(1987) 11 CAL CK 0016

Calcutta High Court

Case No: F.M.A.T. No. 3253 of 1985

Anand Prakash Sexana		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: Nov. 26, 1987

Acts Referred:

- Constitution of India, 1950 - Article 136
- Industrial Disputes Act, 1947 - Section 11A

Citation: 92 CWN 807

Hon'ble Judges: K. M. Yusuf, J; Ganendra Narayan Ray, J

Bench: Division Bench

Advocate: Sadhan Ray Chowdhury and Miss. Kalyani Bhattacharya, for the Appellant;P. Ginwalla, Jatin Ghosh, Pranab Guha and Mr. Pranab Dutta, for the Respondent

Final Decision: Dismissed

Judgement

G. N. Ray, J.

This appeal is directed against the judgment and order passed on 20th August, 1985 in C.O. No. 19863(W) of 1984. By the aforesaid judgment, the learned Trial Judge dismissed the writ petition moved by the appellant Sri Anand Prakash Sexana against the order of removal from service passed against the said Sexana by the respondent No. 3, the Director (Inspection and Quality Control), Export Inspection Council of India.

2. The case of the appellant is inter alia that he was appointed as Assistant Director (Chemical) of the Export Inspection Agency by the Export Inspection Council of India sometime in July, 1971. The writ petitioner appellant was confirmed to the said post sometime in February, 1975 and was later on promoted to the post of Deputy Director (Chemical) and was ultimately transferred to Calcutta Office of the Export Inspection Agency. The petitioner was later on transferred to Bombay and was again transferred to Calcutta sometime in 1979 and was holding the said post of the

Deputy Director in the Calcutta Office. On 5th June, 1979, the appellant was charge-sheeted by the Director, Inspection and Quality Control of the Export Inspection Council on an allegation that while functioning as Deputy Director (Chemical) in the office of the Export Inspection Agency, Calcutta on or about 23rd July, 1977, the appellant had committed gross misconduct by issuing a fitness certificate in favour of M/s. Chitra Trading Corporation of India, Calcutta, regarding export worthiness of 200 M/T of Aluminium Sulphate which were not in conformity with its specification and by issuing such fitness certificate the appellant had failed to maintain absolute devotion of duty and had, therefore, contravened Rule 3(1) (ii) of the Central Civil Services (Conduct) Rules, 1964. On the basis of the said charge-sheet, a departmental enquiry was conducted and the disciplinary authority passed an order of removal from service of the appellant in the said departmental enquiry. The appellant thereafter preferred an appeal to the Chairman, Export Inspection Council and Secretary to the Government of India in terms of Rule 90 of the Export Inspection Agency Employees'' (Classification, Control and Appeal) Rules, 1978, but the appellant was in formed that his appeal had been rejected.

3. The appellant thereafter moved a writ petition before this Court inter alia challenging the correctness and propriety of the order of punishment passed on the appellant, whereupon a Rule ''Nisi'' was issued in Matter No. 64 of 1982. The learned Trial Judge set aside the order of removal from service and directed the respondents to reinstate the appellant but gave liberty to the respondents to impose some lesser punishment in the said departmental proceeding. The respondents thereafter preferred an appeal before this Court. The Court of Appeal thereafter set aside the order passed by the learned Trial Judge and sent the matter back on remand before the learned Trial Judge for disposal of the writ petition. The learned Trial Judge on a rehearing of the matter set aside the impugned order of punishment passed by the disciplinary authority and also the order passed by the appellant authority. A further appeal was preferred by the respondents in Appeal No. 80 of 1983 and the Court of Appeal presided over by Mr. Justice M. M. Dutt (as His Lordship then was) was pleased to direct inter alia that in the facts and circumstances of the case the Court was of the view that the lesser punishment might be imposed on the respondent and for the said purpose it was not thought desirable to send the matter back to the disciplinary authority. The Court of Appeal directed that instead of removing the appellant from service, his promotion would be withheld for two years and he should be paid 50% of his arrears of salary for the period between the date of the impugned order removing him from service and the date of his reinstatement in terms of the order passed by the Court.

4. The respondents thereafter moved an application under Article 136 of the Constitution of India before the Hon''ble Supreme Court and the said SLP was heard and disposed of by the Hon''ble Supreme Court on 15th October, 1984 and the Hon''ble Supreme Court was of the view that the said case was not a proper case for interference under Article 136 of the Constitution of India.

5. It appears that the appellant, was also served with another charge-sheet on 29th May, 197S for an alleged offence committed on 9th August, 1977 and 10th August, 1977 for making a claim for a false T. A. Bill for a journey undertaken from Calcutta to Asansol and back by second class. The departmental proceeding was initiated against the appellant for the said charge and the appellant submitted a representation in the said departmental proceeding inter alia denying the charges levelled against him. It was contended by the appellant that he had undertaken a journey from Calcutta to Asansol and back on 9th and 10th August, 1977 in connection with inspection of a factory at Asansol (Dhadka) and as he had travelled by Rail in second class, he had submitted a T. A. Bill for the second class fare and there was no basis for the allegation that a false T. A. Bill was charged by him. It appears that the Enquiring Officer submitted a report on 19th September, 1979 in the said departmental proceeding and forwarded the said report to the Commissioner for Departmental Enquiry of Central Vigilance Commission, New Delhi. It appears that the Enquiring Officer proposed a punishment for removal of service, but the Vigilance Commission on examining the records of the disciplinary proceeding was of the view that the delinquent officer had drawn an advance of Rs. 107 for the proposed journey to Asansol from Calcutta and he could have claimed Rs. 86 as first class fare to which he was entitled to but he only preferred a bill of Rs. 20 as second class fare. In the aforesaid circumstances, the pecuniary advantage was not the object but the object could only be to conceal the fact that he had accepted the hospitality of the company. Against that background, the major penalty for preparing a false bill without any idea of gain was considered to be harsh by the Vigilance Commission but as he had prepared a false-bill, a high minor penalty could be passed against him and the Vigilance Commission accordingly advised. Such advice was communicated by the Vigilance Commission by his memo dated 4th October, 1979, but the Director of Inspection and Quality Control, viz., the Disciplinary Authority did not proceed with the said departmental proceeding concerning the false T. A. Bill and as the order of removal had been passed against the appellant in other disciplinary proceeding mentioned hereinbefore, no action was taken on the aforesaid disciplinary proceeding but the same was kept pending. After the appellant had succeeded in getting the order of removal from service set aside by this court which was not interfered with by the Supreme Court in SLP in respect of the other disciplinary proceeding, the matter of imposing punishment in the disciplinary proceeding initiated on the allegation of false T. A. Bill was taken up and the Director of Inspection and Quality Control informed the Director, Central Vigilance Commission by his memo dated 12th June, 1984 to the effect that the Vigilance Commission would kindly take note that the Court of Appeal had reduced the punishment imposed on Sri Sexana in view of the fact that there was no allegation of dishonesty against the said Sexana and the act complained of being the first lapse of that nature but as there was element of dishonesty and suppression of material information in the matter of travelling in AC First Class and availing the company''s hospitality, a major penalty m the departmental proceeding

