by the Regional manager, who was subsequently appointed as the Inquiring Officer, by the Respondent no. 2 acting as the Disciplinary Authority, that the enquiry proceedings were conducted contrary to the provisions of the said regulations, that the Regional Manager while conducting the enquiry failed to act with an open mind or that the Disciplinary authority failed to apply its mind to the report of the Inquiring Officer (sic) did he arrive at an independent finding before awarding punishment.

19. There was no careful analysis of the evidence on record nor was any ground for coming to an adverse finding against the petitioner on the basis of the materials some of which could see the light of the day during the course of the hearing before this Court. This is a fit and proper case.

20. Mr. S. Pal, the Learned Advocate duly assisted by Mr. Rabin Pal and Mr. Samar Kumar Basu after placing the fundamental grievances raised in the petition in an elaborate manner claimed and contended that the entire proceedings were vitiated by-

reason of the irregularities. Non-observances of fair play and rules of natural justice crept in the proceedings. Bias of the Regional manager suffered from lack of impartiality. The enquiry report is vitiated by violation of Regulation 6(3), 10(a) and (b) and 6(21) of the said regulations. The enquiry proceedings and the enquiry report is vitiated by denial of the right of inspection of documents, refusal of the Regional Manager and the Disciplinary authority to grant time for submission of written statement of defence, the denial of the prayer of cross-examination of Mr. R. S. Agarwal, the author of the Audit Report and inclusion of new charge. The appellants order is also bad by reason of the failure of the Appellate Authority to record independant finding as also its failure to consider the grievances of the petitioner as are raised in the grounds of Appeal.

21. Mr. Pal in support of the basic challenge founded upon the grievances as are indicated above proceeded with the matter by contending, inter alia, as follows:

The entire proceedings right from the very issue of the show cause notice till the passing of the appellate order suffered from non-observance of fairness or failure of the respondents to act fairly. The Regional Manager who issued the show cause notice and found reply of the petitioner to the show cause notice unsatisfactory failed to act fairly by not allowing the petitioner adequate time namely 15 day''s time in terms of the said Regulations. The Regional Manager before his appointment as the Inquiring Officer althroughout issued show cause notice and Memo and recorded his adverse findings to be stated, hereafter. The petitioner took exception to the appointment of the Regional Manager on the ground of lack of impartiality, refusal of both the Regional Manager and the Disciplinary Authority to allow 15 day''s time as also the inspection of documents which according to Mr. Pal constitute ground of violation of rules of natural justice and non-observance of fairness by respondents.

22. Mr. Pal then took up next ground of challenge i.e. bias in support of which reliance was placed on paragraphs 4, 6, 7 and 8 of the writ petition.

23. After referring to and relying on the said paragraphs, Mr. Pal seriously assailed the action of the Disciplinary Authority in appointing the Regional Manager as the Inquiring Officer for the reasons the Regional manager before issuing Memos, show cause notice dated 3/8-10-85 issued Memo dated June 11, 1985 reads thus:

Sri S.M. Mushari, A. B. M. Jalpaiguri is hereby called upon to explain the following acts of omission and commission, committed by him, while functioning as Branch manager, Tufanganj Branch:

(1) He has incurred Rs. 5,181.90 for the year, 1984 to wards entertainment expenses which is not in conformity with the Bank''s rule.

(2) Further he did not seek for any confirmation from his higher authorities with regard to such huge expenses incurred by him under the afoiresaid head. It is made known to him that by adopting such practices, he has put the branch to sustain a great loss and has

virtually jeopardised Bank"s interest which is unbecoming of officer as per O.S.R. 1976. Management has taken a serious view of such lapses on his part.

As such, he is hereby instructed to submit his explanation in respect of the above within 7 days failing which it shall be construed that he has not got no explain to offer.

Memo dated June 12, 1985 is quoted below:

Sri S. M. Kushari, Assistant Branch Manager, Jalpaiguri Branch was instructed to submit explanation by 30/4/85 in respect of Memo dated 9/4/85 served on him.

But till date, the management has not received any. reply of the said Memo.

As such, it is construed that Mr. Kushari has actually no explanation to offer in respect of the referred Memo thereby he has exposed himself for departmental proceedings.

24. The attention of the Court was drawn to Memorandum dated 3/8-10-85 under cover of which the Articles of Charge were served upon the petitioner. The grievance in this score is that the Regional Manager not only issued the said Memorandum but also recorded that if the petitioner did fail to submit his point-wise written explanation within seven days from the receipt of the said Memo, it would be presumed that he had no explanation to offer and such action as the undersigned might deem fit should be taken against him.

25. He Regional manager, according to the petitioner, had derived, his personal knowledge of the entire matter and in the Memorandum dated 3/8-10-85, he indicated that the acts of the commission were committed by the petitioner while working as Branch Manager (MM-II) of Tufanganj Branch. Element of impartiality of the Regional Manager was consciously absent. The Regional, Manager rendered himself incompetent to act as the Inquiring Officer on the ground of bias. The entire enquiry proceedings and the enquiry report as claimed by Mr. Pal were vitiated by reason of the violation of the provisions of the said Regulation in particular Regulations 6(3) and 6(21) of the said Regulations. The Regulations 6(3). (5), (9), (10) and (21) of the said Regulations are quoted below:

Regulation 6(3):

Where it is proposed to hold an enquiry, the Disciplinary Authority shall frame definite and distinct charges on the basis of the allegations against the officer employee and the Articles of Charge, together with a statement of allegation on which they are based, shall be communicated in writing to the officer employee, who shall be required to submit within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), or within such extended time as may be granted by the said Authority, a written statement of his defence.

Regulation 6(5):

The Disciplinary Authority shall, where it is not the Inquiring Authority, forwarded to the Inquiring Authority:

(i) a copy of the Articles of Charges and statements of imputations of misconduct or misbehaviour:

(ii) a copy of the written statement of defence, if any, submitted by the officer employees;

(iii) a list of documents by which and list of witnesses by whom the Articles of Charge are proposed to be substantiated;

(iv) "a copy of the statements of the witness, if any;

(v) evidence providing the delivery of Articles of Charge under sub-regulation (3);

(vi) a copy of the order appointing the Presenting Officer in terms of sub-Regulation (6);

Regulation 6(9):

If the officer employee does not plead guilt, the Inquiring Authority shall adjourn the case to a later date not exceeding 30 days or within such extended time as may be granted by the Inquiring Authority;

Regulation 6(10):

(a) The Inquiring Authority shall, where the officer employee does not admit all or any of the Articles of Cuarge, furnish to such officer employee a list of documents by which and a list of witnesses by whom, the Articles of Charge are-proposed to be proved.

(b) The Inquiring Authority shall also record and order that the officer employee may for the purpose of preparing his defence:

(i) inspection within five days of the order or within such further time not exceeding five days as the Inquiring Authority may allow, the documents listed;

(ii) submits a list of documents and witnesses that he wants for the enquiry;

(iii) be supplied with copies of statements of witnesses, if any, recorded earlier and the Inquiring Authority shall furnish such copies not later than three days before the commencement of the examination of the witnesses by the Inquiring Authority;

(iv) give a notice within ten days of the order or within such further time not exceeding ten days as the Inquiring Authority may allow for the discovery or production of the documents referred to in item (ii).

Regulation 6(21)(i):

On the conclusion of the inquiry the Inquiring Authority shall prepare a report which shall contain the following:

(a) a gist of the Articles of Charge and the statement of the imputations of misconduct or misbehaviour;

(b) a gist of the defence of the officer employee in respect of each Article of Charge;

(c) an assessment of the evidence in respect of each Article of Charges;

(d) the findings of each Article of Charge and the reasons therefore

(e) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry.

26. The petitioner althrough complained of the bias of the Regional Manager, the details of which appear from Annexure D at page 37 and Annexure A to the writ petition. The learned Counsel for the petitioner placed reliance on the said Memo and representation dated March 13, 1986 and pointed out that the Regional Manager formed an adverse opinion that the reply of the petitioner was not satisfactory. It was also indicated in the said letter that an officer would serve the petitioner with another Memo indicating therein the specific irregularities committed by him. The Regional Manager issued another Memo dated June 12, 1985, as the Disciplinary Authority. Memo dated June 12, 1985 further di3//los%d that the petitioner had actually no explanation to offer in respect of the Memo and thereby exposed himself for departmental proceedings.

27. Mr. Pal also referred in details to the Memo dated October 3/8-10-1985 and to the enquiry proceedings. Mr. Pal after referring to the Regional Manager''s observation during the course of preliminary hearing submitted that on March 13, 1986 the defence representative expressed that he would require 15 days time to study the case. The said request of the defence representative was not acceded to and it was recorded that time more than 6 days could not be granted. The defence representative again made it clear that as he received notice for preliminary hearing on March 10, 1986 he would require sufficient time to present his case. The request of the defence representative was not considered at all and the Regional Manager again recorded that time not more than 6 days would be allowed. The matter was, thereafter, fixed for hearing on March 20, 1986. The defence representative brought to the notice of the Regional Manager as. regards, the representation submitted by the petitioner dated March 13, 1986 and addressed to the Disciplinary Authority. The enquiry proceedings was resumed on March 20, 1986 when the charged officer asked for time upto March 31, 1986 for submission of his reply to the allegations contained in the chargesheet, but extension of time for submission of reply was refused. The Telegram dated March 18, 1986 was placed. The said Telegram is quoted below:

LOG FOR MR. J. J. BHATTACHARJEE/OE STOP RYT DTD 11-3-1986 RECEIVED ON 13-3-1986 REGARDING DEPARTMENTAL ENQUIRY

AGAINST SRI S. R. KUSHARI DCO U/S STOP NO EXTENSION OF TIME WILL BE GRANTED TO SRI S. SM. KUSHARI CHARGESHEET OFFICER AS APPLIED STOP ONCE NO REPLY RECEIVE WITHIN STIPULATED TIME MENTIONED IN THE CHARGESHEET IMMEDIATELY PROCEED WITH DEPARTMENTAL ENQUIRY AS PER TIME BOUND PROGRAMME STOP MUKHERJEE R.A CRATZONEA&CALCUTTA.

28. The Disciplinary Authority while dealing with the prayer of petitioner for extension of time for reply to the Articles of Charge should not have recorded the expression and proceeded with the departmental enquiry as per time bound programme, in Memo dated June 11, 1985, memo dated June 12, 1985 and memo dated July 2, 1985. The views expressed by Mr. J. J. Bhattacharjee in the aforesaid three Memos would show that the Regional Manager acted as the Disciplinary Authority.

29. Further grievance of the petitioner as is placed before this Court is that the Regional Manager having acted as the Disciplinary Authority rendered himself wholly imcompetent to act as the Inquiry Officer.

Mr. Pal on the question of bias referred to the following decisions of the Supreme Court in cases of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, S. Parthasarthi Vs. State of Andhra Pradesh, and Ranjit Thakur v. Union of India, reported in (1987) 4 SCC 61.

30. While placing the decision of the Supreme Court in case of Ranjit Thakur v. Union of India (supra), Mr. Pal also took pains in placing the following decisions relied on by the learned Judges of the Supreme Court in case of Ranjit Thakur v. Union of India (supra).

(i) Vessellidas v. Vessellidas, reported in AIR 1945 PC 138;

(ii) Allinson v. General Council of Medical Education and Registration, reported (1894)1 QB 750;

(iii) Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon, reported in (1969)1 QB 577;

(iv) Public Utilities Commission of the District of Columbia v. Pollak, reported Led 1068;

31. Bias of the Regional Manager which is dismissed by the respondents was sought to be demonstrated before this Court by recourse, to the enquiry proceedings as also the documents. The Regional Manager while issuing a Show Cause Notice prior to the issue of the chargesheet issued by the Disciplinary Authority was in the position of a Judge and he also exposed predetermined disposition of mind. The appointment of the Regional Manager as the Inquiring Officer was resisted by the petitioner on the ground that he was not a person with an open mind, for that reason he should not have been allowed to act

as the Inquiry Officer by his acting as the Disciplinary Authority earlier in respect of the matters covered by the Articles of Charge dated February 21, 1986.

32. While acting as Inquiring Officer, the Regional Manager was incompetent to rely on his own orders as noticed below and thereby he sought to rely on his own findings as a part of the proceedings. Mr. Pal seriously took exception to such acting of the Regional Manager on the ground of the breach of the rules of natural justice and also non-observance of fairness. Reference may also be made to the decisions of the Supreme Court in case of P. Parthaswarathi v. State of Andhra Pradesh (supra).

33. The refusal of the Regional Manager to allow the petitioner 15 days time adversely affected the right of the petitioner to submit written statement of his defence. Instead of acting in terms of Regulation 6(3) of the said Regulation, the Regional Manager refused to grant time more than six days and for that purpose on the basis of reliance on his own order dated December 23, 1985 passed by him in the capacity as the Disciplinary Authority. The said order could not be the basis of passing an order on March 20, 1986 when the Regional Manager, as commented by Mr. Pal, passed an order that the petitioner had sufficient time to present defence. An execution was taken to such an order on the ground that an order that was passed on December 23, 1985 could not be relied on by the Regional Manager for the purpose of deciding the prayer of the petitioner for grant of 15 days time for the submission of written statement of defence. Regulation 6(3) of the said regulation was warranted to be complied with. The petitioner further challenged that the Regional Manager did not act in terms of Regulation 6(10)(a) & (b) of the said Regulation. The aforesaid Regulation inter alia, requires the Inquiring Officer to submit a list of documents by which and a list of witnesses by whom the Articles of Charge are proposed to be proved. The Inquiring Officer shall also, record an order that the officer employee may for the purpose of preparing the defence, inspect "within 5 days of the order or within such further time hot exceeding five days as the Inquiring Officer may allow, the documents listed. The record according to the petitioner would show that on March 13, 1986 the defence representative made the following statement:

Q. Please submit your list of witnesses and documents.

Ans. Defence Representative has expressed that he requires at least 15 days time to study the case.

