

(1978) 09 CAL CK 0018**Calcutta High Court****Case No:** C.R. No. 15443 (W) of 1976

Tripura Charan Chatterjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Sept. 20, 1978**Acts Referred:**

- Evidence Act, 1872 - Section 10
- Penal Code, 1860 (IPC) - Section 120A

Citation: 83 CWN 233**Hon'ble Judges:** G.N. Ray, J**Bench:** Single Bench**Advocate:** Saktinath Mukherjee, Deba Prosad Mukherjee, Madhusudan Banerjee and Smritikana Mukherjee, for the Appellant; N.N. Gupta, G.P. and Samarjit Gupta for the State and Jamini Kumar Banerjee and Sujit Kumar Laik, for the Respondent**Judgement**

G.N. Ray, J.

In the instant Rule the order of compulsory retirement of the petitioner made by the Government of West Bengal, Irrigation and Waterways Department, dated 20th of September, 1976, being annexure "A" to the supplementary affidavit of the petitioner, is under challenge. The petitioner also prays for a writ in the nature of certiorari for quashing the charge-sheet issued against the petitioner, the inquiry report made on the basis of such chargesheet and the second show-cause notice issued on the basis of the said chargesheet and the finding of the inquiring officer. The short facts of the case is that the petitioner joined the then Government of Bengal as Assistant Engineer sometime in June 1946 and in 1959 the petitioner was promoted to the post of Executive Engineer in the Irrigation and Waterways Department of the Government of West Bengal. On 24th of October, 1970, a chargesheet was issued to the petitioner on the following charges :--

Charge No. 1

That Shri Chatterjee dishonestly called for tenders by issuing tender notice No. 8 of 1967-68, dated the 4th July, 1967 for Annual Repair Works to Desh Khal during 1967-68 and had appointed Sarvasri Lakshman Chandra Bhuniyan, Contractor, for digging 2 lac. eft. of earth in the said Khal falling within Salehpur Mouza and Manikpat Mouza at Rs. 5,221.25P. and H. P. Goswami to dig similar quantity of earth in the said Desh Khal falling within the Dongol Mouza for a like amount of money without any sanction, authority or order of the Government and without any fund having been allotted for the purpose, knowing fully well that re-excavation work in the said Khal had already been undertaken and was being executed by the Agri-Irrigation Wing, Central Division, Burdwan under the Agriculture and Community Development Department ;

Charge No. 2

That Shri Chatterjee dishonestly passed the bill for Rs. 8,922/- submitted on the 29th March, 1968 for re-excavation work at Manikpat and Dongol Mouzas by Shri Lakshman Chandra Bhuiyan on false and fabricated Government records and reports prepared to his knowledge in collusion with Shri Anil, Kumar Ghatak, Temporary Sub-Assistant Engineer, Irrigation and Waterways Directorate, who is at present holding charge of the Sibgunge Section under the Hooghly Irrigation Division of the said Directorate, and Sri Ashutosh Mukherjee, permanent Assistant Engineer and Officiating Executive Engineer, Irrigation and Waterways Directorate, Government of West Bengal, now holding charge of the Berhampore Irrigation Division and got it paid to Shri Bhuiyan, although he knew at all relevant times that no earthwork was done by contractor Lakshman Chandra Bhuyan in the Desh Khal at Manikpat Mouza in the same way as he knew that Shri Bhuiyan had no authority to do any earthwork at Dongol Mouza which was allotted by him to contractor, Sri H. P. Goswami, the letter of cancellation of Shri Goswami's contract having been issued from his office as late as 30-3-68 (vide Memo No. 1079(1) to the Assistant Engineer, Arambagh Irrigation Sub-Division.

Charge No. 3.

That Shri Chatterjee in combination with the said Shri Ashutosh Mukherjee, Ex-Assistant Engineer, and Shri Lakshman Chandra Bhuiya, Contractor, dishonestly misappropriated public money to the tune of Rs. 8922/- as between himself and his associates heretofore mentioned, which act on his part was improper and unbecoming of his position as an Executive Engineer and derogatory to the prestige of the Government;.....