concerning the false T. A. Bill was justified. The Vigilance Commission was requested to reconsider its earlier recommendation for imposing a minor punishment on the said charge-sheet concerning the false T. A. Bill. It appears that the Director, Central Vigilance Commission thereafter on reconsideration of the matter agreed with the Export Inspection Council that a major penalty should be imposed on Sri Sexana. The Director (Inspection and Quality Control) thereafter passed a major punishment of removal from service against the appellant Sri Sexana and an aforesaid the appellant Sri Sexana again moved a writ petition before this court inter alia challenging the correctness and propriety of the said order of punishment passed against him.

6. It was contended by the appellant before the Enquiring Officer in the said departmental proceeding that he was directed to inspect the factory M/s. Reckitt and Colman of India Limited at Dhadka, Asansol and he made an official journey to the said factory on 9th August, 1977 and on inspection of the said factory had returned to Calcutta on 10th August, 1977. Although be had drawn an advance for covering the said journey by first class to which he was entitled to but in hurry he had left the said advance drawn by him at his residence and therefore could not undertake the Journey by first class with the money left with him and he had to incur the journey by second class and when he submitted his T.A. Bill he had charged the second class fare for about 20 for both onward and return journey. The appellant had also submitted that as there was so suitable accommodation available at Dhadka, he had to accept the hospitality of the company at Dhadka and stayed in the Guest House of the Company at Dhadka and therefore, he had not charged his T.A. Bill for his lodging at Dhadka. It appears that it was alleged in the charge-sheet levelled against the appellant that the Company had purchased AC First Class ticket for the appellant and he had travelled with Sri D. Prem Narayan, the Export Manager of the said Company and had also returned to Calcutta by A.C. First Class with the said Sri D. Prem Narayan. It was alleged that a reservation in the name of Mr. Sexana was made by A.C. First Class both for onward and return journey by the said Company but the appellant falsely, charged a T. A. Bill for second class railway fare (amounting to Rs. 20) although in fact he had travelled in A.C First Class at the cost of the company and he had suppressed the said fact. It will, however, be noted in this connection that the said Sri D. Prem Narayan was not examined in the departmental proceeding and it also appears to us from the depositions made in the disciplinary proceeding that no one either on behalf of the Railway employees or on behalf of the employees of the said Company had stated that the appellant in fact had travelled in A.C. First Class with Sri D. Prem Narayan. The only evidence adduced in the departmental proceeding was to the effect that in the reservation chart the name of Sri Sexana appeared and in the Railway Chart for reservation a tik mark appeared which suggested that the journey had been undertaken by the passenger against such reservation. The Railway Employee had stated in cross-examination that he did not remember whether the appellant Sexana had

travelled or not with reference to reservation register and he could not say as to whether or not the person in whose name the reservation had been made bad actually travelled. It also appears that in the reservation chart the age of Sexana was mentioned as 38, but the age of Sri Sexana was only 29 years. The driver of the factory car also did not state that Sri Sexana had travelled in the office car from Asansol Station to the company''s Guest House along with Sri D. Prem Narayan. It appears that Sri Kanjilal, an Inspection Officer of C.B.I. (S.W.9) had stated that Sri Prem Narayan had told him during preliminary investigation that the delinquent officer had travelled with him. The delinquent officer raised objection about that admissibility of the deposition of Sri Kanjilal about what he had heard from Sri D. Prem Narayan on the ground that such evidence was hearsay evidence end Sri Prem Narayan not being examined, the correctness of the statement alleged to have been made by Sri Prem Narayan to Sri Kanjilal could not be ascertained. The Enquiring Officer, however, overruled such objection and recorded the deposition of Sri Kanjilal.

7. The learned Trial Judge dismissed the writ petition inter alia on the finding that since the departmental proceeding was fairly conducted by giving the delinquent officer reasonable opportunities to defend himself, the view taken by the Disciplinary Authority and/or the Appellate Authority should not be interfered with in the writ proceeding. It was also held by the learned Trial Judge that as the delinquent officer was holding high position in life and as he had also erred on earlier occasion but this Court took a lenient view because the lapse for giving incorrect certificate was for the first time, the judicial power should not be exercised in favour of a person who was consistently acting contrary to the oath of allegiance and the duty to maintain absolute integrity and devotion to duty. Accordingly, the writ Petition was dismissed by the learned Trial Judge and the instant appeal has been preferred by Sri Anand Prakash Sexana.