I repeat again that, I cannot give you time more than six days.

As the Charged Officer received the notice for preliminary hearing on 10/3/86 at 3-20 P.M. he requires sufficient time to present his case.

I cannot give you time more than six days. As such, I hereby fix the next date of hearing on 20th March, 1986. The enquiry will be held in continuous session for three days. Both the. Presenting Officer as well as the Defence should come fully prepared.

It will not be possible to adjourn the proceedings. If any party"s absence on the appointed date, place (Regional Officer, cooch Behar) and time (11-00A.M.) the enquiry will be held ex parte.

I am submitting a representation given by Sri S. M. Kushari, dated 13/3/86 addressed to Sri K. K. Mukherjee D.G. M/Disciplinary Authority, Central Bank of India. Zonal Officer, Calcutta.

This representation has got nothing to do with the enquiry proceedings. The representation will be forwarded to the concerned authority in due course but I repeat against that next date of hearing stands fixed on 20th March, 1986 at Regional Office, Cooch Behar at 11-00A.M. and the enquiry will be held in continuous session for three days.

"As such he had sufficient time to prepare his defence. He received chargesheet dated 21/2/86 on 10/3/86 the day-to-day hearing has been fixed on this day i.e. 20/3/86. Thus, he has been allowed reasonable time also to prepare his defence.

His objection against appointment of Regional Manager Cooch Behar as Inquiring Officer are not valid.

However, the objections raised by him on 13/3/86 in his letter dated 13/3/86 addressed to the Disciplinary Authority has been referred to the Disciplinary Authority has been referred to the Disciplinary Authority as per the, desire of the Charged Officer and the hearing is being held today the 20th March, 1986 as per Notice issued on 13/3/86 duly receipted by the Charged Officer, Presenting Officer a the Defence Representative on 13/3/86.

Presenting Officer has submitted an application dated 20/3/86 requesting the inquiring Officer to allow him be assisted by Sri Ashok Sinha. Sub-Assistant. Whether have you got any objection to this effect.

I have got no objection.

D.R. to E.O. Sri Achinta Chakraborty, J.M.-I Regional Officer. Cooch Behar shall appear as witness from the Defence side. I do not have any documentary evidence to submit before the Inquiring Officer.

1) Memo of R.M., Cooch Behar dated 11/6/85 and 12/6/85 are signed by him in the capacity of Disciplinary Authority which is against the norms.

2) The appeal filed on 13/3/86 by D.R. Sri Amitava Bhattacharjee regarding prayer for reasonable time i.e. 15 days from 13th onward for preparation of defence, is also not allowed, which amounts to denial of natural justice.

3) Objection filed by D.R. Sri Amitava Bhattacharjee on 13/3/86 duly received by Inquiring Authority addressed to Disciplinary Authority of which I have not received any communication until now. As such, it appears that it has been overruled and proceedings have been started accordingly.

E.O. to D.R. Have you received copies of evidence/documents?

D.R. to E.O. I have not received.

E.O. to D.R. What is your comment?

E.R. to E.O. I have given him all the documents for his perusal.

E.O. to D.R. Have you received anything as per preliminary proceedings recorded on 13/3/86.

D.R. to E.O. I have been appointed as D.R. only today at 11.25 A.M. Now can I get the papers/documents as per preliminary proceedings dated 13/3/86.

E.O. to P.R. Can you give him a copy of all documents/papers against proper receipt.

P.R. to E.O. Yes, I am preparing list in an orderly manner and give him within an hour."

"The enquiry proceedings will again start at 1.45 P.M. today the 20th March, 1986 at Regional Office, Cooch Behar.

This one hour time is given for launch. No further time will be given for lunch break today."

E.O. to P.O. Have you given copies of documents/evidences to D.R?

P.O. to E.O. Yes.

E.O. to D.R. Have you received copies of documents/evidences from P.O.?

D.R. to E.O. Yes.

E.O. to P.O. Now you will proceed further in the matter.

34. The petitioner"s grievance is that the Regional Manager should have allowed five days time to inspect the documents or within such further time not exceeding five days. The Regulation 6(10)(a) & (b) of the said regulation are seriously breached and completely departed from or otherwise violated. Right of cross-examination of the petitioner according to Sri Pal was adversely affected. As the defence representative submitted the list of witness and documents which in his opinion would prove the innocence of the petitioner, the Regional Manager before proceeding with the matter should have acted in terms of Regulation 6(10)(a) & (b) of the said Regulation.

35. The Regional Manager recorded in the Memo dated October 29, 1985 that "the undersigned did not give you any sort of verbal approval for entertaining the staff members of that Branch for working in late hours by debiting P&L A/C by Memo dated July 2, 1985, the undersigned took serious exception to your false statement."

36. Here the Regional Manager steped in the role of an accuser and also recorded his strong exception to false statement. The recital of facts was again recorded in memo dated October 3/8, 1985. The Regional Manager also under Memo dated February 19, 1986 while passing order of suspension stated in the said order "the petitioner"s conduct of abusing his official position as Branch Manager, Tufangunj Branch in Cooch Behar District by sanctioning loans advances to the tune of Rs. 6,91,ooo in violation of Bank"s norsm, laid down procedures, lending policies and/or his spending unauthorisedly bank"s funds towards entertainment expenses and by engaging unauthorisedly casual labour at Tufangunj Branch."

37. Mr. Pal made a reference to the case of State of U.P. and Another Vs. C.S. Sharma, and reported in State of Uttar Pradesh and Another Vs. Sri C.S. Sharma, The said decisions were cited in support of the contention that had the witnesses been produced in particular the author of the audit report and the investigation report, the innocence of the petitioner, would have been established. The enquiry report was seriously assailed on the ground that the Inquiring Officer while submitting the Enquiry Report acted in violation of Regulation 6(21) and the explanation appended thereto of the said Regulations. The enquiry report did being wholly dehors the requirements of the. Regulation 6(21)(b)(d) as the explanation. The enquiry report, thus, prepared and submitted is in contravention of Regulation 6(21) (b)(d) of the said Regulations.

38. The Regional Manager, according to the petitioner, violated the said regulation 6(21)(b)(d) of the said Regulations. The order of the Appellate Authority did not record whether -findings are justified or whether excessive. The Appellate Authority failed to discharge its function by not complying with the Regulation 17(ii) of the said Regulations. In support of the contention; as regards the violation of the Regulation 17 (ii) of the said Regulations, reference was made to the decision of the Supreme Court in case R. P. Bhatt v. Union of India, reported in 1986 Lab. I. C. 790.

39. The Regulation 17(ii) of the said Regulation was not complied with. The word "consider" in Regulation 17(ii) as claimed by Mr. Pal implies due application of mind. The said Regulations cast duty on the Appellate Authority to consider the relevant factors set forth in Clause (ii) of Regulation 17 of the said Regulation. There was no finding that the findings are justified of whether the penalty is excessive in the facts and circumstances of this case. In the absence of any such findings, the order of the Appellate Authority, according to the petitioner, suffered from non-compliance to the requirements of the Regulation 17(ii) of the said Regulations.

40. The chargesheet issued by the Disciplinary Authority was incompetent on the ground that the first chargesheet issued under cover of the Memorandum dated 3-8-86 by the Regional Manager was still pending. The first chargesheet without being withdrawn and/or cancelled, the chargesheet dated February 21, 1985 was wholly without jurisdiction.

41. Mr. Pal urged that the enquiry report and the order of the Appellate Authority are vitiated by reason of finding that huge loss caused to the Bank and invalidity is that both are based on findings which do not find places in the chargesheet. In support of the aforesaid contention, Mr. Pal referred to the decision of the Supreme Court in the case of State of Punjab v. Baktiar Singh reported in 1972 SLR 85; Collector of Customs v. Md. Habibur Rahaman, reported in 1973 SLR 321.

42. Mr. Bholanath Sen, the learned Senior Advocate duly assisted by Mr. Hiranmoy Dutta, Mr. Kalyan Kumar Bandopadhyay and Mr. Samir Kumar Bose, the learned Advocates, after placing the basic objections as are taken in the affidavit-in-opposition claimed and contended that the Court would refuse to entertain the plea of bias. The petitioner did not place before this Court the nature of bias of the Regional Manager in the facts and circumstances of this case. The charge of bias could not be imputed to the Regional Manager in absence of pleadings as regards the nature of bias Mr. Sen while advancing his submission on the question of bias seriously critisized that there should be proper pleadings as to the nature of bias namely, personal bias, administrative bias or pecuniary bias. Such allegations were not made at any point of time. The.petitioner could not place any materials in justification of his assertion that the Regional Manager suffered from any kind of bias at the time of conducting the enquiry proceedings, nor did he place any documents or papers and/or any materials in support of the pleading that the enquiry was not impartial by reason of administrative bias of the Regional Manager. The question of pecuniary bias in the facts and circumstances of this case could not arise.

43. Bias of the Regional Manager as claimed by the petitioner was not justified nor did he step into the role of the prosecutor. In such situation, it could not be said that the enquiry was tainted with bias. Mr. Sen claimed with a great deal of effort in explaining in the facts and circumstances of this case that there is no scope for cat-scan of the charge of bias in such manner as was invited by the learned Counsel for the petitioner. Mr. Sen futher submitted that the chargesheet was issued by the Disciplinary Authority against whom no charge of bias was made. The appellate order was passed by an Authority who was also not accused of the charge of bias. In such situation, the enquire proceedings namely, the enquiry report, chargesheet, order of dismissal and the order of the Appellate Authority are free from bias Mr. Sen referred to the following decisions:

1. Tara Chand Khatri v. Municipal Corporation of Delhi ft Ors.

2. Nar Singh v. Union of India ft Ors.; 1977(2) SLR 779;

3. State of Madras v. A. R. Srinivasan; AIR 1966 SC 1828.

44. The enquiry proceedings was not open for challenge on the ground of procedural impropriety, irrationality and illegality. The enquiry report, the chargesheet, the order of dismissal and the order of the Appellate Authority are proper, legal and justified.

45. Respondents took serious exception to the assertion of bias made by the petitioner on the ground that suspicion of the petitioner could never establish bias. Here the suspicion did not rest on reasonable ground rather it was founded on flimsy grounds. The petitioner was allowed to participate in the proceedings and was given all opportunities to defend his case, that the petitioner failed to establish that the Regional Manager had any personal and official bias against the petitioner. There was no basis for challenging the entire proceedings on the ground of bias.

46. Mere reasonable suspicion of bias is not enough for invalidating the proceedings. The conduct of the Regional Manager was not inhibited by any mind of bias which would operate as disqualification. The mere challenge that the Regional Manager issued certain show cause notices as the Disciplinary Authority would not otherwise render him competent to act as the Inquiring Officer. The Regional Manager may not shed his inclination towards the implementation of the policy and/or maintenance of the pure administration when he acted as the Inquiring Officer, who as urged by Mr. Sen cannot develop the same kind of neutrality and could objectivity towards the issues and policy being the canvassed before him. No charge of bias should be taken against such inclination.

47. The Regional Manager who was neither biased nor was he interested in the matter in any manner while issuing the show cause notices against the petitioner might have some pre-disposition towards the subject matter but he was not incompetent to hold the enquiry. While acting as the Inquiry Officer, the Regional Manager could not be insulated from the interest of the Bank and the administration of the Bank. Mr. Sen referred to the following decisions, namely-

1. Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and Another,

2. Maniklal v. Dr. Prem Chand Singhvi & Ors., (supra)

3. S. Kumbalingam and Others Vs. The Management of the Indian Metal and Metallurgical Corporation and Another,

4. International Airports Authority of India Vs. K.D. Bali and Anr,

5. Mineral Development Ltd. Vs. The State of Bihar and Another,

6. The Queen on the prosecution or Alfred King v. Haxley & Others; Queens Bench Page 383;

7. Mclean v. Workers Union; 29 Woure Charleton 672. Vessellidas v. Veseliidas (Supra).

48. The respondents accorded the petitioner full opportunity of defending his case during the course of the enquiry proceedings and the inspection of the copies of the documents relied on by the management was recorded, that he petitioner was allowed to cross examine the witness that the Regional Manager acted legally and validly in conducting the enquiry proceedings. The enquiry report did not suffer from any illegality, that the enquiry report conformed to the requirements of Regulation 6(21) of the said Regulations and the explanation appended thereto. The Disciplinary Authority after due application of mind to the materials on record accepted the findings of the Inquiring Officer that the Disciplinary Authority was not required to write a judgment like the judicial authority. Apart from the above, there was no infirmity of any kind in the order passed by the Disciplinary Authority. The appellate Authority also passed reasoned order and duly secured compliance of the requirements of Regulation 17(ii) of the said Regulation.

49. The order of Appellate Authority, as claimed by Mr. Sen, was not vitiated by any procedural impropriety and illegality, that the findings of the Inquiry Officer as accepted by the Disciplinary Authority did not go far beyond the charges. Violation of Regulations as urged by the petitioner was without any substance, that the decisions cited by Mr. Pal are not applicable in the facts and circumstances of this case. The decisions of the Supreme Court in the case of Ranjit Thakur v. Union of India (supra); State of Andhra Pradesh v. S. Parthaswarathi (supra) are of no assistance to the petitioner. Yardstick to judge a challenge of bias is that every suspicion felt by a party must not lead to the conclusion that the authority hearing and adjudicatory proceedings are biased, that the apprehension is to be viewed and/or judged from a rational, reasonable and liberal point of view and not on mere whims caprice and apprehension of any person.

50. The other decisions referred to by the Mr. Pal on the question of bias could be of no avail for the similar reasons. Respondents claimed that the entire proceedings and the role of the Regional Manager are not open for challenge for the reasons that the petitioner was althroughout present in the preceedings after having the assistance of defence representative and took the inspection of records, cross-examined the witnesses and signed the Minutes of the proceedings. The Regional Manager duly heard the objections of the petitioner, and his defence representative recorded the same in the Minutes of the proceedings and after careful consideration of the objection of the petitioner arrived at his findings.