It appears that on the basis of such charge-sheet, an inquiry proceeding was initiated, against the petitioner. It further transpires that along with the petitioner, two other Government officers were also charge-sheeted for various lapses made by them and the said officers were Shri Ashutosh Mukherjee, Assistant Engineer, Irrigation, and Waterways Department and Shri Anil Kumar Ghatak, Section Officer

in the said Irrigation and Waterways Department in the Arambag Sub-Division. It also appears that Shri J. C. Chakraborty was appointed as an Inquiring Officer to inquire into the charge-sheets levelled against the petitioner and the said two other officers. It will appear from the inquiry report that the departmental inquiry against the petitioner Shri Tripura Charan Chatterjee who was then Executive Engineer, Irrigation and Waterways Directorate, Government of West Bengal, had been held analogously with the inquiries directed against the said Shri Ashutosh Mukherjee, Assistant Engineer and Shri Anil Kumar Ghatak, Sub Assistant Engineer. It further transpires from the inquiry report that at the desire of the said officers and for the convenience of the parties, the departmental inquiry had been held analogously in respect of all the said three officers. A number of witnesses were examined in the said inquiry proceeding and it appears from the inquiry report that the statements of the said two other officers were also taken into consideration by the Inquiring Officer and in his inquiry report the said officer found that all the said charges had been proved. On the basis of the said inquiry report, a show-cause notice was issued to the petitioner, *inter alia*, stating therein that the findings of the Inquiring Officer appear to be just and reasonable and in the said show-cause memo the petitioner was asked to show cause why he should not be dismissed from service. The petitioner thereafter showed a very long cause, *inter alia*, stating therein that the said inquiry report was incorrect in material particulars and the Inquiring Officer was absolutely biased and proceeded on mere surmise and conjecture and basic facts required to be proved by the department concerned to substantiate the charges had not been proved at all but nonetheless the petitioner was held guilty of all the said charges. In the second show cause notice, the petitioner specifically stated that he was completely innocent and he had no knowledge whatsoever that the excavation of the khal in question was not to be done by his department but some other department of the Government was entrusted to do the said job. In the said long representation showing cause, the petitioner pointed out various irregularities committed by the Inquiring Officer and submitted that under such circumstances the inquiry report should not be accepted at all and the petitioner should be exonerated from all the the charges levelled against him unjustly and without any reasonable basis. It however, appears that the Disciplinary Authority ultimately did not pass an order of dismissal against the petitioner but on the basis of the recommendation made by the Public Service Commission of the State passed the impugned order of compulsory retirement of the petitioner from service and as aforesaid, in the instant Rule the said order of compulsory retirement is under challenge.

2. Mr. Saktinath Mukherjee, the learned Counsel appearing for the petitioner contended that it would be quite apparent and evident from the inquiry report that a joint and common trial was held in respect of the petitioner along with the said two other Government Officers. But such joint trial was completely without jurisdiction. Mr. Mukherjee contended that the disciplinary proceeding was initiated

under the Civil Services (Classification, Control and Appeal) Rules, 1930 and there was no provision under the said Civil services (Classification, Control and Appeal) Rules, 1930 for such joint or common and analogous trial and as such, the entire proceeding before the Inquiring Officer was without jurisdiction and no action was permissible, on the basis of such inquiry report. Mr. Mukherjee contended that the chargesheet, annexure "D" to the writ petition refers to the old rules and as aforesaid there was no provision for joint trial in the said Civil Services (Classification, Control and Appeal) Rules 1930. Mr. Mukherjee next contended that during the continuance of the departmental proceeding, the West Bengal Civil Services (Classification, Control and Appeal) Rules 1971 came into force with effect from 1st of May, 1971 and the departmental proceeding against the petitioner continued upto 10th of November, 1971. Mr. Mukherjee submitted that in view of the provisions of Rule 9, particularly, the proviso to the said rule read with rule 25(1) including proviso to clause (B) of the West Bengal Civil Services (Classification, Control and Appeal) Rules 1971, the said 1971 Rules will apply to the departmental proceeding pending at the commencement of the said Civil Services (Classification, Control and Appeal) Rules 1971 and Mr. Mukherjee fairly conceded that under such circumstances it was quite open to the respondents to obtain sanction either from the Governor or from any other authority referred to in the proviso to Rule 9 of the said Classification, Control and Appeal Rules 1971 for common proceeding against the petitioner along with other delinquent officers. Mr. Mukherjee contended that admittedly in the instant case no such permission or sanction was obtained either from the Governor or from the prescribed authority for a common trial of the petitioner along with the said two other delinquent officers and as such, the inquiry proceeding was vitiated. Mr. Mukherjee further contended that it will appear from the inquiry report itself that at the desire of the petitioner and other delinquent officers and for the convenience of the parties the inquiry proceeding was held analogously so far as the petitioner and the said two other delinquent officers were concerned. Mr. Mukherjee contended that there cannot be estoppel against the Statute and even assuming that the petitioner agreed for such analogous trial there was no occasion on the part of the Inquiring Officer to proceed with a joint trial or a common trial without the sanction obtained from the Governor or any other authority referred to in the 1971 rules. Mr. Mukherjee further contended that on the face of the report of the Inquiring Officer it appears that the petitioner at the most desired for an analogous trial but the joint and or common trial was not desired by the petitioner. Mr. Mukherjee contended that the jurisdiction of the Inquiring Officer in a departmental proceeding depended on the provisions of the said Classification, Control and Appeal Rules, 1971 and no jurisdiction in contravention of the said Rules can be conferred on the Inquiring Officer by any consent of the parties. For this contention, Mr. Mukherjee referred to the decision made in the case of Union of India vs. Prem Chand, reported in 1973 (2) SLR 344. In the said decision Rule 1710 of the discipline and Appeal Rules for the Railway servant was under consideration and it was held in the said decision that there was inherent lack of jurisdiction in the joint