8. The learned counsel for the appellant has contended that the departmental proceeding was initiated after framing the mind by the punishing authority about the commission of alleged offence by the delinquent officer and the charge-sheet was issued not for the purpose of causing departmental enquiry with an open to record the opinion already framed by the punishing authority. It has been contended by the learned counsel that a reference to the charge-sheet will indicate that the punishing authority was proceeding with bias and a closed mind. On that ground alone, the charge-sheet should be quashed. A number of decisions of this Court including the decision reported in 1981(3) SLR 737 made in the case of Suven Chanda Das v. State of West Bengal was cited by the learned counsel for the appellant. He has contended that the charge-sheet indicates that a firm finding about the commission of guilt by the delinquent officer had been made by the punishing authority and the charge-sheet clearly indicates that the delinquent officer was called upon to disprove the conclusion already drawn by the punishing authority as noted in the charge-sheet. He has contended that in the instant case

before the initiation of the departmental proceeding reference was made to the Vigilance Department and the entire report and advice of the Vigilance Department were taken into consideration by the Disciplinary Authority and then the charge-sheet was issued. In the aforesaid circumstances, it cannot be reasonably contended that only a prima facie view had been taken by the punishing authority but no firm opinion had been made by the said authority. The instant case relates to an allegation of drawing a false T. A. Bill for a journey undertaken from Calcutta to Asansol and back. Another charge-sheet was issued to the appellant and the said other charge-sheet refers to an improper export worthiness certificate issued by the appellant. In the first disciplinary proceeding relating to false T.A. Bill, the enquiry report was obtained prior to the enquiry report in the second charge-sheet concerning export worthiness certificate. The punishing authority had, therefore, ample opportunity to take into consideration the report of the Enquiring Officer in respect of the first charge-sheet and to take appropriate decision on the same. The Enquiring Officer appreciating that the charge was of a trivial nature and the materials were insufficient for imposing any punishment chose not to conclude the first departmental proceeding but kept the same pending. The learned counsel has submitted that the disciplinary authority unfortunately developed a strong bias against the appellant and was bent upon getting him removed from service. Since the second charge-sheet concerning improper export worthiness certificate was thought to be of a serious nature and since the Vigilance Department had also recommended for removal from service of the appellant on the second charge-sheet, the Disciplinary Authority concluded the second departmental proceeding and pressed an order of removal from service.

9. As aforesaid, the appellant succeeded before this Court by moving a writ petition and punishment from removal from service was found to be harsh and not warranted in the facts of that case. Instead of removal from service, this court directed for imposing a minor penalty and the department failed to get the order passed by this court reversed or varied by the Supreme Court because the SLP was dismissed by the Hon''ble Supreme Court. The learned counsel has further submitted that in this disciplinary proceeding concerning the T.A. Bill, the Vigilance Department did not advise for removal from service when the opinion of the Vigilance Department was sought for. The learned counsel for the appellant has submitted that the Vigilance Department initially advised for starting a disciplinary proceeding but when the entire report of the Enquiring Officer had been forwarded to the Vigilance Department for its opinion, the Vigilance Department was of the view that the submission of a T.A. Bill for a journey by second class for only Rs. 20 was not on account of any monetary gain but the delinquent officer wanted to conceal the fact that he had accepted the hospitality of a private factory inspected by him. In order to conceal the said fact, a second class T.A. Bill was submitted by him. The Vigilance Department was, therefore, of the view that the major punishment by way of dismissal of removal from service was not warranted in the

facts of the case but a minor penalty should be imposed. The learned counsel for the appellant has submitted that as the punishing authority had from the beginning framed its mind that the delinquent officer was guilty for the offences alleged in the charge-sheet and was also bent upon to do away, with the service of the appellant it was, not satisfied with the advice of the Vigilance Department and when the attempt to dismiss the delinquent officer in the other disciplinary proceeding had failed because of the intervention by the Court, the punishing authority had drawn the attention of the Vigilance Department that in terms of the order of the Court, the delinquent officer could not be removed from service and the recommendation of the Vigilance Department required a revision. It was only at the instance of the disciplinary authority, the Vigilance Department changed its earlier view and agreed to the proposal for major punishment by way of removal from service and the disciplinary authority thereafter promptly passed such order. The learned counsel has contended that in the backdrop of aforesaid events the charge-sheet should be taken into consideration by this court and the court should quash the said charge-sheet on the ground that the said charge-sheet depicts bias and closed mind of the punishing authority. The learned counsel has further contended that in. any event, it must be held that the disciplinary authority had waived the right to indict punishment on account of drawing false T.A. Bill in view of the fact that despite the availability of the enquiry report and also the advice of the Vigilance Department, no action was taken by the disciplinary authority. The learned counsel has contended that if the disciplinary authority, inspite of the fact that the report of the Enquiring Officer and the advice of the Vigilance Department were made available to the disciplinary authority and the disciplinary proceeding and the enquiry report were earlier in point of time than the other charge-sheet and the enquiry report, did not intend to take any action on the first charge-sheet; the court should reasonably hold that the disciplinary authority had dropped the earlier charge-sheet and did not intend to take any action on the same. He has submitted that although the first charge-sheet was not proceeded with any further, the disciplinary authority had revived the said disciplinary proceeding after a long lapse of time only. when the attempt to do away with the service of the delinquent officer had failed.