51. Violation of the said Regulation in relation to the findings of the concerned enquiry proceedings is wholly without any basis, that the findings of the Regional Manager duly conformed to the requirements of the Regulations and no in-validity crept in the proceedings. The decisions cited by Mr. Pal in support of his contention that the enquiry proceedings was vitiated by reason of the illegalities as committed by the Regional Manager while conducting the enquiry in an arbitrary, illegal and unauthorised manner are inapplicable here, that the enquiry report not being tained with procedural impropriety

and violation of the Regulation, according to Mr. Sen is in conformity with the provisions of the said Regulations.

52. The decisions cited by Mr. Pal in cases of State of U. P. v. C S. Sharma (supra), S. L. Kapoor v. Jogmohan (supra) could not be called in aid of the stand of the petitioner. The petitioner right from the issue of the show cause notice till the conclusion of the enquiry proceedings instead of submitting his written statement of defence sought to prolong the proceedings on frivolous grounds. The Regional Manager recorded his findings on each article of charge and gave reason therefor. The enquiry report could not be assailed on the basis that it was valid, legal and in consonance with the provisions of the suit regulations, the Disciplinary Authority duly applied his mind to the materials on record and thereafter, accepted the findings of the Inquiry Officer by passing reasoned order.

53. This Writ Court, according to Mr. Sen, will not be justified in re-appreciating evidence forming basis of the findings of the Regional Manager or reassessing the pros and cons of the entire matter. Such re-appreciation and/or re-assessment of the entire evidence on record and of the findings reached by the Inquiry Officer is wholly beyond the pale of the jurisdiction of this Court under Article 226 of the Constitution. Mr. Sen further claimed that if the court finds certain irregularities, even then proceedings would not be liable for interference on the ground of irregularity.

54. Mr. Pal appearing for the petitioner submitted that the objections of the respondents to the fundamental grounds as taken by the petitioner are without any basis, that the bias of the Regional Manager, according to Mr. Pal, is patently manifest in connection there existed direct and close connection between the Regional Manager and the issues in controversy. In the instant case, the Regional Manager initially acted as the judge, and thereafter, as the prosecutor. Even during the course of the enquiry proceedings, he relied on his order of December 23, 1985 and thereby, stepped in the role of accuser. The Regional Manager after recording certain adverse findings at the time of issue of show cause notices as are detailed above, identified himself with the issues in question. The petitioner on March 13, 1986, raised his serious objection to the appointment of the Regional Manager as Enquiry Officer Apart from recording his findings operating to the detriment of the petitioner, the Regional Manager before the holding of enquiry proceedings committed proceedural impropriety and disclosed his predisposition of mind by not allowing the petitioner 15 days time for submission of the written statement of defence and by the refusal of the Regional Manager to accord the petitioner sufficient time namely, 5 days time for securing the inspection of the documents and the grievance of the petitioner as reiterated by Mr. Pal was against the Regional Manager for the grounds as were advanced by Mr. Pal at the time of initiation of his submission before this Court. Mr. Pal in his reply drew the attention of the Court that the materials on record did not warrant the passing of the punitive order. The findings of the Regional Manager, according to Mr. Pal. Was wholly vitiated for the reasons that the enquiry report was submitted in such manner and/or in such form which are wholly dehors the provisions as contained in Regulation 6(21) of the said Regulations.

55. Cloumn (iv) of the enquiry report was seriously criticised on the ground that the expression "no specific submissions on evidence" did not disclose the mind of the Enquiry Officer in as much as the said stereotyped finding without having proper examination of the materials on record, was unwarranted as the defence case was completely ignored.

56. It is appropriate at this stage to refer to certain startling facts which could not have seen the light of the day but for the production of certain documents by respondents. The said documents produced by the respondents were neither annexed to the Affidavit-in-Opposition on behalf of respondents nor were placed before this Court by respondents at the time of the hearing.

57. The said documents and/or the startling facts are withheld from the court. On a careful scrutiny and reading of the said documents it appears that the needle of bias shockingly points at the conduct of the Regional Manager and moves on.

58. The Regional Manager by acting as the Disciplinary Authority in respect of certain allegations made against the petitioner vide Memo dated June 11, 1985, June 12, 1985 and July 12, 1985 also sent a Me: to Central Office, (A&I), Bombay No. DEPT CRC/PRS No. 85/1595 dated August 1, 1985. The said Memo was also sent to (1) Chief Internal Auditor, Calcutta, (2) Zonal Office, (Credit), Calcutta and (3) Zonal Office (IR), Calcutta. The aforesaid Memo Reads thus:

Reg : Special Audit report on Priority Sector & Cash Credit Advances at Tufangunj Branch.

We acknowledge receipt of the captioned Report dated 24.07.1985 of Sri R. S. Agarwal, Senior Internal Auditor, Calcutta.

In this connection we are to inform you, that Sri S. M. Kushari, the then Branch Manager of Tufanganj Branch, was found to be responsible for many gross irregularities in advances by the undersigned during his branch.visit in the last year. Sri Kushari was called upon the explain the same vide our letters No. DP/COB/P&D/CM/84/317 dated 29.9.84, DO/COB/P&D/CM/84/406 dated 20.11.84 and Memo dated 9.4.85 & CRO/ PRS/85/SF/43/1244 dated 12.6.85. He was also intimated vide our letter No. RO/COB/PRS/RM/85/282 dated 2.7.85, that his explanations have not been found satisfactory, as such further disciplinary actions shall have to be taken.

Accordingly, we are in process of initiating disciplinary action against the said Branch Manager.

Simultaneously, the rectification measures in respect of the irregularities disclosed in the report are being taken.

59. The Regional Manager sent a Memo being no. CRC/PRS/DAW No. 85/e-81 dated October 9, 1985 The relevent portion of the said Memo is quoted below:

In respect of serious acts of omission & commissions committed by Mr. S. M. Kushari, while working as Branch Manager of our Tugangunj Branch during the year May 1982 to March 1985, we are constrained to issue show cause notice vide out Memo CRO/PRS/DAW/85/C-80 dated 8.10.1985, enclosed herewith.

As Mr. Kushari is reaching the age of superannuation and his acts has caused loss to Bank, please pay due attention on the matter.

60. The Regional Manager addressed a Memo no. CRO/DAW/No. 85/ C-115 dated October 29, 1985 to the Deputy General Manager, Zonal Office, Calcutta. The Deputy General Manager is the disciplinary authority who issued the chargesheet dated February 21, 1986. The said letter is very important and significant and for that purpose, the entire text of the letter is quoted below:

"Reg:- Staff, Mr. Shailendra Mohan Kushari, DCO, Jalpaiguri Branch his acts of omission & commission at our Tufangunj Branch.

Ref :- Our Show Cause Memo No. CRO/PRS/DAW/85/C-80 dated 8.10.1985 to the member and letter CRO/PRS/DAW/85/C-81 dated 9.10.85.

While working as Branch Manager (MM-II) of our Tujangunj Branch during May 14, 1982 to March 23, 1985 the abovenamed officer employee abused his authority as Branch Manager. He misused lending powers and Bank"s funds in sanctioning grossly irregular Term loan and cash credit facilities, allegedly in consideration of illegal gratification.

The charge of deriving pecuniary benefits is hethereto not well substantiated but the preponderence of probability is noticeable as under:

a) The stereotoed, generalised and undated pre & post inspection reports appear to have been written in one sitting only by Mr. Kushari alone.

(b) Balance Sheets of the borrowers are stereotyped cooked and typed at one and the same time, on the same typewriter by Mr. Kushari himself.

(c) In a majority of the cases either the borrowers financial worths or their activities are fictitious.

(d) Borrowers have been unscrupulously over-financed and/or unduly accommodated beyond all norms without ascertaining end-use of funds.

(e) Mr. Kushari never submitted any Control" Returns. He concealed/misrepresented the facts of irregular, advances to Regional Office (Sticky Term loans over Rs. 2,55,000/- and cash credit over Rs. 4,36,000/-).

Mr. Kushari has been also charged in respect of unauthorised entertainment expenses of Rs. 5,181-90 and engagement of Casual Worker beyond directives.

We are of the opinion that the matters call for forthwith enquiry specially in view of the member''s date of superannuation on March 31, 1986.

It may kindly be noted that Mr. Kushari has failed to submit the reply of our Memo under reference. We have allowed him further time till November 15, 1985 to render written explanations.

The articles of charges and statements thereof as contained in our referred Memo, are based on Audit Report & Investigation Reports, which are enclosed for your perusal and doing the needful.

61. The Regional Manager sent a Private & Confidential Memo being No. CRO/DAW : 86 C-160 dated 21.1.1986 to the Disciplinary Authority, i.e., the Deputy General Manager, Zonal Office, Calcutta. The said Memo reads thus:

Reg :- Staff - Shri S. M. Kushari, Asstt. Branch Manager (MM-II), JALPAIGURI Branch, previously Branch Manager, Tufangunj Branch : Draft Chargesheet.

Ref : - Your letter ZO : CAL : IR : 85 : 11 : 905 dated 22.11.1985 and our letter CRO : DAW : 85 : C-115 dated 29.10.1985.

We submit the draft chargesheet, copy of Memo dated : 8.10.85, reply dated : 28.11.85, Investigation reports and Audit Report for your perusal and doing the needful.

While posted at Tufangunj Branch, Mr. S. M. Kushari abused his official position by sanctioning loans/advances to the tune of Rs. 6,91,000/-beyond his delegated authority and/or in violation of Bank''s rules, procedures, norms and lending policies. The appraisals, financial reports, Inspection reports, documentation, security are blank/defection/void ab-initio/fictitious and cooked up, thereby putting the Bank''s interest in jeopardy.

Mr. Kushari has also defrauded loan proceeds in collusion with the borrowers and thereby made personal gains as per the circumstantial evidences and anonymous complaints. It shall help the matter if your Vigilance Officer is deputed at our Tufangunj Branch for collecting further material evidences in this regard.

We are further to report that Mr. Kushari fails to maintain good conduct and discipline. Even after receipt of his transfer order from our Tufangunj branch he continued to sanction irregular advances till he was finally relieved. He also engaged casual labour at the branch beyond directives. He spent unauthorisedly Rs. 5,181.90 during the year 1984 towards entertainment expenses.

Mr. Kushari is presently posted at our Jalpaiguri Branch where he has been causing/staging instances of indiscipline even during Branch visit of the undersigned.

It may also be mentioned that during the observance of the Rural Development Day on Fourteenth December, 1985 at Tufangunj one of the constituents Shri Jiban Dey complained in presence of our esteemed Deputy General Manager against Mr. Kushari that he took illegal gratifications from several borrowers.

Considering all the above aspects we find it necessary to recommend forthwith suspension of Mr. S. M. Kushari since his continued presence in the Bank is highly undesirable. We await your kind instructions in this regard.

The chargesheet against the said MM Scale-II Officer may kindly be served at the earliest in view of his date of superannuation in the month of March 1986.

62. The Regional Manager submitted a Special report dated. February 19, 1986. The said report inter alia, contained the first of charge for which the petitioner was suspended. The gist of charges is as follows:

SPECIAL REPORT ON SUSPENSION OF MEMBER TO THE SENT TO RO, AGM (PRS), CENTRAL OFFICE WITH COPY TO VIGILANCE DEPARTMENT ONLY IN CASES INVEIW1NG VIGILANCE.

1.	Name of employee and designation	: Mr. Shidebdra Mohan Kushari. (previously Branch Manager (MM-II) of Tufangunj Branch (M) Assistant Branch. Manager.
2.	Branch where working	
3.	Date of suspension	: 19th February, J 986.

4.	Gist of charges for which suspended	: Abused official position as Branch Manager of Tufangunj Branch by sanctioning loans/ad varices to the tune of Rs. 6,91,000/-in violation of Bank''s norms, laid down procedures, lending policies and/or his discretionary powers with malafide intention; by spending Bank''s funds unauthorisedly towards Entertainment Expenses and engaging casual labour unauthorisedly at Tufangunj Branch - also causing/staging instances of induscipline at Jalpaiguri Branch.

5.	Name of authority who has taken decision for suspension	: Sri K. K. Mukherjee, Deputy General Manager Zonal Office, Calcutta. On the recommendation of Regional Manager, Cooch Behar."

63. The petitioner was served with the order of suspension which was verbatim reproduction of the said gist of charges. Only the charge of causing and staging instances of indiscipline in Jalpaiguri was excluded. But the said Special Report with the inslusion of the aforesaid charges was sent to the authority.

64. On a careful consideration of the factual matrix as cast in the writ application and the affidavir-in-opposition and the supplementary affidavit on behalf of the respondents and submissions of the learned Counsel appearing for the parties, it is appropriate for this Court to examine the fundamental grievances of the petitioner and the basic objections as are taken by the respondents. For the purpose of determining the following issues involved in the proceedings are now required to be determined:

(a) Whether the bias of the Regional Manager vitiated and invalidated the proceedings?

(b) Whether the entire proceedings including the enquiry report, the order of the Disciplinary Authority and the order of the Appellate Authority are violative of the said Regulations.

(c) Whether the entire disciplinary proceedings and the order of the appellate authority are wholly illegal on the ground of non-observance of fairness and violation of the rules of natural justice.

(d) Whether the findings of the Inquiring Officer and the Appellate Authority travelled far beyond the charges or in other words, whether the findings of the enquiry officer and the appellate order stood at variance with the charges.

65. Now down to the point of bias, it is convenient for this Court to consider the facts not in dispute. The Regional Manager was the Disciplinary Authority in respect of the self same charges. During the period between June, 1985 and December, 1985, he issued number of show cause notice and memo as also directed the petitioner to reply to the

certain allegations and expressed pre-determined mind against the petitioner. Prior to the said issue of the show cause notice dated 3/8.10.1985,the Regional Manager recorded against the petitioner prejudicial findings as are elaborately placed above. It is also an admitted fact just at the stage of initiation of the proceedings, the petitioner took serious objection to the appointment of the Regional Manager. The petitioner, in no uncertain terms, raised objections. Attention was drawn to page 34 Annexure C and Annexure K to the writ application which patently manifests capsuled mind of the Regional Manager.