Board of Inquiry and no amount of acquisance or consent of the parties can confer jurisdiction on it which such Board of Inquiry did not possess. The Rajasthan High Court further held in the said decision that in such circumstances, the participation of the plaintiff in the inquiry will not preclude the plaintiff from challenging the jurisdiction of the Board of Inquiry.

3. Mr. Government Pleader, appearing for the respondents, however, contended that there was no joint or common trial in the instant case. The learned Government Pleader fairly conceded that if a joint and/or common trial was held then under the provisions of the West Bengal Civil Services (Classification, Control and Appeal) Rules, 1971 a sanction from the authority referred to in the said Rules was required to be taken. But the learned Government Pleader contended that the facts and circumstances being common, an analogous trial was held in respect of all the three officers by consent of the parties and for the convenience of the parties. Such analogous trial, in the aforesaid facts and circumstances, was not made in breach of any statutory rule, and no exception can be taken in respect of such analogous departmental proceeding held in the instant case. Mr. Government Pleader further contended that as there was no statutory breach, the petitioner is also estopped from challenging the legality of such analogous trial in view of the fact that he consented for such analogous trial and had also participated in such trial.

4. The learned Government Pleader also contended in this connection that even if the findings in respect of one or two of the charges levelled against a delinquent officer are invalid for breach of statutory rules relating to departmental enquiry proceeding and/or for violation of the principles of natural justice, there should not be any interference by the writ court against the penalty imposed on the delinquent officer if the penalty in question could have been passed on the basis of other findings validly made in respect of the remaining charge or charges. For this proposition, the learned Government Pleader referred to a decision of the Supreme Court made in the case of State of Orissa Vs. Bidyabhushan Mohapatra, and another decision of the Supreme Court made in the case of Railways Board, New Delhi vs. Niranjan Singh reported in AIR 1969 S.C. 967. It was held in Bidya Bhushan Mahapatra's case that the reasons which induced the punishing authority, if there had been an inquiry consistent with the prescribed rules, are not justiciable. It was also held that if the order of dismissal may be supported on any finding as to substantial misdeamenour on which the punishment can be lawfully imposed, it is not for the court to consider whether the grounds alone would have weighed with the authority in dismissing the public servant. It was held that the court has no jurisdiction if the findings of the enquiry officer or Tribunal prima facie makes out a case of misdeamenour to direct the authority to reconsider the order because in respect of some, of the findings but not all there had been some illegality. It was also held in Niranjan Singh's case that if the order of removal could be lawfully passed on sustainable charge, it is not for the court, to consider whether that ground alone would have weighed with the authority in imposing the punishment in

question. The aforesaid contention of the learned Government Pleader is therefore of substance and accordingly it is necessary to examine as to whether the penalty in question could have been passed on any of the sustainable charges. If the penalty imposed against the petitioner is permissible in law on the basis of the findings validly made in respect of any of the charges, it is immaterial if the findings made in respect of some other charges had been vitiated because of violation of any statutory law relating to enquiry proceeding and or violation of the principles of natural justice.