10. The learned counsel for the appellant has also submitted that although the Evidence Act and the rigours of proof as required in a court of law are not strictly applicable in the departmental proceeding, the law with regard to the departmental proceeding has been laid down by this court and other High Courts and. also the Hon''ble Supreme Court in no uncertain term and it has been held by the Supreme Court that surmise and conjecture cannot be permitted to be substituted in place of proof. The learned counsel has contended that in order to bring home the charge of submitting false T.A. Bill, the department was bound to establish in the departmental proceeding by cogent and convincing evidence that the delinquent officer had in fact not travelled by second class but had travelled by A.C. First Class as the guest of the company. But the said basic fact could not be proved. None of

the witnesses examined on behalf of the department had stated that such witness had seen the delinquent officer travelling by A.C. Class as a quest of the company. Sri Prema Narayan with whom the delinquent officer had allegedly undertaken journey in A.C. Class was not examined in the departmental proceeding and no summons was also issued to him for appearing in the departmental proceeding. The learned counsel for the appellant has contended that in the departmental proceeding, the department could easily summon Sri Prema Narayan to appear and depose but such attempt bad not been made. The driver of the company''s car who had taken Sri Prema Narayan from Asansol to the company''s guest house and had again taken Sri Prema Narayan back to the Railway Station for return journey was examined by the C.B.I. Officials but he categorically stated that he had not seen any outsider travelling with Sri Prema Narayan in company''s car. The learned counsel has contended that if the case of the department is that the delinquent older had accepted the hospitality of the company and on such acceptance travelled with Sri Prema Narayan in the A.C. Class and also stayed in the company''s guest house at Dhadka, the appellant must have been seen by the driver of the car travelling in the car with Sri Prema Narayan. In order to bring home the charge of drawing a false T.A. Bill and to establish that the delinquent officer had in fact travelled in A.C. Class with Sri Prema Narayan, reservation charts of the Railway had been produced in the departmental proceeding. It may also be noted in this connection that in one of such chart the name of the appellant Sri Anand Prosad Sexana did not appear but one Mr. Sexana was mentioned whose age was different. The learned counsel has submitted that if Mr. Sexana became, the guest of the company and a reservation was made for him his name and his proper age should have appeared in the reservation chart. The Railway employee has specifically stated in the departmental proceeding that he could not say whether at all Mr. Sexana whose name appeared in the reservation chart had also travelled. It may be stated in this connection that a tik mark appeared against the names of the persons for whom the reservation was made and although a tik mark is usually given when the person travels against the reservation, the Railway employee could not say that Mr. Sexana had in fact travelled because he had not maintained that chart. The learned counsel has, therefore, submitted that the fact as to whether or not the delinquent officer had actually undertaken journey in the A.C. Class could not, therefore, be established, by any convincing evidence and the whole thing was left on the guess work of the disciplinary authority who in his anxiety to punish, hastened to draw the conclusion that the delinquent officer had actually undertaken journey in the A.C. Class as a company''s guest. The learned counsel has further submitted that a reasonable inference from the fact proved can be drawn by a disciplinary authority but no inference on surmise and conjecture is permissible. The learned counsel in this connection has referred to the provisions of Departmental Enquiry (Enforcement of Attendance of Witness and Production of Documents) Act, 1972 for the purpose of contending that under the provisions of the said Act, the attendance of Sri Prema Narayan could be enforced by the disciplinary authority. It however appears to us

that the provisions of the said Act were of attracted in the facts of this case and as such we are not inclined to refer some of the provisions of the said Act sought to be relied on by the learned counsel for the appellant. The learned counsel for the appellant has further submitted that an officer of the Vigilance Department had deposed in the disciplinary proceeding that Sri Prema Narayan had stated to him that the delinquent officer had travelled with him in the A.C. class. Such evidence, according to the learned counsel for the appellant, is only hearsay and not admissible. He has submitted that although the Evidence Act as such does not apply, the basic principles of Evidence Act are also applicable in the disciplinary proceeding. He has contended that if the person alleged to have stated some fact is not produced for cross-examination, the veracity of the alleged statement cannot be tested and acceptance of such statement without any opportunity to cross-examine the maker of the statement, will be violative of the basic principles of natural justice. In this connection, reference was made by the learned counsel to a decision of the Jammu and Kashmir High Court made in the case of Zonal Manager, Life Insurance Corporation vs. Mohanlal Saraf, reported in 1978(2) S.L.R. 868. It has been held in the said decision that if no right to cross-examine is given, the same would violate the principles of natural justice. The learned counsel has lastly contended that in any event, the punishment for filing the wrong T.A. Bill for a small sum of Rs. 20, the punishment for removal from service is exceptionally harsh and disproportionate to the offence alleged. He has submitted that the Vigilance Department itself was of the view that any major punishment was not warranted in the facts of the case because the T.A. Bill was not submitted for any monetary gain. The learned counsel has also submitted that it is an admitted position that in a remote area where no suitable accommodation is available, the appellant could accept the hospitality of a private concerned it is also an admitted position that in such circumstances, such acceptance does not amount to any misconduct of the concerned employee. The delinquent officer in the instant case was compelled to accept the hospitality of the Company at Dhadka because there was no suitable accommodation available in that area. Precisely for the said fact, the delinquent officer has not charged for his fooding and lodging which otherwise would have been admissible to him. In the aforesaid circumstances, there could not be any ill motive of concealing the fact of staying in the guest house of the company for the purpose of inspecting the factory of the company at Dhadka. The learned counsel has contended that the appellant was only 29 years of age when the aforesaid T.A. Bill was submitted by him and was not quite experienced and conversant with rules and procedures. He is a highly qualified person and was holding a responsible post with ample scope to go up in the future, but the entire prospect of a successful career of the appellant has been shattered because of harsh and motivated attitude taken by the disciplinary authority. The learned counsel has submitted that even if the court of appeal comes to the finding that the delinquent officer had accepted the hospitality of the company in the matter of travelling by Rail and the said T.A. Bill for Rs. 20 for travelling in second class was wrong, the extreme punishment of the removal from

service will be disproportionate to the alleged offence and wholly unjustified. He has submitted that the learned Trial Judge has not averted to the relevant facts and circumstances of the case and has failed to appreciate that the impugned order was unwarranted and unjustified.