66. By a letter dayed July 2, 1985, the Regional Manager steped into the role of accuser by recording the following:

The undersigned did not give you (while you were the Branch Manager of Tufangunj Branch) any sort of verbal approval for entertaining the staff members of that branch for working in late hours. The undersigned took serious exceptions to your false statement." Whether the statements made by the petitioner was false or true, that could not have been decided by holding an enquiry into the allegations by the Regional Manager, being an accuser.

67. The Regional Manager went on acting at the Disciplinary Authority by issuing Memos dated June 11 and 12, 1985 respectively and also recorded the petitioner has exposed himself for departmental proceedings. Then was elaborate charges in the Articles of Charges sent under cover of memo dated 3/8.10.85. First paragraph of the said Memo again recorded. "Attention of the petitioner was drawn to the acts of omission and commission details in Annexure I thereof that were committed by him while working as Branch Manager of Tufangfunj Branch."

68. Since the month of June 1985, the Regional Manager went on issuing show cause notices and memos and he found the petitioner responsible for omission and commission as also reached his conclusion as to the complicity of the petitioner. The Regional Manager even kept the Disciplinary Authority informed of the progress of the proceedings as also his pre-judgment of the issues. The records thus, produced before this Court would show that the Regional Manager before his appointment a Inquiring Officer made prior utterrance and also exposed his pre-judgment of the issuances. The role of the Regional Manager, as seriously assailed by the petitioner, that he disqualified himself to conduct the enquiry against the petitioner on the ground that before the commencement of the enquiry he expressed adverse comments and disclosed pre-conceived notions as would appear from Memo dated 1st August, 1985, Memos dated October 29, 1985 and January 21, 1986.

69. Even before the issue of show cause notice dated 3/8.10.85, the Regional Manager recorded that the petitioner "was found to be responsible for many irregularities in advances by the undersigned during his branch visit of the last year", and thereby he again acted as an accuser and/or complainant. The Regional Manager was one of the persons responsible for sending the draft chargesheet. After the letter dated January 21,

1986, being issued and sent to the Deputy General Manager, the question of bias either official or pro-managerial bias of the Regional Manager in respect of the subject matter does not require further such deeper probe. He also reached findings against the petitioner in respect of various matters. The decisions cited by. Mr. Sen would be of no assistance. The holding of the enquiry or the appointment of the Regional Manager is to be tested on the touch-stone of the first principle of natural justice and procedural fairness which consist of rule against the bias and based on the three maxims (a) no person shall be judge in his cause, (b) Justice should not only be done, but manifestly and undoubtedly seem to be done, (b) the Judges like Caesar"s wife should be above suspicion.

70. In Hari v. Deputy Commissioner of Police, (supra) an externment order served by the Deputy Commissioner of Police u/s 57 of the Bombay Police Act, 1951 was challenged on the ground that the proceedings were initiated by the police and it was the Police which was the judge in the case also and that it was against natural justice that the prosecutor should be the judge. The Supreme Court, however, pointed out that the evidence or material and the basis of which a person could be proceeded against was collected by a police official of lower rank. The proceedings for externment could be initiated by a police officer above the rank of the inspector who had to inform the person proceeded against of the general nature of material allegations against him. But, the order or externment could be passed only by a Commissioner of Police or a District Magistrate. Hence, the satisfaction was not that of the person prosecuting but that of the Police Officer of a higher rank. It, therefore, means that it does not matter if the prosecution and conviction are done by one and the same department, so long as the two functions are discharged by separate officers. In disciplinary proceedings against the employees, it happens every day that the department itself may hold the preliminary investigation as well as the enquiry at which the charges are sought to be proved and the delinquent official is given the right and opportunity to defend himself. All this happens under the roof of the same department though, of course, the officer who conducts the preliminary investigation would not himself sit in judgment over the charges.

71. In, The Queen of the Prosecution of Alfred Kind v. Handsley and Others, Justice of the Borough of Byrnley (supra), the Court held that by statute a member of the town council of a borough may act as a justice of the peace in matters arising under the Act, in order to disqualify him from so acting it is not sufficient to show that as a member of the town council, he has a pecuniary interest in the result of the information or complaint, or that the Corporation of which he is a member are the prosecutors, but it must be established that he has such a substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter.

72. An officer of a Corporation appointed to collect the borough rate obtained a summons against a rate payer in arrear. In so doing he acted in the discharge of his duty, but on his own responsibility and without consulting the town council. At the hearing the justice dismissed the sum -moas, on the ground that one of the sitting Magistrates being a town

councillor was thereby disqualified from adjudicating upon the summons. On motion for a mandamus to the justices to hear and adjudicate on the summons-

Held that there was no ground for supposing either substantial interest or likelihood of bias, and consequently no disqualification.

73. In Maclean v. The Workers" Union Justice Maugham (supra) the Court held that the Court has no jurisdiction to vary or to set aside the decision of a domestic tribunal if in giving the decision the tribunal has acted honestly in accordance with its own rules in good faith.

The plaintiff was a member of the defendant Union, the rules of which provided, inter alia, that members who or brandies which issued addresses or circulars not duly approved by the executive committee or by the general secretary, should be fined and subjected to certain disqualifications. The plaintiff issued several circulars in connection with election to the executive committee without obtaining such approval. When he stood, sometime later, for election as president of the Union, the committee thereupon resolved that he be fined and disqualified in accordance with the appropriate rule, notifying him to that effect, and stating at the same time that it had been resolved that his nomination for election as president should riot stand. The plaintiff threatened legal proceedings unless the resolution was withdrawn, and this was done, as he had not been heard in his own defence. The plaintiff had also issued without approval an election address. A day was fixed at his convenience for him to be heard in regard to this farther breach of the rules. He attended the meeting of the committee, stated his case, and withdrew; and the committee thereupon resolved that he be excluded from membership of the union. The plaintiff claimed a declaration that the resolution was ultra vires and void, and an injunction to restrain the defendant union from enforcing it, the ground for his claim being the executive committee could not be an impartial body:

Court Held, that the Courts had only a limited jurisdiction over domestic: tribunals, and could not give redress to members of associations on whom hardship was worked by decisions given honestly and in good faith under the rules of such association, even though the rules or decisions were unfair or unjust.

74. Even the statutory exclusion of rule against bias could not be applied in the facts of the case. In case of Manaklal v. Prem Chand Singh (supra), it was held that "This was a case of alleged misconduct of the appellant, an advocate of the Rajasthan High Court. The Bar Council appointed a tribunal to enquire into the allegation of his misconduct. It consisted of three members with Shri Chhangani as Chairman. The alleged misconduct related to a case u/s 145, Criminal Procedure Code, in which the advocate had represented the applicants before the Magistrate. For the opposite parties, Shri Chhangani had filed his vakalat-nama and had in fact argued the case on their behalf."

75. The Court observed: "Actual proof of prejudice, in such cases may make the appellant''s case stronger, but such proof is not necessary in order that the appellant should effectively raise the argument that the tribunal was not properly constituted. The decision in (1914)1 KB 6085 does not justify the contention that even if the constitution of the tribunal is held to be defective or improper, the proceedings taken be the tribunal and the orders subsequently passed in pursuance of the report cannot be successfully challenged unless it is shown that the defective constitution of the tribunal had in fact led to the prejudice of the appellant" The allegation of bias was for the first time raised before the High Court. The appellant in the aforesaid case knew the material facts and he deemed to have been conscious of his legal right and therefore, his deliberate failure to raise objection to the constitution of the Tribunal on the ground of bias before the Tribunal at the earliest stage of the proceedings created an effective bar of waiver."

76. It is further held that "The principle Memo debet case judex in cause propria sua", precludes a justice, who is interested in the subject matter of a dispute, from acting as a justice therein. This principle applied not only to justice but to all tribunals and bodies which are given jurisdiction to determine judicially the rights of parties."

77. In the case of Metal Industries and General Workers Union v. Indian Metal & Metallurgical Corporation, Madras and Another, (supra) it was contended that the employer should not in such a case be permitted conclusively to draw legal inference from his personal knowledge. The Court held "A domestic tribunal cannot be prevented, irrespective of the circumstances, from acting upon facts within personal knowledge of that tribunal. For instance, an extreme illustration could be given where a worker might have assaulted the employer who later constitutes himself the tribunal, in the privacy of the room of the employer. It would be manifestly absurd to argue that the employer cannot act upon these facts within his knowledge, to proceed against the worker for misconduct. But in such a case the employer could not constituted himself as a final repository of legal knowledge regarding inference to be drawn from facts.

78. In the case of Vassiliades v. Vassiliades and Anr., it was held that "It is highly, desirable that any proceding should be dealt with by persons who are above any suspicion, however, unreasonable, of being biased, but where the proceedings have been in fact held, they cannot be set aside except with legal proof of bias."

79. It is further held that "It is a matter of public policy that justice should not merely be done but should appear to be done. Judges, however, ace only human and their patience is sometimes sorely tried by counsel and litigants. It is always to be regretted if their patience even appears to give way. But the administration of justice depends on the co-operation of the Judges and parties. Parties cannot complain whose improper unreasonable conduct has led to a departure from the more regular course of procedures, so long as no substantial injustice is done."

80. Reference may be made in the case of International Airports Authority of India Vs. K.D. Bali and Anr, . In that case, the Supreme Court, inter alia, held that there should be a real likelihood of bias and not mere suspicion of bias before the proceedings can be quashed on the ground that the person conducting the proceedings is disqualified by interest. The application must be judged from the healthy, reasonable and average point of view not on mere apprehension and vague suspicion of whimsical, capricious and unreasonable people. The Learned Judge after examining, in the aforesaid light, the grounds of apprehension of bias stated by the petitioner in that case against the Arbitrator who was appointed by the petitioner itself, the Learned Judge of the Supreme Court held that it is clear that the grounds had no substance and failed to establish reasonable apprehension in the mind of the petitioner for revocation of the authority of the Arbitrator and the conduct of the Arbitrator does not fall within the examples given and the principles enunciated in the cases where bias Can be found as in commercial transaction.

81. Now, it is proper to discuss the decisions cited by Mr. Pal. In Ranjit Thakur v. Union of India (supra), the Learned Judges of the Supreme Court of India while dealing with the question of bias, inter alia, held that it is the essence of a judgment that it is made after due observance of the judicial process, that the Court or Tribunal passing it observed at least the minimum requirements of natural justice and is composed of impartial persons acting failrly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial "coram non-judice". The test of real likelihood of bias is whether a reasonable person, in that bias was likely and whether the authority concerned was likely to be deposed to decide the matter only in a particular way. What is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the judge is not to look at his own mind and ask himself however, honestly, "Am I biased?", but to look at the mind of the Darty before him. In the present case having regard to the antecedent events, the participation of the officer concerned (respondent no.4) in the court martial rendered the proceedings coram non-judice.

82. Reliance was made to the following English and American decisions:

1. Allinson v. General Council of". Medical Education and Registration (supra)

2. Metropolitan Properties Co. (F.CC) Ltd. v. Lannon (supra)

3. Public Utilities Commission of the District of Columbia v. Pollak (supra).

83. The relevant portions of the aforesaid decisions are quoted below:

In Allinson v. General Council of Medical Education and Registration, Lord Esher said that the question is not, whether in fact he was or was not biased. The Court cannot inquire into that In the administration of justice, whether by a recognised legal Court or by persons, who, although not a legal public court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the

administration, any person who is to take part in it should not be in such a position that he might be suspected of being biased.

84. In Metropolitan Properties Co. (F.CC.) Ltd. v. Lannon, Lord Denning M. R. held "In considering whether" there was a real likelihood of bias, the court does not look at the mind of the.justice himself or at the mind of the chairman of the tribunal, or whoever if may be, who sits in a. judicial, capacity It" does not look to see if "there was a real likelihood "that he would, or did in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if rightminded persons would think that, in the circumstances there was a real likelihood of bias on his part, than he should not sit."

85. In Public Utilities Commission of the District of Columbia v. Pollak, Mr. Frank further J. held that the "judicial process demands that a judge moves within the framework of relevant legal rules and the coevenanted modes of though for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. There is a good deal of shallow talk that the judicial role does not change the man within it. It does. The fact is that on the whole judges do lay aside private views in discharging their judicial functions. This is achieved through training, professional habits, self-discipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted. But it is also true that reason cannot control the subsconscious influence of feelings of which it is unaware. When there is ground for believing that such unconscious feelings may unfairly lead others to believe they are operating, judges recuse themselves. They do not sit in judgment."

86. The decision cited by Mr. Pal in case of A. K. Krilpak v. Union of India (supra) is a historical case. In this case, one Nagishbund was a candidate for selection to the Indian Forest Service and was also a member or the Selection Board. Nagisbund did not sit on the Board when his own was considered. Nagishbund was recommended by the Board and was selected by the P.S.C. The candidates, who were not selected filed a writ petition for quashing the selection of Naqishbund on the ground that the principles of natural justice were violated. The Supra Court upheld the contention and set aside the selection of Naqishbund.

It is difficult to prove the state of mind of a person. Therefore, what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. There must be a reasonable likelihood of bias. In deciding the question of bias, we have to take into consideration human probabilities and ordinary course of human conduct.

Good administration and an honest or bonafide decision must, as it seems to me, require not merely imparitiality, nor merely bringing one"s mind to bear on the problem, but -acting fairly, and to the limited extent that the cirumstances of any particular case allow and within the legislative frame-work under which the administrator is working, only to that limited extent do the so-called rules of natural justice apply.

87. The decision cited by Mr. Pal in case of S. K. Kapoor v. Jogmohan (Supra) deals with the supercession of the New Delhi Municipal Committee of the Central Government u/s 238 of the Punjab Municipal Act, 1911. Section 16 expressly provides for an opportunity to be given that the principles to determine the question of disqualification to a statute is silent in case of supercession. The Learned Judges of the Supreme Court held that this would not exclude natural justice in the latter case.