5. Mr. Mukherjee however contended that it was not a case of analogous trial but as a matter of fact, a common and/or joint trial was held so far as the petitioner and the said other two delinquent officers were concerned and the statements and or records relating to other two officers were freely relied on by the Inquiring Officer for the purpose of making his finding in respect of each of the charges levelled against the petitioner. Mr. Mukherjee contended that the statements made by the other delinquent officers were relied on against the petitioner for basing the findings in respect of each of the charges although the said delinquent officers were not cited as witnesses against the petitioner and they also did not depose against the petitioner and the petitioner was also neither supplied with the copies of their statements nor was he given any opportunity to examine the said persons. Mr. Mukherjee contended that in the facts and circumstances of the case, it cannot be contended that there was only an analogous trial and there had not been any breach of the statutory provisions or the principles of natural justice. Mr. Mukherjee contended that the findings made in respect of all the three charges were vitiated and as such the penalty could not have been imposed on the basis of any of the sustainable charges.

6. So far as the charge No. 1 is concerned, Mr. Mukherjee referred to paragraph 14 of the inquiry report and contended that the defence cases of all the said three delinquent officers were taken into consideration by the Inquiring Officer for the purpose of making his finding relating to charge No. 1 levelled against the petitioner. Mr. Mukherjee also referred to paragraph 16 of the inquiry report and stated that the last ten lines of the said paragraph 16 will undoubtedly point out that a joint assessment was made by the Inquiring officer in respect of all the three officers. Mr. Mukherjee also drew the attention of the Court to paragraph 18 of the inquiry report wherein also the reference of the petitioner and his subordinate officers, namely, the other delinquents was made. Mr. Mukherjee also referred to paragraph 56 of the inquiry report and stated that the statement of the other delinquent officer, namely, Shri Ashutosh Mukherjee was relied on by the Inquiring Officer for making his finding against the petitioner relating to charge No. 1. Mr. Mukherjee drew the attention of the Court to the statement contained in the inquiry report in paragraph 56 to the following effect :--

Sixthly, the discrepancies in the defences advanced by the three officers proceeded against, also point to the conclusion that the defence are not bona fide.

It was further held in the said paragraph 56 that :

Sri Chatterjee's statement as to the alleged engagement of contractor Lakshman Bhuiyan runs directly counter to what Shri Mukherjee the Asstt. Engineer, says in his written statement of defence, Ext. 26. In the same way the Sectional Officer Shri Ghatak's statement, Ext. 27 goes against Shri Mukherjee's very materially on this particular point.

Mr. Mukherjee contended that it is thus quite apparent and evident that even the written statements filed by the other delinquent officers were freely relied on by the Inquiring officer for the purpose of making finding against the petitioner so far as charge No. 1 is concerned and by no stretch of imagination it can be contended that it was not a case of joint trial but it was just a case of independent trial held against each of the three officers analogously by the consent of parties and for the convenience of the parties. Mr. Mukherjee also referred to paragraph 58 of the inquiry report wherein it was held :

For such a batch of officers to stoop down to dishonesty and deceit for private gains and personal aggrandisement is but appropriate, and hence their hydra-headed defences themselves constitute yet another circumstances, and a strong circumstances at that, against them all, both individually and collectively.

7. Mr. Mukherjee also drew the attention of the Court to paragraph 62 of the inquiry report and submitted that it will appear from the said paragraph that all the three officers were considered jointly by the Inquiring Officer and on such consideration it was held that "between the three officers charged, and perhaps in collusion with contractor, Lakshman Ch. Bhuiyan who was more or less a name-lender, the illegal actions were taken by all the said officers." Mr. Mukherjee also strongly relied on the statements contained in paragraph 64 of the inquiry report wherein it was held to the following effect :--

The circumstances stated above which are common to all the three cases before me, leave no room for doubt that they are incompatible with the innocence of any of the officers of the I & W. Deptt. with whom we are concerned in these proceedings, and also incapable of explanation upon any other reasonable hypothesis than that of their complicity in the offences charged, both individually and collectively. I say this because the cumulative effect of the circumstances appearing as a whole against them all, is illustrative of their close partnership in the matter of misappropriating Govt. money to the extent of Rs. 9,000/-approximately. In other words, there is in this group of cases a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with their innocence.