11. Mr. Ginwala, the learned counsel appearing for the respondents has, however, submitted that the charge-sheet must be read along with the imputations of charges and it is necessary to state the charges in clear and unambiguous manner, so that the delinquent officer can properly meet the charges levelled against him. In the instant case, a preliminary enquiry was conducted on the allegation contained in the charge-sheet and on prima facie consideration of the materials contained in the imputations of charges, the disciplinary authority framed the charges and the Commissioner for departmental enquiries, Vigilance Commission was appointed am the Enquiring Officer. In the aforesaid facts, there is no basis for contending that the disciplinary authority started the proceeding with a closed mind and or the charge-sheet on the face of it depicts a bias of the disciplinary authority against the delinquent officer. Mr. Ginwala has submitted that there is no form for issuing a charge-sheet and the charge-sheet must be appreciated in its broader aspects and any hyper technical attitude cannot but defeat the disciplinary proceeding. He has submitted that in the instant case, all reasonable opportunities to defend in the departmental proceeding were given to the delinquent officer and the charges were sought to be proved in the departmental examination by leading evidence in support of the department''s case. In this connection, Mr. Ginwala has referred to a decision of the Supreme Court made in the case of Sunil Kumar Banerjee Vs. State of West Bengal and Others, . The Supreme Court has held in the said decision that the finding and decision of the disciplinary authority cannot be said to be tainted with any illegality merely because it consulted Vigilance Commission and obtained its view on the very same subject. Coming to merits of the case, Mr. Ginwala has contended that the disciplinary authority on consideration of materials on record and the evidences adduced in the proceeding, can take one view or the other and the writ court cannot reappreciate the evidences and substitute its own finding. He has also submitted that Evidence Act does not in terms apply in the domestic enquiry but basic principles of natural justice and also the basic principle of the rule of evidence are applicable to the domestic enquiry. He-has further submitted that all facts need not be established by direct evidence and it is an accepted principle of jurisprudice that a fact can also be established by indirect and circumstantial evidence. If from other facts proved and/or established a reasonable inference of another fact can be drawn then such inference of fact is quite legal and valid, no exception can be made for drawing such inference of fact. Mr. Ginwala has submitted that it has been established that the company had booked railway tickets by A.C. Class for Sri Sexana and its official Sri Prema Narayan both for onward and return journey. It has further been established that such reservation had not been cancelled and the tik mark appearing in the reservation chart had indicated that the

persons in whose favour reservation had been made had actually travelled. It has also been established that the delinquent officer had stayed in the Company''s Guest House along with Sri Prema Narayan as the guest of the Manager of the factory at Dhadka. The delinquent officer had suppressed his stay as a guest in Company''s Guest House. If from all these facts, an inference of Sri Sexana''s travelling with Sri Prema Narayan in A.C. Class has been made by the disciplinary authority such inference cannot be held to be perverse or wholly imaginary or impossible warranting an inference by the writ court. Mr. Ginwala has also submitted that the learned Trial Judge did not find that the disciplinary authority had acted arbitrarily and or on fanciful imagination. Mr. Ginwala next contended that no adverse inference should be drawn for not examining Sri Prema Narayan in the disciplinary proceeding. He was contacted by the officers of the Vigilance Department at the preliminary enquiry and statement was recorded but his attendance in the enquiry could not be enforced. He disputed the contention of the learned counsel for the appellant that the Departmental Enquiries (Enforcement of Attendance of Witnesses and Production) Act, 1972 had any manner of application in this departmental proceeding. Mr. Ginwala has further contended that although Sri Prema Narayan had not been examined, the department established the ease of Sri Sexana''s travelling in A.C Class with Sri Prema Narayan by examining other witnesses and producing other materials at the departmental proceeding. On the question of mitigating the punishment inflicted on the delinquent officer, Mr. Ginwala has contended that the delinquent officer cannot claim mitigation as a matter course. The charges established squarely point out a moral turpitude for preparing a false bill. The delinquent officer held a high and responsible position and he succumbed to small allurement. The quantum of monetary gain should not be a guiding factor in the matter of consideration of quantum of punishment. If the dishonesty of the delinquent officer is established by which he tried to make some monetary gain, a very harsh punishment was warranted. When the implication of the dishonesty involved in the case was explained to the Vigilance Commission, it appreciated the view point of the punishing authority and revised its earlier decision and agreed to the proposal of major punishment. The learned Trial Judge also endorsed the view taken by the punishing authority and there are no special factors which comment for mitigation of the punishment awarded on the delinquent officer. In this connection, Mr. Ginwala has referred to a decision of the Punjab & Haryana High Court reported in 1985 Labour and Industrial cases page 10. It was held in the said decision that power u/s 11A of the Industrial Disputes Act for altering the punishment given by the employer to a workman should be exercised when such punishment was made to victimise the workman. The labour court should take into consideration the broader aspects involved in the case and when there was charge of defrauding the employer, order of, reinstatement with 50% back wage by way of altering the sentence of dismissal may not be justified in the absence of any finding about victimisation. He has also disputed the contention of the learned counsel of the appellant that in order to do away with the service of the

delinquent officer, the first departmental proceeding was not concluded but only when the punishment passed in the second disciplinary proceeding was changed from major punishment to minor punishment, the disciplinary authority took up the second disciplinary proceeding and persuaded the Vigilance Commission to agree with the proposal for major punishment. Mr. Ginwala has submitted that simply because the enquiry report for the first disciplinary proceeding was obtained earlier, the disciplinary authority was not under any obligation to complete the same. He has submitted that both the departmental proceedings were initiated in quick succession and the enquiry report of the second disciplinary proceeding was received shortly after the report of the first disciplinary proceeding. The second disciplinary proceeding contained serious charges relating to improper export worthiness certificate issued by the delinquent officer and the Vigilance Commission had also agreed to the proposed punishment of removal from service. If the said disciplinary proceeding had been concluded first, it cannot be argued that the first disciplinary proceeding was kept in abeyance with any ill motive so that the same may be raked up only if the second disciplinary proceeding does not end in the manner intended by the disciplinary authority. As the order of removal from service had been passed in the second disciplinary proceeding, there was no further occasion to treat the delinquent officer in service and to proceed further with the first disciplinary proceeding. He has submitted that the allegation of bias of the Disciplinary Authority and his inclination to award a major punishment are without any substance and are afterthoughts. He has, therefore, submitted that there is no occasion for the Appeal Court to take any view contrary to the view taken by the learned trial Judge and the appeal, therefore, should fail and be dismissed.