88. The learned Justice of the Hon''ble Supreme Court in S. Parthasa-rathi v. State of Andhra Pradesh (supra) inter alia, held that the Deputy Director was inimical towards the appellant and harassed him in ways Manvi was appointed as Director-in-Charge on August 1, 1987. As Director-in-Charge, Manvi caused the appellant to be suspended form services. Thereafter, he framed charges against the appellant on May 13, 1959 and they were communicated to him. The appellant protested saying that Manvi could not conduct on the enquiry on the basis of the charge for the reason that Manvi was biased against him and that he was duly authorised to conduct the enquiry Despite the protest of the appellant, Manvi conducted enquiry. The appellant wanted to inspect several pages and documents in the enquiry for the purpose of interference. Requests, in that behalf were not granted. The appellant, therefore, refused to participate in the enquiry. The enquiry was conducted and the appellant was found guilty of some of the charges.

89. In the case of S. Parthaswarathi v. State of Andhra Pradesh (supra) the Supreme Court also held that while dealing with the continuance of the enquiry by biased officer ceasing to officiate his officer appointed to enquiry, the same is bad in law. It was held that there must be real likelihood of bias that means there must be substantial possibility of bias. The Court will have to judge of a matter as the reasonable man in the conduct of his own business does.

90. Rules of natural and procedural justice with impartiality of the Regional Manager which is also to be tested from the angle of the compliance of the procedural safeguards. The Regional Manager allowed the petitioner to go with the impression that he was condemned unheard with a sense of injustice, either before or during the enquiry proceedings, the Regional Manager in actuality left permanent impression that he failed to act without detachment and cold objectivity. The issue of bias is, therefore, to be viewed from the perspective of the Regional Manager impugned himself. The test is whether reasonable and fair minded person who knows of the relevant facts, without reasonable suspicion could say that the fair trial or fair hearing for the petitioner was possible. In fact, the little difference between the. test of real likelihood bias and reasonable suspicion of bias of the matter is to be examined from the basic objection of the petitioner and it has to be tested on the touchstone of real likelihood of bias, or on the cardinal principle, that justice should not only be done but should manifestly and undoubtedly seem to be done. Here, application of objective test is warranted.

91. On careful scrutiny of all the materials which are effectively and minutely detailed hereinabove, I am of the view that the appointment of the Regional Manager as the

Enquiry Officer was legally impermissible in as much as his partiality and bias vitiated the proceedings. The fair procedure, as was required to be followed in terms of the said regulation was departed from by the Regional Manager. The petitioner was not aware of the findings of the Regional Manager as contained in Memos dated August 1, 1985, October 29, 1985 and January 21, 1986 nor this court could have any occasion for knwoing the pre-determined mind and prejudged opinion of the Regional Manager against the petitioner. The broad facts as clearly stated above demonstrate that the Regional Manager as the Enquiry Officer had already judged the issues and he failed to maintain open mind during the course of the enquiry. There was reasonable apprehension in the mind of the petitioner that he would, not get a fair deal. The Regional Manager even before the holding of the enquiry rendered the whole proceedings a mere farcical episode. The mode and manner adopted by the Regional Manager since the month of June, 1985 till the findings reached by him on March 22, 1986 would show all the notions of procedurtal propriety and fair play. The apprehension of the petitioner was ultimately found to be correct as before the holding of the enquiry, the petitioner expressed his apprehension that in the event of the enquiry being conducted by the Regional Manager, the proceedings would not be conducted impartially. At the very outset of the enquiry proceedings, the petitioner recorded his objection that the Regional Manager would not be impartial. It is a case whether bias or prejudice was obvious even before the enquiry commenced, the petitioner had a strong feeling in his mind that he had no hope of fair hearing. In such situation, Court is to apply a test which is reasonable and has likelihood. The safe and consistency of a reasonable man would be appropriate perspective for the reasons above. The individual himself may be perverse or over-sensitive but the Court itself is capable of looking into the matter with an utmost detachment and impartiality. The character of the rules of natuiral justice which stands violated if the proceedings is vitiated by bias as a prime test of fairness in hearing by the authority. The word "bias, therefore, should be placed in correct perspective. It"s proper significance, in my view, is to spell out a departure from the standard of even handed justice which the statutory rules and regulations require from those as are discharging barging quasi-judicial functions. The procedural safeguards should be in accord with the sweep of the powers. The wider the repository of power the greater must be restraint in the exercise of the powers.

92. The Regional Manager, Cooch Behar went to Jalpaiguri in the month of November, 1986 for official tour. The representatives of C.B. L.E.A. and C.B.I.O.E. of Jalpaiguri unit wanted to discuss with him relating to the staff matter of the branch and other branches in and around Jalpaiguri and sought for appointment with the Regional Manager who refused to talk with the representative of both the organisations alongwith such staff. The Regional Manager held discussion with the representatives of both the organisations. The Regional Manager was of the opinion that the department was instigated by the petitioner. Even on March 20, 1986, the Regional Manager held the objections were not valid, although he had no competence to decide on his own that the objections were not valid. The proper authority to consider and decide such objection was the Disciplinary

Authority who did neither consider the objections on merit nor did he pass a reasoned decision on the objections of the petitioner.

93. In the instant case, the petitioner raised his grievance and objection and also expressed his apprehension in writing before the Disciplinary Authority and also before the Regional Manager. The case of Manaklal v. Prem Chand Singvi (supra) is clearly distinguishable in the facts of the case.

94. Here, the Regional Manager went on making allegations against the petitioner and also reached his entire findings against him. The Regional Manager ought to have given fair opportunity to the petitioner to contradict the allegations and should not have communicated his findings and evidence to the Disciplinary Authority behind the back of the petitioner nor should he have recorded adverse findings" before the holding of the enquiry proceedings, the Court, in such circumstances, is required to enquire whether the exparte findings did operate to the prejudice of the charged Officer sufficiently. The Court would go into the question of bias or degree or prejudice or reasonable suspicion of bias. Essentials of justice so embodied in the said Regulations were rendered meaningless and ineffectivel. The Regional Manager by exparte findings as would appear from the documents clearly displayed his pre-disposition of mind and forfeited his right to act as the Inquiring Officer, in as much as the Disciplinary Authority in respect of the self-same charges, he took part in the proceedings initiated against the petitioner both as the adjudicator and the accuser or complainant and thereafter, as the prosecutor. The Disciplinary Authority ought not to have allowed the Regional Manager to hold enquiry because of his disqualifications.

95. The Regional Manager having allegations against the petitioner should have offered himself as witness but his role was worse than that. Behind the back of the petitioner, he went on making complaints levelling accusations against the petitioner and thereafter, he held against the petitioner on the issues "Which were "already found against him. Even in such situation, the Regional Mdnager was permitted to act as the Inquiring Officer.

96. The real likelihood of prejudice is the reasonable likelihood of bias. The test does not require real likelihood of bias with certainty of proof. The apprehension of reasonable likelihood of bias is to be tested not by suspicion of a person founded upon whims or vagaries. It is to be borne in mind that a fair hearing by an unbiased and non-partisan trier of facts is of the" essence of adjudicatory process, as well when judging is done by an administrative functionary in the manner it is done in a court of law. The other decisions cited by Mr. Sen by reason of the disclosure of facts as are indicated above are of no assistance. Decisions are clearly distinguishable on the case in. hand. In the case of Manaklal v. Prem Chand Singvi (supra) Mr. Chhangain did not act as an accuser or complainant hence distinguishing features are patently noticeable.

97. Another very interesting aspect of the matter requires a little examination. The Disciplinary Authority also received the pre-judged finding of the Regional Manager

before the issue of the chargesheet dated February 21, 1986. Apart from that, the Disciplinary Authority also made it clear that the enquiry must be completed within two days. The Disciplinary Authority by such imposition of dictates upon the Regional Manager violated the provision of the Regulations. The Regional Manager before holding the preliminary hearing issued notice fixing the hearing on March 20, 1986.

98. The letter dated 29/10/85 addressed to the Depuity General Manager and other officers were duly replied by Mr. N. Ramakrishnan by a letter dated November 22, 1985 to the Regional Office, Cooch Behar. The said letter referred to the letter of the Regional Manager dated October 29, 1985. It was recorded in the said letter, inter alia, to the effect:

From your caption letter, it appears that Sri Kushari has committed gross irregularities which draws vigilance angle.

99. The said letter dated January 21, 1985 shows that the Regional Manager clearly pre-judged the entire issue.before the issue of the charge-sheet and also relied on circumstantial evidences and anonymous complaints. The "Regional further reported that the petitioner failed to maintain good conduct of discipline. He offered himself as witness and accused by recording the fact as is quoted above. The Regional" Manager already placed himself as complainant: or accuser. The Regional Manager was. in close touch with the Disciplinary Authority and pre-judiced the mind of he Disciplinary Authority as also blurred the mind of the Disciplinary Authority by informing him that one of the constituents Sri Jiban Dey complained still against "Mr. Kushari that he took illegal gratifications from show that the Regional Manager stepped in the role of an accuser, prosecutor and also judge, he transmitted all findings was it necessary for him to recommend the suspension of Mr. Kushari by observing" his continued presence in the Bank is highly under sir able; After reading of letter dated January 21, 1985, any reasonable person of prudence would come to the conclusion that the Regional Manager as the Inquiring Officer failed to act with a sense of impartiality and open mind. The findings thus reached by the Regional Manager in the letter dated January 21, 1985 would demonstrate that he maintained his pre-conceived notion against the petitioner. It was not possible for the petitioner to take inspection of audit reports and investigation report and other documents being vbluminoius in character. How the defence representative and the petitioner could complete such inspection within an hour on March 20 1986?

100. On a careful scrutiny of the records, the Court cannot ignore experts findings of the Regional Manager reached prior to the issue of the charge-sheet dated February 21, 1986 which completely established the guilt of the petitioner. The Disciplinary Authority had no time to apply his mind to the fundamental grievances raised by the petitioner. The whole thrust was to prove the charges against the petitioner by any means on and before March 31, 1986. It was necessary for respondents to give sufficient time to the petitioner. The petitioner was prevented from submitting "written statements of defence and taking

inspection of documents. How the decision in violation of the said Regulation could be taken? The enquiry was a farce and the whole procedure thus resorted to by respondents "only reminds the court whether the decision should be taken before issue of the chargesheet issued or whether such decision should be taken after holding the enquiry. Documents show that the Regional Manager made many correspondences for the purpose of showing that the petitioner committed gross misconduct, abused his position.

101. After such findings being recorded, the Regional Manager ought not to have been appointed as the Inquiring Officer. Here lies the absence of essence of justice. Administrative injustice and pro-managerial bias go to the root of the matter. The Regional Manager made findings and formed adverse opinion about the conduct of the petitioner and thereby rendered himself more as an accuser, more as a prosecutor and sometime more as a Judge inasmuch as he was incompetent to record his personal verdict and pass on the same to the Disciplinary Authority. Even in such situation, the Regional Manager submitted a special report dated February 19, 1986. The special report contained the gist of changes for which the petitioner was suspended.

102. The petitioner was served with an order of suspension which contained the aforesaid gist to the exclusion of the following portion in the gist of charges of "causing/staging instances of indiscipline at Jalpaiguri."

103. The Regional Manager by another Memo dated February 19, 1986 directed that the petitioner should not be allowed to enter office premises. The Disciplinary Authority directed by Telex dated March 13. 1986 that the enquiry should proceed as per time bound programmed already fixed. In the event, the said regulations had to be. observed then the enquiry could never be concluded as per time bound programme.

104. The Regional Manager already acted with pre-determinedmind and pre-conceived notion by fixing the actual date of enquiry proceedings on March 20, 1986 before the date of preliminary hearing by grant of time not more than 6 days in full, accord with the time bound programme as would appear from the record. The Regional Manager was determined to complete the enquiry on or before March 22, 1986. Mr. R. S. Agarwalla, the Senior Auditor was not produced for cross-examination.

105. The Regional Manager again sent a Telex to the Deputy General Manager on March 8, 1986.

106. Now another very shocking aspect of the matter should not be lost sight of. The enquiry for 20 charges running 21 pages with Annexures which were required to be proved was over within 21/2 days. The enquiry proceedings continued without any inspection from March 20, 1986 to March 22, 1986 and concluded at 2 P.M. of March 22, 1986 being Saturday.

107. The Regional Manager maintained unprecedented speed to execute time bound programme of completing the enquiry for 20 charges within March 22, 1986, being

Saturday. As the enquiry was completed at 2P.M. of March 22, 1986, the Regional Manager completed everything by transmitting his findings to the Disciplinary Authority on the same day. How the deposition could be considered, how the materials were taken info account and how and when the typing was done? Was it possible for the Regional Manager to prepare his report within a short time and send the same to the Disciplinary Authority?

108. The Disciplinary Authority by such imposition of dictates upon the Regional Manager violated the provisions of the said Regulations. The Regional Manager while discharging his functions as the Enquiring Officer was acting at the dictation of the Disciplinary Authority. Such acting under the dictation was impermissible.

109. While arriving at my findings on bias, it is convenient for me to consider the import of the word "bias". The word "bias" is derived from the French word "bias" meaning oblique as opposed to straight. The English word "bias" has reference to the game of blows wherein it means the weight on one side of a bowl, which gives it a tendency to diverge from straight line when running. Hence the word has come to mean prejudice; show of favour or disfavour; antagonism; spite; hostility; prepossession that, sways the mind. As a verb it means to influence: to prejudice; to prepossess (often unduly).

110. Now applying the meaning of the word "bias" as indicated above in the background of factual aspect, it would appear that the Regional Manager was prejudiced and suffered from prepossession that swept his mind.