8. Mr. Mukherjee submitted that it will thus be quite clear that the Inquiring Officer assessed facts against the petitioner relating to charge No. 1 on the basis of the statements made by the other delinquent officers and also on the basis of the complicity of the other officers and it cannot be contended that there was no joint trial and/or common trial so far as charge No. 1 is concerned. So far as charge No. 2 against the petitioner is concerned, Mr. Mukherjee submitted that from paragraph 67 of the inquiry report it will appear that the Inquiring Officer also considered the cases of the other delinquent officers and made a common finding against all of them. Mr. Mukherjee contended that such rolling up of evidences and rolled up consideration of the cases of all the delinquent officers vitiated the inquiry proceeding and no action could be taken on the basis of such inquiry report. Mr. Mukherjee referred to paragraph 67 of the inquiry report and drew the attention of the Court to the statement made in the said paragraph to the effect :

We have again got it from the Sectional Officer, Shri Ghatak, that the work contemplated by Ext. 13 could be completed just in 18 days" time, and that he is not in a position to say as to why the Executive Engineer extended the time for execution of the said work upto 16.5.68.

There is also statement in the said paragraph to the following effect :

Now it is admitted by Shri Mukherjee, the Asstt. Engineer as he then was, that he received a copy of the said letter only on 2.4.68. But strangely, the work concerned was finished according to the defence, by contractor Lakshman Ch. Bhuiyan even before 24. 3. 68.

* * * *

The explanation offered by Shri Chatterjee, as we have already seen, is unacceptable.

9. Mr. Mukherjee also referred to the statement made in paragraph 67 of the inquiry report wherein it was held :

Suffice it to say, the defence of Shri Chatterjee, Shri Mukherjee and Shri Ghatak on the above point and the evidence given by each thereon, bristle with contradictions, that are simply irreconcilable.

Referring to the said paragraph 67 Mr. Mukherjee contended that even in respect of charge No. 2 the Inquiring Officer proceeded against the petitioner on the basis of the statements made by other delinquent officers and the entire proceeding was conducted in such a manner as if there was a joint and/or common trial and the contention of the learned Government Pleader that there was no joint and/or common trial in the departmental inquiries against the three officers but all the three cases were independently inquired into but for the convenience of the parties and with the consent of the parties the said three inquiries were held analogously should not be accepted. So far as charge No. 3 is concerned, Mr. Mukherjee also

submitted that relating to charge No. 3 the Inquiring Officer also rolled up the cases of all the three delinquent officers for the purpose of making his finding against the petitioner. Mr. Mukherjee referred to paragraph 71 of the inquiry report wherein it was held :

Evidence as to these ingredients of a conspiracy are ingrained in the instant group of cases, and hence, I have no hesitation in saying that the principles of section 120A, I. P. C. and also of Section 10 of the Evidence Act are applicable to the facts and circumstances proved against the three officers proceeded against departmentally before this commission.

10. Mr. Mukherjee also referred to paragraph 72 of the inquiry report wherein it was held to the following effect :--

In the above view of the matter, the evidence and the circumstances proved by the prosecution, as we have seen earlier, lead to the inevitable conclusion that Shri Chatterjee in combination with his two subordinate officers stooped to dishonesty and succeeded in defrauding the Govt. of roughly Rs. 9000/- without executing the work which they fraudulently professed to.

Mr. Mukherjee contended that in the aforesaid facts and circumstances of the case it cannot be contended by any stretch of imagination that there was no joint and/or common trial in respect of the petitioner and the said two other delinquent officers but all the said delinquent officers were tried independently but such independent inquiries against each of them were only held analogously for the sake of convenience and by consent of parties as sought to be contended by the learned Government Pleader.

11. After giving my anxious consideration to the respective submissions made by the learned Counsels appearing for the parties, it appears to me that the Inquiring Officer, as a matter of fact, made a joint and/or common trial in respect of all the delinquent officers and it cannot be contended that the case of each of the delinquent officer was dealt with independently although all the three departmental enquiries, were made analogously as sought to be contended by the learned Government Pleader. The evidences and/or the statements made by each of the delinquent officers were freely used against, the other delinquent officer, including the petitioner, for the purpose of making finding in respect each of the three charges levelled against the petitioner. In such circumstances, Mr. Mukherjee is right in contending that the joint and/or common trial was held admittedly, without any sanction from the Governor and/or any other appropriate authority referred to in the said Classification, Control and Appeal Rules, 1971 and in view of violation of the statutory provisions concerning a joint or common trial such joint and/or Common trial was illegal. I am also of the view that the petitioner was highly prejudiced by such joint and/or common trial because the statements of the other delinquent officers were relied on against the petitioner without giving the

petitioner any opportunity to examine the said delinquent officers and to controvert the statements made by them relating to the charges levelled against them in the separate departmental proceedings initiated against them.