12. After considering the respective submissions made by the learned counsels appearing for the parties, it appears to us that the disciplinary authority did not independently assess the facts and circumstances of the case and materials on record and evidences adduced in the departmental proceeding. The disciplinary authority simply endorsed the findings made by the Enquiring Officer and bypassed the impugned order of punishment of removal from service on the charge that the delinquent officer Sri Sexana had falsely claimed Railway fares for journeys on 9th and 10th August, 1977 by second class although he had travelled by A.C, First Class as a guest of the company. It may be noted that the enquiring officer had specifically held that Sri Sexana could not be held guilty of having claimed false daily allowance although he had availed free boarding and lodging at the company''s Guest House at Dhadka at Asansol because such stay was only casual/ occasional and was permitted under the provisions of para. 6 of S.R. 51. The Enquiring Officer had specifically held that the defendant''s omission to mention his free lodging and boarding in company''s Guest House could not be regarded as suppression of material fact for entailing false claim of daily allowance. The punishing authority has also accepted such finding of the enquiring officer. It is, therefore, evident that only for drawing a T.A. Bill for Rs. 20 (Twenty only) for both onward and return journey

from Calcutta to Asansol by second class in Railway, the aforesaid punishment for removal from service has been passed by the punishing authority. The proposal for the said punishment was referred to the Central Vigilance Commission at New Delhi by the punishing authority. Along with the said proposal, the report of Sri M. K. Vasudevan, Commissioner for Departmental Enquiries, Central Vigilance Commission who was appointed as the enquiring officer in the aforesaid departmental proceeding initiated against Sri Sexana, had also been sent to the Vigilance Commission. The Vigilance Commission, after accepting the report of Sri Vasudevan held as follows : "In this case, though the suspect public servant had drawn an advance of Rs. 107 and could have claimed Rs. 86 as first class fare to which he was entitled (after having travelled in ACC) he only preferred a bill of Rs. 20 as a second class fare. Pecuniary advantage was, therefore, not the object. The object could only be to conceal the facts that he travelled in A.C.C. at the expense of the Company. Against this background major penalty for preparing a false bill without any idea or gaining could be considered harsh. Because he has prepared a false bill, he deserved a fairly high minor penalty and the Commission would advise accordingly. Action taken on Commission''s advice may be intimated." For the aforesaid offence of claiming false T.A. Bill, a charge-sheet was issued on June 1.9.1978 and enquiry report was obtained by the punishing authority on September 19, 1979. The other departmental proceeding for issuing Export worthiness certificate to a firm was initiated by submitting a charge-sheet against Sri Sexana at a later date and the enquiry report in that departmental proceeding was received by the disciplinary authority after the enquiry report was obtained by him in respect of the first charge-sheet. It appears to us that in normal circumstances, the punishing authority was expected to complete the first disciplinary proceeding relating to T.A. Bill before completing the second disciplinary proceeding relating to export worthiness certificate. It is only unfortunate that the disciplinary authority chose to keep this departmental proceeding pending and hastened to complete the second departmental proceeding by passing an order of removal from service on July 22, 1980 in the said departmental proceeding. It may be mentioned here that the impugned order of removal from service on the first departmental proceeding was passed only on November 28, 1984. The punishment of removal of service on the second departmental proceeding was set aside in a writ proceeding initiated by Sri Sexana and on appeal the said order was upheld. The punishing authority moved the Hon''ble Supreme Court against imposition of minor penalty in a special leave application but the Hon''ble Supreme Court did not interfere with the order of minor penalty imposed by the court of appeal and dismissed the special leave petition. In the backdrop of events, the disciplinary authority revived the first departmental proceeding and took steps to complete the first departmental proceeding since kept in abeyance and persuaded the Vigilance Commission to reconsider its earlier advice to impose minor penalty and to agree to the proposal for a major penalty and the Vigilance Commission thereafter agreed to the proposal of major penalty and the disciplinary authority passed the impugned order of major penalty by way of