111. Sir Carleton Kemp Allen in his "Law and Orders" has given a very clear and authoritative idea of bias. At page 279 he says....bias has been very strictly interpreted in our law. In the widest terms, any interest, motive or influence which, in the opinion of the court, may impair the "objectiveness of a decision or, what is equally important, may have the appearance of so doing will invalidate a judicial or quasi-judicial determination. The law, in our doctrine, "takes no. chances" it constantly makes allowance, not necessarily for the most reasonable, but for the most suspicious attitude in the public towards the administration of justice; and it, therefore, frequently recognises bias not because it believes that anything irregular has ever happened, but because it might happen or because somebody might think that it has happened".

112. The rights of the petitioner in the instant case were affected by reason of pre-possession that swept the mind of the Regional Manager. The Regional Manager who was called upon to try issues in the departmental proceedings failed to act impartially, objectively and without any bias. Judicial conscience is shocked by the mode and manner in which the proceedings was commenced, continued and concluded. Applying the principles as laid down in the decision of Ranjit Thakur v. Union of India (supra), the fundamentals, giving rise to the real likelihood of bias or reasonable suspicion of bias come into play. The Court cannot but hold that the Regional Manager squarely comes within the sweep of the principles "memo debet esse judex in propria sua causa"

inasmuch as, the Regional Manager whose appointment was objected to by the petitioner decided that the said objections were not valid. The Regional Manager should not be a party and Judge in the same cause and thereby the entire proceedings is against the natural equity and the same is void in itself. The degree of prejudice in the prepossession has been elaborately discussed above. It is an inescapable conclusion that the enquiry proceeding not being free from real likelihood of bias and suspicion of bias and prejudice of the Regional Manager is incurably infected with invalidity or in other words, the proceedings became a nullity. The best security for the pure impartial and effective administrative justice as is required to be done in quasi-judicial proceedings has been found to be elusive and a mirage for the petitioner. This area of impartiality is a sensitive one in which the appearance of justice is of the substance of justice. Even, maximum concession is allowed, on the basis of the submission of Mr. Sen, the conclusionery finding of the Court would be that doing what is right may still result in unfairness if it is done in the wrong way.

113. Here, the conduct and behaviour of the Regional Manager left a permanent impress that the petitioner had to go with the inflict of grave injustice.

The entire enquiry proceedings and the enquiry report are, therefore, incurably infected with the bias of the Regional Manager and the degree of prejudice worked to the petitioner.

114. The next two issues for the sake of convenience are taken up together for effective determination thereof. For the purpose of determination of the issues, it requires consideration whether the relevant provisions of the said Regulations were complied with or not. Keeping in mind the factual matrix as cast hereinbefore, it is necessary to find out whether the enquiry proceedings and the enquiry report do conform to the requirements of the Regulations. It is an admitted fact that prior to the issue of chargesheet dated February 21, 1986, the petitioner was served with show cause notice dated 3/8.10.85, the charges in the aforesaid Memo were engrafted in the charges dated February 21, 1986. The facts not in dispute that the petitioner prayed for inspection of documents by a letter dated November 12, 1986. The prayer of the petitioner Was not acceded to. After receipt of the chargesheet, the petitioner was not given any time at all for the purpose of submission of the written statements. Again, the prayer for grant of 15 days time by the petitioner was turned down. The petitioner was not given reasonable opportunity to inspect the documents in terms of the said Regulations. The Regulations 6(3), 6(5), 6(9) and 6(10)(a)(b) are required to be complied with for the purpose of enabling a charged officer to defend his case in conformity with the rules of natural and procedural justice. Detailed discussion as regards the refusal of prayer of the petitioner for having reasonable opportunity negated by the stand of respondents. The contentions of Mr. Sen that the enquiry proceedings was conducted validly and bonafide, in my view, cannot but fail.

115. The role of the Enquiring Officer as effectively presented before this Court by Mr. Sen is to be viewed from the entirety of the facts-situation and uncommunicated findings and orders as stated above. The Enquiring Officer instead of granting sufficient time referred to his earlier order dated December 23, 1985 which, inter alia, state that the management is not at all satisfied with his reply given on November 28, 1985 to Memo dated October 8, 1985. Further stand of the Regional Manager that the petitioner had sufficient time to prepare his defence was contrary to Regulation 6(3) of the said Regulation which requires that the charged officer should be accorded fifteen days for submission of the written statement of defence. The petitioner admittedly received the notice directing him to appear on March 13, 1986 for preliminary hearing at 3-20 P.M. of March 10, 1986. Even the time thus prayed for the petitioner to be computed from March 10, 1986 Grant of sufficient time namely, 15 days time ought not to have been refused in violation of Regulation 6(3) of the said Regulation. The day-to-day hearing without allowing the petitioner to submit written statement of defence was "fixed with effect from March 20, 1986. It is to be noted here before the fixation of date of hearing on March 20, 1986 the Regional Manager behind the back of the petitioner directed some of the Bank Officials to appear as witnesses by Memo dated March 10, 1986 on March 20, 1986 and thus, the date of hearing was fixed before the date of preliminary hearing on March 13, 1986. The Regional Manager recorded that the petitioner was allowed reasonable time to prepare his defence. The petitioner was, in fact, not accorded reasonable time to prepare his defence. The inspection of such voluminous records by the petitioner could never be physically possible within a span of one hour. The petitioner with a view to delaing with the chargesheets dated 3/8.10.85 prayed for inspection of documents by his letter dated November 11, 1985, but inspection of the documents was disallowed. The Regional Manager also prevented the petitioner from inspecting the documents by arbitrary refusal. Such refusal to grant fifteen days time amounted to a grave miscarriage of justice. It was also brought to the notice of the Regional Manager that the petitioner filed an appeal on March 13, 1986 for grant of fifteen days time onward for submission of written statement of defence, but it was not allowed. Regulation 6(10)(a)(b) of the said Regulation was also violated. The stand of Mr. Sen was that the enquiry proceedings was conducted validly and properly and in consonance with the provisions of the said Regulation, in my view, was without any foundation. Regulation 6(10)(a) and (h) of the said Regulations requires the grant of five days" time. The prayer for the inspection of the documents was persistently and arbitrarily refused. The inspection of voluminious records and the number of exhibits might pose a question to any reasonable person of ordinary prudence whether grant of five days time for inspection of such voluminous documents could be refused. The obvious answer would be in the negative for sole reason that the Regional Manager did not care to look into the voluminous records nor did he consider the prayer of the petitioner for inspection of documents, dispassionately and without detachment. The prayer of the petitioner, my view, for inspection of documents, was rejected arbitrarily and in violation of the Regulation 6(1)(a) and (b) of the said Regulations. The grant of five days" time in a given situation depends on number of documents and exhibits. As the inspection of voluminous records required reasonable and sufficient time, prayed for

inspection of records ought not to have been rejected. The said Regulations keeping in view of the situation where inspection of voluminous records is warranted provide for five days time for that purpose. The Regional Manager. therefore, did not adopt fair procedure. In the instant case, procedural fairness was given a complete go-bye. Inspection of records in terms of Regulation 6(10)(a)(b) of the said Regulation is to be allowed only at the stage when the charged officer is required to submit his written statement of defence. After the inspection of records, the charged officer is required to submit the written statement of defence. Inspection of records is a valuable right for the purpose of submission of written statement of defence. The Regional Manager without securing compliance of Regulation 6(10)(a) and (b) of the said Regulation was not authorised to hold the enquiry. The relevant dates showing unseemly haste in holding of the enquiry are quoted below:

March 6, 1986: Petitioner received chargesheet at 4 P.M

March 10, 1986: (a) Petitioner received the notice at 3-20 P.M. directing the petitioner to appear before the Enquiring Officer on March 13.1.1986 for preliminary hearing.

(b) The Regional Manager before the holding of the preliminary hearing summoned the Bank Officers to appear as witnesses on March 20, 1986.

March 13, 1986 : (i) Petitioner did not admit any of the charges. Petitioner recorded that the defence representative will inspect the documents and furnish the necessary certificates to the Presenting Officer by March 19, 1986.

(ii) The petitioner objected in writing to the. appointment of the Regional Manager on the ground of lack of impartiality.

March 20, 1986: The defence representative recorded that he did not receive copies of evidence and documents till 12.45 on March 20, 1986. The Enquiring Officer asked the Presenting Officer as to whether he could give all copies of documents and papers replied in the affirmative the proceedings was adjourned till 1.45 on March, 20, 1986. After the resumption of the enquiry at 1.45, the Enquiring Officer put a question to the Presenting Officer "Have you given copies of documents/evidences to D.R.? The Presenting Officer replies "Yes".

March 22, 1986: The enquiry proceedings were completed at 2P.M. The Regional Manager submitted his findings on the same day being Saturday and Transmitted the same to the Disciplinary Authority.

116. The defence representative answered in the affirmative when asked by the Regional Manager about the receipt of copies of documents/evidences from the Presenting Officer. On a scrutiny of the list of documents, it would appear that the documents of evidence contain more than 200 pages. The petitioner was not given any time for inspection of document on March 20, 1986. The petitioner was not given time in terms of the

Regulation 6(10)(a) and (b) of the said Regulations. The submission of the written statement of defence without effective inspection of documents was rendered unpasted. The Regional Manager in terms of the said Regulations could not have fixed the date of hearing on March 20, 1986 without allowing the petitioner to have the inspection of records and should have given sufficient time to the petitioner to submit written statement of defence.

117. The Regional Manager fixed the date of hearing or the holding of the proceedings on March 20, 1986. In the instant case, it is pertinent to record that the Regional Manager included the show cause notice which contained his findings in the letter dated June 12, 1985 the letters dated July 3, 1985, the letter dated June 10, 1985, Show Cause notice dated 3/8.10.85, the chargesheet dated February 21, 1986 in the list of documents. Show Cause Notice and the Chargesheet were made part of the list of documents. The findings of the Regional Manager as recorded in the Memos were also made part of the list of documents.

118. The enquiry proceedings were concluded at 2.P.M. on March 22, 1986. The enquiry report was submitted on the same date being Saturday. From a reference to the period during his enquiry proceeding was commenced, continued and concluded, it would appear that the Regional Manager acted with a pre-determined mind to complete the enquiry without adhering at all to the relevant provisions of the said regulations. As stated above, various reports, Memos and the documents on which reliance was placed were not made available to the petitioner for effective inspection of documents. It is, in actuality, a case of travesty of justice for the sole reason that beyond all the accepted and recognised principles applicable in quasi-judicial proceedings, the chargesheet and show cause notice were included in the list of documents. This militates against the notion of justice and fair play, inasmuch as the chargesheet and the findings of the Enquiry Officer in the Memo dated June 12, 1985, October 3/8.1985 and the other documents could not be used as part of the list of documents.

119. The Regional Manager apart from being determined to proceed with the matter in a certain manner with a pre-conceived notion rendered the entire enquiry proceedings merely an empty formality. How the Regional Manager could complete the enquiry proceedings while there were voluminous records being exhibited. The Presenting Officer''s finding were made pact of the list of documents and the said Presenting Officer was allowed to exhibit the said documents.

120. The contention of Mr. Sen could not be accepted for the detailed grounds and/or findings reached above. The enquiry report was also the subject of severe criticism of Mr. Pal. Let us have a look at the enquiry report. How the Regional Manager discharged the functions as the Enquiry Officer in terms of the Regulation 6(21) of the said Regulation. The Inquiring Officer is required to refer a gist of Articles of Charges and the Statement of Imputation of misconduct and a gist of the defence of the Officer in respect of each Article of Charge and the Assessment of the Evidence in respect of each Article of Charge and

finding on each Article of. Charge and reasons therefor. Enquiry report for the purpose of determination of the aforesaid issues demonstrate that the Regional Manager did not consider the case of the defence nor did he discuss and assess the evidence nor did he record his findings on each of Article of Charges. The enquiry report was cast in violation of the said regulation. There is, no assessment of the evidence nor any discussion of the defence case. Regarding the Charge No. 1, the Regional Manager recorded "no specific submission" whereas the petitioner denied the allegation and claimed that he did not sanction irregular advance during the years, 1983-84 by misrepresenting the facts in respect of sanction of promotions. The advance was made according to the material requirement of the borrower for development of retailed trade business and it was within the notice of his Regional Office, Cooch Behar for which regular proposal was made.

121. In regard to the Charge No. 2, the petitioner claimed that he could make no personal gain in sanctioning loan to the borrowers and maintained the procedural sanction of. the loan to the borrowers. With regard to the Charge No. 3, it is the claim of the petitioner that there is no wilful violation of Regional Manager"s Office stipulations but it is followed strictly. The petitioner asked for certain clarifictions in this respect from the authorities.

122. What is urged is that the Regional Manager had merely recorded his ipse dixit and no reasons are assigned in support of his findings. The process which is undoubtedly essential is shockingly mute.

123. No reasons are assigned for reacting on the findings. Regulation 6(21) of the said regulations casts an obligation upon the Regional Manager to record reasons.

124. Regarding Charge No. 6, it is the claim of the, petitioner that as per direction of his management to give quick and satisfactory service to the customers, one daily wage earner was entrusted for work. Regarding shortage of staff, the petitioner referred to Calcutta Office letter No. Cal/GPR/COMP/02.6.645 dated August 25, 1982 and Central Office letter No. Currency Chest and Government A/C"s 82/1003 dated September 13, 1982.

125. Regarding Charge No. 7, the petitioner claimed that the amount as stated above was spent. for the purchase as explained in his earlier letter dated June 22, 1985 in reply to his Regional Office Memo No. CRO/PS/85/.SF/4 3/1241 dated June 11, 1985. The petitioner intimated to Regional Manager Office by letter from time to time vide Tufanganj Branch letter DM(COB) 15/84/1/06 dated January 24 19S4, 15/84/6/16 dated June 15, 1984.

126. Adverse procedure was resorted to. Mr. R. S. Agar walla who could tell about most of the exhibits forming basis of the audit report was not examined as management witness.