12. In view of the aforesaid facts, it is quite evident that the inquiry report in respect of all the said charges is not maintainable in law and actions taken on the basis of such inquiry report, namely, issue of a second show-cause notice and the passing of the impugned order of compulsory retirement, are also not maintainable and the Rule must succeed on that score alone.

13. Mr. Mukherjee lastly contended that in any event, the impugned order of punishment cannot be sustained in law in view of the fact that there was no application of mind by the punishing authority. Mr. Mukherjee contended that it will, appear from the order of punishment passed against the petitioner that the punishing authority only mechanically stated that on consideration of the representation made by the petitioner and the finding made by the Inquiring Officer and considering the recommendation made by the Public Service Commission, the impugned order of punishment was passed by the punishing authority. Mr. Mukherjee contended that there was no real consideration in the case but there was only a show of consideration by the mere use of the expression "considered". Mr. Mukherjee further contended that in the answer to the second show cause notice, the petitioner pointed out details the irregularities committed by the, Inquiring Officer and it was also stated by the petitioner that how on pure surmise and conjecture certain findings, were made although no evidence or proof was given by the department concerned. The punishing authority was legally bound to consider the said contentions of the petitioner made in his representation in answer to the second show cause notice and by mere mechanical disposal of such representation without application of mind, it cannot be held that there had been substantial compliance with the mandatory requirements of consideration of such representation of the delinquent officer by the punishing authority. Mr. Mukherjee contended that it is now well-settled that even at the second show cause stage, it is open to the delinquent officer not only to show cause against the punishment proposed but also to plead total innocence. For this contention Mr. Mukherjee referred to the decision of the Supreme Court made in the case of State of Assam and Another Vs. Bimal Kumar Pandit . It was held in the said decision that there is no doubt that in response to this notice, the public officer is entitled to show cause not only against the action proposed to be taken against him, but also against the validity or the correctness of the findings recorded by the enquiring officer and provisionally accepted by the dismissing authority. In other words, the second opportunity enables the public officer to cover the entire ground.

14. As a proposition of law, no exception can be taken to Mr. Mukherjee's contention that the punishing authority must apply his mind to the facts and circumstances of the case and materials on record before issuing a second show

cause notice and the punishing authority should also take into consideration the materials on record and the representation of the delinquent officer in answer to second show cause notice proposing punishment and such consideration must be real and not a mere show of consideration. It may however be noted in this connection that there is no fixed criteria for such consideration and whether there has been real consideration or not of all the relevant materials by the punishing authority, is to be ascertained from the facts and circumstances of each case.

15. The learned Government Pleader, followed by Mr. Samarjit Gupta, however, fairly conceded that the punishing authority should apply his mind and consider the representation made by the delinquent officer. But, the learned Counsel for the State respondents submitted, that in the instant case there has been application of mind and it cannot be contended that there was only mechanical reference of the charges levelled against the petitioner and the finding made by the Inquiring Officer. The learned Government Counsel also submitted that it was not correct to allege that there was only a show of consideration but there was no real consideration of the facts and circumstances of the case by the punishing authority. Mr. Samarjit Gupta the learned Counsel appearing with the learned Government Pleader further contended that the punishing authority initially proposed to impose a punishment of dismissal in the second show-cause notice but after considering the representation of the delinquent officer and also considering the recommendations of the Public Service Commission the proposed punishment in the second show-cause notice was not ultimately passed by the punishing authority but instead of proposed punishment of dismissal, an order of compulsory retirement was passed. It is thus apparent that there was a clear application of mind by the punishing authority and it cannot be contended that there was no real consideration but only a show of consideration. The learned Government Counsel contended that is not necessary to state in so many words that after considering the representation of the delinquent officer, the proposed punishment in the second show-cause notice was not considered just, and proper. The very fact that a different punishment was ultimately imposed will establish the fact that the punishing authority adverted to the facts and circumstances of the case and passed the impugned order of punishment. In this connexion, the learned Government Pleader also referred to the decision of the supreme Court made in the case of The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others, and also the decision of the Supreme Court made in the case of The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others. In the aforesaid decision the meaning and import of the expression "consider" were discussed by the Supreme Court and relying on the said two decisions the learned Government Pleader contended that the punishing authority, as a matter of fact, adverted to the facts and circumstances of the case and the representation made by the petitioner and as the punishing authority really concurred with the finding of the Inquiring Officer and also the recommendation of the Public Service Commission, the punishing