removal from service. In the aforesaid facts and circumstances, there is force in the contention of the learned counsel for the appellant Sri Sexana, that the disciplinary authority was anxious to get rid of the service of Sri Sexana and as charges in the second proceeding were comparatively graver and the Vigilance Commission readily agreed with the proposal of imposing major punishment, the punishment of major penalty was passed in the second proceeding but despite the fact that the report of the enquiring officer in the first departmental proceeding was received earlier by the disciplinary authority, the disciplinary authority chose not to complete the first disciplinary proceeding but kept. it pending and only when the major penalty imposed in the second disciplinary proceeding had failed because of the intervention by the Court, the first disciplinary proceeding was taken up with right earnest and informing the commission that major punishment imposed on the said second proceeding had been changed to a minor punishment by the court the Vigilance Commission was requested to agree to the proposal of major punishment. It appears to us that if the first disciplinary proceeding had not been kept pending and had been concluded before the conclusion of second departmental proceeding, the question of another lapse on the part of the delinquent officer since highlighted by the punishing authority in its letter to the Vigilance Commission for reconsidering its earlier view, would not have arisen and there was little likelihood that the advice of the Vigilance Commission would be changed on further pursuation. The learned counsel has argued that the charge-sheet indicates a closed mind and a definition bias of the disciplinary authority and on that score the charge-sheet and the impugned order of punishment on the basis of such charge-sheet should fail. We are, however, not inclined to accept the said contention of the learned counsel for the appellant. There is no form in which a charge-sheet is to be issued but question of bias and closed mind of the disciplinary authority are to be adjudged on consideration of the relevant facts and circumstances of the case of including the charge-sheet, imputation of charges and other antecedent facts and circumstances. In our view, in order to bring home the charge levelled against delinquent officer without any vagueness and/or ambiguity, charges are required to be stated specifically and in a straight forward manner. In doing so, the language of the charge-sheet may partake a shade of bias but simply on that score a charge-sheet should not be discarded on the score of bias or closed mind and an overall assessment of the charge-sheet in the context of imputations of charges and other antecedent facts and circumstances are required to be made. The learned counsel for the appellant has further contended that as the disciplinary authority did not conclude the first departmental proceeding despite the receipt of the enquiry report earlier than the report in the second departmental proceeding, it must be deemed that the disciplinary authority had dropped the first departmental proceeding and/or waived the right to impose punishment on the said departmental proceeding. In the facts of the case, we however, do not agree with the said contention of the learned counsel. By keeping the first departmental proceeding pending and proceeding with the second proceeding and concluding it earlier by

itself cannot mean that the first proceeding was dropped or the disciplinary authority had waived his right to impose punishment in the departmental proceeding. We have, however, already indicated that the inclination on the part of the disciplinary authority to keep the first departmental proceeding pending and to complete the second one containing comparatively graver charges with recommendation of the Vigilance Commission to impose major penalty may reasonably warrant an inference about the disciplinary authority''s inclination to get rid of the service of the delinquent officer. Mr. Ginwala, the learned counsel for the respondent has submitted that the disciplinary authority, if on the charges established, decides that the major penalty is to be imposed and if such view is not wholly perverse, the writ court should not interfere with the quantum of punishment imposed by the disciplinary authority in exercise of its discretion. He has also submitted that the fact of the delinquent officer''s actual travelling by A.C. First Class with Sri Prema Narayan might not have been conclusively proved by direct evidence but if from other evidence such inference of fact about the delinquent officer''s travelling by A.C. First Class with Sri Prema Narayan is possible and if the enquiring officer draws such inference and the disciplinary authority accepts such finding of the enquiring officer, there will be no occasion to interfere with such finding. So far as travelling by Sri Sexana by A.C.C. First Class with Sri Prema Narayan is concerned, it appears to us that the evidence adduced only indicated about some probability of Sri Sexana''s travelling in A.C. First Class with Sri Prema Narayan but none of the witnesses could depose to the effect that Sri Sexana had in fact travelled.

13. The finding of the Enquiring Officer about Sri Sexana''s travel by A.C. First Class with Prema Narayan since accepted by the punishing authority squarely rests on the evidence that the company had booked two A.C.C. tickets for Sri Prema Narayan and in the name of Sri Sexana and on the depositions given by Sri Sushil Kr. Chakraborty (S.W. 6), attendant, A.C. Coach and Sri L. D. Gama, A.C.C.-in-charge Eastern Railway (S.W. 7). In his examination-chief Sri Chakraborty on a reference to the reservation chart dated 9.8.1977 has only indicated that the names of the passengers having advance reservation were typed out and the names of the passengers purchasing tickets at the time of journey had been, written in ink in the reservation chart but it was not possible for him to say who was the passenger concerned and other particulars of that person. When a specific question was put to him as to whether or not he could state that the three persons whose names-had been typed out in the chart, had really travelled from Howrah to Asansol, Sri Chakraborty categorically stated that the reservation chart was not maintained by him and therefore, he could not give any reply according to that chart whether three persons named therein had travelled or not. In answer to the question of significance of tick mark in the reservation chart Sri Chakraborty, however, stated that in the chart maintained by him he used to put a tick mark against the name of the person undertaking journey. It is, therefore, obvious that Sri Chakraborty even after seeing the reservation chart

with a tick mark could not say whether persons whose names were typed out had in fact travelled in the A.C. Class because the chart was not maintained by him and significance of tick mark could only be explained by the person who had actually maintained that chart. Sri L. D. Gama, A,C.C.-in-charge, Eastern Railway (S.W. 7) was also examined in the departmental proceeding. Looking at the chart, he could only state that a person in the name of Sri Sexana had travelled A.C.C. Class from Asansol to Howrah and there was no cancellation against his name. When his attention to the significance of tick mark against the name of Sri Sexana was drawn, Sri Gama had stated that the tick mark against the name of the passenger would mean that the concerned passenger had not put any claim for refund and the ticket must have been availed of. In the aforesaid context of the reservation chart with tick marks, when a specific question was asked as to whether or not the three persons mentioned in the reservation chart had actually travelled or not, Sri Gama stated that he could not definitely say whether they had travelled or not. It may be noted in this connection that Sri Sexana at the relevant time was only 29 years old but the age of Sri Sexana was mentioned as 37 years in the reservation chart. Sri Sexana in his representation to the disciplinary proceeding had stated that getting an information from the Deputy Director that Sri Sexana was deputed to visit the factory on 9th August, the company might have purchased tickets quoting an imaginal age for him but he was not known to Sri Prema Narayan and he also did not meet Sri Prema Narayan in the Station and had not in fact travelled in A.C.C. Class. In the aforesaid facts, it appears to us that evidence adduced in the departmental proceeding were not sufficient enough from which an inference of Sri Sexana''s actually travelling in A.C.C. Class as company''s guest could be reasonably drawn and it appears to us that such finding lay more in the realm of surmise and a mere possibility. In this connection, it may be noted that no officer of the company had deposed to the effect that he had seen. Sri Sexana actually travelling in A.C.C. Class, and the statement of the driver of the company at Dhadka becomes very relevant in this context when the driver had specifically stated that no outsider had travelled with Sri Prema Narayan in the company''s car'' from Asansol to Dhadka Guest House and back. On the face of such statement of the company''s driver, the claim of Sri Sexana that he had travelled by taxi from Asansol Railway Station gets a good support and the finding that he had not travelled by taxi but travelled in company''s car with Sri Prema Narayan appears to be a mere surmise not corroborated by any convincing evidence.