127. The Enquiry Officer while submitting the report enclosed the final remarks in the manner as follows:

In M. Ex-25 submitted by the P.O. showing 27 borrowal accounts as either bad and doubtful or sticky involving Rs. 5,43, 226.02. As all the accounts are covered by DIGOC guarantee, to my opinion, the bank may be likely to suffer a loss of Rs. 1.35,000 (one-fourth of Rs. 5,43,226.02) in future due to either allowing reckless advance by the Charged Officer or not initiating any sort of follow-up measures during his tenure as Branch Manager of Tufanganj Branch. Explanation to Regulation 6(21) is relevant.

128. In the instant case, the Regional Manager while recording his findings on article of charges different from original article of charges, did not follow the procedures as laid down in the said explanation. The said provisions require that the article of charges shall not be recorded unless the officer has either admitted the facts on which the charge is based or has reasonable opportunity of defending himself. The charge as would appear from the final remarks was not mentioned in the charge-sheet nor the procedures as laid down in the explanation to Regulation 6(21) of the said Regulations was complied with.

129. The petitioner was never fastened with charge that the "Bank" is likely to suffer the loss of Rs. 1.35 thousand, one fourth of 5.4 3.226.02 in future due to either allowing reckless advance by the charged office or not initiating any sort of follow-up measures as Branch Manager in the Tufanganj Branch. There is no such charge of loss to the extent of Rs. 2.35,000/- in the articles of charge. The Appellate Authority also while dismissing the appeal recorded the Bank has suffered a loss on account of serious lapses on the part of the petitioner.

130. On a plain reading of the aforesaid findings of the Regional Manager which amounted to inclusion of a charge not mentioned in the charge sheet, the order of Appellate Authority that the Bank his suffered considerable loss an account of serious lapses on the part of the petitioner was altogether a new charge. Save what is provided for in the said explanation to Regulation 6(21). of the said Regulations, the Regional Manager had no authority and competence to add a charge nor was the Appellate Authority competent to reach the findings which travelled beyond the charge. The appellate order was also vitiated on that ground. The final remarks of the Regional Manager suffered from inclusion of a new charge in violation of explanation to Regulation 6(21) which stood at variance with the articles of charge. The Regional Manager"s report was, therefore, vitiated on similar grounds. Cat-can of the charges would show that both the Regional Manager in his findings and the petitioner should have been given opportunity of knowing the charge for the purpose of controverting the same. The Appellate Authority when finding the petitioner guilty of the said charge which did not find place in the article of charges should not have allowed the new charge to be taken into account. Fundamentals of fair play demand that no person shall be found guilty of a charge of which he is not told. There is a complete departure from the principles and fundamentals of fair play and essentials of natural justice.

131. The enquiry report apart from being tainted with absence of fair determination of the charges involved suffered from the conclusion reached by the Regional Manager who has

personal knowledge and prejudice. Finding on the articles of charges and reasons therefore are skeletal in nature. The Regional Manager collected informations and engrafted the same in the charges and the show cause Memo as detailed above. The said informations and/or materials were utilised by the Memo dated October 29, 1985 and Memo dated January 21, 1986, in no uncertain terms, establish the firm conclusion of the Enquiry Officer. It is essential that the Regional Manager should not have taken into account any material which have not come in the record. The Regional Manager used and included his findings in the list of documents. Further the findings of the Presenting Officer was also included in the list of documents. How could the chargesheet and the findings be included in the list of documents? How were the show cause Memo dated June 12, 1985, show cause Memo of the Regional Manager addressed to the petitioner dated July 2, 1989 and the show cause Memo dated October 3/8, 1985 treated as evidence. The Presenting Officer submitted the list of evidence as would appear from the records of the proceedings. Sri Kanan Behari Debnath was not called as a witness, nor Sri Krishna Lal Chakraborty was called as an witness. Sri Chandan Kumar Das, Sri A. B. Samajdar and Sri R. S. Agarwalla were produced as witnesses, but their reports were tendered as evidence.

132. The Appendix-II of the chargesheet dated February 21, 1986 was issued as evidence. The reply of the petitioner was used as evidence. It is also recorded by the representative that exhibits that were given by the Presenting Officer could not be gone through due to shortage of time. Sufficient time was prayed for study so that the case could be defended, but the prayer of the defence representative was disallowed. The Defence Representative placed before the Regional Manager that management did not try to prove the charges and it may be set aside.

133. "Now Sri Kushari. has to submit a submission to his Lordship to please allow him to do so." The Regional Manager observed that "have you completed the argument. The Defence Representative again recorded the way my charged office has been put to volumious questions cannot be accepted." "I could have been allowed proper opportunity to reply to the question put before the Presenting Officer."

The Defence Representative prayed that the Presenting Officer should question point-wise one by one, otherwise I have to submit that whatever Sri Kushari has done at the time of his functioning as Branch Manager of Tufangunj Branch, he did it with all fairness and protecting Bank"s interest to the best of his knowledge. The Defence Representative pointed out that R. S. Agarwal would be required to prove his statement by his personal presence." The Regional Manager observed "that it was not for him to come over here from the Branch where he is working now."

134. A large number of documentary evidence were presented and made exhibits in the proceedings. The Presenting Officer instead of presenting the case of the management during the entire disciplinary proceedings acted in the following manner:

The Presenting Officer though not witness nor the author of the exhibits placed large number of documents as mentioned in the Audit Report and large number of documents as mentioned in the Annexure to these articles of Charge. The Presenting Officer was allowed to place the documents one after another without any proof thereof. It is no doubt true that the Evidence Act has no application enquiry conducted by the quasi-judicial authority, but it must be quasi-judicial in character. The quasi-judicial authority should observe the essentials of procedural fairness and the rules of natural justice in the conduct of the enquiry, and if they do so their decision is not liable to be impeached on the ground that the procedure was not in accordance with that which obtains in a court of law, but the application of the principle of natural justice does not imply that what is not evidence can be acted upon When a document is produced before the quasi-judicial authority, the question emerges naturally whether it is a genuine document and what are its contents. Are the statements contained therein true? The items of documents of evidence may be divided in two; (a) the balance sheets and (b) financial report and the audit report and (c) the letter Or other documents. As to the first kind when such documents, namely, balancesheet, financial report, audit report, inspection report etc. are replied on, then it does not by its mere production amount to a proof of it or the truth of the entries therein. Such documents of the first kind were produced by the Presenting Officer and they did not by mere production amount to a proof or of the truth of the entries made therein. When entries and/or the reports are challenged in such manner as was done by the defence representative of the petitioner in case of audit report. Mr. R. S. Agarwal, the author of the audit report, ought to have been produced for the purpose of proof of each of such entries by producing the books and speaking from the entries made therein. As to the proof of the letter or other documents, the fundamental principle is that when it is produced at enquiry then either the writer may be produced or his affidavit thereof be filed and an opportunity afforded to the affected party who challenged that fact.

135. The procedure as indicated above if followed would be in accord with the principle of natural justice and essentials of procedural fairness. The aforesaid principles laid down in the case of Bareilly Electricity Co. Ltd. v. The Workmen (supra) are to be followed in a quasi-judicial proceedings held under the statutory rules. Most shocking is the conduct of the Regional Manager, who took upon himself the task of establishing the charges in violation of the Rules of natural justice and in close collaboration with the Presenting Officer discharged the burden of proving the documents one after another in unprecedented huff and in unseeming haste without giving the petitioner an opportuity to know the contents thereof or to apprise himself of the exact nature of the documents. The said documents were not allowed to be inspected nor the inspection of the said voluminous document could be completed either within an hour or just at the time when the documents were tendered. The general principle is that as regards the person proceeded against there must be disclosure of all such materials which may either serve as a vital link in arriving at the conclusion as against him or which may be instrumental in defence prepared by him Despite the repeated objections taken by the defence representative of the petitioner, the Regional Manager tood the line of reasoning

advanced by the Presenting Officer and adopted a procedure which was not only adverse and arbitrary to the core, but also operated to the extreme prejudice of the petitioner. The Presenting Officer made use of the said documents by treating them as exhibits. Thereafter, no body came forward to prove the said documents. Straightway conclusion was drawn by the Regional Manager from the said documents on the basis of the version obtained from the Presenting Officer How could this kind of procedure be accepted and encouraged? The Disciplinary Authority completely ignored and overlooked that the disciplinary proceedings thus commenced, continued and concluded was invalid on the ground of violation of the rules of natural justice. Perfunctory manner in which the said proceedings was conducted was ignored and overlooked by the Disciplinary Authority. More than 25 exhibits running into more than 200 pages were placed before the Regional Manager and they are marked exhibits at the instance of the Presenting Officer Was the Disciplinary proceeding valid, legal and proper? Was the enquiry just and fair?

136. Let us now examine the challenge of the petitioner against the Disciplinary Authority. The Disciplinary Authority was in Calcutta during the period when the findings of the Inquiring Officer dated March 22, 1986 was transmitted to him. March 22, 1986 was a Saturday. March 23, 1986 was a Sunday. The order of dismissal was passed on March 25, 1986. How the Disciplinary Authority could apply his mind to all the materials on record including the basic objections of the petitioner going to the root of the competence of the Regional Manager to hold the enquiry? The basic objections were required to be considered on the ground of bias. It is not difficult to find the answer. The Disciplinary Authority had to reach his conclusionary findings any how on or before March 31, 1986 when the petitioner would retire service on the ground of superannuation. The Disciplinary Authority did not make any cognizance and/or note of the perfunctory manner in which the disciplinary proceedings was conducted. 25 exhibits running into two hundred or more pages were placed before the Regional Manager. They were marked exhibits at the instance of the Presenting Officer. It was the duty of the Disciplinary Authority to find out objectively now and in what manners the evidences were obtained. The question thus posed to the Court is whether valid, legal and proper procedure for the purpose of finding the petitioner guilty of the charges was adopted in strictest adherence to the provisions of the said Regulations. Answer, in my view, would be in the negative.

137. Regulation 6(21) of the said Regulation casts an obligation upon the Regional Manager at the conclusion of the enquiry to prepare the report which, inter alia, ought to have contained an assesment of evidence in respect of each article of charges and the findings on each articles of charge and the reasons therefore. A moment"s scrutiny of the enquiry report and the relevant documents connected therewith impel any reasonable person properly instructed to come to the conclusion that the report is prepared in contravention of the aforesaid Regulation. The facts-situation is further compounded by the fact that the Disciplinary Authority while accepting the enquiry report which itself was defective, did not assign any reasons for accepting- the report of the Regional Manager. The order of the Disciplinary Authority is just parrotlike chanting of the findings of the

Regional Manager. The Disciplinary Authority merely acted as a rubber stamp by agreeing with the findings of the Regional Manager. It is well-settled that the Disciplinary Author is not bound by the findings of the Enquiry Officer inasmuch as he has to consider the evidence before him. Though he has to consider the report of the Regional Manager, he is not bound by the latter''s findings. Apart from the above, the Disciplinary Authority is required to pass a separate independent order showing that he having regard to the findings on all or any of the Article of Charge is of the opinion that any of the penalties specified in Regulation should be imposed on the charged officer. The expression "having regard to its findings" warrants the authority to take into account certain acts of objective factors which should be objectively dealt with by the Disciplinary Authority in depth. The records of enquiry shall include -

(a) the report of the enquiry prepared by it under Clause (i);

(b) the written statement of defence, if any, submitted by the officer employed to in Sub-Regulation (15);

(c) the written brief referred to in Sub-Regulation (18)., if any;

(d) the orders, if any, made by the Disciplinary Authority required to consider the record of the enquiry and the Enquiry Authority in regard to the enquiry report;

138. The Disciplinary Authority was required to consider the report of the Regional Manager before inflicting the punishment to the prejudice of the petitioner, that was not considered at all by the Disciplinary Authority. The decisions cited by Mr. Sen in support of the contentions, is that it was not necessary for the Disciplinary Authority to give elaborate reasons for accepting the findings.

139. The decisions cited by Mr. Sen in support of the aforesaid contention namely, the case of Tarachand Chhetri v. Municipal Corporation of Delhi (supra) and State of Madras v. A. Srinivasan (supra) case. How the Disciplinary Authority could agree with the findings of the Enquiry Officer, which were in complete contravention of the Regulations 6(3), 6(21) and 6(10)(a) and (b) and 6(21) of the said Regulations? The Disciplinary Authority before imposition of punishment should have considered the findings of the Enquiry Officer for the purpose of formation of opinion which must be bonafide and honest. The Disciplinary Authority being a quasi-judicial Authority ought to have recorded reasons which must be found from the order itself or from the documents placed before this Court. As a quasi-judicial Authority, it is incumbent upon the Disciplinary Authority to write a reasoned order so that the Appellate Authority may know as to what weighed with the Disciplinary Authority. It is not necessary for the Disciplinary Authority that he should write a detailed order. What is required is that he should record reasons in the order so that the delinquent can effectively challenge the same in appeal. To understand the approach of the Punishing Authority and also the mind of the Appellate Authority and the grounds which the impugned orders have been passed, it is necessary that the order should be a

speaking order and should give the grounds on which it has been passed. The order of the Disciplinary Authority does not show as regards the basic issues canvassed by the petitioner were considered and why these were not tenable. The Disciplinary Authority before imposing punishment imposed dictates upon the Regional Manager that the enquiry must be complete within the two days and the report must reach him by March 22, 1986. The Regional Manager from time to time transmitted his findings to the Disciplinary Authority, without furnishing the same to the petitioner. The order of the Disciplinary Authority present utter non-application of mind and on that ground, the said order of Disciplinary Authority stands seriously vitiated.

140. The Disciplinary Authority should have take into account the objectivity and materiality of the entire matter. The record of enquiry contains the basic charge of bias against the Regional Manager and the said charge was not considered by the Disciplinary Authority.

141. On a careful scrutiny of the records, it would appear that the Disciplinary Authority did not apply its mind to the materials on record. Had he applied his mind, he would not have dittoed the finding of the Enquiry Officer.