authority did not set out the reasons in details and in such circumstances the detailed reasons are also not required to be given. In my view, there is substance in the contention of the learned Counsels appearing for the State in this regard. In the facts and circumstances of the case, it cannot be contended that the punishing authority really did not take into consideration the representation of the petitioner and/or the finding made by the Inquiring Officer and the recommendation given by the Public Service Commission. The impugned order is undoubtedly very cryptic and the reasons have not been specifically given but in the special facts and circumstances of the case, I am of the view that the punishing authority adverted to the facts and circumstances of the case and based his finding on consideration of the materials on record. It may be pointed out, in this connection that there was a lot of controversy over the fact as to whether the impugned order is liable to be struck down also on the ground that the opinion of the Public Service Commission since obtained before issue of the second show-cause notice was not disclosed to the petitioner, thereby depriving him to make proper representation. It was contended on behalf of the petitioner that when the punishing authority obtained the view of the Public Service Commission before issuing the second show-cause notice, such view of the Public Service Commission should have been disclosed to the petitioner so that the petitioner was in a position to make proper representation and could deal also with the views expressed by the Public Service Commission which obviously influenced the punishing authority in the matter of issuing the second show-cause notice. As a matter of fact, at one stage, the learned Government Pleader fairly conceded before this Court that as the view of the Public Service Commission was not disclosed to the petitioner, the petitioner may be given a further chance to show cause against the second show cause notice after service of the report of the Public Service Commission and the punishing authority may take appropriate action in accordance with law on consideration of such representation to the second show-cause notice. Mr. Samarjit Gupta the learned Counsel appearing with the learned Government Pleader, however subsequently contended that from the materials on record it transpires that the Public Service Commission was not really consulted before issue of the second show-cause notice and as such there was no occasion to supply the views of the Public Service Commission along with the second show cause notice He submitted that the aforesaid concession was made by the learned Government Pleader on misconception of facts and the records clearly established that the Public Service Commission's view was taken only on one occasion and that also after the issue of the second show cause notice. Mr. Mukherjee, the learned Counsel appearing for the petitioner, however, pointed out that there was a specific statement made in the affidavit-in reply on behalf of the respondent No. 1 in the application for vacating the interim order of injunction passed in this Rule to the effect that the advice of the Public Service Commission, West Bengal was sought for and other formalities were gone through before issuing the second show cause notice and as such it was not possible to issue the said notice before 7th February 1975. Mr. Mukherjee contended that in view of such

specific statement made in the affidavit-in-reply affirmed by a responsible officer of the rank of a Deputy Secretary to the Government of West Bengal, it cannot be contended that the advice of the Public Service Commission was not taken before issue of the second show-cause notice. Mr. Mukherjee contended that it is precisely for such statement in the said affidavit that the learned Government Pleader fairly conceded that the impugned order should be quashed and the petitioner should be given an opportunity to show cause afresh after service on the petitioner of the said advice given by the Public Service Commission and only thereafter the punishing authority will proceed in accordance with law. There is force in this contention of Mr. Mukherjee and in view of such specific and categorical statement made in the affidavit-in-reply by a responsible officer of the rank of a Deputy Secretary to the Government of West Bengal and in the absence of any other affidavit to the contrary it will not be proper to proceed at this stage on the footing that no advice of the Public Service Commission was taken before issue of the second show-cause notice. But in view of my specific finding that the inquiry proceeding itself was vitiated because of the said joint trial held by the Inquiring Officer in breach of statutory Rule and also for serious prejudice caused to the petitioner for violation of the principles of natural justice as indicated hereinbefore, the contention as to whether the advice of the Public Service Commission was obtained before or after the second show cause notice, is only of academic importance. In the circumstances, this Rule is made absolute. But I make no order as to costs. I, however, expressly make it clear that the authorities concerned will be at liberty to proceed afresh against the petitioner on the basis of the charge-sheet issued against the petitioner in accordance with law.