14. We are not oblivious of the position in law that where one view or the other can be reasonably taken on the basis of evidences and materials on record and the authority in the domestic enquiry has taken one such view, the writ court should not interfere by substituting its own view. But law is also well settled that the view that has been taken must be a possible views which one can reasonably take on the basis of the evidences adduced in the domestic enquiry and other materials on record. We have already indicated that surmise cannot substitute the requirement

of proof. Inference drawn from facts must necessarily be a reasonable inference with a high degree of probability and should not be a mere possibility. The Supreme Court in. no uncertain term has laid down that if a finding cannot be reasonably made on the basis of the evidences led in a domestic enquiry and such finding is more in the realm of surmise, such finding should not be held to be proper finding of fact and in that case the writ court is within its right to interfere with such finding of fact on the footing that such finding is perverse and as such nonest in the eye of law.

15. For the reasons indicated hereinbefore, it does not appear to us that the evidences adduced in the departmental proceeding can be held to be sufficient for reasonably drawing an inference that the delinquent officer had in all probability travelled in A.C. First Class with Sri Prema Narayan. Such finding appears to be more in the realm of surmise than on a reasonable inference of other facts proved and established. Be that as it may, even if it is accepted that Sexana had in fact travelled in A.C. Class as the Guest of the Company, it is nobody''s case that in his inspection report, he had shown any favour to the company and for that reason he intended to conceal the hospitality of the company accepted by him. The delinquent officer submitted that Dhadka was a small place and there was no good hotel and stay in Company''s Guest House was a necessity. The Enquiring Officer Sri Vasudevan, who happened to be Commissioner for departmental enquiries, Vigilance Commission has held that paragraph 6 of S.R. 51 permitted the delinquent officer to draw daily allowance even if he had stayed in the Company''s Guest House free of cost and Sri Sexana''s failure to mention such stay in D.A. Bill did not amount to any material suppression entailing false claim. The Vigilance Commission, on consideration of the materials on record and the report of Sri Vasudevan held that drawing of T.A. Bill for travel by second class in Railway for a small sum of Rs. 20 was not actuated by any motive of financial gain but the object could be to conceal that he travelled in A.C. First Class as company''s guest. In the absence of any allegation of showing undue favour to the company, the delinquent officer could have very well disclosed his acceptance of company''s hospitality in travelling by A.C. First Class but the delinquent officer in a young age (in 1977 he was about 29 years old) if without appreciating that he could and should have disclosed the company''s hospitality in the special facts of the case and should not have tried to conceal the said fact and in the anxiety to conceal the fact of accepting company''s hospitality had submitted a T.A. Bill for a second class railway fare for a paltry sum of Rs. 20 not on account of making any financial gain, does not in our view deserve an extreme penalty of removal from service at an early age of 37 years and the impugned punishment appears to us quite harsh and disproportionate to the offence alleged. As a matter of fact the Vigilance Commission was of the opinion that imposition of major penalty was unwarranted in the facts and circumstances of the case. It was only at the subsequent pursuation by the disciplinary authority, the Vigilance Commission revised its earlier views and agreed to the proposal of major penalty. The impugned

major penalty is, therefore, liable to be set aside.

16. We would have referred the matter to the disciplinary authority for imposing a punishment other than a major punishment, but as it appears to us that the basis fact of Sri Sexana''s travelling by A.C. First Class with Sri Prema Narayan as the guest of the company could not be established by cogent and reliable evidences beyond reasonable doubt, the charge of drawing false T.A. Bill cannot but fail. Hence, we do not think that any direction for imposing a minor punishment is required to be given in this case. It may be noted here that the delinquent officer has already suffered considerably for being out of employment in these hard days for a number of years and even if he had made a lapse in drawing a small T. A. Bill not on account of any monetary gain but for concealing his acceptance of company''s hospitality which in the facts of the case, he could have disclosed without any impunity, he deserves some sympathy and consideration.

17. In the aforesaid facts, we allow this appeal and set aside the impugned order of punishment inflicted on the appellant by way of removal from service. The appellant, therefore, must be deemed to be in service and as such entitled to salaries and all other allowances as are admissible to him. The respondents are directed to pay all arrear salaries to the appellant as are admissible to him within two months from this day. There will be no order as to cost in this appeal.

18. After the judgment was delivered by this Court, the learned counsel for the respondents has made a prayer foe stay of the operation of this judgment for a period of seven weeks. In the facts and circumstances, we are, however, not inclined to grant any stay and the prayer is, therefore, rejected.

19. The learned counsel for the respondents has also prayers for a certificate of fitness for appeal to the Supreme Court. In our view, the case does not involve any question of law which requires an authoritative decision to be made by the Hon''ble Supreme Court. Accordingly the prayer for certificate to leave to appeal is rejected.

20. A prayer has also been made by the learned counsel for the respondents that the certified copy of the judgment should be given expeditiously. Let the office take steps for giving the certified copy as expeditiously as practicable if an application for an urgent copy is made therefore

K.M. Yusuf, J.

21. I agree.