142. A detailed appeal was submitted by the petitioner to the Appellate Authority running into 16 pages. In the appeal, the petitioner, inter alia, raised his fundamental grievances:

(a) The petitioner was castigated with a chargesheet by the Regional Manager, Cooch Behar who took initiative on the verge of retirement by issuing chargesheet dated 3/8.10.85 and Memo etc. and on whose report the higher authority had decided future course of action, was appointed as the Enquiry Authority. This was something which is against the principle of natural justice and fair play;

(b) he petitioner"s appeal to appoint someone else in place of the Regional Manager as Enquiry Authority was not acceded to by the management and thereby, the petitioner was deprived of impartial enquiry;

(c) The chargesheet dated February 21, 1936 contained as many as 20 charges against the petitioner;

(d) The enquiry proceeding was nothing but a farce in the name of so-called departmental enquiry, by reason of non-observance of the provisions as contained in the said Regulations;

(e) There was blatant violation of the Regulations. The violation of the Regulations would be proved from the following facts:

(i) The enquiry proceeding was initiated on March 13, 1986 for preliminary hearing and was postponed to March 20, 1986. The enquiry was held on March 20, 1986, March 21, 1986 and March 22, 1986(Saturday), the enquiry was held for 31/2 days for 20 charges;

(ii) Neither the petitioner nor his defence representative was allowed any inspection of exhibits, documents, bank"s records for defending the case although prayer was made under the provision of the said Regulation;

(iii) The evidence in support of the charge was directly recorded from the version of the Presenting Officer without being substantiated by management witnesses;

(iv) The vital witnesses were not produced before the Enquiry Authority;

(v) An Audit Report was made in support of the charges. Mr. R. S. Agarwal, the Auditor, was not produced as witness;

(vi) The cross-examination was not allowed under the provisions of the Regulation.

(vii) The cross-examination of the management witness was obstructed, interfered with and prevented by the Regional Manager. The enquiry was concluded on. the basis of xerox copies of the documents which were not certified by Bank"s officials;

(viii) The defence argument was not called for at the conclusion of the enquiry;

(ix) The enquiry proceedings against the petitioner was concluded in a hurried manner without giving the petitioner reasonable opportunity to the defend his case and explain his position, inspect the documents records properly, examine witnesses freely with the sole object and aim to victimise the petitioner and his family. The petitioner was not given reasonable opportunity and sufficient time to explain his position with regard to twenty charges;

143. An Audit Report was made the prima facie document of evidence, in support of the charge prepared by Mr. R. S. Agarwal, the Senior Auditor, who was not produced as witness although the record showed the Bank also though it fair to produce Mr. R. S. Agarwal. The enquiry was concluded on the basis of the xerox copies of the documents. The obligation was cast upon the Appellate Authority to discharge its function in terms of the Regulation 17(ii) of the said Regulation.

144. The Appellate Authority passed the order on July 8, 1986 and found himself in agreement with the views of the Enquiry Officer, the finding of the Disciplinary Authority. The appeal was dismissed and the punishment awarded earlier was confirmed. Rule 17(ii) of the said Regulation provides amongst others that the Appellate Authority was to consider whether the findings was justified, whether penalty is excessive and/or inadequate and thereafter, to pass appropriate order. In order to ascertain that the said Regulation is complied with, the appellate order must show that it took into consideration the findings relating to the quantum of penalty and other relevant considerations. The expressions "shall consider" and "pass appropriate orders" are enough to indicate the intention of the said Regulation that the Authority must give reasons. The Appellate Authority must give reasons. The Appellate Authority in the facts and circumstances of

this case although bound to give reason, did not record reasons nor did consider the grounds taken by the petitioner in the appeal. These are procedural infirmities in that the findings are not justified by the evidence on record, the penalty is too severe. The Appellate Authority in my view, was required to give reasons and there should be some discussion of evidence on record. The Appellate Authority has a legal duty to deliberate about ponder over and carefully examine the case of the petitioner on records and adjudge it before confirming and upholding the decisions of the Disciplinary Authority. In the instant case, the Appellate Authority in fact arid in effect confirmed a void order on the ground of bias of the Regional Manager and/or imposition of the dictate of the Disciplinary Authority upon the Regional Manager. There was no material showing that the Appellate Authority discharged its obligation under Regulation 17(ii).

145. The findings of the Regional Manager were unsupported by the evidence. and reasons and orders of the Disciplinary Authority as well as the Appellate Authority suffer from same vice.

146. The decision cited by Mr. Pal in the case of R. P. Bhat v. Union of India (supra) postulates that the word "consider" in Rule 27(2) of the Central Civil Service (Classification Control and Appeal) Rules, 1965 implies application of mind. Rule casts a duty on the Appellate Authority to consider the relevant facts" set forthwith in Rule 27(2) of the said Regulations. It was held in, the R. P. Bhatt"s case (supra) that there was no indication nor there was any findings as to whether the findings could be justified by the evidence on record or not. The word "consider" has different shades of meaning and must in Regulation 17(ii) i.e. in the contextual perspective mean an objective consideration by the Appellate Authority after due application of mind which implies the giving of reasons for his decision. It is unfortunate both the Disciplinary Authority and the Appellate Authority did not take into consideration that the enquiry proceedings was commenced, continued and concluded by the Regional Manager who apart from acting in violation of Rules 6(3) 6(21) and 10(a) and (b) of the said Regulations was determined to obtain the decision of the Disciplinary Authority on or before March 31, 1986 and for that purpose, the enquiry into 20 charges was concluded within 21/2 days and he himself decided the objection raised by the petitioner against his appointment as the Inquiry Officer on the ground of bias.

147. Refusal of the Regional Manager to cross-examine Mr. R.S. Agarwal, the author of the audit report seriously prejudiced the rights of the petitioner to defend, his case. The decisions cited by Mr. Pal in the case of State of U. P. v. C S. Sharma (supra) is applicable to the case on hand. The said Regulations provide for a full-fledged enquiry which is counter part of regular trial. The enquiry cannot be said to have complied with the elemantary principles of natural justice. An opportunity of cross-examinations is one of the three limbs of the rights of defence. The cross-examination being on of the rights, the petitioner ought not to have been refused such right arbitrarily on such untenable grounds as are found in the facts and circumstances of the case. The right of cross-examination is an integral part of procedural safeguards. IN the instant case, the

refusal of the Regional Manager to allow the petitioner to cross-examine the witnesses including Mr. Sharma and Mr. R. S. Agarwalla rendered the entire enquiry proceedings infirm in law. At every stage of the enquiry proceedings, the Regional Manager in the Regional Manager in grossest abuse of powers conferred upon him committed violation on the provisions of the said Regulations. The contention as advanced by Mr. Pal on. behalf of the petitioner is well founded. The Court is fully conscious of the fundamental principles that neither the Evidence Act nor the Technical Rules which govern criminal trial in Courts may not necessarily operate in the disciplinary proceedings but nonetheless, the well settled principles in punishing the guilty scrupulous care must be taken to see that the innocent are not punished applied to as much regular criminal trials as to disciplinary proceedings commenced, continued and concluded under the statutory Regulations. Both the Regional Manager and the Disciplinary Authority while purporting to act by the said Regulations must be held bound by the Regulations. The Regulations instead of being complied with were not at all taken account of and as a result, the relevant provisions of the said Regulations as are mentioned above are violated. No reasons could be found in the enquiry report for reaching the findings. Adverse procedure to the prejudice of the petitioner was adopted. The enquiry proceedings, thus concluded and the enquiry report prepared contravenes the said Regulations 6(3), 6(9), 6(10(a)(b) and 6(21) and explanations appended thereunder. Similarly, patent illegality manifests in the order of the disciplinary authority. The findings of the Regional Manager which travelled beyond the Articles of Charge is bad in law and the Disciplinary Authority did not assign any reasons for accepting the said report of the Regional Manager. No reasons in support of the order of punishment are recorded. In the event, the reasons are not recorded, there be less scope for arbitrary, unauthorised exercise of power. The orders will show that consideration not germane to the decision taken into account by authority passing the order. As held earlier, the findings of the Regional Manager were merely his ipse dixit. Regulation 6(21) casts an obligation upon the authority conducting the enquiry, at the conclusion of the enquiry to prepare report which must, inter alia, contain certain findings on each of Article of Charge and the reasons therefor. As regards, the findings of the disciplinary authority, the stand taken by Mr. Pal has much force in it. The relevant provisions of the said Regulation, namely, Regulation 7(3) requires the authority to consider pros and cons of the case in particular, the findings of the Regional Manager. It is very difficult to find out how the disciplinary authority agreed with the observations of the Regional Manager. The Disciplinary Authority never took into account serious infirmities that vitiated the enquiry proceedings, although the fundamental grievances were brought to the notice of the disciplinary authority. How such infirmity could be over-looked by the Disciplinary Authority? The Disciplinary Authority, in my view, ought to have taken into account the ore-possession that swept the mind of the Regional Manager. The Appellate Authority also failed to act in terms, of Regulation 17(ii) of the said regulations. Nothing was shown to the court nor any attempt to show the proceedings of the appellate authority to disabuse our mind, that the appellate authority was not guilty of utter non-application of mind. No attempt was made to justify that the three authorities, namely, the Regional Manager, the Disciplinary Authority and Appellate

Authority had ever recorded reasons in support of their conclusions. The decisions cited by Mr. Sen are distinguishable in the facts of the case for the reasons elaborately placed hereinabove. The decisions cited by Mr. Sen were relied on in the decision of the Supreme Court in the case of R. P. Bhatt v. Union of India (supra). It must be recorded that the Appellate Authority did not record whether the findings of the Regional Manager and the Disciplinary Authority were warranted by the materials on record nor did he secure any compliance as to whether penalty is excessive or adequate or justified in the facts and circumstances of the case. I hold that the order of dismissal passed by the Disciplinary Authority is illegal and invalid for the reason that then action and proceedings taken is thoroughly unwarranted, unauthorised and arbitrary. The findings of the Regional Manager are unsupported by reasons. The order of Disciplinary Authority as well as the Appellate suffer from the same vice.

148. The claims and the counter claims founded upon the submission of the learned Counsel both in fact and in-law in regard to the issues covered by B, C and D have in depth been dealt with and discussed herein before. The enquiry and the findings of the Regional manager on the basis of the facts not in dispute are not only in contravention of the said Regulations as are discussed in this judgment but also in breach of fundamentals of audi alterem partem as also concept of procedural fairness.

149. The Regulations provide for procedural safeguards. These procedural safeguards were denied and were taken away. Incurable infirmity crept in the recommendation of Regional Manager as contained in Memo dated August 1, 1985, October 29, 1985 and January 21, 1986 were not communicated to the petitioner. The entire proceeding was vitiated when Regional Manager resorted to very adverse procedure by establishing the charges by documents without there being any proof thereof in such manner as was elaborately presented. Decision of Bareilly Electric Company v. The Workmen (supra) relying on the decision in case of Union of India v. T. R. Verma (supra) are applicable to the case on hand.

150. The challenge of the petitioner is that the findings of the Regional Manager as regards the loss, at the conclusionary stage, had out-passed the scope of the charge. The facts and circumstances, as detailed above, in my view, did not authorise the Regional Manager to include the said charge without rigorously adhering to the explanation to the Regulation 6(21) of the said Regulations.

151. Similarly, Appellate Authority was incompetent to find the petitioner guilty of the said charge of loss. The decision in case of Collector of Customs v. Mohmmed Habibul Haque and also in case of State of Punjab v. Baktawar Singh apply to the facts to the case. In case of Collector of Customs v. Mahammed Habibul Haque, it is held that:

The charge had read that the delinquent was guilty of aiding and abetting an attempt in the smuggling of goods. The findings was that connivance of the act of aiding or abetting was alone established. It was held that aiding and abetting are not identical with the

connivance of aiding or abetting. The finding that the delinquent was himself guilty of smuggling of the goods was, therefore, a finding in excess of the scope of the charge.

152. In the case of State of Punjab v. Bakluil Singh (supra), the relevant portion of the said judgment is quoted below:

It may be noted that Sri Bakhtwar Singh was not charged with having not discharged his duties impartially. None of the charges levelled against him accused him of not discharging his duties impartially. Hence, the Minister was not justified in taking into consideration a charge in respect of which the member was not given any opportunity to explain his position, further, the finding of the Minister that Sri. Bakhtwar Singh was taking part in politics is a vague finding. Politics is a word of wide import. By merely saying that he was taking part on politics nothing concrete is conveyed or established. In view of this conclusion of ours, it is not necessary to go into the other grounds urged on behalf of Sri Bakhtwar Singh.

153. The finding of the Regional Manager being dehors the explanation to the Regional 6(21) of the said Regulations cannot but be held to be a charge with which the petitioner had not been charged with and the decisions thus, referred to and relied on by Mr. Pal are fully applicable in the facts of the case. The orders impugned in the writ applications including the enquiry report on these grounds cannot be sustained.

154. The position, therefore, emerges is that the petitioner having been charged with particular illustrations of misconduct on or in the acts said to have been constituted, he was held guilty of the charges on a finding on those acts and also other acts wholly unconnected with charges with which he had never been charged and which he had no opportunity to controvert the findings of the Authorities and the orders consequential thereto cannot; therefore, be maintained. Prima facie the charesheet suffers from pre-judgment for reasons as are discussed in this order. The chargesheet is kept alive subject to the observations made in this order.

155. In view of our findings as reached above, we have no hesitation in setting aside all the impugned orders the appointment of the Enquiry Officer, the order of dismissal and the appellate order.

156. The Rule is made absolute to the extent indicated above and the writ application is allowed accordingly without any order as to costs. Let appropriate writs do issue. Mr. Kalyan Banerjee, the learned Advocate for the Respondents, prays for stay of operation of the order. On a careful consideration of the facts and circumstances of the case as also the prayer of Mr. Banerjee, I direct that such stay would be operative for a period of one month from the date on condition the petitioner shall be paid Rs. 10,000/- without prejudice to his rights and contentions within a period of two weeks from date. On the expiry of the period of the stay, respondents shall pay to the petitioner service benefits as also the retiral benefits to the petitioner within four weeks from the date of the aforesaid

expiry of stay.